



The 26th Constitutional Amendment in Pakistan: A Threat to Judicial Independence and Democratic Governance

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ABSTRACT

In October 2024, Pakistan adopted the 26th Constitutional Amendment that encompassed various controversial provisions on the judicial system in that country. This Amendment had a new process of appointing the Chief Justice by a parliamentary committee, restricted the suo motu power of the judiciary, and comprised political leaders in the Judicial Commission of Pakistan. Although the government defended these reforms by saying that they were needed to make their system efficient, the critics are of the view that they threaten the sovereignty of the judiciary and are an assault on the concept of separation of powers that was featured in the Constitution. The Amendment was hurriedly put across without proper discussion in parliament and the involvement of key players, which casts doubts on transparency and adherence to democratic conventions. The Human Rights Commission of Pakistan and the International Commission of Jurists have gone ahead to criticize the Amendment to the extent that they termed it unconstitutional and politically-driven. The paper is a critical review of the text of the Amendment, legal implications, and the political context of the same, which will conclude that the Amendment is a great threat to judicial independence and democracy in Pakistan.



Introduction

Pakistan adopted the 26th constitutional Amendment in October 2024, a law that introduced major changes to its judicial system, especially on how the Chief Justice of Pakistan is appointed (Khan et al., 2022). This Amendment supersedes the old system of seniority, which had in place a parliamentary committee of twelve members who selected the Chief Justice to occupy the office after a given term of three years among the three senior-most judges (Qureshi, 2025). The

Amendment also transformed the Judicial Commission of Pakistan (JCP) to involve parliamentarians, the Law Minister, the Attorney General, and other political figures when appointing judges to judicial positions (Mehboob et al., 2025). It also limited the suo motu authority of the Supreme Court, which means the Supreme Court no longer has the right to act independently, which casts doubts on a lack of transparency and executive overreach.

Legal experts, opposition parties, and international organizations have been very critical of the Amendment. The International Commission saw it of Jurists as an assault on judicial independence and a breach of the separation of powers (Haider, 2025). The Human Rights Office warned that such reforms endanger the liberty and objectivity of the judiciary (Muhammad et al., 2024). According to the complaints of all the bar associations in the country, the Amendment allows political interference in the decisions of the court. According to opponents, the courts will no longer be able to check and balance the executive (Saifulislam et al., 2025).

Research Justification

The 26th Amendment of the Constitution is one of the many changes in the legal and administrative environment of Pakistan. It has far-reaching consequences for the tribal areas, the political arena, human rights, and democracy. The goal of the consolidation of the Federally Administered Tribal Areas (FATA) and Khyber Pakhtunkhwa (KP) was to counter decades of institutional marginalization. Nevertheless, the adoption of this reform should be reconsidered.

It is significant to know the implications of the Amendment due to a number of reasons. To start with, it gives an understanding of how constitutional amendments can be used to broaden the rights of the citizens and abolish parallel justice systems, which include their colonial-era regulation, the Frontier Crimes Regulation. Second, the Amendment is used as an example to consider how the introduction of inclusion may be both radical and provocative, particularly in ethnically and culturally diverse areas.

Moreover, the given study is essential in evaluating the possibilities of legal reforms' success and their influence on influential integration. Nevertheless, the newly united regions have had a deficiency of infrastructure development and administrative preparation. It has been the gap that has demonstrated the difference between what is written on paper and what is done on the ground. The purpose of this report is to discuss the strengths and weaknesses of the 26th Amendment and its implications so as to inform future policy and constitutional debate in Pakistan.

Research Objectives

1. To discuss the historical context of the 26th constitutional Amendment.
2. To highlight the theoretical context of the 26th constitutional Amendment.
3. To analyze the laws regarding the 26th constitutional Amendment.
4. To identify the key challenges regarding the 26th constitutional Amendment.
5. To explore the opportunities for the 26th constitutional Amendment.
6. To propose effective prevention and intervention strategies.

Research Methodology

This study employed a systematic review methodology, with research objectives established accordingly. A comprehensive literature review was conducted (Komba & Lwoga, 2020). Research findings were categorized based on their content (Hiver et al., 2021; Petticrew & Roberts, 2006), and classified information was incorporated into the study by organizing it into headings

(Gan et al., 2021; Pawson et al., 2005). The evaluation of classified information and titles formed the basis of the study (Page, 2021; Rahi, 2017), ensuring the integrity of the research subject and its contents (Egger et al., 2022; Victor, 2008). The criteria for selection are listed.

Relevance: Researches that directly addressed the questions posed by this study are included.

Quality: Studies that meet a certain quality threshold (e.g., methodological rigor, bias risk) are included. Most of the research is from Scopus-indexed and Clarivate Analytics journals and reputed publishers.

