

Pakistan's Constitutional Reform Package: Judicial Independence Under Threat?

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Summary

Over the past month, the current coalition government in Pakistan has been attempting to garner support for a constitutional amendment bill to reform the country's judiciary and court structure. The bill was finally passed on 21 October 2024. Yet, while the government argues these changes will alleviate case backlogs, critics warn they undermine judicial independence and the separation of powers.

The controversial [26th Constitution Amendment Bill](#), which primarily focuses on reforming Pakistan's judiciary, has divided opinions. The reforms emerged [after months of speculation](#) concerning their substance, with widespread rumours suggesting that the government intends to extend the tenure of the Chief Justice of Pakistan and increase the number of judges on the Supreme Court bench. After extensive negotiations with multiple stakeholders, the coalition government successfully presented the bill in both the Senate and National Assembly, securing the two-thirds majority needed in both houses. The bill [officially became law](#) on 21 October 2024, receiving [President Asif Ali Zardari's assent](#).

The reforms aim to expand the executive's influence over the judiciary, and it originally contained over 50 proposals, most centred on judicial reforms. Among the key changes, the coalition government had originally conceived the establishment of a [new Federal Constitutional Court](#) that would operate alongside the Supreme Court (SC), specifically tasked with handling petitions related to constitutional interpretation. The final draft, however, settled for constitutional benches instead of a separate court. The formation of these new constitutional benches was included in a [new Article 191A](#), where all matters that "involves the constitutionality of any law or a substantial question of law as to the interpretation of the Constitution" would be adjudicated.

A key amendment was made to Article 175A, which governs the selection process for judges to Pakistan's top courts, including the Chief Justice of Pakistan (CJP). Under the revised clause 3, the CJP will no longer be the most senior SC judge by default. Instead, a Special Parliamentary Committee, consisting of four senators and eight National Assembly members, will choose the CJP from the three most senior SC judges.

This change marks a major departure from the existing process, where the President appointed the highest-ranking SC judge as the CJP. The new law also requires the Justice Commission of Pakistan to submit its nominations for top court vacancies directly to the Prime Minister. Additionally, an amendment to Article 179 caps the CJP's tenure at a maximum of three years.

The government had originally attempted to present the bill in [early September 2024](#). However, it faced strong opposition and failed to reach consensus. The government argues the reforms are essential to [depoliticise the courts and address case backlogs](#). However, opponents have raised significant concerns. Pakistan Tehreek-i-Insaaf (PTI), the main opposition party, openly expressed its discontent with the proposed judicial restructuring. Asad Qaiser, a senior PTI member, [condemned the proposed reforms](#), declaring, “We will oppose this type of pressure and oppression in the parliament, in the courts, on the road, and everywhere.” The PTI argued that the bill targets Imran Khan, alleging the CJP’s tenure extension [aligns with the ruling coalition](#) to marginalise its party through the legal system.

Opposition also emerged from members of the judicial community, [who petitioned the SC](#) to prevent the government from tabling the bill. This petition was signed by several prominent lawyers and legal experts, including former president of the Supreme Court Bar Association Abid Zuberi, who expressed concerns about the [potential impact on judicial independence](#). He cautioned that “the government’s control over appointing the chief justice will fundamentally alter the judiciary’s autonomy.”

The government, however, had strong support from the Pakistan People’s Party (PPP). Bilawal Bhutto, chairman of the PPP, defended the [constitutional proposal](#), asserting that it aligns with the Charter of Democracy signed by the PPP in 2006. The party also found consensus with Maulana Fazlur Rehman, whose party’s (Jamiat Ulema-e-Islam) support was crucial in achieving a two-thirds majority in the National Assembly. Rehman played a key role in mediating between the [PTI and the coalition members](#) to renegotiate the bill.

The 26th Constitution Amendment Act raises serious concerns regarding its impact on judicial independence, the separation of powers and the rule of law. “These changes...”, [noted Santiago Canton](#), International Commission of Jurists’ Secretary General, “...bring an extraordinary level of political influence over the process of judicial appointments and the judiciary’s own administration.” He added, “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.”

Moreover, increasing the executive’s control over the superior courts undermines the [legitimacy of the political process](#) and the current government, which is already tainted by the disputed results of the February 2024 elections. Ultimately, these reforms threaten to further erode public trust in state institutions and the political system.

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