



Research Article

A Critical Analysis of Judicial Structure of Pakistan's Apex Court: Pre- and Post-26th Constitutional Amendment

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Haq Nawaz ^{1,*}, Manual Selvaraj Bexci ²

¹Ph.D. Research Scholar, Social Sciences Arts & Humanities (Specialized in Law) Lincoln University College, Petaling Jaya, Selangor Darul Ehsan, Malaysia

²Professor & Pro Dean, Faculty of Social Sciences Arts & Humanities, Lincoln University College, Petaling Jaya, Selangor Darul Ehsan, Malaysia

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*Corresponding Email:

nawazlegal@gmail.com

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Abstract

Since Pakistan's independence in 1947, the Supreme Court has undergone significant constitutional transformations, shaped by numerous amendments aimed at realizing the true spirit of the Constitution and the will of the state. The Constitution of 1973 established core objectives of constitutional supremacy, separation of powers, judicial autonomy, and the protection of fundamental rights. Within this framework, the 26th Constitutional Amendment stands as a landmark reform with profound implications for the judiciary's structure and role. This study critically analyzes the procedural, structural, and functional impacts of the amendment. Key changes include fixing the Chief Justice of Pakistan's tenure at three years, restructuring the Judicial Commission of Pakistan and the Parliamentary Committee, and introducing controversial grounds for the removal of the Chief Justice. Proponents argue these reforms enhance transparency, democratize judicial governance, and limit the concentration of authority. Critics, however, contend that they erode judicial independence, politicize appointments, and dilute the principle of separation of powers. Employing doctrinal and comparative methodology, this research evaluates the amendment through the lenses of separation of powers, rule of law, and judicial independence, drawing parallels with similar reforms in Hungary and Poland. Findings suggest that while the amendment may increase parliamentary oversight and accountability, it simultaneously risks political manipulation and undermines judicial impartiality. Notably, curtailing the Supreme Court's Suo-Motu powers under Article 184(3), once a vital tool to protect fundamental rights, further complicates the balance between judicial activism and legislative authority. The study concludes that reforms must be guided by principles of merit-based appointments, financial autonomy, and transparent removal mechanisms. Without such safeguards, the 26th Amendment threatens to reverse decades of progress in strengthening judicial independence. This research contributes to constitutional scholarship by underscoring the urgent need for reforms that reinforce, rather than compromise, Pakistan's democratic governance and judicial credibility.

Keywords: 26th Constitutional Amendment, Judicial Independence, Separation of Powers, Supreme Court of Pakistan, Constitutional Reform.

Introduction

Since the independence of Pakistan in 1947, the Supreme Court has undergone significant reforms in its constitution, structure, and role. These developments reflect the progression in the politics and laws of the country. The Court was formed to enact the constitutional supremacy and guarantee fundamental rights. Over the years, legislative and constitutional changes have transformed its functions, jurisdiction, and composition. Over time, the amendments to the Constitution of Pakistan have affected the scope of judicial authority, often in direct response to changing political circumstances. The most recent, 26th Constitutional Amendment, stands out for its far-reaching political and legal implications, which resulted in fresh debates the

independence, efficiency, and jurisdiction of the nation's highest judicial forum.

This research paper focuses on a fundamental question: How has the 26th Constitutional Amendment impacted the judicial structure of Pakistan's apex court? One line of inquiry is whether the amendment strengthened judicial independence. Another is whether it curtailed the Court's ability to act impartially and efficiently. The in-depth study further explores the comparative differences in the Court's powers, composition, and jurisdiction before and after the amendment, highlighting both the intended reforms and their practical implications. The objectives of this study are threefold: first, to critically evaluate the judicial structure of the Supreme Court prior to the 26th Amendment; second, to assess the structural and functional changes introduced by the amendment; and third, to analyze the legal, political, and social consequences of these changes. Through this analysis, the research aims to contribute to a deeper understanding of how constitutional engineering affects judicial independence and the balance of power in Pakistan's governance system. The importance of this research lies in its contribution to constitutional law scholarship in Pakistan. This paper looks at the effect of the 26th Constitutional Amendment, which is largely underestimated. It starts with the investigation of the relationship between the structure of the judiciary and constitutional supremacy. It then states that a working, independent judiciary is critical to the safeguarding of democratic values.

Historical Background

The Supreme Court of Pakistan was formed when Pakistan attained independence from British rule on 14th August 1947. This Supreme Court inherited the jurisdiction of the Federal Court of India which was highest court of the subcontinent in the British colonial era. This phase of Pakistan was a provisional constitution under the Act of Government of India 1935 that operated until the first constitution of the country came into place in the year 1956. It was a Supreme Court that could interpret the Constitution and take appeals from other courts while safeguarding the rights of the citizens. This branch, however, is at some point or another a very powerful and supreme one, and the power it has been placed under very controversial debates in the past among political and military elites of the country (Ali, 2024).

The judicial system in Pakistan has passed through four phases of history that have lasted over a thousand years: the Hindu kingdoms, the Muslim rule (including the Mughal period), the British colonial rule, and post-independence of Pakistan. With time, it incorporated influences of foreignness with the locals to form a dispute-resolution mechanism that the people embrace. During the Hindu era (1500 to 1550 AD), the king was the main source of justice and was helped by the judiciary, ministers, and counselors. There was also a hierarchical court system, whereby the king was at the apex, then village courts and then caste or family meetings at the bottom. The appointment of judges was made through qualification and they were mostly entrusted to Brahmins. Procedures were based on moral and customary law and arbitration and conciliation had a significant role. The judicial system during the Muslim era (11th century to the middle of the 19th century) included the King's Court at the top, Qazi courts at different levels, village panchayats (council of elders), revenue courts, and criminal courts run by officials like Faujdars (officials in charge of military, judicial, and revenue functions) and Kotwals (leader of kit or fort). During this time, Islamic law predominated while local customs continued. Appointments emphasized scholarship, competence, and integrity, and procedures were similar to modern civil processes, with muftis interpreting the law.

