

Question # 2

26th Constitutional Amendment in Pakistan.

The 26th amendment in the Constitution of Pakistan was passed and received assent of President on 21-October 2024. It marks a significant milestone in the history of constitutional amendments of Pakistan after 18th amendment. It includes 27 clauses which were amended and included in the 1973 Constitution of Pakistan. It basically addresses the long standing tension in between Judiciary and executives. It enhances role of executives and Parliament in appointment of judges and provide oversight to Parliament over Judiciary amidst the history of judicial activism in the country since independence. Moreover, it establishes a checks and balances system in the country. Through introduction of evaluation of judicial performance and keeping judicial overreach under control to ensure the essence of separation of power in the country. The 26th amendment fits perfectly

to the Roman saying "who will guard the guardians"

Main Contours of 25th

Amendment:

There were total 27 sub amendments in 26th amendment in 1973 Constitution of Pakistan. However, a few of them were main and major contours of it, which are explained below:

- Elimination of Riba: under article 38(F)
Previously it was written as eliminating Riba as soon as possible, however, under 26th amendment it is amended as elimination of Riba by till 1-January-2028.

Right to Clean and healthy environment

amendment added under article 9A, 26th
Clean and healthy environment. This was added to address increasing climate impact in Pakistan.

- Redefining of term of Chairman of election Commission of Pakistan.

has redefined the term of chairman of Election Commission of Pakistan. As if the term of chairman ended but the next chairman has not been appointed yet. Then the current chairman will continue till appointing of a new one.

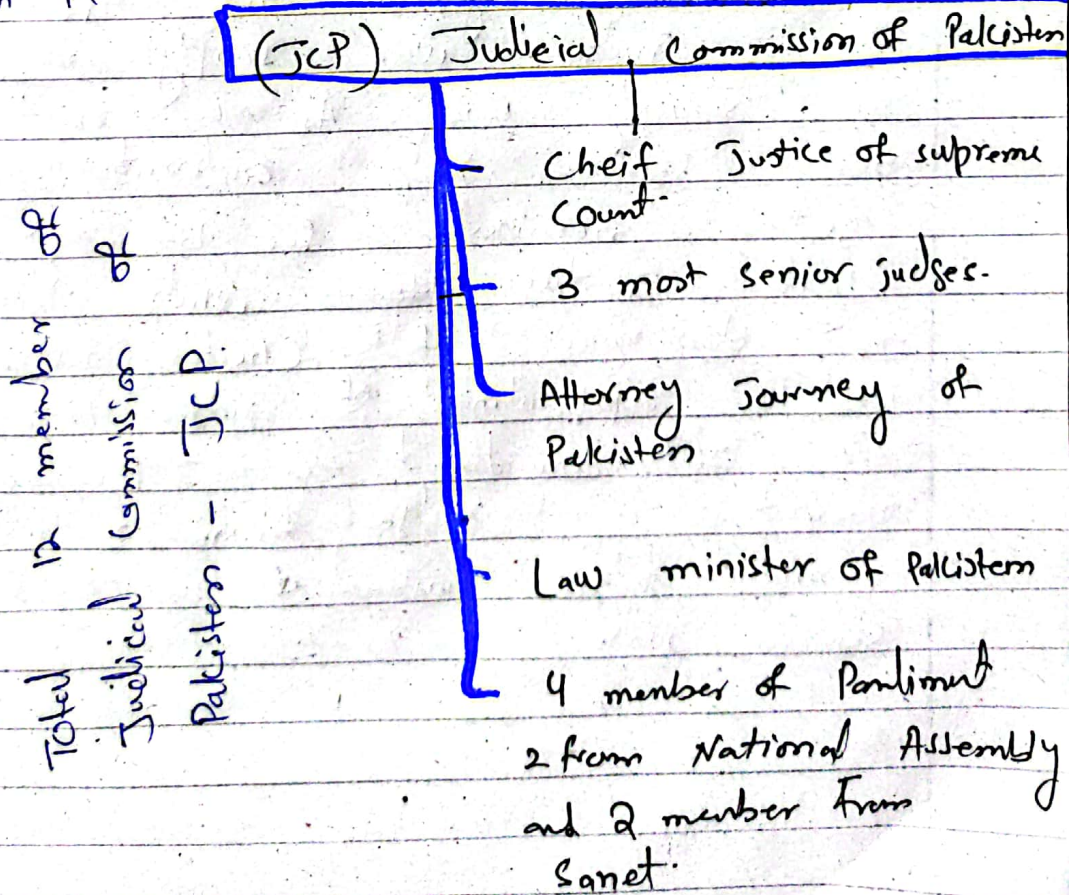
There are a few main contours which are related to judiciary of independence. which are mentioned below:

Contours of 26th Constitutional Amendment in Pakistan in the Context of Independence of Judiciary

The major constitutional amendments which were amended under 26th amendment were related to: judiciary and address issues and tensions related to Judiciary and Parliaments relations. for which the following articles were amended and which are concerning to independence of judiciary in Pakistan.

