

PAKISTAN
NATIONAL
ASSEMBLY



STUDY GUIDE



LUMUN21



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THE LUMUN SPIRIT

The LUMUN Spirit was first introduced as a concept at LUMUN XV. It sought to reintroduce a recognition of the most essential components of MUN culture; imparting a sense of responsibility accepting that the onus is on us to be the forerunners of change. The fundamental premise of a Model UN is to develop our understanding of the issues and conflicts in the world as a collective, and to connect individuals with vastly differing life experiences with each other. The pursuit of quantitative success and accolades has fermented a tradition of MUN being a space mired in hostility and distrust. The LUMUN Spirit is our continuing effort to inculcate empathy, compassion, understanding and diplomacy within this competitive activity.

As we proceed on our journey of revamping Model UN, the LUMUN Spirit is an idea that we aspire to incorporate in the entire LUMUN experience: from the Host Team, to an expectation that we will have from the delegates as well. It is not an abstract concept – it is a vision that should embody the behavior of every delegate in every committee. Inside the committee or out; the enthusiasm to meet other people, present arguments in a true ambassadorial manner and the idea to enjoy LUMUN should never be forgotten. In this very essence we will be able to represent what it means to simulate a true world model; an actual representation of the United Nations. We continue to strive and ensure that the outlook of LUMUN XVIII is to not be an average Model UN conference anymore.

And so, leadership and prowess within a committee is not characterized by exerting one's overbearing presence on others or by alienating and excluding others from discussion. They manifest in a delegate's ability to engage with others, help them play their part in the committee, and to facilitate the committee as a whole to engage in a fruitful and informative debate. This includes actions as simple as maintaining a moderate temperament, inviting others' input and operating with honesty and respect. The LUMUN Society invites you to understand what it means to be an ambassador of a country and represent its foreign policy means to employ collaboration alongside reasoned argumentation to press forward with that actor's policy agenda.

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Secretary General



Laiba Noor Abid

Dear Delegates,

On behalf of our Secretariat and Staff, it is with great joy and immense pride that I extend a heartfelt invitation to you for the 21st edition of LUMS Model United Nations (LUMUN). This milestone marks not only a continued legacy of excellence in diplomacy at LUMS but extends beyond! It is both an honor and a privilege to carry forward this tradition of global engagement in collaboration with Oxford University this year.

At LUMUN, we believe in the power of dialogue. For just over two decades, each year young minds have come together to tackle issues of global and contemporary importance. In the process, they learn how to face adversity and difference while celebrating the spirit of negotiation and collaboration. These five days serve as a platform for utilizing real-world knowledge to craft actionable and feasible policy proposals.

But LUMUN is so much more than just a forum for intellectual exchange; it is a community where lasting connections are forged! Now more than ever, as we diversify and internationalise the LUMUN community, we hope to facilitate bonds and create treasured moments for delegates to carry as souvenirs far beyond the conference days. Staffed by over 200 members, our team is dedicated to ensuring that delegates feel welcomed to the vibrant city of Lahore and enjoy a wide array of engaging social and recreational activities, outside their committee rooms.

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With a diverse range of committees – from General Assemblies to Specialized Agencies, Regional Bodies, and the Economic and Social Councils – there is something for everyone at LUMUN. Whether you are new to Model United Nations or a seasoned delegate, you will find a platform that perfectly aligns with your interests.

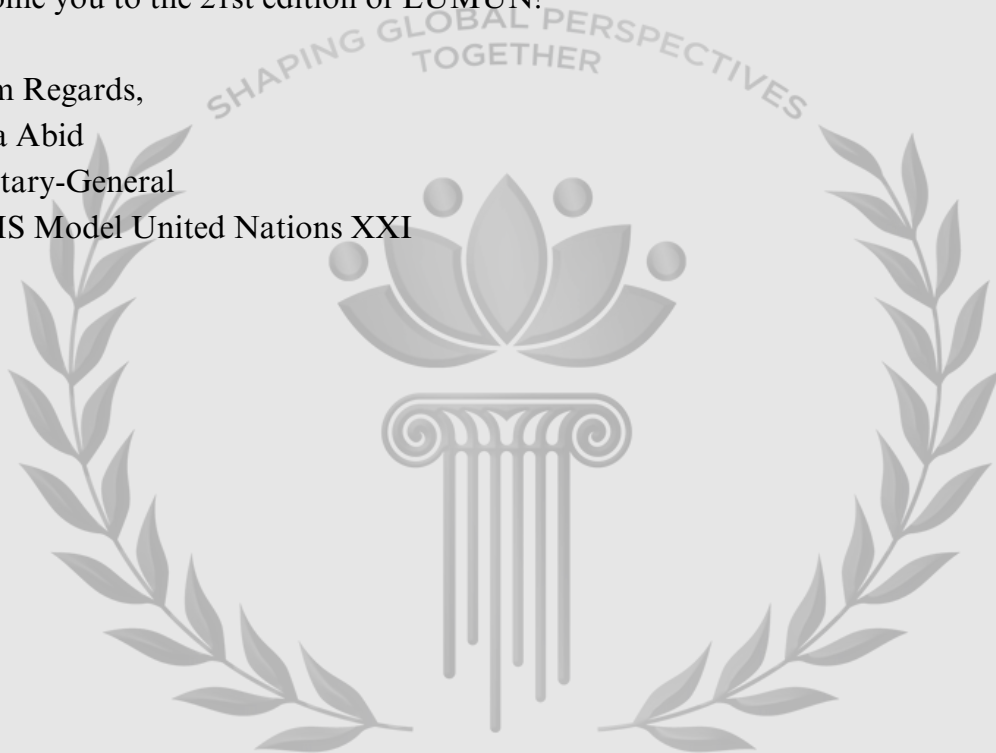
As we celebrate and expand our ongoing legacy of quality debate, we are committed to making this year's LUMUN more memorable than ever. The Staff and I are thrilled to welcome you to the 21st edition of LUMUN!

