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Print ISSN: [3006-2497](#) Online ISSN: [3006-2500](#)Platform & Workflow by: [Open Journal Systems](#)**The 26th Amendment and the Politicization of Pakistan's Judiciary****Muhammad Asif Khan**

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Email: bestjanab0000@gmail.com**Abstract**

The 26th constitutional Amendment of Pakistan enacted on October 21, 2024, brought some changes to the judiciary system. This paper will first discuss the judicial history of Pakistan and then answer many questions like when and how this amendment was passed, their implications on judicial independence, separation of power and public trust. The main criticism would be on the basis of timing, context and intent. How the appointment process was changed from seniority principle to special parliamentary committee for the appointment of judges. For this, the whole judicial composition was changed and the non-judicial members were increased from the judicial members which further politicize the judiciary. The immediate cause of this amendment was the election rigging case of 2024 which the government considers as a threat, that is why they tried to control the judiciary. The research paper discusses the amendment's key provisions and evaluates its impacts one by one. The paper concludes by assessing and evaluating the long-term implications on the independence of judiciary and theory of separation of power.

Keywords: *Theory of Separation of Power, Constitution, Rule of Law, Judicial Independence, Constitutional Amendment, Judicial Commission, Special Parliamentary Committee.*

Introduction

The independence of judiciary is cornerstone of a democratic society that upholds justice and rule of law while also protecting the citizen's fundamental rights. An independent judiciary is required to have check on balance of power and for maintaining the separation of power among the three pillars of state which are executive, legislature and judiciary and to prevent them from absolute power and abuse of power. Every government either military or civil tried to curtail the power of judiciary in one way or another. From 1947 to onwards, many constitutional amendments were also passed by civil and military governments to curtail the power of judiciary. Since independence, various changes in the constitution have impacted the power, structure, and freedom of the judiciary. Early amendments, like the 2nd and 5th, which was passed under Z.A Bhutto era changed what was required from judges and how they should behave. Later, the 8th and 17th amendments, passed by military governments, increased the government's influence. The 18th Amendment was a significant change aimed at reducing political influence in choosing judges and increasing their independence. It did this through a special judicial

commission. But this amendment increased the role of parliament in appointment process as a result Supreme Court of Pakistan compelled the parliament to reduce their influence, so 19th amendment was passed which again increase the role of judiciary in judges appointment process. Then after some year's parliament again tried to dominate the appointment process of judges to control the Supreme Court by passing the 26th amendment of Pakistan. The changes and their impact will be covered in this research comprehensively.

Research Questions

The historical evolution of the executive and judiciary and its impact on independence of judiciary in Pakistan?

What were the major constitutional changes made by the 26th constitutional amendment regarding judicial appointments, judicial commission, constitutional benches and the appointment process of judges?

How the 26th amendment impacted the independence of judiciary and theory of separation of power?

How the 26th constitutional amendment impacted the rule of law, transparency in appoint process of judges and unbiasedness of judicial decisions?

Literature Review

The book *Constitutional and Political History of Pakistan* (2017), written by Hamid Khan, examines the historical evolution of Pakistan's judiciary and argues that judicial independence has repeatedly been compromised through executive intervention and the doctrine of necessity. The author demonstrates how successive military and civilian governments reshaped judicial institutions to consolidate political authority. He identifies constitutional amendments as important instruments through which governments influenced judicial structures and appointments. The book provides a comprehensive historical foundation for understanding judicial development in Pakistan. Nevertheless, because it was published before 2024, it does not evaluate the constitutional and institutional consequences of the Twenty-Sixth Constitutional Amendment.

The research article "Judicial Independence and the 26th Constitutional Amendment of Pakistan: A Critical Analysis" (2025), which is written by Minhaj Uddin Attaullah and Asad Ullah, which examines the impact of Twenty-Sixth Constitutional Amendment on judiciary of Pakistan. They are of the view that the 26th amendment has increased the parliamentary influence over judicial appointments by undermining judicial independence. The amendment change the balance of judicial commission in favors of parliamentary members and reduced the judicial influence from the judicial commission on the appointment process of judges. Moreover, increase of parliamentary members will lead to partiality in the appointment process of judges. However, the study does not comprehensively examine the amendment's historical background and doctrine of separation of power.

