Judicial Capture: Independence of the Judiciary in Pakistan after the 26th and 27th Constitutional Amendments

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Executive Summary

A year ago, on 13 November 2025, Parliament enacted the 27th amendment to the Constitution of Pakistan, 1973. The amendment fundamentally alters the structure of the judiciary and undermines its functioning in striking ways. Most significantly, it establishes a Federal Constitutional Court (FCC), giving the FCC sweeping powers to exercise many of the functions previously in the jurisdiction of the Supreme Court of Pakistan. The Chief Justice of the FCC is appointed by the President on the advice of the Prime Minister, and the "first batch" of judges of the FCC is appointed by the President on the advice of the Prime Minister in consultation with the Chief Justice of the FCC. In short, the judges of the newly established highest court of Pakistan now assume their positions almost entirely by executive selection, with little involvement of the judiciary itself.

The amendment also gives the Judicial Commission of Pakistan (JCP) the power to recommend to the President the transfer of judges from one High Court to another. The recommendation for transfer may be made without the judges' consent and without clearly defined criteria or objectives.

Additionally, the amendment gives sweeping and unconditional immunities to the President of Pakistan and the "honorary" ranks of Field Marshal, Admiral of the Fleet, and Marshal of the Air Force.

Parliament enacted the 27th constitutional amendment not long after the 26th constitutional amendment, which was adopted on 21 October 2024. Both Houses of Parliament passed the 26th amendment in less than 24 hours and on the basis of a draft that had been kept secret from the public. The amendment restructured the High Courts and the Supreme Court of Pakistan and provided for an extraordinary level of political influence over the process of judicial appointments and the judiciary's internal administration. Notably, it changed the composition of the JCP to reduce its judicial members to a minority. In addition to nominating judges for appointment, the JCP was given the power to determine and nominate "Constitutional Benches" within the Supreme Court and High Courts. These benches had exclusive jurisdiction over matters involving interpretation of the Constitution and enforcement of fundamental rights.[1] The 26th amendment also changed how the Chief Justice of Pakistan was appointed, and gave a Special Parliamentary Committee (SPC), consisting of members of the National Assembly and the Senate, the power to nominate the CJP from among the three most senior Supreme Court judges. It gave for no grounds or criteria on the basis of which the SPC was to nominate the CJP and provided that its meetings would be held in camera.

The implementation of the amendments has confirmed the concerns expressed at the time of their adoption by the ICJ that the amendments constitute a deliberate attempt to subjugate the judiciary and bring it under the control of the executive, and that they erode the judiciary's capacity to independently and effectively function as a check against excesses by other branches of the State and protect human rights.[2]

A day after the 26th amendment was passed, the Special Parliamentary Committee nominated Justice Yahya Afridi as the Chief Justice of Pakistan, bypassing the two most senior judges of the Supreme Court who had prior to the amendment given judgments viewed unfavorably by the ruling coalition. The newly constituted JCP nominated a Constitutional Bench by a narrow majority, in which votes of the executive and parliamentary members from the treasury were decisive. The Constitutional Bench subsequently legitimized the trial of civilians by military courts; upheld the arbitrary transfer of judges to the Islamabad High Court that displaced the seniority of judges who had publicly alleged interference by intelligence agencies in their judicial work; and reversed the Supreme Court's judgment on "reserved seats", increasing the numbers of the ruling coalition and its allies significantly in the National Assembly. The 27th amendment, passed a few months later, was made possible because of the parliamentary majority secured in part through this judgment.

The Federal Constitutional Court was established with judges who were almost entirely executive appointments. No criteria or reasoning was made public to explain why certain judges of the Supreme Court and High Courts and a retired judge were appointed to the FCC, while others with widely recognized constitutional expertise were not. Two of the most senior judges of the Supreme Court, Justice Syed Mansoor Ali Shah and Justice Athar Minallah, resigned on the day of its enactment. Justice Shah stated in his letter of resignation that continuing would "amount to silent acquiescence in a constitutional wrong" and sitting in a court "whose constitutional voice has been muted."[3] Justice Athar Minallah wrote the 27th

[1] The 27th amendment to the Constitution abolished the Constitutional Benches in the Supreme Court. The Federal Constitutional Court now exercises these powers.
[2] https://www.icj.org/pakistan-26th-constitutional-amendment-is-a-blow-to-the-independence-of-the-judiciary/
[3] https://justicemansooralishah.com/resignation-letter/

amendment had scuttled "whatever was left of an independent judiciary" and continuing as a judge would be perpetuating "the worst fraud possible, a fraud on oneself."[4]

In April 2026, the JCP by a majority vote used its new powers to recommend the transfer of three of the six Islamabad High Court judges who had complained of interference by intelligence agencies in their work. One of the judges who was transferred, Justice Mohsin Akhtar Kayani, resigned in October 2026, citing concerns about the growing control of the executive over the judiciary.[5] Earlier, in December 2025, the Islamabad High Court had "annulled" the appointment of Justice Tariq Jahangiri, another judge of the IHC who had written the letter alleging interference in judicial work. A two-member bench of the IHC found his law degree was "invalid" and his appointment therefore was without lawful authority.[6]

The FCC's record a year since its establishment shows a continuation of the performance of the Constitutional Benches of the SC in cases of political significance. Notably, the FCC has used its powers to call for the record of cases involving the interpretation of the Constitution from any court to assume jurisdiction over politically sensitive cases, which raises the concern that the FCC is using its powers to preempt adverse decisions against the Government. The FCC has also used disputes over jurisdiction, delay and deferral, and disposal of cases on technical grounds to avoid deciding constitutionally significant questions on their merits in a timely manner.

The ICJ in this report analyses the independence of the judiciary in Pakistan a year after the 27th constitutional amendment and two years after the 26th constitutional amendment were adopted. The ICJ concludes the cumulative effect of the amendments and of the manner of their implementation is that the highest courts of Pakistan no longer enjoy the institutional guarantees of independence required by Article 14 of the ICCPR and the UN Basic Principles on the Independence of the Judiciary, among other international standards.

The systemic undermining of judicial independence has effectively resulted in judicial capture, and has gravely impaired the courts' capacity to act as an effective check on the other branches of the State and to provide effective remedies for violations of human rights.

The ICJ does not take a position on the merits of political disputes between the parties. Its analysis is focused on the institutional framework in which the judiciary operates, and whether it is consistent with Pakistan's obligations under international law.

The structural problems identified in this report require substantial constitutional and statutory amendments, including revision or repeal of provisions of the 26th and 27th amendments that are inconsistent with international law and standards on the independence of the judiciary. However, as short-term, temporary measures, until wider structural reform of the judiciary is accomplished, the ICJ recommends:

To the Government of Pakistan

Initiate a comprehensive review of the 26th and 27th constitutional amendments and their implementation in light of international law and standards, particularly Pakistan's international legal obligations under the ICCPR, including by holding transparent and broad public consultations. In so doing, the Government should engage international cooperation, for instance by seeking technical assistance of the UN Special Rapporteur on the independence of judges and lawyers.

Extend an invitation to the Special Rapporteur on the independence of judges and lawyers for a country visit.

To the Judicial Commission of Pakistan

Revise the criteria for judicial appointments in accordance with international law, standards, and best practices. Ensure the published criteria are the sole basis for nomination of Judges to the Federal Constitutional Court, the Supreme Court, the High Courts, and Constitutional Benches of the High Courts. Establish a transparent procedure for appointments and publish reasons for each appointment that demonstrate the published criteria are being implemented in practice.

[4] "Two judges quit as amendment 'hollows out' SC", *Dawn News*, 14 November 2025, https://www.dawn.com/news/1954958
[5] "'Conscience does not permit': LHC's Justice Kayani resigns, cites 'executive's growing control' over judiciary", *Dawn News*, 28 October 2026, https://www.dawn.com/news/2040428
[6] "Tariq Jahangiri's appointment annulled", *Dawn News*, 24 February 2026, https://www.dawn.com/news/1975351

Formulate and adopt clear criteria that meet international law and standards on the transfer of judges between High Courts. The judge being considered for transfer should be given an opportunity to be heard and the reasons for recommending transfer should be made public. Refrain from recommending any transfer of a High Court judge without the judge's consent.

To the Supreme Judicial Council

Define "inefficiency" in a manner that is consistent with international standards to only mean serious incompetence that renders judges unfit to discharge their duties.

To the Special Parliamentary Committee

Adopt clear and transparent criteria and procedures for appointments for the Chief Justice of the Supreme Court and the Chief Justice of the FCC. Publish reasons for each selection.

To the Federal Constitutional Court, the Supreme Court, and High Courts

Interpret and apply the provisions of the 26th and 27th amendments, to the greatest extent possible, in a manner consistent with the independence of the judiciary as guaranteed by Article 14 of the ICCPR.

I. Introduction and immediate context

The judiciary has been a central arena of political contestation in Pakistan for much of its history. In particular, in the period leading up to the country's general elections of February 2024, judgments of the Supreme Court and the Islamabad High Court regarding matters related to the elections, arrests and detention of political leaders, unlawful surveillance, and executive interference in judicial matters repeatedly brought the courts into confrontation with the Government and the security establishment. They also brought judges of the Supreme Court and High Courts into confrontation with each other.

On 13 January 2024, just weeks before the general elections, a three-member SC bench set aside a Peshawar High Court ruling and upheld the Election Commission of Pakistan's (ECP) decision to deny the Pakistan Tehreek-e-Insaf (PTI) a common electoral symbol over irregularities in its intra-party polls.[7] This was a major setback for the PTI, whose top leader, former Prime Minister Imran Khan, was already in detention and facing trial in a number of cases. Soon after, in the period between 30 January and 3 February 2024, Imran Khan was convicted in three separate cases for leaking state secrets,[8] illegally selling state gifts,[9] and "fraudulent marriage".[10]

Pakistan held its general elections on 8 February 2024. The results of the elections were heavily contested, particularly by the PTI. The party alleged unlawful manipulation and "rigging",[11] and petitioned the Supreme Court to form a judicial commission to "inquire, audit and examine" the manner and process of the elections and "the developments that took place thereafter of compiling false and fraudulent results rendering winners into losers and losers into winners."[12] On 22 February 2024, nearly all elected PTI-backed independent members of the National Assembly and provincial assemblies joined the Sunni Ittehad Council (SIC).[13]

On 26 March 2024, six out of the eight judges of the Islamabad High Court wrote to the Supreme Judicial Council alleging coercion by intelligence agencies, including through the abduction and torture of relatives of the judges and unlawful surveillance, to "influence the outcome of cases of interest".[14] The Government decided to establish a commission of inquiry to probe into the allegations made by the judges, and the Supreme Court took *suo motu* notice of the letter.[15] There was a difference of opinion among Supreme Court judges on the appropriate institutional response to the allegations.