Under British colonial rule, the East India Company established courts initially for its employees, later extending to locals, creating a dual system: English law in presidency towns and local laws in mofussil areas (rural or provincial areas). The High Court Act 1861 replaced earlier courts with High Courts, the Code of Civil Procedure 1908 defined the civil court hierarchy, and the Government of India Act 1935 introduced the Federal Court and reinforced judicial independence. After independence, Pakistan retained the 1935 legal system until adopting new constitutions in 1956, 1962, and 1973, renaming the Federal Court as the Supreme Court, upgrading provincial High Courts, and establishing the Federal Shariat Court in 1980 to ensure laws conformed to Islam.

The superior judiciary comprises the Supreme Court, with original, appellate, and advisory jurisdiction while the provincial High Courts with powers to enforce fundamental rights, hear appeals, and supervise subordinate courts; and the Federal Shariat Court, which reviews laws for Islamic conformity and has revisional jurisdiction in Hudood cases. The subordinate judiciary includes civil, criminal, and revenue courts, as well as special courts and tribunals such as banking, customs and anti-corruption courts, etc., all under the High Court's administrative control (Hussan, 2011).

The Supreme Court of Pakistan before the 26th Amendment

The Supreme Court of Pakistan, as defined in Article 176 of the Constitution of 1973, is the highest judicial authority in the country, empowered to resolve disputes, interpret laws, and safeguard the Constitution. Unlike other courts, it has nationwide jurisdiction and handles significant legal and constitutional matters, ensuring that government actions align with constitutional provisions and citizens' rights are protected. Upon the establishment of Pakistan, the Founder of Pakistan and first Governor-General approved the appointment of Sir Abdul Rashid as the nation's first Chief Justice in 1948. Justice Sir Rashid was succeeded by Justice Muhammad Munir in 1954. The Supreme Court of Pakistan was established on 2nd March 1956. This was the first time in history that Pakistan had a separate court system that was dedicated to democratic values. Over time, it has changed to meet the changing legal and political needs of Pakistan. It has made important decisions that have strengthened the judicial system, constitutional laws, and protected basic rights.

The Supreme Court's main functions are to interpret the Constitution, hear appeals from lower courts, exercise power of judicial review to strike down laws or actions by the government that are unconstitutional, and protect people's basic rights. The Constitution gives it three types of jurisdictions: original jurisdiction (hearing disputes between provincial or federal governments or constitutional matters under article 184), appellate jurisdiction (hearing appeals on lower court and High Court decisions), and advisory jurisdiction (giving legal advice to the President under Article 186). The Chief Justice and other judges are the composition of the Court.

The law changes the number of judges from time to time. Currently, there are 26 judges, including the Chief Justice of Pakistan and two ad-hoc judges. A new Article 191A in the constitution was inserted by the 26th constitutional amendment as "There shall be Constitutional Benches of the Supreme Court comprising such Judges of the Supreme Court and for such term as may be nominated and determined by the Judicial Commission of Pakistan from time to time "Provided that the Constitutional Benches may comprise equal number of Judges from each Province" Currently the Constitutional Bench, is led by Justice Aminuddin Khan. Judges are appointed by the President on the recommendation of the Judicial Commission of Pakistan and may serve until the age of 65 years. The Chief Justice leads judicial proceedings and ensures the fair administration of justice. The Supreme Court plays a vital role in maintaining democracy, equality, and justice, balancing governmental powers, enforcing constitutional rights, and setting legal precedents that shape future laws and governance. Landmark cases such as the Asghar Khan Case (exposing political misuse of public funds) and the Panama Papers Case (leading to the disqualification of a sitting Prime Minister) demonstrate its commitment to accountability and the rule of law. The Supreme Court's decisions are final and binding on all courts and authorities. It is crucial for Pakistan's democracy as it ensures adherence to constitutional principles, safeguards rights, and maintains the rule of law (Legal Point, 2025).

Impact of Constitutional Amendment

The Constitution of Pakistan 1973 established a bicameral legislature (two legislative houses) and clearly defined the principle of separation of powers between pillars of the state, the legislative, executive, and judiciary. Over time, numerous constitutional amendments have reflected significant political shifts, shaping governance and the legal framework. Judicial independence is essential for preventing abuse of power, maintaining the rule of law, and fostering public trust, government accountability, and socio-economic progress; however, certain amendments, though aimed at balancing authority, have at times undermined judicial autonomy. The Eighth Amendment (1985) strengthened presidential powers, including dissolving the National Assembly, weakening parliamentary democracy; the Seventeenth

Amendment (2003) process allowed politically motivated removals, further consolidating presidential authority; and the Legal Framework Order (1997) altered judicial appointments, giving the president excessive influence. In contrast, the Eighteenth Amendment (2010) strengthened parliamentary democracy, removed the President's power to dissolve parliament, abolished article 58(2b), enhance judicial independence, established the judicial commission for transparent judge appointments. Notable judicial events include the control, and the 2012 ousting of Prime Minister Yousaf Raza Gilani, which demonstrated the judiciary's authority to hold the executive accountable. Comparatively, India's 42nd Amendment (1976) restricted judicial independence, but later reforms, including the collegium system, restored autonomy, while Bangladesh has faced fluctuating levels of judicial independence due to frequent political-judicial conflicts. In Pakistan, persistent challenges include political interference, corruption, favoritism, and weak accountability mechanisms. To strengthen judicial independence, recommended measures include implementing transparent, merit-based appointment processes, upholding the Judicial Commission's role, enforcing higher qualification requirements, establishing constitutional safeguards to ensure separation of powers, preventing executive influence over judicial oversight, granting financial autonomy to the judiciary, and introducing term limits for key positions (Jatoi & Shah, 2023).