Warm Regards,

Laiba Abid

Secretary-General

LUMS Model United Nations XXI



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Under Secretary General



Khudija Munawar

Dear Delegates,

It is with great pleasure that I welcome you to the 21st edition of LUMUN. As the Under Secretary General for Specialized and Regional Bodies, I am excited to host you at this prestigious event. Currently, I am a sophomore at LUMS, pursuing a major in Anthropology & Sociology (though at the rate this changes, I might graduate with a degree in indecision).

While I am a true parliamentary debater at heart, LUMUN has been instrumental in shaping my appreciation for Model United Nations. From my early days as a middle school delegate at this very conference to now being part of its organizing team, LUMUN has given me countless cherished memories. (Shoutout to Noor Fatima, my best friend, whom I met here as a delegate all those years ago). I hope to deliver an experience that fills you with the same sense of learning and connection that I've been lucky enough to find (I am just a chill guy).

I am confident that each of you will bring your best to the conference, contributing to the high-caliber debate that defines LUMUN. Beyond that, I encourage you to pause and reflect on why you love public speaking. Savor those moments of joy—they will stay with you far longer than any award or title (seriously, those are the core memories TikTok edits are all about).

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The topics for all regional bodies have been carefully curated, and your chairs and ACDs have worked tirelessly to create an inclusive, enriching environment for debate. I urge you to approach the conference with mutual respect and actively contribute to maintaining a safe, equitable space for all. This is the most fundamental responsibility you owe to one another.

With that (totally not a quarter-life-crisis-inspired) reflection, I wish you the very best for an incredible conference. If you require any help, no matter how big or small, please do not hesitate to reach out to me.

Yours ever,

Khudija Munawar

Under Secretary General | Specialized & Regional Bodies



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Committee Director



Amal Tanveer

Hello Delegates,

It is my absolute pleasure to welcome you to the Pakistan National Assembly at LUMUN 21! My name is Amal Tanveer, and I am honored to serve as your Committee Director this year. I am currently pursuing a major in Chemistry (yes, you heard that right—Chemistry!) at the Syed Babar Ali School of Science and Engineering, affectionately (and accurately) nicknamed the trenches. While being a woman in STEM is just one facet of my personality, my passion for making a meaningful impact in the world is a cornerstone of who I am.

With over half a decade of MUN experience under my belt, I joined LUMUN last year as the Assistant Committee Director for the PNA at LUMUN 20. This year, I am thrilled to step up and chair a committee that holds a special place in my heart. I hope this experience inspires you to do justice to the debates, engage in meaningful discussions, and walk away with a deeper understanding of the nation we call home—and the forces shaping it. I look forward to well-researched and politically aware delegates who value hard work and passion above all else while keeping in mind the spirit of debating during a MUN. Looking forward to meeting you all in December!

Warm Regards,

Amal Tanveer

Committee Director- Pakistan National Assembly

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Committee Director



Qazi Soban Siddiqui

Salam Delegates!

Welcome to the Pakistan National Assembly at LUMUN 21! My name is Qazi Soban Siddiqui, I am a second-year Law student, and your Chair for this committee. When not immersed in debates about governance and law, I enjoy playing music and exploring the world through poetry.

This year, the PNA will tackle the 26th Amendment to the Constitution of Pakistan, a pivotal issue with far-reaching implications for judicial independence and civilian rights. As delegates, you will navigate the nuances of governance, analyze the risks, and propose solutions to safeguard our democratic foundations. Keep in mind that the committee is set around the time when this Amendment is proposed.

I encourage you to approach this debate with curiosity, critical thinking, and diplomacy. Let's make this committee a space for bold ideas and meaningful conversations. Remember to stay respectful of everyone during the time we spend together. I'm excited to see what you bring to the table!

Best regards,
Qazi Soban Siddiqui
Committee Director | Pakistan National Assembly
LUMUN 21

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Assistant Committee Directors



Aliza Khan



**Muhammad Talha
Aziz**



Maria



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Mandate and Overview of Pakistan National Assembly:

The Pakistan National Assembly (PNA) in LUMUN 21 will replicate Pakistan's House of the People, a lower house comprised of members elected from all constituencies across the country. The NA is run on routine business, motions, and bills. The Speaker, therefore, presides over the sittings to keep the affairs running smoothly. Delegates will represent the different political parties, addressing debates on public importance, resolutions, and legislative motions while strictly adhering to parliamentary decorum and procedure.

The most important function of the PNA is to pass bills. A proposed bill is scrutinized in appropriate standing committees and then is given three readings in the Assembly, allowing for debate and amendments. Once a majority approves the bill, it is transmitted to the President for final assent. Delegates must understand these legislative mechanisms to engage effectively in debates and simulate the decision-making process within the framework of Pakistan's separation of powers.

“National Assembly of Pakistan.” 2017.
Na.gov.pk. 2017.
<https://www.na.gov.pk/en/index.php>

Committee Context for PNA at LUMUN 21:

At LUMUN 21, the Pakistan National Assembly (PNA) will recreate the crucial October 21, 2024 session to discuss the 26th Constitutional Amendment. The reform tackles essential issues of judicial independence, transparency, and accountability, becoming a part of the foundation of Pakistan's democratic transition. Political party delegates will address the differences in ideology, coalition politics, and the changing nature of crises as they bargain over the terms of the amendment. The simulation highlights creative problem-solving and advocacy, with the participants expected to investigate the interplay of law, politics, and governance in determining the outcome through debate and a concluding vote.

