

THE 27TH CONSTITUTIONAL AMENDMENT AND FEDERATION OF PAKISTAN

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Abstract

The 27th constitutional amendment makes a landmark in the constitutional and political history of Pakistan. It has faced criticism from various circles of the society on account of the creation of the Federal Constitutional Courts, the transfer of judges, the office of the Chief of Defense Forces but a deep look in to it would provide the people with a sound judgment that nothing is wrong with the amendment. Research objective of the study is to analyze the 27th Constitutional Amendment with respect to the federation of Pakistan. In a federation like Pakistan, the passage of an amendment must require a 2/3rd majority, which it has observed. Main findings of the research testifies that the amendment would bear a deep imprint on the future politics of Pakistan as the main focus of the amendment is to adjudicate over constitutional issues pertaining to the federation and the provinces or amongst the provinces of the federation.

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Introduction

The 27th Constitutional Amendment to the Constitution of 1973, Islamic Republic of Pakistan makes a new landmark in the political and constitutional history of Pakistan. The bill was approved with 2/3rd majority, a pre-requisite for a constitutional amendment in a federation like Pakistan. Pakistani federation requires a 2/3rd majority for passing any constitutional amendment and this amendment has fulfilled this re-requisite. The bill was initiated in the Senate in Pakistan and was passed by a 2/3rd majority with 64 votes cast in its favor while no vote was cast in its opposition (Hussain A. , 2025). The bill received 231 votes in the National Assembly of Pakistan obtaining a 2/3rd majority (Pakistan, 2025). The bill received the assent of the President of Pakistan, Mr. Asif Ali Zardari, on 13th November, 2025 (Dawn, 2025) despite protests from the opposition party though the bill had received 2/3rd majority in both the Houses of the parliament.

The bill brought about some changes in the constitution of the country whereby some articles and clauses were amended. The National Assembly ratified the amendment on November 12, 2025 and was again presented to the Senate of Pakistan on 13 November 2025 with few changes and was passed by the senate. The bill related to 27 constitutional amendment has been signed by President of Pakistan on 13 November 2025. The amendment made certain changes in the constitution particularly with reference to the offices of the president and the defense officers granting them immunity for lifelong. The amendment has faced criticism from different quarters of the society particularly with reference to the creation of Federal Constitutional Courts, transfer of judges from one court to another court, granting of immunity to the President, the Chief of the Defense Forces and the granting official status of the of Field Marshal. Some changes have been made in articles of the Constitution of 1973, the Islamic Republic of Pakistan.

Article 199 & 200

- The President has the power to transfer High Court judges between provinces on the recommendations of Judicial Commission

Article 248 – Presidential Immunity

- A new clause grants the President Lifetime legal immunity.
- Phrase “Notwithstanding any judgment of any court” to be inserted before the word “President” in clause (1).

- Clause (2) revised: No criminal proceedings shall be initiated or continued against the President. Transfer of the judges from one High Court to another High Court or from one province to another province is another area of concern for the judges as refusal to comply with transfer orders would result in their retirement. Previously, there was no such provision for the transfer of judges from province to another province but the transfer can result in transparency of adjudication coupled with fairness and merit based decisions since this would discourage access of the judiciary. The new amendment provides for granting immunity to the President of the Republic for life long. Prior to this amendment, the President had the immunity only during the office of his presidency which enabled him to be immune from the civil and criminal proceedings as long as he was in power but the new amendment is a special prerogative to the office of the presidency granting him immunity from civil and criminal proceedings for lifetime thus making him to be above the rule of law. This privilege grants special immunity which in itself may be in contravention of the doctrine of the ‘rule of law’ which enshrines upon the equal treatment of all citizens on the basis of law. The rule of law makes no exception to any particular class of the people or any privileged class granting immunity whether during office or lifelong prerogative.

Article 243 – Defense structure & appointments

- Office of the Chairman Joint Chiefs of Staff Committee to be abolished from November 27, 2025.
- Strategic military authority to be concentrated under the Chief of the Defense Forces.

