

## [ Part - II ]

### Q. 2. Answer:

The relationship between Pakistan and India remains one of the most complex bilateral equations in South Asia. Although both states share centuries of linguistic, cultural, geographic and economic interconnectedness, their post 1947 trajectory has been overshadowed by structural distrust, unresolved political disputes, and repeated crises that have shaped their national security doctrines. The durability of these complexities reflects not only historical choices but also competing national narratives, regional dynamics, and shifting geopolitical alignments.

### Historical origins of the Divide

The roots of Indo-Pak complications lie in the partition of 1947, one of the largest population displacements in human history. The hurried boundary demarcation by the Radcliffe Award generated deep resentment

on both sides and produced enduring disputes, most critically the Kashmir issue, which became the core contest for territorial identity, public opinion, and national security. Early clashes over Kashmir in 1947-48 institutionalised mistrust, as each side perceived the other as unwilling to honour commitments. The initial conflict became the psychological and strategic baseline of bilateral relations.

### Wars and Strategic Crises

A sequence of wars and crises entrenched hostility. The 1965 war, fought largely over Kashmir, demonstrated that the dispute would not be resolved through conventional means. The 1971 war, influenced by regional instability in East Pakistan and exploited by India, further deepened strategic bitterness. Despite the post-war Simla Agreement (1972) which institutionalised bilateralism as the framework for

dispute resolution India's policies often diverged from Pakistan's expectations, especially regarding the status and rights of Kashmiris.

Subsequent crises, notably Siachen (1984), Brasstacks (1986-87), and the Kargil Conflict (1999), reinforced the security dilemma. India's growing military asymmetry and evolving regional ambitions added structural challenges to the relationship, especially after its 1998 nuclear tests, which formalised a nuclear dyad and heightened the risks of miscalculation.

**Kashmir : The central Political Dispute**  
Kashmir remains the most significant driver of bilateral tension. For Pakistan, it is a matter of international law, unfinished partition, and humanitarian concern for the Kashmiri population. For India, it is framed as an internal matter. This divergence has created a zero-sum political environment.

India's revocation of Articles 370 and 35-A in August 2019 unilaterally altered the region's legal and demographic framework, escalating tensions and closing political space for dialogue. The situation has become further complicated by India's heavy militarisation of the region, restrictions on civil liberties, and demographic engineering developments that Pakistan, international human rights organisations, and global civil society view with deep concern.

**Political Narratives and Domestic Determinants**  
Indo-Pak Politics is also shaped by internal political calculations. In India, domestic electoral politics often instrumentalises anti Pakistan rhetoric, particularly under the influence of Hindu nationalist ideology. Such politicisation reduces incentives for diplomacy and moderates. In Pakistan, the state consistently advocates for peaceful coexistence based on equality

and resolution of core disputes. However, every time Pakistan has extended an olive branch such as during the Lahore Process (1999) or Musharraf's four point formula (2004-07) regional events or Indian political shifts disrupted momentum.

### Geopolitics, Regional Competition, and External Actors

Regional geopolitics further deepens the complexity. India's Strategic Partnerships with the United States, integration in the Indo Pacific framework, and rivalry with China indirectly shape its posture towards Pakistan. Conversely, Pakistan's role in Afghanistan, its strategic partnership with China, and its geoeconomic connectivity ambitions affect its foreign policy calculations. These intersecting alignments make bilateral relations a part of wider regional politics.

### Economic Potential vs Political Realities

Despite a shared border of over 3,000 km and natural complementarities in trade, the economic relationship has remained hostage to political disputes. Studies show that under normal conditions, bilateral trade could reach USD 20-30 billion annually. Yet, trust deficits, tariff barriers, suspension of trade after 2019, and absence of dialogue have prevented economic normalisation.

### Conclusion

Indo Pak relations remain trapped in a layered historical and political structure shaped by partition trauma, unresolved disputes particularly Kashmir, periodic wars, domestic political narratives, and shifting geopolitical alignments. Despite profound cultural and civilisation linkages, the relationship has been overshadowed by strategic distrust. Sustainable peace requires a structured dialogue process,

respect for international commitments,  
de-escalation mechanisms, and resolution  
of core disputes in accordance with  
the aspirations of the people involved.  
only then can both states transition  
from perpetual to stable coexistence.

#### Q. No. 4. - Answer:

In constitutional theory, the doctrine of  
the separation (or trichotomy) of powers  
between the legislature, the executive and  
the judiciary is central to ensuring checks  
and balances. A constitution that respects  
the doctrine prevents concentration of power,  
protects rule of law, and insures institutional  
independence. The 27th Constitutional Amendment,  
enacted in 2025, introduced sweeping changes  
in Pakistan's judicial, executive and military  
structure. As such, it has major implications  
for the balance of power among state  
institutions. This answer analyses how

the 27th Amendment impacts the trichotomy of power in Pakistan, examining its effects on the Judiciary, executive, legislature and military, and highlighting the shift in institutional equilibrium.

### Key Provisions of the 27th Amendment

- Creation of a new apex judicial body:

The amendment establishes a Federal Constitutional Court (Fcc), assigning to it the primary role of constitutional interpretation, adjudication of constitutional disputes, inter provincial disputes, and other high stakes constitutional matters. As a result, the existing Supreme Court of Pakistan (sc) would be deprived of much of its previous constitutional jurisdiction.

