



Sociology & Cultural Research Review (SCRR)
 Available Online: <https://scrrjournal.com>
 Print ISSN: 3007-3103 Online ISSN: 3007-3111
 Platform & Workflow by: [Open Journal Systems](#)



Recalibrating Judicial Power: An Analysis of Pakistan's 26th Constitutional Amendment and Its Democratic Implications

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ABSTRACT

The 26th Constitutional Amendment (2024) to Pakistan's 1973 Constitution represents a pivotal shift in the country's judicial landscape, recalibrating the balance between judicial independence and political accountability. This amendment introduces sweeping reforms, including the restructuring of the Judicial Commission of Pakistan (JCP) to grant greater influence to parliamentary and executive actors in judicial appointments, replacing the seniority-based selection of the Chief Justice of Pakistan (CJP) with a politically mediated process, and imposing new restrictions on the Supreme Court's suo motu jurisdiction under Article 184(3). Proponents argue these changes enhance transparency and curb judicial overreach, while critics warn they risk undermining the separation of powers and eroding the judiciary's role as a constitutional check on executive and legislative excesses. Drawing on comparative constitutional frameworks such as India's NJAC judgment (2015) and Kenya's judicial reforms this analysis assesses whether the amendment strikes a sustainable balance or facilitates democratic backsliding. The amendment's vague "inefficiency" clause for judicial removals and its politicization of bench formations raise concerns about executive encroachment and the erosion of institutional autonomy. Historical precedents like the Al-Jehad Trust case (1996) and the Lawyers' Movement (2007) underscore the judiciary's contested role in Pakistan's democracy, highlighting tensions between judicial activism and majoritarian governance. Pending Supreme Court challenges to the amendment may test the viability of a "basic structure doctrine" in Pakistan, mirroring India's constitutional jurisprudence. Recommendations for reform emphasize transparent appointments, depoliticized performance evaluations, and institutional safeguards to reconcile accountability with independence. The 26th Amendment thus encapsulates a broader constitutional dilemma: whether democratizing judicial processes necessitates sacrificing judicial independence, or whether a middle ground can preserve both democratic legitimacy and the rule of law.

Keywords: 26th Constitutional Amendment, Judicial Independence, Judicial Commission of Pakistan (JCP), Chief Justice of Pakistan (CJP), Suo Motu Jurisdiction, Separation of Powers, Basic Structure Doctrine, Democratic Backsliding, Pakistan 1973 Constitution, Judicial Accountability.

Introduction

Judicial independence has always been a key part of Pakistan's democratic setup. Article 175(3) of the 1973 Constitution clearly states that the judiciary must work separately from

the executive branch. This principle supports the idea that no single institution should have all the power and that each branch of government should be free to do its job. But in practice, this idea has faced many challenges. Over the years, Pakistan's courts have had to deal with pressure from military takeovers, interference from the executive, and at times, pressure from Parliament. After the famous lawyers' movement and the restoration of judges in 2009, the judiciary, led by Chief Justice Iftikhar Muhammad Chaudhry, began to play a more active role in holding the government accountable (Yusuf, 2018). While this strengthened the courts' role, it also raised questions about judges going beyond their limits, secretive appointments, and lack of accountability. In this context, the 26th Constitutional Amendment, passed in 2024, was introduced to bring major changes to how judges are appointed, how the Chief Justice runs the courts, and how judges can be removed from office.

According to the government and lawmakers who supported the 26th Amendment, these changes were necessary to make the judiciary more open, efficient, and connected to the public. They argue that the current system gives too much power to a small group of senior judges, which limits transparency and allows elite control over important decisions (Ahmed, 2024). The amendment introduces changes like reducing the Chief Justice's sole authority in forming benches and taking suo motu actions under Article 184(3). It also expands the role of Parliament in appointing judges and adds a new reason "inefficiency" for removing a judge, alongside misconduct or poor health. Supporters say this will make judges more answerable and stop the system from favoring a select few. But many lawyers, judges, and legal experts disagree. They believe that the amendment goes too far and weakens the judiciary's independence by opening it up to political influence (Siddique, 2024). Critics say that letting politicians play a bigger role in selecting and removing judges could lead to biased decisions and make it harder for the courts to act freely and fairly.

