

PAK AFFAIRS

Q4

How 26th Constitutional Amendment affected the trichotomy of power in Pakistan?

The 26th Constitutional Amendment, passed by Pakistan's Parliament in October 2024, has several clauses that significantly impact the trichotomy of power in Pakistan, primarily by altering the balance between the judiciary, legislature, and executive. Here's a breakdown of the key effects.

1. Enhanced Parliamentary Role in Judicial Appointments:

Judicial Commission of Pakistan (JCP) Reconstitution: The amendment modifies the composition of the JCP, which nominates Judges for the Supreme Court and High Courts. It increases the number of parliamentary members (two members from the National Assembly and two from the Senate, with one from the opposition in each house) while reducing the proportional representation of judges. This gives the legislature a greater say in judicial

appointments, potentially increasing political influence over the judiciary and diluting the judiciary's independence in its own composition.

Chief Justice of Pakistan (CJP)

Appointment:

Instead of the most senior Supreme Court judge automatically becoming the CJP, a "Special Parliamentary Committee" (comprising eight members from the National Assembly and four ^{from} the Senate) will now nominate the CJP from the three most senior judges. This further embeds the legislature in the selection process of the head of the judiciary, a move criticized as potentially undermining judicial independence.

Impact on Trichotomy:

These changes shift the power balance by granting the legislature a more direct and significant role in the appointment of judges to the superior courts, including the Chief Justice.

This arguably encroaches upon the independence of the judiciary, a key tenet of the separation of powers.

Critics fear this could lead to the appointment of judges more aligned

with the executive's or the ruling coalition's interests.

2. Curtailed Suo Moto Powers of the Supreme Court and High Courts:

The amendment removes the Chief Justice's (and potentially other Judges') individual power to take suo moto (on its own motion) action under **Article 184 (3)** of the Constitution (Supreme Court's original jurisdiction on matters of public importance concerning fundamental rights) and **Article 199** (High Courts writ Jurisdiction). Instead, these powers will now be exercised through "Constitutional Benches" formed by the Judicial Commission of Pakistan.

Impact on Trichotomy:

While proponents argue, this brings more collegiality and reduces the potential for individual judicial overreach, critics view it as a limitation on the judiciary's ability to independently address pressing constitutional and fundamental rights issues. By placing the initiation of such actions in the hands of JCP-constituted benches,

there's a risk of potential considerations influencing which matters are taken up. This could weaken the judiciary's role as a check on the other branches.

3. Establishment of "Constitutional Benches":

The amendment mandates the creation of dedicated "Constitutional Benches" in both the Supreme Court and High Courts, to be nominated by the CJP, with exclusive jurisdiction over constitutional interpretation and fundamental rights cases.

Impact on Trichotomy: The state aims is to ensure specialized handling of constitutional matters. However, concerns exist that the JCP's power to form these benches could allow for the creation of benches deemed more favourable to the government, potentially influencing the outcomes of politically sensitive cases. This could undermine the impartiality and independence of the judiciary.

4. Grounds for Removal of Judges:

The amendment adds "inefficiency" as a ground for the Supreme Judicial Council (SJC) to recommend the removal of judges, in addition to "incapacity" and 'misconduct'. However, "inefficiency" is not clearly defined.

Impact on Trichotomy: Critics worry that this vague criterion could be used to exert pressure on judges and potentially motivated removals, further compromising judicial independence and the balance of power.

Overall Impact

The 26th Constitutional Amendment is largely viewed by legal experts and human rights organization as a potential threat to the judicial independence, shifting the balance of power towards the legislature and executive.

Increased parliamentary influence in judicial appointments, curtailed **suo moto** powers, and the ambiguous ground for judge removal ("inefficiency") raise concerns

about the judiciary's ability to effectively check the other branches of government, a cornerstone of the separation of powers.

While the government argues for enhanced accountability and parliamentary supremacy, the lack of transparency surrounding the amendments passage has fuelled doubts about its true intentions and long-term consequences for Pakistan's constitutional framework.