

## The Twenty-Sixth Constitutional Amendment and the Erosion of Judicial Independence in Pakistan: A Critical Analysis

Zohaib Jamali<sup>1\*</sup>, Waqas Khoso<sup>2</sup>, Shahnawaz Rind<sup>3</sup>, Ali Raza<sup>4</sup>

<sup>1,2,3</sup> Institute of Law, University of Sindh, Sindh, Pakistan

<sup>4</sup> Institute of Peace and Conflict Studies, University of Peshawar, Khyber Pakhtunkhwa.

**\*Corresponding author:**

Zohaib Jamali, Email: [zohaibjamali92@gmail.com](mailto:zohaibjamali92@gmail.com),

**DOI: <https://doi.org/10.70670/sra.v3i4.1152>**

### Abstract

Judicial independence is the bedrock of Pakistan's constitutional democracy, safeguarding the rule of law through an impartial judiciary. The Twenty-Sixth Constitutional Amendment Act, 2024, has fundamentally transformed the judicial appointment process by granting Parliament and the Executive decisive influence over the selection of the Chief Justice of Pakistan and the composition of the Judicial Commission of Pakistan. This paper critically argues that the Amendment fails to strike a legitimate balance between accountability and independence, instead threatening to subordinate the judiciary to political control. Through analytical and comparative lenses, it explores Pakistan's history of judicial reforms, evaluates the corrosive implications of the amendments for the separation of powers, and contrasts them with appointment systems in other common-law jurisdictions. The paper concludes that the 26th Amendment risks profound politicization, endangering the constitutional balance of power and undermining the very fabric of judicial independence. This paper employs a qualitative doctrinal method supported by comparative constitutional analysis.

**Keywords:** Judicial Independence, 26th Amendment, Separation of Powers, Judicial Appointments, Basic Structure Doctrine, Pakistan Constitution.

### Introduction

Judicial independence is a cornerstone of constitutional democracy, ensuring that courts operate without external pressure to protect fundamental rights and uphold the rule of law. The processes for appointing and removing judges are therefore critical, as they directly impact the balance between judicial autonomy and democratic accountability. In Pakistan, this debate reached a pivotal juncture with the enactment of the Twenty-Sixth Constitutional Amendment Act, 2024, which fundamentally reorganized the appointment mechanism for the Chief Justice of Pakistan (CJP) and the structural framework of the Judicial Commission of Pakistan (JCP) – a Constitutional Body responsible for the appointments of judges of the Superior Judiciary. Prior to this reform, the office of the CJP was filled by the most senior judge of the Supreme Court, a convention rooted in constitutional practice and the framework established by Article 175A, as amended by the Eighteenth and Nineteenth Amendments. While the seniority principle was valued for insulating the judiciary from political bargaining, it faced criticism for lacking a formal mechanism to assess leadership competence, integrity, or administrative capability. Conversely, its proponents argued that it was a vital bulwark preserving judicial autonomy from executive interference. Similarly, the pre-Amendment JCP maintained a significant judicial majority, minimizing executive influence compared to the post-26<sup>th</sup> Amendment landscape. The 26<sup>th</sup> Amendment established a twelve-member Special Parliamentary Committee – comprising eight

members from the National Assembly and four from the Senate – to select the CJP from among the three most senior Supreme Court judges. It also fixed the CJP's term at three years, a departure from the previous practice of serving until the retirement age i.e., 65 years. While proponents framed the reform as a measure to democratize judicial selection, enhance accountability, and ensure leadership continuity, opponents warned of its potential for politicization and the erosion of judicial independence. This paper provides a critical analysis of the 26<sup>th</sup> Amendment, focusing on its implications for judicial independence, the separation of powers, and constitutionalism. The research employs a qualitative and doctrinal methodology, utilizing primary sources including the constitutional text, the Twenty-Sixth Constitutional Amendment Act, and relevant jurisprudence. This is supplemented by secondary sources such as scholarly commentary and legal critiques. The analysis proceeds in three parts: first, it situates the reform within Pakistan's historical context of judicial appointments; second, it conducts a critical appraisal of the amendment's provisions and legislative background; and third, it employs a comparative lens, contrasting the new system with appointment processes in other common-law jurisdictions like the United Kingdom, India, and the United States. Ultimately, this study interrogates whether the 26th Amendment signifies a principled recalibration of accountability and independence, or whether it threatens to subordinate the judiciary to parliamentary control.

