

# CHAPTER 1

## INTRODUCTION

A brief introduction to the constitutional history of Pakistan is predictable to appreciate the changes that have been made in the powers of the Presidents since independence. Basically constitution is supreme law that guides a state and its different organs how they should work. The 1935 Act of India filled in as the primary constituent report of Pakistan, subdividing Pakistan on national grounds accordingly making the separation points that have to somehow happen to date. The Constitutions of both 1956 and 1962 were disproved and abandoned. In October 1958, President Iskandar Mirza revoked the Constitution of 1956, but it was abrogated shortly by martial Law regime. The 1962 constitution had a short life and was withdrawn in 1969 while the powers were shifted on to General Yahya Khan. Yahya put an end to the one-unit framework settling on holding general races on a limited one-vote basis. 1973 constitution it was amended 216 times in the history.

According to 238 article constitution can be amended and 239 article is about the process of amendment. It was under General Zia-ul-Haq that the honor of the President to break down the Parliament was included in the Presidential power. By allowing that, the eighth Amendment was set in the Constitution. Detached by Nawaz Sharif amid his second period as the Prime Minister, the correct discovered its way back by introducing 13<sup>th</sup> amendment in the constitution however the military dictator General Pervaiz Musharraf enjoyed absolute powers in conflict the 13<sup>th</sup> amendment. It was the regime of PPP that passed the 18<sup>th</sup> Amendment realized significant changes in the Constitution of Pakistan 1973; including removing the powers of President abrogates the Parliament.

The constitution of Pakistan was enforced on the 14<sup>th</sup> of August 1973. It consisted of 280 articles and 7 schedules and 26 amendments. With the passage of time, many amendments were added in this constitution. However, the eighteenth amendment was considerably wider in nature, changing the very substance of the administrative structures. It rested emphasis on being a Federal Parliamentary system. It laid emphasis on common self-rule in provinces. It additionally laid attention on Fundamental Rights. It also affected on the presidential power. The Constitution of

1973 has Twenty Six amendments so far. Among Eight (8<sup>th</sup>), Thirteen (13<sup>th</sup>) and Seventeenth (17<sup>th</sup>) amendments are quite at length as well as radical. Eight Amendments brought the office of the president of Pakistan almost at power.

The Eight Constitutional Amendment, however, altered the form of the Constitution drastically. Passed by the Senate on November 14, 1985, the Eight Amendment affected almost 19 clauses of the Constitution. The President was given the right to nominate the Prime Minister, Governors of the provinces, and Judges of the High Court and Supreme Court, including the Chief Justice. Democratically elected Prime Minister thus became subservient to the President.

The Thirteenth Amendment to the Constitution of Pakistan was a short-time amendment to the Constitution of Pakistan, adopted by the elected Parliament of Pakistan in 1997 by the government of people elected Prime Minister Nawaz Sharif. It stripped the President of Pakistan of his reserve power to dissolve the National Assembly, and thereby triggering new elections and dismissing the Prime Minister.

The President Asif Ali Zardari established a Special Committee of Parliament. This proposed Constitutional corrections exclusively to stop the repeal of the Constitution. Additionally to make laws so extraordinary provinces allowed dealing with the issues and needing one of a kind to their region with more prominent opportunity to embrace decisions. The amendment bill was passed by the Senate of Pakistan on April 15, 2010 and became an act of parliament when a smiling President Asif Ali Zardari put his signature on the bill on April 19, 2010. It was the first time in the history of Pakistan that a president relinquished a significant part of his powers willingly and transferred them to parliament and the office of the prime minister. In the ancient eras of the bygone past, after three successful military revolutions in the South Asian country, Pakistan has practiced a kind of political conflict between its President and Prime Minister. However, some of the recent constitutional amendments have made Prime Minister more powerful than President.

Regarding military appointment and war and peace settlement are the Presidential powers. After 18<sup>th</sup> amendment president possesses legislative powers. The 18th amendment comprises articles related to the presidential powers are 46, 48 (5a, b) (6), 58(2), 59, 75 (2) (3), 91 (1) (5) (7) (8) removing the power of the president of Pakistan.

## **1.1 Statement of the Problem**

The introduction of 18th amendment in 1973 constitution of Pakistan altered the powers of president, and shifted from presidential to parliamentary form of government. The eighth amendment altered Pakistan's structure of government from a parliamentary democracy to a semi presidential system. The eighth amendment strengthened the authority of the President and also granted additional powers to dismiss the elected Prime Minister's government. After 8<sup>th</sup> amendment, 13<sup>th</sup> amendment introduced President of Pakistan of his reserve power to dissolve the National Assembly, and thereby triggering new elections and dismissing the Prime Minister. The Constitutional Amendment was supported by both the government and the opposition, and was thus passed unanimously. With the enforcing of this amendment, Pakistan's system of government was shifted from Semi-presidential system to Parliamentary democratic republic system. Pervaiz Musharraf introduced 17<sup>th</sup> amendment in which Electoral College, which consisted of both houses of Parliament and all Provincial Assemblies, was created and then nonelected President was to win vote of confidence of such Electoral College to become elected

President of Pakistan. In this way, this amendment had affected parliamentary democracy. On 8<sup>th</sup> April 2010, 18<sup>th</sup> amendment passed which removed the powers of president; it was that time Pakistan turned from semi presidential to a parliamentary republic.

## **1.2 Aims/Objectives of the Study**

The purpose of the study is to assess Review and analytical study on the constitutional powers and authorities of the president pre and post 18<sup>th</sup> amendment and how its effects on Pakistan government.

- To review and analysis the power of Presidential Powers before 18th amendment.
- To identify the powers of president reflected in the 18th amendment.
- To assess the effect of 18th constitutional amendment on the Presidential Powers and its impact on political stability.

### **1.3 Research Questions**

Following are some research questions of this study:

1. What were the presidential powers amendments in 1973 constitution till date?
2. How during various regimes the presidential powers more dealt through different amendments?
3. What changes brought in presidential powers in 18<sup>th</sup> amendment and what were the impact of these changes?

### **1.4. Significance of the Study**

The comparative study of presidential powers pre and post 18th amendment constitution of Pakistan it provides understanding of the dynamic changing of presidential powers through different amendments and their impacts on political instability. It also provides detail of the articles and clauses related to the president's office which were amended. It will be keen study for those researchers to conduct the further additional research related to the presidential power in future.

### **1.5 Research Methodology**

The basic research has adopted the methodology for this study is qualitative, descriptive, comparative and historic. The descriptive method has been used to analyze the pertinent literature whereas qualitative method have been employed to cross check the data validity and for deriving conclusion. Literature review and data have been extracted from primary and secondary resources. Secondary sources such as books, magazines, newspapers and journals etc have been used. The primary sources include 1973 constitution, 8th, 13th, 17th, and 18th amendment. Debates in national assembly have also been approached.

## 1.7 Literature Review

A good and valid literature review lays down a foundation for any credible research. For this purpose, the researcher went through research articles and books to develop better understanding of the subject.

### 1.7.1 Books related to Constitutional Development

A number of sources were helpful in understanding the dynamics related to the 18th amendment. During literature review one issue became apparent that there was a lack of literature that directly targeted it in a focused context. But still, many studies and books were helpful in getting a specified idea on the subject at hand.

George W. Keeton's book *The British Commonwealth: The Development of Laws and Constitution*, deals with constitutional developments in Pakistan from the viewpoint of British Commonwealth. It is a series of volumes. But for the purpose of this study only vol.8, which relates with Pakistan has been used in this thesis. This is also very important source, which has been dealt with from the British viewpoint<sup>1</sup>.