Recency: Consideration of the publication date to ensure that the review reflects the most current evidence. Most of the studies are from the last three years.

Language: Only studies published in English are included.

Data Completeness: Previous studies must provide sufficient data on outcomes of interest for practical synthesis; it is also ensured in this research.

This study did not use primary data from human participants; therefore, no ethics clearance letter from the ethics committee was required.

Literature Review

Negative reaction to the 26th Constitutional Amendment has been envisaged, especially on the aspects of its perceived interference with judicial independence. The opponents tend to use academic and press views to back up their claims (Khan et al., 2022). The Amendment was secretly passed in a late-night session, and under duress, which also poses the question of the judicial system being politicized into the executive. It is a blow to the capacity of the judiciary to check and balance (Nawaz & Bexci, 2025). Tripathi and Kumar of Constitution Net believe that the reforms force the judiciary to follow the executive, hence defeating its purpose of being an independent branch of power. Consequently, the independence of the judiciary is grossly indicted, and the Amendment overturns decades of uniformity and equity in the practice of law (Qaiser & Jamil, 2025). Legal theorists are examining these changes in terms of their structural implications.

The Dawn reported that UN human rights chief Volker Turk has made this statement, indicating the Amendment was hasty and not consultative, and may lead to catastrophic consequences to judicial independence (Qureshi, 2025). The Amendment has been described by the International Commission of Jurists (ICJ) as an attack on judicial independence, with the party politics on the appointment and operation of judges more than it has ever been. Analysts such as Neha Tripathi are concerned that the restructured bench system based on the reconstituted Judicial Commission of Pakistan (JCP) in a majority party-dominated setup may be a way to fulfill executive interests as opposed to promoting justice (Rafiq et al., 2025). This literature gives a critical point of reference in assessing the undesirable implications of the Amendment in the separation of powers, rule of law, and democratic legitimacy (Rajper et al., 2024).

Historical Context of the 26th Constitutional Amendment

Over the history of Pakistan, the judicial system has contributed to striking the balance of power between the institutions in the country (Mehboob et al., 2025). The most notable milestone in the independence of the judiciary was the Lawyers' Movement (2007-2009), which resulted in the recovery of Chief Justice Iftikhar Muhammad Chaudhry, who opposed military and executive

supremacy (Umar et al., 2025). Judicial appointments were finally reformed in 2010 and 2011 by the 18th and 19th Amendments. These changes created the Judicial Commission of Pakistan (JCP), which aims to decrease the influence of politics on the appointments and improve the level of transparency in the selection process (Muhammad et al., 2024).

Nevertheless, during the 2020s, the judicial and executive branches became too dependent on each other, and it was especially worrisome about the high-profile political cases where former Prime Minister Imran Khan was involved (Haider, 2025). Opponents alleged that the ruling party was threatened by the aggressiveness of the courts. This tension reached a contentious vote late that October 2024 that brought a set of reforms that consisted of restrictions on suo motu powers (Khan et al., 2022), alterations in the procedure of appointing the Chief Justice, and the inclusion of political figures into the JCP. Many legal experts perceived these reforms as interference with the independence and the historical autonomy of higher courts in Pakistan (ICJ) (Qureshi, 2025).

Theoretical Context of the 26th Constitutional Amendment

The 26th Constitutional Amendment can be critically evaluated using some of the basic theories of the Constitution, especially on the separation of powers, independence of the judiciary, and the rule of law. In order to ensure a successful checks and balances system, the judiciary should not be dependent on the executive and legislative branches as has been stipulated in the theory of separation of powers.

Nevertheless, the Amendment gives the power to a parliamentary committee, which is mainly constituted by the ruling party folk, to make the appointment of the Chief Justice of Pakistan. This setup erodes the fundamental tenet of judicial independence. Alexander Hamilton, in the Federalist Papers, explained the judiciary as the least dangerous branch of the government because it lacks the power to control the military and financial resources. Its strength is based mainly on the trust of the people and institutional autonomy.

This independence is at risk of being compromised by the inclusion of political players into the Judicial Commission of Pakistan, and undermining the judiciary in supporting the ideals of Hamilton. Moreover, the rule of law, as formulated by A.V. Dicey, focuses on the fact that government acts should be subjected to law and therefore the need to have independent courts that would safeguard the rights of citizens. The Amendment limits the liberty and objectivity of the judiciary by introducing performance reviews as well as limiting the sui-generis powers, and this, finally, compromises the protection. Theoretically, the Amendment goes against the concept of constitutionalism by weakening the power of the judiciary and establishing barriers to democratic accountability.

Laws Regarding the 26th Constitutional Amendment

Necessary legislation has a great influence on the judicial and constitutional system of Pakistan because the laws guarantee the observance of ethical values and judicial independence. It is critical to scrutinize such amendments, especially the 26th Amendment to the Constitution, which reorganized the judicial system of appointments and jurisdiction.