On 12 July 2024, a 13-member Supreme Court bench held by majority that PTI remained a political party entitled to its share of "reserved seats"[16] for women and religious minorities even though it had contested the elections without a common symbol.[17] The ruling coalition criticized the SC judgment as being partisan and unconstitutional. Parliament responded by enacting the Elections (Second Amendment) Act, 2024, with retrospective effect, to clarify the legal framework governing the allocation of reserved seats and the provisions governing independent candidates joining political parties.[18] The Speaker of the National Assembly urged the ECP to disregard the ruling in light of the changes to the Elections Act.[19] Under international law and standards, respect for the independence of the judiciary entails implementing judicial decisions and judicial decisions cannot be subject to revision.[20]

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[7] PLD 2024 SC 267. The PTI contended that a common symbol is necessary for a political party and its voters to exercise their fundamental right to vote, and the judgment effectively disenfranchised the party's support base.

[8] "Imran Khan, Shah Mahmood Qureshi sentenced to 10 years in jail in cipher case", *Dawn News,* 30 January 2024, https://www.dawn.com/news/1809793

[9] "Imran Khan, Bushra Bibi sentenced to 14 years in Toshakhana reference," *Dawn News,* 31 January 2024, https://www.dawn.com/news/1810025

[10] "In yet another conviction, Imran and Bushra Bibi handed 7-year jail sentences in Iddat case", *Dawn News,* 3 February 2024, https://www.dawn.com/news/1810889

[11] PTI's white paper on general elections: https://insafpk.org/news/pti-whitepaper-rigging-elections-2024

[12] "Ex-PM Khan moves top court to form judicial commission to probe contentious polls", *Arab News,* 20 March 2024, https://www.arabnews.pk/pakistan/ex-pm-khan-moves-top-court-to-form-judicial-commission-to-probe-contentious-polls-2479826

[13] "PTI-backed independents join Sunni Ittehad Council," *Dawn News,* 22 February 2024, https://www.dawn.com/news/1816169.

[14] "IHC judges detail 'brazen meddling' in letter to Supreme Judicial Council", Dawn News, 27 March 2024, https://www.dawn.com/news/1824028/ihc-judges-detail-brazen-meddling-in-letter-to-supreme-judicial-council

[15] "IHC judges' letter: Jillani recuses himself from inquiry commission as SC takes suo motu notice," *Dawn News*, 1 April 2024, https://www.dawn.com/news/1825056

[16] Under Pakistan's Constitution, 1973, a certain number of seats in the National and provincial assemblies are reserved for women and non-Muslims. Members of the assemblies on "reserved seats" are elected through proportional representation on the basis of the total number of general seats won by each political party. In the National Assembly, there are a total of 336 seats, out of which 60 seats are "reserved" for women and 10 seats are "reserved" for non-Muslims.

[17] "Major win for PTI as Supreme Court rules party eligible for reserved seats", *Dawn News*, 12 July 2024, https://www.dawn.com/news/1845359

[18] https://www.na.gov.pk/uploads/documents/66bef5220f613_134.pdf

[19] "Supreme Court ruling on reserved seats cannot be implemented under new law: NA speaker", *Dawn News*, 19 September 2024, https://www.dawn.com/news/1859825

[20] UN Basic Principles on the Independence of the Judiciary, Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985 (UN Basic Principles), Principle 4.

The SC judgment on reserved seats not only gave rise to a conflict between the Government and the Supreme Court, but it also revealed divisions in the Supreme Court itself. In clarifications issued on 14 September and 18 October, eight SC judges, including Justice Syed Mansoor Ali Shah, the senior-most judge of the SC after the CJP, and Justice Munib Akhtar, the second senior-most judge of the Supreme Court, reaffirmed that the amendments made in the Elections Act after the release of the SC's Order "have no bearing and the Commission is bound to implement the judgment passed by the Supreme Court of Pakistan, in its letter and spirit, without seeking any further clarification."[21] Chief Justice Qazi Faez Isa, on the other hand, objected to the clarifications issued by the judges and stated they were "of no legal effect" and did not have to be followed.[22]

During the same period, on 20 September 2024, the President promulgated an ordinance to amend the Supreme Court (Practice and Procedure) Act, 2023.[23] The Act, passed initially in 2023, had replaced the Chief Justice of Pakistan as the "master of the roster" and had provided that SC benches were to be constituted by a committee of the Chief Justice and the next two senior judges of the SC. The ordinance changed the composition of the committee, and provided it would comprise the Chief Justice, the most senior judge of the SC, and a SC judge nominated by the Chief Justice. A day after the Ordinance came into force, CJP Qazi Faez Isa replaced Justice Munib Akhtar in the Committee with Justice Aminuddin Khan, the fourth in seniority in the SC.[24]

Justice Syed Mansoor Ali Shah refused to participate in committee meetings until a full court examined the constitutionality of the ordinance.[25] Justice Shah was due to become Chief Justice upon the retirement of Chief Justice Qazi Faez Isa on 25 October 2024. Around the same time, the Government announced its intention to bring about a "constitutional package" to amend the provisions related to the functioning of the higher courts. The amendment was ultimately adopted on 21 October 2024, four days before CJ Qazi Faez Isa's retirement. Among other things, the 26th amendment changed the procedure for the appointment of the Chief Justice of Pakistan, and the Special Parliamentary Committee established under the amendment nominated Justice Yahya Afridi as the Chief Justice of Pakistan.

These circumstances informed the widely held perception that the amendment was designed at least in part to determine the outcome of the succession to the office of Chief Justice and to reshape the courts that would decide politically significant cases in the coming months.

Table 1: Developments related to the judiciary in Pakistan: January 2024 to November 2026

Date	Event and significance
13 Jan 2024	SC upheld the decision of the Election Commission of Pakistan to deny PTI an electoral symbol because of irregularities in the party's intra-party elections.
8 Feb 2024	General elections held. Results contested by the PTI.
26 Mar 2024	Six judges of the Islamabad High Court wrote a letter to the Supreme Judicial Council alleging interference by intelligence agencies in judicial work.
12 Jul 2024	In a judgment authored by Justice Syed Mansoor Ali Shah, the SC held PTI is a political party entitled to reserved seats for women and non-Muslims.
21 Oct 2024	26th Constitutional Amendment adopted.
22 Oct 2024	Special Parliamentary Committee nominated Justice Yahya Afridi (third in seniority) as Chief Justice of Pakistan, bypassing Justice Shah.

[21] https://www.supremecourt.gov.pk/downloads_judgements/c.m.a._7540_2024.pdf and "Changes to election laws cannot retroactively undo reserved seats verdict: SC", *Dawn News,* 18 October 2024, https://www.dawn.com/news/1866044

[22] "CJP 'overrules' majority opinion in reserved seats case", *Dawn News,* 23 October 2024, https://www.dawn.com/news/1866985

[23] https://www.na.gov.pk/uploads/documents/672c4554ac5cb_171.pdf. Under Article 89 of the Constitution of Pakistan, "the President may, except when the Senate or National Assembly is in session, if satisfied that circumstances exist which render it necessary to take immediate action, make and promulgate an Ordinance, as the circumstances may require." The Ordinance expires after a period of 120 days unless extended by either House for another 120 days. An Ordinance may only be extended once.

[24] "Ordinance gives CJP wide berth to shape benches," *Dawn News,* 21 September 2024, https://www.dawn.com/news/1860120

[25] "Justice Shah refuses to attend judges committee meeting after promulgation of new ordinance", *The News*, 23 September 2024, https://www.thenews.com.pk/latest/1233089-justice-shah-refuses-to-attend-judges-committee-meeting-after-promulgation-of-new-ordinance

4 Nov 2024	The Supreme Court (Number of Judges) Act, 1997, amended to increase the strength of the Supreme Court from 17 to 34 judges.
5 Nov 2024	JCP, by 7–5 majority, constituted the Supreme Court's first Constitutional Bench (CB) headed by Justice Aminuddin Khan. A number of senior SC judges were excluded.
1 Feb 2025	Three judges transferred to the Islamabad High Court from other High Courts.
7 May 2025	CB of SC by 5–2 majority upheld military trials of civilians, setting aside an earlier SC judgment that declared such trials unconstitutional.
19 Jun 2025	CB of SC by 3–2 majority held the transfers of judges to the IHC were constitutional and left the question of seniority to the President.
27 Jun 2025	CB of SC set aside the 12 July 2024 judgment on "reserved seats" and restored Peshawar High Court judgment that held Sunni Ittehad Council/PTI-backed candidates are not entitled to reserved seats.
29 Jun 2025	President declared Justice Sarfraz Dogar, transferred from LHC, senior-most IHC judge. Justice Dogar later appointed CJ of the IHC.
13 Nov 2025	27th Constitutional Amendment adopted.
13 Nov 2025	Justice Shah and Justice Athar Minallah resigned from the SC in protest against the amendment.
13–14 Nov 2025	President appointed Justice Aminuddin Khan as the first Chief Justice of the FCC.
15 Nov 2025	Justice Shams Mehmood Mirza resigned from the LHC citing the 27th Amendment.
18 Dec 2025	IHC declared Justice Jahangiri's appointment unlawful for lack of a valid law degree.
28 Apr 2026	JCP by majority approved transfer of three IHC judges: Justice Mohsin Akhtar Kayani transferred to LHC, Justice Babar Sattar to PHC, and Justice Saman Rafat Imtiaz to SHC.
28 Oct 2026	Justice Mohsin Akhtar Kayani resigned from LHC, stating the 26th and 27th amendments compromised judicial independence.

II. Overview of Pakistan's human rights situation[26]

The rapid erosion of the independence of the judiciary in Pakistan has happened alongside a backsliding of democracy and the protection of human rights in the country. This has impaired the right of victims of human rights violations to an effective remedy, guaranteed under Article 2(3) of the International Covenant on Civil and Political Rights (ICCPR), to which Pakistan is a party, as well as Pakistan's domestic law.

