

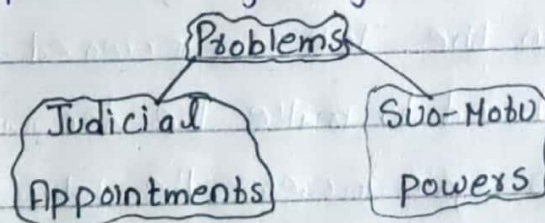
26th Constitutional Amendment

Introduction:

Since independence, Pakistan is facing two basic problems regarding the Judiciary one is the Judicial appointments and the second is the Judicial Activism. The long-term tussle between Judiciary and Executive hinders the affairs of the government. The 26th constitutional amendment is a milestone regarding the separation of power between Judiciary and the executive. The key provisions include the Appointment of chief Justice of Pakistan, tenure of CJP and the powers of Judiciary related to suo-motu. The 26th Amendment increased the executive role, limits the Judicial Activism and introduce stronger political oversight. There is a criticism on 26th Amendment regarding the transparency and the violation it made of the Pakistan constitution.

Background of 26th Amendment:

Two main problems regarding the judiciary in the history are



• Early Constitutional Phase (1947-73)

The president appoints the judges on the recommendations of Prime Minister.

• Appointment Under 1973 Constitution:

The president appoints the judges on the recommendations of Chief Justice of Pakistan (CJP) and in high court case on the recommendations of relevant high court judge. But a case appears which increases the power of Judiciary in Judicial appointments:

Al-Jehad Trust vs Federation of Pakistan:

Supreme Court (SC) ruled that the nominations made by them were final and President has to appoint the Judge immediately.

• Appointments After 18th Amendment:

A Judicial Commission of Pakistan (JCP) was formed in which includes CJP, Federal Ministers, Attorney General and representatives from bar which nominates the Supreme Court Judges. Then a Parliamentary Committee (PC) will final those names. This limits the Judicial power.

• Appointments after 19th Amendment:

Supreme Court ruled in the Naeem Ahmad case that no of Judges in the JCP was increased and the president was bound to make the decisions from these nominations. This again increases the Judicial power in appointments.

• Issues of Sui Generis Powers:

Chief Justice Saqib Nisar using his sui-generis powers in many cases which includes the dams fund and

the ~~appon~~ kidney and Liver institute Lahore.

Major Changes in 26th Constitutional Amendment:

• Appoint of Chief Justice of Pakistan:

Before Amendment	After Amendment
The top most judge automatically qualify for the CJP.	A special Parliamentary Committee (SPC) was introduced which finalize the name from top most three judges.
	Composition of Parliament: 2 members from National Assembly (NA) and 4 from Senate (Article 175 A(3))

• Tenure of Chief Justice of Pakistan:

Before Amendment	After Amendment
The chief Justice will retire at the age of 65.	The chief Justice will remain only for 3 years. After that, he/she will retire. (Article 179)

• Increasing the strength of Judicial Commission of Pakistan (JCP):

Before Amendment	After Amendment
Composed of Total 9 members.	Composed of Total 13 members. Additional 4 members. Two from NA and two from Senate.

- Reducing no of judges from 4 to 3 - 1 Judge from constitutional bench and 1 woman or non-muslim from outside.

• Judicial Performance Evaluation:

The JCP will evaluate the performance of judges. If it is not good, then period is given to improve it. If not improved, then the report send to Supreme Judicial Council for further action.

• Role of JCP in Appointing SC and High Court Judges:

The role of JCP is now increased from evaluating the performance to the appointing of Judges.

• Reducing the Sua-Motu Powers:

Before Amendment	After Amendment
The judiciary has the enormous power related to sua-motu	Limits the sua-motu power. only decision made related to application filed under article 184.

• Establishing Constitutional Benches:

A new article 19A and 202A have been added. The JCP now form the constitutional benches and the senior most judge is the presiding judge. They enjoy powers related to original jurisdiction of Article 184, Appellate jurisdiction under Article 185, Advisory jurisdiction under article 186. The high court constitutional

benches enjoys power under article 219.

Implications of 26th Amendment on Judiciary:

The major implications include the

• Increases Political oversight on Judicial Appointments:

The increasing number of parliament members in the JCP highlights its increasing oversight on judicial appointments.

• Reevaluation Judicial Performance:

The judicial performance done by the JCP highlights the importance of Judges performance.

• Limiting Judicial Activism:

Reducing the powers related to suo-Motu limiting the judicial activism.

• Reducing Power of Judiciary in Appointments:

Reducing the number of judges in the judicial commission of Pakistan reduce the power of Judiciary in appointments.

• Introduces ~~Political~~ Legislative control on Judiciary:

The Special Parliamentary Committee now introduces the legislative control on judiciary.

Criticism on the 26th Amendment:

Some people criticise on the 26th Amendment. These are

• Undue Political influence in Judiciary:

The increasing political intervention in the judicial matters increases their influence in judicial matters.

