

[Part - II]

Section - A

Q.No. 2.

Answer:

Introduction:

The U.S. Constitution (1787) established one of the world's most elaborate systems of checks and balances, rooted in the political philosophy of Madison, Montesquieu, and the Federalist papers. It distributes state power among three co-equal branches; Legislature, Executive, and Judiciary each empowered to limit the other. The objective is to prevent tyranny, avoid concentration of power, and maintain constitutional equilibrium. While the system has demonstrated resilience, especially during political crises, it also faces challenges due to hyper partisanship, presidential unilateralism, and judicial politicisation.

Pakistan, with its recurring cycles of military intervention, weak Parliament, and Executive dominance, offers significant room for

institutional learning.

1. U.S. system of checks and Balances

The U.S. Model is not merely separation of powers; it is separate institutions sharing powers. Each branch has constitutionally defined instruments to check the others:

a) Legislative checks on executive

- Congress can override presidential vetoes

with a two thirds majority.

Senate confirms cabinet appointments, ambassadors, and federal Judges.

- Congress control the power of purse; no federal money can be spent without congressional approval.

- Congress can impeach and remove the president.

Example:

- Watergate scandal (1974): Congressional investigations forced President Nixon's resignation, demonstrating legislative oversight.

b) Executive checks on Legislature

- The President can veto legislation passed by Congress.
- Through executive orders, the president influences governance.
- Can call special sessions of Congress.

Example:

President Obama vetoed the 2015 keystone XL Pipeline bill, illustrating presidential legislative backing powers.

c) Judicial checks on Both

- The Supreme Court, through Judicial review, can strike down laws or executive actions that violate the constitution.

Examples:

- Marbury v. Madison (1803): Established judicial review.
- United States v. Nixon (1974): Supreme court compelled Nixon release tapes.

2. Effectiveness of checks and Balances in Preventing Abuse of power.

i) High Effectiveness in Institutional crises

The U.S. System has proven capable of restraining authoritarian tendencies.

Examples:

Watergate: Congress, courts, and the media collectively checked executive overreach.

Pentagon Papers (1971): Supreme court upheld press freedom against executive censorship.

ii) Protection of Judicial Independence

Life tenure for federal judges and protection from salary reduction insulate the judiciary from political pressure.

Example:

Supreme Court decisions often go against sitting presidents (e.g., Trump's travel ban partially struck down in 2017 before a revised version was accepted).

iii) Controlled Use of Emergency powers

Even during wars or emergencies, courts and Congress retain reviewing power.

Example:

Hamdan v. Rumsfeld (2006) - Supreme court declared military tribunals set up for Guantanamo detainees unconstitutional.

iv) Effectiveness Declines under partisan polarisation

Hyper Partisanship has weakened congressional oversight.

Examples:

President Trump's two impeachments resulted in acquittals due to party loyalty in senate.

Executive orders are increasingly used to bypass congress (e.g., abortion on immigration, Trump on border wall, Biden on climate Policy).

v) Potential Judicial Politicisation

Senate controlled appointments can tilt

Judicial balance.

Example:

Appointment of three supreme court justices during Trump's term shifted the court ideologically.

The system structurally ensures checks, but its effectiveness depends on political norms, party discipline, and institutional maturity.

3. Lessons for Pakistan

Pakistan's constitutional instability, civil military imbalance, and inconsistent judicial autonomy make U.S. institutional lessons highly relevant.

Strengthening separation of powers

Clear Constitutional Boundaries

In the U.S., each branch strictly guards its domain. In Pakistan, boundaries blur especially between executive and establishment.

Codify clearer limits on:

- Prime Minister's Power,
- President's discretion,
- Military's role in Policy,
- Bureaucratic encroachments.

Recommendations:

- Limit frequency of presidential ordinances.
- Strengthen parliamentary committees with investigative authority.
- Ensure mandatory vetting for key appointments (as in U.S. senate confirmations).

Judicial Independence

Security of Tenure and Transparent Appointments
U.S. Judges enjoy life tenure, protected from executive influence.

Pakistan's Judiciary suffers from:

- Executive interference,
- Internal divisions,
- Controversies in judicial appointments.

Needed Reforms by introducing more transparent criteria for judicial elevation.

Strengthen the Judicial Commission's independence and protect Judges from post retirement appointments that compromise neutrality.