The research article "The 26th Constitutional Amendment and Judicial Independence in Pakistan: Constitutional and Institutional Perspectives" (2025), written by Hammad Bashir, Abdul Basit Khan, and Rifat Rafeeq, discusses the 26th amendment in the constitution of Pakistan and its negative impact on the independence of judiciary in Pakistan. They argue that the primary focus of the amendment is to change the appointment process of judges from seniority principle to special parliamentary committee .The amendment also made changes in the members of the judicial commission, appointment process of judges, and the creation of constitutional benches. They are of the view that the amendment

increased the executive influence on the judiciary which is against the doctrine of separation of power. However, the article lacks comprehensive analysis of the constitutional changes and its impact on the independence of judiciary.

The research article "Judicial Independence after Pakistan's Twenty-Sixth Constitutional Amendment: Constitutional Challenges and Democratic Governance" (2025), which was written by Miraj Muhammad Saifulislam and Sajjad Ali, in which they examine the constitutional implications of the twenty-sixth constitutional amendment on the democratic governance and judicial structure of Pakistan. They argue that changing the process of appointment of judges from seniority principle to special parliamentary committee may undermine the constitutional doctrine of separation of powers, which will lead to partiality of judges and consequently weakening the institution of justice. . However, it fails to highlight the broader political context, including the 2024 constitutional crisis.

The writers Zohaib Jamali, Waqas Khoso, Shah Nawaz Rind, and Ali Raza, argue in their research article "Constitutional Governance and Judicial Independence after the Twenty-Sixth Amendment in Pakistan" (2025), that the amendment created space for political interference in the appointment of judges by increasing the members of non judicial members in the judicial commission and by making the constitutional benches whose members are firstly appointed by the executive which is contrary to the theory of separation of power. They also argue that these political influence will directly or indirectly impact on decision making of judges. They concluded that the amendment will weaken public trust on judiciary and undermines the independence of judiciary. However, the study provides limited context of the amendment and does not analyse comprehensively.

Methodology

The qualitative research methodology is used for a deeper understanding and to examine constitutional, legal, and political implications of the 26th Amendment. The research is analytical and interpretive in nature, aiming to analyse the impact of the amendment on the independence of the judiciary and the theory of separation of powers. Historical documents are analysed to trace the relation between the executive and the judiciary and the evolution of judicial independence by examining major constitutional developments and judicial decisions. This historical understanding enables a deep understanding of the context of the 26th Amendment.

To examine the constitutional provisions, a legal analysis is employed to deeply understand the 26th amendment and its provisions. For this, major constitutional developments such as *Federation of Pakistan v. Maulvi Tamizuddin Khan* (1955), *State v. Dosso* (1958), *Asma Jilani v. Government of Punjab* (1972), *Al-Jehad Trust v. Federation of Pakistan* (1996), and the 26th constitutional amendment and its implication. The primary and secondary sources are used such as constitution of Pakistan, judicial decisions, acts, statutes and books, research articles and international reports respectively. The study also links the amendment with theory of separation of power to strengthen the analysis and to determine whether the amendment reinforces or weakens the dependence of judiciary and balance of power among the legislature, executive, and judiciary. The amendment is compared with international standards on judicial independence to assess the amendment. The research follows a qualitative research method for in-depth understanding of the amendment. It does not involve field research or interviews instead it utilizes historical evidence, constitutional provisions and judicial precedents to assess the consequences of the amendment.

Significance of the Study

In the constitutional history of Pakistan, the Twenty-Sixth Constitutional Amendment demonstrates the historical continuity of the executive's attempts to control the judiciary through direct or indirect interference. The Twenty-Sixth Amendment is the most significant constitutional amendment which generated extensive debate among legal scholars and constitutionalists over its impact on the independence of the judiciary. This study increases legal and constitutional debate by providing historical context and evolution of constitutional developments. Unlike many existing studies, which only focus on this, this research analyses the context, motives, and impact of the amendment by analyzing the relationship between the executive and judiciary from 1947 to 2025. The study examines the constitutional amendments related to the judiciary and their impacts on the independence of the judiciary.