### **Literature Review**

Scholarly discourse on Pakistan's judicial reforms has long been polarized between advocates of pure judicial autonomy and proponents of greater political accountability. However, the enactment of the 26<sup>th</sup> Amendment has galvanized a significant critical consensus, with a predominant body of recent literature concluding that the reform constitutes a severe regression, fundamentally damaging judicial independence and the separation of powers. Historical analyses, such as that by Ali (2021), trace the cyclical nature of judicial independence in Pakistan, noting how previous amendments like the 18th and 19th sparked intense debate over the appointment process. This historical context is crucial for understanding the 26th Amendment not as an isolated event, but as the latest episode in a protracted struggle for control over the judiciary. Contemporary scholars have been swift to condemn the new law. S., Muhammad, & Ali (2025) identify the 26<sup>th</sup> Amendment as a direct response to socio-political and legal challenges but highlight that its rapid passage and specific provisions have ignited significant debate, with most commentary viewing it as a threat to the judiciary's autonomous functioning. Multiple studies converge on the point that the 26<sup>th</sup> Amendment has drastically altered the balance of the JCP, granting predominant influence to the executive and parliament. Mehmood (2025) and Qureshi (2025) both characterize this shift as a grave threat to judicial independence, arguing that it institutionalizes political interference and undermines the doctrine of trichotomy of powers. The amendment's passage, met with a "Black Day" protest by the legal community, is further critiqued by Muhammad, Khan, & Shahid (2024) for its procedural deficiencies and lack of genuine stakeholder consultation, which have exacerbated institutional tensions. The emerging scholarly narrative is unequivocal: the Twenty-Sixth Amendment represents a decisive step toward parliamentary hegemony, potentially neutering the judiciary's role as an essential check on executive and legislative authority. While this existing literature rightly condemns the amendment, it often lacks a sustained, tripartite critique examining judicial independence, separation of powers, and accountability in tandem, nor does it fully leverage comparative analysis to underscore the amendment's unique deficiencies. This paper seeks to fill that gap.

### **Constitutional & Historical Background**

The relationship between judicial independence and constitutional modifications in Pakistan has become more intricate due to significant legislative developments. Jatoi and Shah (2023) argue that these developments have frequently altered the authority and management of the courts. The trajectory of judicial independence in Pakistan has been profoundly shaped by its constitutional

evolution, marked by periods of assertion and subordination. Understanding this historical context is essential to critically appraise the radical departure represented by the Twenty-Sixth Amendment. The early constitutional history of Pakistan was characterized by executive dominance. The Constitutions of 1956 and 1962 vested extensive appointment powers in the President, offering limited safeguards for judicial security. This era was marked by judicial capitulation in landmark cases like *Dosso v. State* (PLD 1958 SC 533), where the Supreme Court endorsed military coups under the "doctrine of necessity." A significant shift began with the *Al Jehad Trust* case (PLD 1996 SC 324), where the Supreme Court mandated that consultation in judicial appointments must be "effective, meaningful, and purposive," establishing a nascent form of judicial primacy. The cornerstone of the modern appointment system was laid by the Constitution of 1973. While Article 177 provided for the appointment of Supreme Court judges by the President "after consultation" with the CJP, the office of the CJP itself was governed by an uncodified convention of seniority. This practice became a critical buffer against executive patronage. A transformative change arrived with the Eighteenth and Nineteenth Amendments (2010-2011), which introduced Article 175A. This provision created a structured process involving a Judicial Commission of Pakistan (JCP) to nominate judges and a Parliamentary Committee to review them. Despite this new architecture, the seniority convention for appointing the CJP remained intact until 2024, preserving a core element of judicial insulation from political bargaining. The lead-up to the Twenty-Sixth Amendment was marked by heightened tensions between the judiciary and the executive, notably exemplified by the letters from six judges of the Islamabad High Court alleging intelligence agencies' interference. It was against this backdrop of institutional conflict that the 26th Amendment was rapidly passed in October 2024, fundamentally restructuring the pillars of judicial appointment and tenure that had been carefully, if imperfectly, constructed over previous decades.

