

Pak Affairs - NOA

~: Question-2:~

26th Amendment

Introduction-

The Passage of 26th amendment in Pakistan has curtailed the 'Judicial Independence' by providing a way to political interference by Parliament.

-The International Commission of Jurists (ICJ) -

The 26th amendment is another political expedition done by parliament in 2024. which, according to most critics, has curtailed the independence of judiciary. There are many provision in this amendment that threaten the judicial

freedom, and are considered against international norms.

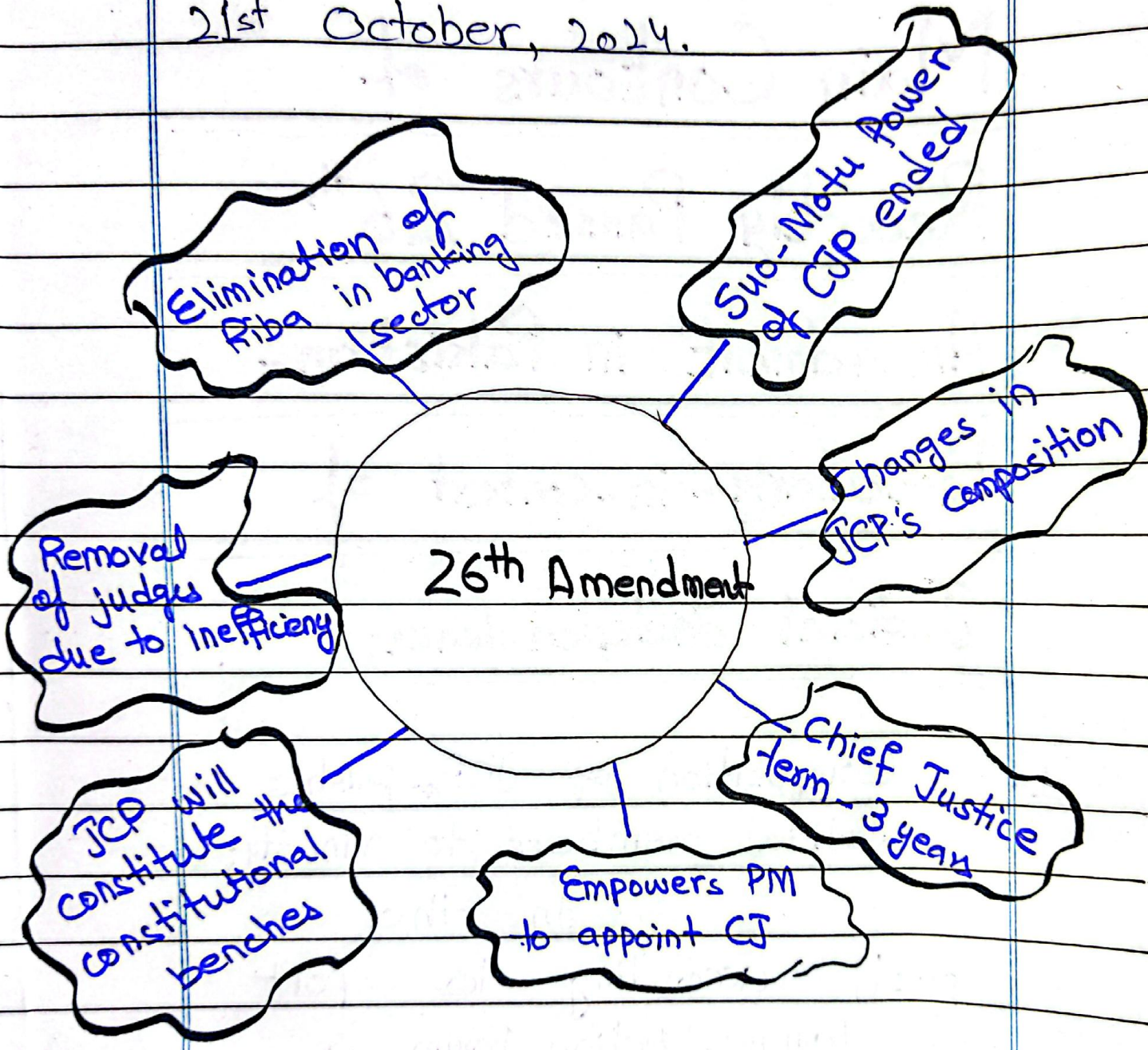
From controversial appointment of ~~top~~ procedure of apex court judge to the removal of judiciary judges over ambiguous cause of 'inefficiency', 26th amendment made great changes in the structure and functioning of Pakistan's judicial system. Also, there is a popular perception that these institutional changes are great blow to judicial freedom.

Understanding 26th

Amendment - A Little Glimpse

26th Amendment
passed in 'Senate and National
Assembly' by 2/3rd majority on

21st October, 2024.