Legislation

Since 2024, the newly elected Parliament and provincial assemblies have passed legislation that is glaringly inconsistent with Pakistan's obligations under international human rights law. This includes the Peaceful Assembly and Public Order Act, 2024, which provides for criminal liability for engaging in assemblies in Islamabad on a range of grounds that are incompatible with the right to peaceful assembly, including Article 21 of the ICCPR.[27] The Prevention of Electronic Crimes (Amendment) Act, 2025, among other things, criminalizes "false and misleading" online content and makes it punishable by up to three years in prison, without adequately defining "false and misleading" content or requiring the intention to spread disinformation, in contravention of Article 19 of the ICCPR.[28] The Anti-Terrorism (Amendment) Act, 2025, allows law enforcement and security agencies to preventively detain people for an extendable period of three months.[29] The Anti-Terrorism (Punjab Amendment) Act, 2026, allows for secret trials of accused in "special security cases" in violation of the right to a fair trial, including Article 14 of the ICCPR.[30]

Human rights defenders

Pakistan authorities have engaged in a crackdown on the exercise of freedom of expression, association, and assembly, including dissent by political activists and human rights defenders. In June 2026, Mahrang Baloch, a Baloch human rights defender and activist, was sentenced to life imprisonment by an anti-terrorism court in Quetta. Multiple UN human rights experts described her punishment as "a travesty of justice, following an unfair trial and the misuse of counter-terrorism and murder charges to suppress peaceful protest and freedoms of association and expression".[31] In January 2026, human rights lawyers Imaan Mazari and Hadi Ali Chattha were convicted under PECA and sentenced to 17 years' imprisonment for posts and reposts on X (formerly Twitter) in support of Mahrang Baloch and making allegations against State institutions for perpetrating serious human rights violations. Later in the year, in October 2026, they were convicted and sentenced to three and ten years' imprisonment under penal and anti-terrorism laws respectively for moving a security barrier. More than a dozen international civil society organizations[32] as well as a number of independent experts of the UN Human Rights Council, including the Special Rapporteur on the independence of judge and lawyers, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Special Rapporteur on the situation of human rights defenders, and Special Rapporteur on the rights to freedom of peaceful assembly and of association[33] have condemned the convictions as unlawful judicial persecution of the lawyers for their human rights work.

Political persecution

Members of the political opposition, in particular the leadership and cadre of the PTI, have also faced persecution. Former PM Imran Khan has been in prison since August 2023. His wife, Bushra Bibi, and other senior members of the party, are also incarcerated after convictions for a wide range of offences. In June 2024, the UN Working Group on Arbitrary Detention found former Prime Minister Imran Khan's

[26] This section does not purport to provide a comprehensive assessment of the situation of human rights in Pakistan and only gives a snapshot into the many challenges being faced by the people of the country in the exercise of their human rights.
[27] HRCP, "Civil society deplores ICT law curbing right to peaceful assembly", 16 January 2025. https://hrcp-web.org/hrcpweb/civil-society-deplores-ict-law-curbing-right-to-peaceful-assembly/
[28] Amnesty International, "Pakistan: Authorities pass bill with sweeping controls on social media", January 2025. https://www.amnesty.org/en/latest/news/2025/01/pakistan-authorities-pass-bill-with-sweeping-controls-on-social-media/
[29] President Zardari signs anti-terrorism amendment bill into law, *Dawn News,* 31 August 2025, https://www.dawn.com/news/1938651
[30] Human Rights Watch, "Pakistan: Anti-Terrorism Bill Threatens Fair Trials", 11 September 2026. https://www.hrw.org/news/2026/09/11/pakistan-anti-terrorism-bill-threatens-fair-trials
[31] UN experts condemn life sentence against Baloch woman human rights defender in Pakistan as grave injustice, 8 July 2026, https://www.ohchr.org/en/press-releases/2026/07/un-experts-condemn-life-sentence-against-baloch-woman-human-rights-defender
[32] https://www.icj.org/pakistan-international-civil-society-organisations-condemn-the-sentencing-of-human-rights-lawyers-imaan-zainab-mazari-hazir-and-hadi-ali-chattha/
[33] "Pakistan: UN experts call for immediate release of lawyers Mazari-Hazir and Chattha", 30 September 2026, https://www.ohchr.org/en/press-releases/2026/09/pakistan-un-experts-call-immediate-release-lawyers-mazari-hazir-and-chattha

detention to be arbitrary on multiple counts.[34] The UN Special Rapporteur on torture has also urged the Government of Pakistan to take immediate and effective action to address reports of inhumane and undignified detention conditions of former Prime Minister Imran Khan, warning that they could amount to torture and other inhuman or degrading treatment.[35]

The Government has also used preventive detention measures under a number of laws, particularly the Maintenance of Public Order Ordinance, 1960, to arbitrarily detain the leadership, workers, and family members of prominent figures belonging to PTI such as Imran Khan's sisters, as well as other opposition parties. Most recently, following the imposition of emergency rule in Khyber Pakhtunkhwa, the Chief Minister of Khyber Pakhtunkhwa, Sohail Afridi, along with dozens of people associated with the party, were preventively detained. The FCC suspended petitions for their release in the Peshawar High Court until the FCC gave a ruling on the powers of the Peshawar High Court during the imposition of emergency and the deployment of the Pakistan Army "in aid of civil power" under Article 245 of the Constitution in the province.

[34] UN Human Rights Council Working Group on Arbitrary Detention, *Opinion No. 22/2024 concerning Imran Ahmad Khan Niazi (Pakistan)*, U.N. Doc A/HRC/WGAD/2024/22, 18 June 2024.
[35] https://www.ohchr.org/en/press-releases/2025/12/pakistan-imran-khans-solitary-confinement-and-inhumane-detention-conditions

III. Obligation to ensure judicial independence under International Law

The role of the judiciary is paramount in safeguarding human rights and rule of law at all times. The judiciary serves as an essential check on the other branches of the State and ensures that any laws and practices comply with the rule of law and human rights.[36]

The ICCPR provides under Article 14 that *"everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."*[37] In its General Comment clarifying the scope and nature of obligations under Article 14 of the ICCPR, the UN Human Rights Committee highlighted key aspects of judicial independence and impartiality that are particularly important in considering Pakistan's context:

> "*The requirement of competence, independence and impartiality of a tribunal ...is an absolute right that is not subject to any exception. The requirement of independence refers, in particular, to the procedure and qualifications for the appointment of judges, and guarantees relating to their security of tenure until a mandatory retirement age or the expiry of their term of office, where such exist, the conditions governing promotion, transfer, suspension and cessation of their functions, and the actual independence of the judiciary from political interference by the executive branch and legislature. States should take specific measures guaranteeing the independence of the judiciary, protecting judges from any form of political influence in their decision-making through the constitution or adoption of laws establishing clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of the members of the judiciary and disciplinary sanctions taken against them. A situation where the functions and competencies of the judiciary and the executive are not clearly distinguishable or where the latter is able to control or direct the former is incompatible with the notion of an independent tribunal. It is necessary to protect judges against conflicts of interest and intimidation. In order to safeguard their independence, the status of judges, including their term of office, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law."*[38]

The UN Human Rights Committee reviewed Pakistan's second periodic report on the implementation of the ICCPR in October 2024, when the 26th amendment was being deliberated and no final draft was made available to the Committee. In its Concluding Observations, adopted in November 2024, the Committee expressed concern regarding the 26th amendment's potential impact on the independence of the judiciary and on the process of judicial appointments as follows:

> *…The Committee is concerned about the lack of prior, broad, transparent and effective consultations with judges, prosecutors, lawyers, bar associations and civil society on the proposal. It is particularly concerned, given the impact of the revisions on the independence of the judiciary and on the process of judicial appointments, including with regard to the reconstitution of the Judicial Commission, the appointment of the Chief Justice through a special parliamentary committee and the introduction of constitutional benches in the Supreme and High courts to be constituted by the Judicial Commission. The Committee regrets the lack of information on the legal framework and institutional mechanisms to guarantee the independence of prosecutors and on the mechanisms for their recruitment, appointment, promotion, disciplinary action and dismissal. It is also concerned about reports that judges and prosecutors involved in politically sensitive cases and cases relating to corruption, terrorism and blasphemy are frequently subjected to harassment, intimidation and threats, including by non-State actors*.[39]

The Committee recommended that, to bring it into compliance with its obligations under Article 14 of the ICCPR, Pakistan "should take all the measures necessary to safeguard, in law and in practice, the full independence, impartiality and safety of judges and prosecutors. In particular, it should review the

[36] International Commission of Jurists, Geneva Declaration: ICJ Declaration and Plan of Action on Upholding the Rule of Law and the Role of Judges and Lawyers in Times of Crisis, 2008.
[37] International Covenant on Civil and Political Rights UN Doc. 999 UNTS 171, (1976) (ICCPR), Article 14.
[38] UN Human Rights Committee, General Comment 32 on the right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (23 August 2007), Para 19.
[39] UN Human Rights Committee, Concluding observations on the second periodic report of Pakistan, UN Doc. CCPR/C/PAK/CO/2 (2 December 2024), para 40

constitutional and legislative framework on the independence of the judiciary and on the process of judicial appointments, including by holding transparent and broad public consultations, to align them with the Covenant and with relevant international standards, such as the Basic Principles on the Independence of the Judiciary."[40]

The universal standards on the independence of the judiciary are reflected in the UN Basic Principles on the Independence of the Judiciary, endorsed by the UN General Assembly.[41] The Basic Principles reinforce the general rule of law principle that the judiciary must be structurally and institutionally independent. As affirmed by the Basic Principles, "It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary"[42] and there shall be no inappropriate or unwarranted interference with the judicial process.

The independence of the judiciary is also specifically recognized in regional standards. In the Asia-Pacific region, the Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region,[43] adopted by Chief Justices of the Asia-Pacific region, including the Chief Justice of Pakistan, provides "the maintenance of the independence of the Judiciary is essential to the attainment of its objectives and the proper performance of its functions in a free society observing the Rule of Law." The *Beijing Principles* also stipulate that the "Independence of the Judiciary requires that [it] decide matters before it in accordance with its impartial assessment of the facts and its understanding of the law without improper influences, direct or indirect, from any source".[44]

[40] *Ibid*. Para 41.
[41] UN, Basic Principles on the Independence of the Judiciary. UN General Assembly Resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, (1985).
[42] *Ibid,* Principle 1 and 4.
[43] LAWASIA: The Law Association for Asia and the Pacific, Statement of Principles of the Independence of the Judiciary in the LAWASIA Region (1997) (Beijing Statement).
[44] *Ibid*, para 3a.