The Judiciary in Pakistan- Historical Context and Evolution:

The judiciary has played a central role in shaping the political and constitutional landscape of Pakistan. Its constitutional mandate of safeguarding justice and principles has been the source of conflict as it seeks to stay above the politics of crisis and military interventions.



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While it inherited a robust legal framework from British colonial rule, the judiciary has repeatedly faced challenges in balancing its role as a constitutional arbiter with pressures from powerful executives and military regimes. Key moments in its history, such as its validation of military coups and controversial rulings under the Doctrine of Necessity, have underscored this tension, contributing to debates about its impartiality and credibility.

These historical dynamics have to be understood to take up judicial reform in Pakistan. Delegates should keep the complex legacy of the judiciary in mind while drafting sustainable reforms that further the independence of the judiciary and democratic governance. For detailed analysis of specific cases, such as *Maulvi Tamizuddin Khan v. Federation of Pakistan* or the judiciary's rulings during military regimes, please refer to the case study section of this study guide.

Structure and Functions of Pakistan's Judiciary:

The judiciary in Pakistan is structured on a hierarchical system to ensure justice, uniformity, and accountability in the delivery of judicial services.

It comprises of three main levels: the Supreme Court, the High Courts, and the subordinate courts. Each level plays a separate role to make up the whole judicial machinery for dealing with constitutional, civil, and criminal matters

1. The Supreme Court:

At the top of the judiciary stands the Supreme Court of Pakistan, which plays a role as the highest authority in all legal and constitutional disputes. The court assumes original jurisdiction in interpreting the Constitution and resolution of disputes between the federal government and provincial governments along with cases of violations of fundamental rights.

It also possesses appellate jurisdiction where decisions by lower courts and tribunals are reviewed. The Chief Justice of Pakistan (CJP) heads the institution, along with a bench of justices, each making a difference in the country's judicial framework.

2. High Courts:

There is one High Court for each of the four provinces; Islamabad High Court was added to supervise matters in the federal capital territory.



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High Courts mainly deal with constitutional petitions, appeals, and other issues requiring judicial review of executive actions. They are supposed to supervise and guide other courts, inferior to them within their jurisdictions in their respective regions for uniformity of application of laws.

3. Subordinate Courts:

The following are the details of grassroots-level courts, which actually constitute the backbone of the judiciary system of Pakistan. District and session courts handle civil litigation, criminal prosecutions, and family law disputes. Magistrates and judges at this level are crucial for providing justice to the populace and typically carry the bulk of judicial burdens.

Judicial Appointments:

The process of appointing judges is a cornerstone of judicial independence and integrity. However, the mechanisms employed for these appointments have evolved with time, reflecting the dynamic struggle to balance between a merit-based choice and transparency and accountability.

Pre-26th Amendment Appointment Process:

Before the 26th Amendment, the Chief Justice of Pakistan exercised substantial powers in appointing judges to Supreme and High Courts. Nominations are technically made by the judiciary after going through the President; such selections are later approved. This process has been criticized as opaque and susceptible to the influence of favoritism within the judicial system. Judicial appointments indicated possible aspects of personal or political bias in public eyes, hence the lack of public trust in the system.

Back in 2010, the 18th Constitutional Amendment aimed to address some of these issues by putting in place the Judicial Commission of Pakistan (JCP) and the Parliamentary Committee on Judicial Appointments. The JCP was composed of senior judges, representatives of the bar council, and members of the executive, which were supposed to nominate the judges.

The nominations were screened by the Parliamentary Committee, which was bipartisan in composition and consisted of legislators.



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While the new mechanism intended to promote merit and transparency, it brought along its associated challenges through allegations of political interference and over-reach of the executive.

Judicial Activism in Pakistan:

Judicial activism in Pakistan has become the identity of the judiciary in time with governance lapses and political instability. It has more frequently involved the judiciary where its position is not normally intended: in matters otherwise put into the hands of either the executive or the legislative under Article 184(3) of the Constitution on suo moto to correct an issue of public importance. Though such actions, especially under the previous Chief Justice Saqib Nisar, highlight critical governance issues, like healthcare costs, environmental degradation, and public infrastructure, they also raise debate regarding the extent of judicial overreach. Some of the notable instances include the judiciary's stand on the Diamer-Bhasha and Mohmand dams, as well as its decision to regulate private hospitals. The judiciary here has played an important role in addressing public grievances which other state organs failed to address.

Critics also argue that judicial activism goes too far, causing unintended consequences and disrupting the separation of powers. Cases such as the forced eviction caused by encroachment drives in Karachi or schools being closed in Islamabad reveal the problems of overreaching by the judiciary. Legislative amendments to amend the scope of suo moto action and accountability mechanisms such as mandatory larger benches in all suo moto cases would restore balance between judicial independence and institutional boundaries. The delegates must take into account these dynamics while debating judicial reform for a just and effective model of governance at LUMUN 21.

Understanding Separation of Powers:

The doctrine of the separation of powers undergirds the constitutional structure of Pakistan, thus distributing governance among three separate entities: the legislative, the executive, and the judicial. This tripartite system in the 1973 Constitution is positively oriented toward democracy by avoiding any concentration of power in the hands of a single branch with a robust system of check and balance.