Moreover, the study contributes academically by providing valuable insights for scholars of academia and legal experts, which will help assist policymakers, legislators and legal practitioners. The study covers both the constitutional objectives and the criticisms associated with the amendment, and the study seeks to encourage informed academic discussion. Lastly, the study will provide useful reference for future researchers examining judicial history in Pakistan.

Limitations of the Study

The first limitation of the study is that it relies mainly on constitutional documents, judicial decisions, parliamentary legislation and scholarly literature. The study does not include field research such as interviews with judges, lawyers and parliamentarians. Secondly, the analysis is limited to the available data, as many of the amendment's impacts are still evolving. Moreover, the study primarily discusses historical and constitutional aspects of the amendment rather than political, economic, and comparative aspects.

Despite these above-mentioned limitations, the study provides a comprehensive analysis of the historical evolution of the relationship between the executive and judiciary while analyzing the impact of the Twenty-Sixth Constitutional Amendment and the theory of separation of powers in Pakistan.

Historical Context

The first decade after its inception, Pakistan's judiciary has colonial mentality to serve the executive and administration not the people, constitution and rule of law. For nine years, Pakistan was without constitution and Pakistan was administrated on the basis of Government of India Act 1935. The first test of Supreme court starts when Governor General Ghulam Muhammad dismissed the first constituent assembly of Pakistan which was going to make the first constitution of Pakistan, at that time Moulvi Tamizuddin was the speaker of constituent assembly and he challenged this decision in the court known as the *Maulvi Tamizuddin* case (1955) in which judiciary instead of standing for its independence, collaborated with executive and undermining independence of judiciary. The only judge who took stand for independence of judiciary was Alvin Robert Cornelius. The judiciary shows further weakness in *State v. Dosso* (1958) case, where Chief Justice Muhammad Munir on the pretext of Kelsen's theory (doctrine

of necessity) validated and legalized the Ayub Khan's coup, calling it a revolution. This judgment set dangerous precedent for future military coup on the basis of doctrine of necessity.¹

During Ayub Khan era, executive tried to control the judges and dissenting judges were removed. However, in the *Asma Jilani* case (1972) Supreme Court for the first time took stand for independence of judiciary and constitution, calling Yahya Khan as a usurper and condemning the doctrine of necessity. Then 1973 constitution was established which aimed to institutionalize judicial independence, but as Bhutto was authoritarian in nature so he manipulated the appointment process of judges on political basis. The judiciary again failed to maintain its independence when martial law was imposed by military dictator Zia ul Haq and a case was filed in Supreme Court by *Nusrat Bhutto* in 1977 but the Supreme Court decision again justified martial law on the ground of doctrine of necessity.²

The era of 1980s and 1990s was the era of politicization and polarization in the Supreme Court. Prime Minister Nawaz Sharif's confrontation with Chief Justice Sajjad Ali Shah in 1997 was the most infamous confrontation between executive and judiciary which ended in the Chief Justice ouster from the office. Amid this turmoil, the *Al-Jehad Trust* case (1996) became the turning point in the judicial history of Pakistan which mandated the Chief Justice's consultation in judicial appointments and optimism developed that from now there will be independent judiciary but not for long because soon martial law was imposed by dictator Pervez Musharraf who pressurized the judges to take the oath under PCO (Provisional Constitution Order). Very few judges resisted this unconstitutional measure and one of them was Justice Wajihuddin Ahmed, who resisted this authoritarian pressures. He refused to take oath under PCO and became a symbol of judicial resistance to military dictator.³

Another resistance was started and led by Chief Justice Iftikhar Muhammad Choudary whose resistance to Musharraf sparked the 2007 Judicial Crisis. He was not alone in this resistance, and there were some other judges also like Justice Bhagwandas, Justice Ramday, and others, this resistance ultimately led to the Lawyers' Movement. Public protest, media pressure, and civil society involvement marking a historic moment for judicial independence.⁴

The lawyer's movement led to structural reforms in the judiciary through the 18th and 19th Amendments, which created the Judicial Commission for the appointment of judges, which contains both judicial and parliamentary members in a balanced proportion. Insertion of Article 175-A reduced executive control and emphasized consultation with senior judges to preserve judicial independence.⁵

The next conflict arose between the judiciary and the executive over the Panama case verdict, which ousted Prime Minister Nawaz Sharif in 2017 on technical grounds. Chief Justice Saqib Nisar and his like-minded judges were severely criticized for judicial activism and political bias.⁶ The next conflict started between the executive and judiciary when the government refused to follow the orders of the Supreme Court on the issue of election dates which showed deep polarization within the judiciary. Legal experts

¹ Constitutional and Political History of Pakistan, Hamid Khan, *Constitutional and Political History of Pakistan*, 4th ed. (Karachi: Oxford University Press, 2017), 53–74.

