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Twenty Sixth Constitutional Amendment, fall of Judicial Independence, And Executive Influence over the Judiciary in Pakistan

Samra Khan

Student at Department of Shariah & Law Islamia College Peshawar

Email: samrakhan012020@gmail.com

ABSTRACT

The independence of the judiciary in Pakistan has long been a concern under both military and democratic regimes, as it is central to upholding the rule of law. Politicians have often sought judicial validation of unconstitutional actions through manipulation of judicial appointments, resulting in constitutional changes over time—most notably the 8th Amendment, which enhanced executive power, and later the 18th and 19th Amendments, which sought to restore judicial independence before the recent 26th Amendment again curtailed it. This paper critically examines the 26th Constitutional Amendment and its implications for judicial independence. It traces executive interference from independence to the Zardari era, analyzes the appointment process of judges, and reviews landmark cases such as Maulvi Tamizuddin, State v. Dosso, and Zafar Ali Shah, which illustrate how executive dominance has shaped the justice system. Key constitutional principles—judicial independence, separation of powers, and checks and balances—are highlighted as safeguards against political control. While the 19th Amendment strengthened judicial independence and facilitated greater judicial activism in subsequent years, the 26th Amendment reversed this trend by curtailing judicial powers. The paper also compares judicial appointment practices in developed countries, considers the Islamic perspective on judicial independence, and concludes with practical reforms to preserve the judiciary's impartiality within Pakistan's democratic framework.

KEY WORDS: *Judicial independence, Appointments, Rule of law, Democracy, and Executive.*

INTRODUCTION

Judicial independence is a central pillar of democracy, ensuring that courts function freely without pressure from governments, political parties, or external forces. As Gylbehare Murati notes, an independent judiciary is vital for safeguarding human rights under any form of administration (*The Independence of the Judiciary and Its Role in the Protection of Human Rights under UN Administration*). In Pakistan, however, this independence has often been compromised, with both civilian and military governments interfering in judicial appointments, pressuring judges, and manipulating proceedings. According to Tanazur General (*Executive Influence on Judicial Independence in Pakistan*), such interference has eroded public trust in the courts. The Twenty-Sixth

Constitutional Amendment has further intensified concerns, as it strengthens political influence over judicial appointments and undermines the separation of powers. Unlike most studies that focus solely on the amendment, this paper adopts a broader perspective by examining the historical pattern of executive interference, the evolution of judicial appointments, and landmark constitutional cases. It also incorporates an Islamic perspective, highlighting how judicial independence is central to justice in both legal and religious traditions. In light of recent political events and controversial rulings, the issue has gained new urgency. This paper argues that the 26th Amendment weakens judicial independence and proposes reforms to protect impartiality and the enforcement of fundamental rights.

Executive Interference in Judicial Appointments in Pakistan: From Independence to the Zardari Era

After independence, CJP Mian Abdur Rashid set high standards of neutrality (Hamid Khan, *A History of the Judiciary*). In 1954, Governor General Ghulam Muhammad manipulated appointments to elevate Justice Munir over senior judge A.S.M. Akram (*Conspiracy Against Justice A.S.M. Akram*; Hamid Khan). Munir's rulings in *Maulvi Tamizuddin* (1955) and *Dosso* (1958) legitimized executive overreach and martial law (Hamid Khan). Under Ayub Khan, judicial appointments favored loyalty over merit, with figures like Afzal Cheema promoted despite weak legal backgrounds (Hamid Khan). Zulfikar Ali Bhutto curtailed judicial powers through the 4th, 5th, and 6th Amendments and pressured judges, including extending CJP Yaqub Ali's tenure (Hamid Khan). Zia-ul-Haq entrenched executive dominance by validating martial law in *Begum Nusrat Bhutto*, enacting the 8th Amendment, and influencing Bhutto's controversial trial (*The Politicization of Judiciary During Zia Era*; SC 2024). Benazir Bhutto clashed with Zia-appointed judges in her first term and later interfered in appointments, elevating Justice Sajjad Shah and showing favoritism in the *Sabir Shah* case (Analytical Study: *Judiciary in Benazir Era*). Nawaz Sharif pressured judges, and during his second term PML-N workers stormed the Supreme Court in contempt proceedings (Executive Intervention in Judicial Independence in Pakistan). Musharraf removed 13 judges through the 1999 PCO; the *Zafar Ali Shah* case upheld his coup, while Iftikhar Chaudhry's removal triggered the Lawyers' Movement (*Judicial Crisis in Pakistan During Musharraf Regime*). In Zardari's era, tensions escalated in the Swiss cases, and the 18th and 19th Amendments restructured judicial appointments, reflecting both executive assertion and judicial pushback (*Political Development During Zardari era*]