IV. The 26th Constitutional Amendment

i. The adoption process

The Government acknowledged a "constitutional package" was being negotiated among political parties in September 2024, but the contents of the amendments were not made public at the time. A draft amendment was eventually introduced and approved by the Federal Cabinet and tabled in the Senate on the evening of Sunday 20 October 2024, where it was passed within hours. It was then introduced in the National Assembly, which passed it in the morning of 21 October. The President assented soon after, and in less than 24 hours of being tabled in the Senate the amendment came into effect.[45]

The ICJ in a statement observed "the core principle of the rule of law and the separation of powers according to which citizens and their freely chosen representatives have the right to participate in the legislative process culminating in the adoption and enactment of laws was flagrantly violated in this case."[46] The UN High Commissioner for Human Rights expressed concern that the amendment had been adopted hastily, without broad consultation, and would seriously undermine the independence of the judiciary.[47]

The UN Human Rights Committee, in its Concluding Observations on Pakistan's second periodic report on the implementation of the ICCPR, also expressed concern "about the lack of prior, broad, transparent and effective consultations with judges, prosecutors, lawyers, bar associations and civil society"[48] before the adoption of the amendment.

ii. Key provisions related to the judiciary

Table 2: Changes made to the judiciary in the 26th amendment

	Before the 26th Amendment	After the 26th Amendment
Composition of the Judicial Commission of Pakistan (JCP)	Majority of the members were judges. For nomination of SC judges, the JCP comprised the CJP and four senior SC judges, a former SC judge, the Law Minister, the Attorney-General, and a Bar representative.	Judicial members in a minority. 13 members for SC appointments include the CJP, three senior SC judges, senior-most Constitutional Bench judge, Law Minister, Attorney-General, a Bar representative, two Members of the National Assembly, two Senators, and a woman or non-Muslim member nominated by the Speaker.
Parliamentary role in appointments	Parliamentary Committee could reject JCP nominees for reasons recorded in writing.	Parliamentary Committee abolished; legislators sit directly as members of the JCP.
Appointment of the CJP	Most senior SC judge. No fixed term. Continued in office until retirement at 65 years.	Nominated by a 12-member Special Parliamentary Committee from the three most senior judges, in camera, by two-thirds majority; fixed three-year term.
Constitutional jurisdiction	Exercised by benches of the Supreme Court and High Courts constituted internally by the courts.	Exclusive jurisdiction vested in Constitutional Benches whose judges are nominated by the JCP.
Performance and removal	Removal by SJC for misconduct or incapacity.	JCP to evaluate the performance of High Court judges; "inefficiency" added as a ground for removal by the SJC.

[45] https://ecp.gov.pk/storage/uploads/PekedAZCtcu6XeNsPaVTg5K7nI7rFE7LAjufpATZ.pdf
[46] https://www.icj.org/pakistan-26th-constitutional-amendment-is-a-blow-to-the-independence-of-the-judiciary/
[47] https://www.thenews.com.pk/latest/1243129-hastily-passed-26th-amendment-to-undermine-judicial-freedom-un-rights-chief
[48] UN Human Rights Committee, Concluding observations on the second periodic report of Pakistan, UN Doc. CCPR/C/PAK/CO/2 (2 December 2024), para 40.

The amendment also included provisions unrelated to the judiciary, including the recognition of a right to a clean and healthy environment and a commitment to eliminate interest (*riba*) by January 2028. These provisions are not addressed in this report.

iii. Judicial Appointments

The reconstituted Judicial Commission of Pakistan

The Judicial Commission of Pakistan (JCP) is responsible for nominating judges for the Supreme Court and High Courts for appointment. Before the 26th Constitutional Amendment, the JCP was composed of a majority of judges.

Article 175A of the Constitution, as amended by the 26th amendment, changed the composition of the JCP and reduced judicial members to a minority in the Commission. For nominating judges of the Supreme Court, the JCP comprised 13 members: the Chief Justice of Pakistan (the Chairperson), the three most senior judges of the Supreme Court, the most senior judge of the "Constitutional Benches", the Federal Minister for Law and Justice, the Attorney-General of Pakistan, an advocate of the Supreme Court nominated by the Pakistan Bar Council; two members of the National Assembly and two members of the Senate (one each from the treasury and opposition benches in each House), and a woman or non-Muslim member, qualified to be a Senator, nominated by the Speaker of the National Assembly. For appointments to a High Court, additional members drawn from that High Court and the province concerned are also part of the JCP. Decisions are taken by a majority of the total membership.

The amendment abolished the separate "Parliamentary Committee", which since 2010, when the 18th constitutional amendment revamped the judicial appointments process in Pakistan, had the power to review nominations made by the JCP, and instead placed parliamentarians directly within the body responsible for nominating judges for appointment.

Assessment against international standards

The selection and appointment of judges is central to the independence of the judiciary. International law requires that judges be appointed through procedures which are fair, appropriate, and which contain structural safeguards against undue interference by the political branches and other powerful actors, such as large business enterprises or other influential private institutions.[49]

The UN Human Rights Committee has stressed that in order to comply with their obligations under Article 14 of the ICCPR, "States should take specific measures guaranteeing the independence of the judiciary, protecting judges from any form of political influence in their decision-making through the constitution or adoption of laws establishing clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of the members of the judiciary and disciplinary sanctions taken against them."[50]

The general criteria for selection and appointment of judges, in a manner that preserves independence is reflected in the UN Basic Principles, which provide that, judges should be appointed through an open process on the basis of prescribed criteria based on merit and integrity, and without discrimination. Selection of judges for promotion too, should follow prescribed criteria, which "should be based on objective factors, in particular ability, integrity and experience."[51] Judicial appointment procedures must be clearly set out in domestic law and "any method of judicial selection shall safeguard against judicial appointments for improper motives."[52]

In 1997, the Chief Justices of 32 countries in the Asia Pacific Region, including Pakistan, formulated and adopted the Beijing Statement of Principles of the Independence of the Judiciary.[53] These principles emphasize safeguards against improper influence and the requirement of transparency and objectivity in judicial appointments. With regard to methods of selection and appointment of judges, the Beijing Principles provide where a Commission such as a Judicial Services Commission nominates judges for appointment, such a Commission should "include representatives of the higher Judiciary and the independent legal profession as a means of ensuring that judicial competence, integrity and independence are maintained."[54]

[49] UN Basic Principles, *supra* fn 20, Principle 10
[50] UN Human Rights Committee, General Comment 32, para 19.
[51] UN Basic Principles, *supra* fn 20, Principle 13.
[52] UN Basic Principles, *supra* fn 20, Principle 10.
[53] Beijing Statement, *supra* fn 43.
[54] *Ibid,* para 15.

The UN Special Rapporteur on independence of judges and lawyers, in his 2018 report to the UN Human Rights Council, has recommended judicial councils as a preferred method of selection and appointment of judges "to insulate the judiciary and judicial career processes from external political pressure, mainly from the executive branch."[55]

As the above discussion illustrates, a key requirement of selection and appointment procedures is insulation and separation from the executive, a principle continuously reaffirmed by the UN Human Rights Committee and independent experts appointed by the UN Human Rights Council.[56] Another significant requirement is that the authority selecting judges should be plural, representative and be composed mainly (if not solely) of judges and members of the legal profession.[57]

After the adoption of the 26th (as well as the 27th) amendments, the composition of the Judicial Commission of Pakistan is not in compliance with these standards, given its effective control by the political branches of the State. The Law Minister and the Attorney-General are members of, or answerable to, the executive. Two of the four parliamentary members represent the treasury benches. The fifth non-judicial member is nominated by the Speaker of the National Assembly, an office ordinarily held by a member of the ruling party. The governing coalition can thus ordinarily rely on five votes. Since a nomination requires a majority of the total membership of 13 (seven votes), the Government needs the support of only two of the five judicial members, or one judicial members and the bar representative, to secure or block any appointment. A small minority of the judiciary, acting together with the executive, can override the majority of the judicial members. This design gives the executive a decisive role in judicial appointments in a manner that is incompatible with the principle that bodies responsible for judicial appointment must be independent of the executive and legislative branches of the state.

Furthermore, the amended article 175A does not require the JCP to give reasons for its decisions or prescribe any criteria for the nomination of judges. The JCP constituted the Constitutional Bench, discussed in detail in Section IV.V, in an opaque, secretive manner, without disclosing any criteria applied for the selection of existing SC judges to the Constitutional Bench.

On 23 December 2024, the JCP adopted the "Judicial Commission of Pakistan (Appointment of Judges) Rules, 2024". The Rules provide that in assessing the merit of a nominee, the following factors shall be taken into consideration: professional qualifications and experience; legal ability; professional conduct; efficiency; communication skills; integrity and independence; and any other matter deemed relevant by the Commission. Rule 6 also provides that in "initiating and finalizing the nominations for the appointment of Judges in the High Courts, the Members shall, subject to the prescribed criteria, ensure proper diversity in terms of gender, region and religion."

However, since the deliberations and proceedings of the JCP are secret and opaque, the public has no information about why certain candidates are chosen for consideration and on what basis candidates are selected for nomination. While the detailed deliberations of the JCP need not be made public, the reasons for selecting certain candidates for nomination must be disclosed to demonstrate how the criteria are applied in practice.

Following the 27th Amendment, the Chief Justice of the FCC and the senior-most judge of the FCC, both initially appointed by the President on the advice of the Prime Minister, became members of the JCP, further eroding the independence of its judicial component (see Section V).

Appointments in practice

The reconstituted JCP's decisions demonstrated the practical effect of its composition. Its proceedings were marked by divided votes, with judicial members frequently outvoted by a combination of the executive and parliamentary members and a minority of judges. In February 2025, the JCP recommended six judges for appointment to the Supreme Court. The two most senior judges of the SC, Justices Syed Mansoor Ali Shah and Munib Akhtar, had urged that appointments be deferred until the constitutional challenges to the 26th Amendment, then pending, were decided, so that the Court deciding those

[55] Diego García-Sayán, Special Rapporteur on the Independence of Judges and Lawyers, Report of the Special Rapporteur on the independence of judges and lawyers: Role that judicial councils play in ensuring the independence of the judiciary, UN Doc A/HRC/38/38, (2 May 2018), para 84.
[56] Concluding Observations on the Congo, CCPR/C/79/Add.118, para. 14; Concluding Observations on Liechtenstein, CCPR/CO/81/LIE, para. 12; Concluding Observations on Tajikistan, CCPR/CO/84/TJK, para. 17; Concluding Observations on Honduras, CCPR/C/HND/CO/1 (2006), para. 16; Concluding Observations on Azerbaijan, UN Doc. CCPR/C/AZE/CO/3 (2009), para. 12; Human Rights Committee, Concluding Observations on Kosovo (Serbia), UN Doc. CCPR/C/UNK/CO/1 (2006), para. 20.
[57] Leandro Despouy, Special Rapporteur on the Independence of Judges and Lawyers, Report of the Special Rapporteur on the Independence of Judges and Lawyers, UN Doc. A/HRC/11/41 (2009), para. 28-29.

challenges would not be reconstituted by the very body whose legality was in question. The JCP, however, rejected their request.

By reducing its judicial members to a minority and by allowing appointments to be made in an opaque manner without clear criteria, the 26th amendment facilitated the undue political influence over judicial appointments to the highest court. A Commission in which the executive and its parliamentary allies hold a structurally decisive position cannot provide the safeguard against appointments for improper motives that international law and standards require, and judges appointed through such a process may reasonably be perceived by litigants, particularly litigants opposed to the Government, as lacking independence.

iv. Appointment of the Chief Justice of Pakistan

The new procedure

Before the 26th Amendment, the most senior judge of the Supreme Court was appointed Chief Justice of Pakistan. Neither the executive nor Parliament had a role in the selection. The 26th amendment replaced this with a procedure under which a Special Parliamentary Committee (SPC), composed of eight members of the National Assembly and four Senators drawn from parliamentary parties in proportion to their strength in Parliament, was empowered to nominate the Chief Justice from among the three most senior judges of the Supreme Court. The nomination required a two-thirds majority of the Committee's total membership. The amendment also provided the Chief Justice would serve a fixed term of three years, or until reaching the retirement age of 65, whichever is earlier. Meetings of the SPC are held in camera. The Constitution prescribes no criteria for the selection and does not require the Committee to give reasons for its decision.