In this accord, the most beneficial documents were pertained through a book titled 'constitutional documents'. It is the publication of the ministry of law and parliamentary affairs (law division) in the government of Pakistan. The volume III of said edition entailed all of the major information related to the Indian independence act 1947 and the constitution of Pakistan 1956<sup>2</sup>.

A book by the name *The Formative Phase of Pakistan 1857-1958* written by Khalid Bin Saeed was also helpful in this regard as it provided an accurate account of the events the lead to the establishment of Pakistan. It gave context to the role of political elite of that particular era.

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<sup>1</sup> George W Keeton, *The British Commonwealth: The Development of Laws and Constitution*, Vol. 8 (London: Steins and Sons, 1967).

<sup>2</sup> Govt. of Pakistan, *Constitutional Documents Pakistan Vol. III* (Karachi: Ministry of law and parliamentary affairs, Law Division, 1964).

Without an authentic historical context it is impossible to understand the political landscape of Pakistan.

Lawrence Zing has also tried to present his understanding about the happenings within the political landscape of Pakistan in his famous book titled '*Pakistan in the 20<sup>th</sup> century*'. This book covers the all of the major topics related to the political history of Pakistan. America has played a major role to shape the power structure with Pakistan. Thus a narrative from an American author was in order for building a strong foundation about external dynamics that effected Pakistan<sup>3</sup>.

The initial years of Pakistan were critical towards determining the future of the country. The book by the name of '*Constitutional and Political Developments in Pakistan 1951-1954*' presents the scenarios of that particular period. Riaz Ahmad presented an academics point of view about the early developments in the constitutional history of Pakistan. Such developments included the objective resolution, the BPC report of 1950-54 and the draft constitution of 1954. Thus, it was helpful in providing a background for this research<sup>4</sup>.

Lawrence Ziring's '*The Ayub Khan Era: Politics in Pakistan 1958-69*' is an authentic source for Ayub Khan Period. It covers the span between 1958 and 1969. Similarly, the book titled '*Ayub Bhutto and Zia*' by Syed Shabbir Hussain also provides comparative analysis of the three aforementioned rulers. It concludes that all of three rulers feel victim to their own aspirations and egos<sup>5</sup>.

Almost all of the academics agree that the abrupt departure of Jinnah after the advent of Pakistan created a crisis of leadership for Pakistan. This gap was never filled by any other leader as none matched the charisma and vision of the Quaid. This phenomenon is tackled in book titled '*Pakistan' Crisis in Leadership*' by Fazal Mugeem Khan. He argues that the crisis of firm leadership was the main variable that leads to the constitutional crisis. According to him, this variable was the

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<sup>3</sup> Lawrence Ziring, *The Ayub Khan Era: Politics of Pakistan 1958-1969* (Karachi: Paramount Publishing Enterprise 2009).

<sup>4</sup> Riaz Ahmad, *Constitutional and Political Development in Pakistan 1951-1954* (Rawalpindi: Pak American Book 1988).

<sup>5</sup> Lawrence Ziring, *Pakistan in the 20<sup>th</sup> Century: A Political History* (Karachi: Oxford University Press, 2010).

main factor that leads to the failure of 1956 and 1962 constitution. Eventually, it reared its ugly head once more when it leads to the separation of East Pakistan<sup>6</sup>.

As mentioned above that leadership crisis was the main cause for the separation of East Pakistan, yet there were other dynamics at play as well. For the further understanding of such dynamics, the book by the name of '*Pakistan under challenge*' by L F Rushbrook can be considered as a masterpiece. It entails all of the major political, regional and constitutional issues which lead to that particular tragedy. He labels constitutional failure as the main culprit for agitation in East Pakistan. He is a British academic that has worked extensively on the political history of both India and Pakistan. Thus his argument cannot be swept under the rug that easily<sup>7</sup>.

Bhutto era is synonymous with constitutional developments. This particular regime is responsible for the formulation of the 1973 constitution of Pakistan. In this regard, the best academic work can be attributed to Philip E Jones for his book titled '*The Pakistan People Party: The rise to power*'. It presents a comprehensive account of the efforts made by Bhutto in his quest for a constitution. Jones painted the picture of difficult endeavor by Bhutto to generate consensus among the political parties and their respective leaderships. It also showcase the ordeal Bhutto went through to converge the political elites under one platform. It also gives full description of the articles present within the constitution and their relevance<sup>8</sup>.

Syed Mujawar Hussain Shah's '*Religion and Politics in Pakistan 1972-88*', is another source as it discussed various Amendments brought out during the period of Zia ul Haq and prime minister Junejo. In this era we came to know as how president Zia issued. – amended the constitution and greatly expanded his power.

As for the regime of Zia ul Haq, the book titled '*Religion and Politics in Pakistan 1972-1988*' by Mujawar Hussain Shah also carries importance. It provides ample knowledge about background of that era. The main focus of that book pertains to the study of amendments made during Zia era especially when Junejo was prime minister. This time period is well known for the 8<sup>th</sup> amendment

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<sup>6</sup> Fazal Muqem Khan, *Pakistan Crisis in Leadership* (Islamabad: National Book Foundation, 1973).

<sup>7</sup> L. F. Rushbrook William, *Pakistan under Challenge* (London: Stacy International, 1975).

<sup>8</sup> Philip E. Jones, *The Pakistan People's Party; Rise to Power* (Karachi: Oxford University Press, 2003). <sup>9</sup> Syed Mujawar Hussain Shah, *Religion and Politics in Pakistan 1972-1988* (Islamabad: Quaid I Azam University, 1996).

that rolled back the martial law on the 30<sup>th</sup> of December of 1985. It also describes the religious factors that lead to many Islamic provisions in the constitution<sup>9</sup>.

Anthony Hyman's; Muhammad Ghayur's; Naresh Kaushik's '*Pakistan Zia and after*' is knowledge about Zia rule which were based on dictatorship for Elven Years. According to that account, it was indeed a harsh martial Law at that time. Zia as a president had used many powers and made many enemies within Pakistan opposition parties.

Wolfgang Peter Zingel, *Pakistan in the 80s* deals with the constitutional and political developments during the 1980s along with the background events from the times of Bhutto. This is source in which political and constitutional developments have been dealt with from different angles that not accommodated by most of the other writers<sup>9</sup>.

According to C. G. P. Rakisits, Clearly President Zia's view is the main reason Pakistan had yet to be fully integrated. This article was helpful for knowing the power of president ZiaulHaq and how he wanted to promote Islamization in the nation.

When it comes to the constitution itself, the book by the name of '*Annotated constitution of 1973*' by G.W. Chaudhary provides data related to original draft along with the major constitutions. This book is a great read if one wishes to learn about the constitutional position in the era of Nawaz Sharif and Benazir Bhutto. It also provides a simple narrative about the 18<sup>th</sup> amendment through proper citations. Other than that, the report of parliamentary committee presented to senate and national assembly on the 2<sup>nd</sup> of April 2010 also turned out to be useful document for building further understanding about the subject at hand<sup>10</sup>.

As for the return of the prodigal daughter of the east after a forced hiatus, '*Benazir's Pakistan*' by M.D. Dharamdasani describes the return of Benazir Bhutto to Pakistan. This study provided a different perspective that catered to both internal and international dynamics.

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<sup>9</sup> Wolfgang Peter Zingel, *Pakistan in the 80s* (Lahore: Vanguard Books Ltd, 1985).

<sup>10</sup> G.M.Chaudhry, *Annotated Constitution of Pakistan 1973* (Rawalpindi: Federal Law House, 2012).