Appointment procedure of judges in Pakistan; Pre-18th amendment era

Judicial appointments in Pakistan have long reflected a power struggle between the executive and judiciary. After independence in 1947, the Government of India Act, 1935 vested appointment powers solely in the Governor-General, without judicial consultation. The 1956 Constitution required presidential consultation with the Chief Justice for Supreme Court judges and with governors and high court chief justices for High Court appointments, but this ended with its abrogation in 1958. Under Ayub Khan's 1962 Constitution, the executive dominated appointments, often bypassing consultation. The 1973 Constitution restored consultation, yet Zia-ul-Haq's martial law (1977) undermined it by removing pro-democracy judges and appointing loyalists under the PCO. Although the 8th Amendment (1985) nominally restored the system, Zia frequently ignored the Chief Justice's recommendations [Ahmed Saeed, *Judicial Appointments Throughout History*, voicepk.net].

Al-jihad trust case—1996 [also known as judge case]

In *Al-Jehad Trust* (1996), a public interest petition challenged High Court judge appointments made by the President without proper consultation with the Chief Justice of Pakistan or the concerned High Court Chief Justice, violating Articles 177 and 193. The government argued “consultation” only meant discussion, but the Supreme Court held on March 24, 1996, that consultation must be effective and binding unless the President gave strong written reasons otherwise. It declared appointments without proper consultation unconstitutional [*Al-Jehad Trust Case*, advocateonline.pk]. Known as the “Judges’ Case,” it marked a turning point in safeguarding judicial independence, affirming the Chief Justice’s primacy. However, despite the ruling, executive and military influence in appointments persisted informally [Tanzur Research Journal, p.7].

Judicial Appointments and Independence After the Eighteenth and Nineteenth Amendments

The Eighteenth Constitutional Amendment 2010 transformed Pakistan’s judicial appointment process by introducing Article 175A, which established the Judicial Commission of Pakistan and the Parliamentary Committee to ensure transparency, accountability, and institutional participation. The Judicial Commission, chaired by the Chief Justice, included senior judges, the Law Minister, Attorney General, a retired judge, and a senior advocate, while the Parliamentary Committee comprising equal representation from both Houses and parties reviewed nominees within fourteen days, requiring a three-fourths majority for rejection (Aness Iqbal, *The Process of Judicial Appointments under the Constitution of Pakistan 1973*, p.10). The Nineteenth Amendment 2011, passed after judicial review of the Eighteenth, increased judicial representation in the Commission and required written reasons for any rejection, thereby strengthening judicial independence (Legislative Efforts for Institutionalization of Judges’ Appointments and Judicial Response: An Appraisal of 18th and 19th Constitutional Amendments, p.165). Subsequent cases such as Gilani’s contempt conviction in 2012 and Nawaz Sharif’s disqualification in the Panama Papers case illustrated the judiciary’s growing autonomy, although later political developments like the Twenty-Sixth Amendment revived concerns about executive influence (Pakistan’s Political Development: Continuity and Change under the Zardari Period, p.8; *Rule of Law and Judicial Independence: Myth and Reality*, p.6).

Fall of judicial independence again; the 26th constitutional amendment

Parliament swiftly passed the Constitution (Twenty-Sixth Amendment) Act, 2024, on October 21, 2024, and the President approved it the same day. Although presented as an effort to improve the welfare of citizens, strengthen the legal system, and enhance judicial transparency, the amendment has sparked considerable criticism. The International Commission of Jurists (ICJ) has described it as a serious blow to human rights protection, judicial independence, and the rule of law.[Failure of judicial independence is the failure of doctrine of tracheotomy in Pakistan page 322]

THE MAJOR CHANGES BROUGHT BY THE 26TH CONSTITUTIONAL AMENDMENT

A few significant modifications to the 1973 constitution brought forth by the 26th constitutional amendment regarding judiciary are enumerated below.