#### **a. Earlier Constitutional Framework (1956–1973)**

The Constitution of 1956 vested the power to appoint judges of the superior courts in the President, acting on the advice of the Prime Minister. Safeguards for independence were limited, and political influence over the judiciary remained considerable. The 1962 Constitution, promulgated under military rule, centralised appointment powers further in the executive. Judicial tenure and security were vulnerable to presidential discretion.

#### **b. The 1973 Constitution and Seniority Convention**

The Constitution of 1973, still in force, sought to entrench judicial independence under Articles 175 and 209. Article 177 authorised the President to appoint Supreme Court judges "after consultation" with the Chief Justice. For the Chief Justice of Pakistan, the text was silent on hierarchy, but constitutional practice quickly crystallised around a seniority principle, making the most senior judge the presumptive successor. This practice, although not codified, was defended as a buffer against patronage.

#### **c. Eighteenth & Nineteenth Amendments (2010–2011)**

The Eighteenth Amendment introduced Article 175A, establishing a Judicial Commission (to propose names) and a Parliamentary Committee (to confirm or reject recommendations). The Nineteenth Amendment refined the composition of these bodies after criticism from the Supreme Court. Despite these reforms, the office of the Chief Justice remained tethered to seniority rather than discretionary selection.

#### **d. Pre-2024 Practice and Critiques**

From 2011 to 2024, appointments to the Supreme Court followed Article 175A mechanism, but the Chief Justice continued to be chosen automatically by seniority. Scholars and practitioners highlighted strengths, predictability, insulation from partisan bargaining, and weaknesses,

including a lack of scrutiny over leadership skills and the possibility of very short tenures for some Chief Justices.

### **The Twenty-Sixth Constitutional Amendment (2024)**

Passed by the Parliament on October 20-21, 2024, with unusual haste, the Twenty-Sixth Constitutional Amendment represents the most significant restructuring of the judiciary since the 18th and 19th Amendments. Comprising 27 clauses, the amendment fundamentally altered the processes for appointing the CJP, composing the JCP, and constituting specialized benches. The key provisions of the Amendment, relevant to the instant topic, are as follows:

#### **a) Appointment of the Chief Justice of Pakistan**

Previously, the CJP was appointed on a seniority basis. The most senior judge had been appointed to the post. The Amendment dismantled the long-standing seniority convention. It established a Special Parliamentary Committee, composed of twelve members with proportional representation from parliamentary parties based on the strength in the parliament, to nominate the CJP from among the three most senior Supreme Court judges. This nomination is sent to the Prime Minister for formal appointment by the President. All members of the committee are from parliament. The committee consists of eight members from the National Assembly and four members from the Senate. The committee is constituted without the inclusion of any member from the judiciary. The Amendment has fixed for the first time the tenure of the CJP, but the logic behind it is unique because the tenure of the CJP is three years unless he sooner resigns or attains the age of 65 years or is removed from his office. Notably, a judge appointed as CJP at the age of 62 would retire after three years at 65, but a judge appointed at 60 would be required to step down as CJP after three years, despite having two years remaining before the general retirement age of 65 for Supreme Court judges. Furthermore, if a judge appointed as CJP at 64 would be required to retire after 1 year.

#### **b) Appointment of the Judges of the Superior Judiciary**

The JCP is primarily responsible for the appointment of the judges of the superior judiciary. The 26<sup>th</sup> Amendment has significantly changed its structure. The Parliamentary Committee for the appointment of judges has been substituted and merged with the JCP. The reconstituted JCP now includes fewer judges and more representatives from the executive and legislature, including the Law Minister and the Attorney-General, thereby formalizing executive dominance over the judicial appointments.

#### **c) Constitutional Benches in the Supreme Court and High Court**

For the first time, the Amendment mandates the formation of Constitutional Benches in the Supreme Court and High Courts. The power to nominate judges to these powerful benches is vested in the newly executive-dominated JCP. This gives the government, as the largest litigant, direct influence over the composition of benches that adjudicate the most significant constitutional questions. No judge can be nominated for the constitutional benches without the support and votes from the executive.