Hamid Yousef's *'Pakistan: A Study of Political Development 1947-97'* is an objective record of the political history of Pakistan from 1947 to 1997. Yusuf has written each period political history with objectivity, though it is void of observation on the constitutional development. It is a valuable work for the understanding of the political development which provides background<sup>11</sup>.

Sartaj Aziz's *"Between Dreams and Realities: The Political History of Pakistan"* is a helpful record of the milestones and turning points that this nation has faced since its initiation. In this comprehensive book, Sartaj Aziz explores the basic causes of the failure of democracy in Pakistan and proposes that only a genuine democratic dispensation -- not military rule with a civilian facade -- can ensure the country's survival as a viable federation. This source is mostly about Zia and Musharraf rule.

Sadia Aziz's *'The Constitution of Pakistan'* is a book about constitutional Law and history and discusses the distribution of powers between the major branches of the government. Author explained the Pakistan solely understood by references to a cycle of oscillation between military and civilian rule. According to Sally Morgan, in 2002, Musharraf changed the constitution to strengthen his presidential powers. This source turned out to be helpful for comprehending the president's power in Musharraf era.

Catherine Yang's 'End of Dictatorship: Presidential power' has long been a particularly controversial question in Pakistan. This article helps us to know the president Musharraf power and how Zardari brought 18th amendment in constitution after coming in power. This 18th amendment made various remarkable changes in president's power.

For the purpose of getting a better understanding about the constitutional development, Hamid Khan's *'Political and constitutional history of Pakistan'* is imperative. The latest volume of this particular book has covered the entire history of constitutional and political history of Pakistan. Plus, perspective of a practicing lawyer is necessary for the understanding of the internal intricacies within the political system.

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<sup>11</sup> Hamid Yusuf, *Pakistan: A Study of Political Development 1947-97* (Lahore: Sang-E-Meel Publications, 1997).

Report of the parliamentary Committee Presented to Senate and National Assembly of Pakistan on 2<sup>nd</sup> of April 2010 had also been consulted from the library of the National Assembly of Pakistan. This was a very useful document which was the very basis for writing of the 18<sup>th</sup> constitution Amendment especially in regards to presidential powers and authority.

In order to get a fair and valid critical analysis about the 18<sup>th</sup> amendment of Pakistan, any researcher must go through the research conducted by Mehboob Hossain and Rizwan Kokab that is by the name of '*Eighteenth Amendment in the Constitution of Pakistan: Success and Controversies*'. According to him, this amendment represented all of the deliberations and consensus of political parties found within the political landscape of Pakistan. To simply put, their aspirations and yearnings were answered in an ample manor through this amendment as it purged the constitution of all of the major impurities in the form of undemocratic articles and clauses.

The merits of democracy were amply explored in that paper whereas it also emphasized the need for a stronger democratic system that caters to every section of society. The need for political autonomy was deemed as imperative for strong state institutions and federation. This study also delved into the concerns, purposes and impacts of all kind of tweaks that were carried out to either manipulate or distort the constitution. Similarly, it also gave account of those changes that were done in the domain of democracy in order to further democratic practices in Pakistani politics. The core areas that fall into such domain are civil rights, strength of parliament, provincial autonomy, decrease in the powers of President, political parties, and appointment of election commission and judiciary. However, on the opposite end of the spectrum, this study also explored the controversies with respect to prior changes made in the constitution; in order to further the agendas of military dictators. Such changes polluted the constitution and tried to diminish the spirit of the original constitution draft<sup>12</sup>.

Another research in this regard was a combine effort by Farzana Arshad, Muhammad Iqbal and Chawla Anjum Zia which was titled as '*Re-contextualizing the 18th Amendment: Working of Federalism in Pakistan*'. This research aimed to create an understanding about the inner workings of federalism during the democratic eras in the political history of Pakistan. According to the

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<sup>12</sup> Mahboob. Hussain and Rizwan Kokab, "Eighteenth Amendment in the Constitution of Pakistan: Success and Controversies", *Asian Social Science* Vol. 8, No. 1 (January 2012): 81-88.

authors, this region has been constantly ignored by the historical academia. Thus it aimed to bridge the gap of that entailed a complete overlooking of the relevant literature related to that particular area. There is no doubt that the 18<sup>th</sup> amendment was a pivotal milestone that ushered in a new era of provincial autonomy. This autonomy came with unprecedented legislative and financial power that was absent in the prior history of Pakistan. It also argued that this autonomy strengthened the federation by creating symbiotic relation between the center and the provinces.

This in return led to strengthening of trust between the two aforementioned entities. Even though there was mistrust between the federal government of PPP and the PMLN government of Punjab, yet both parties displayed reasonable attitude toward each other and functioned in a reasonable manor. The whole process lead to the eventual stability of the federal structure while creating a good example for the future governments. Even though this relationship between said parties was in no way can be referred to as an ideal relationship, yet it paved the way for democracy and democratic norms to flourish in the country. The prime example of this phenomenon is the 18<sup>th</sup> constitutional amendment as it rightfully transferred the concurrent list to provinces and restored the parliament democracy to the shape that was originally envisioned in the original draft of the 1973 constitution. Hence, this study justified the importance of understanding nature and the characteristic of the political landscape and historical intricacies of the central Punjab especially when looked through the context of the aforementioned amendment. This research concluded that indeed the 18<sup>th</sup> amendment was very relevant and useful for creating fruitful atmosphere that lead to a subsequent reasonable relationship between Punjab and the center<sup>13</sup>.

In order to understand the constitutional history of Pakistan, the research paper by the name of *'Revitalization of Parliamentary Democracy in Pakistan under 18<sup>th</sup> Amendment'* by Muhammad Rizwan, Muhammad Arshad and Muhammad Waqar proved to be very useful. Even though every aspiring military dictator was given a ceremonial role in the helm of affairs by the constitution, yet all of them became de facto rulers of the country through manipulation of the system. The same can be said about the civilian tyrants that did not give any consideration to the democratic norms and utilized the constitution to further their respective ambitions. This whole situation disturbed the organic evolutionary process of the democratization in Pakistan. As a result, healthy parliamentary culture was never given ample space to take roots on the political landscape.

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<sup>13</sup> Farzana Arshad, Muhammad Iqbal Chawla and Anjum Zia, "Re-contextualizing the 18th Amendment: Working of Federalism in Pakistan", *Journal of the Research Society of Pakistan*, vol. 55, no. 2 (Jul.-Dec. 2018): 25-35.

Therefore, democratic norms were thrown out of the window and parliamentary democracy was swept under the rug a whopping four time in the entire history of Pakistan. The main reason for this ordeal can be attributed to factors such as escalating political aspiration of military Generals, mismanagement and unstable institutional development. In order to curb the democratic process, many variables contributed to strengthen the grasp of said dictators. These tyrants utilized many means to push their agendas whether in the form of constitutional models or necessary amendments. In this regard, any political system would have been coveted if it served their aims and objectives. The ruling systems such as Parliamentary to Presidential and Quasi Presidential systems were tweaked to strengthen hold of such rulers.

Likewise, drafts such as 8<sup>th</sup> and 17<sup>th</sup> constitutional amendments were also utilized by likes of Zia and Musharraf in their quest for power. Hence it should not come as a surprise that these amendments distorted parliamentary democracy, diluted parliament's sovereignty and denied people's rights. In the aftermath of 2008 general elections, it was imperative of the democratic government to restore the constitution to its original spirit as intended by its creators. Before the elections, a formal charter of democracy was signed by the democratic forces in order to determine a democratic rout that the original constitutional draft envisioned. Thus it was now up to the democratic forces to do just that as they had the required authority fulfill their promise. Thus ample actions were required to reinforce parliamentary democracy, ensure provincial autonomy, independence of judiciary and Election Commission and to ensure a tangible socio-economic development of the state. This particular aspect was the main subject of this research paper as it's opted to understand the role of People Party in order to achieve the aforementioned objectives through the formulation of the milestone that was the 18<sup>th</sup> amendment<sup>14</sup>.