- Appointment Of Chief Justice (Article 175A)

Following the 26th Amendment, the twelve-member special parliamentary committee nominates the chief

justice of the Supreme Court, from among the Supreme Court's three most senior judges. Twelve people make up the committee: four members from the senate and eight members from the national assembly. 14 days before the current CJP retires, a two-thirds majority of the committee must submit the nomination for the new CJP. The committee will include parliamentary parties represented proportionately according to their strength in the National Assembly (Constitution of Pakistan, 1973)

➤ Term of the chief justice of Pakistan (article-179)

The chief justice of Pakistan term is now limited to three years, unless they resign or reach the age of 65. upon completing their three years term, the chief justice of Pakistan automatically get retired, even if they have not reached the age of superannuation. Before 26th constitutional amendment the chief justice of Pakistan served until the age of 65 [constitution of Pakistan, 1973].

➤ Increasing the strength of judicial commission of Pakistan article 175-a [clause-2]

For appointment of judges of the supreme court, the commission shall consists of—chief justice of Pakistan, three most senior judges of the supreme court, most senior judge of the constitutional benches, federal minister for law and justice, attorney general for Pakistan, an advocate having not less than fifteen years of practice in the supreme court to be nominated by the Pakistan bar council for a term of two years, two members from the senate and two members from the national assembly, a woman or non-Muslim other than a member of majlis-e- shora [parliament], which is qualified to be a member of the senate as a technocrat, to be nominated by the speaker of the national assembly for a term of two years. [constitution of Pakistan, 1973]. The majority of the judiciary was under charge of the judicial commission prior to the 26th constitutional amendment, but the executive branch now had the majority when it came to appointing judges. Five members of the judicial commission are from the judiciary, while eight members are from outside the judiciary.

➤ Judicial performance evaluation (article 175 –a)

The judicial commission of Pakistan will now conduct annual performance evaluations of high court judges. If a judge's performance is deemed unsatisfactory, the judicial commission of Pakistan will give them a period to improve. If no improvement is seen, a report will be sent to the supreme judicial council for further action [constitution of Pakistan, 1973].

➤ Appointment of judges to the supreme court and high courts (article;175-a)

The Pakistani judiciary commission now has more influence over judicial nominations, including the assessment of high court judges' performance. Judges of the Supreme Court and the High Court will now be appointed by the JCP. Chief Justice being [Chairman of JC] will forward the nomination to the PM, who will subsequently forward it to the President for final approval [constitution of Pakistan, 1973].

➤ Su moto powers of supreme court (article 184 clause 3)

Before the amendment the Supreme Court had extensive Su moto powers, allowing it to take actions without an application. After twenty sixth constitutional amendment Su moto powers have been restricted the Supreme Court can no longer make decisions on its own initiative beyond the contents of an application filed under 184 clause 3 [constitution of Pakistan, 1973].

- Constitutional benches of supreme court and high court articles 191-a and 202-a

The judges for these constitutional benches can be nominated by the judicial commission of Pakistan. The benches may consist of an equal number of judges from each province. The most senior judge among those nominated will be the senior most judge of the constitutional bench [called presiding judge].

- Exclusive jurisdiction of constitutional benches only constitutional benches can exercise the following jurisdictions
 - Original jurisdiction under article 184.
 - Appellate jurisdiction under article 185 [3], when the constitutionality of any law or substantial constitutional question is involved.
 - Advisory jurisdiction under article 186.

This constitutional bench is now able to exercise certain writ jurisdictions under article 199 [constitution of Pakistan, 1973].

Dark Side of the Twenty-Sixth Constitutional Amendment

- Appointment of Chief Justice

Before the 26th Constitutional Amendment, the most senior judge automatically became the Chief Justice of Pakistan, without any executive role in the appointment. The amendment changed this by empowering a special legislative committee to select the Chief Justice from among the three most senior judges of the Supreme Court. This allows parliamentary and executive influence, compromising judicial independence [The 26th Constitutional Amendment to the Constitution of Pakistan: Implications for Judicial Independence]. Judicial independence is vital for ensuring justice and maintaining public trust, but political involvement undermines confidence in both the judiciary and democratic institutions [Pakistan's 26th Constitutional Amendment: New York City Bar].

