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QNO2

Explain the main contours of recently passed 26th constitutional Amendment in Pakistan, particularly in the context of independence of judiciary.

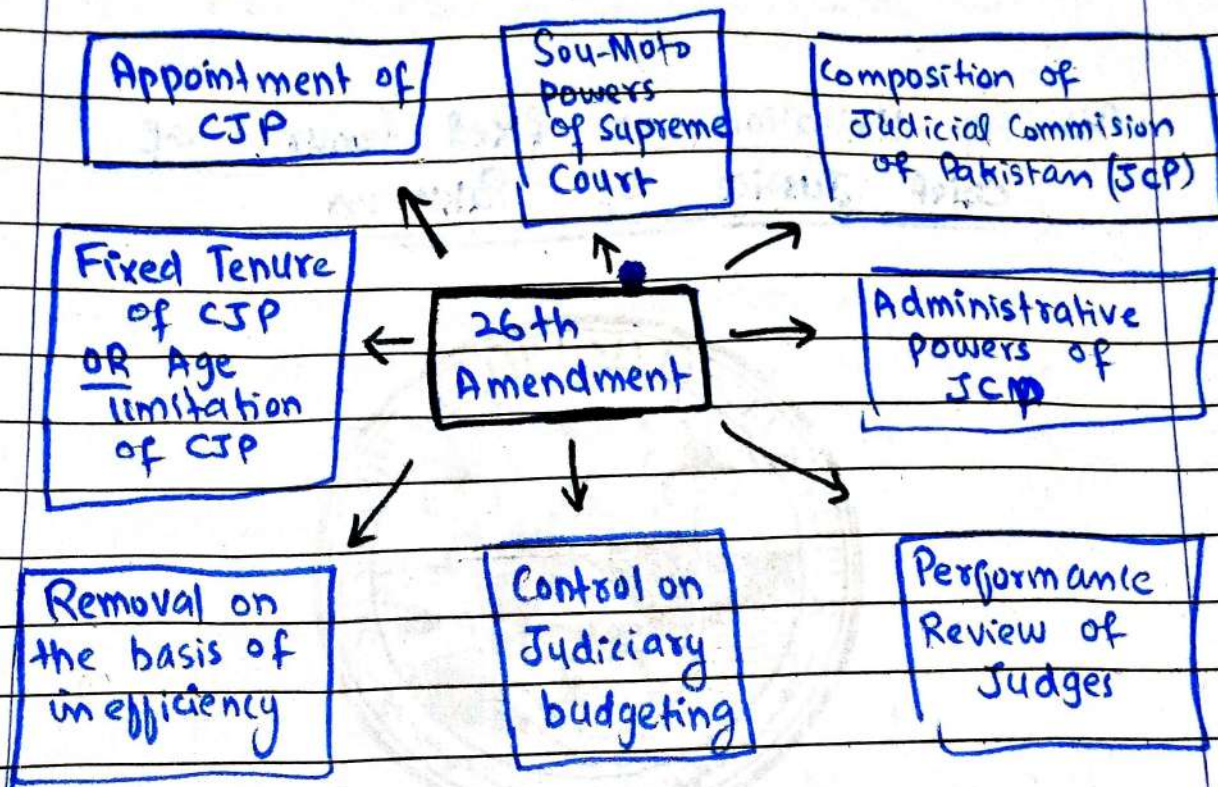
## 26th Constitutional Amendment:

### A Blow To Independence of Judiciary

The recently passed 26th constitutional amendment was an attempt to subjugate judiciary under the powers of executive and legislature. Most of the articles were related to judicial branch such as the appointment process of Chief Justice of Pakistan (CJP) was altered. It changed the composition of Judicial Commission of Pakistan (JCP) with increased political influence. A special Committee was formed to review the performance of high court judges, on which they can be transferred on the basis of their performance and inefficiency. This amendment also fixed the tenure of Chief Justice of Pakistan. Hence, the experienced judges may be removed after



fixed duration and appointing other judges who are in alignment with political leaders. Hence, the 26th amendment severely undermined the judicial independence.



## ① Appointment of Chief Justice of Pakistan

The 26th amendment formed a 'Special Parliamentary Committee' for the appointment process. This committee composed for ~~four~~ <sup>eight</sup> members from National Assembly and four members from Senate. It will nominate chief Justice from three most senior judges of Supreme Court. Before such ~~amendment~~ amendment, the



Senior most judge was appointed as Chief Justice on the seniority basis. The amendment has included interference of legislature in judicial appointment. Hence, it undermined the independence of Judiciary.