Before the advent of 18<sup>th</sup> amendment, the constitutional history of Pakistan can be somewhat considered as a checkered affair. Indeed this whole phenomenon encountered highs and lows while going through different regimes. The study titled '*The 18th Amendment in the 1973 Constitution*' by Fakhr-ul-Islam, went through all of such era in the constitutional development from its conception to the 18<sup>th</sup> amendment (1973- 2010). The final few years of the first decade of the twenty first century brought hope to democratic forces as the clouds of dictatorship had

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<sup>14</sup> Muhammad Rizwan, Muhammad Arshad and Muhammad Waqar "Revitalization of Parliamentary Democracy in Pakistan under 18<sup>th</sup> Amendment", *Journal of Humanities and Social Science*, vol. 19, no 2 (Feb. 2014): 149-156.

vanished and a newly elected democratic government had taken its rightful place in the parliament. Thus the cost was clear to amend the constitution in order to cleanse the impurities brought on by the 17<sup>th</sup> amendment of Musharraf era. This study aimed to discuss the salient features of the 18<sup>th</sup> constructional amendment. Thus it tried to compare the gist of said amendment with the original draft of the 1973 constitution. It also aimed to address the weak link in this amendment especially those factors that put the government on the collision course with the judiciary of that time. Such defects in the 18<sup>th</sup> amendment were somewhat dealt with in the 19<sup>th</sup> amendment but by then many events had taken place. Thus, this paper aimed to discuss the factors that could have been resolved if given ample consideration and time<sup>15</sup>.

There is no doubt that the 18<sup>th</sup> constitution was conceived in the era full of turmoil and agitation. Many factors such as terrorism, energy crisis, political instability and bad governance were plaguing Pakistan after the demise of Musharraf regime. A research paper by the name of

*The 18th Amendment: Pakistan's Constitution Redesigned'* written by Shahid Javed Burki highlighted the value of the 18<sup>th</sup> amendment in those troubled times. The war on terror had put Pakistan in economic and political jeopardy. Due to this situation, the Pakistani democratic forces from different regions and ideologies had to join heads in order to create as stable political order. For this purpose, the 1973 constitution was in need of a serious amendment. The nature of the constitutional framework had given the space and permission to amend it according the needs and requirements of the time. Yet the military dictators took advantage of this factor and created the amendments that disfigured the constitution. Such amendments were inserted to create a more suitable centralized structure that would be easy to control and manipulate. This interference resulted into a hybrid system that functioned like a presidential system while operating under guise of parliamentary structure and apparatus. This system made the dictators all powerful as they were answerable to no one but to themselves. Such dictators undermined the political and economic autonomy of the provinces while favoring a strong and all controlling center. Such kind of system would have posed problems for the political democratic forces in the future as well as the present. Thus this system was to be dealt with an ample manor that required certain changes. This change came in the form of the 18<sup>th</sup> constitutional amendment. This paper argued that due to looming danger of military coup, the political forces had reached a consensus to erase the unconstitutional

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<sup>15</sup> Fakhr-ul-Islam, "The 18th Amendment in the 1973 Constitution", *The Dialogue*, vol. 8, no. 2 (2013): 186-197.

acts by the Musharraf regime. Thus on the 19<sup>th</sup> of April, the constitution was amended for the 18<sup>th</sup> time. This action by the political elite aimed at achieving the following two objectives. First, to divert executive authority to the prime minister and his cabinet and hold them accountable to parliament and second; to allow much greater autonomy to the provinces<sup>16</sup>.

However none of these books and articles has provided an in dept study on the Powers of President's Office: A Comparative Study Pre & Post 18th Amendment. Having found gap in the existed literature, this thesis is a small effort to cover the gap, and present a preliminary study on how this amendment was processed and how its content would change the system of governance after its conception. Therefore, it analyzed the original constitutional draft in order to make sense of the prominent changes and the reason for such changes.

## **1.8 Organization of Study**

This study is comprises of four chapters.

Chapter 1 is **introduction**. This chapter deals with the scheme of study, statement of the problem, aims and objectives and significance of the study, research questions, research methodology and review of literature.

Chapter 2 is about **Presidential Powers in historical prospective**. The presidential powers in historical perspective have been examined in this chapter. It focuses on two constitutions of Pakistan the 1956 and 1962.

Chapter 3, **Presidential powers in 1973 constitution is about** 7<sup>th</sup>, 8<sup>th</sup>, 13<sup>th</sup>, and 17<sup>th</sup> amendments. We discuss these amendments with articles and its clauses in the light of presidential powers.

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<sup>16</sup> Shahid Javed Burki, "The 18th Amendment: Pakistan's Constitution Redesigned", *ISAS Working Paper* No. 112 – 3 (September 2010): 1-18.

Chapter 4, **Presidential Powers and the 18<sup>th</sup> Constitutional Amendment** is representing comprehensive study on the 18<sup>th</sup> constitutional amendment and powers of the president of Pakistan.

Chapter 5, **Comparative Study of President Powers in Pre and Post 18<sup>th</sup> Amendment**, has analyzed the powers of the President of Pakistan before and after the 18<sup>th</sup> constitutional amendment.

Conclusion deals the overall outcome of this research work and bibliography is placed in the end of the thesis.

## CHAPTER 2

### PRESIDENTIAL POWERS IN HISTORICAL PERSPECTIVE

#### 2.1 Introduction

A brief introduction to the constitutional history of Pakistan is predictable to appreciate the changes that have been made in the powers of the Presidents since the British Era. It had taken nine centuries for the British to develop a democratic system for the purpose of governing the helms of affairs. They termed it as 'Westminster style of parliamentary democracy'. After few tweaks, this system became a colonial legacy as it was adopted by many liberated states such as Australia, Canada, New Zealand, India and Pakistan. For Lord Dicey, the classic exposition of the doctrine of parliamentary sovereignty can simply be stated as:

*"The principle of parliamentary sovereignty means neither more nor less than this, namely, that Parliament... has, under the English Constitution, the right to make or unmake any law or whatever; and, further, that no person or body is recognized by the law of England as having a right to override or set aside the legislation of the Parliament"*

#### 2.2 The Historical Retrospect with Regards to Constitutional Development in Pakistan

To better understand the impact and the implication of the constitutional development we need to take a look at the history of Pakistani politics. Then and only then we can come at a conclusion that would make sense of the different political mindset found within the politicians and the military dictators.

##### 2.2.1 The Era Devoid of Constitution after Freedom

In the aftermath of the Second World War the British decided to leave the subcontinent. Thus, the date of 15 August was fixed in order to officially recognize the freedom of this region. For political leverage, Jinnah wanted an early declaration of separation hence he convinced Lord Mountbatten to hold the national assembly meeting on 10 August. At that time the British



independence act had formally recognized the liberation of this region a month prior. This first Pakistani constituent assembly was provisionally presided by J.N. Mandal who was a true representative of the minorities residing in Pakistan. Eventually on 11 August 1947, Jinnah became the regular president of the national assembly. Three days after, Mountbatten formally transferred the power to Jinnah and the Government of India Act of 1947 became the interim constitution of Pakistan<sup>17</sup>.