Constitution of Pakistan, 1973: This is the law created through this document. Article 175A involves the appointment of the judges, and Article 209 is the accountability of the judges. Article 175A was changed by the 26th Amendment, and a parliamentary committee took the place of judicial oversight, which gave rise to the issue of the autonomy of the judiciary and the possibility of executive interference.

Judicial Commission of Pakistan Rules, 2010: These regulations provide the way of nominating the judges. The new Amendment weakens the work of the commission, which threatens to compromise transparency and appointments on merit, which is one of the major aspects of ethical governance.

Legal Practitioners and Bar Councils Act, 1973: This act regulates the ethics and professional conduct of lawyers. Bar councils have criticized the 26th Amendment as an act of betraying the ideals of independence and equity.

Ordinance of Contempt of Court, 2003: This ordinance safeguards the honor and powers of the courts. Law academics are also concerned that the Amendment can give way to political meddling, and thus a lack of respect and adherence to the court ruling.

Challenges for the 26th Constitutional Amendment

Absence of Transparency: The Amendment was adopted late in a sitting and without much or any debate, which was a concern in regard to transparency. Such non-transparency renders the legislative intent, the process, and the outcomes hard to comprehend and criticize by scholars, lawyers, and civil society.

Amendment criticism: The opponents of the Amendment, such as lawyers, bar associations, and human rights activists, are pressured and even threatened. This fear suppresses dissent and impairs the possibility of an open expression, and any academic and legal analysis becomes a threat and limiting.

Political Influence: The politicization of the judicial system is one of the greatest problems of the 26th Amendment. According to the Amendment, the ruling party gets the power to appoint the Chief Justice. This forms a conflict of interest that interferes with an objective study of the Amendment, including legal evaluations with political evaluations.

Media Publicity: A significant number of citizens do not have a clear-cut knowledge of the constitutional procedures and judicial independence. This state of affairs weakens the demands of accountability among the people, and a review process that is limited to lawyers, but not to a significant degree of civic involvement.

Opportunities for the 26th Constitutional Amendment

Academic and Legal Involvement: The Amendment has given way to the heavy constitutional scrutiny and legal involvement by universities, think tanks, and legal forums to evaluate the constitutional framework of Pakistan critically. Other democracies can offer other examples that guarantee the objectivity and independence of the judicial system.

Civic Awareness and Advocacy: The general reaction of the citizens to the Amendment can be channeled to the development of healthy civic education. The NGOs, Bar associations, and media can create awareness among the masses on the significance of the judiciary in a democracy. They are also able to mobilize citizens to take part in legal reform movements in order to make the judiciary accountable by actively participating in the reform campaigns.

Constitutional Reforms: The argument of the 26th Amendment gives a viable chance of constitutional reforming, even though in a moderate way. The Articles 175A and 209 can be reviewed by lawmakers, law practitioners, and civil society to bring about improved judicial

control as well as minimize the unwarranted executive and parliament interference. Such a strategy might allow creating institutional balance and regaining of trust among people.

Enhancing Judicial Independence: The available conflicts can be used to put measures in place to ensure judicial independence. The judiciary can be more proactive by initiating court cases and petitions that concern the interests of the people, hence strengthening its constitutional role. It would create more transparency in the selection of judges on merit and the integrity of appointing judges without political influence.

Discussion

The judicial independence, transparency, and democratic accountability in Pakistan are a serious concern in the Amendment to the 26th Constitution. The problem of having a parliamentary committee give the authority to choose the Chief Justice, so that the judicial branch introduces political factors into the judicial system, and it should remain a neutral and independent institution. It compromises the concept of separate and independent powers and subjects judicial objectivity and integrity to ethical concern.

The Amendment was voted in late at night in a situation where there was limited debate and no consultations with the legal society, and the civil society was not consulted. This poor level of transparency indicates a worrying lack of observance of the norms of democracy and legal decorum. The critics claim that these measures are meant to limit the judiciary so that it is not a check on the executive power, and it is a requisite of a constitutional system. This course of action will also tend to undermine confidence in the justice system and cause instability in the core tenets of democracy, in which all arms of government should be answerable and autonomous to perform efficiently.

Conclusion

The 26th Constitutional Amendment has created a great controversy in relation to its effect on judicial independence and the constitutional balance in Pakistan. The reversal of judicial orders by the Amendment leads to the issue of political interference in the judicial system, especially in the appointment and the restrictions that were given to the Supreme Court. The Amendment has been criticized by legal experts and even civil and international organizations for weakening the rule of law as well as destabilizing the institutional checks and balances. An analysis of the existing literature also indicates that the constitutional provision on judicial independence in Pakistan ought to be maintained, and democratic ideals ought to be respected. What is more, it underlines the necessity of the reforms which will enhance the integrity and the internal structure of the judicial system, but not its weakening.