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Ideally, each branch serves particular purposes- the legislature legislators, the executive executor, and the judiciary interpreter. Ideally, this separation of powers can lead towards a soundly balanced state machinery where responsibility, independence, and coordination go hand-in-hand; however, the pragmatic implementation of this rule in Pakistan testifies to a much more complex and often stormy affair. History points to the failure to keep balance between these branches with constant overlaps and tensions between them.

The judiciary has occasionally intruded into the domain of the executive through judicial activism, and the legislature has periodically attempted to influence judicial independence. This interplay is exacerbated by a controversial principle invoked during periods of political instability in the name of continuity of the state and national interest: the doctrine of necessity. Through this doctrine, the judiciary has validated extra constitutional measures, including martial laws and emergency rules.

Khan, M. I., & Shafiq, M. (2021). An Assessment of Judicial Activism to Empower the People: A Case of Pakistan (2007-2013). *Global Political Review*, VI(II), 79-91.
<https://www.humapub.com/admin/alljournal/s/gpr/papers/KIukO8fMS8.pdf>

Such incidents have severely raised questions regarding the independence and neutrality of the judicial branch. Analyzing the relationship between these branches defines Pakistan's governance problems and reforms. In order to contextualize the ongoing judicial reform debate, delegates in the Pakistan National Assembly (PNA) simulation must first appreciate this complex dynamic.

A thorough appreciation of these inter-branch relationships must be developed to effectively assess the implications that this amendment has on governance and democracy in Pakistan. That nuanced appreciation, in turn, assists not only in thinking through well-informed arguments, but also in imagining a future where the separation of powers would be more effectively realized.

Legal Definitions and Clarifications:

The Constitution (Twenty-sixth Amendment) Act, 2024 [26th Amendment],

[1]Dawndotcom, "Constitution (Twenty-sixth Amendment) Act, 2024," Scribd, 2024.
<https://www.scribd.com/document/782504787/Constitution-Twenty-sixth-Amendment-Act-2024> (accessed Nov. 25, 2024).



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(became known as the Constitutional Package), requires a 2/3rd majority by both the Senate and the National Assembly to be officially passed. It will be tabled to the National Assembly 3 days before the retirement of Qazi Faez Isa, the Chief Justice of Pakistan. According to the “Statement of Objects and Reasons”, signed by the Law Minister, Azam Tarrar, the purpose of the Amendment is to “improve the criteria and bring transparency in the appointment process of Judges of the Superior Courts”, and to “place an effective mechanism for performance evaluation of the Judges of the High Court.” It emphasizes the dire need for establishing Constitutional Benches in order to streamline the judicial processes, allowing the courts to focus on cases of utmost pertinence and lauds the proposal of a Special Parliamentary Committee to appoint the Chief Justice of Pakistan (CJP).

Overview:

Out of the 25 articles added, substituted or amended by the 26th Amendment,

A. B. Mehboob, “Unpacking the amendment,” DAWN.COM, Oct. 27, 2024. <https://www.dawn.com/news/1867912> (accessed Nov. 25, 2024).

16 (or 64%) of these pertain to the judiciary. These reforms will therefore significantly change the judicial structure of Pakistan. Broadly, the process of appointment of the Chief Justice will be changed, who will be appointed from a panel of three most senior judges by a Special Parliamentary Committee in which the government commands the majority, composition of the commission that appoints Supreme Court and High Court Judges will also be altered and Constitutional Benches will be made at the High Court and Supreme Court levels, including a performance evaluation of the high court judges, consequently increasing the role of the government in the judiciary.

Appointment of Supreme Court Judges: Article 175A and Article 177A

Amendments to 175A correspond to restructuring of the Judicial Commission, which is responsible for the appointment of judges of the Supreme Court. The commission previously comprised the Chief Justice of Pakistan (CJP), four senior members of the Supreme Court of Pakistan (SCP), a former CJP or SCP judge, the Federal Minister for Law and Justice,



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the Attorney General of Pakistan, a senior advocate - therefore representing a greater proportion of the judiciary. The Amendment, however, proposes to change the composition of the commission to allow for greater parliamentary influence in the judiciary. The new proposition includes the CJP and three, instead of four senior judges of the SCP. Moreover, a former CJP or SCP judge, previously part of the composition, has been removed. To increase parliamentary representation, 2 members from the Senate and 2 from the National Assembly, from both the government and opposition benches (in equal proportions) will be included as members of the Supreme Judicial Council to appoint judges.

***SUO MOTU POWERS CURTAILED:
Article 184 and Article 199***

Another profound amendment - to Article 184, has taken away the apex court's suo motu powers,

which have historically allowed the court to exercise judicial activism. Article 184 allows the Supreme Court to take up any matters of public importance related to the enforcement of fundamental human rights.

"Judicial activism refers to the proactive role of the judiciary in addressing societal issues and promoting social justice, often through the use of suo moto notices, where the court takes cognizance of a matter on its own initiative." Changes to Article 184, have taken away these powers from the Supreme Court, requiring specific applications to initiate cases, therefore placing checks on judicial activism. The purpose is to ensure that the Supreme Court's authority to issue orders aligns with its jurisdiction defined by the Constitution and does not extend beyond its scope of powers. Curtailing these powers will, however, limit the Supreme Court's influence in public matters that demand urgent attention.

Furthermore, changes in Article 199 will not only curtail the High Court's suo motu powers, but will also allow the Supreme Court to transfer any pending cases or appeals from any high court to itself.