### ② Age limitation or fixed tenure of Chief Justice of Pakistan

The 26th amendment fixated age of retirement at 65 years or it limited the tenure upto 3 years, whatever comes first. Hence, the experienced and competent judges will be removed and new judges will be appointed according to alignments of political leaders. Therefore, judiciary loses its independent influence after 26th amendment.

### ③ Removal of Judges on the basis of inefficiency

The amendment provides a body called "supreme judicial council" that is responsible for over-viewing of high court judges. This body can remove the judges on the basis of their inefficient



performance. Again, increasing influence of legislature in the independence of judiciary. Even, the criteria for inefficiency is not mentioned in the constitutional amendment.

#### ④ Altered composition of Judicial Commission of Pakistan

The amendment added two members from senate and two members of senate and one woman or non-muslim nominated by the speaker of National assembly to the Judicial Commission of Pakistan. This provided with only five judges in 13 member group of judicial Commission of Pakistan for nomination of judges of supreme court and High Court. It shows clear involvement of parliament in judicial system, sub-duing its independence under the influence of politicians.

#### ⑤ Administrative Powers of Judicial Commission of Pakistan

The 26th amendment has given powers to Judicial Commission of Pakistan to determine and nominate "constitutional benches" within the supreme court and High Court. These benches will interpret the constitution of Pakistan and involve in the enforcement of fundamental rights. This change



brings Judicial Commission of Pakistan under direct political influence in decision-making power hence, reducing the independence of judiciary.

### ⑥ Performance Review Of Judges

The amendment provides authority to legislature for reviewing performance of judges and they can transfer or remove high court judges on the basis of their performance.

### ⑦ Sou Moto powers of Supreme Court are limited

It reduced the sou-moto powers of supreme court. Previously, Supreme Court could initiate its review independently. But, the 26th amendment curtailed its powers and now, Supreme Court requires approval from judicial committee to initiate sou-moto. This article also alters the balance of power and ultimately undermining the independence of judiciary.

### ⑧ Control on Judiciary Budgeting

The judicial ~~budget~~ budget is now under control of parliamentary committee.



It increases the financial control of parliament over judiciary, undermining its independence below legislative branch.

## Conclusion

The passing of 26th constitutional amendment compromised the separation of power and curtailed power of judiciary to check the powers of other branches of government. According to international court of Jurists (ICJ);

The 26th amendment passed by parliament of Pakistan is a blow to Rule of law, fundamental rights of citizens and independence of judiciary.



QNO.3

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

Ans.

### Federal and Parliamentary Government: most appropriate for Pakistan

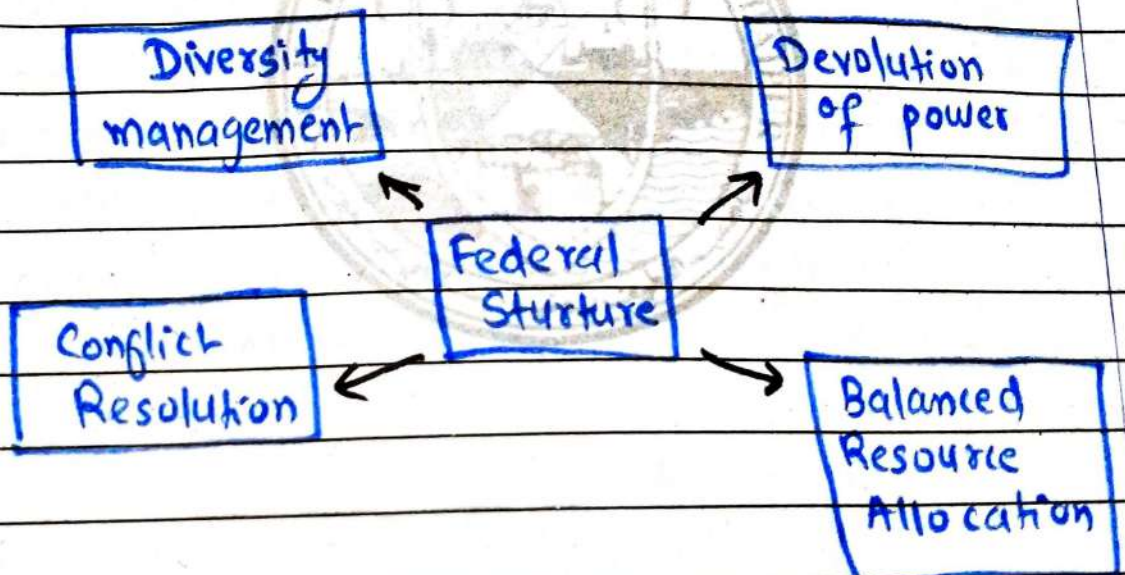
The federal structure consists of central, provincial and local components of the government that provides increased representation of diverse cultures and ethnicities. This system decentralizes power from centre and strengthens provincial authorities to control their respective provinces. Parliamentary form of government gives the executive from legislature and they ~~become~~ represent the whole public. The parliamentary system also provides a balance of power with separation of authorities within its three branches of executive, legislature and judiciary. There is vote of no-confidence if the executive show inefficiency or creates instability within the country. He is accountable before the people. Hence, federal structure and parliamentary form of government



