

QUESTION # 2

CHANGES IN CONSTITUTION OF PAKISTAN THROUGH TWENTY SIXTH AMENDMENT

1. INTRODUCTION:

Pakistan on 21st oct 2024 passed 26th constitutional Amendment also known as "Constitutional Package" represents one of most comprehensive reforms in country's judicial history - 27 clauses of 1973 constitution has been amended. The amendment was aim to address transparency, accountability, and balance of power within judiciary. While by curtailing certain judicial powers and involving Parliament in judicial appointment this amendment package seeks to enhance democratic oversight and addresses longstanding criticism about judicial overreach. The most significant changes were about eliminating suo motu power and appointment of chief justice of Pakistan. Politically it has enhanced executive power and prevented executive overreach.

2. BRIEF OVERVIEW OF 26th CONSTITUTIONAL AMENDMENT

Enacted on : 21st Oct 2024

Number of Amended Clauses : 27

New Inserted Article : 9A (about environmental protection)

The 26th constitutional Amendment is legislation aimed at:

1. Revoking Supreme Court Suo Moto powers
2. setting Chief Justice of Pakistan's term at three years
3. Empowering Prime Minister to appoint new Chief Justice of Pakistan from among three top most senior Supreme Court Judges.
4. Establishment of constitutional Benches.

2a NOTEABLE AMENDED ARTICLE

Article 175 A : (about appointment of Judges to Supreme Court, High Court and Federal Shariat Court)

AMENDMENT: Top judge will now be appointed on the recommendation of special Parliamentary committee

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Article	Provision Under Article	Amendment
175 A	Deals with process of appointment of Judges to Supreme Court, High Court, and Federal Shariat Court.	The top judge will now be appointed on the recommendation of special Parliamentary Committee from amongst three most senior SC judge
	The Chief Justice shall hold office until he attains age of 65 years	Chief Justice of Pakistan term shall be three years
Article 184	Deals with apex court's <i>Suo Motu</i> Powers	Provided that Supreme Court shall not make an order or give direction or make declaration on its own or in the nature of <i>Suo Motu</i> Power

3. RETROSPECTIVE GLANCE AT CONSTITUTIONAL AMENDMENT REGARDING JUDICIARY

Pakistan Parliament has passed 23 Constitutional Amendments. Formally these are counted as 26 despite that fact that three

(the ninth Amendment of 1985, 11th Amendment of 1989 and 15th of 1998) were introduced but never passed. Out of these 23 Amendments a majority of 13 or 56 per cent have to do entirely or partly with Judiciary. Eight Amendments were exclusively deal with judiciary while remaining five are mix bag. These amendments passed can be viewed in context of ever-present power tussle between executive and judiciary.

4- CRITICISM ON 26th CONSTITUTIONAL AMENDMENT

The amendment sparked debate about politicizing judiciary. Critics argue that the appointment of Chief Justice of Supreme Court by special parliamentary Committee, curtailment of suo motu power and establishment of constitutional benches are meant to ding the judicial independence.

"The changes bring an extraordinary level of political influence over process of judicial appointments and judiciary's own administration"

(Santiago Canton, Secretary General of International Court of Justice)

However, the proponents argue that the amendment would stabilize the democratic process by maintaining balance between judiciary and executive-

"It has not always been the judiciary on the receiving end; there are the times when judiciary also apparently 'encroaches' on turf of parliament and executive"

(Asif Saeed Khosa, former Chief Justice of Pakistan)

It was supreme court which endorsed the death sentence of former Prime Minister Zulfikar Ali Bhutto in 1979. It was also the same apex court which declared in 2024 that Mr. Bhutto was not given fair trial by Lahore High Court and Supreme Court. The Supreme Court also sacked two elected prime ministers in 2011 and in 2017 on grounds largely believed to be less than legitimate. Moreover, Chief Justice misinterpreted Article 63-A about defection of parliamentarians.

5. IMPACT OF CONSTITUTIONAL AMENDMENT ON POLITICAL SYSTEM OF PAKISTAN

1. SHIFT IN POWER DYNAMICS

By reining in the supreme court's *Suo Motu* powers and restructuring the appointment process of Chief Justice, the amendment could reduce executive and legislative actions independently.

Analysts suggest that this might enhance parliamentary power over the judiciary, giving government freedom to operate without fear of judicial interference. This shift could lead to short-term political stability, as executive may feel less restricted by judiciary's independent action.

“By limiting judicial powers, lawmakers hope to prevent judicial overreach in governmental matters and reduce perceptions that political affiliations or biases may have influence judicial decisions.”

(The Diplomat)

2- POLITICAL NEUTRALITY AND JUDICIAL INDEPENDENCE

The amendment raises concerns over possible politicization of judiciary with Prime Minister now involved in appointing Chief Justice from short list, there is potential for political biases to shape judicial landscape, which could erode public's trust in judiciary as an impartial institution.

"this could make judiciary more susceptible to executive influence possibly compromising its role as an independent arbiter in politically sensitive cases"
(Eurasia Review)

3- IMPACT ON OPPOSITION PARTIES

The shift might deepen political polarization as opposition leaders could view the judiciary as increasingly aligned with ruling parties interest.

4- INSTITUTIONAL EFFICIENCY AND PUBLIC CASE BACKLOG

The establishment of constitutional benches could streamline high-profile cases, theoretically reducing the backlogs of public cases that affect citizens directly.

This focus on improving judicial efficiency may garner public support, as courts could address citizens' grievances more effectively without prolonged delays.

6. CONCLUSION:

The 26th constitutional amendment thus, has brought significant changes in judicial branch of government. The amendment spawned controversy among legal fraternity as it appears to be the curtailment of judicial independence. Critics of the amendment are of view that the amendment has politicized the judiciary by inserting influence of executive. They summarized the amendment in three words: "Judiciary's wings clipped". Along with these changes three religious changes were also inserted for instance the usurpation of Interest (Riba) from 1st January 2028. Moreover, it profoundly impacted the political system of power - The shift in power dynamic from judiciary's to executive is most significant - Now, the question arises whether the parliament would efficiently use its new power