

NOA Test Series

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Q.2)

Introduction

The 26th Amendment to the Constitution of Pakistan was passed by Parliament on October 21st, 2024. The amendment contains 27 clauses, which in effect change judicial, parliamentary, and executive frameworks. The amendment has seen several controversies, both during the process of introduction and passing, as well as the act of implementation. One main area it has impacted is the independence of Pakistan's judiciary, which this analysis will seek to explore further.

Salient Facts of Amendment

- revoking Supreme Court's suo motu powers (change to Article 184)
- setting the Chief Justice of Pakistan (CJP) term at 3 years
- empowering PM to appoint next CJP from among the 3 most senior Supreme Court Judges
- empowers Supreme Court to transfer any case to itself

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Amendments
to Article
184

Amendments
to
Article
175A

Main - Contours
of Amendment

Insertion of New
Article 202A

Insertion of
New Article
191A

① Amendments to Article 175A

→ amending clause 3 = instead of President appointing "most senior" judge as CJP, CJP will now be "appointed on the recommendation of the Special Parliamentary Committee from amongst the 3 most senior" SC Judges

→ Special Parliamentary Committee consists of:

→ 8 members from National Assembly

→ 4 members from Senate

→ committee sends nominee to PM, who forwards it to President for appointment

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② Amendments to Article 184

- SC's ability to exercise suo motu powers is restricted
- SC cannot issue orders or directions on its own beyond what is presented in an application
- new clause (1A) prohibits suo motu
- SC can now transfer any case, appeal, or proceeding from any high court to itself if deemed expedient for justice

③ Insertion of New Article 191A

- establishes Constitutional Benches within the SC.
- Benches will include judges nominated by the Judicial Commission of Pakistan, with an equal representation from each province

④ Insertion of New Article 202A

- formation of constitutional benches in the high courts
- only constitutional benches may exercise specific jurisdictions vested in high courts, particularly:
 - issuing orders for enforcing constitutional fundamental rights

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26th Amendment's Impact on Independence of Judiciary:

"These changes bring an extraordinary level of political influence over the process of judicial appointments and the judiciary's own administration"

"They erode the judiciary's capacity to independently and effectively function as a check against excesses by other branches of the state and protect human rights" ... "a blow to judicial independence, the rule of law, and human rights protection"

-International Commission of Jurists

Appointment of
CJP

Composition of
Judicial Commission
of Pakistan
(J.C.P)

Main Contours
of Amendment
With Respect to
Judicial
Independence

Removal on the
ground of
"inefficiency"

Administrative
Powers of JCP

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① Composition of JCP

→ JCP is responsible for nominating judges for SC and High Courts

→ Previously = comprised a majority of judges

→ Now = 2 members of National Assembly, 2 members of Senate, 1 woman or non-Muslim (nominated by Speaker)

→ these changes allow for direct political influence over JCP, and reduce JCP's judicial members to a minority

↳ e.g. for appointment of SC Judges, only 5 out of the 13 JCP members are required to be judges

② Administrative Powers of JCP

→ in addition to nominating judges for appointment, JCP has been given the power to determine and nominate "constitutional benches" within SC and High Courts

→ these benches shall have exclusive jurisdiction over matters involving Constitution interpretation + fundamental rights

→ Such power allows JCP - a body subject to direct political influence - to create tailor-made judicial benches to hear specific cases,

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→ there is a serious concern these JCP-appointed benches will not be independent + impartial

③ Appointment of CJP

→ Previously = most senior judge, Executive or Parliament have no say

→ Now = Special Parliamentary Committee ^{→ SPC} nominate CJP, empowers PM

→ Amendment outlines no grounds/criteria on the basis of which SPC is to nominate CJP, eroding judicial independence

④ Removal on the ground of "inefficiency"

→ Supreme Judicial Council (SJC) may recommend judges of SC and High Courts for removal if it finds they "may be inefficient in the performance of the duties" of their office

→ Amendment does not define "inefficiency"

→ this directly violates Article 14 of the International Covenant on Civil and Political Rights, which guarantees right to a fair public hearing by a competent, independent, impartial tribunal

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→ this amendment is a blatant attempt to subjugate the judiciary and bring it under the control of the executive, betraying fundamental principles of rule of law, separation of powers, and independence of judiciary.

Conclusion

The 26th Amendment is a significant piece of legislation that has a profound impact on Pakistan's political and judicial system. Several of its provisions seemed to be aimed toward eroding the independence of the judiciary, a crucial cause for concern. Time will tell how big of an impact this Amendment shall have.