

# PA Test 2

## QUESTION 2

### Introduction:

The constitution of Pakistan has recently been amended with the 20<sup>th</sup> constitutional amendment to 1973 constitution of the country. The amendment was passed on 21<sup>st</sup> October 2024 and was implemented the same day with the Presidential assent. Many provisions have been made to the constitution especially to the judiciary judicial branch of the government. Multiple provisions to the judiciary have been made in the amendment.

### Main Contours of the 20<sup>th</sup> Amendment

The 20<sup>th</sup> amendment has proved very significant in the

Constitutional history of Pakistan with its unique and controversial provision to the three branches of the government especially the judicial branch. Some of the important provisions are as follows

## 2) Removal of Sou Moto:

The 26<sup>th</sup> amendment has taken away the ~~embodie~~ powers of Sou moto from the Supreme Court of Pakistan and no longer allows the Supreme Court to take part in administrative and governance of the country when in need.

## 2) Authority of Parliament to Appoint CJP.

The authority to appoint the chief Justice of Pakistan has been given to the parliament of

the country. The CJP is supposed to be selected among from the top 3-judges of Supreme court on the discretion of the parliamentary committee established. This giving the power to Parliamentarian.

### 3) ReFormation of Parliamentary Committee:

The reformation of parliamentary committee to include greater number of parliamentarians than the judges to select the Supreme Chief Justice of the Supreme court of Pakistan.

### 3) Formation of Judicial Commission of Pakistan

The judicial commission of Pakistan is formed with a total of 12 members. 8 belonging to the National Assembly with 4

belonging to the Senate.

4) Capping CJ's tenure to 3 years:

The tenure of Chief Justice of Pakistan has been capped at to 3 years or at the age of 65.

5) Formation of Separate

Constitutional Bench in SC:

The 26<sup>th</sup> amendment enforces the formation of a separate constitutional bench in the supreme court that will be responsible for hearing the matters related to the implementation of constitution.

6) Limiting Court's abilities to maintain checks:

The power of Supreme Court to keep a check on the recommendations from Prime Minister

or President have been limited.

### 7) Nomination of 3 Senior Judges for CJP:

The parliamentary panel is supposed to nominate the names of the three senior judges of Supreme Court to be invited (Selected as) who selected for the chief justice of Pakistan.

### 8) Ending Military Trials:

The military trials for civilians have been made unlawful under the 26th amendment to the constitution.

## Impact To the Judicial Independence:

The 26th amendment and its multiple provision for judiciary have

completely broken the backbone of the judicial branch of the government. The judicial independence is in question and has been compromised. Many powers of the Supreme Court, High Courts and the Chief Justice of Pakistan have been taken away with a parliamentary oversight.

Following are a few damages to the judicial independence of the government-

### \* Huge Blows on Judicial Review and Judicial Activism

The amendment has made huge blows to the philosophy and practice of Judicial Review of the executive and parliamentary decisions. The hands of the SC have been clipped by the Parliament.

## \* Parliamentary Oversight:

The judiciary is not independent and is being looked over by the Parliament of the country.

This impacts the judicial independence within the country.

## \* Politicization of Judiciary:

The independence of judiciary has been taken away by making this branch of government politicized with lobbying & on its way.

## \* Separation of Powers:

The philosophy of the separation of powers have been damaged extremely with giving Parliament rights and authorities in the judicial branch of the government.

## \* Restricted Powers of the CJP and SC:

The independence of the judiciary has been taken away by restricting the powers of the chief justice of Pakistan by taking away the *Suo moto*. The Supreme Court is not allowed to take part in the governance of the country.

## Conclusion:

The ~~the~~ judicial independence of the judicial branch has seen devastating damages. The powers of the Chief Justice of Pakistan have been restricted with politicization the overall process of CJP appointment. The increased oversight of Parliament compromises the concept of Separation of Powers and takes away the



judiciary's right of review. Thus the independence of Judiciary ~~is~~ has been weakened by many folds with the passing of the 20th amendment to the Constitution.

### QUESTION 3:-

#### Introduction.

Pakistan has seen different forms of government since its inception. Both the presidential and parliamentary forms of government have had its positive and negative impacts on the country. Moreover the federal system of the country with provinces having autonomous authority has experienced changes throughout the history of the country with the

devolution of power to provinces  
and increase in NFC awards.

Pakistan has experienced many  
challenges. Critically analysing the  
democratic procedures and the  
political <sup>dynamics</sup> stability of the country,  
it can be said that the  
Federal structure and Parliamentary  
System is more suited for  
Pakistan.

## History of Dictatorship and Autocracy:

Pakistan has experienced a  
total of 4 martial laws since  
its inception. Four martial  
laws imposed by military chief  
and multiple governor rules imposed  
in the country. The trust of  
power and autocratic rules in  
Pakistan makes it difficult for

a presidential form of government to sustain in the country.

## Parliamentary Form of Gov more suited for Pakistan:

The parliamentary form of government is more suited in Pakistan due to the following reasons

### \* Greater consensus in the government:

The Parliamentary form of government is based on greater consensus among the parliamentarians and the government along with the general public.

### \* Decrease in Nepotism:

The parliamentary government allows lesser chances of nepotism as compared to the presidential system.

where the  $\phi$  ministries and their appointed are at the discretion of the President.

#### \* Uniformity between government and Parliament:

The government and Parliament are <sup>more</sup> uniformed or in a Parliamentary form of gov. as compared to presidential one. In Pakistan, as there is always political turmoil, the uniformity will improve the democratic procedures of the country.

#### \* Check on dictatorial attitudes.

As Pakistan has faced multiple dictatorships, the Parliamentary system curbs the power of president to undergo any dictatorial acts and anything against the Constitution of Pak.

## \* Local Level Representation.

The provincial and local politics is promoted in a parliamentary system. With Pakistan facing tremendous challenges of economy and at local level. Such democratic system prioritizes the local needs over country-wide challenges.

## Federal System in Pakistan

The federal system in Pakistan is well suited to it with the devolution of power to the provinces. The country is able to move forward with all the units taking responsibility and coordinating. Some benefits of federal system in Pakistan are as follows.

\* Huge Population divided among provinces.

The huge population in Pakistan is divided among provinces and (would not have) to have provincial rights. The ~~fed~~ huge population would not be catered to in a unitary system.

#### \* Ethnic and Regional Grievances:

The ethnic and regional grievances are curbed by the provinces and the provincial assemblies working for its people. The devolution of power and authority to provinces allow to incorporate such grievances and matters.

#### \* Multiple Subject Areas:

All the subject areas have been distributed among the federation and provinces to benefit the local people. Thus federation is effective in Pakistan rather than a

unitary system in the country.

### \* Smooth Tax Collection:

The taxes given to the provincial government makes the tax collection easier. For example sales tax and income tax and property tax. The tax collection of 220 million people can be a daunting challenge and thus distribution of responsibilities among the federation and provinces makes it easier.

### Conclusion:

There are a number of benefits of Pakistan being a federation and a parliamentary form of government acting in the country. Though there are many cons of these structures too but the opposite of such

Structure leads to greater instability  
in the country with derailed  
governance, administration and  
democracy. Thus Federation and  
Parliamentary form of government  
are more suited in a country  
like Pakistan.

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