This amendment begs the question, is it really rendering the courts more democratic and transparent or is it giving away their independence under the garb of making the courts more democratic? This article proposes the thesis that although, indeed, some overhaul is necessary, namely, enforcing accountability and justice of judicial appointments, the 26th Amendment, as it stands now, is too politically inclined. This might destroy the equilibrium of democracy that the Constitution attempts to strike. The harmful effects of such changes can be long-lasting in the countries where institutions are just developing, and they are not traditionally or explicitly guarded by law yet. In order to shed some light on this problem, the paper will compare the situation in Pakistan to the juridical judgments in others countries, including the Indian Supreme Court ruling to reject the NJAC in 2015 because it interfered with the basic structure of their Constitution. It shall also consider the Kenyan model of judicial appointments and important decisions in Pakistan such as the Al-Jehad Trust case. In this comparison, the article will look at whether the 26th Amendment has got the balance between accountability and independence or it will compromise the already indigent Pakistani democracy by causing a disproportionate transfer of power to the politicians.

The Historical Evolution of Judicial Power in Pakistan

The history of judicial power in Pakistan is heavily entrenched in the stormy constitutional and political history and judiciary has been seen to swing between the shadows of submission and struggle with the executive authority. A major milestone is the Maulvi Tamizuddin Khan case (1955) in which the Federal Court ratified the decision of Governor General to dismiss

the Constituent Assembly putting the judiciary under the whims and fancies of the executive (Newberg, 1995). Not only did this ruling legitimize unlawful acts in the name of the so-called doctrine of necessity but it did set a precedent of executive overreach. *State v. This* doctrine was further entrenched by the *Dosso* (1958) ruling which the judiciary upheld the military coup that was staged by General Ayub Khan through the Hans Kelsen legal positivism theory of the law. This ruling reinforced a trend according to which the regime changes that were unconstitutional afterwards were retroactively legalized by the courts. Nonetheless, the Supreme Court started recovering judicial space and particularly on judicial appointments in the *Al-Jehad Trust* case (1996) in which it held that the executive could not unilaterally appoint judges without any proper consultation with the Chief Justice. This was the emblematic case which was designed to bring constitutional balance into the equation by making the independence of the judiciary stronger when it comes to appointments.

These developments are a massive correction to the judicial appointment system in Pakistan as the 18th and 19th Constitutional Acts (2010 and 2011) constituted a Judicial Commission of Pakistan (JCP) and a Parliamentary Committee (PC). The aim was to create a compromise between the judicial independence and democratic accountability. The JCP, which is headed by the Chief Justice, is made up of the senior-most judges, a retired judge, the Law Minister, and a Pakistan Bar Council representative and it was assigned the responsibility of proposing judicial appointments and the PC looked at them. But eventually the effectiveness of such arrangement was called into question. The failure to provide transparency and internal checks in the JCP was further criticized between 2010 and 2024. The monopoly of the power in the hands of the Chief Justice was often noted, as there were fears that the procedure had become a kind of judicial oligarchy (Khan, 2023). Whereas the formation of the JCP was a much-celebrated democratizing act, the paradox concerning it was that select few people gained the center stage of decision-making, and reforms were demanded to make the process more generalized, with a set of criteria and more oversight by the parliament, which serves as a backbone to the drive behind the 26th Amendment.

Subsequent judicial cases following the *Al-Jehad Trust* case solidified and established the judiciary as taking first place in the process of appointment. The 1998 ruling in the *Malik Asad Ali* case by the Supreme Court reinstated the need of binding consultation with the Chief Justice in the judicial appointment in the case. The case of *Munir Hussain Bhatti* (2011) used the JCP recommendations to say that they were binding to the Parliamentary Committee further denying the executive the space to maneuver. All these rulings had contributed to the constitutional jurisprudence that has placed the judiciary as custodian of its institutional limits. However, these growths also created another issue of insulation of judicial authority with respect to external accountability. The absence of any kind of opposition in JCP, the veil of secrecy regarding selection, and growing dissatisfaction by bar councils and civil society groups depicted that absolute judicial discretion had a potential to breed favoritism and inertia (International Commission of Jurists, 2021). As a result, the judicial primacy formerly promoted as a custodian of independence was itself put into question due to its supposed misuse of higher values of transparency and democratic representation.

