

## QUESTION NO: 02

### Main Contours of R 26<sup>th</sup> Amendment in Context of Independence of Judiciary

Recently passed 26<sup>th</sup> Constitutional Amendment also called Constitutional package was passed on 1. Oct. 2024, with  $\frac{2}{3}$  Two-third majority, 65 votes from senate and 225 votes from national assembly. The total clauses amend are twentyseven. This Constitutional amendment mainly strengthens parliamentary and executive check on judiciary.

The main contours of this amendment in context of judiciary are formation of constitutional bench, appointment of Chief justice of Pakistan, reduction of term of CJP, amendment in jurisdiction, alteration of supreme court power as *sue moto* power has been snatched from Supreme Court.

"26<sup>th</sup> amendment of Pakistan:

A blow to the independence of the judiciary."

(International Commission of Jurists)



## Basic Contours of 26th Amendment in context to judicial independence

- Modification in 195-A regarding appointment of senior most judges
- Inclusion of clauses related to formation of constitutional benches
- Amendments in Powers of Supreme Court related articles
- Restructuring of judicial Commission of Pakistan
- Limitation on judicial Review of executive decisions

## APPOINTMENT OF JUDGES:

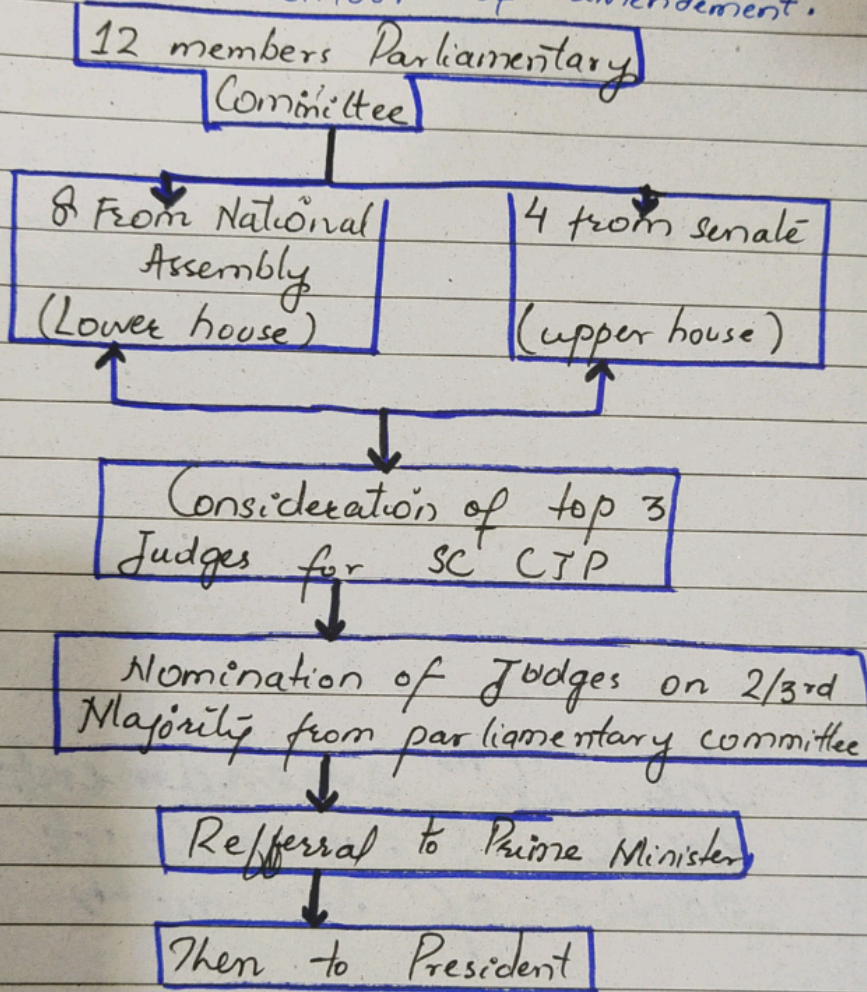
The modification within the Constitutional amendment bring an extra ordinary level of political influence over the process of judicial appointments and judiciary's own administration.