The 26th Constitutional Amendment and its Political & Legal Significance

The Twenty-Sixth Constitutional Amendment to the Constitution of Pakistan was passed by the parliament between 20 & 21 October 2024. The amendment contains 27 clauses, which effect change in judicial, parliamentary and executive frameworks by modifying aspects of judicial appointments, powers, and adjusting legal procedures. These include the removal of the controversial Suo-Motu prerogative of the Supreme Court, the capping of the Chief Justice of Pakistan's tenure to three-years, the reconstitution of the Judicial Commission of Pakistan (JCP) to sit on judicial appointments, the formation of a separate constitutional bench in the Supreme Court, the limiting of the ability of courts to question the recommendations from cabinet to the president or the prime minister, the increasing of parliamentary oversight, and the establishment of a 12-member Special Committee in parliament with proportional representation to nominate the Chief Justice of Pakistan (CJP) with two-thirds majority of the special parliamentary committee amount three most-senior judges in the Supreme Court (Wikipedia, 2025).

The government calls the changes "judicial modernization" and says they will fix judicial overreach, make the judiciary more accountable, and bring it in line with democratic oversight. Critics, on the other hand, say that it could lead to politicization, weaken judicial independence, and weaken checks and balances, since constitutional benches could be used to handle cases that are politically sensitive, "Some critics view it as a violation of Article 175(3), which mandates that the judiciary shall be separated progressively from the executive within fourteen years from the commencing day which Pakistan has not formally adopted the basic structure, many jurists insist judicial independence is constitutionally inherent. International parallels, such as judicial reforms in Poland (2017) and Hungary (2011), highlight similar concerns. In practice, legislative involvement in CJP selection may politicize appointments, weaken the merit-based system.

Another significant aspect of the 26th Constitutional Amendment is the division of the Supreme Court's power through the creation of constitutional benches by the insertion of Article 191A (Shahid, 2025). These benches have been entrusted with exercising the Supreme Court's original, appellate, and advisory jurisdiction (Rao, 2025). However, this development is widely viewed as expanding executive influence over the composition and functioning of the judiciary, raising concerns about the independence of the Court, furthermore, the restrictions on Suo-Motu powers may limit the judiciary's oversight role, risking public perceptions of bias akin to the Zia era. Critics also note the lack of consultation during the amendment's passage, with the International Commission of Jurists voicing concern. While transparency in appointments and reduced discretionary power may be potential benefits, the risks of executive overreach, politicized rulings, and loss of institutional trust are significant. Long-term outcomes will depend on whether safeguards for judicial independence are implemented, such as strengthening the JCP, ensuring judicial tenure and financial

autonomy, adopting judicial ethics, maintaining judicial review powers, and mobilizing public and institutional support. Without these protections, the amendment could weaken democratic governance and transform the judiciary into a political instrument, despite its stated aim of enhancing accountability.

Research Questions

1. What structural, functional, and procedural changes did the 26th Constitutional Amendment introduce to the Supreme Court of Pakistan as compared to its previous legal system?
2. What has been the 26th Amendment's impact on the Supreme Court's independence, impartiality, and effectiveness in its constitutional role?

Objectives of the Study

This study aims to critically examine the judicial structure of Pakistan's Supreme Court before the enactment of the 26th Constitutional Amendment, highlighting its composition, powers, and operational framework within the broader constitutional setup. It further seeks to assess the structural and functional reforms introduced by the amendment, with particular attention to changes in judicial appointments, tenure, and institutional procedures. In addition, the research analyzes the legal, political, and social implications of these reforms, exploring their potential impact on judicial independence, the balance of power among state institutions, and public confidence in the judiciary.

Significance and Motivation of the Research

The significance of this research lies in its potential to contribute meaningfully to the understanding of judicial independence as a cornerstone for maintaining constitutional supremacy in Pakistan. A strong and independent judiciary is essential to safeguarding fundamental rights, ensuring the separation of powers, and upholding the rule of law, all of which are central to a functioning democracy. This study seeks to enhance constitutional law scholarship through a comprehensive examination of the 26th Constitutional Amendment, a recent reform that has implemented significant structural and procedural alterations in the Supreme Court's operations. Despite its extensive ramifications, a significant deficiency persists in academic literature that rigorously analyzes the amendment's effects on judicial independence, impartiality, and efficacy, which this study aims to rectify. The rationale for conducting this study is grounded in a sustained academic and professional interest in constitutional law and judicial reforms.

