

1. DATE: \_\_\_/\_\_\_/\_\_\_ PAK. AFFAIRS TEST-02

## QUESTION NO. 2

Explain the main contours of recently passed 26th constitutional amendment in Pakistan, particularly in the context of Independence of Judiciary.

## ANSWER

### INTRODUCTION

After the 18th Constitutional amendment passed on 8th April, 2010 - also known as "Mini-Constitution" - 26th constitutional amendment is the most important amendment. 18th constitutional amendment altered about a third of Pakistan's constitution and transformed Pakistan from a semi-presidential to a parliamentary republic.

However, the 26th constitutional amendment holds 27 amendments in the clauses which were passed by the National Assembly.

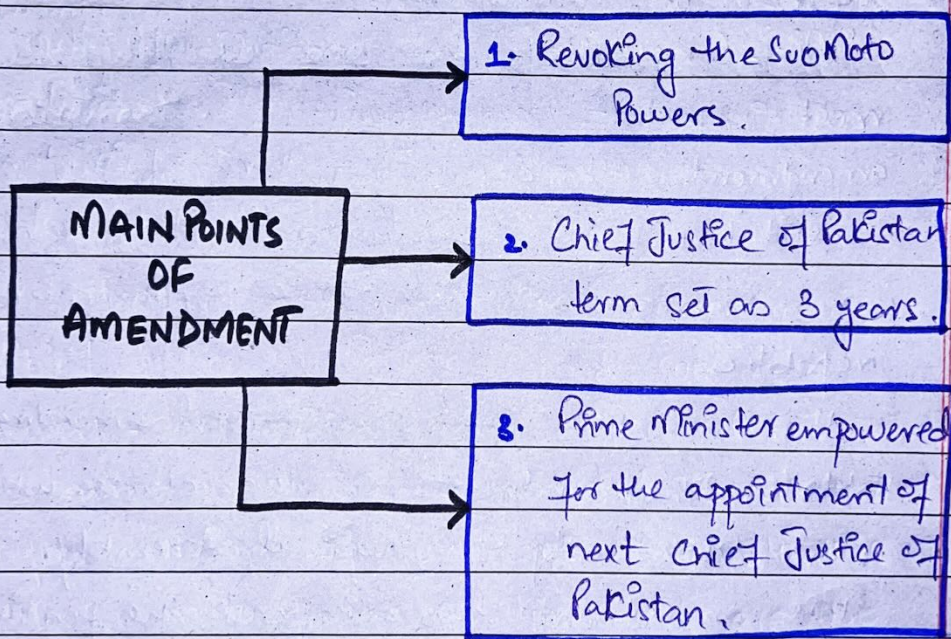
This amendment has enhanced the parliamentary oversight and executive oversight of the Judiciary.

In the recent past ~~we~~ ~~had~~ the immense use of judicial power to intervene in the executive branch was seen which was unsuitable for the executive branch hence, the 26th constitutional amendment majorly focused on clipping the powers of Judiciary.

## 26th Amendment - The Constitutional Package

26th Constitutional amendment was passed on 21st October, 2024. The senate passed the amendment with a two-thirds majority - 65 votes - and followed by the National Assembly - 225 votes.

Main Points of the Amendment:



### ARTICLE 175A:

Major focus of the amendment was on article 175A, which governs the appointment process of judges to the Supreme Court of Pakistan, High courts and the