² Ibid.

³ Hamid Khan, *Constitutional and Political History of Pakistan*, 81–90.

⁴ Ibid.

⁵ Lawyers' Movement, International Crisis Group, *Reforming Pakistan's Judiciary* (Brussels: ICG, 2008), 8–17

⁶ *Imran Ahmed Khan Niazi v. Mian Muhammad Nawaz Sharif*, PLD 2017 SC 692.

argue that some of the decisions of Chief Justice Qazi Faez Isa has damaged his reputation as well as the reputation of judiciary to take revenge against a political party that filed a reference against him when the party was in power. His decisions especially the reinterpretation of Article 63-A, that make way for the 26th amendment as the government does not have the required number to pass the amendment, so the Supreme Court reinterpreted the Article 63-A that allow the defectors votes to be counted.⁷

Theory of Separation of Power

Theory of separation of power was presented by French philosopher Montesquieu in his book *The Spirit of Laws* written in 1748. This theory advocated the division of power among the three organs of the state i.e executive, legislature and judiciary. The purpose of this theory is to prevent the concentration of power and to promote check and balance system among the pillars of the state. It also promotes specialization by establishing specific function of each branch of the state i.e legislative is responsible for making laws, executive is responsible for implementing the laws and judiciary is responsible for interpreting the law according to constitution and protecting the fundamental rights of its citizen. The US is strictly following the theory of separation of power. There is a parliamentary form of government in Pakistan where the executive is taken from legislature that is why there is overlapping of power between the executive and legislature but the independence of judiciary is guaranteed by the constitution of Pakistan.⁸

26th constitutional amendment

The 26th amendment was passed by parliament with a two third majority on October 22, 2024. It has amended, substituted, or added 25 articles out of which 12 articles deal with the judiciary. Three articles are related to the religious provisions. The bill was passed in haste and rushed through the two houses of the parliament without debate and discussion. Even the MNA (Member of National Assembly) from the government parties did not know about the bill.⁹ Moreover, the government did not have the required numbers to pass that amendment; for that they needed defectors from the opposition, but it was not possible due to the interpretation of Article 63-A, which denied the counting of votes of defectors. The Supreme Court under Chief Justice Qazi Faez Isa reinterpreted the Article 63-A and allowed defector's votes to be counted. 11 defectors from PTI (Pakistan Tahreek –e-Insaf) voted in favor of amendment. In this way, they achieved the required number and passed the amendment.¹⁰

Composition of the Judicial Commission of Pakistan (JCP)

The 26th Amendment alters the basic structure of the Judicial Commission of Pakistan (JCP), which plays an important role in the appointment of judges to the Supreme Court and High Courts. Previously, it largely consisted of senior judges, which minimized executive influence, particularly from the political class. However, this amendment increased the parliamentary members by introducing five new members: two from the National Assembly, two from the Senate, and one from a minority group. As a

⁷ Supreme Court of Pakistan, *Review Petition against the Presidential Reference under Article 63A of the Constitution*, 2024.

⁸ The Spirit of the Laws, Montesquieu, *The Spirit of the Laws*, trans. Anne M. Cohler, Basia C. Miller, and Harold S. Stone (Cambridge: Cambridge University Press, 1989), 155–166.

⁹ Pakistan Institute of Legislative Development and Transparency (PILDAT), *Assessment of the Twenty-Sixth Constitutional Amendment* (Islamabad: PILDAT, 2024).