Literature Review

The judicial system in Pakistan has developed with time, constitutional amendments, and political reforms. The highest court of the country and protector of the constitution and basic rights is the Supreme Court, which was formed in 1947. However, it has always been redefined by the amendments to the Constitution in order to correspond to the changes in political situations. The 26th Constitutional Amendment, which was passed in October 2024, is one of the most significant new amendments. It has brought a fresh debate regarding judicial independence, procedural transparency, and the equilibrium of power between state institutions. The judicial system in Pakistan has undergone four major periods in almost 1000 years, including Hindu, Muslim, British colonial, and post-independent and each introduced its own traditions and ideas. The Hindu period (1500 to 1550 AD) was the period when kings and village councils administered justice based on moral and traditional laws. Under the Islamic law, the Qazi courts, revenue officials, and local assemblies ruled the period of the Muslim rule (11th to 19th century). These courts put a lot of emphasis on honesty and evidence. Then the British set up two types of courts: English law courts in presidency towns and local Sadar Adalats. These were later combined into one system by the High Court's Act of 1861 and the Federal Court by the Government of India Act of 1935. The remaining lower courts were governed by the Civil Procedure Code 1908.

After independence, Pakistan retained this framework, creating the Federal Court in 1948 (renamed the Supreme Court under the Constitutions of 1956, 1962, and 1973), and also upgraded provincial courts. The 1973 Constitution strengthened judicial independence and separation from the executive, reinforced by the Sharaf

case and the 18th and 19th Amendments, which reformed judicial appointments. The Federal Shariat Court, established in 1980, reviews laws for conformity with Islam. Today, the Supreme Court serves as the apex body with original, appellate, and advisory jurisdiction, adjudicates inter-governmental disputes, enforces rights, and operates a Human Rights Cell. Despite heavy caseloads of over 20,000 pending in 2011 reforms like the National Judicial Policy (2009) reduced backlogs, though concerns remain over the bench system. Overall, Pakistan's judiciary reflects a hybrid legal system shaped by shifting political and constitutional dynamics (Hussain, 2011). The 26th Constitutional Amendment introduces sweeping changes to Pakistan's judicial system, primarily through extensive revisions to Article 175A concerning judicial appointments. The most significant change replaces the automatic appointment of the most senior Supreme Court judge as Chief Justice of Pakistan (CJP) with a system where a Special Parliamentary Committee, comprising 12 members (eight from the National Assembly and four from the Senate with proportional party representation), recommends one candidate from among the three most senior judges. This recommendation is sent to the prime minister and then to the president for appointment. Parliamentary oversight is expanded, replacing the earlier eight-member committee with broader legislative representation, including treasury, opposition, and technocrat members. The committee's decisions require a two-thirds majority, operate in-camera, and are exempt from Article 68's restrictions on discussing judicial conduct. The Judicial Commission of Pakistan (JCP) retains a central role but now includes a presiding judge, reduces senior Supreme Court judge members from four to three, and adjusts membership criteria for lawyers and legislators. The amendment also caps the Chief Justice of Pakistan's (CJP) term at three years, regardless of age, under changes to Article 179. It creates new constitutional benches at both the Supreme Court (Article 191A) and high courts (Article 202A), restricting certain constitutional jurisdictions to these benches, with equal provincial representation and defined composition and nomination procedures. All pending cases within these jurisdictions are transferred to the new benches. The Judicial Commission of Pakistan (JCP) holds the power to review the performance of high court judges and oversee their appointments by changing the rules for membership. For example, in some clauses, "most senior judge" is changed to "head of constitutional benches."

Article 193 reduces the minimum age of the high-court judges to 40, removes some of the civil-service limitations and alters the way the judges are appointed to the Islamabad High Court by including a senior advocate and a federal minister to the list. These reforms impact the process of appointment, the term of the courts and their organization, shifting the system in the direction of seniority, greater involvement of parliament, and creating a special system of constitutional adjudication. Articles 184, 185 & 186 vest original, appellate and advisory jurisdiction in the Supreme Court. It has enforced the rule of law by making seminal decisions like the Asghar Khan and Panama Papers cases. Even when politics influence matters, the Court balances merit, seniority, and institutional integrity (Dawn.com, 2024).

The Twenty-Sixth Constitutional Amendment has elicited a lot of controversy regarding judicial independence, the rule of law and democracy. It transformed the Judicial Commission of Pakistan (JCP) and changed the process of appointing the Chief Justice of Pakistan (CJP), adding a vague excuse, which is the lack of efficiency, to dismiss judges. Critics explain that those provisions make the appointments and removals of judges political and antagonize the independence of the judiciary and create a negative political climate towards judges. In the past, seniority was used to appoint the CJP and appointment and dismissal of judges were largely non-politicized by the JCP and the Supreme Judicial Council (SJC). The amendment introduces political members to the council, incorporates legislators, and introduces minority representatives elected by the Speaker of the National Assembly. It also enables the JCP to form constitutional benches in superior courts a move that might see the appointment of judges being politically appointed. These reforms are inconsistent with global norms. The UN Basic Principles on Judicial Independence and the International Covenant on Civil and Political Rights (ICCPR) demand that judges should be hired in a fair way, be given job security, and should only be dismissed in clear ways due to inability or misconduct. Pakistan might be contravening its obligations under these instruments by the amendment. The amendment may violate the obligations of Pakistan as it provides ambiguous grounds of removal and increases the appointment powers of the politicians.