#### **d) Removal of Judges**

The 26th Amendment introduced a new mechanism for judicial accountability under Clause (18) of Article 175-A. S., Muhammad, & Ali (2025) state that the 26<sup>th</sup> Amendment has given another opportunity to the executive and parliament to remove a judge from the service on the grounds of inefficiency. It empowers the JCP to evaluate the performance of High Court judges and, if deemed "inefficient," to send a report to the Supreme Judicial Council (SJC). Upon receipt of such a report, the SJC is obligated under the amended Article 209(5) to initiate proceedings against the judge.

The vagueness of the term "inefficiency" raises concerns about its potential use as a tool for political coercion.

### **Analytical Appraisal**

The Twenty-Sixth Amendment has reshaped the judiciary *vis-à-vis* the office of CJP, Constitutional Benches, Suo-Motu powers, and the power to do complete Justice. These reforms must be evaluated against constitutional principles of judicial independence, separation of powers, accountability, and institutional efficiency.

#### **a) Judicial Independence**

In *Groia v. Law Society of Upper Canada* (2018 SCC 27), the Supreme Court of Canada held that Judicial independence, a cornerstone of constitutional democracy, is essential for ensuring both the impartiality of the judiciary and the maintenance of the rule of law. This principle entails that every judge is free to adjudicate matters based solely on an assessment of the facts and an understanding of the law, without succumbing to improper influences, inducements, or pressures from any quarter. In *Government of Sindh v. Sharaf Faridi* (PLD 1994 SC 105), the Supreme Court emphasized that, in addition to the requirement that the judiciary remain independent of the executive and legislature, it also requires the judiciary, as an institution, to remain independent of the executive and legislature. The transparency of judicial appointments is fundamental to sustaining this independence, as it fosters public faith in the judiciary's impartiality. In *Al-Jehad v. Federation of Pakistan* (PLD 1996 SC 324), the Supreme Court reinforced that the litigants approach the courts with the expectation that judges are neutral and that justice will be administered without fear, favour, or extraneous considerations. This vital trust is eroded when appointments are not conducted through a transparent and merit-based process. It is against this foundational principle that the appointment mechanism of the Twenty-Sixth Amendment must be critically evaluated. The Special Parliamentary Committee, vested with the exclusive authority to appoint the Chief Justice from among the three most senior judges, has already demonstrated its potential for politicization. This was evident in its decision to bypass the two senior-most judges to appoint Justice Yahya Afridi as CJP—a decision made without recorded justification. Malik (2024) reported that it is widely perceived as retaliation for the judges' ruling in the *Reserved Seats Case* (PLD 2025 SC 67). The subsequent reversal of that very judgment by a newly constituted Constitutional Bench underscores the high stakes of this new process.

Further compromising judicial independence is the role of the reconstituted JCP. With its executive-dominated membership, the JCP holds the power to nominate judges to the influential Constitutional Benches. This creates a direct conflict of interest, as the executive branch is the country's most frequent litigant. Placing the power to select judges in the hands of a primary party to litigation flagrantly violates the core legal maxim *nemo iudex in causa sua*—that no one should be a judge in their own cause. The discretion afforded to the JCP carries a profound risk of politicization, a concern exacerbated by the absence of clear nomination criteria. In practice, this has led to the repeated nomination of judges perceived as aligned with the ruling coalition's preferences, thereby undermining impartiality and contravening constitutional and international obligations as discussed by Tariq, Tariq, Saqib, and Fatima (2025). Consequently, rather than striking a balance, the Twenty-Sixth Amendment creates incentives for judicial conformity and risks subordinating judicial autonomy to political expediency.

#### **b) Separation Of Powers**

The doctrine of separation of powers is a foundational principle of constitutional democracy, designed to control governmental authority and prevent it from undermining the very values it is meant to promote, chief among them, political liberty. By dividing the state into distinct branches, the doctrine aims to safeguard liberty by ensuring that no single person or group can monopolize the machinery of government. This structure creates autonomous centers of power that develop

distinct institutional interests, thereby enabling them to function as internal checks and balances on one another. A core tenet of this doctrine is that each branch must be confined to its own constitutional functions and prevented from encroaching upon the domains of the others. When properly implemented, this system of mutual checks prevents the accumulation of excessive power and guards against arbitrary rule. Consequently, Vile (1998) explains that in a constitutional democracy, the separation of powers is a primary mechanism for achieving constitutionalism – the principle that governmental power must be legally limited to protect individual freedom. The independence of the judiciary from the legislative and executive branches is an indispensable component of this constitutional framework, as judicial autonomy is intrinsically linked to the effective functioning of the separation of powers as emphasized by Ocheme (n.d.).