- Prime Minister, on the recommendation of the Chief of the Defense Forces, to appoint the Commander of the National Strategic Command.
- Officers granted constitutional protection; can only be removed through Article 47 procedure.
- Presidential immunity under Article 248 extended to these officers.
- Federal government is to define its responsibilities, while the President (on PM's advice) sets salaries and privileges.

The office of the Chief of Joint Staff Committee, a four –star general position is to be abolished on 27th November, 2025 with the retirement of Gen. Sahir Shamshad. A new post of Chief of Defense Forces, five-star general has been created where strategic military authority to be concentrated under the office of the Chief of Defense Forces. The Prime Minister of the Republic, on the recommendations of the Chief of Defense Forces will appoint the commander of the National Strategic Command. It is also important to mention that Chief of Defense Forces and other officers will be immune from the civil and criminal proceedings for lifelong on account of the offices which they hold or they have enjoyed during their services. The amendment will grant lifetime privileges to the top military officers, those promoted to the ranks of Field Marshal of the Air Force, or he Admiral of the Fleet (Tahir, 2025). The propped law also aims at centralizing command authority, remove certain military officers and define constitutional protections (Tahir, 2025). Moreover, the Field Marshal, Marshal of the Air Force, or Admiral of the Fleet will retain their rank, title and privileges for life. They will remain in uniform permanently even after completing their tenure of service.

Federal Constitutional Courts (New Chapter - Part VII)

- Federal Constitutional Courts to have original jurisdiction in Constitutional disputes between the government and fundamental rights enforcement cases
- Pending petitions or appeals in the Supreme Court or its constitutional benches under this jurisdiction are to be transferred to FCC.
- Abolishes *suo motu* powers of SC and deletes Articles 184, 186, and 191A.
- Justice Yahya Afridi will continue as the Chief Justice of Pakistan.
- "Pakistan" will be removed from the Supreme Court.

The establishment of Federal Constitutional Court will be a new court meant for the resolution of constitutional disputes between the fundamental rights enforcement cases. Thus the creation of a separate courts for the settlement of constitutional disputes on one hand has made it easy to have separate forum for constitutional matters but on the other hand may weaken the jurisdiction of the Supreme Court of Pakistan that has hitherto been the sole custodian of the interpretation of all constitutional and other matters in the federation of Pakistan. Another important point of this amendment is that all the pending petitions under this jurisdiction will be transferred to the federal constitutional courts, which is another blow to the powers of the apex court of the country. Not only this but also the *suo moto* powers of the Supreme Court will be done away granted to it under article 184, 186 and 191A of the constitution (Niazi, 2012) & (Hussain T. , 2024) . The Federal Constitutional Court (FCC) will consist of:

- Chief Justice and judges determined by Parliament (or temporarily by the President) with equal representation from each province
- FCC to have original jurisdiction in:

Constitutional disputes between governments

Fundamental rights enforcement cases

- Pending petitions or appeals in the Supreme Court or its constitutional benches under this jurisdiction to be transferred to FCC.
- Judges' tenure is until age 68
- Chief Justice: 3-year term, retires after completion regardless of age

The most fundamental change brought by the 27th amendment is the establishment of new Federal Constitutional Court (FCC) with sweeping powers to exercise many of the functions that were previously exercised by the Supreme Court of Pakistan. The Federal Constitutional Court will have the powers and functions previously exercised by the Supreme Court of Pakistan pertaining to resolution of disputes between the center and the provinces, between the provinces and the issues of fundamental rights. The FCC will further delimit the powers of the Supreme Court of Pakistan since some changes had already been brought in the structure of the judiciary by the 26th constitutional Amendment Bill. The Federal Constitutional Court will comprise a Chief Justice and judges having equal representation from each province. The court will have jurisdiction in the resolution of constitutional disputes between the federation and provinces and between provinces. In addition, the jurisdiction of the court extends to fundamental rights and enforcement cases, previously exercised by the Supreme Court of Pakistan under Article 199 of the Constitution.