The effects on human rights and the rule of law are grave. A judiciary susceptible to political influence may inadequately serve as a check on executive and legislative powers. It undermines constitutional protections for fundamental rights. Politicized bench formation could undermine impartial adjudication in politically sensitive cases, eroding public trust in the justice system and facilitating authoritarian tendencies. Scholars recommend repealing or revising the amendment to restore judicial representation in the Judicial Commission of Pakistan (JCP), defining objective criteria for judicial removal, ensuring transparent and participatory judicial reforms, and aligning domestic law with international standards. Without such measures, Pakistan risks further diminishing judicial independence, destabilizing democratic institutions, and eroding the rule of law (Bhatti, 2024). The amendment reshaped the judicial structure, judicial appointment process and reconstituted the Judicial Commission of Pakistan by reducing judicial members from six to five and adding five political members, shifting majority control to the legislature and executive. The Chief Justice is now chosen by a 12-member parliamentary committee from the three most senior judges for a fixed three-year term, replacing the automatic seniority rule. It also curtailed the Supreme Court's Suo-Motu powers, formed government-aligned constitutional benches, and added "inefficient performance" as grounds for removal. Historically, judicial appointments shifted from executive dominance to judicial control after the 1996 Al-Jehad Trust case and the 18th and 19th Constitutional Amendments. The 26th Constitutional Amendment reverses these safeguards, reintroducing political leverage. Its timing followed disputed 2024 elections and adverse court rulings, and just before Chief Justice Isa's retirement, allowing Justice Yahya Afridi's appointment over senior Justice Mansoor Ali Shah (Tripathi & Kumar, 2024).

Supporters argue for the amendment as it promotes parliamentary sovereignty, transparency, and accountability, curbs judicial activism, and aligns judicial functions with democratic oversight under the banner of "Judicial Modernization." Critics, however, warn that it undermines judicial independence, politicizes appointments, and erodes the separation of powers enshrined in Article 175(3). They see parallels with past episodes of executive overreach, such as the Provisional Constitutional Order (2000) and the 1976 reforms under Prime Minister Bhutto. International examples from Poland (2017) and Hungary (2011) highlight potential dangers, including political influence over the judiciary, weakened checks and balances, and declining public trust. The amendment was not widely adopted. The long-term consequences have become a cause of concern as the International Commission of Jurists has been alarmed (Awan, 2024).

Key Theories and Concepts Related to the 26th Amendment

Doctrine of Separation of Powers: The concept of separation of powers is a rudimentary element for the governance of a democratic country. The principle corroborates fairness, impartiality and uprightness in the working of a government. Although it is not followed in its strict sense yet, most of the democratic countries have adopted its diluted versions under their respective constitutions (Gururani, 2019). The idea of separation of powers was originally developed in ancient Greece and subsequently became one of the pillars of the Roman Republic. To ward off arbitrary rule, the Constitution of the early Roman Republic separated state power into a legislature, executive, and judiciary. According to this doctrine, the reason behind the debate is the redistribution of judicial power after the 26th Amendment. The amendment restricts the Chief Justice of Pakistan to serve only for three years, increases the powers of Parliament over appointments to judicial offices and transfers part of the administrative and case-allocation responsibilities to parliamentary committees and constitutional benches. Critics state that such reforms may destabilize power distribution and enable the law to intervene in judicial affairs, while the supporters argue that the reforms make the courts more responsible and democratic.

Judicial Independence Theory: Judicial Independence, the ability of courts and judges to perform their duties free of influence or control by other actors, whether governmental or private. The term is also used in a normative sense to refer to the kind of independence that courts and judges ought to possess. That ambiguity in the meaning of the term judicial independence has compounded already existing controversies and confusions regarding its proper definition, leading some scholars to question whether the concept serves any useful analytical purpose. There are, in general, two sources of disagreement. The first

is conceptual, in the form of a lack of clarity regarding the kinds of independence that courts and judges are capable of possessing. The second is normative, in the form of disagreement over what kind of judicial independence is desirable (Law, 2025).

Judicial independence theory is the theory that maintains that the courts should not be influenced by any other branch of government; it should be independent from the political, legislative, or executive, in order to safeguard fundamental rights and pass verdicts that are just. People have looked at the 26th Constitutional Amendment this way because it changes the way the Judicial Commission of Pakistan is formed and how members are chosen. It also limits the Chief Justice's ability to make decisions on their own. Supporters believe that giving different parts of the judiciary more power and letting Parliament make appointments makes things clearer and lessens the chance of one part of the judiciary having too much power over the others. Those who are against claim that more involvement from Parliament could harm the independence of the judiciary. According to them, it makes it less able to act impartially in cases involving the state. Constitutionalism and Rule of Law Principles: The rule of law requires that law make the differences it purports to make, linking the formal demands of law and the reality of the rules that structure power within a community. The chapter begins by outlining the rule of law. There are two aspects to the principle: first, the rule of law requires that laws be expressed in a way that enables people to obey the law; secondly, the rule of law requires that the social context is such that people are led to obey these rules. The second part of the chapter examines the connection between the rule of law and the state. First, it will be contended that states need to comply to a degree with the rule of law in order to exist. Secondly, in societies such as ours, non-state legal orders require the existence of the state, and state legal orders, for their successful operation (Barber, 2018).

Constitutionalism posits that governmental power originates from and is limited by a constitution, whereas the rule of law mandates that all individuals and entities, including the state, are governed by legal standards that are applied uniformly and consistently. The 26th Amendment directly addresses these principles by instituting constitutional reforms that alter judicial governance. From a constitutionalist point of view, any changes to the structure of the judiciary must be in line with the spirit of the Constitution and not weaken the institutional protections that keep citizens safe from arbitrary power. Critics say that the amendment could make judicial appointments and processes more political, which would make the rule of law weaker. On the other hand, its supporters say that making the courts more representative and accountable to democratic institutions is good for constitutionalism.

Judicial Activism vs. Judicial Restraint: Judicial activism and judicial restraint are two opposite approaches often written as judicial activism vs judicial restraint, which are both challenging and conflicting ideologies for a country activist judge. Judicial activism and judicial restraint relate to keeping a check on the dishonest use of power by constitutional bodies and the government. The major difference between the two approaches is that judicial activism is a philosophy of judicial decision-making where a judge advocates contemporary values and conditions and allows personal views regarding a public policy instead of constitutionalism. On the contrary, judicial restraint is a theory that encourages judges not to make decisions that are unconstitutional and limits their powers (Lexinter Dictionary, 2025).

