

Q 21) Introduction:-

Constitution of any state is not any fixed document but a living document which means that it can be amended from time to time for wider public interest. It is the sole prerogative of the legislature, who is the sole representative body of the people. They have the requisite mandate to do any sort of amendment. However, the impacts of such an amendment can be both positive or negative. Same is the case with the recently passed 26<sup>th</sup> amendment that has a wide-range implications for state's another body, i.e. judiciary. The salient features of this amendment, such as constituted benches, appointment of judges, of supreme court and others have significant implications for the independence of the judiciary.

2) 26<sup>th</sup> amendment: main clauses, adoption, deliberation and judiciary



## 2.1) Background:-

26<sup>th</sup> amendment was envisaged by those that are in power now as an "constitutional package". Basically it was meant for the imposition of check and balance on the judiciary. For this treasury benches had started deliberations.

## 2.2) Deliberations:-

Initially 57 amendments were envisaged. However for gaining required numbers and for achieving maximum consensus 27 amendments were only included in the amendment.

## 2.3) Passing of the amendment

Thus 27 amendments that were included in the package was passed by 2/3<sup>rd</sup> majority in the parliament on 20<sup>th</sup> October. By this parliament by using its own prerogative has heralded a landmark legislation.



3) Contours of recently passed 26<sup>th</sup> amendment

Contours

Related with the judiciary

Other than judiciary

- a) Appointment of CJP of
- b) Tenure of Chief justices of Supreme and High courts

a) Elimination of Riba by 2028.

c) Sou motu cases.

b) Insertion of Article 9-A.  
(Right to have a clean environment)

d) Reconstitution of JCP.

c) Retirement of Chief Election Commissioner

④ Formation of constitutional benches

⑨ Performance evaluation and dismissals against judges.



④ 26<sup>th</sup> amendment and independence of judiciary.

a) Appointment and tenure of CJP (Article 175A)

Unlike in the past, CJP has now fixed term of 3 years. He is not now the senior-most judge appointed by the special parliamentary committee.

Special parliamentary committee → Formed by the proportional representation of the parliament  
8 members from National Assembly and 4 from senate

b) Suo Motu cases:-

Article 184(3) was also amended to deprive the suo motu power of CJP. It was handed over through Practice and Procedure Act

c) Reconstruction of JCP:-



Past

- a) CJP
- b) 3 senior most judges
- c) 3 members from executive
- d) One -nominee from speaker of NA from women.

Total 8 members

Now

- a) CJP
- b) Presiding judge
- c) 3 senior most judges
- d) 3 members from executive
- e) 4 members from Parliament 2 from each house
- f) one nominee from speaker of NA from women

Total 12 members

Ⓐ Performance of evaluation of judges.

JCP has now the powers to evaluate the performance of the judges. It can move the resolution of dismissal of judges.



B) Age for high court judges

Age for becoming high court judges are reduced from 45 to 40.

4) Constitutional benches

Constitutional benches are formed, having equal representation of provinces.

Now the matter of constitutional importance are not dealt by CJP alone but by the JCP backed constitutional benches

5) Arguments in favour for the 26th amendment

5.1) :- Constitutional benches can ease the burden of cases, as important cases impedes justice denied.



5.2 → "Not the seriously principle but performance prevails in the appointment of judges"  
"Performance"

5.3 → "By clipping article 184(3), judicial activism can be curbed"  
"Judicial Activism"

5.4 → "By reconstituting JCP, the powers are within the checks and balances of parliament"  
"Checks & balances"

5.5 → "Reducing age limit of judges of high court can expand the number of judges, reducing case overload"  
"Increasing number of Judges"

5.6 → "Constitutional benches can increase the confidence on judiciary as it can dispense justice in a better way of matters related to the national importance"  
"Constitutional benches"



## ⑥ Arguments against the Independence of Judiciary

### a) Politicization of Judiciary

By including special parliamentary committee for appointment of CJP, it has politicized the judicial appointments

### b) Disturbance in the concept of "balance of power"

Parliament  
or JCP has now edge in total numbers of JCP members. This can ~~part~~ undermined the formation of constitutional benches

### c) Harm in preservation of fundamental rights



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As by clipping 184(3)(A),  
it has clipped the  
CJP's power to provoke  
in case of violation  
of fundamental rights

e) Performance evaluation at  
the hands of politicians

JCP and SPC has  
been now included most  
of politicians - Thus political  
evaluate judges performance.  
This will undermine the  
basis of "troika of power"