The FCC will have the power to call for the record of any case involving a substantial question of law pertaining to the interpretation of the constitution of the country and will pass on orders there on. It will have the power to hear appeals and cases as provided by the 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 the country. Cases pending before any court in Pakistan and falling within the purview of this court shall stand transferred to the FCC. The judgment of this court, in case decided by it, will be binding upon all courts in Pakistan including the Supreme Court. This will make the FCC as supreme over the powers of the Supreme Court in dealing with the resolution of disputes between the federation and the provinces or cases amongst the provinces while the latter had to abide by the judgments and order passed by it. Prior to this amendment, the Supreme Court of Pakistan had the power to exercise jurisdiction over matters related to the constitution and the federation.

The International Commission of Jurists has termed the 27th Constitutional Amendment as an attack on the independence of judiciary since it has delimited the powers of judiciary (ICJ, Pakistan – Dismantling Justice: A Full-Frontal Assault on the Rule of Law, 2025). Some judges of the Supreme Court of Pakistan have also resigned from the offices of judges as a protest saying that the amendment has weakened judiciary and is an attack on judiciary as the independence of judiciary has been put on stake. “The changes made to the judicial system in the 27th amendment are alarming,” said Santiago Canton, ICJ’s Secretary-General (ICJ, Pakistan – Dismantling Justice: A Full-Frontal Assault on the Rule of Law, 2025). “They will significantly impair judiciary’s ability to hold the executive accountable and protect the fundamental human rights of the people of Pakistan.” Earlier, the 26th Constitutional amendment bill, only a year ago, had brought about drastic changes in the structure of the judiciary and led to the undermining of the judicial system in various ways. The 27th Constitutional Amendment made further alterations in the procedure, practice and jurisdiction of Supreme Court.

Appointment of the Chief Justice of the FCC

The 27th amendment provides that the President on the advice of the Prime Minister shall appoint the Chief Justice of the FCC from the serving Supreme Court judges. The first Chief Justice of the FCC, Justice Aminuddin took over the charge of his office on 14th November 2025 upon recommendation by the President of the state. Duration of the office of the Chief Justice of the FCC shall be three years from the date of his appointment. The number first batch judges have to be determined by the parliament and to be appointed by the President on the advice of the Prime Minister and in consultation with the Chief Justice of the FCC (Tarar, 2025). After the first chief justice of the federal constitutional court, and the first batch of judges are appointed, the appointment of the judges of the FCC are to be made on the recommendation of the judicial commission of Pakistan while the appointment of the Chief Justice of the FCC to be made by a special Parliamentary Committee The

amendment says nothing about the criteria for the appointment of the Chief Justice and other judges of the FCC. The criteria for the appointment of the judges must be objective so as to cater for transparency and objectivity in the appointment and overall process of the judicial system.

Appointment of the Chief Justice of the Supreme Court and the Federal Constitutional Court

Prior to the 26th amendment, the most senior judge of the Supreme Court was to be appointed as the Chief Justice of Pakistan. The 26th Amendment vested this power to a political body called the ‘Special Parliamentary Committee’ (SPC) consisting of eight members of the National Assembly and four members of the Senate. The function of the SPC is to nominate the Chief Justice of Pakistan from amongst the three senior most judges of the Supreme Court. Thus, the office of the Chief Justice of the Supreme Court of Pakistan is to be offered not to the senior most judge of the Supreme Court but from a panel of three senior most judges of the Supreme Court judges to be appointed by the SPC. The 27th Constitutional Amendment provides the same method and procedure for the appointment of the Chief Justice of the Federal Constitutional Court after the expiry of the duration of the first Chief Justice of the FCC. The provision gives no specific criteria for the appointment of the Chief Justice of the Federal Constitutional Court and the procedure through which the Special Parliamentary Committee shall make the appointment but it does make provision for its meetings to be held ‘in camera’.