26th Amendment

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Main Contours of Recently Passed 26th Amendment in Pakistan - Particularly - in - context of Judicial Independence;

1- Composition of JCP pushes
Judicial members to minority;

In the past, according to report of Lawyers Action Forum, a Pakistani-based organization, JCP Judicial Commission of Pakistan was composed of total nine members - three from National Government - six were judiciary members. The

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recent amendment added new members - two from NA - two from Senate, thus, pushing ^{other} to minority.

2- Appointment of Top Judge by PM - Promote Favouritism; and Undermine Meritocracy;

According to UN Human Rights Commission declaration article 11, appointment of judges in any country must be done without any outside interference. The recent amendment empowers PM to appoint top-judge. may undermine meritocracy.

3- Removal of Judge over Ambiguous Clause of Inefficiency - a Big Blow to Judicial Freedom;

'A good 'Judge' must be disinterested and should give verdict without any

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These words said by
International Commission of Jurists
has underscored the importance
of absence of fear for judge.
26th amendment has undermined
the judicial freedom by
giving upper hand to
JCP to remove judge over
ambiguous reason.

4- Nomination of Constitutional Benches by JCP - a Threat to Fair Trial;

Some critics
like Aitzaz Ahsan, a senior
lawyer, has said that
the nomination of
constitutional benches by
JCP can threaten the
fair trial. As JCP would
decide which case is
worthy to hear or who

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will hear the case. This
blows the fair and free
trial.

5- Ending Suo-Motu Power- Silenced Judiciary over Taking Action for Public Good;

Suo-Motu power
was once a bone of contention
between parliament and
judiciary. Thus, 26th amendment
has ended this power of top
judge. In future, no judge
will be able to take
any suo-motu for public
good.

6- Disturbed Notion of Separation of Power by Providing Parliament an Upper Hand;

Montesquieu, an
eminent french philosopher, had

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discussed that separation of power between 'Executive, Judiciary and Legislature' was important for smooth functioning of government. However, the 26th amendment has also disturbed the notion of separation of power by providing upper hand to parliament.

7- No More Anti-ruler Judges;

Parliament and government 'ensured' through 26th amendment that in future there should be no judge being appointment that could oppose the ultimate power of rulers.

Conclusion;

In a nutshell,

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Hamid Khan writes in his book 'Constitutional and Political History of Pakistan' that there were always a tussle between 'Judiciary and Parliament'. However, this power competition ended in the favour of parliament, ~~that~~ ~~pro~~ through passing of 26th amendment.

~: Question 3:~

Form of Government

Federal Structure and

Parliamentary Form - Most Appropriate System For Pakistan;

History suggests us that being the multi-ethnic nation, only federal and

parliamentary form of government can end the issue of proper representation in Pakistan'

- Anatol Lieven

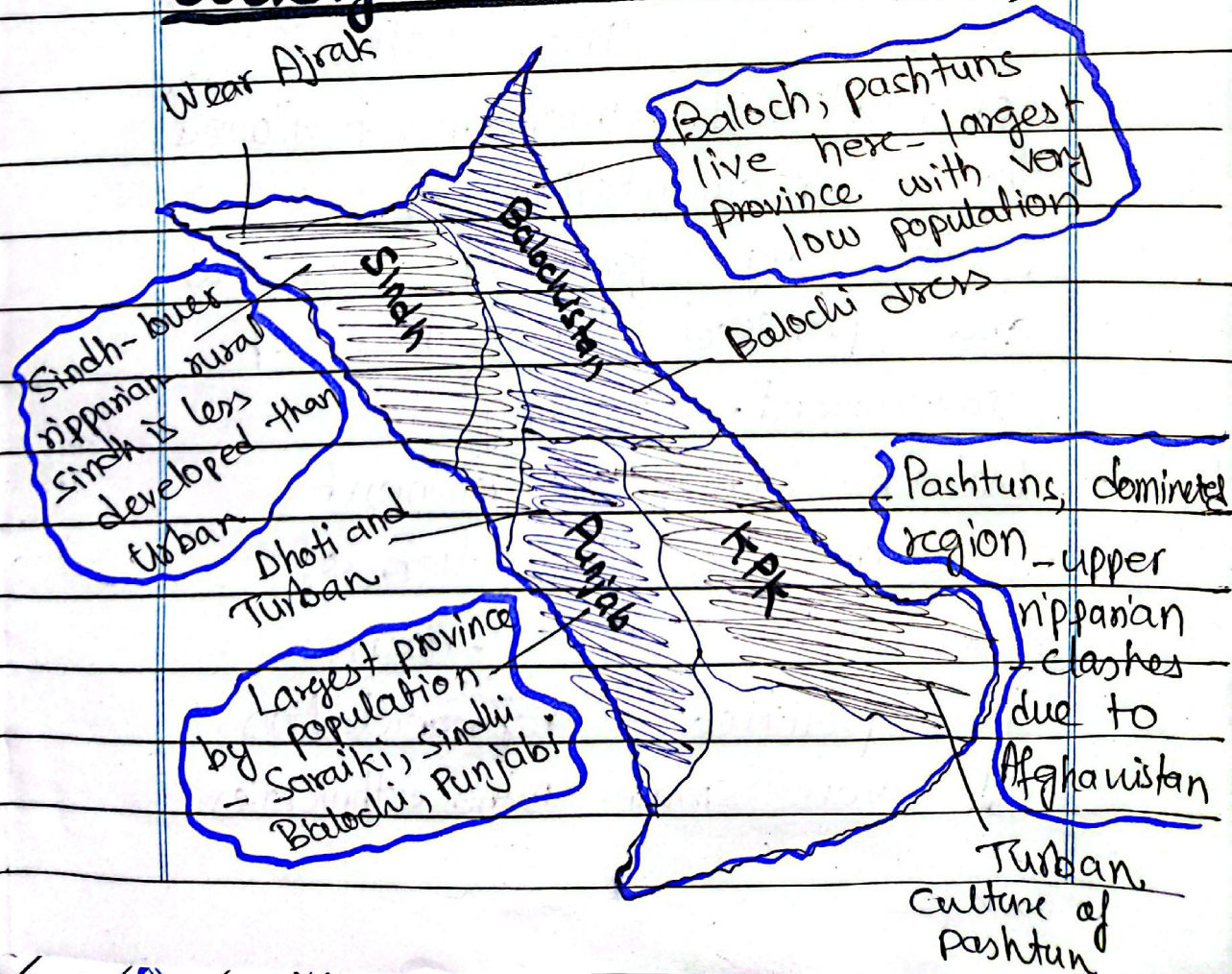
Anatol Lieven in his book 'Pakistan: A Hard Country' has said that only parliamentary form of government and federal structure seems appropriate in Pakistan due to its multi-ethnic society.