The tension between judicial activism and judicial restraint centers on the judiciary's authority to interpret laws and review governmental actions. Judicial activism involves a proactive role in shaping policy and protecting rights. Whereas judicial restraint advocates for minimal intervention and respect for the elected branches. The 26th Amendment can be interpreted as a legislative response to perceived judicial overreach, particularly in cases where the Supreme Court exercised expansive *Suo-Motu* powers. By limiting certain unilateral powers of the Chief Justice and involving parliamentary bodies in judicial matters, the amendment arguably nudges the judiciary toward greater restraint. However, detractors argue that curbing judicial activism through political channels risks diminishing the judiciary's capacity to safeguard constitutional rights against majoritarian excesses.

Research Methodology

This study employs a qualitative, doctrinal legal research approach to critically examine the structural, functional, and procedural changes brought about by the 26th Constitutional Amendment to the Supreme Court of Pakistan, as well as its implications for judicial independence, impartiality, and constitutional governance. The research is rooted in an interpretive analysis of constitutional provisions, legislative records, case law, and scholarly commentary to provide a comprehensive understanding of the amendment's legal and political significance.

Research Design

The research adopts a descriptive-analytical design, combining historical, comparative, and evaluative methods:

Historical Analysis: To contextualize the 26th Amendment within Pakistan's constitutional evolution, the study traces the Supreme Court's structural development from the Hindu, Muslim, and colonial legal eras to the post-independence constitutional frameworks of 1956, 1962, and 1973.

Comparative Legal Analysis: The pre- and post-26th Amendment judicial structures are systematically compared to identify substantive changes in jurisdiction, composition, appointment mechanisms, and tenure of the Chief Justice.

Doctrinal Evaluation: The study applies key constitutional doctrines separation of powers, judicial independence, constitutionalism, and rule of law, to assess the amendment's alignment or divergence from established constitutional principles.

Thematic Analysis: The amendment's provisions are thematically categorized (e.g., judicial appointments, constitutional benches, Suo-Motu powers, removal grounds) to evaluate their potential political, legal, and institutional consequences.

Data Sources

The research relies exclusively on secondary data gathered from authoritative and credible sources:

Primary Legal Sources:

Constitution of the Islamic Republic of Pakistan (1973) and all relevant constitutional amendments.

Text of the 26th Constitutional Amendment Act, 2024.

Available Parliamentary debates, committee reports, and legislative proceedings relating to the amendment.

Landmark Supreme Court judgments impacting judicial independence and constitutional interpretation (e.g., Al-Jehad Trust, Sharaf, Asghar Khan, Panama Papers cases).

Secondary Sources:

Peer-reviewed journal articles and law review papers on constitutional amendments, judicial independence, and governance.

Books and monographs on Pakistan's constitutional and judicial history.

Reports and statements by legal bodies, including the International Commission of Jurists and the Pakistan Bar Council.

Credible news outlets, editorial analyses, and expert commentaries from reputable sources (e.g., Dawn, The Express Tribune, The News).

Comparative International Sources:

Constitutional reforms and judicial restructuring cases in jurisdictions such as Poland (2017), Hungary (2011), India, and Bangladesh, used to provide comparative insights and identify potential parallels.

Analytical Framework

The data is analyzed through a three-stage evaluative framework:

1. Pre-Amendment Baseline Assessment: Establishing the structural, jurisdictional, and procedural

framework of the Supreme Court prior to the 26th Amendment.

2. Post-Amendment Assessment: Examining the exact constitutional and operational changes introduced by the amendment, including their practical application and potential for political influence.
3. Impact Evaluation: Assessing the amendment's consequences on judicial independence, separation of powers, rule of law, and public trust, using theoretical lenses such as Judicial Independence Theory and Judicial Activism vs. Restraint.

Scope and Limitations

The scope of this research is limited to the constitutional and judicial implications of the 26th Amendment as it relates to the Supreme Court of Pakistan. It does not attempt to measure the amendment's economic or administrative impacts outside the judiciary. While reliance on secondary sources ensures breadth of coverage, it also introduces limitations related to potential bias in media reports and interpretive commentary. The absence of primary interviews with legislators, judges, or legal practitioners limits firsthand perspectives, which are instead inferred from publicly available speeches, statements, and parliamentary records.

Ethical Considerations

The study adheres to academic integrity by relying on verifiable and properly cited sources. Interpretations are grounded in established legal principles and avoid partisan political bias. Comparative insights are applied with contextual sensitivity to Pakistan's unique constitutional history and political environment.

Results and Analysis

The findings of this study reveal that the 26th Constitutional Amendment of October 2024 constitutes one of the most far-reaching judicial reforms in Pakistan's constitutional history, significantly altering the Supreme Court's structural composition, functional capacity, and procedural framework. Through doctrinal and comparative legal analysis, the results demonstrate a mixed pattern of reform outcomes, while certain provisions may enhance parliamentary oversight and procedural transparency, others pose serious risks to judicial independence, separation of powers, and institutional credibility.