The first appointment under the new procedure

The SPC was constituted on 21 October 2024, the day of the 26th amendment's enactment, and met the following day. The Registrar of the Supreme Court transmitted the names of the three most senior judges, Justice Syed Mansoor Ali Shah, Justice Munib Akhtar and Justice Yahya Afridi, to the Committee. The PTI's members boycotted the proceedings. Of the nine members who attended, eight members voted for Justice Afridi, the third in seniority. One member, from the JUI-F, voted for Justice Shah. The President appointed Justice Afridi as Chief Justice on 23 October, and he took oath on 26 October 2024.

No reasons were given for passing over the two most senior judges of the Supreme Court. However, as discussed above in Section I, Justice Shah had authored the majority judgment in the "reserved seats" case and he as well as Justice Akhtar had been part of benches whose decisions were considered adverse to the Government. This reinforced the perception that the selection was made for political reasons, and not for reasons of competence, merit, or experience.

The ICJ expresses no view on the qualifications or conduct of Justice Yahya Afridi, who was appointed as the Chief Justice of Pakistan. It is concerned with the procedure for appointment and its incompatibility with international law and standards. The office of Chief Justice of Pakistan, which at the time was the most consequential judicial office in the country, was filled by the choice of a political body, in secret, without stated criteria or reasons, in circumstances that gave rise to a reasonable perception that judicial decisions adverse to the ruling coalition had been a major factor.

Assessment against international standards

The Chief Justice of Pakistan is not merely the senior-most judge of the Supreme Court. Until the 27th Amendment, the Chief Justice chaired the JCP and the Supreme Judicial Council (the body responsible for judicial discipline and removal), presided over the administration of the Supreme Court, and led the Committee responsible for constituting benches and listing cases before them. International standards require that the selection of judges, including for positions of judicial leadership, be insulated from political influence. A procedure that places the selection exclusively in the hands of a parliamentary committee, whose majority will ordinarily reflect the ruling coalition, does not satisfy that requirement.

Furthermore, the requirement that the SPC meet in camera, combined with the absence of public criteria and reasons for selections, means that there is no evident basis upon which the public or the legal profession can assess whether a selection was based on merit or on improper considerations. This is inconsistent with the requirement, as articulated by the UN Human Rights Committee, of clear procedures and objective criteria for appointment.

Subsequent changes to the office

After the 27th Amendment, the title and position of the "Chief Justice of Pakistan" was abolished, with a transitional clause allowing the incumbent, Chief Justice Yahya Afridi, to continue to be known as the "Chief Justice of Pakistan" during his term in office.[58] After Chief Justice Yahya Afridi's retirement, there will be a Chief Justice of the Federal Constitutional Court and a Chief Justice of the Supreme Court. The 27th amendment also provides that the chairperson of the JCP and the Supreme Judicial Council would be the senior amongst the CJ of the FCC and the CJ of the SC.[59] The procedure described above remains the appointment procedure for the CJ of the SC and the CJ of the FCC.

v. Constitutional Benches

The legal framework under the 26th amendment

The 26th amendment inserted Article 191A into the Constitution, establishing "Constitutional Benches" of the Supreme Court comprising judges nominated by the JCP, which also determines their number and the period of their nomination. The Benches were given exclusive jurisdiction over the Supreme Court's original jurisdiction in disputes between governments,[60] its original jurisdiction in matters of public importance involving the enforcement of fundamental rights[61], appeals from High Court judgments involving a substantial question of constitutional interpretation, and the Court's advisory jurisdiction on references from the President.[62] All pending petitions, appeals and reviews falling within these categories were transferred to the Constitutional Benches. A parallel provision, Article 202A, created Constitutional Benches in the High Courts with exclusive jurisdiction over writ petitions concerning the enforcement of fundamental rights and other constitutional matters, again with judges nominated by the JCP.

Constitutional Benches in the Supreme Court were abolished by the 27th amendment, which established the FCC to exercise the jurisdiction transferred to the Constitutional Benches in the 26th amendment. Constitutional Benches continue to function in the High Courts.

Formation of the Supreme Court's Constitutional Bench

On 5 November 2024, the JCP decided, by a vote of seven to five, to nominate seven judges of the Supreme Court to the Constitutional Bench for a period of 60 days, with Justice Aminuddin Khan as the senior-most judge. A number of Supreme Court judges had argued that all judges of the Supreme Court should sit on the Constitutional Benches, which would have preserved the Supreme Court's control over the assignment of cases. The JCP did not accept this demand. Notably, the JCP provided no criteria or basis for the selection of the Constitutional Bench.

In January 2025, a conflict arose when a regular bench of the Supreme Court, examining whether a question concerning the scope of article 191A could be heard outside the Constitutional Bench, had the matter withdrawn from it by an administrative committee.[63] The episode highlighted the uncertainty created by the division of the SC's jurisdiction and the risk that decisions regarding which bench would hear a case would determine the outcome of the case.

Assessment against international standards

Principle 14 of the UN Basic Principles provides that the assignment of cases to judges within the court to which they belong must be treated as an internal matter of judicial administration.[64] The Beijing Statement provides likewise.[65] Under Article 191A, the JCP, a body in which the executive and its parliamentary allies hold a structurally decisive position, selected which judges of the Supreme Court would decide every case concerning constitutional interpretation and the enforcement of fundamental rights. The ICJ warned at the time of the amendment's adoption that this power allowed the JCP to create tailor-made benches to hear

[58] Constitution of Pakistan, Art 176: "Provided that and notwithstanding anything contained in the Constitution, the incumbent Chief Justice shall be and continue to be known as the Chief Justice of Pakistan during his term in office."
[59] See the Explanations in Art 175A(2) and Article 209 of the Constitution of Pakistan. The Explanations also provide that the *inter se* seniority shall be determined with reference to their dates of appointment as the Chief Justice of the Federal Constitutional Court and the Chief Justice of the Supreme Court.
[60] Constitution of Pakistan, Article 184(1).
[61] Constitution of Pakistan, Article 184(3).
[62] Constitution of Pakistan, Article 186.
[63] https://scp.gov.pk/judgments/crl.i.c.a._1_2025.pdf
[64] UN Basic Principles, *supra* fn 20, Principle 14.
[65] Beijing Statement, *supra* fn 43, para 35.

specific cases, including those of political significance or character, giving rise to serious concern that these benches will not be independent and impartial.[66]

The amendment also permitted the exclusion of judges of the Supreme Court, appointed through a constitutional process and enjoying security of tenure, from the exercise of the Court's most significant functions. This exclusion did not have to relate to a legitimate objective, such as a disciplinary finding or incapacity of the excluded judge, but was a consequence of a decision of the JCP that did not have to be reasoned and was for a period that too was determined by the JCP. Judges whose nominations are subject to periodic renewal by a body with heavy executive influence cannot be regarded as enjoying the security necessary to decide cases independently and impartially.

vi. Constitutional Bench decisions in politically significant cases

During the period in which it exercised exclusive constitutional jurisdiction, from November 2024 to November 2025,[67] the Constitutional Bench decided several cases of major political significance and character that were favorable to the Government and its allies.

Military trials of civilians

In May 2023, Pakistani military and government authorities announced their decision to hold trials of civilians allegedly involved in violence and arson surrounding the arrest of former Prime Minister Imran Khan on 9 and 10 May 2023[68] in military courts, including under the Official Secrets Act (OSA) and Pakistan Army Act (PAA). On 23 October 2023, a five-member bench of the SC held provisions of the Army Act, 1952, which brought civilians under its ambit and provided for their trial by courts martial, were in violation of the Constitution and of no legal effect. In addition, the SC held instead of military courts, ordinary criminal courts of competent jurisdiction must conduct trials of those accused of committing crimes on 9 and 10 May 2023.[69]

The Government appealed the decision of the Supreme Court through an intra-court appeal to a larger bench of the Supreme Court. On 13 December 2023, a six-member bench of the Supreme Court heard the Government's appeal. The Court held that "since the appellants have raised various questions of law which require consideration," the operation of the judgment is suspended subject to the condition that no final judgment shall be passed against accused persons by the military courts.[70] In March 2024, on the Attorney-General's request, the SC allowed military courts to announce reserved verdicts, where those convicted could get their remaining sentence remitted and be released.[71] In April 2024, 20 convicts who had been sentenced to one-year imprisonment were released after their remaining sentences were remitted.[72]

On 13 December 2024, a seven-member Constitutional Bench hearing the case allowed military courts to conditionally announce verdicts for the remaining 85 accused as well, subject to its final decision on the appeals before the Supreme Court.[73]

On 7 May 2025, the Constitutional Bench, presided over by Justice Aminuddin Khan, by a majority of five to two, allowed intra-court appeals and set aside the Supreme Court's October 2023 judgment that had held the trial of civilians by military courts to be unconstitutional. The Bench also restored the relevant provisions of the Pakistan Army Act, 1952. The Bench recommended that to maintain and preserve "the constitutional and societal norms in the existing legal framework" and ensure compliance with international law, including the ICCPR, Parliament should consider enacting legislation to provide an independent right of appeal to the High Courts from military courts within 45 days.[74] As of 17 November 2026, legislation on the right to appeal has not been enacted and the Government has not indicated any intention of implementing the recommendation. The ICJ has consistently stated that the trial of civilians by military courts is incompatible with article 14 of the ICCPR and has found the military trials of 105 civilians for

[66] https://www.icj.org/pakistan-26th-constitutional-amendment-is-a-blow-to-the-independence-of-the-judiciary/
[67] The 27th amendment to the Constitution abolished the Constitutional Benches in the Supreme Court. The Federal Constitutional Court now exercises their powers.
[68] https://www.dawn.com/news/1752003
[69] https://www.supremecourt.gov.pk/downloads_judgements/const.p._24_2023_f.pdf
[70] https://www.supremecourt.gov.pk/downloads_judgements/i.c.a._5_2023.pdf
[71] https://www.dawn.com/news/1824252
[72] https://www.dawn.com/news/1826642
[73] https://www.dawn.com/news/1878498
[74] https://scp.gov.pk/judgments/i.c.a._5_2023_so_07052025.pdf

offences in relation to violence surrounding the arrest of former Prime Minister Imran Khan in May 2023 fall afoul of core rule of law and human rights principles.[75]

Reserved seats

On 27 June 2025, the Constitutional Bench allowed review petitions against the July 2024 judgment of a 13-member bench in the reserved seats case, holding that the PTI was not eligible for reserved seats.[76] A total of 77 reserved seats, 22 in the National Assembly and 55 across provincial assemblies, were redistributed among the ruling coalition and its allies, primarily PML-N and PPP. This strengthened the position of the ruling coalition and its allies in the National Assembly, which was subsequently instrumental in the adoption of the 27th Amendment.

