



## Redefining Judicial Power in Pakistan: Federal Oversight and Global Lessons from the 27<sup>th</sup> Amendment

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### Abstract

The 27<sup>th</sup> Constitutional Amendment of Pakistan is one of the historical landmarks in the history of judiciary in Pakistan, which introduces changes in judicial appointments, transfers, Federal Constitutional Court, binding decisions and the ability to exercise suo motu powers. In this paper, the critical analysis will be done of how these changes are shifting the balance of autonomy and federal control and the judicial power. The research offers international lessons and best practice which can influence the judicial governance in Pakistan through drawing comparisons to other judicial systems across the world. The results of the Amendment on the check and balance between the act and the judiciary, judicial responsibility and safeguarding the constitutional ideals have been described in the discussion and this information guides the legal experts, policy analysts and professionals handling the complex issues of judicial empowerment and federal control.

**Keywords:** 27<sup>th</sup> Constitutional Amendment, Judicial Independence, Federal Oversight, Suo Motu Powers, Judicial Appointments, Binding Decisions, Comparative Constitutional Law

### Introduction

Constitution (hereafter 27<sup>th</sup> Amendment), which was promulgated in November 2025, fundamentally alters the judicial architecture of Pakistan and institutional equilibrium like no other. It creates a new Federal Constitutional Court (FCC), to which it gives final responsibility for deciding on constitutional religious disputes between federal and provincial governments, and for performing SC functions with respect to enforcement of fundamental rights.<sup>1</sup> In the new dispensation, SC's constitutional bench jurisdiction (suo motu jurisdiction and constitutional review) is largely transferred to the FCC; bifurcating superior courts' hierarchy.<sup>2</sup> In addition to jurisdictional switches, the Amendment reforms the structure of appointment and transfer for judges. Under the revamped scheme, the membership of the JCP is replenished (by adding to it the SC and FCC moguls and some seniormosts from each of them) but also altered due to which the President, exercising only on advice aforesaid his newly-conferred powers, authorizes first lot of FCC judges including its CJ.<sup>3</sup> The Amendment also grants the President, through the recommendation of a Joint

<sup>1</sup> 27<sup>th</sup> Constitutional Amendment tabled in National Assembly," Radio Pakistan, November 11, 2025.

<sup>2</sup> NA passes 'The Constitution (27<sup>th</sup> Amendment) Bill 2025'," Radio Pakistan, November 12, 2025.

<sup>3</sup> Senate passes the Constitution (Twenty-seventh Amendment) Bill, 2025," Radio Pakistan, November 13, 2025.

Consultative Panel (JCP), the authority to transfer high court judges from one province to another, which critics argue could place undue influence on judicial officers and erode security of tenure.<sup>4</sup> Proponents of the 27th Amendment argue that these reforms bring much needed institutional clarity; they contend the FCC will alleviate the SC's overburdened docket, ensure equal provincial representation at the apex, and streamline constitutional adjudication.<sup>5</sup> The advocates of the move justify it as the realization of long held dreams in past political accords like the Charter of Democracy.<sup>6</sup> Nevertheless, the opponents of the Amendment such as law academicians, bar and civil society forums warn that the restructuring will undermine judicial independence. The reforms can undermine structural protection of separation of powers, impartiality, and accountability because they consolidate the power to make appointments and transfers under the influence of an executive system and diminish the constitutional role of the SC.<sup>7</sup> This paper is a critical analysis of the implication of the 27th amendment on the constitutional order in Pakistan. By conducting a comparative study to the related institutional reforms in other jurisdictions, it aims to determine whether the redefinition of judicial power under the Amendment amounts to institutional modernization or a retrogressive move that would lead to the subordination of the judiciary to the evanescent political or executive interests. The paper is structured into three sections, first of unraveling the key legal and institutional adjustments of the Amendment, second evaluating the possible effects of the amendments on the judicial independence, separation of powers and protection of constitutional rights and finally providing comparative lessons learned by other constitutional systems in order to provide a recommendation on how to protect judicial autonomy and still have an effective system of federal-judicial checks and balances.