The period before the 26th Constitutional Amendment was faced with increased tensions between the judicial supremacy and the demand of systemic accountability. The 2024 amendment, which aims to equalize this imbalance, tries to do so by changing the

composition and operation of the JCP, in particular by enhancing parliamentary representation and making its appointment more consultative. The advocates say this action returns to the essence of constitutional democracy, whereby checks and balances will dominate institutional hegemony. The amendment may, however, weaken judicial autonomy by encouraging political intrusion by critics (Siddique & Khattak, 2024). This paradox highlights the challenge of a long-standing problem of satisfying autonomy against accountability. The history indicates that neither the extreme control of the executive power nor its absolute immunity to judicial control is in the interests of the democratic project. Rather, a re-conceptualised framework in which judicial excellence and transparency and parliamentary legitimacy can be balanced out can be regarded as a sustainable way forward. So the 26th Amendment is not just a legal adjustment, it is a constitutional negotiation over the kind of power, the kind of institutional integrity and what the judiciary should mean in a democratic state.

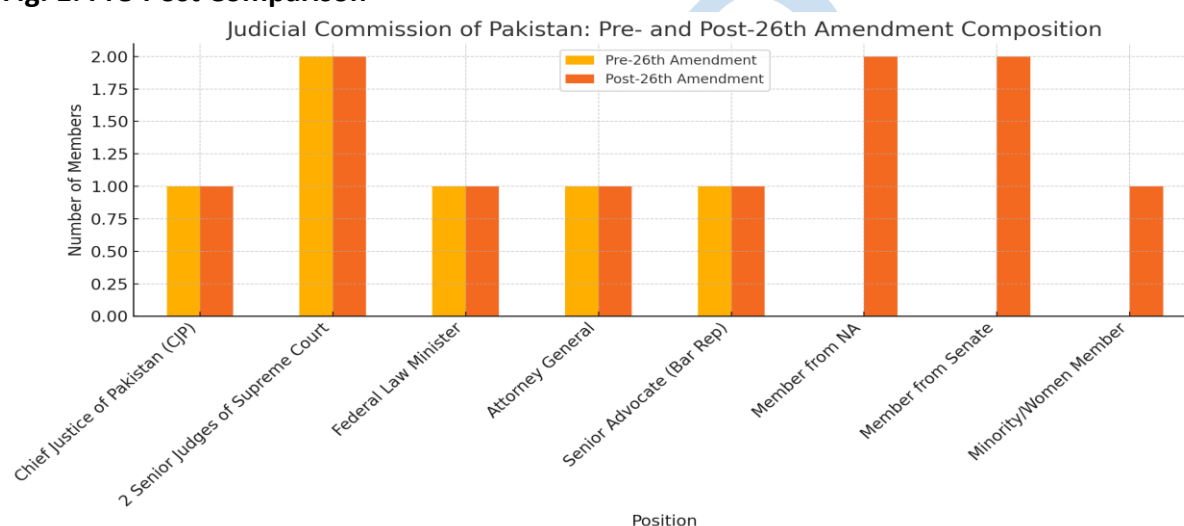
Key Changes Brought by the 26th Amendment

The 26th Amendment changed the very nature of the Judicial Commission of Pakistan (JCP) into a politically controlled institution, which was previously headed by judges. The JCP was a seven-member body with a majority of members in the judiciary, and which guaranteed internal judicial control under the 18th and 19th Amendments. The commission is however constituted today after the amendment of 13 members, two members of the National assembly, two senators (appointed by ruling and opposition leaders), one minority (gender or religious) member hence the judicial members are outnumbered (Qaiser, 2025; Wikipedia contributors, 2025). Opponents argue that this has placed the power of selection of judges squarely in the hands of parliamentary majorities, a factor that weakens the independence that the proponents of the courts had hoped to enhance (Qaiser, 2025). This amendment therefore substitutes the self-regulation by the judiciary with political gate keeping which increases the chances of patronage and reduces meritocracy in the appointment of judges in the supreme courts. Past practice is that the retiring senior-most Supreme Court judge was automatically appointed by constitutional convention the Chief Justice of Pakistan (CJP). The new amendment reverses this convention: the new CJP will be chosen by a special committee in parliament (8 NA + 4 Senate) out of the three senior-most judges, and only serve three years (Reuters, 2024; Wikipedia contributors, 2025). Although disguised as a democratic change to detract the established judicial elitism, this politicizes what was a transparent and predictable succession model. According to specialists this shift introduces a degree of uncertainty and partisanship into the nation's most visible judicial position which may bring the supremacy court into line with the intentions of the legislature instead of the objective pursuit of justice (Courting the Law, 2024).