~ Santiago canton ICJ's Secretary General

Constitution of a parliamentary Committee for selection of Chief



Justice of Pakistan among three most senior judges of supreme court. The prime minister will approve later. It is the main contour of amendment.



## Accentuated Administrative Power of JCP: Power to Form Constitutional Benches

The 26<sup>th</sup> constitutional amendment forged consensus on the formulation of constitutional benches of Supreme Court and high court referring them



exclusive jurisdiction over matters related to political consensus overpowering Supreme court strength. This contour in 26<sup>th</sup> amendment restricts judicial independence at some extent. There will be the formation of Constitutional benches, by judicial Commission. Article 191-A, ~~will~~ under this article Constitutional bench for Supreme court will be made, and under Article 201, 202 Constitution bench for high court will be formed. It will impact exclusive jurisdiction over matters involving interpretation of Constitution and enforcement of fundamental laws.

## The 26<sup>th</sup> amendment erodes Supreme Court power of suo moto

The 26<sup>th</sup> amendment erodes CJP's power to exercise suo moto powers, it diminishes the role of judiciary in initiating cases on its own to address matters of public interests.

Article 184 of Constitution has ~~is~~ taken away the authority of Supreme court to exercise suo moto.

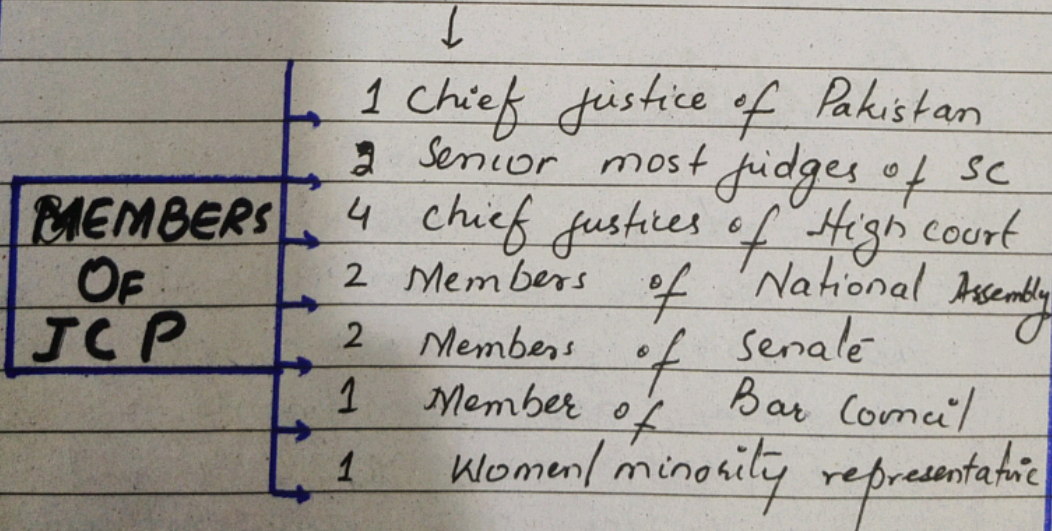


Judiciary - the custodian of the rights of people, is severely impacted and judicial independence is undermined.

## Restructuring the judicial Commission of Pakistan

26<sup>th</sup> Constitutional amendment has restructured judicial commission of Pakistan. It portrays a pivotal shift amplifying influence of executive over individual (judge) appointments by boosting executive representation. It diminishes independence of judiciary. Article 175 deal with such provision.

### Restructured JCP



The inclusion of 4 parliamentary members has increased legislative influence, reducing the dominance of



Judicial members.

## Limitation of Judicial Review on Executive Decision:

The 26<sup>th</sup> constitutional amendment has restricted the Courts from questioning executive recommendations to the president and prime minister. It has reduced judicial oversight of executive actions. This not only violates Article 14, that is about equality before law but curb independence of judiciary at some extent.