¹⁰ National Assembly of Pakistan, *Debates of the National Assembly*, October 2024; Dawn, "Parliament Passes 26th Constitutional Amendment," October 21, 2024.

result, majority party in the parliament would possess power in judicial appointments. Moreover, the amendment reduces the number of judicial members within the JCP, effectively dominating the political influence in the appointment process. Legal experts argue that this shift increased the political influence in the judicial decisions indirectly. From now on, selection of judges will be based more on loyalty to politicians than on merit. This restructuring undermines the concept of separation of powers by increasing the executive influence in the judiciary.¹¹

Constitutional benches

The Twenty-Sixth Amendment established constitutional benches parallel to the Supreme Court, which deal with the constitutional matters; however, their appointment process is also in the hands of the judicial commission of Pakistan. By selecting which judges hear cases, the judicial commission of Pakistan can indirectly influence court decisions. Legal experts fear about the formation of politically aligned benches. If judges are appointed to these benches on the basis of political favor rather than impartiality, then it will undermine the independence of judiciary. Critics are of the opinion that these constitutional benches may serve political purposes rather than constitutional ones. There is no transparent criteria for how these benches are constituted and it will become easier for political parties to manipulate court proceedings. Moreover, such manipulation can create divisions among the judges of the judiciary, as judges may be seen as favorites or non-favorites, and this will undermine internal cohesion and public faith in the Supreme Court.¹²

Appointment of the Chief Justice of Pakistan

One of the most controversial aspects of the 26th Amendment is the changes made in the appointment process of the Chief Justice of Pakistan (CJP). Previously, the appointment process was based on the seniority principle, a convention rooted in maintaining judicial neutrality. The new amendment changed this practice. Now, the Special Parliamentary Committee will select the Chief Justice from among the three most senior judges. The members of the Parliamentary Committee will follow party interest instead of merit. Moreover, it sets a dangerous precedent for future appointments and will reduce public trust in the justice system. By increasing executive influence on the judiciary, it also undermines the doctrine of separation of powers in a democracy.¹³

Grounds for Removal of Judges

Another change brought by the amendment is the removal of judges on the basis of “inefficiency”, and this term is not properly defined, which might be politically motivated. Before that, judges could only be removed on the basis of proven misconduct or physical/mental incapacity. These were clear standards for the removal of judges, but the term “inefficiency” is ambiguous and subjective, as it lacks proper definition. This ambiguity raises fear within the legal community that the term could be exploited by political parties to remove judges who challenge their executive authority. By including such provision, the amendment threatens judicial independence. Judges will have no option but to align with the political situation to avoid accusations of inefficiency. Moreover, this measure is also against the

¹¹ Minhaj Uddin Attaullah and Asad Ullah, “Impacts of 26th Constitutional Amendment on the Independence of Judiciary in Pakistan,” *International Journal of Politics & Social Sciences Review* 4, no. 2 (2025): 130–138.

¹² Ibid.

¹³ Hammad Bashir, Abdul Basit Khan, and Rifat Rafeeq, “Neutralizing the Independence of Judiciary: Study of the Impacts of the 26th Constitutional Amendment of Pakistan,” *Pakistan Journal of Social Science Review* 4, no. 5 (2025): 1208–1224.

international legal standards, which demand fair and transparent grounds for the removal of judges. How can a judge decide the case independently if he is under constant pressure and fear of being removed on the basis of vaguely defined term and his ability to act independently in delivering justice will be seriously compromised.¹⁴

International Legal Standards on Judicial Independence

The 26th amendment is in contrast with the globally accepted norms on judicial independence. specifically, it contradicts Article 14 of the International Covenant on Civil and Political Rights (ICCPR), which guarantees everyone the right to a fair and impartial trial under an independent judiciary and as a signatory to ICCPR, Pakistan has committed to uphold this standard. An independent judiciary is important for delivering justice, and for this the appointment process should be transparent and impartial. There is an internationally recognized standard that judges can only be removed through a fair, transparent and proven misconduct or physical/mental incapacity and not for vague reasons like inefficiency. The increased role of politicians in judicial appointments is serious a deviation from these principles. Legal experts of national and international forums view these reforms as alarming regressions. The deviation from the international legal norms could affect its standing globally and weaken public trust in the judiciary.¹⁵