The threshold of money required to file

“View of Judicial Activism and Comparative Analysis of Sua Motu Notices Taken by Chief Justice Saqib Nisar and Iftikhar Chaudhry,” Policyjournalofms.com, 2024. <https://policyjournalofms.com/index.php/6/article/view/127/143>



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appeals from high court decisions to the Supreme Court has also been changed from 50 thousand to a million rupees, which is likely to reduce the volume of appeals to the apex court, but will also disproportionately restrict individuals with less resources to the highest levels of justice.

CONSTITUTIONAL BENCHES IN THE SUPREME COURT : Article 191A

Article 191A, pertaining to the Constitutional Benches of the Supreme Court, has been inserted in the constitution to bring structural changes to the judiciary.

These Constitutional Benches will comprise judges of the Supreme Court, nominated by the Judicial Commission of Pakistan, with equal representation of each province and the most senior judge amongst them will be the Presiding Judge of the Constitutional Benches. The Benches will separate constitutional jurisdiction from other Supreme Court cases, therefore strengthening the distinction between judicial functions. These jurisdictions are specified as matters where the Supreme Court acts as the court of first instance, particularly those involving fundamental rights.

All petitions and appeals related to these matters will be transferred to and heard by the Benches only, therefore specifically categorizing cases of constitutional and political significance, ostensibly aiming to reduce case backlogs and streamline processes.

CONSTITUTIONAL BENCHES IN HIGH COURTS: Article 202A

Insertion of Article 202A calls for the establishment of Constitution Benches, which will comprise judges of a high court, nominated by the Judicial Commission of Pakistan and the most senior judge will be the Head of the Constitutional Benches.

Additional clauses curtail the authority of other high court benches, giving the Constitutional Benches exclusive authority over matters related to fundamental human rights as well as government and administrative compliance with the law. All cases related to these matters will be transferred to and heard by the Constitutional Benches only, further categorizing them as separate.



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APPOINTMENT OF CJP AND THE SPECIAL PARLIAMENTARY COMMITTEE - Article 175A:

Previously, Clause 8 of 175A authorized the Judicial Commission of Pakistan (JCP) - the constitutional body responsible for overseeing the appointment and confirmation of judges - to nominate candidates in the Supreme Court, High Courts and the Federal Shariat Court. These nominations were then sent to an 8-member parliamentary committee for review and approval, followed by the Prime Minister, who would further send them to the President for approval. The 26th Amendment, however, legitimizes the JCP to bypass the Parliamentary Committee and send its nominations directly to the Prime Minister and to the President for final appointment, therefore shifting authority from the Parliamentary Committee and giving the PM more direct influence over appointment. This aligns with the Amendment's overarching purpose of alleviating judicial independence through parliamentary and political influence.

Instead of the President directly appointing the senior most judge of the Supreme Court, the Chief Justice of Pakistan will be nominated by a Special Parliamentary Committee “from amongst the three most senior Judges of the Supreme Court. The committee shall send the name of the nominee to the Prime Minister who shall forward the name to the President for appointment.”

The committee will consist of 8 members from the National Assembly and 4 from the Senate, in proportional representation to their strength in the Assembly. Therefore implying that the sitting government is likely to have a majority in the Committee and hence, greater influence in the appointment of the CJP.

Additional clauses increase the scope of the JCP's rule making authority, which was previously limited to internal operations. Under the new law, JCP will be responsible for the assessment, evaluation and for determining the fitness of appointment of Judges. The parliament's overreach in judicial processes will therefore be inevitable.

Dawndotcom, “Constitution (Twenty-sixth Amendment) Act, 2024,” Scribd, 2024. <https://www.scribd.com/document/782504787/Constitution-Twenty-sixth-Amendment-Act-2024> (accessed Nov. 25, 2024).



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APPOINTMENT OF HIGH COURT JUDGES: Article 175A and Article 193

Changes to Article 175A, related to the Judicial Commission of Pakistan (JCP) for appointing high court judges, make structural changes to the composition and substitution processes in High Courts.

According to the amendments, the most senior judge of the high court in question will be replaced by the head of the Constitutional Benches of that high court, as a member of the JCP.

An amendment to Article 193, specifies the eligibility criteria of a High Court judge as forty, instead of forty five years of age and elaborates that the person must have been an advocate of a High Court, or must have held judicial office in Pakistan, for at least ten years.

PERFORMANCE EVALUATION OF HIGH COURT JUDGES: Article 175A

Dawndotcom, "Constitution (Twenty-sixth Amendment) Act, 2024," Scribd, 2024. <https://www.scribd.com/document/782504787/Constitution-Twenty-sixth-Amendment-Act-2024> (accessed Nov. 25, 2024).

Amendments to 175A have created checks and balances for the judiciary, imposing performance evaluations on the High Court Judges by the Judicial Commission, therefore curtailing their independence. If a judge's performance is found unsatisfactory, the Commission is to grant a period for improvement, however, in case of persistent inefficiency, the matter is to be referred to the Supreme Judicial Council for further scrutiny, which can risk their removal. Moreover, the Judicial Commission will be empowered to make separate rules, standards and metrics for gauging performance.

Additional:

Additional amendments call for the elimination of riba (usury) before the first of January, 2028 and for every Pakistani citizen to be entitled to "a clean, healthy and sustainable environment."

Future Implications of the amendment:

Impact on Political Dynamics:

By enhancing parliamentary control over judicial appointments,



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the amendment reinforces legislative supremacy, therefore strengthening the Parliament. Experts argue this could reflect democratic values but risks undermining checks and balances. Lawyer Jahanzeb Sukhera noted, "In theory, parliament represents the will of the people. However, this shift risks fostering a system where ruling parties dominate judicial outcomes".