The 26th Amendment relocates the powers of the Chief Justice over the constitutional benches to hear the constitutional and original jurisdiction cases to the JCP who has been granted the power to constitute and manage the constitutional benches (Dawn, 2024; Qaiser, 2025). This is in contrast to the tradition in the past where the Chief Justice used to form benches independently as per Article 184 (3). The institutionalization of this procedure in a commission places bureaucratic processes above personal judicial decision and this poses a danger of political influence in the assignment of cases. The critics are afraid of the possibility that they can be used to direct sensitive constitutional petitions into benches which are

considered to be favorable to the governing coalitions (Verfassungsblog, 2025). The amendment also places procedural restraints on *Suo Motu* powers, which the Supreme Court had been undertaking freely under Article 184(3), on issues of public interest or issues of fundamental rights. Under the new order of things, only constitutional benches that were formed by the JCP can start *Suo Motu* action and not the Chief Justice per se (Jurist, 2024). This institutional gatekeeping adds delays and filters that limit dramatically the capacity of the court to respond rapidly to impending rights abuse or governance failure. Critics believe that such a shift compromises a critical constitutional protection and reduces the judicial receptiveness and its protectionist capabilities in enforcing rights (Jurist, 2024). In figure 1, the comparison of composition of the Judicial Commission of Pakistan before and after the 26th Amendment is given. The graph points to the huge growth in the level of political and parliamentary representation after amendment which suggests that it was dominated by judges and it has changed into a more politically dominated organization.

Fig. 1: Pre-Post Comparison



Historically, the Supreme Judicial Council (SJC) could only recommend removal of justices on grounds of willful misconduct or incapacity under Article 209. The 26th Amendment introduces a new and vaguely defined criterion: inefficiency (Courting the Law, 2024; ICJ / Dawn, 2024). This expansion grants the executive-influenced SJC discretion to dismiss judges based on performance without clear definition or objective standards. Observers warn that the term “inefficiency” is highly subjective and may be weaponized for political reprisal against independent-minded judges (ICJ/Dawn, 2024). The absence of defined thresholds opens the door to removal of judges for dissenting decisions under the guise of administrative inadequacy.

Theoretical and Comparative Framework

The 26th amendment to the constitution has to be viewed in the perspective of constitutional theory, more specifically the philosophy behind separation of power, independence of the judiciary, and independence of institutional autonomy. Classical constitutionalists such as Montesquieu insisted on the importance of avoiding concentration of power by decentralizing the exercise of power among independent institutions (Vile, 2021). It is in this respect that judicial independence is not only an ideational goal but also a structural requirement to uphold checks and balances that are critical to an effective constitutional democracy. This principle has been rooted in Article 175(3) of the Constitution of Pakistan

which requires the separation of the judiciary and the executive. Nonetheless, the 26th Amendment, with its modification of the creation and composition of the Judicial Commission of Pakistan (JCP) has steers the judiciary towards a politically leashed model, and this raises concerns in the light of this fundamental tenet. Given that the amendment transfers decision-making power to political players in the JCP, as well as a weakening of the position of the Chief Justice in terms of bench composition, the question arises whether the judiciary can still serve as a counterweight of sorts between the encroachments of legislatures and executives (Cheema & Gilani, 2024).