It is this critical balance that the 26<sup>th</sup> Amendment has profoundly disrupted. The Amendment has fundamentally altered the composition of the JCP, which is central to judicial appointments. Previously, the JCP was judicially dominated, a structure intended to insulate the appointment process from political interference. The 26th Amendment reduces judicial members to a minority and significantly increases representation from the legislature and executive, including lawmakers, the law minister, and the attorney general. This new configuration allows the ruling party and its allies to form a majority, enabling them to exert decisive control over judicial appointments. This structural shift formalizes executive and legislative influence over a process that was previously insulated, thereby compromising the separation of powers and substantially risking the politicization of the judiciary. Critics argue this effectively transforms the JCP from a judicial body into a hybrid institution that the executive can control. This encroachment is further evidenced by the Amendment's overhaul of the appointment process for the Chief Justice of Pakistan. The long-standing convention, which insulated the appointment from political interference by automatically elevating the senior-most judge of the Supreme Court, has been abolished. In its place, the Amendment grants the legislature complete control over the selection of the CJP through the Special Parliamentary Committee. The cumulative effect of these changes is a clear violation of the doctrine of Judicial Independence and the separation of powers. By granting the political branches dominant control over both the general judicial appointment process and the specific selection of the judiciary's leader, the 26th Amendment undermines the autonomy necessary for the judiciary to function as a co-equal branch of state.

### **c) Accountability**

Accountability within the judiciary is an indispensable element of constitutional governance, ensuring that judges, while independent, remain answerable for their conduct and performance in accordance with principles of transparency, integrity, and public trust. The fundamental constitutional challenge, however, resides in balancing this accountability without compromising the very independence it seeks to regulate. Proponents of the 26<sup>th</sup> Amendment defend its enhanced parliamentary role as a necessary step toward this balance, contending that an entirely self-selecting judiciary is antithetical to democratic principles. A critical examination, however, reveals that the Amendment establishes a framework not for genuine judicial accountability, but for a form of political accountability that risks subverting judicial autonomy. This risk is starkly illustrated by the power granted to the now executive-dominated Judicial Commission of Pakistan (JCP). Under Clause (18) of Article 175-A, the JCP can evaluate judicial performance and initiate proceedings before the Supreme Judicial Council (SJC) on the vague grounds of "inefficiency." The term "inefficiency" is inherently malleable and lacks precise legal definition, rendering it susceptible to politicization. This ambiguity allows it to be weaponized against judges who deliver decisions contrary to the government's interests, effectively creating a "sword of Damocles" hanging over the judiciary. Such a mechanism does not promote integrity; rather, it fosters a culture of fear and conformity, chilling judicial independence. Furthermore, the selective application of this new accountability model is demonstrated by the process for appointing the Chief Justice of

Pakistan. The selection by the Special Parliamentary Committee, conducted without disclosed rationale as evidenced by the bypassing of two senior judges following the Reserved Seats Case, reveals an outcome-oriented approach. This indicates that the purported accountability is not applied consistently but is instead leveraged to achieve specific political results. Therefore, while the need for robust judicial accountability is undeniable, the 26<sup>th</sup> Amendment provides a profoundly distorted version. It sacrifices the core of judicial independence without achieving the genuine, principled accountability required for a resilient constitutional democracy.

### **Comparative Perspective**

Judicial appointment systems across constitutional democracies reflect a perpetual tension between independence and accountability. A comparative analysis of the United Kingdom, India, and the United States provides a critical lens through which to evaluate Pakistan's Twenty-Sixth Amendment, revealing that the Pakistani model adopts the politicization of other systems while pointedly rejecting their essential safeguards.

#### **a) United Kingdom**

The United Kingdom's model, established by the Constitutional Reform Act 2005, prioritizes insulating the judiciary from political branches. The independent Judicial Appointments Commission (JAC), composed primarily of judges and legal professionals, conducts rigorous merit-based assessments. The role of the Lord Chancellor is largely limited, and parliamentary involvement is deliberately minimized to prevent politicization. The British system demonstrates that accountability can be achieved through transparency and rigorous professional standards, without compromising the core of judicial independence. This stands in stark contrast to Pakistan's 26<sup>th</sup> Amendment, which actively injects parliamentary politics into the very heart of the judicial appointment process.