- Change in Judicial Commission of Pakistan and Appointment of Judges

The amendment restructured the Judicial Commission of Pakistan (JCP), expanding executive representation and reducing judicial dominance. Now, only five of thirteen JCP members are judges—the Chief Justice, senior judges of constitutional benches, and the next three senior-most judges of the Supreme Court. This composition grants the executive substantial control over judicial appointments [Implications for Judicial Independence of the 26th Amendment to the Pakistani Constitution]. International standards emphasize that no political branch, especially the executive, should have decisive influence in judicial appointments [International Guidelines for Judicial Independence; ICJ].

- Constitutional Benches in Supreme Court and High Courts (Articles 191-A and 202-A)

The amendment empowers the JCP to constitute constitutional benches in the Supreme Court and High Courts to interpret constitutional matters and fundamental rights. Such authority enables political interference in bench formation, raising concerns about impartiality [ICJ]. Unlike systems in the U.S. and U.K., where courts independently form benches, this change allows executive intrusion, threatening functional judicial independence [International Standards for the Independence of the Judiciary].

➤ Curtailment of Su Motu Powers (Article 184(3))

The amendment restricts Article 184(3), removing the Supreme Court's Su Motu jurisdiction. This power previously enabled enforcement of fundamental rights and served as a check on executive and legislative excesses [Judicial Activism and Democracy: A Case Study of Chief Justice Saqib Nisar's Time, p.2; Rule of Law and Judicial Independence: Myth and Reality, p.1101]. Limiting this authority weakens access to justice, especially for marginalized citizens, and diminishes the judiciary's constitutional role [Judicial Independence: Islamic Jurisprudence from the Standpoint of International Law, p.2].

➤ Performance Evaluation of High Court Judges

The introduction of "inefficiency" as a ground for judicial removal lacks definition and opens the door to political misuse. This vague standard can be weaponized against judges for unfavorable rulings, threatening their independence [A Critical Review of the 26th Amendment's Potential Effects on Pakistan's Political and Legal System; www.courtingthelaw]. Traditionally, removal was only for proven misconduct or incapacity, ensuring judicial security—now weakened by this subjective criterion.

➤ Procedural Irregularities in Passing the Amendment

Parliamentary norms require three readings and committee scrutiny for any constitutional amendment [Selected Constitution by Prof. Bakhtiar]. However, the 26th Amendment was passed without public access to its text or participation by lawyers, media, or opposition [The 26th Constitutional Amendment; Constitution.org; Neha Tripathi's Account]. Such lack of transparency violated legislative due process and the principle of separation of powers [ICJ].

➤ Violation of Separation of Powers (Article 175-A)

Article 175(A) mandates separation of the judiciary from the executive within fourteen years of the Constitution's commencement [Constitution of Pakistan, 1973]. The amendment breaches this by allowing executive dominance in judicial appointments and functioning, eroding judicial independence [ICJ; Lopez-Guerra's Work on the Judiciary and the Separation of Powers].

➤ Violation of Rule of Law and Natural Justice (Article 4)

Article 4 guarantees equality before the law [Constitution of Pakistan]. The rule of law demands impartiality and justice free from influence [British Institute of Human Rights]. Executive control over judicial appointments compromises neutrality and erodes public trust, enabling politically motivated judgments and weakening citizens' rights protections.

➤ Reserved Seats Case and Judicial Credibility

The Supreme Court's July 12, 2024, verdict reversing its earlier decision to restore PTI's parliamentary status drew widespread criticism, further eroding confidence in judicial integrity [Express Tribune]. Many viewed the 26th Amendment as a political tool following the disputed 2024 elections to tighten executive control over the courts [Constitution.org; Neha Tripathi's Account].

➤ Impact on Checks and Balances

Judicial independence is central to maintaining checks on executive power [www.idlo.int]. By empowering the executive in judicial appointments and bench formation, the amendment disturbs this constitutional balance, enabling overreach and weakening institutional safeguards.