### **2.2.2 The Objective Resolution**

From the day of its conception, Pakistan was plagued with many problems including refugee settlement, Kashmir dispute, water crisis, lack of resources and boundary demarcation.

Thus in such conditions formulation of the constitution was a hefty task which remained unchecked. Meanwhile, a resolution was passed to ensure that power to frame a constitution would remain in the hands of the constituent assembly. After the death of Jinnah a power vacuum was witnessed which no one was able to fill. In 1949, Liaquat Ali Khan passed an objective resolution to determine the nature of the constitution. The key features of this resolution are as follows.

- The sovereignty of this country will rest with Allah and the elected representatives of Pakistan will abide by the rules laid down by that divine entity.
- The parliament was declared as supreme authority to frame constitution.
- The parliament will refrain from any lawmaking that undermines the teachings of Quran and Sunnah.
- The state will ensure the proliferation of Islamic values of life and will serve the public according to Islamic injunctions.
- The minorities will not be discriminated against. They will be given the equal status and rights just as their Muslim counterparts.

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<sup>17</sup> Fazal Muqeem Khan, *Pakistan Crisis in Leadership* (Islamabad: National Book Foundation, 1973), 15.

### **2.2.3 The First Basic Principle Committee Report**

During the Liaquat Khan era, a basic principle committee report was published in 1949. This report proved to be controversial for that government. It has been said that the assassination of Liaquat Ali Khan was somewhat associated with this report. The clause that addressed the matters related to minorities and religion became the bane for the political leadership's existence. It is not a surprise that this assassination had far reaching implications that plagued Pakistan for many decades to come.

In this report, objective resolution was instructed to be incorporated into the formal constitution of Pakistan. The head of the house was to be taken from outside. If a member from anyone of the two houses was to be appointed as head, he would have to relinquish his seat in his respective house. The span of the term for the head was confined to five years while number for said terms was set to two. He would also be given the authority to appoint head of army and judiciary respectively. It was agreed upon that the head of the house was to be the prime minister not the president. Plus, the ministers were to be selected on the advice and consent of the prime minister from either house.

The structure of the two legislative houses would include both elected individuals and the legislature units. The head of the provinces were also to be appointed by the head of the state. The chief minister was given the status of the head of province and the authority to appoint to provincial ministers. Both the head of state and the head of province were given the authority to promulgate the ordinances of the president. Urdu was set to be the official language of Pakistan.

### **2.2.3 The Second Basic Principle Committee Report**

After the assassination of Liaquat Ali Khan, Khawaja Nazim Ud Deen resigned as the governor and became the second prime minister of Pakistan in 1951. He enjoyed the support from the Muslim league and other parliamentary units within assembly. Thus, he considered himself capable of settling the ongoing constitutional matters. Hence a second report by basic principle committee was issued to do just that. Before this draft went to the parliament for debate, many issues plagued Pakistan especially those related to Ahmedia community. On the March of 1951, the riots in Lahore resulted into the martial law imposed by general Azam Khan. At that time

Ghulam Muhammad had replaced Khawaja Nazim ud Deen as the governor general. Thus on behest of Ayub Khan he dissolved the national assembly on the April 13 of 1953<sup>18</sup>.

Once again this report emphasized the importance of objective resolution. This time the head of the state was required to be a Muslim while the nature of his term remained the same as before. This draft proposed two houses just as the previous draft. But this time the number of the members in the house of units was set to be 120. This number was divided equally among east and West Pakistan on the principle of proportional representation by means of single transferable vote. On the other hand, the number for the members of the house of people was set to be 400. The parliament was given ample authority in this draft as all monetary power to pass bills was allocated to house of people.

In case of any dispute between the houses, a simple majority was deemed as unit to resolve any issue. The participation of the majorities was ensured by this draft. For example, out the 200 seats in Bengal. 20 seats were reserved for smaller castes 20 for Hindus 02 for Buddhists and 01 for Christians. The chief minister was decided as the head of unit for the provinces. Again the process to select the chief minister was identical to the previous draft. The number of the members of the units was set to be anywhere between 75 and 350. Whereas, the minister were to be selected from the aforementioned unit<sup>19</sup>.

The head of the state was to be provided with power to proliferate an ordinance but had to get consent from the assembly within six week or the ordinance would become null and void. The head of the state was also given uncanny authority to dissolve the assembly on the advice of the ministers of his council. The two houses were made toothless to avoid such fate. The Supreme Court was deemed as the highest judicial part of the state.

The head of the state was given the power to appoint the chief justice of the Supreme Court. The candidates for the post of chief justice could be taken from the high court (those that have served for more than five years) or from the existing practicing barristers. As for the units within

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<sup>18</sup> Riaz Ahmad, *Constitutional and Political Development in Pakistan 1951-1954* (Rawalpindi: Pak American Book), 64.

<sup>19</sup> George. W. Keeton, *the British Commonwealth: The Development of Laws and Constitution, Vol. 8 - Pakistan* (London: Steins and Sons, 1967), 33.

the state, high courts were to be established in the similar fashion as the Supreme Court. When it came to the matters of the civil service, they were to be given constitutional warranty against any kind of abrupt or uncalled for dismissal. Directive principles of the state policy were to be made the integral part of constitution.

#### **2.2.4 The Third Basic Principle Committee Report**

It was apparent that both Ayub Khan and Ghulam Muhammad were garnering support from the United States of America. Thus, Muhammad Ali Bogra was called back from United States and was appointed as the third prime minister of Pakistan. Pakistan went in the American camp in that era thus it was imminent that a person like Bogra (who was the ambassador to America) was called back to deal with the situation back at home. Thus he presented his famous Bogra formula which was integrated into the third principle committee report.

This draft also suggested the formation of two houses one being the house of people while other being the house of units. The number of members for the house of units was declared to be fifty. This strength was to be derived from five units including East Bengal, Punjab, NWFP, Baluchistan, Sindh and Baluchistan. The selection of the members within the house of units was to be done by the legislatures. In the absence of legislatures, elections would commence. Two seats were reserved for women.

On the other hand, the house of people would be comprised of three hundred members taken from all five units. These house were given equal leverage. In case of vote of no confidence, a joint session could be called to address the matters. Decisions could be finalized through the application of simple majority but each units were to have at least thirty percent representation. In case of zero resolution of the issues, the head of the state could dissolve the assembly on a whim. This clause created a problem when translated into constitution as it created an imbalance in the realm of power dynamics. The head of states was made no longer bound to be not selected from the same zone as the prime minister.

The gist of this formula was in similar alignment as the first two drafts when it came to the parity between the units. But it further improved upon that notion by taking into account the geographical status of the zones. As the western part of Pakistan was substantially bigger than the

eastern part thus this formula recognized this diversity and allocated seats accordingly. This report came under intricate scrutiny by the assembly and was finally acknowledged in September 1954. Before this report could be approved, on 24<sup>th</sup> October 1954, Governor Ghulam Muhammad dissolved the assembly once again. Bogra suffered the same fate as his predecessor.

Molvi Tameez-u-Deen went to Sindh high court to challenge this act by the governor general Ghulam Muhammad. He got relief as the Sindh high court declared the actions of Ghulam Muhammad as null and void. The court gave its order on the basis of the 1947 independence act which declared the national assembly's as an independent unit free from any outside influence. The federal government challenged this judgment in the Supreme Court. The Supreme Court set aside the previous judgment and ordered the assembly to be restored. But there was a catch, Bogra was now gone and Ch Muhammad Ali took his place. This assembly started functioning but refrained from doing anything worthwhile for the time being. One unit was created in this particular era through the application establishment act 1955 passed on the October of the same year. It divided Pakistan into two units comprising of Bengal as one unit and the rest of Pakistan as other unit.