Transfer of judges to the Islamabad High Court

On 1 February 2025, the Ministry of Law and Justice notified the transfer of three judges to the Islamabad High Court: Justice Sardar Muhammad Sarfraz Dogar from the Lahore High Court, Justice Khadim Hussain Soomro from the Sindh High Court, and Justice Muhammad Asif from the Balochistan High Court. Justice Dogar, who had ranked fifteenth in seniority in the Lahore High Court, was placed at the top of the Islamabad High Court's seniority list as a result of the transfer. After the appointment of the Chief Justice of the IHC, Justice Aamer Farooq, to the SC on 13 February 2025, the President appointed Justice Dogar as the Acting CJ of the IHC.[77] Five judges of the Islamabad High Court challenged the transfers and the resulting seniority list before the Supreme Court. On 19 June 2025, a five-member Constitutional Bench, by a majority of three to two, held the transfers to be constitutional and left the question of seniority to the President.[78] On 29 June, the President declared Justice Dogar to be the senior-most judge, and on 1 July, the JCP approved his appointment as the Chief Justice of the Islamabad High Court.

The constitutional petitions challenging the 26th amendment filed by bar associations, former judges, and civil society were placed before the Constitutional Bench, the very body created by the provisions under challenge. Requests by the petitioners that a full Court comprising all judges of the SC hear them were not granted. The petitions were still undecided when the 27th amendment was passed. Following the 27th amendment, the petitions were transferred to the FCC.

vii. Performance Evaluation, Discipline, and Removal of Judges

The legal framework

Under Article 209 of the Constitution, judges of the Supreme Court and the High Courts may be removed only by the President on the report of the Supreme Judicial Council (SJC).[79] Before the 26th amendment, the grounds for removal were that a judge was incapable of properly performing the duties of office by reason of physical or mental incapacity, or had been guilty of misconduct.

The 26th amendment added a third ground for removal. A judge may now also be removed if found "inefficient in the performance of the duties of office".[80] The term "inefficiency" is not defined, and no threshold, standard or criteria for its determination are provided. The amendment empowered the JCP to undertake an annual evaluation of the performance of High Court judges and where it finds a judge's performance to be "inefficient", to give the judge time to remedy the deficiency and, failing that, to refer the matter to the SJC.

Assessment against international standards

The ICJ has, prior to the 26th amendment, raised concern about the judicial accountability mechanism and grounds, including the ambiguity with which "misconduct" is defined in the Code of Conduct of the judges of the High Courts and the Supreme Court and the arbitrary manner in which the Supreme Judicial Council handles complaints of misconduct.[81] Instead of addressing these problems, the 26th amendment

[75] https://www.icj.org/pakistan-military-justice-system-reflects-a-glaring-surrender-of-human-rights/
[76] https://scp.gov.pk/judgments/c.r.p._312_2024_2102025_dn.pdf
[77] https://www.dawn.com/news/1891705
[78] https://scp.gov.pk/judgments/const.p._22_2025_25092025.pdf
[79] After the 27th amendment, the SJC is composed of the CJ of the FCC, the CJ of the SC, the next most senior Judge each of the Federal Constitutional Court and the Supreme Court, a Judge of the Federal Constitutional Court or the Supreme Court jointly nominated by the Chief Justice of the Federal Constitutional Court and the Chief Justice of the Supreme Court, for a period of two years, and two most senior CJs of High Courts.
[80] Article 209(5) of the Constitution of Pakistan, 1973.
[81] https://www.icj.org/resource/pakistan-year-of-judicial-accountability/

has grossly compounded them by adding "inefficiency" as a ground on which judges can be removed, which is patently non-compliant with international standards.

Security of tenure is a cornerstone of judicial independence. The UN Human Rights Committee has affirmed that judges may be dismissed only on serious grounds of misconduct or incompetence,[82] and Principle 18 of the UN Basic Principles limits removal to incapacity or behavior that renders a judge unfit to discharge their duties. "Inefficiency", undefined and without any threshold, does not meet these standards. It is capable of capturing conduct falling far short of serious incompetence, such as the time taken to decide complex cases, and is susceptible to being applied selectively against judges whose decisions are seen as unfavorable.

[82] UN Human Rights Committee, General Comment 32 on the right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (23 August 2007), para 20.

V. The 27th Constitutional Amendment

i. The adoption process

On 8 November 2025, the 27th Amendment was approved by the Federal Cabinet and tabled in the Senate. It was passed by the Senate on 10 November, by the National Assembly with amendments on 12 November, and finally, passed again by the Senate and assented to by the President on 13 November.

The UN High Commissioner for Human Rights expressed concern about the haste with which the amendment was adopted, noting that the 27th constitutional amendment, like the 26th amendment last year, had been adopted without broad consultation and debate with the legal community and wider civil society. The UN High Commissioner for Human Rights also warned the amendments run counter to separation of powers that underpins the rule of law and safeguards the protection of human rights in Pakistan.[83]

The two-thirds majority in both Houses of Parliament that allowed the amendment to be passed was itself the product of earlier developments described in this report. For example, the Constitutional Bench's June 2025 reversal of the "reserved seats" judgment gave the Government and its allies more seats in the National Assembly.

ii. Key provisions related to the judiciary

Table 3: Changes made to the judiciary in the 27th amendment

	Before the 27th Amendment	**After the 27th Amendment**
Highest court	The Supreme Court was Pakistan's apex court.	A new Federal Constitutional Court (FCC) is at the top of the judicial hierarchy. The Supreme Court is now the final appellate court for civil and criminal matters.
Who hears constitutional cases	After the 26th amendment, Constitutional Benches handled matters involving constitutional interpretation from within the Supreme Court.	The FCC has exclusive jurisdiction over constitutional interpretation. Constitutional Benches in the Supreme Court are abolished.
Appointment of the first FCC chief justice and first batch of judges	FCC did not exist.	The President, on the Prime Minister's advice, appoints the first FCC Chief Justice from serving Supreme Court judges. The President, on the PM's advice and in consultation with the CJ of the FCC, appoints the first batch of FCC judges. After the first batch of FCC judges, FCC judges too are nominated by the JCP and the CJ of FCC nominated by the SPC.
Transfer of high court judges (Article 200)	The President could transfer high court judges only with their consent.	The JCP recommends transfers to the President and sets the terms for transfer. A judge who refuses faces disciplinary proceedings before the Supreme Judicial Council under Article 209.

[83] "Pakistan: Türk concerned by constitutional amendments and immunity provisions", 28 November 2025, https://www.ohchr.org/en/press-releases/2025/11/pakistan-turk-concerned-constitutional-amendments-and-immunity-provisions

Judicial Commission (JCP)	Judicial members were in a minority after the 26th amendment, but comprised Supreme Court judges for the nomination of judges to the SC.	The FCC Chief Justice and its most senior judge also sit on the JCP, replacing two SC judges as members.

iii. Establishment of the Federal Constitutional Court

The most fundamental change brought by the 27th amendment is the establishment of a new Federal Constitutional Court (FCC) with sweeping powers to exercise many of the functions previously in the jurisdiction of the Supreme Court of Pakistan.[84]

Article 175B of the Constitution provides the Federal Constitutional Court shall consist of the Chief Justice of the Federal Constitutional Court and as many other judges as may be determined by Parliament, or, until so determined, as may be fixed by the President. The FCC shall have equal number of judges from each Province and at least one Judge from Islamabad High Court. The FCC's judgments, in so far as they decide a question of law, are binding on all courts, including the Supreme Court.

The FCC was given exclusive jurisdiction to decide disputes between any of Pakistan's governments (provincial and federal) and to adjudicate matters of public interest involving the enforcement of fundamental rights.[85] All cases or petitions pending before any other court that fall under the FCC's jurisdiction were to be transferred to the FCC, and the FCC was also given the power to call for the record of any case from other courts that may involve a substantial question of law related to the interpretation of the Constitution of Pakistan, and make orders in the case.[86] The FCC also has the jurisdiction to hear appeals as provided by any act of parliament, as well as appeals from the High Courts involving a substantial question of law related to the interpretation of the Constitution of Pakistan.[87]

Before the amendment, the Supreme Court of Pakistan exercised the functions that have since been transferred to the FCC. The Supreme Court has been effectively limited to an appellate court, that too only in matters that do not involve interpretation of the Constitution.

International law and standards do not prescribe any particular model for how the judiciary should be organized. Specialized constitutional courts, separate from the ordinary apex court, exist in many jurisdictions and are not by themselves incompatible with international standards. States may also reorganize their courts by following their relevant legislative or constitutional procedures. However, international law requires that any such reorganization must respect the independence of the judiciary as an institution and the security of tenure of individual judges, and that other branches of the State must not use reorganization to subordinate the courts to the political branches or to remove judges whose decisions are viewed unfavorably.[88]

The Beijing Principles expressly recognize this principle in respect of restructuring. Where a court is abolished or restructured, its existing members must be reappointed to its replacement or appointed to another judicial office of equivalent status and tenure.[89] The underlying rationale is that structural reform must not become an instrument for selecting judges who will exercise the most consequential judicial power through political means or in a manner susceptible to undue political influence, which is what the 27th amendment does by establishing a new Federal Constitutional Court. The amendment does not abolish the Supreme Court, but transfers the jurisdiction of judicial review and the interpretation of the constitution to a new court whose first batch of judges are executive appointments. The judges of the Supreme Court who were not appointed to the FCC retain their titles, but no longer exercise constitutional jurisdiction. The judges who were appointed to the FCC from the SC, by contrast, gained three additional years of tenure.

The circumstances of the FCC's creation reinforce this concern. The 27th amendment was adopted without meaningful public or institutional consultation, including with the judiciary, notwithstanding requests by sitting as well as former judges that the Supreme Court be permitted to respond institutionally to a

[84] The 26th amendment, as discussed above, provided only Constitutional Benches in the Supreme Court shall exercise these functions.
[85] Constitution of Pakistan, Article 175E.
[86] *Ibid*.
[87] Constitution of Pakistan, Article 175F.
[88] Human Rights Committee, General Comment 32, *supra* fn 38, para. 19. UN Basic Principles, *supra* fn 20, Principles 1 and 4.
[89] Beijing Statement, *supra* fn 43, para. 29.

proposal that fundamentally altered its own jurisdiction.[90] Two of the most senior judges of the Supreme Court, Justices Syed Mansoor Ali Shah and Athar Minallah, resigned within hours of the amendment's enactment, as did Justice Shams Mehmood Mirza of the Lahore High Court shortly afterwards.[91] Justice Shah's resignation letter described the amendment as having subordinated the judiciary to the government.[92] Such resignations are a candid indication of how the amendment has been understood within at least a substantial portion of the judiciary.

