

Pak Affairs - NOA

~: Question-2: ~

26th Amendment

Introduction-

The Passage of 26th amendment in Pakistan has curtailed the 'Judicial Independence' by providing a way to political interference by Parliament.

- The International Commission of Jurists (ICJ) -

The 26th amendment is another political expedition done by parliament in 2024. which, according to most critics, has curtailed the independence of judiciary. There are many provision in this amendment that threaten the judicial

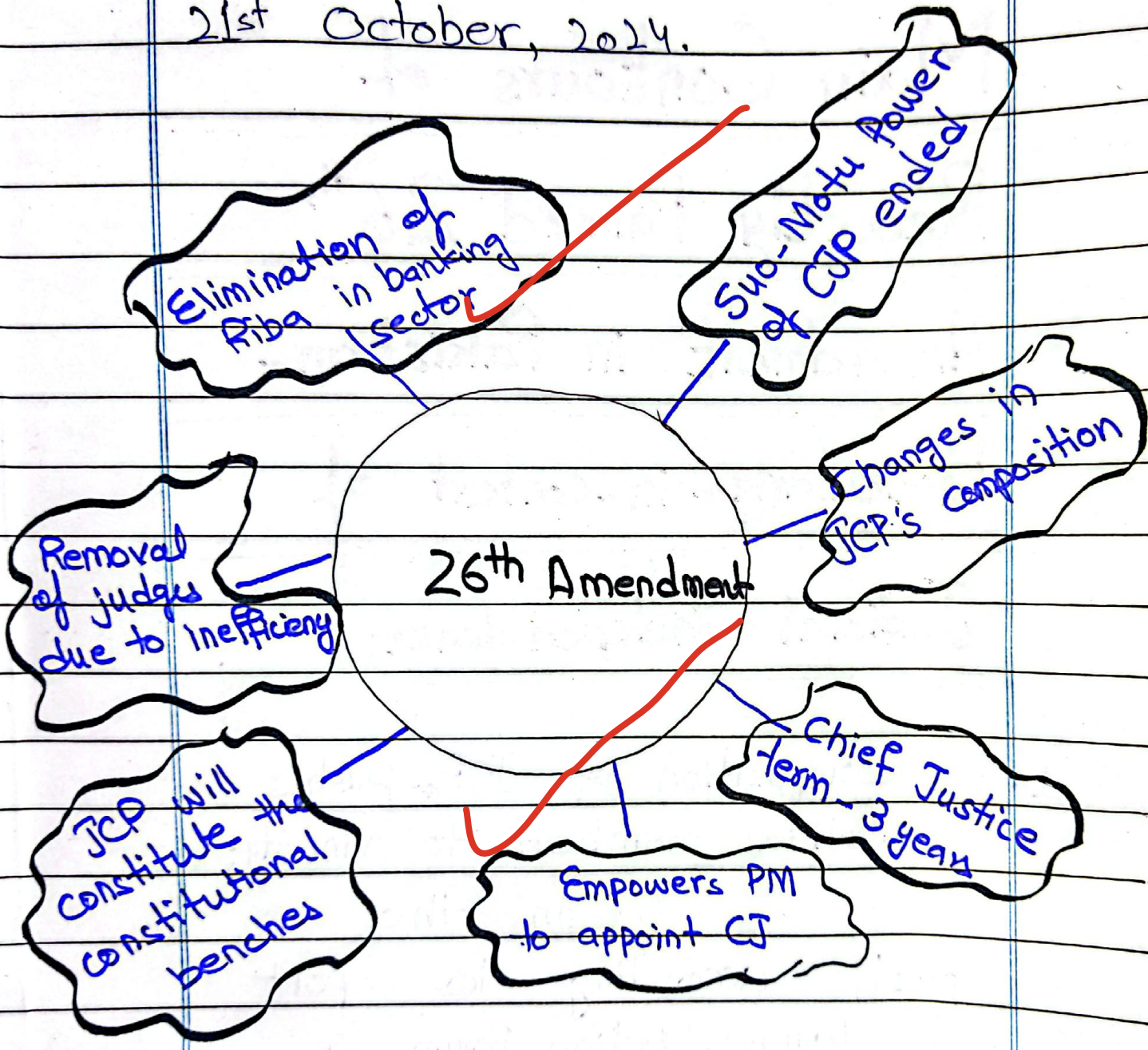
freedom, and are considered against international norms. From controversial appointment of top procedure of apex court judge to the removal of judiciary judges over ambiguous cause of 'inefficiency', 26th amendment made great changes in the structure and functioning of Pakistan's judicial system. Also, there is a popular perception that these institutional changes are great blow to judicial freedom.

Understanding 26th

Amendment - A Little Glimpse

26th Amendment
passed in 'Senate and National
Assembly' by 2/3rd majority on

21st October, 2024.