Executive Accountability

Institutional oversight Mechanisms

Congressional hearings and investigations are a major strength of U.S. democracy.

Pakistan lacks equivalent parliamentary investigative culture.

create independent congressional style investigative committees.

Ensure mandatory publication of inquiry reports (e.g., Sugar Scandal, audio leaks).

Strengthen Auditor General and Public Accounts Committee.

Impeachment and Removal processes

The U.S. has a clear impeachment process, even if political.

Pakistan's Article exists, but is rarely used or politically impossible.

Strengthen mechanisms for accountability of the president, PM, and Judges through constitutional reforms with cross-party consensus.

Civil Military Relations

Civilian Control over Military

In the U.S., the President is Commander in Chief, but the military is institutionally barred from political interference. Congressional oversight prevents autonomy.

Pakistan's history reflects repeated military interventions and indirect influence.

Enhance parliamentary oversight over defence budgeting.

Institutionalise NSC as a consultative not supervisory body.

Strengthen constitutional mechanisms ensuring military neutrality.

Synthesis:

The U.S. model cannot be transplanted

wholesale, but its institutional logic offers valuable insights.

Power must be divided.

Each branch must have tools to check others, oversight must be continuous, not episodic.

Norms are as important as constitutional text,

No institution should be above accountability, including civilian executives, military establishment, or Judiciary.

Conclusion

The U.S. Constitution's checks and balances have historically prevented the concentration of power by ensuring inter branch oversight, Judicial independence, and legislative accountability. While contemporary challenges like partisanship and executive unilateralism have strained this system, it remains one of the most resilient constitutional models. Pakistan can draw essential lessons: strengthening parliamentary oversight, protecting Judicial independence, clarifying

separation of powers, and ensuring transparent, accountable executive authority. ultimately, Pakistan's constitutional stability depends not only on structural reforms but also on sustained political commitment to democratic norms.

[Section - B]

Q.No. 8. Answer:

Introduction

The twenty sixth and Twenty seventh Amendments (passed respectively on 21 October 2024 and 12-13 November 2025) represent major, contested revisions to Pakistan's 1973 constitutional settlement. Together they restructure judicial appointment and Jurisdiction, expand executive / Parliamentary Control over Judicial Processes, and in the case of the 27th grant new powers and immunities to the military leadership. These changes must be judged by their concrete effect on governance, institutional autonomy,

and the balance of powers.

Twenty sixth Amendment {

Reconfigured Judicial Procedures : curtailed the Supreme Court's *Suo motu* Jurisdiction; limited the Court's ability to hear certain Constitutional challenges; created Procedural Constraints and a parliamentary role in Selection of the Chief Justice via a special parliamentary Committee; capped the Chief Justice's effective tenure (three years) and restructured the Judicial Commission and procedures for transfers. It also added new rights (e.g., environmental right) and other technical changes. The act was enacted amid rapid parliamentary proceedings.

Twenty Seventh Amendment

Reconfigured the architecture of Constitutional adjudication by setting up a Federal Constitutional Court and substantially limiting the Supreme Court's original Jurisdiction over

Constitutional matters; altered appointment and transfer mechanisms giving the executive and Parliamentary bodies greater influence; and (critically) expanded the formal powers and legal protections of the Army chief (including extended term / role and immunity provisions). The bill passed swiftly and provoked high level Judicial protest and resignations.

Effects on judicial independence and rule of Law

Erosion of Judicial independence

Removing or curtailing *Suo motu* Powers and reallocating constitutional Jurisdiction to a newly constituted court weakens the supreme court's capacity to act as an independent check on executive and military action. The reallocation of appointment / transfer powers (and the new parliamentary special Committee) creates political avenues to influence judicial composition and behaviour. International

legal observers warned that the 26th Amendment is a blow to the independence of the Judiciary.

Instrumentalisation risk

When appointment and transfer mechanisms are politicized, Judges face incentives to align with political or military patrons; this undermines impartial adjudication, delays accountability, and reduces public confidence in courts. The 27th Amendment's fast track passage and subsequent Judge resignations illustrate the chilling effect and perceived capture.

Example: Two senior Supreme Court Judges resigned in protest after the 27th Amendment, publicly describing the changes as a 'grave assault' on the Constitution an exceptional crisis of institutional legitimacy.