## Conclusion

The 26<sup>th</sup> constitutional amendment in constitution of Pakistan proved to be so controversial.

The contours, with reference to judicial independence are amendments in article 175, 202, 195, 201 and so on. The most amended article is article 175 A. It raised concerns about judicial independence and increase parliamentary involvement.



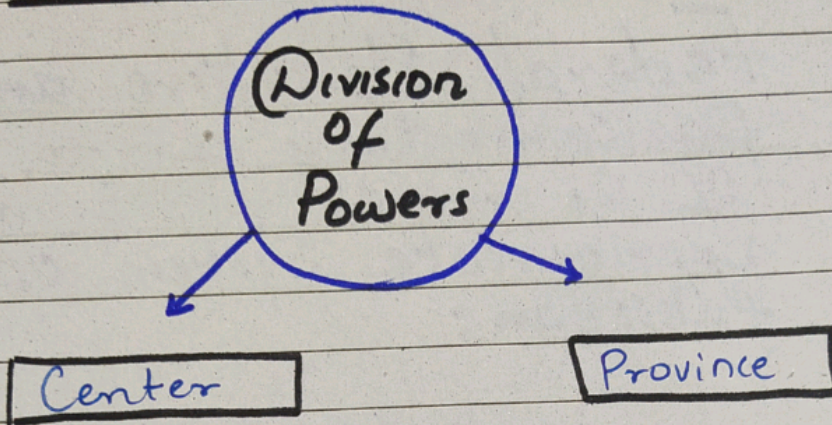
QUESTION: 03Federal Structure and Parliamentary form of Government are most appropriate System of Pakistan:

Federalism or federal structure of government and parliamentary form of governments are most suitable systems for Pakistan. As Pakistan is consisting upon diverse ethnic groups living in different provinces, and have different identity and culture. So it is most appropriate system for Pakistan. Moreover, in parliamentary system power to elect Head of government is vested upon parliament. It has homogeneity, consensus, and share of multiple political entity.

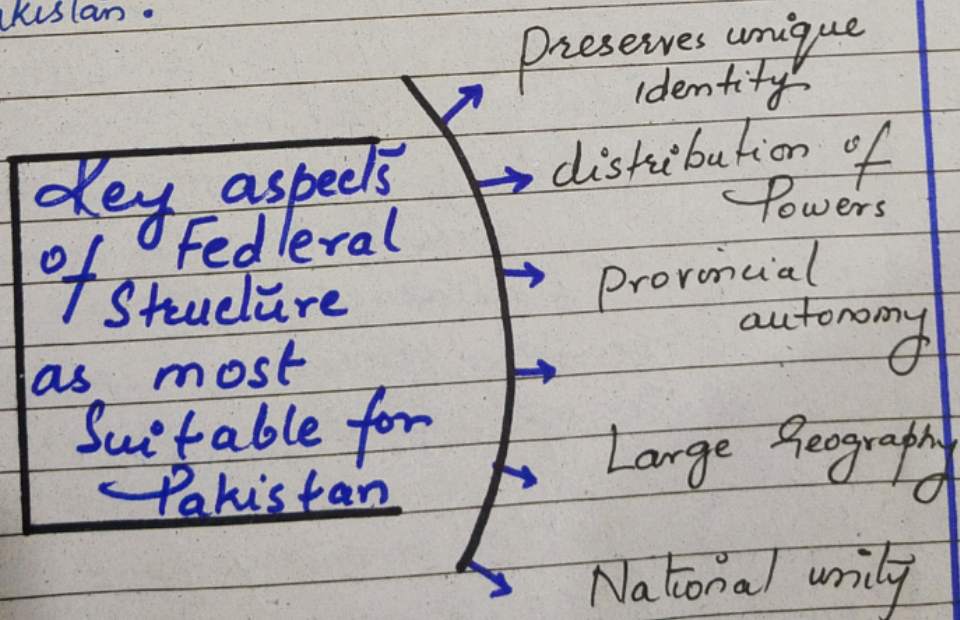
The Parliamentary form of Govt is only system suitable for Pakistan. It ensures representation of people and accountability.