The involvement of parliament in judicial matters could also deepen political divisions, as opposition parties fear being marginalized in critical decisions. These polarization risks can exacerbate grievances among different parties, resulting in political tensions and turmoil.

Impact on Judiciary:

Jahanzeb Sukhera, "26th Amendment: the good, bad and ugly," *Thenews.com.pk*, Oct. 22, 2024.

<https://www.thenews.com.pk/print/1242864-26th-amendment-the-good-bad-and-ugly> (accessed Nov. 09, 2024).

Jahanzeb Sukhera, "26th Amendment: the good, bad and ugly," *Thenews.com.pk*, Oct. 22, 2024.

<https://www.thenews.com.pk/print/1242864-26th-amendment-the-good-bad-and-ugly> (accessed Nov. 09, 2024).

Whilst the judicial evaluation mechanism may increase accountability, it risks politicization. Critics argue this could pressure judges to align their decisions with government preferences. Sukhera warned, "The amendment could compromise the judiciary's role as a check on executive overreach". The trade off between accountability and independence of the judiciary therefore becomes pertinent.

Moreover, by limiting suo motu powers, the amendment reduces arbitrary judicial activism, which has often been reported as a persistent pain point throughout Pakistan's judicial history, with the likes of Chief Justice Saqib Nisar and Chief Justice Iftikhar Chaudhry often criticized for "misusing the powers". Former Attorney General of Pakistan Irfan Qadir notes, "Judicial activism has been most detrimental for the system of the country. The judiciary is not the supreme authority in the country." However, whilst the amendment may be deemed a positive step towards limiting judicial overreach, curtailing suo motu powers could also hinder the judiciary's ability to address pertinent public matters urgently.

Impact on Civil-Military Relations:



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The reduced power of courts in cases involving executive actions may limit civilian oversight over military influence, consequently tipping the balance of power in favor of the executive. Moreover, experts fear that politicizing the judiciary could erode its role as a mediator in civil-military disputes. Constitutional lawyer Saad Rasool remarked, "Judicial independence is vital for democratic stability, particularly in a system where civil-military tensions are prevalent".

Impact on Governance and Legal Professions:

Whilst the Constitutional Bench could potentially streamline judicial processes by addressing backlog issues, concerns about transparency in judge removals remain. The Pakistan Bar Council's role in judicial decisions further raises fears of political parties influencing legal regulatory bodies, exacerbating existing issues, further encroaching judicial autonomy.

The Amendment has therefore been

Our Correspondent, "26th Amendment has no public benefit," The Express Tribune, Oct. 23, 2024.
<https://tribune.com.pk/story/2504691/26th-amendment-has-no-public-benefit> (accessed Nov. 28, 2024).

described as a "double-edged sword" by legal scholars. While critics argue that it will alleviate judicial independence through parliamentary influence, proponents believe increased transparency and accountability will strengthen the law of the land. Hence, while it aims to recalibrate power, it introduces vulnerabilities. "The success of these reforms depends on their implementation in good faith rather than partisan exploitation," Sukhera observed.

Case Studies:

The judicial system in Pakistan has undergone substantial changes due to

Doctrine of Necessity:

One of the most significant court decisions in Pakistani history is the Molvi Tamizuddin Khan case. The Constituent Assembly, which was drafting Pakistan's new constitution, was disbanded in 1954 by Governor-General Ghulam Muhammad. The Speaker of the Assembly, Molvi Tamizuddin Khan, appealed this ruling in the Sindh High Court. The Federal Court, presided over by Chief Justice Muhammad Munir, reversed the court's decision in his favor, citing the Doctrine of Necessity.



The Doctrine of Necessity is a legal principle that permits a state to use unlawful measures in times of emergency as long as those measures are intended to restore order. The Federal Court decided that dismissing the Assembly was required to avoid a constitutional crisis in the Molvi Tamizuddin Khan case. The independence and authority of the judiciary were greatly impacted by this decision, which established a precedent that permitted the executive branch to supersede the court under dire circumstances various circumstances. The 26th Amendment is only one such instance.

During martial law, the Doctrine of Necessity continued to influence Pakistan's legal system. In the 1958 Dosso case, the Supreme Court confirmed the constitutional revocation and maintained the martial law imposed by President Iskander Mirza. The court contended that a new legal system had been established as a result of a revolution. This ruling gave the military administration legal support and reaffirmed the Doctrine of Necessity.

Jatoi, Sajjad Ahmad, et al. "JUDICIAL ACTIVISM AND DEMOCRACY IN PAKISTAN: A CASE STUDY OF CHIEF JUSTICE SAQIB NISAR ERA." Pakistan Journal of Social Research, vol. 04, no. 02,

Bhutto Case:

Zulfikar Ali Bhutto, the founder of the Pakistan Peoples Party (PPP) and a former Prime Minister, was arrested and charged with the 1974 murder of Nawab Muhammad Ahmad Khan Kasuri. In 1978, the Lahore High Court found him guilty and gave him the death penalty. The administration of General Zia-ul-Haq executed him after the Supreme Court affirmed the sentence in 1979. Many criticised the case as a "judicial murder" committed at the military regime's request. In 2024, the Supreme Court of Pakistan recognised that Bhutto had not been given a fair trial.

Legal Framework Order (LFO) of 2002:

Pakistan's constitutional framework was drastically changed in 2002 by President Pervez Musharraf's introduction of the LFO. Although its goal was to restore the 1973 Constitution, it contained changes that gave the President more authority and diminished that of Parliament. The independence of the judiciary was called into question when the LFO granted the President the authority to select judges.