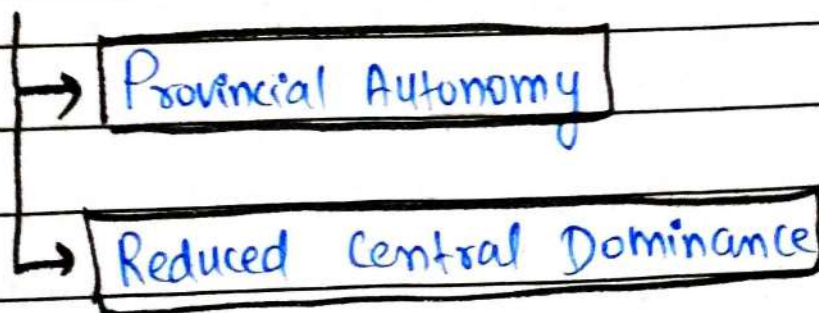
seems most appropriate for diverse culture of Pakistan.

## ① Federal Structure Of Pakistan

The federal structure of Pakistan consists of a central government and then provincial and local governments for respective provinces, ensuring representation of multiple cultures and ethnicities.



## ① Devolution Of Power





### ① Provincial autonomy

The federal structure decentralizes power from centre empowering the provincial authorities and giving them financial and administrative powers. Hence, they can resolve their matters with great autonomy according to cultural needs.

### ② Reduced Central Dominance

The federal structure curtails over-dominance of centre, which can enhance efficiency of local authorities. The ~~and~~ De-centralization reduces the resentment in marginalized provinces such as Sindh and Balochistan.

### ③ Diversity Management

Pakistan has diverse culture and ethnicity. For management of such diversity federal system is appropriate. It consists of multiple languages, ethnicities, cultures and religions. Local governments and provincial governments run the authorities accordingly which is possible only in



federal structure.

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### ③ Conflict Resolution

Federal structure allows resolution of conflicts which are related to both central and provincial issues. Hence, through Council of Common Interest, disputes are addressed. It fosters resolution, strength and cooperation between both centre and provinces.

### ④ Balanced Resource allocation

Federalism allows equitable distribution of resources among the different levels. It has established National Finance Commission award, which distribute the finances, allowing provinces for autonomous management. Hence, it fosters prosperity of whole nation, providing proving it to be appropriate for Pakistan.

## ② Parliamentary System of Pakistan

Pakistan has parliamentary form of government that consist of executive, legislative and judiciary. These three branches are separated and combined at the ~~same~~<sup>same</sup> time. This system has separation of powers giving



- stability in political system and this system has mechanism of checks and balances that holds all the branches accountable to one another, hence, this ~~is~~ balanced environment is most appropriate for government of Pakistan.

### (i) Representation of people

Parliamentary system includes direct representation of people. The executive is elected and he is accountable to people. The parliamentarians are representative of their people, they come from different corners of the country and represent diversity. Therefore, this system is suitable for Pakistan.

### (ii) Responsiveness and accountability

The legislative can use power of "vote of no confidence" against the prime minister. Hence, he remains responsible and concerned for stability and growth of nation. Otherwise, the executive can lose confidence in majority and removed from the office.



### ③ Stability in multi-cultural society

As Pakistan has various cultures, the ~~over~~ over-powering of single culture can't survive. For the sake of stability, Pakistan requires parliamentary form of government. Different leaders represent their ethnicity and reduce grievances of marginalized provinces, especially Balochistan. This system helps to bridge divides and maintain stability in multi-ethnic state like Pakistan.

### ④ Compatible with Pakistan's historical legacy

Pakistan inherited parliamentary system from British colonial past and it aligns with political traditions in Pakistan. Therefore, parliamentary form of government is the most appropriate for Pakistan.

## Conclusion

The federal structure and parliamentary form of government are most appropriate for Pakistan, given its multi-cultural and multi-ethnic nature. It gives an inclusive and



representative form of government. It strengthens provincial and local government as well. These systems also support financial autonomy of provinces. However, effective implementation and institutional strengthening are crucial for maximizing their potential for national unity and development.