The Composition of the Judicial Commission of Pakistan

The Judicial Commission of Pakistan (JCP) nominates judges for the Supreme Court, High Courts, and now judges of the FCC for appointment. Prior to the passage of the 26th Constitutional Amendment, the Judicial Commission of Pakistan comprised the judges while the amendment changed the composition criteria of the Judicial Commission of Pakistan to include two members from the National Assembly, two from the Senate and one woman or non-Muslim member to be nominated by the speaker of the National Assembly (ICJ, 2024). It is pertinent to mention that the Judicial Commission of Pakistan had already the Law Minister, the Attorney General and a representative of the Bar as members. The 27th Amendment Bill has changed the judicial members of the Judicial Commission of Pakistan by including the Chief Justice of the FCC, Chief Justice of the Supreme Court, the next senior most judges of the FCC and Supreme Court each, and a judge of the Supreme Court or Federal Constitutional Court jointly nominated by the Chief Justice and the Federal Constitutional Court and Chief Justice of the Supreme Court while the other members remain the same.

Article 200 – Transfer of High Court Judges

- President empowered to transfer High Court judges between provinces on Judicial Commission’s recommendation. Commission to include the Chief Justices of both relevant High Courts.
- Transferred judge’s seniority counts from initial appointment date.
- No transfer may make a judge senior to the Chief Justice of the transferee High Court.
- A judge refusing transfer shall be deemed retired.

The 27th Amendment makes amendment in Article 200 of the Constitution of 1973 of the Islamic Republic of Pakistan relating to the transfer of the judges of the High Courts. Now, this power has been vested in the Judicial Commission of Pakistan to recommend to the President the transfer of a judge from one High Court to another High Court by determining the terms and conditions of for such transfers. If the judges do not accept the offer within 30 days, they shall be subjected to disciplinary proceedings under Article 209 of the Supreme Judicial Council, a judicial body responsible for inquiring into such cases. Prior to the 27th Amendment, the president had the power to transfer judges from one High Court to another High Court in consultation with the Chief Justice of the Supreme Court of Pakistan and the Chief Justices of the respective High Courts. The consent of the judge for transfer was necessary, which has now been removed.

Immunities

The 27th Amendment makes changes in Article 248 of the Constitution of Pakistan granting lifetime immunity to the President of the Republic from criminal proceedings and arrest as well as protection

against civil proceedings. Earlier, this prerogative was applicable to the president only during holding the office of presidency but now this has been extended to a lifelong. In addition to the grant of this prerogative to President, Article 243 of the Constitution of 1973 has been amended to the extent of granting lifelong immunity from criminal proceedings and arrest as well as protections against civil proceedings to the ‘honorary’ ranks of Field Marshal, Admiral of the Fleet, and Marshal of the Air Force.

Such immunities for life-long may impair transparency, accountability, access to justice, and equity before law. This may clash with the spirit of the rule of law’’ where everybody is equal before law and has to be treated by the same law and courts in a country. This may allow for acts which may be unlawful or not permitted by the law. Such prerogative may make the position of the President, Field Marshal and other incumbents very strong, that may be contrary to the norms of social justice and democratic values since they may have no fear of being tried before any court of law nor be given any punishment for violating any clause or section of law.

Article 175A – Judicial Commission & Supreme Court Changes

- Expands Judicial Commission of Pakistan’s (JCP) composition to include:

Chief Justice of the FCC

Chief Justice of the Supreme Court

Senior judges of both courts

one additional judge jointly nominated by both chief justices

- Senior of the two chief justices to chair the Commission.
- Abolishes *suo motu* powers and deletes Articles 184, 186, and 191A.
- Removes the President’s authority to refer legal questions to the Supreme Court for advisory opinions.

The amendment provides for the changes in Article 243 by creating a new post of Chief of Defense Forces to be headed by the chief of the army staff (Hussain A. , 2025). This gives authority to the chief of the army staff over the Air Force and Navy. Article 248 of the Constitution of 1973, the Islamic Republic of Pakistan enshrines that no criminal proceedings whatsoever shall be instituted against President or Governor in any court of law during their term of office but that has now been extended for lifelong under the 27th Amendment (Hussain A. , 2025). Judges of High Court can be transferred from one province to another province on the proposal of the Judicial Commission of Pakistan while refusal to comply with such orders may result in retirement of the judge. The current Joint Chief of Staff Committee is four-star General Sahir Shamshad who is going to retire on November 27, 2025 and from that date the office of the Joint Chiefs of Staff Committee would be abolished.