In comparison, a precedent can be found in the experience of India with the National Judicial Appointments Commission (NJAC) Act of 2014. The NJAC was aimed at amending the collegium system with the commission that involved the members of the executive, and the civil society. Nevertheless, in the infamous Supreme Court case of *Supreme Court Advocates-on-Record Association v. Union of India* (2015), the Court struck down the NJAC by employing the doctrine of basic structure, concluding that the supremacy of the judiciary in the process of appointment is central to the basic structure of the Constitution (Bhuwania, 2019). The Indian courts argued that the basic characteristic of judicial independence could not be undermined even through a democratically legislated law. This ruling provides valuable comparative analysis: in cases where decision-making in the process of appointing judges is one-sided (with executive and legislative players taking the upper hand), the equilibrium of the concept of separation of powers is disrupted. In the Pakistani context, it can be speculated that the 26th Amendment seems to trespass on a comparable constitution red-line by recalibrating the structure of judicial appointment and control in a method that could impede institutional independence (Zia, 2024). Pakistan does not, however, formally entrenched a basic structure doctrine as is present in India; hence the possibility of structural dilution through the guise of democratic amendment may be greater there.

The theoretical conflict is even more severe when it is considered through the prism of the institutional independence. According to the arguments presented by constitutional theorists such as Elster (2020), Ginsburg & Melton (2017), the institutions obtain their legitimacy not only through the procedural legality but through the ability to work independently of the coercive means. The 26th Amendment has the effect of undermining the self-governance supposedly enjoyed by the judiciary through the ability to influence the appointment of Chief Justices, form constitutional benches and even initiate an attempt at removal over broad grounds of supposedly being inefficient. It twice makes the judiciary no longer a constitutionally co-equal branch but an institution that is becoming more vulnerable to the majoritarian pressure and the partisan manipulation. In this respect, the amendment is part of a wider global process of democratic backsliding, which involves constitutional amendments to formally reorganize institutions in a manner that reduces accountability and checks and balances (Levitsky & Ziblatt, 2018; Roznai, 2020). In such a way, being presented as the improvement of the accountability and transparency of the judicial system, the 26th Amendment can actually institutionalize some sort of ascendancy of the executive branch at the expense of judicial independence and the long-term viability of democracy in the United States.

Democratic Implications of Pakistan's 26th Constitutional Amendment

Under the 26th Constitutional Amendment, the boundaries of judicial independence within Pakistan are altered in a major way. The amendment diminishes the institutional independence of the judiciary in Pakistan and the constitutional promise of independence rider in Article 175(3) by replacing the seniority-based principle of appointment process of the Chief Justice of Pakistan with a politically-influenced process of appointment and redistribution of powers to the Judicial Commission of Pakistan (JCP). Earlier, the judiciary exercised functional control over the composition and leadership of the judiciary and thus was insulated against blatant political influence. The amendment brings in a structural vulnerability since it politicizes appointment and disciplinary processes, integrating political players. Such a change converts the judiciary into a more of a potential object of executive action rather than a relatively independent arbiter and leads to the deterioration of its ability to act as a neutral protector of constitutional norms. Empirical research on the judicial independence highlights that in the case of judicial appointment or removal based on the partisan control of the procedure, judges lose their integrity and credibility in the long-term (Ginsburg & Versteeg, 2015; Larkins, 2021). This is a shift reminiscent of trends in hybrid regimes where the centralization of control is achieved by making formal legal revisions in the disguise of reform (Levitsky & Ziblatt, 2018).

In addition, the amendment rearranges the balance between the system of checks and balances by undermining the historic role of judiciary as a constitutional check on the abuses of executive and legislative branches. The ability of the judiciary to counter possible infringements of the fundamental rights or unconstitutional governance is much diluted by transferring duties of forming constitutional bench and limiting suo motu power under Article 184(3). In the past, the courts of Pakistan, in spite of times of complacency, have also played a key role in restoring constitutional order in times of crisis, as with the Al-Jehad Trust case, to the Lawyers Movement of 2007 (Khan, 2023). This shift of power to the executive branch and away of the supervisory capacity of judiciary through the amendment creates a balance of power more prone to authoritarianism under the pretext of the law. In a democracy an effective judiciary that can review the judicial acts is required especially in postcolonial states whereby institutional structures are still being gelled (Choudhry, 2020). The amendment poses a momentous democratic query: Can a judiciary that has lost both grasp of power and independence be effective protector of rights and constitutional restraints?