Vague Grounds of Judicial Removal:

The removal of chief Justice or high court justice on their performance raise the ~~gen~~ question that there is no clear criteria mentioning for judges the performance.

~~• Lack of Political Participation~~

• Lack of Transparency in Passing the Amendment:

The draft of Amendment was kept secret and the amendment was passed only in 24 hours.

• Violating the Laws:

The amendment violates the International Covenant on social ~~and~~ and Political rights (ICCPR) article 14 and Pakistan constitution Article 10A regarding the independence of judiciary and the right of fair trial.

Conclusion:

The 26th amendment solve the long-term conflict between the judiciary, executive and the legislature. This introduces the separation of powers concept in more elaborative concept. Thus, the institutions work in their own sphere. But the time will show how this amendment work - whether it introduces separation of powers or it introduces the political oversight.



Question # 1

Introduction:

Since independence Pakistan is facing the issue regarding the extreme polarization. All the parties are linked with this issue. The persons are so extreme in their views regarding their parties which resulted in political polarization. The major reasons behind this is the lack of efficient leaders, poor government policies and the less national political parties. The clashes between the different party associate show that the political culture in Pakistan is extremely polarized. Pakistan can get out of this problem by educating about politics, giving chance to new leaders, and the promoted peace on media. Also, Freedom of speech, electoral reform and free and fair elections can reduce this polarization in the country.

Understanding Political Culture:

"Political culture is the normative views and the ideas related to the politics in the country."

Political Culture in Pakistan:

In Pakistan, the political culture is the subject Political culture. In which people give their views according to their understanding of the political culture.

Polarization in Political Culture:

In Pakistan's Political culture, extreme polarization is seen. This is due to the reasons which are mentioned below.

• Over-developed State Apparatus:

The over-developed state apparatus in which people are suppressed using the force by military and civil officers. This shows that the party in government is against the people which resulted in hatred against that government.

• Lust of Power of Political Leaders:

Political leaders since the first election are fought to gain the power. Their lust allows them to use harsh language against their opponent which resulted in the polarization.

• Dynastic Politics affect the root of Polarization:

In Pakistan, majority 3 parties are fought for the government. Out of these 3, the two run on the concept of dynastic politics in which the children succeed the father which don't allow the new leaders to participate in politics.

• Socio-economic imbalance raise the Polarization:

The Balochistan and NWFC are far behind in the development stage. This triggers the anger among

people of those provinces to generate views that are extremist in nature.

• Foreign Interference in Political matters:

Many people in Pakistan believe that the political matters have been decided by the foreign nationals or the government which give hatred against the government. This view gives the extremist views or polarizations.

• Rigged Elections in the Country:

All the elections in the country are believed that rigged. Free and fair elections never been conducted. One party blames the other party. This gives rise to a political extremism.

Remedies to Lessen the Polarization:

Pakistan could take foreign steps to lessen the polarization in the country.

• Educating People about Politics:

The government should include the context related to politics in which they give knowledge about the participant political culture and encouraging students to participate in political activities.

• Giving chance to New Leaders:

The new leader come with a new ideology regarding the political culture which may result in the peaceful political activities.

• Media Plays a crucial role:

The media which is a modern tool used by every country to spread the news. The reason is that people spend most of their time on social media. Hence the political stability lectures or ads should be promoted on media.

• Freedom of speech

Every man or woman should be given a right to speak on political decisions by the government. This encourages the people to give their views so the government might implement these views to solve the issues.

• Learning from Political Stable Countries:

Pakistan should learn from the countries like Turkey in which they adopted the policies to curb the extreme polarization. Their model should be implemented in Pakistan.

• Conducting Free and Fair Elections:

The elections from which all the people developed their views are the backbone of political culture. If elections are fair then the chances of polarization will be less.

• Islamic Scholars raise the awareness:

Islamic scholars can raise the awareness about the consequences of political polarization so people should fear and they not raise this issue again.

Critical Analysis:

Political culture is the views of people about the politics. This culture is very important for the political stability in the country, strengthening the democracy, and it influences the policies of the government. Thus the economic prosperity or the security conditions relates to them. If the political culture is not good, then ethnic conflicts are more, national integration is less and political extremism rises in the country. Hence, it is ~~the~~ critical for any country to survive on the earth. Otherwise, internal conflicts will be more damaging which leads to the destruction of state.

Conclusion:

Pakistan's political culture from independence is not so good. The separation of east Pakistan shows that the political divisions ⁱⁿ ~~between~~ the country damage the institutions. So, Pakistan have to learn from that tragedy and promote a culture in which peace and ethnic dialogue is more than extremism. Also, Pakistan should encourage people to participate in the politics. Because a writer said-

"The future of any leader or political ~~culture~~ ^{system} is to be determined by the people of the country"

(Bin-Ki-Mom)