➤ Impact on Fundamental Rights

The rule of law and protection of human rights depend on an independent judiciary [The Independence of the Court and the Rule of Law by Daniel C. Prefontaine, Q.C., and Joanne Lee]. Articles 184(3) and 199 guarantee the enforcement of fundamental rights, but executive control under the 26th Amendment compromises judicial impartiality, risking injustice in politically sensitive matters.

INTERNATIONAL COMPARISON

According to comparative research, nations like the UK and Canada who have strong judicial nomination processes have seen less involvement from the executive branch [General Tanzur Research: Executive Intervention on Judicial Independence in Pakistan]. Judges will have the freedom and responsibility to decide cases based on their own interpretation of the law and their assessment of the facts, free from any constraints, pressures, threats, or interference, whether direct or indirect, from any source or for any reason. The judiciary will remain separate from the legislative and executive branches [international instrument on the independence and accountability of judges, lawyers, and prosecutors].

An Islamic Appraisal of the Twenty-Sixth Amendment: Balancing Shariah and State Law

History shows that without a restraining authority, the powerful exploit the weak. To ensure justice, Allah sent prophets and scriptures: “We sent Our messengers with clear signs and the Book and the Balance so that people may uphold justice” [Quran 57:25]. Scholars note that while the Prophet (PBUH) initially acted as sole judge, he also appointed companions like Amr ibn al-ʿĀs and Abu Musa al-Ashʿari to settle disputes, reflecting separation between judiciary and executive. Caliph Umar (RA) formalized this by appointing independent judges in Madina, Basrah, Kufa, and Egypt (Al-Fasi, 259). Ibn Hajar al-Asqalani and Ibn ʿAbd al-Barr confirm these judges held judicial, not administrative, roles. The judiciary’s role is to resolve disputes in light of Quran, Sunnah, and law, and in an Islamic State it serves as guardian of the Constitution, striking down laws against Sharia (Article 203-D, Constitution of Pakistan 1973; Quran 5:44). Judicial independence, therefore, is vital to ensure justice without influence from government or powerful groups [*The Concept of Independence of Judiciary in Islam*, p.68].

CONCLUSION

Since Pakistan’s independence, political interference in the judiciary began as early as the era of Ghulam Muhammad. Both politicians and the military have historically used the judiciary to serve their own interests. A key method of control has been through judicial appointments—selecting judges who would deliver favorable decisions. The *Al-Jehad Trust* case stands as a landmark judgment that emphasized the importance of judicial independence and laid the groundwork for reforms in appointments. The 18th and 19th Constitutional Amendments introduced a system involving judicial commissions and a parliamentary committee, which gave judges a more dominant role in appointments and helped foster judicial activism and independence. However, the passing of the 26th Constitutional Amendment has reversed much of this

progress, once again allowing increased political influence in judicial appointments. Even from an Islamic perspective, the judiciary must remain separate from the executive to ensure justice. Unfortunately, the struggle for judicial independence in Pakistan continues to rise and fall—a cycle that remains unresolved to this day.

Suggestions

The following suggestions, if incorporated into the **26th constitutional amendment**, could help restore judicial independence in Pakistan:

1. **Increase Judicial Representation in the Judicial Commission**

The number of judicial members in the Judicial Commission of Pakistan should be increased to ensure that the appointment of judges remains primarily a judicial function, free from executive or political influence.

2. **Restore the Seniority Principle for the Chief Justice's Appointment**

The conventional principle of seniority should be reinstated for appointing the Chief Justice, preventing arbitrary or politically motivated selections that could compromise judicial neutrality.

3. **Abolish Constitutionally Mandated Benches**

The creation of constitutional benches under political pressure should be abolished. Bench formation must remain an internal judicial matter, guided by impartial rules and judicial consensus.

4. **Restore Su Moto Powers under Article 184(3)**

The Supreme Court's suo motu jurisdiction under Article 184(3) should be fully restored to ensure the protection of fundamental rights and the effective pursuit of public interest litigation.

5. **Define 'Inefficiency' in Judicial Performance Evaluation**

The term "*inefficiency*" in judicial performance evaluation should be clearly and objectively defined to prevent its misuse for targeting independent judges and undermining judicial autonomy.