Impact on the Rule of Law and Human Rights

The undermining of judicial independence through the 26th Amendment has negatively impacted the rule of law and basic human rights in Pakistan. For example, the recent validation and legalization of civilian trials in military court by the constitutional bench has further weakened the human rights condition in Pakistan. The purpose of an independent judiciary is to check on executive and legislative power, ensuring that all these state organ's actions align with the Constitution. By allowing political influence in judicial appointments, this amendment distorts the concept of separation of power. It is a matter of concern, particularly in human rights cases, where the judiciary is expected to defend the human rights of a citizen. If judges feel pressure from the executive then the likelihood of impartial rulings will become a dream. Benches made by political influence may favor the government in critical decisions, just like the election rigging case of 2024. An impartial judiciary can lead to unchecked executive interference and the violation of civil liberties. As the public lose faith in the courts, they may also lose faith in the democracy.¹⁶

Manipulation of Chief Justice Appointment

The tussle between the government and judiciary on the appointment of Justice Mansoor Ali Shah highlights growing concerns about procedural integrity. The government wanted to give an extension to Justice Qazi Faez Isa, and by this way, they can stop the elevation of Justice Mansoor Ali Shah on the basis of the seniority principle. In seniority principle, the most senior judge is elevated to the post, ensuring transparency and respect for seniority. However, the government changed this procedure, and now the parliament will appoint the new chief justice among the three most senior judges of the

¹⁴ Ibid.

¹⁵ Zohaib Jamali et al., "The Twenty-Sixth Constitutional Amendment and the Erosion of Judicial Independence in Pakistan: A Critical Analysis," *Social Science Review Archives* 3, no. 4 (2025).

¹⁶ Ibid.

supreme court. This manipulation of Chief Justice appointment just some days before the appointment of Justice Mansoor Ali Shah shows the ill intention of the government. The new appointment process is against the merit-based and seniority-based culture that previously guided such appointments. Moreover, it is not the change in the appointment process but the ill intention of the government that is being considered controversial.¹⁷

Seniority Principle Removed

The seniority principle for the appointment of judges was changed just before the appointment of Justice Mansoor Ali Shah, who is considered to be an impartial judge. Before the amendment, there was a perception that when Justice Mansoor Ali Shah became chief justice, he would open the case of election rigging of 2024, so it was the immediate cause of the amendment to stop him from becoming chief justice; that is why they changed the seniority principle. Now, Parliament will appoint the new chief justice from the top three senior-most judges. While proponents of this amendment argue that it established the supremacy of parliament, critics view it as a politicization of an appointment process and also raise question about its timing and intent. Moreover, this development has also created division in the Supreme Court, which will ultimately lead to weakening of the institution. The sidelining of senior judges on the basis of political biasness will undermine judicial morale and breed distrust in the judiciary.¹⁸

Term Limit Introduced

The 26th amendment also increased the tenure of chief justice to three years. Proponents of this amendment argues that it will curtail judicial overreach. However, the critique of this amendment argue that it is the timing and intent of the amendment that are being considered problematic because the government wanted to complete its term, and for that, they wanted to control the institution by appointing those persons, who will not open the election rigging case. Moreover, it will make the chief justice more cautious of political pressure, especially if the appointments of judges depend on the ruling party's support. This provision in the amendment, while seemingly neutral, but its timing and intent make it controversial. It may have consequences for the independence of judiciary and its ability to resist executive encroachment.¹⁹

Suo Motu Power Curtailed

One of the most consequential reforms introduced by this amendment is the restriction of the Chief Justice's suo motu powers. Before that, the chief justice could unilaterally take notice of matters of public importance. The amendment has brought about significant changes. Now such action requires the approval of a judicial committee. Although this is intended to check misuse of power, but again timing, context, and intent raises questions. Critics are of the view that it reduces the judiciary's ability to respond swiftly to rights violations and constitutional crises. The restriction may deter action on political and fundamental human rights related cases, especially if the committee becomes dominated by partial

¹⁷ Shaheena Iqbal, "Judicial Independence in Pakistan Post-26th Amendment: Assessing the Judicial Commission's Role," *International Journal of Contemporary Issues in Social Sciences* (2025).

¹⁸ Ibid.