- Restructuring of judicial appointments and transfers:

under the revised framework, appointments to superior courts (Fcc, High Courts) and

transfers of Judges would be controlled significantly by the Judicial Commission of Pakistan (JCP), which after prior reforms is dominated by executive and parliamentary members rather than by the Judiciary. The president may also transfer High Court Judges on recommendation; refusal can lead to enforced retirement.

- Consolidation of executive military authority: The amendments revise Article 243, abolishing the office of the chairman, joint chiefs of staff committee, and replacing it with a unified command under a newly created chief of Defence Forces (CDF). The sitting Army chief thus becomes constitutional head of all three services (army, navy, airforce). Lifetime Privileges and legal immunity are extended to five star officers (e.g., a Field Marshal), including protection from criminal or civil proceedings.

## • Immunity Provisions for top officers:

The amendment amends Article 248 to provide lifetime immunity from prosecution to the president, Governors, and top five star officers even after their term ends.

These changes together reshape the institutional architecture of Pakistan's state power with profound consequences for separation of powers.

## Effects on the Judicial Branch - Erosion of Judicial Independence

### 1. Diluted Judicial autonomy in appointments / transfers

under earlier constitutional arrangements (Pre-2024), the judiciary enjoyed a dominant role in appointing its own members via a judge-majority judicial commission. The 26th Amendment (2024) began shifting this balance; the 27th Amendment completes that shift by placing the appointment and transfer of judges firmly under

Executive dominated bodies.

The power to transfer a High Court Judge from one Province to another, without their consent, exposes Judges to removal pressure if they deliver rulings unfavourable to the Executive undermining Judicial independence.

## 2. Fragmentation of open Judicial authority

By creating a Federal Constitutional Court and removing the Supreme Court's

Constitutional Jurisdiction, the Amendment

fractures the open Judicial authority. The

coherence of Constitutional Jurisprudence

historically developed under a single open

court risks disruption. Critics argue this

violates the 'basic structure' doctrine underlying

Judicial continuity and Constitutional stability.

## 3. Longer tenures, but increased executive influence

Judges of the new FCC will retire at

age 68 (instead of 65 under SC), and the

first Chief Justice will have a fixed three

Appointments

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Year term. While on paper this entends Judicial Continuity, the method of selection and oversight now lies with executive bodies raising serious questions about impartiality, independence, and institutional credibility.

overall, the Judiciary traditionally the crucial check on excesses by the executive or military seems institutionally weakened.

The trichotomy's 'Judicial branch' is structurally subordinated to executive dominated mechanisms.

## Effects on the Executive & Legislature

### 1- Executive dominance over Judiciary and Constitutional matters

By empowering the executive / legislature to control Judicial appointments, transfers, and the composition of the new FCC, the Amendment greatly increases executive influence over constitutional adjudication.

This shift real constitutional authority

away from an independent Judiciary toward a politically influenced Judiciary.

The fact that the amendment was passed with two thirds majority, despite fierce opposition and without broad national consensus, underlines how legislative power was used to reshape institutional structure reducing checks & balances.

## 2. Entanglement of executive and military authority

The amendment formalises a constitutional role for the military high command within the structure state, merging executive level decisions with military command.

This undermines the traditional separation between civil executive and military institutions. The executive no longer acts solely through civilian channels; military command structure becomes constitutionally embedded.

### 3. Immunity protections - weakening accountability

By granting lifetime immunity to Presidents, Governors, and five star officers, the Amendment limits accountability. Judicial oversight of these top offices - a core safeguard under the doctrine of checks and balances is effectively removed. This tilts power heavily toward executive / military actors.

Thus, the executive by extension the legislature that passed the Amendment) significantly consolidates power at the expense of judicial oversight.

### Implications for Civil - Military Balance and Institutional Equilibrium

Historically, in Pakistan, the civil military balance has been a delicate interplay, often shaped by informal conventions and institutional checks. The 27th Amendment embeds the dominance of the military

within the constitutional framework, the head of the army becomes constitutional head of all services; a new apex military role (COP) is created; top officers get lifetime immunity.

The constitutionalisation of military authority fundamentally reorients the balance of power: it elevates the military to a standing, constitutionally entrenched pillar of the state effectively outside a bimodal system: a powerful executive military bloc, and a weakened judiciary, with diminished capacity to act as an independent institution.

### Counter Arguments or Governments justification and criticism

Proponents argue that the 27th amendment modernises state institutions in light of evolving security challenges, streamlines military command, and expedites constitutional litigation by

establishing a dedicated FCC. They maintained these changes were envisaged in historical political commitments, like the charter of democracy (2006), which proposed reforms to constitutional adjudication.

Conclusion: The 27th constitutional Amendment represents a fundamental rearrangement of Pakistan's institutional architecture, with far reaching implications for the trichotomy of powers. By vesting constitutional authority over the judiciary in an executive dominated framework, consolidating military command under a constitutionally empowered military chief, and limiting accountability through immunity provisions, it deeply shifts the balance of power in favour of the executive military bloc. The Judiciary previously the vital check on excess - is structurally weakened, its independence curtailed, and its role as guardian of the constitution compromised. Judiciary must be allowed genuine autonomy, transfers must be insulated from political interference.