⑦ Conclusion:

In a nutshell  
we can say that 26<sup>th</sup>  
amendment has far-reaching  
impacts on the judicial  
system of Pakistan. Those  
who brought this amendment  
has of the view that  
it would upbringing the  
most-needed reforms in the



judiciary and bring transparency  
 accountability and ~~meritocracy~~  
 in the judiciary. However, critics  
 argue otherwise and say  
 that it will cause the  
 politicization of judiciary. Thus,  
 the time will tell us  
 about its far-reaching  
 implications

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### Question 3

#### ① Introduction:

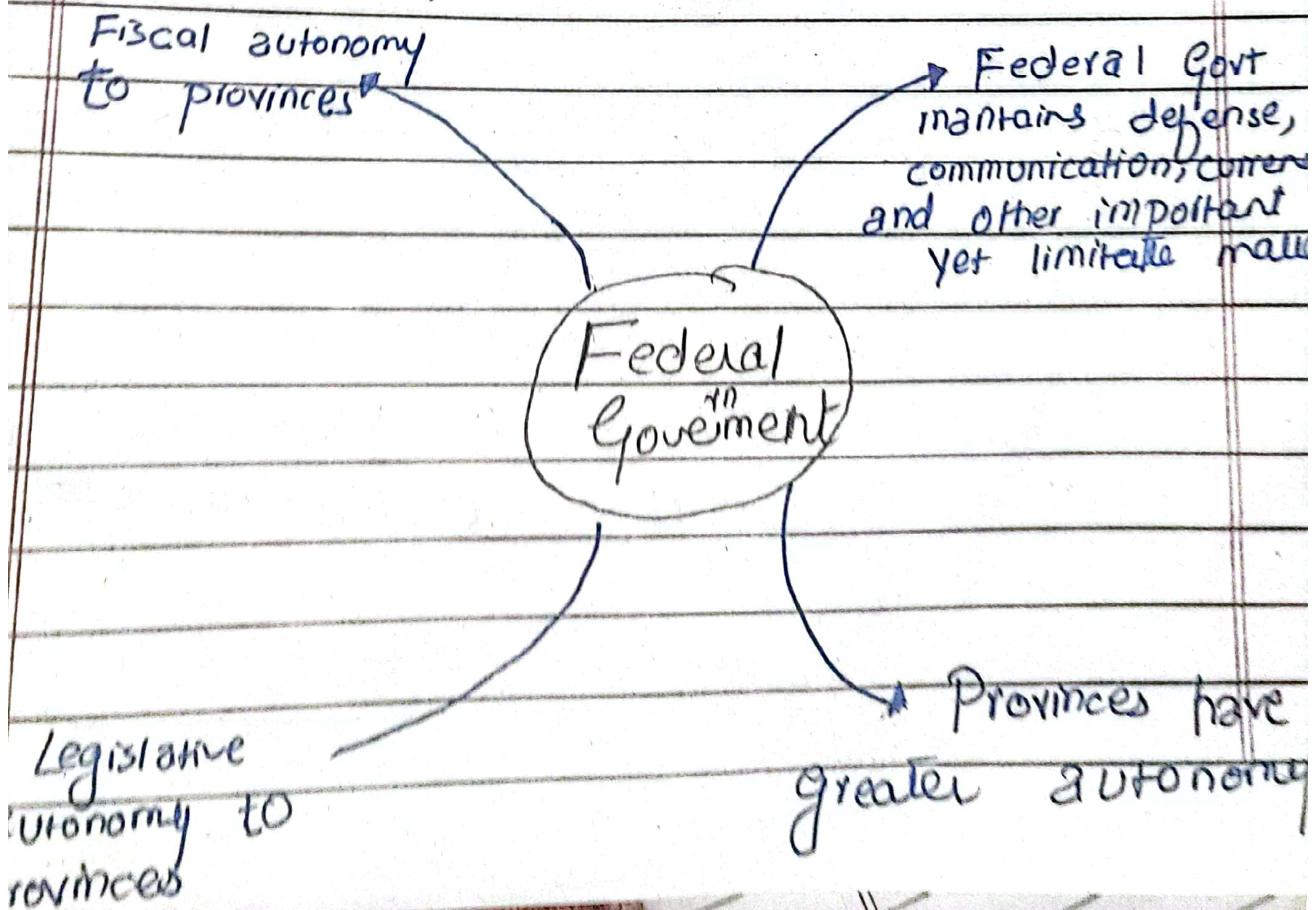
The most important  
 purpose for the Government  
 is to serve its people.  
 It can only perform such  
 purpose when it deeply  
 embrace the nature of  
 its constituent things. So,  
 if they are diverse in  
 its constituent elements,



than a particular form and structure would suit with them. On the contrary, governments have to adopt otherwise. Pakistan has also much diversity as a nation, which the government has to utilize them into forging unity.