Recommendations

Empower bar councils: Build bar associations that can effectively work as watchdogs to any form of political interference in the judicial system.

Enable legal challenges: Allow civil society and legal organizations to challenge against development of amendments that are unconstitutional in court.

Ensure judicial independence: It is important to establish systems that ensure that the executive and legislative branches of governments do not interfere with judicial issues, and that the judicial system can be left to administer justice.

Fund academic research: This would fund universities and think tanks to review constitutional amendments critically and to provide policy advice.

Go back to merit-based judicial appointments: Revive the concept of seniority or develop new transparent and merit-based procedures to bring non-politics into the judicial appointment process.

Improve awareness of the law: Educate society more about the rights of the Constitution and the need to establish the independence of the judiciary, so that there is support for the reforms.

Make judicial reforms transparent: The judicial reforms and all the constitutional amendments should be openly discussed with the participation of the legal professionals, civil society, and citizens.

Protect the sovereignty of the Supreme Court: Ensure the executive is not unchecked by the Supreme Court, through the protection of the sovereignty of the Supreme Court, through guaranteeing its authority to hear on its own initiative.

Reform the Judicial Commission of Pakistan: The Judicial Commission of Pakistan needs to be reformed by including more judicial and legal experts and reducing the role of political actors.

Systems of Institute accountability: Put in place performance and ethical responsibility, which are transparent and accountable to judicial independence.

Research Limitations

There are various limitations of research on the 26th Constitutional Amendment in Pakistan. First, access to official documents, legislative discussions, and internal government deliberations is limited. This non-transparency does not allow for the formation of a complete picture of the intentions of the Amendment is going to and how it will affect it in the long term. Second, the Amendment itself is still being adopted, which means that there is not a lot of empirical data on its practical implications, and its results cannot be assessed efficiently. Third, the objectivity and bias of the analysis can be undermined by the use of biased sources, which are conditioned by the existing political polarization and sensitivity of judicial reforms. Fourth, the interpretations of the Amendment offered by different political forces, legal practitioners, and media houses tend to be different, and it may be hard to reach a consensus on the meaning of the Amendment. Fifth, Pakistan's politics are unstable and may shift very quickly, making the past evaluation irrelevant. Lastly, the absence of general awareness and the low level of involvement of the civil society as concerned with the Constitution leads to the narrowness of opinions. The restrictions mean that a person should be cautious about the interpretation of the research results and that it is vital to exercise continuous monitoring and update the research with the latest information as it is revealed.

Research Implications

The analysis of the 26th Constitutional Amendment in Pakistan is very important to the governance and the rule of law.

Comparative Frameworks: The paper promotes comparisons to other democratic systems, and it can help Pakistan improve its judicial governance and institutions.

Judicial Training: In this study, the need to train judges with specialization in areas of ethics, constitutional demands, and separation of powers is emphasized, aspects that are directed towards ensuring impartiality and integrity among judges.

Legal Advocacy: The bar councils, civil society organizations, and legal practitioners will be in a better position to promote the safeguarding of judicial independence as well as oppose political interference with the judicial system; this is due to the implications of the Amendment, focusing on the impact of the Amendment.

Policy Reform: The results can inform policymakers and legislators to reform judicial appointment processes to provide more transparency and judicial independence that is essential to maintain constitutional checks and balances.

Public Awareness: The study would facilitate measures that sensitize the citizens on their constitutional rights and judicial role, which would eventually boost civic education and responsibility.

Future Research Directions

More studies on the 26th Constitutional Amendment in Pakistan ought to be conducted on different dimensions in an effort to promote integrity and inform reforms:

Comparative Constitutional Analysis: Comparing the constitutional design of Pakistan with that of other democracies would help to identify the best practices that promote judicial independence and the creation of a strong system of checks and balances.

Impact Assessment: To effectively measure the actual consequences of the Amendment in practice, there is a great amount of research that should be conducted to measure the impact of the Amendment on judicial independence, the system of judicial appointments, and how courts will operate.

Legal and Institutional Reforms: Future theorizing must seek to present reform and policy suggestions that can empower the Judicial Commission, promote transparency, and promote merit in appointing judges.

Political Influence: It is possible to conduct studies about the level and nature of the political interference with the procedure of judicial appointments and the decisions made after the Amendment. The study is also expected to have some ways of how the neutrality of the judiciary can be maintained.

Public Perception and Awareness: Surveys and qualitative research can be used to determine how the general public is aware of judicial reforms and the levels of judicial legitimacy and independence that they have.

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