June 2022, pp. 1–11.
<https://doi.org/10.52567/pjsr.v4i2.445>.



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At the same time, the Supreme Court could consider the President's decision to dissolve the National Assembly. Accordingly, the court had a crucial role in monitoring the executive branch's activities.

Most significantly, the LFO made the military's influence in national politics official, which had an impact on the judiciary's independence.

Seventeenth Amendment of 2003:

The Seventeenth Amendment was passed in December 2003 to ratify and legitimize the changes introduced by the LFO. It was a result of negotiations between President Musharraf and political parties to resolve the constitutional crisis caused by the LFO13.

Panhwar, Sani. n.d. "Zul Kar Ali Bhutto Trial Documents."

<https://bhutto.org/wp-content/uploads/2021/08/Zulfikar-Ali-Bhutto-Trial-Documents.pdf?form=MG0AV3>.

Khan, Kamran. 17th Constitutional Amendment & Its Aftermath: The Role of Muttahidda Majlis-i-Amal (MMA) . University of the Punjab, 2016, pu.edu.pk/images/journal/studies/PDF-FILES/Kamran%20Aziz%20Khan.pdf. Accessed 26 Nov. 2024.

The amendment incorporated many provisions of the LFO into the Constitution, making them permanent. This included the President's power to dissolve the National Assembly, subject to judicial review. The amendment required the President to consult with the Prime Minister before dissolving the National Assembly, adding a layer of checks and balances. The amendment reinforced the judiciary's role in reviewing executive actions, ensuring that the President's decisions were subject to judicial scrutiny.

The suspension of Chief Justice Iftikhar Muhammad Choudhry by President General Pervez Musharraf in 2007 sparked a major conflict between the judiciary and the presidency. Choudhry's suspension ignited the Lawyers' Movement, a wave of protests and demonstrations organised by lawyers, civil society groups, and political parties. The movement called for judicial independence to be restored and Chief Justice Choudhry to be reinstated.

Choudhry was later reinstated by the Supreme Court after it determined that his suspension was unlawful. The judiciary became more active in monitoring executive power as a result of



it, increasing judicial activism.

The Lawyer's Movement (2007):

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Eighteenth Amendment of 2010:

The 18th Amendment to Pakistan's Constitution was passed in 2010, with the goal of decentralising power from the

federal government to the provinces. It significantly altered the government's structure and reinstated the 1973 Constitution in its original form. The modification strengthened the Prime Minister's and Parliament's authority while diminishing the President's.

In 2010, the Supreme Court reviewed the 18th Amendment and its implications for the constitutional framework of Pakistan. The judicial assessment ensured that decentralisation of power did not jeopardise the rule of law or fundamental rights¹³. By guaranteeing that the executive branch's activities were subject to court examination, the review strengthened the system of checks and balances. During this time, the Supreme Court's rulings significantly influenced Pakistan's political climate and strengthened the ideas of judicial independence and federalism.

Political Parties' Stances on the 26th Amendment- A Diverse Spectrum:

The 26th Constitutional Amendment introduced a complex dynamics of compromise and consensus among Pakistan's power polity,

Malik, Ayesha A. 2023. "Judicial Review and the Rule of Law in Pakistan." *Asian Journal of Comparative Law* 18 (3): 291–302. <https://doi.org/10.1017/asjcl.2023.28>.



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which reflects the varied stands and focuses of the two major parties of the country and minor political parties. This diversity indicates that the amendment has far-reaching consequences regarding the two provisions related to judicial independence and governance reform. Below is an elaboration of the stands taken by major and minor parties along with floating voters.

1. *Sunni Ittehad Council*

The Sunni Ittehad Council (SIC) advocated judicial reforms that adhered to Islamic principles and represented the religious constituencies. Although SIC did not play a paramount role in the debate, it took a very tough stand over the importance of the judiciary independence for moral as well as religious values. As a result of which it remained present in large number within the National Assembly; still, it is not regarded as the source for opposing the 26th Amendment.

Much of the opposition came from former leaders of PTI, who had joined the SIC after the political dissolution of PTI in the National Assembly. These leaders continued to maintain their criticism of the amendment, based on concerns over judicial overreach. Internal dissatisfaction with the rigid policies of the government caused some members to break ranks, further weakening the coherence of opposition efforts. Despite last-minute lobbying efforts, this faction proved unable to organize serious opposition, reflective both of the fragmented opposition and of a changing tide in the Assembly.

2. *Pakistan Peoples Party (PPP)*

The PPP energetically supported the bill, touting judicial independence as imperative for democratic stability. PPP leaders, in particular, Bilawal Bhutto Zardari, spearheaded efforts to form alliances and negotiate compromises through the legislation. Furthermore, the PPP aimed to be perceived as a reform-friendly group, reaching out to smaller parties and independent members of parliament to ensure their support. Its success in negotiating JUI-F's inclusion was very telling, indicating the party's success in negotiating diplomatic

OUR STAFF REPORT. 2024. "Three-Party Huddle on 26th Constitutional Amendment Remains Inconclusive." The Nation. October 17, 2024.
<https://www.nation.com.pk/17-Oct-2024/three-party-huddle-on-26th-constitutional-amendment-remains-inconclusive>.



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manoeuvres.

3. *Pakistan Muslim League-Nawaz (PML-N)*

PML-N was cautiously supportive of the amendment. The party felt that this was an opportunity to rectify judicial attitudes that had been harmful to its tenure, especially in the activism of Chief Justice Saqib Nisar. At the same time, PML-N insisted on mechanisms for judicial accountability, including checks and balances. The party leadership collaborated closely with PPP to negotiate amendments that would fit their shared vision of judicial reform.