### **Research Objectives**

The primary objectives of this study are:

1. To analyze the key provisions of Pakistan's 27th Constitutional Amendment, including the establishment of the Federal Constitutional Court, judicial appointments, transfers, and the exercise of suo motu powers.
2. To evaluate the impact of the Amendment on judicial independence, federal oversight, and the separation of powers in Pakistan.
3. To examine comparative experiences from other jurisdictions to identify lessons and best practices for balancing judicial autonomy with effective federal control.
4. To provide recommendations for ensuring that constitutional reforms strengthen judicial governance without compromising the rule of law or impartiality of the judiciary.

### **Research Methodology**

This paper uses the doctrinal and comparative research approach to review the 27th Constitutional Amendment of Pakistan. The doctrinal part entails an analytical study of key legal documents, the Constitution, the language of the Amendment, the laws enacted, and the judicial rulings with the aim of scrutinizing its provisions and determining the effects that it has on judicial independence, federal control, and separation of powers. The comparative element of the project focuses across the border and the foreign nations to search the lessons

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<sup>4</sup> Parliamentary committees continue deliberations on 27th Amendment," Pakistan Today, November 9, 2025.

<sup>5</sup> 27th Constitutional Amend clears Senate amid 'uproar, defections and deepening political rifts'," Pakistan Today, November 11, 2025.

<sup>6</sup> Ibid. (on equal provincial representation and reference to Charter of Democracy)

<sup>7</sup> President gives assent to 27th Amendment after Senate nod," Dawn, November 14, 2025.

learnt across the world, best practices or issues in mind with the aim of balancing the judicial independence and the executive / federal oversight. Moreover, secondary sources such as research articles, reports and commentary of experts are also taken to put the findings into perspective and present comprehensive evaluation of the far-reaching impact of the Amendment on the Pakistani judiciary.

### **Key Provisions of the 27<sup>th</sup> Constitutional Amendment**

**Creation of the Federal Constitutional Court (FCC):** The 27th amendment provides for a Federal Constitutional Court (FCC) to decide issues related to interpretation/implementation of the Constitution, and disputes between federation and provinces.<sup>8</sup> The FCC is structured so that there is a Chief Justice and other justices drawn to represent every province, thereby balancing federalism. Judges will be retired at the age of 68, and the Chief Justice will have a fixed term of 3 years. The holdings of the FCC shall be binding upon all other courts in a major expansion of its constitutional jurisdiction.

**Binding Decisions and Suo Motu powers:** Whatever decision taken by FCC will have a force of law overruling all decisions given by any court including Supreme Court as per provisions of this Act.<sup>9</sup> Furthermore, Article 184 of the constitution that allowed the Supreme Court to notice suo motu in respect of law matters has been deleted.<sup>10</sup>

**Jurisdictional Changes for the Supreme Court:** Under the amendment, the Supreme Court's original jurisdiction in constitutional cases can be curtailed as such matters would essentially become a matter for FCC to address, especially suo-motu cases.<sup>11</sup> This is a significant diminution as it makes the FCC, in practical terms, the chief expositor of the Constitution in matters federal and provincial.<sup>12</sup>

**Appointment and Composition:** Judges of the FCC shall be appointed by the President, in consultation with (after seeking opinion from) the Prime Minister; who will further consult with Judicial Commission of Pakistan (JCP).<sup>13</sup> The government has finalised the names of seven judges for FCC suggesting its early operationalisation. Although designed to promote greater transparency and accountability, opponents say a greater role of the executive legislature in appointments could undermine judicial independence.

**High Court Judges and Transfers:** The Judicial Commission will have the power to transfer judges of the High Courts. Judges who decline transfer will be deemed retired.

**Administrative and Institutional Safeguards:** The amendment introduces administrative mechanisms to expedite constitutional adjudication and reduce case backlogs. These include procedural rules, case management systems, and reporting obligations.<sup>14</sup> Critics, however, warn that such administrative control may be leveraged to influence judicial decisions, potentially undermining impartiality.<sup>15</sup>