REFERENCES

- [1] Ijaz, S. (2014). Judicial Appointments in Pakistan: Coming Full Circle. *LUMS LJ*, 1, 86.
- [2] ur Rehman, A., Ibrahim, M., & Bakar, I. A. (2013). The concept of independence of judiciary in Islam. *International Journal of Business and Social Science*, 4(2), 67-75.
- [3] Pakistan, & Pakistan. National Assembly. (1973). *The constitution of the Islamic Republic of Pakistan*. Manager of Publications.
- [4] Jatoy, S. A., Mustafa, G., & Kataria, M. S. (2022). Judicial activism and democracy in Pakistan: A case study of chief justice Saqib Nisar era. *Pakistan Journal of Social Research*, 4(2), 1-11.
- [5] Benwell, R., & Gay, O. (2011). *The separation of powers*. House of Commons Library.
- [6] Mehmood, S. (2020). Judicial independence and development: Evidence from Pakistan.
- [7] Zeitune, J. (2004). International principles on the independence and accountability of judges, lawyers and prosecutors: a practitioners' guide.

- [8] La Porta, R., Lopez-de-Silanes, F., Pop-Eleches, C., & Shleifer, A. (2004). Judicial checks and balances. *Journal of Political Economy*, 112(2), 445-470.
- [9] Muhammad, M., & Ali, M. S. (2025). The 26th Amendment to the Constitution of Pakistan: Implications for Judicial Independence. *Social Science Review Archives*, 3(2), 148-153.
- [10] Ali, R. N., Jabeen, T., & Jan, M. (2021). Judicial Appointments in the Historical Context: From 1947-2005. *Pakistan Social Science Review*, 5(1), 9.
- [11] Khan, M. H. A. Q. (2021). A Critical Analysis of the procedure of appointment of Judges in the Superior Courts of Pakistan. *Pakistan Journal of Criminal Justice*, 1(1), 40-51.
- [12] Tripathi, N., & Kumar, A. (2024). The Story of the 26th Amendment: Executive Interference and the Judiciary's Struggle for Independence in Pakistan. *Constitution Net*, 29.
- [13] Yadav, V. (2022). Independence of Judiciary. *Supremo Amicus*, 30, 208.
- [14] Klabbbers, J. (2008). Checks and balances in the law of international organizations. In *Autonomy: In the Law* (pp. 141-16). Dordrecht: Springer Netherlands.
- [15] Meteskey, G. E., Smith, D. W., Brooke, J. W., Spring, B. W., & Montgomery, S. C. (1972). The Press, Volume 8, Issue 22 Supplement, 13 March 1972.
- [16] Choudhry, S., & Stacey, R. (2013). International Standards for the Independence of the Judiciary. *The Center for Constitutional Transitions at NYU Law & Democracy Reporting International Briefing Papers (with R. Stacey)(2013)*.
- [17] Munir, B. (2021). Legislative Efforts for Institutionalization of Judges' Appointments and Judicial Response: An Appraisal of 18th and 19th Constitutional Amendments. *Journal of the Punjab University Historical Society Volume*, 34.
- [18] Muhammad, A., Nadeem, M. S. A., & Khakwani, M. A. K. (2024). Executive Influence on Judicial Independence in Pakistan: A Critical Analysis With Reference to Constitutional and Legal Framework. *Tanazur*, 5(4), 194-227.
- [19] Riaz, M. (2023). Historic Disclosures About Blurry Motives of Politicization in Pakistan's Judiciary. *PERENNIAL JOURNAL OF HISTORY*, 4(2), 18-46.
- [20] Rajaratnam, T. W. (1988). A judiciary in crisis?: the trial of Zulfikar Ali Bhutto.
- [21] Zikria, G., & Roofi, Y. (2020). Evaluation of Judicial Independence in Pakistan (2008-13). *PAKISTAN Bi-annual Research Journal*, 56(1), 68-85.
- [22] Khan, H. (2016). A History of the Judiciary in Pakistan.
- [23] Ahmed, F. A., & Asma, M. (2024). Legal Implications of Pakistan's 26th Constitutional Amendment: A Critical Analysis. *Journal for Social Science Archives*, 2(2), 351-368.