The rule that FCC decisions on questions of law bind the Supreme Court, while the reverse is not the case, completes the subordination of the Supreme Court to the new court.

iv. Performance of the Federal Constitutional Court

When the Federal Constitutional Court was established in November 2025, 22,183 cases were transferred from the SC to FCC. As of September 2026, 23,340 were pending before the Court.[93] These cases include a number of petitions related to disputes about the 2024 general elections.

The record of the FCC in politically sensitive matters shows a pattern of judicial evasion. The Court has used jurisdictional doubt,[94] delays and deferral, and disposal of cases on technical grounds to avoid deciding constitutionally significant questions on their merits.

The FCC has also used its powers under Article 175E of the Constitution to assume jurisdiction over cases involving the interpretation of the Constitution[95] in a manner that gives the impression that the FCC is shielding the Government from adverse or unfavorable decisions from other courts. Two decisions of the FCC are notable in this respect.

Suspension of the writ jurisdiction of the Peshawar High Court

On 11 October 2026, the President of Pakistan issued a Proclamation under Articles 232 and 234 of the Constitution, imposing a state of emergency in the province of Khyber Pakhtunkhwa, where the PTI was in government.[96] The Federal Government assumed control of executive powers in the province through the Governor of Khyber Pakhtunkhwa. The reasons given for the imposition of the emergency related to a "grave emergency" because of a "surge in terrorist attacks" in the province and allegations that the provincial government had failed to adequately "deal with the menace of terrorism." The Proclamation also stated that the Governor of Khyber Pakhtunkhwa had indicated in a report that there was a "breakdown of constitutional machinery in the province" and the government could "not be carried on in accordance with the provisions of the Constitution of Pakistan." Following the Proclamation, the Federal Government authorized the deployment of Pakistan Army "in aid of civil power" under Article 245 of the Constitution.[97]

Article 245(3) of the Constitution provides the High Court of the province "shall not exercise any jurisdiction under Article 199 in relation to any area in which the Armed Forces of Pakistan are, for the time being, acting in aid of civil power in pursuance of Article 245." On 5 November 2026, the Federal Constitutional Court suspended all proceedings before the Peshawar High Court related to the PHC's writ jurisdiction and protection of fundamental rights, including challenges to preventive detention orders of several people until the FCC authoritatively reinterpreted the bar of the jurisdiction of high courts under Article 245. On 7 November 2026, the Administrative Committee of the PHC stated in an order that, "writ petitions filed on or after 12 October 2026 shall not be fixed for hearing while fresh cases shall not be entertained and be returned to approach the appropriate forum." This included challenges to the imposition of emergency rule in the province, which had earlier been adjourned until 10 November 2026. On 16 November 2026, the FCC modified its 5 November order, and allowed the PHC to hear cases under Article

[90] "'Radical restructuring': Justice Shah, retired judges, top lawyers urge CJP to summon full court on 27th Amendment", Dawn News, 10 November 2025, https://www.dawn.com/news/1954264
[91] "Justice Shams Mehmood Mirza resigns from LHC following 27th Amendment," *Dawn News*, 15 November 2025, https://www.dawn.com/news/1955240
[92] https://justicemansooralishah.com/resignation-letter/
[93] "FCC fails to reduce top courts' combined pendency", *Express Tribune*, 13 September 2026, https://tribune.com.pk/story/2628984/fcc-fails-to-reduce-top-courts-combined-pendency
[94] See, for example, https://www.dawn.com/news/2030106 and F.C.P.L.A.2392 to 2458 & 2307 to 2354/2026.
[95] Article 175E, which was inserted in the Constitution through the 27th Constitutional Amendment, empowers the FCC to call for the record of any case and authorizes it to decide matters involving major questions of constitutional law.
[96] https://www.dawn.com/news/2036378
[97] https://www.dawn.com/news/2036387

199 of the Constitution except cases that related to preventive detention orders under Section 3 of the Maintenance of Public Order Ordinance, 1960, and the imposition of emergency in Khyber Pakhtunkhwa.[98]

The right to health of prisoners

On 18 August 2026, the Supreme Court of Pakistan passed an interim order directing relevant authorities to move former Prime Minister Imran Khan from Adiala Jail, where he is being detained, to Shifa International Hospital in Islamabad within 48 hours for medical examination and treatment. The court also approved weekly family visits, bi-weekly phone calls with his sons, and participation from his personal physician and sister in his treatment. The SC also directed that Imran Khan "or any person related to or associated with him in any capacity, shall not use the medical reports or information concerning his health as an instrument for political gain."[99] The Chief Commissioner of Islamabad and the Government challenged the ruling and filed a review petition against the Supreme Court's order, arguing that the court had bypassed the concerned prison rules, which give the jail medical board the power to decide treatment for prisoners. Instead of transferring Imran Khan to Shifa International Hospital, as directed by the SC, the authorities took him to PIMS, a government hospital, for a short examination and returned him to Adiala Jail.

On 14 September 2026, under Article 175E of the Constitution, the FCC summoned the complete record of cases related to the transfer of Imran Khan to Shifa International Hospital pending before the Supreme Court.[100] Soon thereafter, the SC resumed hearings in the case and sought the legal assistance of the Attorney-General of Pakistan over the FCC's assumption of jurisdiction over the matter.[101] The case was adjourned and has not been re-listed.

The jurisdictional dispute has meant that neither the FCC nor the Supreme Court has scheduled a hearing in the case since September 2026, even though, according to the SC's interim order, the matter involves the right to life of Imran Khan. On 16 November 2026, Imran Khan through his counsel made a public appeal to the CJs of the IHC, SC, and FCC for the implementation of the SC order regarding his medical treatment, stating "on the most basic grounds of human compassion: give me justice before it is too late."[102]

v. Appointment of the Chief Justice of FCC and first "batch" of judges

The 27th amendment provides that the President on the advice of the Prime Minister shall appoint the first Chief Justice of the FCC from serving Supreme Court judges.

While the precise number of judges on the FCC is to be fixed later by parliament, the amendment provided that the first "batch" of judges to the FCC shall be appointed by the President on the advice of the Prime Minister in consultation with the CJ of the FCC. Until Parliament determines the number of judges for the FCC, the President may fix the number of judges.

After the first CJ of the FCC and the first "batch" of judges are appointed, the appointments of FCC judges shall be made on the recommendation of the Judicial Commission of Pakistan (JCP) and the appointment of the Chief Justice of the FCC shall be made by a Special Parliamentary Committee.

The amendment did not provide any criteria on which the appointments will be made and did not require reasons to be given for the appointments, apart from general qualifications necessary to be considered a judge of the FCC.

Assessment against international standards

International standards provide the appointing body should be separate from and not under the direct control of the executive, a requirement that is clearly not met in the appointment of the CJ of the FCC and the first "batch" of judges of the FCC. Under international standards, there must also be clear procedures and objective criteria for the appointment of judges. See Section IV.iii for an assessment of international law and standards on judicial appointments.

[98] "FCC conditionally allows PHC to hear cases under Article 199", *Express Tribune*, 16 November 2026, https://tribune.com.pk/story/2640628/fcc-conditionally-allows-phc-to-hear-cases-under-article-199
[99] https://scp.gov.pk/judgments/crl.a._400_2025_18082026.pdf
[100] https://www.dawn.com/news/2030106
[101] https://www.dawn.com/news/2030356
[102] "'I may not return alive': In open letter to top judges, Imran pleads for medical treatment for him and Bushra Bibi", Dawn News, 16 November 2026, https://www.dawn.com/news/2044922

Appointments to the FCC in practice

Justice Aminuddin Khan, who was due to reach the Supreme Court retirement age of 65 at the end of November 2025, was appointed Chief Justice of the FCC on the Prime Minister's advice on the day the amendment was enacted and sworn in the following day. His tenure now extends to the age of 68.[103] Six other judges, drawn from the Supreme Court, the High Courts and, in one case, a retired judge, were notified on 14 November 2025.[104] No criteria or reasoning were made public to explain why certain judges of the Supreme Court and High Courts were appointed to the FCC, while others with widely recognized constitutional expertise were not. The lack of independence of the appointing authority coupled with the complete opacity surrounding the selection process called into question the independence and impartiality of the newly established highest court in the country.

The concerns regarding independence and impartiality are not limited to the transitional phase. Once the first Chief Justice of the FCC retires, a Special Parliamentary Committee, meeting in camera and without any stated criteria, will nominate his successors as well.[105] Meanwhile, the first Chief Justice of the FCC and the next most senior FCC judge, both executive appointees, sit as members of the JCP and will thus shape the appointment of high court, SC, and FCC judges for a long time. The effects of the executive's initial choice are therefore self-perpetuating.

vi. Subsequent appointments of the FCC Chief Justice

Prior to the 26th amendment, the most senior judge of the Supreme Court was appointed the Chief Justice of Pakistan. Neither the Executive nor the Parliament appropriately had any say in this appointment. The 26th amendment changed the Constitution to give this authority to a political body, namely a "Special Parliamentary Committee", consisting of eight members of the National Assembly and four members of the Senate. The SPC was empowered to nominate the Chief Justice of Pakistan from among the three most senior Supreme Court judges.

The 27th amendment prescribes the same method for the appointment of the Chief Justice of the Federal Constitutional Court after the first CJ of the FCC, Justice Aminuddin Khan, retires. The provision gives no grounds or criteria on the basis of which the SPC is to nominate the CJ of the SC or the CJ of the FCC, while also providing that its meetings shall be held in camera.

See Section IV.iv for an assessment as to why the appointment of the CJ of the FCC by a Parliamentary Committee is inconsistent with international standards.

vii. Subsequent appointments of FCC judges

At present, the strength of the FCC is seven judges, including the CJ of the FCC. Article 175A of the Constitution provides that after the "first batch" of judges is appointed by the President on advice of the PM in consultation with the CJ of the FCC, subsequent appointments to the FCC shall be made by the Judicial Commission of Pakistan.

The composition of the JCP for nominating judges for appointment to the FCC is the same as for nominating judges for appointment to the SC and the Federal Shariat Court. The JCP is composed of 13 members, of which five are judges. Specifically, the members are the Chief Justice of the FCC, the Chief Justice of the SC, the next senior-most judges each of the FCC and SC, a judge of the FCC or the SC jointly nominated by the CJ of the FCC and the CJ of the SC for a period of two years, Federal Minister for Law and Justice, the Attorney-General of Pakistan, an advocate with fifteen years or more of practice in the Supreme Court nominated by the Pakistan Bar Council for a period of two years, two members from the Senate and two members from the National Assembly of whom two shall be from the Treasury Benches, one from each House, and two from the Opposition Benches, from each House, and a woman or non-Muslim or a technocrat, other than a member Parliament who is qualified to be a member Parliament, to be appointed by the Speaker of the National Assembly.

See section IV.iii for a detailed assessment of why nomination by the JCP in its present composition is inconsistent with international standards.