26th Amendment

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Main Contours of Recently Passed 26th Amendment in Pakistan - Particularly - in - context of Judicial Independence;

1- Composition of JCP pushes
Judicial members to minority;

In the past, according to report of Lawyers Action Forum, a Pakistani-based organization, JCP Judicial Commission of Pakistan was composed of total nine members - three from National Government - six were judiciary members. The

recent amendment added new members - two from NA - two from Senate, thus, pushing ^{other} to minority

2- Appointment of Top Judge by PM - Promote Favouritism; and Undermine Meritocracy;

According to UN Human Rights Commission declaration article 11, appointment of judges in any country must be done without any outside interference. The recent amendment empowers PM to appoint top-judge. may undermine meritocracy.

3- Removal of Judge over Ambiguous Clause of Inefficiency - a Big Blow to Judicial Freedom;

'A good 'Judge' must be disinterested and should give verdict without any

fear'

These words said by International Commission of Jurists has underscored the importance of absence of fear for judge. 26th amendment has undermined the judicial freedom by giving upper hand to JCP to remove judge over ambiguous reason.

4- Nomination of Constitutional Benches by JCP - a Threat to Fair Trial;

Some critics like Aitzaz Ahsan, a senior lawyer, has said that the nomination of constitutional benches by JCP can threaten the fair trial. As JCP would decide which case is worthy to hear or who

will hear the case. This
blow the fair and free
trial.

5- Ending Suo-Motu Power Silenced Judiciary over Taking Action for Public Good;

Suo-Motu power
was once a bone of contention
between parliament and
judiciary. Thus, 26th amendment
has ended this power of top
judge. In future, no judge
will be able to take
any suo-motu for public
good.

6- Disturbed Notion of Separation of Power by Providing Parliament an Upper Hand;

Montesquieu, an
eminent french philosopher, had

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discussed that separation of power between 'Executive, Judiciary and Legislature' was important for smooth functioning of government. However, the 26th amendment has also disturbed the notion of separation of power by providing upper hand to parliament.

7- No More Anti-ruler Judges;

Parliament and government ensured through 26th amendment that in future there should be no judge being appointment that could oppose the ultimate power of rulers.

discuss the second part of the answer by giving separate headings and subheadings.

Conclusion;

In a nutshell,

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Hamid Khan writes in his book 'Constitutional and Political History of Pakistan' that there were always a tussle between 'Judiciary and Parliament'. However, this power competition ended in the favour of parliament, ~~that~~ ~~pro~~ through passing of 26th amendment.

~: Question 3:~

Form of Government

Federal Structure and

Parliamentary Form - Most
Appropriate System For Pakistan;

History suggests us that being the multi-ethnic nation, only federal and

parliamentary form of government can end the issue of proper representation in Pakistan'

- Anatol Lieven

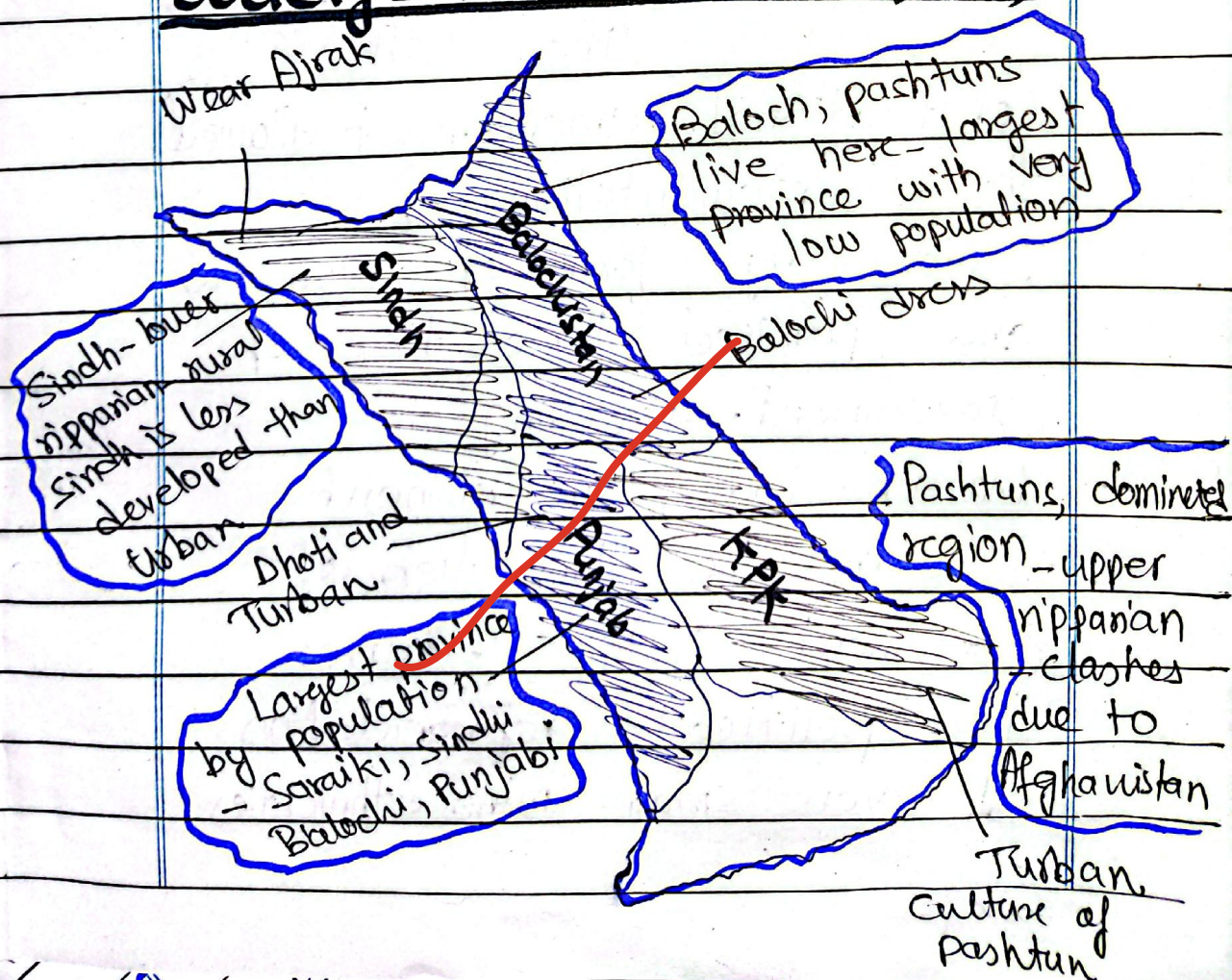
Anatol Lieven in his book 'Pakistan: A Hard Country' has said that only parliamentary form of government and federal structure seems appropriate in Pakistan due to its multi-ethnic society.