- Judicial Appointments Under Article : 175 A

Under ~~the~~ 26th amendment in the Constitution of Pakistan - article 175 A has been ~~amendment~~ amended by reconstruction of Judicial Commission of Pakistan (JCP). Previously it was ~~relet~~ constructed in a way that it had dominated by Judges (judiciary) but now after 26th amendment it is reconstructed by increasing number of members and increasing Parliamentarians representations in it.



- Advocate nominated by Tax Bar, who must have at least 15 years of experience.

- One Technocrat seat of Senate.

The above Commission will decide to nominate ~~name~~ of judges to be appointed and send the Summary to Parliamentary Committee.

- Appointment not on Seniority only.

Previously, the next appointment of Judge was simply made on Seniority basis. As the next most senior judge automatically get nominated for becoming Chief Justice. ~~However~~ which showed the dominance of Chief Justice in the appointment of judges. However, after 26th amendment the JCP will nominate a judge from 3 most Senior judges instead of one the most Senior judge.

Redefining Tenure of CJP:

Previously judges served till the retirement age, but now it is limited to 3 years tenure only. And after completion of the same the Judge will automatically get retired. This feature of 26th amendment has curbed the monopoly of judges on seat.

Limitations On Judicial Power Under Judicial Activism:

Judiciary had enjoyed judicial Activism Powers under suo moto Power. Since inception of Pakistan. For instance: Maulvi Tamizuddin's case, Dado case, Begum Nusrat Bhutto's case, The Judge's case, and many more examples in same way. However, in 26th amendment, this power of Supreme Court and High Courts have been abolished under amendments in articles 184 and 199 respectively. The same is considered to curtail independence of Judiciary and limiting judicial Powers and works in Pakistan by Parliament.

Constitution of Constitutional

Courts Under Article 184A

Constitutional Courts has been constituted under 25th amendment of Constitution of Power. Now law interpreting work / tasks / cases, where Courts specify supreme court was had a privilege to interpret constitutional matters, where there was clarity needed or ambiguity involved.

The same is assigned to Constitutional Courts under Constitution of the same in 26th amendment.

Performance Evaluation of

Judges:

Previously there was not any concept of performance evaluation of in judiciary. However, the same is introduced under 26th amendment of Constitution. Now a committee will be assigned by the authority to evaluate judges work and performance. The same will input the Promotions, Demotions, expel from service of Judges.

Critical Analysis:

It is said that with all above amended articles, Parliament has hindered and compromised independence of judiciary. However, the same is not the case as involving parliament in judicial appointment is not new as in United States judicial appoints are done by President under the recommendation of Senate. Other than that in United Kingdom appointments of judiciary are made by fifteen members Committee / Commission. Furthermore, the best judicial system of the world is said to be of Denmark, where judicial appointments are made through judicial appointment counsel.

Other than appointments 25th amendment ensures judicial independence by remaining free from political pressures but still held accountable to the public through Parliamentary Oversight. Performance evaluation mechanism ensures a balance between independent judiciary and the democratic demand for accountability.

The inclusive judicial appointment ensures a broader representation in judicial decision, not just by the judiciary. It promotes greater public trust.

Question # 1

The Nexus of Pakistan's Political Culture and Extreme Polarization

Political Polarization refers to the increasing divide between different Political groups or individuals with opposing views and ideologies. In Pakistan, Political Polarization has been a long-standing issue that has been exacerbated by various factors, including economic disparities, regional tensions, and the rise of extremism. The Political culture of Pakistan is mired with extreme Polarization, which can be witnessed through its ~~political~~ elements of Political culture. This emerging, increasing Polarization is resulting in various detriments to the nation. The ~~can~~ Polarization can be eliminated by taking proper correction measures to get the Political culture free from Polarization.

Elements of Pakistan's Political

Culture: Mired with Extreme

Polarization

Pakistan's Political

Culture has different elements which are listed as below: which leads to Polarization in Political culture of Pakistan and shows how Political culture of Pakistan is merged with Polarization.

- Dynastic Political Parties and Feudalism.

Pakistan since its independent movement has a culture of dynastic Political Parties as all party leaders were belonged to aristocratic families with financial strength. The same was continued after establishment of Pakistan. till to date all Political Parties are based on dynastic and Feudal System. Leadership of Political Domains are Parties are shifting from one generation to another generation of same families.