### **2.3 The 1956 Constitution and presidential powers**

After assuming charge as Prime Minister, Chaudhary Muhammad Ali and his team worked hard to formulate a constitution. The committee, which was assigned the task to frame the Constitution, presented the draft Bill in the Constituent Assembly of Pakistan on January 9, 1956. The bill was opposed by the Bengali autonomists. Bhashai, the leader of Awami League in East Pakistan, even used the threat of secession to press for autonomy and his party staged a walkout from the Assembly on February 29, when the Assembly adopted the Constitution. Later on, Awami League boycotted the official ceremonies celebrating the inauguration of the Constitution. However, despite their opposition, the Constitution was adopted and was enforced on March 23, 1956. With this Pakistan's status as a dominion ended and the country was declared as the Islamic Republic of Pakistan. Constituent Assembly became interim National Assembly and Governor-General Iskander Mirza sworn in as the first President of Pakistan.<sup>20</sup>

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<sup>20</sup> L.F. Rushbrook William, *Pakistan Under Challenge* (London: Stacy International, 1975), 249.

The Constitution consisted of 234 articles, divided into 13 parts and 6 schedules. This constitution was parliamentary form of government. yet it declared that the executive authority of the Federation would be in the president.

The Constitution's presidential power was next on the list. The President shall hold office for a term of five years from the date on which he enters upon his office, subject to clause (3) and Article 35 of the 1956 constitution: Provided, however, that notwithstanding the expiration of his term, the President shall continue to hold office until his successor enters upon his office. (2) No person may serve as President for more than two consecutive terms. (3) The President may resign by writing to the Speaker of the National Assembly, addressed under his hand. (4) When a vacancy in the office of President arises as a result of the President's death, resignation, or removal, or when his term of office expires, the vacancy shall be filled as quickly as possible, in line with clause (1) of Article 32. The legislature had no say in the president's election because he had direct mandate power to carry out his functions at the request of the electors.

President could appoint from amongst the MNAs a Prime Minister who had to take the vote of confidence from the house in two months. The Prime Minister had to inform the president about all the decisions of the cabinet. In Article 32 Clause (1) The President of Pakistan, referred to as the President in the Constitution, shall be elected by an electoral college comprised of members of the National Assembly and Provincial Assemblies, in accordance with the provisions of the First Schedule. The validity of the President's election is not subject to challenge in any court, according to clause (3). The president's powers in the 1956 constitution are as follows:

### **2.3.1 Executive power**

The executive authority of the Federation shall vest in the President and shall be exercised by him, either directly or through officers subordinate to him, in accordance with the Constitution under Article 39(1). Article 41(1) All executive actions of the Federal Government shall be expressed to be taken in the name of the President.(2) The President shall by rules specify the manner in which orders and other instruments made and executed in his name shall be authenticated, and the validity of any order or instrument so authenticated shall not be questioned in any court on the ground that

it was not made or executed by the President(3) The President shall also make rules for the allocation and transaction of the business of the Federal Government.<sup>21</sup>

### **2.3.2 Follow the advice of prime minister**

Prime Minister and his cabinet were to aid and advise the president. The president was required to follow the advice of the cabinet except where he was empowered to act at his discretion. Article 42 It shall be the duty of the Prime Minister.(a) To communicate to the President all decisions of the cabinet relating to the administration of the affairs the Federation and proposals for legislation;(b) To furnish such information relating to the administration of the affairs of the Federation and proposals for legislation as the President may call for; and(c) If the President so requires, to submit, for the consideration of the Cabinet any matter on which a decision has been taken by a Minister but which has not been considered by the Cabinet.

### **2.3.3 Appointment of attorney general**

The President shall appoint an Attorney-General for Pakistan, under Article 38(1)<sup>22</sup> who shall hold office during the pleasure of the President, shall receive such remuneration as may be determined by the President, and shall perform such duties as may be assigned to him by the President. The Supreme Command of the Armed Forces shall vest in the President, and the exercise thereof shall be by law in Article 40(1).further more in clause (2) Until Parliament makes provision by law in that behalf, the President shall have the power-(a) To raise and maintain the Naval, Military and Air Forces of Pakistan and the Reserves of such Forces;(b) To grant Commissions in such Forces; and (c) to appoint Commanders-in-Chief of the Army, Navy and Air Forces and determine their salaries and allowances

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<sup>21</sup> Fazal Muqeem Khan, *Pakistan Crisis in Leadership* (Islamabad: National Book Foundation, 1973), 18.

<sup>22</sup> Syed Mujawar Hussain Shah, *Religion and Politics in Pakistan 1972-1988* (Islamabad: Quaid I Azam University, 1996), 102.

### **2.3.4 Appointment of chief justice of Pakistan**

In the 1956 constitution states Article 149 (1) that the President appoints the Chief Justice of Pakistan, and the President appoints the other judges after consulting with the Chief Justice. Article 151 (1) A Judge of the Supreme Court shall not be removed from his office except by an order of the President made after an address by the National Assembly, supported by the majority of the total number of members of the Assembly and by the votes of not less than two thirds of the members present and voting, has been presented to the President for the removal of the Judge on the ground of proved misbehavior or infirmity of mind or body: Provided that no proceedings for the presentation of the address shall be initiated in the National Assembly unless notice of the motion to present the address is supported by not less than one-third of the total number of members of the Assembly. In clause (2) Parliament may by law prescribe the procedure for the presentation of an address and for the investigation and proof of misbehavior or infirmity of mind or body of a Judge, and until such a law is made the President may by order prescribe the said procedure.<sup>23</sup>

### **2.3.5 Transfer of the judges of high court**

The President may transfer a Judge of a High Court from one High Court to the other High Court, but no such Judge shall be transferred except with his consent and after consultation with the Chief Justice of Pakistan and the Chief Justice of the High Court of which he is a Judge under Article 172 (1). in clause (2) When a Judge is so transferred, he is entitled to such compensation allowance, in addition to his salary, as the President may by order determine for the period in which he serves as a Judge of the High Court to which he has been moved. A Supreme Court or High Court judge may leave his or her position pursuant to Article 173 by writing to the President under his or her own hand.

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<sup>23</sup> G.W.Chaudhry, *Annotated Constitution of Pakistan 1973* (Rawalpindi: Federal Law House, 2012),



## **2.4 1962 constitution and presidential powers**

Pakistan adopted its first constitution in 1956 which hardly remained enforced for two and half years. President Iskandar Mirza in a politically blatant move dismissed the government and national assembly on 7th October 1958 by imposing Martial Law in the country under the command of General Ayub Khan. Twenty days after the imposition of martial law on 27th October 1958 Ayub Khan forced Iskandar Mirza to resign and exiled him to London. After four years of his rule in the country, Ayub Khan introduced the second constitution of Pakistan on first March 1962. According to the 1962 constitution, it would be a presidential form of government in Pakistan. Article 9 There shall be a President of Pakistan, who shall be elected in accordance with this Constitution and the law. Article 10 A person shall not be elected as President unless (a) he is a Muslim; (b) he has attained the age of thirty-five years; and (c) he is qualified to be elected as a member of the National Assembly.<sup>24</sup>

### **2.4.1 Removal of president**

Removal of president under Article 13 clause (1) not less than one-third of the total number of members of the National Assembly may give written notice signed by each of them to the Speaker of the Assembly that they intend to move a resolution in the Assembly for the removal of the President from office on a charge that he has wilfully violated this Constitution or has been guilty of gross misconduct. Removal of president on the basis of physical and mental incapability under Article 14 (1) Not less than one-third of the total number of members of the National Assembly may give written notice signed by each of them to the Speaker of the Assembly that they intend to move a resolution in the Assembly for the removal of the President from office on the grounds of his physical or mental incapacity.