This system of government is suitable because it provides political representation to every class. Apart from it, some critics argued that the presidential form of government experimented through 1962 constitution was failed badly. Moreover, the emerging political

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issues and social issues like water crisis etc require diverse opinions to solve this problem. This is only possible in federal structure and parliamentary form of government.

Pakistan - A Multi-Ethnic Society - A Little Glimpse;



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How Federal Structure and Parliament Form is Suitable For Pakistan?

1- Ensures Political Representation to Every Ethnicity, through Three-Tier Government System;

The 18th
Constitutional amendment allowed
the implementation of
parliamentary form of government
and promised three tier of
government. According to
Maleeha Lathi, an eminent
scholar, the three tier of
government system ensures
the political representation
of even small ~~minor~~ ethnicities.

2- Allows Small Population of Balochistan to Actively Participate in Central Government;

Anatol Lieven in his book 'Pakistan a Hard County' said that Balochistan is the smallest province in terms of population. As it has small population and small number of voters, ~~then~~ only parliamentary form of government provide opportunity to form coalition govt.

3- Removes Grievances of Ethnicities and Fear of being Ignored, by Giving Due Rights;

Parliamentary form of government and federal structure provide the due rights of federating units by ~~allowing~~ giving them

proper representation in
parliament and senate.

4. 1973 Constitutional of Pakistan is Parliamentary in Nature;

According to
Hafeez Pasha, a renowned
scholar, the ¹⁹⁷³ constitutional
of Pakistan is parliamentary
in nature. It requires a
large consensus to amend
it for other system of
government.

5. Provides Federating Unit a power to govern according to Popular Will;

As parliamentary
and federal system provides
autonomy in many matters
and subjects, it actually
allows all federating

units to govern and form policies according to the popular demand and will.

6- Issue of Different Local Languages can be solved under it;

According to S. Shaw, who in his book 'Pakistan: A home of multi-ethnicity' said that in the unfortunate event of 1971, East Pakistan separation, the issue of language was considered as an issue of dissent among East and West.

7- Provides Opportunity to End Provincial Disparities by allowing Autonomy in Fiscal Policies;

Federal government structure allows provincial

autonomy. After 18th amendment
~~there~~ ^{is} also ~~provides~~ fiscal
 autonomy to all federating
 units so ~~they~~ can manage
 their finances on their
 own.

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In this regard provide potential solution to many issues of Pakistan.

8- Presidential System is not suitable for corrupt and immature political leadership;

'Power corrupts and absolute power corrupts absolutely'

~~Presidential power~~
form of government provide absolute power which could lead towards tyranny due to immature and corrupt political leadership in Pakistan.

9- Already Failed Experience in the face of 1962 constitution;

Many critics says that the failure of

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1962 Constitution and the separation of East Pakistan provide strong foundation to the argument that parliamentary system is only suitable for Pakistan.

add more arguments.

Conclusion;

To make it short, according to Jshrat Hussain, a renowned scholar, the issue of political representation was exist in the pre-partition era and remained even in post partition until the issue was resolved through providing the promised autonomy and representation to ~~at~~ different ethnicities. Only parliamentary system

In this regard provide
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