

TEST #02

Date: _____

Day: _____

QUESTION #02

1- INTRODUCTION:

The constitutional Package of 2024 was the twenty sixth time the 1973 constitution was amended. Famously known as "26th Amendment", it was passed and became a law. Primarily, it focuses on reforms in judicial sector ensuring collaboration between ~~Executive~~ legislative branch and judiciary. It is an overt attempt to consolidate the political control over judiciary. In total it consists of 53 amendments, out of which 22 focus on judicial reform.

2- BACKGROUND:

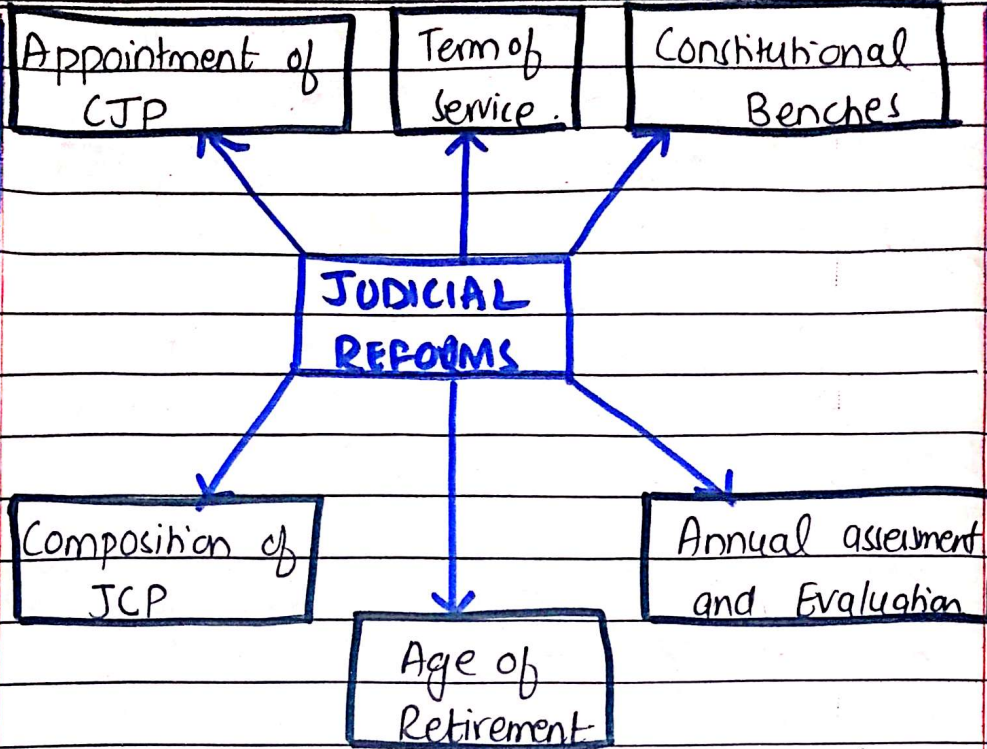
The 26th Amendment was debated for fairly long time in societal context, outside parliament. Moreover, it is believed to be an attempt to address Suo Moto powers of Supreme Court judges under Article 184 of 1973 constitution. The concern about judicial activism was driven by Supreme Court ruling of 12th July about reserve seats and about interpretation of article 63(A). This constitutional Package aims to bring reforms in judiciary that can prove counter productive to other branches of government.

3- MAIN FEATURES: JUDICIAL REFORMS

The judicial reforms aimed in The 26th Amendment are following.

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a- Appointment of Chief Justice of Pakistan:

Before the amendment, Chief Justice of Pakistan was selected on the basis of seniority principle. Now, according to 26th Amendment, the Special Parliamentary Committee will pick a name out of three most senior judges of Supreme Court and forward it to President and Prime Minister for assension. The Special Parliamentary Committee will consist of eight to twelve members i.e.

SPLC → 8 Ministers + 4 members
12 members of National Assembly of Senate

as proportionate to party representation in Parliament.

b- Term of Service:

Article 179 was amended and the term of a Chief Justice of Pakistan

was fixed at 3 year and retirement age at 65 years. So, the tenure will of the earliest of both, be it retirement or end of service.

c- Constitutional Benches:

It is the most important and controversial aspect of Constitutional Act, 2024. Article 191 A was added that pertain to formation of constitutional benches for all cases regarding Article 185 that is interpretation of constitution. Moreover, the constitutional bench will ^{also} exercise suo moto power and jurisdiction under Article 184. The bench will be consisted for 5 years and then it will be formed again. It will comprise of judges of Supreme Court which will be nominated and determined by Judicial Commission of Pakistan. The senior most judge among nominated will be the Presiding Judge of the Constitutional Bench. Also, insertion of Article 202(A) envisioned similar benches in High Courts with same selection criteria.

d- Composition of Judicial Commission of Pakistan:

Article _____ was amended and it stated that Judicial Commission of Pakistan will include four members of Parliament (two treasury, two opposition) from Senate and National Assembly in equal proportion.

e) Annual Assessment and Evaluation:

For the first time, the 26th Amendment envisioned the Performance Assessment and Evaluation of Judiciary. The role will be the responsibility of Judicial Commission. The JCD is trusted with the responsibility of defining a criteria for assessment - evaluation and fitness for appointment of Judge. Minimum age of appointment has been reduced from 45 years to 40 years.

4- CRITICAL ANALYSIS:

The Amendment package also included insertion of Article 9(A) that enlists right to safe and healthy environment under Fundamental Basic Right of every citizen.

i- Advantages of The 26th Amendment:

The Constitutional Benches will ensure speedy justice and will lower the backlog of constitutional cases on Supreme Court. Moreover, it will intricately link the legislature and Judiciary, ensuring further check and balance upon each other.

ii- Criticism of the Judicial Reforms:

This constitutional package is highly criticized by all as:

- a- The legitimacy of Parliament is highly questioned after 8th February controversial election.
- b- In 1973 Constitution, it is clearly written that any amendment must not be against its salient features like division of power, democracy, independence of judiciary etc.

and this amendment curtails judicial independence.

- a- It undermines judicial independence by altering selection criteria, formation of constitutional benches and annual performance evaluation by JCP.
- d. It strips Supreme Court of Pakistan of its Constitutional jurisdiction, i.e. *Suo Motu* notices.
- e- Recommendation of CJP by Prime Minister is the highest level of meddling in internal affairs of judiciary.

5- CONCLUSION:

The 26th Amendment brings many judicial reforms. It amends the selection process of Chief Justice of Pakistan, composition of Judicial Commission of Pakistan, the term and age of retirement of judges and it introduces the concept of annual performance assessment and evaluation. It is highly controversial and the International Commission of Jurists called the Amendment as a blow to judicial independence, rule of law and human rights violation.

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