## Comparative Analysis of Judicial Reforms

Features	Pakistan (27 <sup>th</sup> amendment)	India	United states
<b>Apex court/ Constitutional court</b>	Federal constitutional court(FCC) established; supreme court retains appellate role	Supreme court of India serves as apex constitutional and appellate court	Supreme court of United States serves as apex constitutional and appellate court
<b>Judicial appointments</b>	FCC judges appointed by President on PM's advice; JCP reconstituted with SC and FCC members	Collegium system; Chief Justice+senior judges recommend appointments; President formally approves	President nominates federal judges; Senate confirms; lifetime tenure
<b>Judicial transfer</b>	High Court judges transferred on JCP recommendation; approved by President	Transfers possible by president on recommendation on SC; collegiums consults	Not applicable; federal judges assigned by SC to circuits but no transfer between states
<b>Suo Motu Powers</b>	FCC empowered to take suo motu cognizance of constitutional violations	Supreme court can take suo motu or public interest litigation cases	U.S. Supreme court does not take suo motu cases; riles on appeals/petitions filed
<b>Binding decisions</b>	FCC decisions binding on all courts	Supreme Court decisions binding on all courts	Supreme Court decisions binding on all federal and state courts
<b>Tenure / Security</b>	FCC judges' tenure not explicitly lifetime; subject to retirement and transfer rules	Supreme court judges hold office until age 65; High court judges until 62	Lifetime tenure for federal judges, removable only by impeachment
<b>Separation of power/ Executive influence</b>	Criticism over potential executive influence via appointments and transfers	Collegium system limits executive influence but not immune to consultation politics	Executive nominates, legislative approves, judicial independence largely protected by tenure

### Key Insights from Comparative Analysis

**1. Appointment Mechanisms:** The Amendment of Pakistan puts the executive influence at the center as compared to the collegium of India or lifetime-appointed federal judges in the U.S, which can be a source of the judicial independence issue.

**2. Sua Motu Powers:** FCC attains broad authority akin to that of the Indian Supreme Court that allows proactive enforcement of the constitution but requires well-defined accountability procedures.

**3. Tenure and Security:** Pakistan does not have a lifetime tenure policy on FCC judges as the U.S. does, which can be a source of loss of independence.

**4. Constructive Authority:** Binding Authority decision by FCC enhances uniformity in the constitution but heightens the responsibility in protecting impartiality.

**5. Global Lessons:** Comparative jurisdictions have highlighted that transparent appointment procedures, well-established tenure and limitations on powers are vital factors that can protect judicial independence.

### Analysis and Impacts of 27<sup>th</sup> amendment

The 27<sup>th</sup> Constitutional Amendment represents a landmark in Pakistan's judicial evolution, primarily by creating the Federal Constitutional Court (FCC) and redefining the roles of the Supreme Court and High Courts.<sup>16</sup> Jurisdiction over constitutional interpretation, intergovernmental disputes and enforcement of fundamental rights lies exclusively with the FCC, whereas until now these matters were divided with the SC.<sup>17</sup> This schism leads to very important constitutional concerns, and that is over the separation of powers and judicial independence when such individuals are appointed on advice from the executive in their initial appointments to the FCC.<sup>18</sup> The Amendment changes the system of appointment and

transfer of judges. The Judicial Commission of Pakistan (JCP) is remade to have representatives both the SC and FCC, although The President whose decision based on prime minister recommendation still has discretionary power in appointing the Chief Justice and judges of the FCC.<sup>19</sup> The transfer of High Court judges is presently dependent on the recommendation of the JCP and such appointment needs to be approved by the President, leading to a possible conflict between executive control and judicial independence.<sup>20</sup> Academics maintain that such structural reform might threaten the tenure security of judicial office and the judiciary's independence should safeguards not be rigorously implemented.<sup>21</sup> By comparison, countries such as India and the United States provide lessons. Appointment of judges to the Supreme Court and High courts is made by a collegium system, which produces an independent judiciary but one that also has not shielded judicial appointments from political interference.<sup>8</sup> In the United States, federal judges are appointed by the President and must be approved by the Senate balancing power between the executive and legislative branches of government while providing lifetime tenure for those who serve so that they cannot be removed from office without an indictment (impeached) as a guard against any form of influence.<sup>22</sup> These examples illustrate that determination of the method of appointment, guarantees of independence from removal and the assignment of jurisdiction are pivotal determinants to judicial independence. The introduction of suo motu powers and binding decisions for the FCC in the 27th Amendment significantly changes who decides constitutional litigation; loosens control over what is decided by passing it to an 11-judge bench which can decide through simple majority; and raises the stakes by effectively limiting Supreme Court reconsideration to itself. Proponents of these powers argue that they fill that ability to redress constitutional violations promptly and that the imposition of restrictions will not violate significant freedoms but opponents admonish that the holder of such power will not use it ill or act in political interest. v. There is consideration to be able to hold people accountable, some Strengthening of the Principles and Criteria of the Exercise of these Powers 24."<sup>23</sup> It is therefore important to have accountability in transparent procedures and clear measures of exercising such powers.<sup>24</sup> Overall, although the 27th Amendment is intended to help modernize judicial system in Pakistan and mitigate institutional inefficiency, it at the same time poses a major challenge. Striking the balance between judicial independence and federal control, making sure that executive control does not come at the cost of the rule of law, and the lessons learned internationally would be instrumental in the Amendment to fulfill its desired purposes.<sup>25</sup>