# Federal Structure



Federal structure in Pakistan is most suitable as it gives opportunity to all units to operate independently. Following are key features of federal structure that makes it suitable for Pakistan.





## Federal Structure in Pakistan Preserve Unique Identity

Pakistan is the 5<sup>th</sup> most populous country of world it is divided into multiple ethnicities, languages, and culture.

Punjab	52.9
Sindh	23.1
KPK	16.9
Balochistan	6.2

Source: Pakistan Bureau of statistics

So, it is necessary that each province should be independent so as to preserve its identity. Federal structure preserves unique identity and hence most appropriate for Pakistan.

## Distribution of Power

Federal structure divides power between the central government and province, ensuring that regional interest are not overshadowed by federal government. Each province is independent and powers are devolved among centre and province.

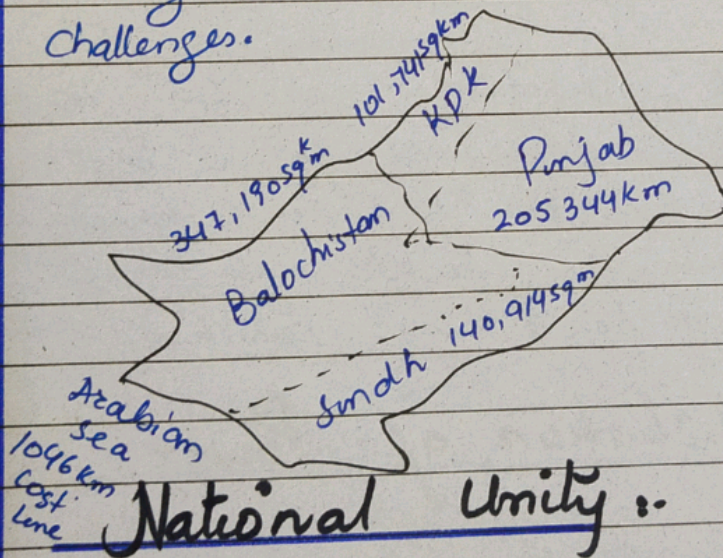


## Provincial autonomy

Province are autonomous, they can address issues like health, education and cultural affairs more effectively through their legislative powers.

## Large Geography

Pakistan's large geographical area of about 881,913 sq km necessitates decentralized governance to effectively manage resources and address other challenges.



## National Unity :-

Federal structure foster national unity, as province are independent, they are neither dependent on center nor interdependent. So it ~~for~~ creates peace between province and hence / national unity prevails.



## Parliamentary System as most suitable for Pakistan

Homogeneity of government and Parliament  
Census of entire leadership

Share of multiple political entity  
Accountability

### Creates homogeneity between Government; and Parliament

Parliamentary system creates homogeneity in Government and Parliament. It paves way for easily passing the bill from Parliament. It allows greater flexibility in governance. As Pakistan has different units, it is most suitable.

### Census of entire political leadership:

Parliamentary system provide co-operation of entire political leadership over suitability of parliamentary system. This encourage all parties to work together forming broad based governments. So it provide more political stability.

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## Share of multiple political entity:

It provides more inclusive form of government, and government can not neglect even those political parties which are having least number of people. for example Zafar-ul-Ikhan Jamali 14th Prime minister of Pakistan was only member in this party. Thus it is best for Pakistan.

## Accountability:

The prime minister is directly accountable to National assembly, which allows for effective checks and balances. As Pakistan is a developing country, & increasing ratio of youth are now trying to be aware of their right to info as mention in article 28.

## Conclusion:

Pakistan is the country of diverse ethnic, cultural and social groups of people. Parliamentary and federal forms of government are very essential & most suitable for Pakistan.