

# **Does the 26th Amendment Undermine Judicial Independence and Rule of Law?**

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This article examines Pakistan's recent 26th Constitutional Amendment, which has sparked concerns regarding its potential to weaken judicial independence, the rule of law, and human rights. The amendment introduces changes to the Judicial Commission of Pakistan (JCP), the process for selecting the Chief Justice of Pakistan (CJP), and new, vaguely defined criteria for removing judges based on "inefficiency." This analysis reviews these changes in the context of international standards, particularly the International Covenant on Civil and Political Rights (ICCPR) and UN Basic Principles on Judicial Independence. The findings suggest that this amendment may diminish judicial autonomy, limit the judiciary's role in checking the other branches of government, and compromise democratic governance in Pakistan.

## **Introduction**

The judiciary serves as a safeguard against government overreach in democratic societies, protecting human rights by maintaining a balance of power among the executive, legislative, and judicial branches. In Pakistan, however, the judiciary has historically faced threats to its independence due to executive and military interference. The 26th Amendment, enacted in October 2024, introduces changes to the selection and oversight of judges, particularly regarding the JCP and CJP appointment processes. Additionally, it establishes "inefficiency" as grounds for judge removal without a clear definition, potentially allowing political influence over the judiciary.

While reforms to enhance transparency and accountability are needed, the 26th Amendment appears to undermine judicial independence. By altering judicial appointments and introducing vague grounds for removal, the amendment could compromise the judiciary's role in checking abuses of power, threatening democratic governance in Pakistan. The lack of judicial independence could lead to public distrust, with the judiciary seen as politically influenced rather than impartial.

International human rights covenants like the ICCPR recognize judicial independence as essential to democracy. A judiciary that can ensure government accountability and uphold human rights is crucial for maintaining the rule of law. Any reform that restricts judicial independence threatens both the rule of law and Pakistan's democratic framework.

## **Judicial Independence in Pakistan's Constitutional Framework**

Before this amendment, Pakistan's Constitution provided some protections for judicial independence, primarily through the JCP and Supreme Judicial Council (SJC), responsible for judge appointments and removals based on legal qualifications. Seniority typically guided CJP appointments, limiting executive influence. Despite these safeguards, the judiciary has historically been vulnerable to political pressure.

The 26th Amendment marks a significant shift, increasing the judiciary's exposure to political interference.

### **Key Changes Under the 26th Amendment**

- **JCP Composition:** The amendment alters the JCP structure, introducing members of the National Assembly and Senate, along with a minority or gender representative, which reduces the judiciary's influence in appointments. This change allows greater political involvement in judge selection, risking judicial neutrality.
- **JCP Administrative Powers:** The JCP now has authority over "constitutional chambers" in the Supreme Court and High Courts. This change could enable politically influenced decisions by creating ideologically motivated benches.
- **CJP Appointment:** Under the amendment, the CJP is selected by a Special Parliamentary Committee (SPC) from the top three senior judges, which may politicize the appointment process and weaken judicial independence.
- **Grounds for Judge Removal:** The amendment introduces "inefficiency" as grounds for judge removal without a clear definition, increasing the risk of politically motivated dismissals.

### **International Standards on Judicial Independence**

Judicial independence is a global standard essential to fair trials and the rule of law, as reflected in Article 14 of the ICCPR, which Pakistan has ratified. Article 14 guarantees the right to a fair trial by an impartial tribunal. The UN Human Rights Committee has emphasized the need for judicial appointments to be transparent and free from political influence.

The 26th Amendment's provisions-especially changes to the JCP composition and CJP appointment process-are concerning in light of these standards. Increased political influence in judicial appointments threatens judicial impartiality and independence.

The UN's Basic Principles on Judicial Independence, established in 1985, stress that judges should be appointed based on merit and free from political interference. Removal of judges should be limited to cases of misconduct or proven incapacity, following a transparent and fair process. These principles also discourage external influence over case assignments within the judiciary, which helps prevent political manipulation. By involving politicians in judicial selection, the amendment risks compromising these standards, leading to biased case allocations and judgments.

### **Impact on the Rule of Law and Human Rights**

This article discusses how Pakistan's 26th Amendment has affected judicial independence, rule of law, and human rights protection. By limiting judicial autonomy, the amendment risks shifting power to the executive branch, threatening democratic checks and balances. Politicized benches,

with judges aligned to political interests, may compromise rule of law and human rights, as courts are essential for protecting citizens from government overreach.

A judiciary free from executive and legislative influence is fundamental to democracy. The amendment weakens this independence, risking public perception of the judiciary as politically controlled rather than impartial. Without a neutral judiciary, constitutional rights-like freedom of speech, fair trials, and protections against state abuses-are at risk.

## **Recommendations**

1. **Repeal or Revise the Amendment:** The amendment should be repealed or revised, especially the Judicial Commission of Pakistan (JCP) composition. This would limit political involvement in judge selection, helping to restore judicial independence.
2. **Clear Criteria for Judge Removal:** The amendment's vague language on judge removal, especially "inefficiency," should be clarified to prevent political misuse. Removal criteria should follow standards like the UN's Basic Principles on Judicial Independence.
3. **Public Consultation in Reforms:** Future reforms must include public consultation, legal expert input, and stakeholder engagement to enhance confidence in the judiciary.
4. **Align with International Standards:** Pakistan should incorporate international legal standards into judicial reforms, emphasizing commitments under the ICCPR and UN principles to protect judicial independence and human rights.

## **Conclusion**

The 26th Amendment has weakened judicial independence, which could destabilize Pakistan's democratic governance. Urgent revisions to safeguard the judiciary from political interference are necessary to restore confidence in Pakistan's justice system and protect citizens' rights.