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[103] "Justice Aminuddin appointed first CJ of Constitutional Court", *The News,* 14 November 2025, https://www.thenews.com.pk/print/1380790-president-appoints-aminuddin-as-first-cj-of-constitutional-court

[104] "6 judges appointed to Federal Constitutional Court", *The News,* 15 November 2025, https://www.thenews.com.pk/latest/1357980-6-judges-appointed-to-federal-constitutional-court

[105] https://www.icj.org/pakistan-dismantling-justice-a-full-frontal-assault-on-the-rule-of-law/

viii. Transfer of judges of High Courts

The 27th amendment fundamentally alters Article 200 of the Constitution of Pakistan, 1973, which relates to transfer of judges of the High Courts. It gives the Judicial Commission of Pakistan the power to recommend to the President the transfer of a judge from one High Court to another and to determine the terms and conditions for such a transfer.[106] If judges do not accept, they shall be subject to disciplinary proceedings within 30 days under Article 209 by the Supreme Judicial Council (SJC), a judicial body responsible for inquiring into misconduct.[107] Until the SJC makes a decision on whether the judge's refusal was misconduct or not, the judge is barred from performing judicial functions.

Before the amendment, the President of Pakistan had the power to transfer judges from one High Court to another in consultation with Chief Justice of Pakistan and the chief justices of the High Courts to and from which the transfer was being made. The consent of judges was necessary for them to be transferred. The requirement of consent has been removed.

Assessment against international standards

The transfer provisions are inconsistent with international standards on the independence of the judiciary in relation to conditions of tenure. The UN Basic Principles provide that "the term of office of judges, their independence, security…conditions of service, shall be adequately secured by law."[108] The Implementation Measures of the Bangalore Principles of Judicial Conduct also call for a judge's consent for transfer, except if the transfer is pursuant to a system of regular rotation provided by law or formulated after due consideration by the judiciary.[109] The Beijing Statement also establishes that judges must have security of tenure and that "a judge's tenure must not be altered to the disadvantage of the judge during his or her term of office."[110]

Arbitrary transfers violate the principle that security of tenure must be ensured and conditions of service remain unaltered. The transfer of judges outside their home provinces, especially to remote areas, can carry a punitive impact and constitute an adverse consequence on their work and lives and amount to a change in the terms of office.

The former UN Special Rapporteur on the independence of judges and lawyers in his 2020 Report has described transfers as one of the most frequent kinds of disguised sanctions, which are often used in order to "prevent a judge from adjudicating on a particular case or to punish and marginalize a judge regarded as too independent or unsympathetic to the Government's interests."[111]

The perception that transfers are being used as a "disguised sanction" threatens independent discharge of judicial functions, as all High Court judges would know that decisions that are viewed as unfavorable could expose them to an adverse transfer, and if they refuse, they will have to face disciplinary proceedings that may lead to their removal.

The Government also failed to provide convincing reasons for removing the requirement of consent for judicial transfers in the 27th amendment. In an interview, the Law Minister stated transfer was a means of ending corrupt practices of High Court judges, as some of them have "opened shop" at their respective courts.[112] This pronouncement is highly problematic, as it shows that instead of proceeding against such judges in the SJC for alleged misconduct, as required by Article 209, transfers are being considered a means of circumventing the constitutional accountability mechanism.

[106] Article 200 provides that the Chief Justices of both High Courts shall also be members of the Judicial Commission of Pakistan for the purposes of recommending judges for transfer.
[107] Article 200(4) of the Constitution of Pakistan: "A Judge of a High Court who does not accept a transfer under this Article shall be proceeded against under Article 209 within a period of thirty days. Such Judge shall not perform his functions till such time the Council under Article 209 renders its decision."
[108] UN Basic Principles, *supra* fn 20, Principle 11.
[109] Judicial Integrity Group, Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct (The Implementation Measures), (2010), Para 13.5
[110] Beijing Statement, *supra* fn 43, Para 30.
[111] Diego García-Sayán, Report of the Special Rapporteur on the independence of judges and lawyers. UN Doc. A/75/172,17 July 2020, para. 6.
[112] "Aaj Shahzeb Khanzada Ke Saath", *Geo News,* 11 November 2025.

Transfers in practice

On 28 April 2026, the JCP approved the transfer of three judges of the Islamabad High Court – Justice Mohsin Akhtar Kayani to the Lahore High Court, Justice Babar Sattar to the Peshawar High Court, and Justice Saman Rafat Imtiaz to the Sindh High Court – without their consent, on a proposal initiated by the Chief Justice of the Islamabad High Court.[113] The transfers were notified the following day.[114] All three judges were among the judges of the Islamabad High Court who, in 2024, had written to the SJC complaining of interference by intelligence agencies in judicial affairs, and who had challenged earlier transfers of judges into their court. Their removal from that court therefore gives rise, at the very least, to a reasonable apprehension that the transfers were retaliatory.

Justice Sattar requested a personal hearing before any decision on his transfer was taken but no hearing was allowed.[115] Each of the transferred judges lost seniority, with Justice Kayani falling from senior-most judge of the Islamabad High Court after the CJ of the IHC to twelfth in the Lahore High Court list. The JCP also decided that the resulting vacancies would be filled only by transfer.[116] Loss of seniority affects a judge's prospects of elevation and administrative responsibility and, in this context, has the character of a sanction.

On 28 October 2026, Justice Kayani resigned from the Lahore High Court, more than five years before his scheduled retirement, citing what he described as the executive's growing control over the judiciary.[117]

Whatever the stated justification for the April 2026 transfers, the absence of criteria, reasons and a hearing makes it impossible to establish that they served a legitimate purpose rather than a punitive or other illegitimate objective.[118] The guarantees surrounding transfer exist so that judges and the public can be confident that judges will not be moved because of the content of their decisions. The chilling effect of such transfers extends well beyond the judges directly concerned.

[113]"Three IHC judges shunted out to other courts", *Dawn News*, 29 April 2026: https://www.dawn.com/news/1995905

[114]Press Information Department, Government of Pakistan, PR No. 302, 'Acting President approves transfer of Islamabad High Court judges on PM's advice', 29 April 2026, available at: https://pid.gov.pk/site/press_detail/32584

[115] https://www.dawn.com/news/1995905

[116]"Three IHC judges shunted out to other courts", *Dawn News*, 29 April 2026: https://www.dawn.com/news/1995905

[117]"'Conscience does not permit": LHC's Justice Kayani resigns, cites "executive's growing control"', 28 October 2026, https://www.dawn.com/news/2040428

[118]https://www.icj.org/pakistan-dismantling-justice-a-full-frontal-assault-on-the-rule-of-law/

VI. Conclusion and recommendations

The effect of the 26th and 27th amendments and the manner in which they have been implemented is that the higher judiciary of Pakistan no longer enjoys the institutional guarantees of independence required under international law and standards, including Article 14 of the ICCPR and the UN Basic Principles on the Independence of the Judiciary.

The 26th and 27th constitutional amendments were a decisive break from the model of judicial independence that Pakistan had built after the restoration of the judiciary in 2009. The erosion of judicial independence was not done through the overt removal of judges as was done during military rule, most recently by General Musharraf,[119] but through constitutional amendments adopted by Parliament.

The Government has argued the amendments were necessary to check judicial overreach, reduce the growing backlog of cases, end the perceived politicization of the SC's original jurisdiction, and give Parliament a role in judicial appointments comparable to that of legislatures in other democracies. None of these claims withstands scrutiny or justifies changing the judicial structure in a manner that is glaringly inconsistent with Pakistan's obligations under international law.

The ICJ has long advocated for reforms to make the judiciary in Pakistan more independent and accountable, including through an appointment process that is transparent and inclusive. The ICJ has also raised concerns about judicial overreach and the SC's extraordinary jurisdiction being used without clear rules in a manner that risked eroding the rule of law it was meant to protect. In some cases, the ICJ found the Court had encroached into the roles of Parliament and other institutions.[120]

However, Parliament failed to address these deficiencies through measures consistent with judicial independence. Instead, the 26th and 27th amendments have led to systemic judicial capture by other branches of the State and the dismantling of the rule of law in the country. The ruling coalition exploited the genuine grievances of the people with the functioning of the courts and calls for reform to make the judiciary more independent, impartial, and accountable in a self-serving manner with the objective to control the judiciary instead. As a result, even the highest courts of the land in Pakistan no longer serve as a check on the executive or the Parliament, and their function as avenues for redress of victims of human rights violations is seriously impaired.

Recommendations

The structural problems identified in this report require substantial constitutional and statutory amendments, including revision or repeal of provisions of the 26th and 27th amendments that are inconsistent with international law and standards on the independence of the judiciary. However, as short-term, temporary measures, until wider structural reform of the judiciary is accomplished, the ICJ recommends:

To the Government of Pakistan

Initiate a comprehensive review of the 26th and 27th constitutional amendments and their implementation in light of international law and standards, particularly Pakistan's international legal obligations under the ICCPR, including by holding transparent and broad public consultations. In so doing, the Government should engage international cooperation, for instance by seeking technical assistance of the UN Special Rapporteur on the independence of judges and lawyers.

Extend an invitation to the Special Rapporteur on the independence of judges and lawyers for a country visit.

To the Judicial Commission of Pakistan

Revise the criteria for judicial appointments in accordance with international law, standards, and best practices. Ensure the published criteria are the sole basis for nomination of Judges to the Federal Constitutional Court, the Supreme Court, the High Courts, and Constitutional Benches of the High Courts. Establish a transparent procedure for appointments and publish reasons for each appointment that demonstrate the published criteria are being implemented in practice.

Formulate and adopt clear criteria that meet international law and standards on the transfer of judges between High Courts. The judge being considered for transfer should be given an opportunity to be heard

[119] See, for example, ICJ concludes mission to assess developments related to reference against Chief Justice Chaudhry, 26 April 2007, https://www.icj.org/icj-concludes-mission-to-assess-developments-related-to-reference-against-chief-justice-chaudhry/

[120] https://www.icj.org/wp-content/uploads/2013/12/ICJ-EXEC-SUMMARY-PAKISTAN-FINAL.pdf

and the reasons for recommending transfer should be made public. Refrain from recommending any transfer of a High Court judge without the judge's consent.

To the Supreme Judicial Council

Define "inefficiency" in a manner that is consistent with international standards to only mean serious incompetence that renders judges unfit to discharge their duties.

To the Special Parliamentary Committee

Adopt clear and transparent criteria and procedures for appointments for the Chief Justice of the Supreme Court and the Chief Justice of the FCC. Publish reasons for each selection.

To the Federal Constitutional Court, the Supreme Court, and High Courts

Interpret and apply the provisions of the 26th and 27th amendments, to the greatest extent possible, in a manner consistent with the independence of the judiciary as guaranteed by Article 14 of the ICCPR.

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April 2026

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