This system of government is suitable because it provides political representation to every class. Apart from it, some critics argued that the presidential form of government experimented through 1962 constitution was failed badly. Moreover, the emerging political

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issues and social issues like water crisis etc require diverse opinions to solve this problem. This is only possible in federal structure and parliamentary form of government.

Pakistan - A Multi-Ethnic Society - A Little Glimpse;



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How Federal Structure and Parliament Form is Suitable For Pakistan?

1- Ensures Political Representation to Every Ethnicity, through Three-Tier Government System;

The 18th Constitutional amendment allowed the implementation of parliamentary form of government and promised three tier of government. According to Maleeha Lodhi, an eminent scholar, the three tier of government system ensures the political representation of even small ~~minor~~ ethnicities.

2- Allows Small Population of Balochistan to Actively Participate in Central Government;

Anatol Lieven in his book 'Pakistan a Hard County' said that Balochistan is the smallest province in terms of population. As it has small population and small number of voters, ~~then~~ only parliamentary form of government provide opportunity to form coalition govt.

3- Removes Grievances of Ethnicities and Fear of being Ignored, by Giving Due Rights;

Parliamentary form of government and federal structure provide the due rights of federating units by ~~allowing~~ giving them

proper representation in
parliament and senate.

4. 1973 Constitutional of Pakistan is Parliamentary in Nature;

According to
Hafeez Pasha, a renowned
scholar, the ¹⁹⁷³ constitutional
of Pakistan is parliamentary
in nature. It requires a
large consensus to amend
it for other system of
government.

5. Provides Federating Unit a power to govern according to Popular Will;

As parliamentary
and federal system provides
autonomy in many matters
and subjects, it actually
allows all federating

units to govern and form policies according to the popular demand and will.

6- Issue of Different Local Languages can be solved under it;

According to S. Shaw, who in his book 'Pakistan: A home of multi-ethnicity' said that in the unfortunate event of 1971, East Pakistan separation, the issue of language was considered as an issue of dissent among East and West.

7- Provides Opportunity to End Provincial Disparities by allowing Autonomy in Fiscal Policies;

Federal government structure allows provincial

autonomy. After 18th amendment
~~there is~~ also ~~provides~~ fiscal
 autonomy to all federating
 units so they can manage
 their finances on their
 own.

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In this regard provide potential solution to many issues of Pakistan.

8- Presidential System is not suitable for corrupt and immature political leadership;

'Power corrupts and absolute power corrupts absolutely'

Presidential power form of government provide absolute power which could lead towards tyranny due to immature and corrupt political leadership in Pakistan.

9- Already Failed Experience in the face of 1962 Constitution;

Many critics says that the failure of

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1962 Constitution and the separation of East Pakistan provide strong foundation to the argument that parliamentary system is only suitable for Pakistan.

Conclusion;

To make it short, according to Ishaat Hussain, a renowned scholar, the issue of political representation was exist in the pre-partition era and remained even in post partition until the issue was resolved through providing the promised autonomy and representation to ~~at~~ different ethnicities. Only parliamentary system

in this regard provide
 potential solution to
 many issues of Pakistan.