

Q No-8

Critically assess 26th and 27th Constitutional amendments in Pakistan in the context of military domination and erosion of judicial norms. How have these amendments affected governance, institutional autonomy, and balance of powers?

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Introduction

The Constitution (Twenty-sixth Amendment) Act, 2024 in Pakistan introduced sweeping changes, primarily focused on the Judiciary's structure, appointments and powers. Unlike the US 26th Amendment (voting age), the Pakistani amendment is highly controversial and centers on the balance of power between the government and the superior courts.

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Key Provisions of Pakistan's 26th Amendment

Removal of Suo Motu power

The Supreme Court's power to take suo motu (on its own motion) notice on matters of public importance under Article 184(3) has been effectively removed and transferred to a committee under a separate practice and procedure Act.



Fixed CJP (Chief Justice of Pakistan)

The tenure of the Chief Justice of Pakistan (CJP) is capped at three years, replacing the previous system based on retirement age 65.

change in CJP Appointment

The CJP is no longer automatically appointed based

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on seniority. A special parliamentary committee now nominates the CJP from among the three most senior judges, which critics argue increases political influence.

Judicial Commission (JCP) Composition.

The body that nominates judges for appointment has been reconstituted to include a higher representation of lawmakers and executive appointees, diluting the influence of existing judges.

Erosion of institutional autonomy

The amendment impacts judicial independence through two main mechanisms. This reduces the proportion of sitting judges on the Commission, making the judicial members a minority. Critics argue this shifts

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control over judicial appointments to the political branches, threatening the selection of impartial judges.

Shift in The Balance of Power

The amendments heavily curtail the judiciary's ability to act as an effective check on the other branches of government:

Curtailment of Suo Moto power

The Supreme Court's power to take suo moto notice on matters of public importance has been effectively removed and transferred to a Committee under a separate Practice and Procedure Act.

Control over Bench Formation

The restructured JCP and related changes grant control over the

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formation of "Constitutional benches" to politically influenced bodies. This raises fears of the executive creating tailored benches to hear politically sensitive cases, thereby ensuring favourable outcomes.

Vague Removal Grounds

Adding "inefficiency" as a ground for removal without clear definition allows the Supreme Judicial Council (SJC) to potentially be used as a political tool to target judges who issue ruling unfavourable to the government.

27th Amendment

The Constitution (Twenty-seventh Amendment) Act, 2024 in Pakistan is seen by many analysts as a historic and definitive step that formally entrenches military dominance and severely

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destabilizes the constitutional balance of power in the favour of the armed forces and executive.

Institutionalizing Military Supremacy

The key changes solidify the Army Chief's power and grant him unprecedented constitutional protection.

Chief of Defence Forces (CDF)

The amendment creates the new constitutional post of (CDF), which is held concurrently by the sitting Chief of the Army Staff (COAS). This abolishes the coordinating post of chairman joint chiefs of staff committee (CJCSC) and formally grants the Army Chief primacy and operational command over the Air Force and Navy.

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Control over Nuclear Assets

The CDF is granted full command over the National Strategic Command (NSC) which manage the country's nuclear arsenal, centralizing control over the most critical strategic assets under the Army chief.

Lifetime Immunity and Protection

It grants five-star general including the current Army chief, lifetime immunity from criminal prosecution and right to retain their rank and uniform for life. Removing a five-star general requires $\frac{2}{3}$ rd parliamentary majority.

Affect on Balance of Power

The 27th Amendment, in conjunction with the 26th

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Amendments systematically dismantles institutional checks and balances

Weekening The Judiciary By establishing a new Federal Constitutional Court (FCC) and restructuring judicial appointment and transfers,
Executive attack on judiciary.

After this amendments judiciary is under control of executive. Judges can never give ruling against government

Formation The Hybrid Model

The changes constitutionalize the long standing practice of military dominance in governance, transforming de facto control over key state affairs into de jure authority.

Conclusion

26th and 27th Amendments reflects the aim of ruling elites the way these are amended a clear message for democracy that this is "demo" not democracy.