¹⁹ International Commission of Jurists, *Pakistan: Twenty-Sixth Constitutional Amendment Threatens Judicial Independence* (Geneva: ICJ, 2024).

and biased judges. The amendment curtails the power of the judiciary and its role in defending public interest and constitutional values.²⁰

Performance Review of judges

A new provision was introduced that will review the performance of the judges. While accountability of judges and public office holders is necessary in democracy, for this there should be a proper and transparent mechanism. This amendment gave power to the parliament, especially the majority ruling party, to monitor and review the performance of the judges. As political parties follow political and vested interests more than the constitution, so they will intimidate those judges who issue unfavorable rulings. The fear of poor evaluations might lead judges to abstain from hearing political cases. Such supervision and monitoring of judges could turn judges into bureaucrats, accountable not to law but to the executive. If changes were not made and regulated, this provision would threaten the independence of the judiciary and theory of separation of power.²¹

Parliamentary Oversight Institutionalized

The 26th amendment established a special parliamentary committee, consisting of 12 members empowered to oversee judicial appointments. This provision has been criticized for inserting political actors directly into judicial selection. The composition and powers of the committee give elected officials, especially the majority ruling party to influence the judge's selection process. Rather than isolating the judiciary from politics and the executive, this reform turned judge's appointment process controversial. The credibility and impartiality of future constitutional benches could be compromised if the selection process is controversial and the public perceives judges as political appointees. With the passage of time, this may lead to a loss of confidence in the judicial system of Pakistan.²²

Division in Judiciary

The 26th amendment has created division in the Supreme Court, there are judges who are against this amendment and those judges who are beneficiaries of this amendment. Those judges who are against this amendment consider the non appointment of Justice Mansoor Ali Shah as an injustice and interference in the judiciary. They resisted the executive interference in the judiciary, that is why they were sidelined and constantly criticized by the government. On the other hand, there are judges who accepted this amendment consider parliament as the mother of all institutions and constitution and believe in the supremacy of parliament. But as Quaid e Azam was a constitutionalist, that is why there should be constitutional supremacy in Pakistan because constitution protects basic human rights and checks the balance of power. The government has also increased the number of judges in the Supreme Court to sideline those judges who they consider independent and impartial²³

Conclusion

The 26th amendment in the constitution of Pakistan, which was passed in 2024 marks a troubling moment in the judicial history of Pakistan because this amendment reversed the long and difficult

²⁰ Ibid.

²¹ Ibid.

²² Reuters, "Pakistan Empowers Parliament to Pick Country's Top Judge," October 21, 2024, <https://www.reuters.com/world/asia-pacific/pakistan-empowers-parliament-pick-countrys-top-judge-2024-10-21>.

²³ Pakistan Institute of Legislative Development and Transparency (PILDAT), *Assessment of the Twenty-Sixth Constitutional Amendment* (Islamabad: PILDAT, 2024).

struggle for judicial independence. Passed without parliamentary debate, the amendment has been widely criticized by legal experts as the most serious attack on the independence of judiciary. Among its most controversial provisions is the reconstitution of the Judicial Commission, where the number of judicial members has been reduced and non-judicial members have been increased. This move compromises the separation of powers and independence of judiciary. The creation of constitutional benches raises fear of selectively assigning judges in politically sensitive cases. The most controversial provision is the manipulation of the Chief Justice's appointment: senior judge Justice Mansoor Ali Shah who was going to be the new chief justice was bypassed, and Justice Yahya Afridi was appointed contrary to the seniority principle. Now, the Chief Justice will be appointed by majority party in the Parliament from the top three senior judges, and this will increase the political influence in the judiciary. In addition, the amendment also reduces the judiciary power by curtailing the Chief Justice's suo motu powers. New methods to pressurize the independent judges were introduced such as the term "inefficiency" as a ground for dismissal of judges because the term was not clearly defined and could be used for political victimization. The appointment, monitoring and removal of judges by the parliament is against the spirit of theory of separation of power and independence of judiciary. These reforms do not enhance accountability and it has nothing to do with the supremacy of parliament; rather, they threaten judicial independence and increases executive influence in the judiciary. This amendment will undermines public trust and discourages bold rulings. The long term implications are severe. Public confidence in the judiciary is decreasing, and the perception of impartiality is weakening. International organizations like the United Nations and the International Court of Justice, have expressed concern over the passage of amendment and consider the amendment as a violation of international norms of judicial independence. Moreover, the amendment is also being challenged in Pakistan's courts. The future of Pakistan depends on preserving the independence of judiciary. Without it, the rule of law, human rights and justice system of the country will be in danger.

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