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<sup>24</sup> G.W.Chaudhry, *Annotated Constitution of Pakistan 1973* (Rawalpindi: Federal Law House, 2012),

### **2.4.2 Dissolution of national assembly.**

The President may at any time dissolve the National Assembly in Article 23 clause (1). The President shall not dissolve the National Assembly at any time when the unexpired portion of the term of the Assembly is less than one hundred and twenty days under clause (2) (3) If notice of a resolution is given to the Speaker of the National Assembly in pursuance of Article 13 or 14, the President shall not dissolve the Assembly- (a) before the resolution has been voted upon by the Assembly; or (b) before the expiration of thirty days after the expiry of the period which it may be moved, whichever first occurs. (4) When the President dissolves the National Assembly he shall cease to hold office upon the President elected as his successor entering upon his office.<sup>25</sup>

### **2.4.3 Power of referendum**

President had the power of referendum under Article 24 (1) If, at any time, a conflict with respect to any matter arises between the President and the National Assembly and the President considers that it is desirable that the matter should be referred to a referendum in the form of a question that is capable of being answered either by "Yes" or "No". (2) A referendum under this Article shall be conducted amongst the members of the Electoral College. The president enjoyed the power to issue ordinances that would take the shapes of law. No court and legislature would challenge presidential orders

### **2.4.4 Executive power**

The executive authority of the Republic is vested in the President and shall be exercised by him, either directly or through officers subordinate to him, in accordance with this Constitution an Article 31 and the law Article 33 to assist him in the performance of his functions, the President may, from amongst persons qualified to be elected as members of the National Assembly, appoint persons to be members of a Council of Ministers, to be known as the President's Council of Ministers. Article 34 before he enters upon his office, a Minister appointed by the President shall

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<sup>25</sup> Hamid Khan, *Constitutional and Political History of Pakistan* (Karachi: Oxford University Press, 2004),

make before the President an oath in such form set out in the First Schedule as is applicable to his office.<sup>26</sup>

#### **2.4.5 Appointment of chief justice**

Presidents appoint The Chief Justice of the Supreme and the other Judges shall be appointed by the after consultation with the Chief Justice in Article 50 (1). If, at any time-the office of a Judge of the Supreme Court is vacant a Judge of the Supreme Court is absent or is unable to perform the functions of his office due to illness or some other cause, The President may appoint a Judge of a High Court who is qualified for appointment as a Judge of the Supreme Court to act temporarily as a Judge of the Supreme Court 54 (1). In Article 59 (1) If, at any time, the President considers that it is desirable to obtain the opinion of the Supreme Court on any question of law which he considers of public importance, he may refer the question to the Supreme Court for consideration. (2) The Supreme Court shall consider a question so referred and report its opinion on the question to the President.

Article 61 (1) The Supreme Court shall have power to issue such directions, orders or decrees as may be necessary for doing complete justice in any cause or matter pending before it, including an order for the purpose of securing the attendance of any person or the discovery or production of any document.<sup>27</sup> (2) Any such direction, order or decree shall be enforceable throughout Pakistan and shall, where it is to be executed in a Province, be executed as if it had been issued by the High Court of that Province.

#### **2.4.6 Appointment of governors and attorney general**

President appoint Governors for each provinces s under article 66 (1) and governor shall perform their function to the direction of the president in clause (2) .in Article 36 (1) a person who is qualified to be Attorney-General appointed as a Judge of the Supreme Court to be Attorney General

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<sup>26</sup> Ibid,

<sup>27</sup> Asif Ezdi, *A Flawed Constitutional Package* (The News, 2010, March 15).

for Pakistan. In clause (2) The Attorney-General shall perform such duties as the President may direct.

#### **2.4.7 Appointment of parliamentary secretary**

Article 35 <sup>28</sup> The President may, from amongst the members of the National Parliamentary Assembly, Appoint persons (not exceeding in number the Secretaries, number of divisions of the Central Government established by the President) to be Parliamentary Secretaries, and persons so appointed shall perform such functions in relation to those divisions as the President may direct.

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<sup>28</sup> Tahir Hasan Khan, *18th Amendment: Expectations Run Parallel with Dangers* (*The News*, 2010, April 5).

## **CHAPTER: 3**

### **PRESIDENTIAL POWERS IN 1973 CONSTITUTION**

The constitution of Pakistan 1973 contained 280 articles and 6 schedules. It opted for a parliamentary form of government which distinguished the role of both federal and provincial governments. It formulated the principle policy for the federal and the provincial institutions more specifically on the standard operating procedures to utilize the governmental apparatus. The importance of the fundamental rights for the citizen and the functioning of the state machinery were address in intricate manner. Pakistan was officially given the name of Islamic Republic of Pakistan. Thus, this constitution addressed the suggestions given the objective resolution.

The president was made the nominal head of state as he could function on the advice of the cabinet of the prime minister. The members of federal and province legislature were given the authority to elect the president for the span of five years. On the other hand, the prime minister was given the title and the powers of the chief executive with in the federation. The selection of prime minister was left to the members of the parliament through the application of the majority vote. This mode of selection would instill the loyalty and consent for the prime minister as the parliament would have confidence in their own selection. The prime minister was to take the oath from the president and would serve for five years in the similar fashion as his oath taker<sup>29</sup>.

#### **3.1 President of Pakistan**

Pakistan will have a President who will serve as the country's head of state and reflect the country's unity. A person shall not be entitled for election as President unless he is a Muslim of at least forty-five years of age and is qualified to be elected as a member of the National Assembly, according to article 41 clauses (2). Members of an electoral college consisting of sub clause (a) members of both Houses and sub clause (b) members of the provincial legislature elect the President in accordance with the requirements of the Second Schedule under clause (3).

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<sup>29</sup> G.M.Chaudhry, *Annotated Constitution of Pakistan 1973* (Rawalpindi: Federal Law House, 2012).

Under clause (4) Election to the office of President shall be held not earlier than sixty days and not later than thirty days before the expiration of the term of the President in office; Provided that, if the election cannot be held within the period aforesaid because the National Assembly is dissolved, it shall be held within thirty days of the general election to the Assembly. Under (5) An election to fill a vacancy in the office of President shall be held not later than thirty days from the occurrence of the vacancy: Provided that, if the election cannot be held within the period aforesaid because the National Assembly is dissolved, it shall be held within thirty days of the general election to the Assembly. The validity of the election of the President shall not be called in question by or before any court or other authority. According to the article 42 Oath of President; before entering upon office, the President shall make before the Chief Justice of Pakistan oath in the form set out in the Third Schedule.

According to the article 43 clause (10) Conditions of President's office; The President shall not hold any office of profit in the service of Pakistan or occupy any other position carrying the right to remuneration for the rendering of services.(2) The President shall not be a candidate for election as a member of Majlis-e-Shoora (Parliament) or a Provincial Assembly; and, if a member of Majlis-e-Shoora (Parliament) or a Provincial Assembly is elected as President, his seat in Majlis-e-Shoora (Parliament) or, as the case may be, the Provincial Assembly shall become vacant on the day he enters upon his office.