## 2) Federal Government & parliamentary form of government

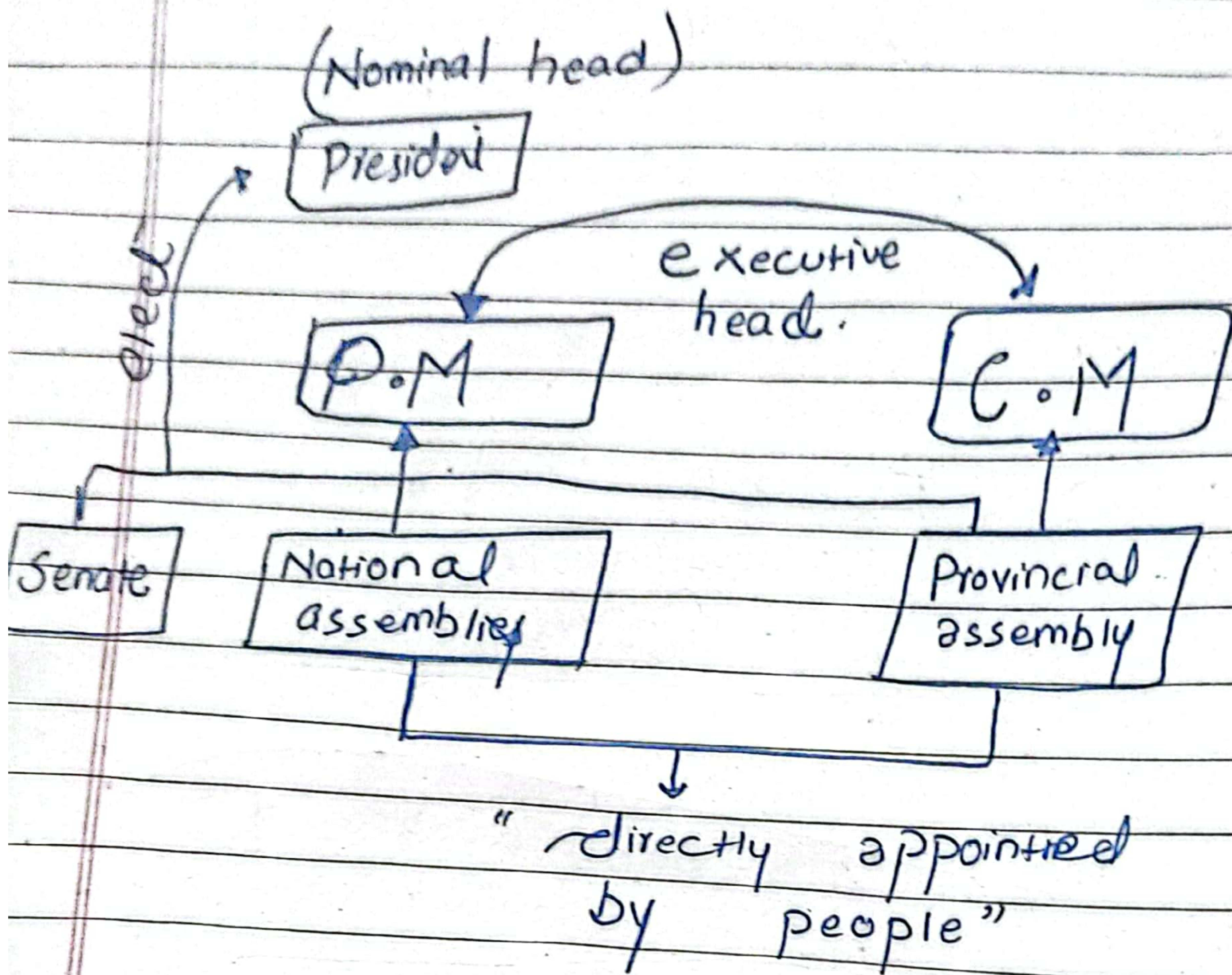
### 2.1) Chief characteristics of federal government





