

Maktab Competitive Exams Services

Current Affairs Workshop for CSS 2025

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Is 26th Amendment a Blow to Independence of Judiciary?

Features:

1. **Article 9-A:** Right to clean and health environment (Article 9: Security of life)
2. **Article 38:** Promotion of Social and Economic Welfare – sub clause f (Elimination of riba as soon as possible – elimination of riba before Jan 2028)
3. **Article 48:** President will act upon the advise of PM and Cabinet – (Not subject to court review or challenges by any tribunal and authority)
4. **Article 81:** specifies the **expenditures charged upon the Federal Consolidated Fund**, meaning these expenditures are automatically debited from the fund without requiring a vote of approval by the **National Assembly**. (Remunerations of Judicial Commission and Supreme Judicial Council along with Supreme court and President have been added)
5. **Article 111:** Right to speak in assembly – Advocate General – Take part in the proceedings of provincial assemblies – Article 130(11) CM has right to appoint five advisors – these advisors can also take part in the proceedings of Provincial assemblies but they do not have right to vote same like Advocate General
6. **Article 175 A:**
 - a) Chief Justice from the 3 senior most Chief justices of Supreme Court would be appointed by PM. advise to the President (Earlier senior most judge used to get appointed)
 - b) Special parliamentary committee (12 members 8 from NA 4 from senate Equal members from treasury and opposition benches (In camera meetings - 2/3rd majority must be maintained while taking decision)
 - c) Members of the judicial commission: CJP, 4 most senior judges of SC, 1 retired CJP, Attorney general, Law Minister, senior advocate of SC nominated by Pakistan Bar Council for 2 years
 - d) New Amendment: CJP, 3 most senior judge of Supreme court, Most senior judge of constitutional court, Federal Law minister, Attorney general, Supreme court Advocate, two members from senate and 2 from NA, A technocrat woman or a non muslim appointed by speaker national assembly for two years
 - e) Appointment of a judge against vacant position: Chief justice will nominate a judge and send it to PM for approval. Pm will advise president to appoint that judge. (Earlier 8 members committee nominate the judge)
7. **Article 177:** Appointment of Supreme Court Judge - Citizen of Pakistan - Remained 5 years Judge of High Court, 15 years High court and as well as supreme court advocate
8. **Article 179:** term of Chief Justice would be 3 years regardless of the age
9. **Article 184:** Supreme Court cannot take suo motto action on any case pertaining to public importance
10. **Article 185:** Supreme court hear the cases of subject matter of atleast 1 million (earlier it was 50 thousand)
11. **Article 186 a:** Supreme court has power to transfer cases of public importance from one high court to an other or even transfer it to itself
12. **Article 191 A:** Federal constitutional court was opposed by political parties. Decided to make constitutional benches in supreme court. Member of each bench would not be less than 5. Members will be supreme court judges and they will be appointed by the government and they would be taken equally from all provinces. The most senior judge will head the bench. Time frame will be decided by Judicial Commission
13. **Article 193:** Appointment of the high court judge. Citizen of Pakistan, minimum 40 years of age, 10 years high court judge 10 years experience in judicial office

14. **Article 202:** Constitutional benches in high courts. Judges of high courts will be appointed. Term would be decided by Judicial commission. Senior judge would be the president of that bench
15. **Article 203 -D:** Federal Shariat Court – appeals would be disposed off in 12 months
16. **Article 215:** Chief election commissioner will continue his/her office till the appointment of successor

How is it a blow to independence of judiciary?

The International Commission of Jurists (ICJ) stated: The 26th Constitutional Amendment (CA), passed by Pakistan's Parliament today, is a blow to judicial independence, the rule of law, and human rights protection

1. The composition of the Judicial Commission of Pakistan

The Judicial Commission of Pakistan (JCP) nominates judges for the Supreme Court and High Courts for appointment. Before the 26th Constitutional Amendment, the JCP comprised a majority of judges. However, the amendment has changed the composition of the JCP to also include two members of the National Assembly, two members of the Senate and one woman or non-Muslim member, to be nominated by the Speaker of the National Assembly.

2. Administrative powers of the Judicial Commission of Pakistan

In addition to nominating judges for appointment, the JCP has been given the power to determine and nominate "constitutional benches" within the Supreme Court and High Courts. These benches shall have exclusive jurisdiction over matters involving interpretation of the Constitution and enforcement of fundamental rights. Such power allows the JCP – a body subject to direct political influence in its decision-making – to create tailored-made judicial benches to hear specific cases, including cases of political significance. As a result, there is serious concern that these JCP-appointed benches will not be independent and impartial.

3. Appointment of the Chief Justice of Pakistan

Prior to the 26th Constitutional Amendment, the most senior judge of the Supreme Court was appointed the Chief Justice of Pakistan (CJP). The Executive or the Parliament had no say in this appointment. The 26th Constitutional Amendment has amended the Constitution to give a "Special Parliamentary Committee" (SPC) consisting of eight members of the National Assembly and four members of the Senate the power to nominate the CJP from among the three most senior Supreme Court judges.

4. Removal on the ground of "inefficiency"

The amendments provide the Supreme Judicial Council (SJC) – a judicial body responsible for recommending judges for removal – may recommend judges of the Supreme Court and High Courts for removal if it finds they "may be inefficient in the performance of the duties" of their office. With respect to this, the 26th Constitutional Amendment does not define "inefficiency", nor does it establish a threshold or criteria for "inefficiency". Earlier, the grounds for removal by the SJC were incapacity or misconduct.

These amendments directly violate **Article 14 of the International Covenant on Civil and Political Rights (ICCPR)**, which guarantees the right to equality before courts and tribunals and to a fair and public hearing by a competent, independent and impartial tribunal established by law. **Article 10A** of Pakistan's Constitution also recognizes the right to a fair trial.