

Pakistan Affairs (T-2)

Hafsa
Khalid

Q. No. 1

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no need for a detailed outline for a 20 marks answer.

1:

Introduction:

The 26th Constitutional Amendment, passed in October 2024, represents a transformative role in Pakistan's governance, with significant implications for the judiciary. By redefining the appointment process of the Chief Justice of Pakistan (CJP), restructuring the Judicial Commission, limiting suo motu powers, and introducing constitutional benches, the amendment aims to streamline judicial efficiency. Simultaneously, it incorporates environmental rights into the Constitution, reflecting a progressive vision. However, these changes have raised concerns about increased political control over the judiciary, potentially compromising its independence. This answer examines the amendment's contours, including its impacts on judicial appointments, alongside public

and expert reactions

2. 26th Constitutional

Amendment:

The 26th Constitutional Amendment, passed in October 2024, makes a significant institutional changes in the structure and functioning of Pakistan's judicial system, particularly with respect to the Supreme Court and High Court.

"The 26th Constitutional Amendment (CA), passed by Pakistan's Parliament, is a blow to judicial independence, the rule of law, and human rights protection,"
(International Court Commission of Justice (ICJ))

3: Main Contours of the 26th Constitutional Amendment of Pakistan:

(3.i) Redefining the Appointment of the Chief Justice:

Before the Amendment: The most senior judge of the Supreme Court automatically became the CJP upon the incumbent's retirement.

After the Amendment: The appointment of the CJP is now subject to a special Parliamentary Committee, which nominates the CJP from among the three senior-most judges, with a fixed term of three years.

(3.ii) Restructuring the Judicial Commission of Pakistan.

Before the Amendment: The JCP was composed mainly of senior judges, with a limited role

for the executive.

After the Amendment: The composition of JCP has been altered, giving more weight to parliamentary representatives in judicial appointments.

also mention the article number amended as reference.

(3.iii) Curtailling Sua Motu Jurisdiction

Before the Amendment: The Supreme Court had the power to initiate cases suo motu (on its own accord), particularly in matters of public importance.

After the Amendment: The suo motu powers are now confined to a judicial committee, which decides whether such powers can be exercised.

(3.iv) Establishment of Dedicated Constitutional Benches:

Before the Amendment: Constitutional cases were handled by

full bench of Supreme Court.
After the Amendment: A dedicated constitutional bench within the Supreme Court has been created to handle cases specifically related to constitutional matters.

(3.v) Recognition of Environmental Rights:

Before the Amendment: Pakistan's Constitution did not explicitly recognize environmental rights.

After the Amendment: Article 9A has been added, recognizing the right to a clean, healthy, and sustainable environment as a fundamental right.

4. Implications for Judicial Independence:

(4.i) Enhanced Political Control:
By involving parliament

in judicial appointment, the amendment introduces a degree of political oversight.

- Critics argue this undermines judicial impartiality.

"Judicial independence is eroded when political agendas overshadow legal merits".

(Justice (r) Nasira Iqbal)

(4.ii) Curtailment of Judicial Activism:

Limiting suo motu powers reduces the judiciary's ability to check executive and legislative excesses.

- This shift is seen as a blow to the judiciary's role as a guardian of democracy.

(4.iii) Balancing Judicial and Legislative Authority:

Proponents argue the amendment curbs judicial

overreach, being ~~impairing~~ parliamentary sovereignty.

(5) Criticism and Public Reaction:

- Critics, particularly opposition leaders, argue that

the increased role of the executive and legislature in judicial affairs threatens the fundamental principle of separation of powers, which could lead to the judiciary being subservient to political pressure."

- Prime Minister Shehbaz Sharif argue that,

the amendment is aimed at curbing judicial overreach and ensuring the proper functioning of parliamentary democracy, when they

believe had been hindered by an overly powerful judiciary.

6. Conclusion:

The 26th Constitutional Amendment marks a crucial shift in Pakistan's judicial framework, with its provisions altering the balance of power between the judiciary, legislature, and executive. While it aims to enhance parliamentary sovereignty and streamline judicial processes, it raises concerns about the independence of the judiciary. The true impact of this amendment will depend on its implementation and whether safeguards can be established to protect judicial impartiality. The debate surrounding the amendment reflects a broader struggle for power, and its outcomes will shape Pakistan's governance for years to come.