#### **b) United States**

The United States employs a highly politicized appointment process, where federal judges, including Supreme Court Justices, are nominated by the President and confirmed by the Senate. This system openly acknowledges the role of political ideology in judicial appointments. However, several critical safeguards distinguish it from Pakistan's post-26<sup>th</sup> Amendment model. First, appointments are for life tenure ("during good Behaviour"), insulating judges completely from political pressure after confirmation. Second, the process involves powerful checks and balances between the political branches, the executive and legislature, which often have competing interests, forcing negotiation and moderation. Third, there is a long-standing tradition of professional scrutiny through the American Bar Association and intense public hearings. In contrast, Pakistan's Amendment creates a monolithic political control through an executive-dominated JCP and a Special Parliamentary Committee dominated by the ruling coalition, without the robust inter-branch checks or the guarantee of life tenure. The CJP's fixed term, in particular, makes them susceptible to political calculations about their post-retirement career, a pressure absent in the U.S. system.

#### **c) India**

India's journey underscores the absolute primacy of judicial independence. Through a series of landmark rulings, the *Second Judges Case* (1993) and the *Third Judges Case* (1998), the Supreme Court established the Collegium System, vesting primary appointment authority within the judiciary itself. This judicial interpretation was decisively reaffirmed in *Supreme Court Advocates-on-Record Association v. Union of India* (2015), where the Court struck down the National Judicial Appointments Commission (NJAC). The ruling held that judicial primacy in appointments is an essential feature of the Constitution's "Basic Structure," a fundamental principle that even a democratically elected parliament cannot amend. The Indian experience presents a powerful

counter-argument to the 26<sup>th</sup> Amendment: it establishes that "democratic accountability" cannot be a pretext for diluting judicial independence, which is itself a non-negotiable foundation of constitutional democracy.

### **Lessons For Pakistan**

In contrast, Pakistan's 26th Amendment removes internal judicial checks and creates a system where an executive-dominated JCP dominates appointments and constitutional benches. Unlike the UK or India, where independence is structurally preserved, or the U.S., where checks exist, Pakistan's reform centralizes power without sufficient safeguards. This shift risks transforming the judiciary into a political extension of Parliament, undermining constitutionalism and the rule of law.

### **Implementation Challenges & Future Prospects.**

#### **a. Institutional Resistance & Constitutional Litigation**

The 26<sup>th</sup> Amendment has already sparked constitutional petitions challenging its validity on grounds that judicial independence forms part of the unamendable "Basic Structure" of the Constitution. The Supreme Court's impending adjudication will be a watershed moment, determining whether Pakistan follows the Indian precedent set in *Kesavananda Bharati v. State of Kerala* (1973). The Pakistani Supreme Court has previously hinted at a basic structure doctrine in *District Bar Association, Rawalpindi & others v. Federation of Pakistan & others* (PLD 2015 SC 401), asserting its power of "constitutional guardianship." If the Court strikes down the 26<sup>th</sup> Amendment, it would represent a monumental reassertion of judicial authority. However, if it upholds the Amendment, it would be legitimizing a fundamental shift in the constitutional balance of power, potentially codifying its own subordination.

#### **b. Confrontation**

A judiciary perceived as politically aligned loses its moral authority and public confidence. The immediate implementation of the Amendment, particularly the constitution of executive-influenced Constitutional Benches that have swiftly overturned major precedents like the *Reserved Seats Case*, has already created a deep rift within the judiciary and the legal community. This perception transforms the court from a neutral arbiter into a political actor. Future governments, leveraging the same tools, will be tempted to "pack" the benches with sympathetic judges, leading to a cyclical erosion of judicial legitimacy. The ultimate challenge, therefore, is not merely legal but institutional. The 26<sup>th</sup> Amendment risks triggering a permanent state of confrontation between the branches and fostering a public belief that justice is for sale to the highest political bidder, thereby undermining the very rule of law it purports to strengthen.