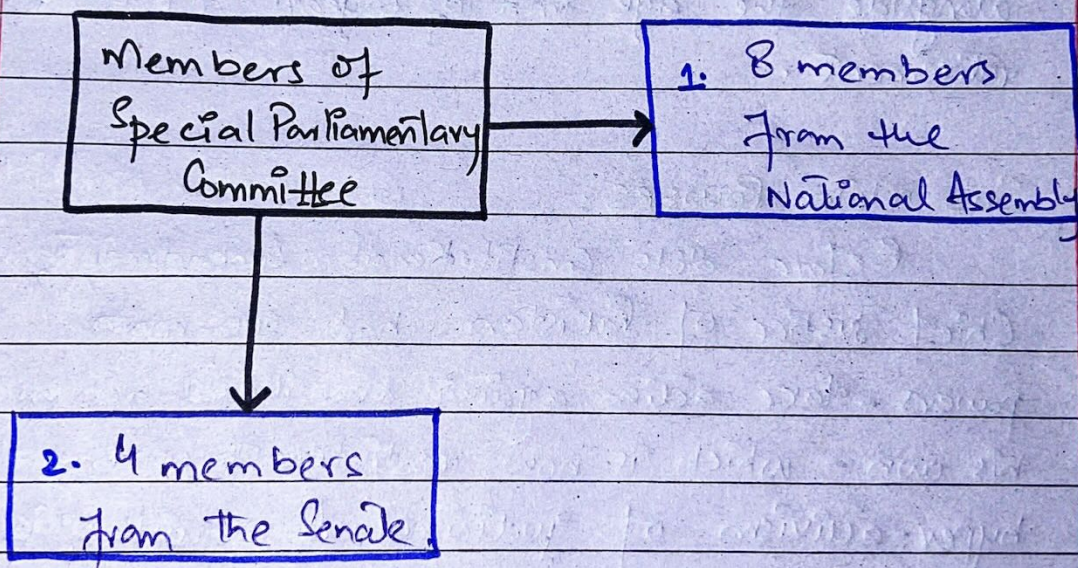
## Federal Shari'ah Court.

### Clause 3 of Article 175A:

Now, the appointment of the Chief Justice of Pakistan will be from the top three Judges of Supreme Court and will be appointed on the recommendation of Special Parliamentary committee.

### Special Parliamentary Committee:

It will consist of 12 members.



Previously, as per the 19th amendment the Judges appointment summary was made by the Supreme Judicial Council and signed by the President. Parliament had no powers to appoint the Judges. The appointment of Chief Justice of Pakistan was according

to the senior puisne Judge residing after the current Chief Justice. However, now the powers are with the parliament.

### JUDICIAL COMMISSION OF PAKISTAN:

According to clause 4 of Article 175A, the rules of appointment, assessment and evaluation of Judges will be done by the Judicial Commission of Pakistan which now has 13 members instead of 8.

Furthermore, the serving term of the Chief Justice of Pakistan is limited to three years, alongside the age limit of 65 years or earlier retirement.

### Suo MOTO POWERS:

Before 18th Constitutional Amendment, Chief Justice of Pakistan had suo-moto powers - take action against any illegal act on his own - which is now restricted to curb the hyper-activism of judiciary. Along with this the suo-moto powers of High Courts are also restricted to act only on the contents of filed applications.

### CONSTITUTIONAL BENCHES:

The constitutional benches are basically courts within a court. It is another layer

of litigation which is formed at the federal and provincial level. The constitutional bench will include equal number of Judges from each province - nominated by Judicial Commission of Pakistan, and the senior puisne judge will preside the Constitutional Benches.

### OTHER AMENDMENTS:

Some other amendments were also made in the 26th Constitutional Amendment which focused on the following:

- ① Complete elimination of Qaza by, 1 January, 2028.
- ② Right to a clean and healthy environment.
- ③ Chief Election Commissioner will reside in the office until the successor assumes the position.

### CLIPPING THE POWERS OF JUDICIARY

According to the above mentioned clauses of the 26th Constitutional Amendment majority has seen as a move to clip the powers of Judiciary for personal political gains.

Judiciary is now politicized and the equality of the three constituents of state are disturbed. The neutralization of

Suo moto powers and the process of appointment of Judges is now not based on meritocracy but lies in the hands of parliament, which poses great threat to the independence of judiciary.

### CRITICAL ANALYSIS

Analysing the steps taken in 26th amendment it cannot be said the clipping the powers of Judiciary was totally wrong.

#### POSITIVE SCHOOL OF THOUGHT:

This amendment is viewed positively because the same pattern of strengthened parliament, keeping a check on judiciary is followed in first world countries like America and United Kingdom. Along with these, in the neighbour country of Pakistan - India - as well. Thus, the amendment enhances the parliamentary oversight of judiciary.

#### NEGATIVE SCHOOL OF THOUGHT:

This school of thought - followed by many in Pakistan - argues that the judiciary has now become totally politicized, which will maintain the dominance of the executive and it is a threat to the judicial independence.

## CONCLUSION

This amendment has majorly clipped the powers of the Judiciary but the way in which the amendment was enacted gave rise to many controversies. However, with the 26th amendment, there is a clear sense of undue haste, as the process was rushed and took place at midnight. Other than this the Supreme court - Apper court of Pakistan - had legitimized floor crossing, which further complicates the situation.