4. *Jamiat Ulema-e-Islam-Fazl (JUI-F)*

Initially aligning with PTI, Maulana Fazlur-Rehman's JUI-F shifted its stance after strategic negotiations with PPP. This realignment was pivotal, highlighting the party's pragmatism and its broader goal of aligning with pro-democracy forces. The party justified its position as a commitment to judicial reforms that would protect constitutional and religious rights.

5. *Pakistan Muslim League-Quaid (PML-Q)*

PML-Q took a conservative approach to the 26th Amendment. While the party was vocal about reform to ensure judicial efficiency and transparency, it was wary of provisions that seemed to weaken parliamentary oversight. PML-Q wanted assurance that the amendment would not strengthen the judiciary unduly at the cost of legislative independence. It thus took a cautious stance in aligning with the government's allies while keeping its identity as a centrist party intact.

6. *Balochistan Awami Party (BAP)*

The BAP, a key player in the Senate, maintained a neutral stance initially, emphasizing the need for inclusive reforms that addressed the concerns of smaller provinces. However, its eventual alignment with the PPP-PML-N coalition demonstrated the party's strategic prioritization of federal cohesion over partisan politics.

7. *Pashtun Tahafuz Movement (PTM)*

The PTM was barred from formal discussions on the subject, but its exclusion has since become something of



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a point of debate. Critics have argued that PTM's exclusion weakens the inclusivity of the amendment to deal with systemic issues of judicial transparency and equity for marginalized communities.

8. *Muttahida Qaumi Movement-Pakistan (MQM-P)*

MQM-P expressed qualified support for the 26th Amendment, with a focus on provisions of judicial transparency and performance audits. The party demanded incorporation of safeguards to address fears of judicial overreach on matters of urban governance and land disputes, which would be crucial for its Karachi-focused electoral constituency. MQM-P also used the occasion to raise issues of minority rights, demanding amendments for the provision of equal justice for marginalized communities.

9. *Awami National Party (ANP)*

ANP supported the objectives of the amendment in terms of judicial reforms as necessary for the strengthening of democratic structures, but the party suggested incorporating measures that would place the provincial autonomy on a pedestal in judicial matters.

ANP wanted to know what impact the amendment would have on judicial appointments and provincial-level accountability, with an intent to make judicial reforms mesh with its core philosophy of decentralization and strengthening smaller federating units.

10. *Grand Democratic Alliance (GDA)*

The GDA adopted a mixed stance on the amendment, supporting provisions that strengthen judicial independence while expressing concerns over potential conflicts with legislative authority. Representing various regional and tribal constituencies, the GDA pushed for reforms that address localized judicial inefficiencies. However, it remained wary of any provisions that could centralize judicial power, potentially sidelining smaller provincial voices.

11. *Awami Muslim League (AML)*

The head of AML, Sheikh Rasheed Ahmed, voiced strong support for the amendment, describing it as a step that would check corruption and bring about judicial accountability. The amendment was seen by AML as an opportunity to correct long-standing inefficiencies in the judicial system that were part of its populist narrative of systemic reform.



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Although AML had little presence, it vocally pressed for the passage of the bill with all due haste, using its influence through alliances.

12. *Jamhoori Watan Party (JWP)*

JWP, Balochistan's representative, was careful in its move to amend. The party emphasized judicial reforms as a step to redress the grievances of the marginalized and conflict-affected communities. JWP underscored the role of the judiciary in ensuring justice for Balochistan and called for provisions to enhance judicial accountability for cases of human rights violations and enforced disappearances in the province.

13. *Balochistan National Party (BNP)*

BNP has expressed conditional support to the amendment, calling for reforms that guarantee judicial independence but simultaneously correct systemic injustices in Balochistan. The party demanded that the amendment should include specific measures for improving judicial accessibility and impartiality for historically neglected regions. BNP's position underscores its broader advocacy for federal equity and protection of marginalized communities.

14. *Floating Voters and Independents*

Independent legislators and floating voters were pivotal in the passage of the 26th Amendment as they had influence in a politically divided assembly. Being representatives of constituencies cut off from rigid party loyalty, they became the target of aggressive lobbying by both the ruling coalition and opposition. Most independents, despite promises of development funds and legislative concessions, went with the PPP and PML-N because of their broad approach to judicial reforms and willingness to address diverse concerns.

Some independents were initially hesitant, raising fears about judicial overreach and reforms' impact on smaller provinces and marginalized groups. The ruling coalition's assurances eventually swayed the majority in favor of the amendment. It was a testament to their dual role as critical power brokers and symbols of Pakistan's fluid political dynamics where pragmatic alliances often outweigh ideological consistency.



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Questions A Resolution Must Answer

1. How will the amendment ensure a balance between judicial independence and parliamentary oversight?
2. What safeguards can be implemented to prevent the politicization of judicial appointments under the new mechanisms?
3. How can the performance evaluation of judges be structured to avoid undue influence while promoting accountability?
4. To what extent should suo motu powers be retained or limited to preserve judicial independence while avoiding overreach?
5. How can the amendment address the backlog of cases without compromising access to justice for marginalized groups?
6. How will the amendment address concerns of smaller provinces and marginalized communities regarding representation and equity in judicial processes?
7. What mechanisms can prevent the amendment from becoming a tool for political domination by the ruling coalition?
8. How will the amendment's provisions be monitored to ensure their effective implementation and avoid partisan misuse?
9. What role will the judiciary play in mediating civil-military tensions under the amended framework?

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