Such rectification also rekindles conflict between the constitutionalism and parliamentary supremacy. Even though Parliament possesses sovereign law-making powers under the Constitution, such powers are not absolute. The Constitution or higher-order of a legal framework places both structures and normative limits to which the legislature must adhere. Placement of politically oriented discretion into the areas of judicial appointment, disciplinary authority and interpretive independence pushes the notion of parliamentary supremacy to the limits that it can clash against very fabric of constitutionalism. A word of particular concern regarding the amendment is the focus on the use of the term efficiency as the basis of removal listed in Article 209, which creates a confusing criterion that can even be used as a mechanism of weaponization against independent or dissenting judges. This is how the way to the politicization, executive interference, and loss of general trust toward the judicial procedures is opened. When the belief in institutional neutrality wears thin, the democratic legitimacy wears thin along with it. As soon as it becomes defined that a partisan or

subservient judiciary is perceived, the trust of the people in the justice as a check on democracy is jeopardized. Such is not an abstract issue, as in such nations as Hungary and Turkey, a decline in judicial independence has been a predictor of more general democratic regress (Sadurski, 2019; Scheppele, 2020). The same is the case in Pakistan today where that amendment, unless legally contested or otherwise restructured, may provide the grounds on which democracy is eroded under the aegis of the Constitution.

Judicial and Legal Response

The legal and judicial reaction to the 26th Constitutional Amendment is at a developing stage and a series of petitions against this clause in the constitution are also under consideration in the Supreme Court of Pakistan. The petitions are filed by the Pakistan Bar Council and more prominent legal institutions such as Supreme Court Bar Association challenging the legality of the amendment on the grounds of violation of judicial independence as guaranteed by the Constitution under Article 175(3) in 1973. According to petitioners, the amendment upsets the structural balance of power through the replacement of the seniority rule in the appointment of the Chief Justice, and the reformation of the Judicial Commission of Pakistan (JCP) to the inclusion of political actors who have a decision-making role, and this is a breach of a settled constitutional norm. The constitutional moment of the cases pending before the apex court is important because they will help in determining whether the institutional autonomy of the judiciary can be supplanted by a legislative fiat or whether there are substantive limits based on the very constitution in the Constitution that cannot be went into by Parliament.

Pakistan Supreme Court has played the role of a custodian of judicial independence although in an inconsistent manner. Such case laws as *Al-Jehad Trust v. The basis of the seniority principle of judicial appointment was laid in Federation of Pakistan* (PLD 1996 SC 324) where it was interpreted that Articles 177 and 193 require senior judges to be promoted unless there are strong reasons to depart. On the same note, *Sharaf Faridi v. Federation of Pakistan* (PLD 1989 Karachi 404) the courts pointed out separation of power and denounced the interference of the executive in the judicial role. *Munir Hussain Bhatti v. The judgment of Federation of Pakistan* (PLD 2011 SC 407) restated that the opinion of Chief Justice has binding effect in the appointment of judges thus highlighting judicial independence within the court. These precedents indicate that there exists a jurisprudential inclination towards protecting the judiciary against political capture, a tendency that will have to be overutilized with strong constitutional rationale especially where the Supreme Court is expected to retain its legitimacy and status as custodian of the constitutional order.

This changing scenario has also brought about a new debate whether the Supreme Court of Pakistan will or should apply a doctrine of basic structure like that used in the neighbour, India. The *Kesavananda Bharati v. State of Kerala*, (1973) and *Supreme Court Advocates-on-Record Association v. In Union of India* (2015) (the NJAC case), the Indian Supreme Court held that even the parliament cannot change the basic features of the Constitution, i.e., separation of powers, rule of law and independence of the judiciary as the parliament can not even amend them through constitutional amendments. Although the courts in Pakistan have not actually taken on a basic structure doctrine, such a doctrine has been discussed in dicta in a case such as *District Bar Association Rawalpindi v. The willingness by the Court to treat as beyond reproach some of the norms of the Constitution is indicated by Federation of Pakistan*

(PLD 2015 SC 401). Should the Supreme Court promote such a doctrine in the present confrontations it would be a revolutionary event in the Pakistani constitutional jurisprudence that would allow the Court to strike down any adoption which undermines core values of democratic governance and institutional independence.

