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# 26<sup>th</sup> Amendment, Pakistan's Constitution

## Background

The 26th constitutional amendment was introduced when the differences among judges were in public and there was a political crisis that hinged on the decision of the Supreme Court of Pakistan. This is not exceptional to 26th constitutional amendment. Earlier, many an amendment took place in similar circumstances. For example, at the time of the passage of 19th constitutional amendment judiciary nudged the parliament to pass an amendment favoring it and to carve out a system that provided control to the Chief Justice of Pakistan in the appointment of judges to the superior judiciary.

## Constitutional Amendments

27 amendments have been introduced through the 26th constitutional amendments to the constitution of Pakistan 1973.

### a. General Amendments

#### i. New Fundamental Right

- New Article 9A
- Clean, healthy and sustainable environment for citizens
- Justiciable

#### ii. Elimination of Riba

- Article 38(f) has been amended
- Riba shall be eliminated by 1<sup>st</sup> January 2028
- Non-justiciable

*(Note: earlier the matter about the elimination of 'Riba' was already in the Principles of Policy but with no timeline. The supreme court, however had declared it illegal in 1999)*

#### iii. Advice to the President

- Article 48(4) provides the power to the constitution has also been amended
- Providing that any advice tendered to the president shall not be questioned in any court of law

#### iv. Charging on Federal Consolidated Fund

- Article 81 has been amended
- To provide for expenditure of the Judicial Commission of Pakistan (JCP) and the Supreme Judicial Commission of Pakistan (SJC) along with the Supreme court of Pakistan (SCP)

*(Note: Previously only expenditure of SCP was chargeable on the FCF)*

#### v. Advisors to Attend Provincial Assembly

- Article 111 Advocate General of a province was allowed to address the provincial Assembly
- This has been expanded to include advisors to the chief Ministers to address the provincial assembly
- However, both the advocate general and advisors cannot vote in the provincial assembly

#### vi. Continuation of the chief Election Commissioner

- Article 215 has been amended
- To provide for the legal basis of the transition period of the Chief Election Commissioner (CEC)
- CEC shall continue to work till his successor is appointed
- This shall take effect irrespective of the end of the tenure of a CEC

#### vii. Categories of Civil Awards Expanded

- Article 259 amended
- Include the categories of 'science, technology, arts and public service' for civil awards to be conferred by the president

#### viii. Reference to the Council of Islamic Ideology

- Article 229 amended
- The numerical requirement for the requisition has been changed from two-fifths to one-fourth of the total membership of a house/Provincial Assembly through amending article

*(Note: President/Governor a piece of legislation to the Council of Islamic Ideology on receipt of requisition from lawmakers)*

## ix. Taxation by Cantonment

- 4<sup>th</sup> Schedule has been amended
- Allowed the cantonment to charge tax, fee and tolls

## b. Judiciary-related Amendments

Article 175 of the constitution that mandates separation of judiciary from the executive. The separation of judiciary and executive was to be carried out in a transitional manner that ended in 1993. The article 175-A deals with the appointment of judges to superior courts, and this article and some succeeding articles got amended through the 26<sup>th</sup> constitutional amendment.

### i. Change in Composition of the JCP

- Article 175-A amended
- To change the composition of the JCP
- Resulting in increasing the non-judicial members to 8 out of 13

*(Note: Article 175-A was added through the 18<sup>th</sup> amendment in 2010 provide for the procedure for appointment of the judge of the supreme courts and federal Shariat court. 19<sup>th</sup> amendment in the same year brought back the control of appointment back to CJP)*

### ii. Appointment of the CJP through the special Parliamentary Committee

- Article 175-A(3) amended
- Seniority has been modified
- 3 senior-most judges of the SCP are to be nominated by a new body called the special parliamentary committee that shall comprise 12 members from the parliament.
- SPC nominated based on proportional representation principle

### iii. Creation of Constitutional Benches

- Articles 191-A and 202-A amended
- Members and heads of the CBs are to be appointed by the JCP
- CB at the SCP has to have an equal number of judges on a provincial basis in the CB is reflective of judicial federalism in the constitution

*(Note: The charter of democracy was a political undertaking that took place in 2005 between PPP and PNL-N reform agenda for many political parties, established FCC)*

#### iv. Performance Evaluation of Judges

- Article 175-A(1) amended
- Provide for 'performance evaluation' of the judges of the high courts. Earlier, no such mechanism was envisaged

#### v. Removal of Judges

- Article 209 amended
- Besides misconduct and incapacity, inefficiency and the reports of performance evaluation of the judges have been made the basis and grounds of the removal of the judges

#### vi. Tenure of Judges

- Article 179 removal of doubt
- 'A judge of the supreme court shall hold office until he attains the age of 65 years, unless sooner resigns or is removed from the office accordance with the constitution'

#### vii. Jurisdictional Limitations

- Article 184(3) amended
- No Suo motu jurisdiction under the constitution
- The power of the SCP to transfer cases from high court to another has been expanded, and now the SCP can transfer as case unto 'itself' under article 186-A

#### viii. Islamic Law and Judiciary

- Article 203-D(2) amended
- Safeguard of finality through SCP has been removed.
- FSC judgment shall come into effect after 12 months unless suspended earlier by SCP

*(Note: FSC was established under article 203-C of constitution the decisions of the FSC were considered pending under article 203-D until the appeal was decided by SCP)*