The Supreme Court of Pakistan was created through Article 176 of the 1973 Constitution. Prior to the 26th Amendment, the Supreme Court used to appoint the Chief Justice by itself, and according to seniority. Retirement was not an unalterable period; it was age-based. The Judicial Commission of Pakistan (JCP) also managed appointments, promotions and transfers and it was overrun by judges. Removals were done by the Supreme Judicial Council (SJC), commonly on grounds of misconduct or incapacity. The Court possessed original, appellate and advisory jurisdiction. Its Chief Justice possessed numerous administrative powers, such as the constitution of benches. There was also a *Suo-Moto* jurisdiction that the Chief Justice could take to defend fundamental rights. The historic cases of Asghar Khan and the Panama Papers demonstrated that the Court was capable of holding political leaders to account, which increased the level of trust among the people. The 26th Amendment fundamentally reconfigures the judicial appointment process and institutional hierarchy through several key changes.

1. The Chief Justice of Pakistan's term is now limited to three years, breaking from the seniority tradition.
2. The structure of the Judicial Commission of Pakistan (JCP) is reshaped and its members are increased by reducing the judicial representation and adding the legislative participation.
3. The Chief Justice of Pakistan (CJP) is selected by a Special Parliamentary Committee from among the three most senior judges, requiring a two-thirds majority, with proportional representation from all the political parties.
4. Legislative influence is increased by reducing judicial members and adding political nominees, shifting decision-making power toward the legislature.
5. New benches under Article 191A (Constitutional Benches) are established to hear specific

constitutional matters, with membership determined partly by non-judicial actors (currently it has 13 in numbers).

6. Inefficient performance is introduced as a vague (unclear) basis for removal, raising concerns of subjective application.
7. The eligibility age drops from 45 to 40 years for the appointment of High Court Judges, potentially broadening the pool but risking the appointment of less-experienced judges.

Applying the Judicial Independence Theory and Separation of Powers Doctrine, the results indicate that:

Positive Aspects: Parliamentary participation could democratize judicial governance, reduce intra-judicial concentration of power in the Chief Justice of Pakistan's office, and introduce broader accountability mechanisms.

Negative Aspects: Legislative dominance in appointments undermines the judiciary's ability to act as a neutral arbiter, particularly in politically sensitive cases. The erosion of the seniority principle and vague removal grounds create opportunities for executive and legislative manipulation, threatening impartial adjudication.

The comparative analysis with Poland (2017) and Hungary (2011) confirms that similar reforms abroad resulted in the politicization of the judiciary and weakened the rule of law, lending credence to domestic critics' warnings. While the creation of specialized constitutional benches could theoretically improve case management and expertise in constitutional matters, the risk of politically engineered bench composition threatens case impartiality. Limiting *Suo-Motu* powers might stop the courts from being too active, but it also makes it harder for the Court to move forward in urgent human rights cases, which is one of its most important jobs. From a constitutional standpoint, reforms that redefine judicial authority must uphold institutional safeguards that protect citizens from arbitrary power. The study finds that the 26th Amendment is framed as "judicial modernization," but it doesn't have enough protections against political misuse. Also, passing it without consulting a lot of different groups goes against participatory constitutionalism. Public opinion, as indicated by secondary sources like statements from the Pakistan Bar Council and reports from the International Court of Justice (ICJ), reveals significant skepticism regarding the amendment's intentions. People's trust in the independence of the judiciary is closely linked to their views on political non-interference. Any perception of politicization could harm the legitimacy of the judiciary and the balance of power in a democracy for a long time. The evidence indicates that the 26th Amendment signifies a constitutional turning point. It could make things better for the government and make lawmakers more accountable, but it would also take away some of the independence of institutions. Without constitutional protections, including an articulated standard of removal, appointment based on merit, and guarding against party politics, the suggested reforms may undo decades of gains in the direction of an independent judiciary, which was the aim of the Eighteenth and Nineteenth Constitutional Amendments.

In general, the results indicate that the 26th Constitutional Amendment brings significant structural, procedural, and operational reforms to the Supreme Court of Pakistan. Supporters emphasize the sovereignty of parliament and the accountability of the judiciary, but theory, legal doctrine and comparative history all indicate that the amendment increases the susceptibility of the judiciary to political pressures.

Discussion

The 26th Constitutional Amendment is a complicated phase of the judicial development of Pakistan. It is not only revolutionary but controversial. Based on historical and theological views, this paper will opine that the reform will put the balance between judicial and legislative control at risk of being tipped too far in one way or the other since 1947. The Supreme Court of Pakistan was created in order to enforce constitutional supremacy and fundamental rights. It was based on the original constitution of the 1935 Government of India Act and developed based on the constitutions of 1956, 1962 and 1973. A case in point is the Asghar Khan case, which made the court stronger in the past due to its landmark rulings and the Panama Papers revelations. Also, there was a principle of seniority in terms of appointments that facilitated the prevention of political

influence. The 26th Amendment interferes with such an order, the Chief Justice can serve only for three years, the nomination is done by a parliamentary committee and additional legislators are included in the Judicial Commission of Pakistan (JCP).

The amendment poses some significant questions as analyzed using the Doctrine of Separation of Powers. According to the proponents, it increases parliamentary sovereignty, accountability and balance of power. However, in appointment, tenure and in case allocation, it advances the danger of law-making intrusion to the judiciary. Pakistan is a country of alterations that have favored the executive or legislature over judicial autonomy, which is one of the most important constitutional safeguards. The same reforms that have jeopardized judicial independence have attracted international criticism in Poland (2017) and Hungary (2011). These events can be interpreted in another manner through the Judicial Independence Theory. It shows that more parliamentary control of appointments can put at risk fair justice. Prior to the change, the Judicial Commission of Pakistan (JCAP) and the Supreme Judicial Council (SJC) safeguarded the judges against political influence. The removal on the basis of weak judicial representation and unclear reasons allowed the interference. This has been aggravated by the absence of clear performance standards. The same was true of Poland (2017) and Hungary (2011), as reforms were criticized by the international community because they undermined the independence of the judiciary.