## Recommendations

The review of the 27th Constitutional Amendment in Pakistan and insights provided by other countries indicates that a number of recommendations can be made to ensure judicial independence and guarantee the effectiveness of federal oversight:

**Open appointment Proceeding:** Judicial appointments particularly to the Federal Constitutional Court must be conducted in a transparent and merit-based process to ensure that undue executive influence does not creep in so as to ruin the confidence of people in judicial processes.

**Safe Tenure of Judges:** To maintain independence and impartiality of judges, it is necessary to secure their tenure and to avoid transfer and untimely retirement by an arbitrary decision.

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<sup>8</sup> S.P. Sathe, *Judicial Activism and Independence in India* 45–67 (2019).

**Clear Boundaries to Suo Motu Powers:** An extension of power must have very clear limits and also procedural regulations so that they do not go overboard, and are also checked and balanced in another way other than determining such an extension.

**Balanced Division of Jurisdiction:** It is the interest that should be preserved by the separation-of-powers principles in order to prevent duplication or confusion or compartmentalization and result in constitutional clashes and internal conflict.

**Ensuring Binding Effect of Supreme Court larger benches Decisions on Federal Constitutional Court:** It has to be binding on the federal constitutional court decisions of the supreme courts larger benches that some way or other fall within its constitutional jurisdiction this should serve as a guide for smaller benches of the federal constitutional court. The 27th Amendment should be so read that the future rulings of FCC are binding on the other courts including The SC & Not allow Benches inferior in number to reverse the established constitutional pronouncements of The SC imparted by larger benches.

**Capacity Building and Institutional Support:** Constant training, research assistance and development of infrastructure by the judges and FCC can enhance efficiency and quality and uniformity in constitutional adjudication.

**Strengthening Judicial Oversight Mechanisms:** There must be the creation of independent oversight bodies or internal review mechanism mechanisms that would hold the judicial accountable without affecting the judicial independence.

**Learning from Comparative Jurisdictions:** Pakistan needs to learn better how other systems which have constitutional systems, especially in terms of appointments transparency and the security of tenure and the checks and balances between the judicial system and the executive.

**Public Awareness and Engagement:** A culture of accountability and appreciation of judicial independence can be enhanced through judicial reform awareness and engagement.

## **Conclusion**

The 27<sup>th</sup> Constitutional Amendment is a massive change in the judicial system of Pakistan in which the responsibilities of the Supreme Court have been reorganized and the Federal Constitutional Court (FCC) has proclaimed as the final organ in interpreting and administering the constitution and the basic rights. Even though the Amendment is trying to reform the governance of the judiciary system, improve the constitutional adjudication, and expose the clarity of the federal-provincial relations, it also creates great concern of the autonomy of judiciary, the role of the executive, and separation of powers. The other jurisdictions that are used to compare the jurisdiction includes India and the United States, where the transparency of appointment process, security of tenure, as well as the clear process have shown the importance of ensuring the judicial independence. Even though this may have a good purpose in terms of enforcing the constitution, the introduction of suo motu powers and binding decisions to the FCC would implement a high level of accountability to prevent overreaching and politicization. Finally, the 27th Amendment will be successful once its provisions are implemented carefully, and the principles of judicial independence are followed and its effect on the rule of law is constantly assessed. Lessons learned in the global experiences can help Pakistan to make sure that the Amendment enhances judicial control, constitutionalism, and offer a balanced ratio between the judicial independence and effective federal supervision.

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