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## 2.2) Parliamentary form of gov



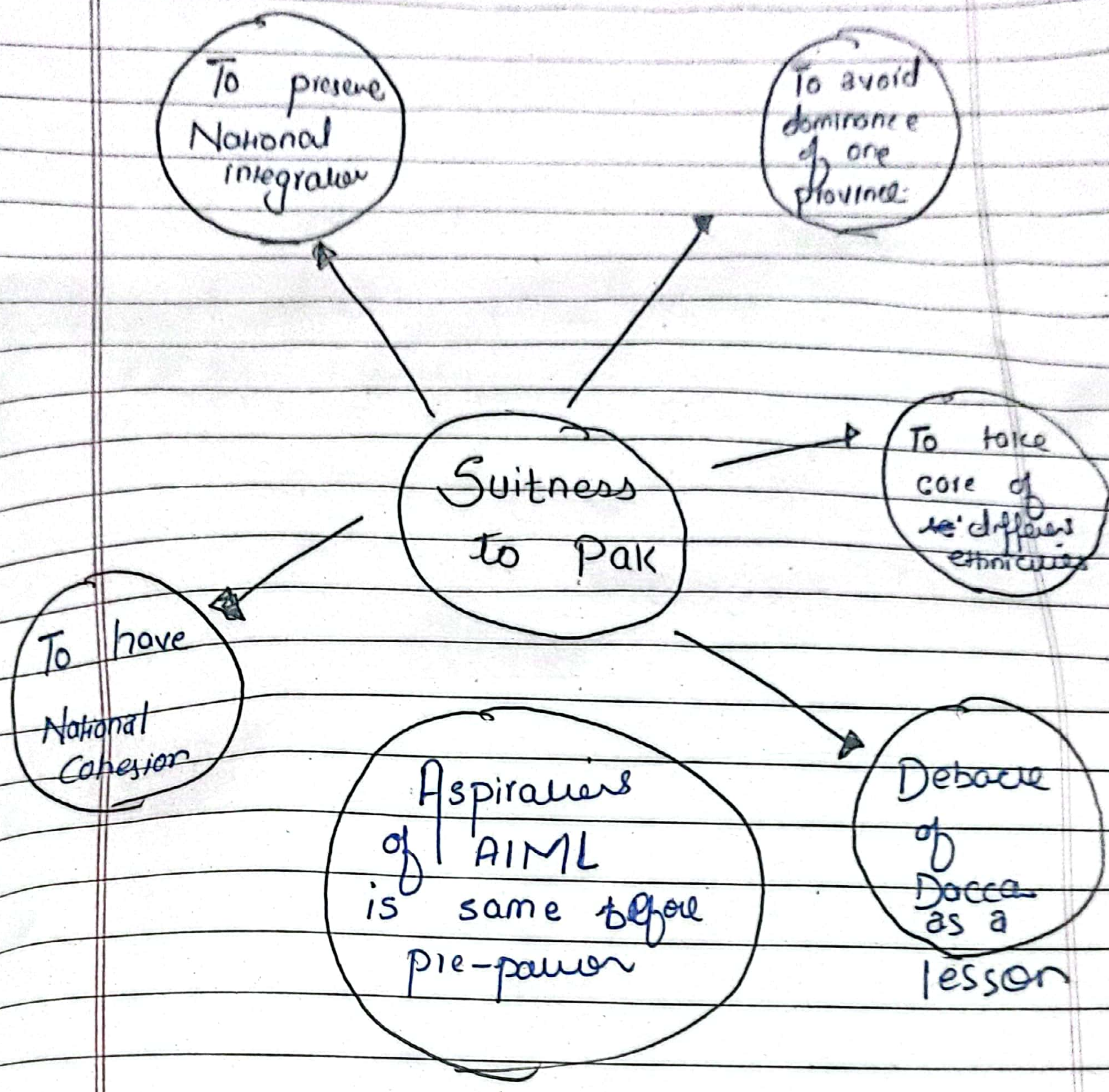
## 3.) Why Pakistan

best suits for

federal & parliamentary

form of gov





## Conclusion

Our  
and  
of

Based on  
founding principles  
our experience  
debate of Bangladesh



federal and parliamentary

System would best suit

as, as visible in its

continuity - It helps in

the preservation of national

unity and diversity

differences