Hence, this step has received a major backlash by the nation and the world wide organizations like UN.



### QUESTION NO. 3

Federal structure and parliamentary form of government are most appropriate systems for Pakistan. Discuss.

### ANSWER

### INTRODUCTION

Pakistan being a diverse nation with multiple ethnic, linguistic and cultural groups, requires such a system of the government which ensures ~~the~~ inclusivity and representation.

Since the inception of Pakistan, the federal structure and parliamentary form of government have been integral to Pakistan's constitutional framework. Both these systems align with Constructivism, which emphasizes the role of identities, norms and social structures in shaping political systems. The federal structure respects its ethnic and cultural diversity by granting provinces autonomy to manage local affairs, while the parliamentary form ensures democratic representation and accountability at all levels. ~~These are~~ Hence, these systems align with Pakistan's socio-political identity, ensuring stability and cohesive state-building within its pluralistic society.



## FEDERAL STRUCTURE: ENSURING REGIONAL REPRESENTATION AND AUTONOMY

### FEDERALISM:

A federal system divides the power between the national, state and local governments. In federalism, government at all levels has sovereignty in some areas and share powers in other areas.

Eg:

Both federal and state government have the power of tax collection. But war can only be declared by the federal government.



## FEDERAL STRUCTURE: RELEVANCE TO PAKISTAN

### ① Ethnic and cultural diversity:

Pakistan includes numerous cultures and ethnicities, some in majority while some in ~~the~~ minorities. Hence, federalism provides autonomy to provinces which can address the unique needs and aspirations of every group.

### ② PROVINCIAL AUTONOMY:

The provincial powers were strengthened in the 18th constitutional amendment which helped address the long-standing grievances. It also

makes it easier to manage the education, health and local infrastructure effectively.

### ③ REDUCED CONFLICTS:

Granting autonomy by federalism reduces the risk of separatist movements and ensures national unity, also reduces the grievances of the minorities, especially.

### ④ RESOURCE ALLOCATION:

Devolution of power at all levels enables the government to adopt tailored policies for each province which also helps in resource allocation to all provinces.

## PARLIAMENTARY FORM OF GOVERNMENT:

It is a democratic administration in which the government is formed by the political party that obtains the most seats - majority - in the legislature or ~~the~~ Parliament during ~~the~~ the federal election. The majority party selects a leader to be the Prime Minister.

President is the chief executive, who is directly elected by the people. All the three branches - executive, legislative, and judiciary - are constitutionally independent of each other, and no branch can dismiss or dissolve any other.

## PARLIAMENTARY GOVERNMENT: RELEVANCE TO PAKISTAN

### ① Democratic Representation:

Democratic representation gives the power to the people and they elect the representative through electoral process.

### ② Unity of Authority:

Unlike presidential system, the parliamentary system focuses on merging the legislative and executive powers which unites the authorities and reduces the risk of conflicts.

### ③ Accountability and transparency:

Parliamentary form of government encourages the accountability for all and ensures that no one should be above the law and law is applicable on every citizen of the country. It also promotes transparency and the nation has the right to information.

### ④ Flexibility:

This form of government is not rigid, which means that if the elected leader is not effective it can be removed with the help of vote of no confidence which helps in avoiding the prolonged political crises.

## FEDERALISM AND PARLIAMENTARY GOVERNMENT TOGETHER

Both systems work simultaneously to address the diverse needs of Pakistan. Parliamentary system ensures democratic representation at the federal level, while federalism empowers regional governance.

### CHALLENGES FOR PAKISTAN:

Pakistan is facing a few challenges, like:

- ① Political instability due to frequent changes in leadership.
- ② Weak political parties lead to coalition.
- ③ Electoral and governance reforms are required.
- ④ Provincial disputes over resource allocation.
- ⑤ Weak institutions to implement the federal principles effectively.

### CRITICAL ANALYSIS

The federal structure and parliamentary form of government are the most appropriate for Pakistan as Pakistan is a diverse nation with multiple ethnic, linguistic and cultural groups. However, the challenges faced can be overcome through reforms and stronger institutions - it is not impossible.

By adhering to these systems, Pakistan can ensure representation, accountability, development, paving the way for a suitable and prosperous future of Pakistan.