### **Conclusion**

The 26<sup>th</sup> Amendment represents not a rebalancing but a fundamental rupture in Pakistan's constitutional framework. This paper has demonstrated that, rather than achieving a sustainable equilibrium between accountability and independence, the Amendment systematically subordinates the judiciary to parliamentary and executive dominance, thereby jeopardizing the core tenets of judicial independence and the separation of powers. The critical appraisal reveals that the Amendment's mechanisms are inherently corrosive. The dismantling of the seniority convention for the Chief Justice and its replacement with a politically constituted parliamentary committee has already demonstrated its potential for partisan retaliation, as evidenced in the appointment of Justice Yahya Afridi as CJP. The restructuring of the JCP to grant a decisive majority to the executive and legislature transforms a body intended to protect judicial integrity into one that guarantees political control. Furthermore, the creation of executive-influenced Constitutional Benches, operating without transparent criteria, flagrantly violates the principle of *nemo iudex in causa sua* – that no one should be a judge in their own cause—given the state is



the largest litigator. The comparative perspective underscores the Amendment's deviation from global democratic norms. Unlike the United Kingdom's independent Judicial Appointments Commission or India's staunch defence of judicial primacy as part of its basic structure, Pakistan's reform introduces the politicization of the U.S. model but crucially omits its safeguarding features i.e. life tenure and robust inter-branch checks. The resulting system is one of monolithic political control, devoid of the countervailing forces necessary to prevent abuse. While proponents champion the reform as a necessary step toward accountability, this paper has argued that it establishes a misguided and politicized framework. The power to evaluate judges on vague grounds of "inefficiency" and to dominate judicial appointments constitutes accountability to the ruling party, not to the law or the public. This substitutes genuine, legal accountability with political conformity. The ultimate implication of the 26<sup>th</sup> Amendment is therefore the transformation of the superior judiciary from a fearless check on governmental power into a potential instrument of it. This erosion of a key democratic pillar creates a profound risk of authoritarian consolidation and undermines the legal protection of fundamental rights. The future of Pakistani constitutionalism now hinges on a watershed moment; the Supreme Court's courage to defend judicial independence as an unamendable basic feature of the Constitution. Should it fail to do so, the 26th Amendment will stand as the formal surrender of the judicial branch to the transient whims of the political arena, with dire consequences for the rule of law in the Islamic Republic of Pakistan.

## References

1. Ali, R., *Independence of Judiciary in Pakistan: An analysis of 18th & 19th Constitutional Amendments*, 10 J. Soc. Sci. Rev. 45 (2021).
2. Jatoi, G. F., & Shah, I. H., *The Impact of Constitutional Amendments on Judicial Independence in Pakistan*, Journal of Education, Law and Social Sciences, 1(1), 63-77 (2023).
3. Malik, H., *One judgment cost Justice Mansoor CJP's robes: Real purpose of 26th amendment becomes clear as day*, The Express Tribune (Oct. 23, 2024), <https://tribune.com.pk/story/2504719/one-judgment-cost-justice-mansoor-cjps-robes>.
4. Mehmood, B., *From Juridical Idealism to Institutional Decay: The Rule of Law Conundrum*, 3 J. Soc. Sci. Archives 112 (2025).
5. Muhammad, A., Khan, U., & Shahid, A., *The Intersection of Legal Reforms and Judicial Crisis: A Study of Pakistan's 26th Constitutional Amendment and the Black Day for Judiciary*, 5 Critical Rev. Soc. Sci. Stud. 88 (2024).
6. Qureshi, M., *Failure of Judicial Independence is the Failure of Doctrine of Trichotomy in Pakistan*, 3 Soc. Sci. Rev. Archives 25 (2025).
7. S., Muhammad, M., & Ali, S., *The 26th Amendment to the Constitution of Pakistan: Implications for Judicial Independence*, 3 Soc. Sci. Rev. Archives 15 (2025).
8. Tariq, M. M. N., Tariq, M. A. N., Saqib, M., & Fatima, M. U. N., *Pakistan's Constitutional Conundrum: Navigating the Lucid Implications of 26th Amendment*, 4 Pak. Rsch. J. Soc. Sci. 1 (2025).
9. Vile, M. J. C., *Constitutionalism and the Separation of Powers* (2d ed., Liberty Fund 1998).