

Pakistan affairs, Mock Test

Q:- (2) (Ans)

1. Introduction:

The 26th Amendment to the Constitution of Pakistan 1973, makes significant changes in the structure and functioning of Pakistan's judicial system. These changes aimed at enhancing legal and judicial frameworks have long-term implications not only for the country's judicial system but also for the democratic process, which is based on trichotomy of power.

2. What is 26th Constitutional Amendment:

The 26th Constitutional Amendment of 2024, also called the Constitutional Package, focuses on judicial reform. It limits the Chief Justice of Pakistan's term to three years, curtails the

Supreme Court's *sub moto* powers, and gives the Prime Minister the authority to select the CJP from among the three most senior judges of the Supreme Court. The bill passed with a two-thirds majority in both the Senate and the National Assembly.

3. Key Changes to the 26th Constitutional Amendment:

(a) Chief Justice of Pakistan's CJP's Appointment Process

(i) Amendments to Article 175A:
The CJP will now be appointed from among the three most senior SC Judges upon the recommendation of a special Parliamentary Committee. The Prime Minister will forward the name recommended by the Parliamentary committee to the President for appointment.

(ii) Special Parliamentary Committee Structure:

The Special Parliamentary committee comprises of 12 members, eight members from the National Assembly, and 4 members from the Senate. The committee will show proportional representation of Parliamentary parties.

(iii) Chief Justice of Pakistan: CJP's term: limited to 6 years.

The CJP's term is set at three years, and shall hold the office until he attains the age of 65 years, unless he sooner resigns or is removed from his office in accordance with the Constitution.

(b) Changes to the Supreme Court's Jurisdiction

(i) Reduction of *Pro Motu* Powers:

The Supreme Court cannot initiate *pro motu* proceedings on its own.

beyond the scope of applications filed under Article 184.

(ii) Case Transfer Powers:

The Supreme Court now has the power to transfer cases between high courts or take them up itself, under Article 186A.

(c) Modifications to the Judicial Commission of Pakistan:

(i) Reducing JCP's Judicial members to a minority:

Before the 26th Constitutional Amendment, the JCP comprised of a majority of judges. However, the amendment has changed the composition of the JCP to also include two members of the National Assembly, two members of the Senate and one woman or non-muslim member, to be nominated by the Speaker of National Assembly. The Law Minister, the

Mention the article numbers
amended as references

Attorney General of Pakistan, and a representative of the Bar were already members of the JEP and remain so. Only five out of thirteen JEP's members are required to judge, namely, Chief Justice of Pakistan, the most senior judge of the constitutional benches, and the three most senior Supreme Court judges.

(ii) formation of Constitutional Benches:
In addition to nominating judges for appointment, the JEP has been given the power to determine and nominate 'Constitutional Benches' within the Supreme Court and High Courts. These benches shall have exclusive jurisdiction over matters involving interpretation of the Constitution and enforcement of fundamental rights.

(iii) Performance and Evaluations of High Court Judge:

The JCP can establish criteria for the evaluation and fitness of judges. If the performance of a judge of high court is found by the commission to be inefficient, the commission shall send its report to the Supreme Judicial Council.

4. Implications of 96th Constitutional Amendment to the Political System of Pakistan

(a) Strengthening Parliamentary Supremacy:

The 96th Amendment enhances the role of the Parliament in judicial appointments, particularly in the selection of the Chief Justice.

The amendment reinforces parliamentary authority over judiciary-related decisions.

(b) Curbing Judicial Activism

One of the primary motivations behind the amendment is to address the judicial activism that had previously led to the removal of elected leaders and halted parliamentary elections. By restricting the Supreme Court's suo motu powers, the amendment seeks to limit instances where the judiciary intervenes in executive or legislative matters. This shift may curb what some see as an overreach by the judiciary.

Add and highlight references against these arguments

(c) Influence of Political Parties on Judiciary

The establishment of a Parliamentary Committee, which will have substantial influence over appointments, grants ruling parties like PMN- and PPP considerable sway over the judiciary.

(d) Creation of Constitutional Bench: New Judicial Structure.

The amendment's provision for a constitutional bench within the Supreme Court to handle specific constitutional matters changes the judicial structure. By allowing selected judges to handle cases, the amendment reduces the possibility of a single Chief Justice or a smaller bench wielding too much influence over constitutional interpretations.

(e) Potential for Political Manipulation and Concern of Judicial Independence:

Critics, including the Human Rights Commission of Pakistan (HRCPP) and International Commission of Jurists (ICJ), argue that the amendment weakens judicial independence by introducing political control over judicial functions. There are concerns that the amendment could serve as a tool for political figures to manipulate judicial decisions.

(f) Impacts on Check and Balance Among Institutions:

Traditionally, the judiciary has served as a check on the executive and legislative branches, especially through suo moto actions. This amendment, some fear that weakening the judiciary authority to overrule the executive or legislature could disrupt the balance of power.

(g) Public and International Perception

Domestically, some see the amendment as necessary to curb judicial overreach, others view it as a political strategy that compromises judicial integrity. International bodies including the UN and the ICJ, have expressed reservations about the amendment, fearing it could threaten the role of law and human rights protections in Pakistan.

8. Conclusion:

The 26th Amendment introduces significant changes with far-reaching implications for Pakistan's political landscape. The success of these reforms, however, will depend on whether they foster genuine checks and balances or become tools for political gain, influencing Pakistan's democratic and legal framework for years to come.