Impact of Recent Constitutional Amendments

Focusing on the 26th & 27th Amendments

26th Amendment

Primarily restructured selection and appointment of judges of High Court and Supreme Court

Key Pillars of the 26th Amendment

Appointment of Chief Justice

Chief Justice appointed by Special Parliamentary Committee from 3 most senior judges

Performance Review

Judicial Commission to review performance of judges

Term Limits

Fixed three-year term established for the Chief Justice of Pakistan (CJP)

Jurisdictional Limits

Removal of Suo Moto powers of Supreme Court

Constitutional Benches

Constitutional Benches created in HC and SCP

Empowering JCP

Appointment of judges and tenure in Constitutional Benches decided by JCP

JCP Composition Comparison

Stakeholder	18th Amendment (7 Members)	26th Amendment (13 Members)
Judicial (Serving/Retired)	4 Members	5 Members
Executive / Government	2 Members	5 Members
Legislative (Opposition)	0 Members	2 Members
Professional (PBC)	1 Member	1 Member

Other important changes through 26th Amendment

Article 9A
Right to a clean and healthy environment made a fundamental right

Article 38
Elimination of Riba by 1 January 2028 as a principle of policy

Taxation Powers to Cantonment Boards
Boards allowed to impose and collect taxes in cantonment areas

27th Amendment

The Advent of the Federal Constitutional Court

Apex Constitutional Authority

68

FCC Retirement Age

Articles 175B to 175L

Establishing the **Federal Constitutional Court (FCC)**. Unlike the Supreme Court's 65-year limit, FCC judges serve until 68, enjoying full security of tenure and exclusive jurisdiction over constitutional issues.

FCC Precedence



Art 175E (3)

Power to make any order regarding public importance and fundamental right enforcement.



Art 175E (5)

Exclusive jurisdiction to transfer any case from any court in Pakistan to itself.



Article 189

FCC not bound by any judgments or precedents of the Supreme Court.

Consequential and notable changes

Composition of JCP

Modified to include Chief Justice of the FCC and judges of FCC

Supreme Judicial Council

Composition modified to include Chief Justice and judges of FCC

Requirement of Consent for Transfer

Consent of High Court judge is no longer required for transfer

Bifurcation of Tax Litigation

Type A: Routine Assessments

Factual disputes proceeding through departmental hierarchy (Show Cause, Order, Appeals). Ends in the **Supreme Court**.

Type B: Validity & Vires

Direct challenges to the constitutionality of levies (e.g., Super Tax, 7E, CVT). Ends in the **Federal Constitutional Court.**

Strategic Impact

Operational Realities for Taxpayers

A Civil Law Model?



Comparative Evolution

Pakistan has shifted towards a civil law model: a specialized court for fiscal/administrative matters (SCP) and a dedicated Federal Constitutional Court for "constitutional" questions and legal validity.

Key Takeaway: The FCC is "unshackled" from previous tax jurisprudence, allowing for a fresh review of fiscal laws.

Post-Amendment Litigation Trends

01	02	03	04
Tax Litigation Channeled All tax litigation on legal validity or constitutional grounds channeled to Constitutional Benches in Sindh	**No More Precedent** FCC is unshackled from previous precedent — a fresh start for constitutional jurisprudence	**Departmental Hierarchy** Jurisprudence discouraging taxpayers from directly approaching High Courts and bypassing departmental hierarchy	**Finance Act Amendments** Finance Acts 2024 & 2025: a) Alternate dispute resolution for SOEs b) 30% deposit of demand for interim relief from High Court

Post-Amendment Litigation Trends

The cumulative impact of these changes:

Fewer direct HC filings

Fewer cases being filed directly in High Courts as taxpayers are redirected through departmental hierarchy first

Less direct relief

Taxpayers receive less immediate relief from courts, with greater emphasis on exhausting statutory appeal channels

Strengthened hierarchy

Strong jurisprudential push to exhaust departmental remedies before approaching superior courts

Conclusion & Discussion



Summary of Impact

- Channeled litigation via CBs and FCC.
- Increased barriers for interim relief.
- FCC not bound by previous precedence