Recommendations and Way Forward

Following the judicial and constitutional crisis over the 26th Constitutional Amendment of Pakistan, there is a dire need of establishing a strong and transparent judicial appointing process that should also strike the balance of accountability and independence. First, institutionalization of transparency concerning judicial appointments should be practiced. These consist of advertising standards of elevation, publishing of deliberation summary of the Judicial Commission of Pakistan (JCP), and provision of civil society checks with non-partisan observers. The example of any comparative model, like the Judicial Appointments Commission in the United Kingdom, provides a good point of comparison in which a merit-based, consultative system is entrenched without undermining the independence of the courts. The judiciary of Pakistan can shift to an open call system of appointment to High Courts and the Supreme Court based on legal experience, opinions, scholarship, and integrity evaluated by panels that have a predominant number of members who are judges, shielding the procedure against politics.

Second, objective and depoliticized systems of performance evaluation of judges have to be introduced, and far too much room should not be left to executive and parliamentary actors. It should be measured in terms of measurable variables like disposition of cases, good quality of judgments, behavior in courts and integrity but there should be an independent assessment of it done by a judicial council and not political appointees. Although Article 209 has already given the Supreme Judicial Council (SJC) the authority to issue removal of misbehaving or incapacitated judges, the new clause referring to efficiency as defined in the 26th Amendment still is quite vague and susceptible to abuse. The term has to be clearly defined in statute law, and any recommendation to remove should go through multiple levels of scrutiny with peer review, documentary proof and defence. By making the SJC more transparent, diverse, and implementing procedural safeguards, accountability mechanisms will not be used to seek to intimidate or coerce the judges.

Lastly, moving forward will ultimately need to get the institutional boundary between the Parliament and the judiciary straight and make sure that no arm of the state can impose on the constitutional mandate of the other. The recent case of constitutional crisis exemplifies a fundamental confusion in terms of the balance of power. One way through which this conflict may be minimized is that Pakistan may think of introducing a full-court reference mechanism as a consultative method where all the sitting judges of the Supreme Court can come up, collectively, and deliberate on constitutional issues that are of institutional significance including those pertaining to amendments that affect the judiciary. This would not only be a democratizing step towards internal judicial deliberations, so far as the criticisms of the Chief Justice are considered to constitute a one-man court, but it would also point to institutional unity, and increase the legitimacy of decisions of the Court. Also, there must be a clear mechanism of review of constitutional amendments as a major part of parliamentary law-making which should include stringent constitutional review including referenda or

supermajority consent regarding amendments which alter the structure of the constitution like separation of powers, judicial independence etc.

Conclusion

The 26th Amendment of the Constitution of Pakistan has become a milestone in the constitutional evolution of the country especially in the way it alters the balance of power between the judiciary, the executive and the legislature. Although it has been reported as a reform, meant to increase accountability and efficiency of the juderies, the amendment has raised fundamental concerns of whether and how it would affect the judicial independence. The amendment also transfers the power out of an insulated judiciary to politically controlled units by modifying the composition and the power of the Judicial Commission of Pakistan, redefining the procedure of appointment of the Chief Justice, setting procedural limit to suo motu jurisdiction and backdoor imposition of generalized removal grounds in the new clause on efficiency. This rearranging of the cards bring up the issues of the separation of powers and whether the balance of the whole constitution so paramount to democratic rule has been breached to achieve a short-time political gain.

In a larger context, the amendment is likely to lead to a gradual loss of faith in the neutrality and autonomy of the judiciary by the population. When judicial institutions are supposed to become the custodians of constitutionalism and fundamental rights, the heightened political influence in judicial affairs can create possibilities of executive interference, lowering of internal institutional solidarities and the capacity of the courts to monitor the arbitrariness of governance. Although the necessity to change is not a subject of debate especially with regard to standards of transparency, efficiency, and judicial appointments diversity the direction to such change must be consultative, constitutional and based on consensus. In the future, it would not be sufficient to secure judicial independence against any form of legislative usurpation but rather a principled adherence to constitutional standards, institutional self-restraint and involvement in the democratic process of democratic rule. It is only with such a precarious balance that Pakistan will be able to enhance its democratic institutions with justice being independent, credible and available to all.

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