The Judicial Independence Theory provides an interpretive dimension which emphasizes the fact that the greater power of parliament to control the appointment of judges increases risks of interfering with the fair trial. Before the amendment, the institutional protection against direct political interference was the Judicial Council and the Supreme Judicial Council. It is a slippery slope to reduce the number of judicial representatives in these bodies and to remove them under the vague term of inefficiency. In addition, the lack of clear performance measures increases the risk and allows judges to make decisions that are not in the best interest of politics to be punished or retaliated. When applied to constitutionalism and the rule of law, the legitimacy of the amendment is not only subject to its formal approval by the parliament but also its alignment with the core of the Constitution, and particularly, Article 175(3), which requires that there be a separation between the judiciary and the executive. Supporters assert that legislative engagement enhances the judiciary's democratic accountability, whereas detractors emphasize the peril of subordinating constitutional adjudication to fluctuating political majorities, which may undermine public trust in judicial impartiality and consistency. The study's results also contribute to the discourse surrounding Judicial Activism and Judicial Restraint. People think that the 26th Constitutional Amendment is a law that was made because people were worried about the court's exercising excessive *Suo-Motu* powers. The reform seeks to direct the Court towards increased restraint by centralizing specific constitutional cases in newly established benches.

These reforms also limit the Chief Justice's unilateral administrative authority. Perceived activism is constrainable, yet such a move can undermine the critical counter-majoritarian functions of the judiciary, safeguard minorities and check the executive. The interpretation of the amendment will be incomplete without an interpretation of the long-standing judicial-political dynamics in Pakistan. The Executive dominance started in the Dominion era and was legalized in 1955. The Lawyers Movement of 2007 began as a response to regain judicial independence, but has been fortified and undermined by the amendments to the constitution that followed. The 26th Amendment came into effect during post-2024 election conflicts and a radical judicial overhaul, a repetition of the earlier conflicts. The reform has been seen by many as a change of power and not an apolitical modernization partly due to the timing of the reform coinciding with some politically sensitive cases and executive transitions. Research observes that the amendment has its merits and demerits. It encourages transparency, places tenure limits and provides greater protection. Such characteristics can make it more open and avoid the situation when the group of judges is too small and acquires excessive power. Negatively, these changes could politicize the judiciary, it can also erode constitutional decision-making, and damage the Court's reputation. All because of the absence of clear safeguards like financial independence, merit-based appointments, and freedom from political influence.

This discussion is important because it bridges a gap in the scholarly literature on the amendments and their

long-term effects on Pakistan's democratic governance. It further points out that there should be further reforms to ensure the independence of the judiciary. These reforms must enhance impartiality of the Judicial Commission of Pakistan, explicitly establish the method through which judges can be displaced, protect judicial review and ensure that any alteration in the jurisdictional authority is executed with clear case-allocation processes. Finally, the 26th Amendment shows how narrow a margin there is between safeguarding judicial independence and accountability. The paper provides historical, doctrinal, and comparative data that support the fact that constitutionally sound reforms are needed. Such changes must reorganize the judicial system and cannot be accounted by short-term political interests that may jeopardize the rule of law. The manner in which the 26th Amendment is enforced in the near future will determine its practical implications and the maturity of the constitutional democracy in Pakistan and the strength of its courts.

Conclusions

This study may be sum up, the 26th Constitutional Amendment is a major change in the history of the constitution and courts in Pakistan. Although it has its advantages to the government, it brings up the issue of the independence of the courts. The amendment is an indication of the battle between judicial independence and political authority, tracing the history of the development of Pakistan law since the pre-colonial times in the form of the legal system up to the colonial rules and the post-independent constitutional changes. It changes the process of selecting Chief Justices as a seniority-based appointment to a parliamentary appointment. It also transforms the Judicial Commission of Pakistan, creates constitutional benches, and creates ambiguous reasons for removing judges. All of these changes change the way the Supreme Court is set up, what powers it has, and how it protects itself. From the point of view of the Doctrine of Separation of Powers and Judicial Independence Theory, the amendment gives more power to the legislature, which could lead to political control over the judiciary. Supporters say that it makes things more open, stops judges from going too far, and makes democracy stronger. But experiences in Poland and Hungary show that these kinds of changes can lead to political encroachment of the courts if there aren't strong protections in place. Without clear removal rules, merit-based appointments, financial independence, and protection from partisan influence, "judicial modernization" will make the judiciary a politically driven institution instead of an impartial guardian of the Constitution. In the past, Pakistan's courts have been under a lot of political pressure, from the early years when the executive branch was in charge to the time after the 18th Amendment, when the courts were able to be independent again. The 26th Amendment could undo a lot of those gains by giving the courts less control over their own makeup and rules. It could make people more responsible, limit the Chief Justice's powers, and allow for specialized constitutional benches. These benefits are outweighed by risks like bench manipulation, weaker protection of basic rights, and less public trust in the courts' neutrality. The 26th Amendment's real effect will depend on how it is used and whether democratic institutions make sure it is safe. It could become a fair system of judicial accountability if it is used with open processes, financial and structural independence, and a strong commitment to the Rule of Law and Constitutionalism. But without these kinds of protections, it could lead to politicized justice in Pakistan, which would weaken the supremacy of the constitution. The most important thing to do now is to make sure that the Supreme Court stays the protector of the Constitution, the defender of fundamental rights, and a key part of democracy, even if the structure changes.

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