- Non-Democratic nature of Political parties

Nature of Political Parties in Pakistan is non-democratic in its very essence. As there is no intra-Party elections concept in Political Parties. More over voting is based on Caste and ethnic bases. There is no concept of merits in Political System of Pakistan which further

Polarized Political culture of Pakistan.

- NO National Political Party:

The concept of regional Political Parties are a core of Political Culture of Pakistan which proved extreme Polarization in Political culture as there is no party which can be called a national Political Party or it Promotes national unity in the state due to the regional party system, further Polarization fosters. Therefore, this Polarized culture of Political culture ignites Regionalism and promotes regional Policies which further widens the regional conflicts.

- Mixing of Religion with Politics:

Pakistan's Political culture is mixed with religious elements. Here Political leaders use religious narratives to exploit the emotional sentiments of masses as Pakistan's nation is religion driven. The same can be proven through establishment of Pakistan which was based on religious ideological factors. The same is continued which is now being exploited by Political parties to create a desire response and support from

names

- Politically illiterate names

Political culture of Pakistan includes Politically illiterate names which further Promotes Polarization in it. Pakistan's low turn-out of voters in election for instance there was only 52% voters turn out in 2018 elections in Pakistan. When the names are Politically illiterate it leads to provide more fault lines and increase vulnerability to Political Polarization in the culture of Politics.

- Security centered and low foresightedness In Politicians

Pakistan's Political culture is based on security centered Politics. As Pakistan since its inception has a neighboring country which it keeps rivalry towards each other. For instance ~~Pakistan~~ India. Pakistan has a long history of Indian culture and security. Pakistanian politicians in Pakistan lack foresightedness as hardly any party keep its term and no party could win consensus terms. because these reasons politicians do not have any long term plans instead

Focused only completing the term.

- Provision of space to Non-State Actors

Due to ^{religious} regional, ethnic, and social faultlines which are due to polarisation in political culture of Pakistan lead to give space to non-state actors which further exploit these faultlines and weakens social fabrics and promotes religious intolerance in the masses and lead to future polarized culture in the state.

~~Political~~ Historical Analysis of Polarized

Political culture of Pakistan:

- Prolonged and Intermittent Martial Law:

Pakistan's political culture has experienced prolonged and multiple martial laws in its history which started not after the decade of Pakistan's establishment in 1960s, 1970s, 1950s and emergency implementation in late 1990s and early 2000s. This culture of military takeovers over democratic government shows how political culture of Pakistan has been merged with polarisation.

- Regional Insurgencies and Provincial Dispute.

Pakistan has been experiencing regional insurgencies which are due to Political culture as provinces are divided into regional blocs and no national narrative is being displayed by any Political party. Which lead to regional and provincial grievances and provincial space and vacuum to non-state actors to exploit these fault lines and further polarize the Political culture as for instance: Baloch Insurgencies and provincial disputes over water on Kalri Bakh Dam.

Remedies to Eliminate Polarization In Political culture of Pakistan:

There are many remedies to curb Polarization in Political culture of Pakistan: which are

Inducing Intra Party elections.

There is a need to induce intra party elections in Political Parties so

so that a concept of merit based politics can be flourished, and the same will lead to less political corruption - need is to shift from feudal and dynastic politics to merit based politics.

- Electing visionary ~~politics~~; leadership.

By introducing intra party elections and selecting leaders on merit based will lead to create visionary leaderships which will not work only to complete a particular term but will come with ~~long~~ foresightedness and long term vision.

Educating The masses:

There is a need to educate masses with politics so that they could identify between a fact and polarized opinion and could make a rational decision in election and electing the representative on the basis of logical reasoning not on emotional or irrational point of view.

Separating Religion and Politics.

There is a need to separate religion from politics so that religious sentiments of people can not be

exploited as Pakistani nation is emotion driven when it comes to inclusion of religion in politics.

- Curbing Non-State Actors.

Government needs to take actions to counter non-state actors so that the fault lines can not be used as further polarisation of political culture. ~~They~~ can be stop. it will not let regional parties to overturn national interests. Though controlling non-state actors government can introduce national narrative and national political culture.

- Strengthening Democratic Institutions

There must be a strengthened democratic institutions. Every government should be given a fair chance to complete its term and work under democracy. Perpetual demolition of 58(2)(b) under 18th amendment gave breathing space to democratic institutions. Government need to strengthen it more so that democracy can be promoted in state which will curb polarisation in political culture of Pakistan.

Conclusion:

Pakistan's Political culture is marred with extreme Polarization. The concept is not new as it can be witnessed throughout the history of Pakistan and to some is going on till to date. However, with collective efforts of all Stakeholders this Polarization can be contained and a culture of democracy can be promoted and ~~is~~ flourished in the realms of country.

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