Gen Asim Munir is the second Field Marshal after Gen Ayub Khan who has been promoted to the rank of a five-star General. None of the other military branches such as the Air Force or Navy has had a five-star General. This amendment also gives official status to the position of Field Marsahl by granting immunity and lifelong privileges. The post of Commander of National Strategic Command has been created for safeguarding the country’s nuclear command. It is important to note that the 26th Constitutional Amendment had shaken the foundation of the tri-chotomy of power; the 27th Amendment has murdered the constitution (Hussain Z. , 2025) . The amendment negates the charter of democracy in the country and would lead to authoritarianism in the country whereby some powers to be enjoyed by a few people for lifelong thus making them above law (Hussain Z. , 2025). Both the amendments have weakened judiciary and has resultantly weakened the federation (Hussain Z. , 2025).

The creation of federal constitutional courts and settlement of disputes relating to the federation and the provinces or amongst the provinces or issues of fundamental rights’ enforcement and transfer of judges from one province to another one would cause problems for the federation

(Diplomat, 2025). Empowering the lower courts to handle petty crimes and maintain public order to reduce burden on the courts, would be another infringement of powers of judiciary. The 27th Constitutional Amendment has also faced opposition and criticism from different circles and quarters. Pakistan Awami Tehreek, a political party and its women wing Sindhiyani Tehreek continue to make protest against the Amendment (Express, 2025). Vasand Thari, President of the party called the 27th Amendment “worse than the post-hybrid system and an attack on democracy.” Criticizing the ruling class, the amendment has distorted the constitution, suspending fundamental rights, and subjugating judiciary through the amendment, would lead to the plundering of Sindh’s mineral and other resources. The President and Field Marshal have been given lifetime immunity placing them above the state, Islamic Law and 250 million citizens (Express, 2025).

Discussion and Conclusion

The 27th Constitutional Amendment has been viewed as one of the most controversial documents by the most of the circles of the society. It has affected the role of judiciary by the creation of Federal Constitutional Courts for the adjudication of constitutional matters between the federation and the provinces or between the various provinces and the enforcement of fundamental rights. The court has both original as well appellate jurisdictions over constitutional matter while the already pending cases have to be transferred to the newly established federal constitutional courts. An important feature of the Federal Constitutional Court is that the retiring age of the Chief Justice has been increased to 68 whereas retiring age for Chief Justice of Supreme Court is 65 years.

Presidential immunity is another area of concern for judiciary since as per the spirit of the Constitution of 1973, the President has the immunity and no criminal proceedings can be initiated against him as long as he is in office but the amendment has provided lifelong immunity to the President, Field Marshal, Chief of Defense Forces, Chief of Admiral and Air Forces. Lifelong immunity to the President has been greatly criticized from various circles and sections of the society as this would make him above law, which in itself is against the spirit of the ‘rule of law’. Similarly, the transfer of Judges of High Court from one province to another province is another important future of this amendment as refusal by any judge to comply with transfer order would be considered as retirement for the judge.

The creation of Federal Constitutional Court is an important aspect of the 27th Constitutional Amendment which has been much criticized but a deep look into it would help describe the jurisdiction of this court. Only fundamental rights cases can be initiated over there in addition to the resolution of disputes over constitutional deadlocks between the Centre and the Province or amongst the provinces. This would lessen the burden on the Supreme Court where all civil, criminal and routine matters cases would be initiated and decided. All the pending cases of the nature of constitution would be transferred to the Federal Constitutional Courts whereby cases of such nature would be put to trial and High Courts and the Supreme Court would have enough time to try cases of civil and criminal nature. Moreover, it is significant to opine that in a federation like Pakistan, 2/3rd majority is a pre-requisite for any constitutional amendment which the 27th Amendment has fulfilled. Let us hope for the best the constitutional amendments are in the best interest of the country and public interest.

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