In article 44 clause(1)<sup>30</sup> Subject to the Constitution, the President shall hold office for a term of five years from the day he enters upon his office: Provided that the President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.(2) Subject to the Constitution, a person holding office as President shall be eligible for re-election to that office, but no person shall hold that office for more than two consecutive terms.(3) The President may, by writing under his hand addressed to the Speaker of the National Assembly, resign his office. Power of president in the 1973 constitution Of

Pakistan divided in three parts Legislative, executive and judiciary

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<sup>30</sup> Ibid,

## **3.2. Legislative powers.**

### **3.2.1. Duties of Prime Minister in relation to President**

In article 46(a) It shall be the duty of the Prime Minister to communicate to the President all decisions of the Cabinet relating to the administration of the affairs of the Federation and proposals for legislation; (b) to furnish such information relating to the administration of the affairs of the Federation and proposals for legislation as the President may call for; and (c) if the President so requires, to submit for the consideration of the Cabinet any matter on which a decision has been taken by the Prime Minister or a Minister but which has not been considered by the Cabinet.

### **3.2.2 Address by President.**

Article 56 (1) states that the President may address either House or both Houses assembled together, and that he or she may require the members' attendance for that purpose. (2) The President may transmit messages to either House, whether in connection with a bill currently pending in the Majlise-Shoora (Parliament) or otherwise, and any House to whom such a message is conveyed shall consider any subject required by the message to be considered with all reasonable dispatch. (3) The President shall address both Houses assembled together and tell the Majlis-e-Shoora (Parliament) of the reasons for its summoning at the start of the first session after each general election to the National Assembly and at the start of the first session of each year. (4) The rules governing the procedure of a House and the conduct of its business shall provide for the allotment of time for debate of the subjects alluded to in the President's address.<sup>31</sup>

**3.2.3 Presidential power to grant pardon, etc.** in article 45 The President shall have power to grant pardon, reprieve and respite, and to remit, suspend or commute any sentence passed by any court, tribunal or other authority.<sup>32</sup>

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<sup>31</sup> Hamid Yusuf, *Pakistan: A Study of Political Development 1947-97* (Lahore: Sang-E-Meel Publications, 1997).

<sup>32</sup> G.M. Chaudhry, *Annotated Constitution of Pakistan 1973* (Rawalpindi: Federal Law House, 2012).

### **3.2.4 Promulgation Ordinances**

According to article 89 the Power of the President is to promulgate Ordinances. Except while the National Assembly is in session, the President may make and promulgate an Ordinance-as the circumstances may necessitate-if he or she is satisfied that circumstances exist that require immediate action. With reference to clause (2) An Ordinance promulgated under this Article shall have the same force and effect as an Act of the Majlis-e-Shoora (Parliament) and shall be subject to like restrictions as the power of the Majlis-e-Shoora (Parliament) to make law, but every such Ordinance-(a) shall be laid-(i) before the National Assembly if it contains provisions dealing with all or any of the matters specified in clause (2) of Article 73, and shall stand repealed at the expiration of four months from its promulgation or, if before the expiration of that period -a resolution disapproving it is passed by the Assembly, upon the passing of that resolution;(ii) before both Houses if it does not contain provisions dealing with any of the matters referred to in sub-clause (a), and shall stand repealed at the expiration of four months from its promulgation or, if before the expiration of that period a resolution disapproving it is passed by either House, upon the passing of that resolution; and(b) may be withdrawn at any time by the President.(3) Without prejudice to the provisions of clause (2) an Ordinance laid before the National Assembly, shall be deemed to be a Bill introduced in the National Assembly.<sup>33</sup>

### **3.2.5 Dissolution of the National Assembly;**

The President shall dissolve the National Assembly if the Prime Minister so advises; in Article 58 clause (1), the National Assembly shall be disbanded at the expiration of forty-eight hours after the Prime Minister has so advised, unless sooner dissolved. Explanation: A reference to a Prime Minister in this Article shall not be construed to include a Prime Minister who has been served with a notice of motion for a vote of no confidence in the National Assembly but has not been voted on, or against whom such a motion has been passed, or who is continuing in office after his resignation or the dissolution of the National Assembly.

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<sup>33</sup> Wolfgang Peter Zingel, *Pakistan in the 80s* (Lahore: Vanguard Books Ltd, 1985),



Despite anything in clause (2) of Article 48, the President may dissolve the National Assembly at his discretion if, in his opinion, (a) a vote of no confidence against the Prime Minister has been passed, and no other member of the National Assembly is likely to command the confidence of a majority of the members of the National Assembly in accordance with the provisions of the Constitution as determined in a National Assembly sessions. (3) In the event that the National Assembly is dissolved under paragraph (b) of clause (2), the President shall refer the matter to the Supreme Court within fifteen days of the dissolution, and the Supreme Court shall consider the reference within thirty days, whose decision shall be final.

### **3.3 Executive powers**

#### **3.3.1 Appointment of attorney general**

According to article 100 clause (10) of the Constitution, the president appoints an attorney general of Pakistan who is eligible to serve as a Supreme Court judge. Clause (2) states that the attorney general must serve at the pleasure of the president and shall not engage in private practice while holding the position of attorney general. The attorney general's duty under clause 3 is to advise the federal government on such legal matters and to fulfill any other legal obligations that may be assigned to him. In Article (4), the attorney general may quit his position by writing to the president under his hand address.

**3.3.2 Federal Ministers and Ministers of State** On the advice of the Prime Minister, the President shall appoint Federal Ministers and Ministers of State from among the members of Majlis-eShoora (Parliament): under Article 91, subject to clauses (1), (7), and (8); provided, however, that the number of Federal Ministers and Ministers of State who are members of the Senate shall not at any time exceed one-fourth of the total number of Federal Ministers. Clause (2) Before taking office, a Federal Minister or Minister of State must take an oath in the form prescribed in the Third Schedule before the President. Clause (3) A Federal Minister or Minister of State may resign his office or be dismissed from office by the President on the suggestion of the Prime Minister by writing under his hand addressed to the President.<sup>34</sup>

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<sup>34</sup> Lawrance Ziring, *Pakistan in the 20<sup>th</sup> Century: A Political History* (Karachi: Oxford University Press, 2010), 39.

### **3.4. Judicial powers**

#### **3.4.1 Appointment of Supreme Court Judges;**

Pakistan's Chief Justice is appointed by the President. The President, in agreement with the Chief Justice, shall appoint each of the other Judges under Article 177, clause (1). (2) No person shall be appointed a Judge of the Supreme Court unless he is a Pakistani citizen and has served as a judge of a High Court (including a High Court that existed in Pakistan at any time before the commencement day) for a period of not less than five years, or as an advocate of a High Court for a period of not less than fifteen years (including a High Court which existed in Pakistan at any time before the commencing day)

#### **3.4.2 Acting Chief Justice**

Articles 180 (a) The President shall appoint the most senior of the other Supreme Court Judges to act as Chief Justice of Pakistan at any time when the office of Chief Justice of Pakistan is vacant; or (b) the Chief Justice of Pakistan is absent or unable to perform the functions of his office due to any other reason, the President shall appoint the most senior of the other Supreme Court Judges to act as Chief Justice of Pakistan.

#### **3.4.3 Acting Judges**

According to Article 181 clause (1), the President may, in the manner provided in clause (1) of Article 177, appoint a Judge of a High Court who is qualified for appointment as a Judge of the Supreme Court to act temporarily as a Judge of the Supreme Court when: (a) the office of a Judge of the Supreme Court is vacant; or (b) a Judge of the Supreme Court is absent or unable to perform the functions of his office due to any other cause, appoint a A person who has retired as a Judge of a High Court is included in this section as a "Judge of a High Court." (2) An appointment made under this Article remains in effect until the President revokes it.

#### **3.4.4 Appointments of High Court Judges**

In article 193(1) on (a) and (b), with the Governor concerned; and, except where the appointment is that of Chief Justice, with the Chief Justice of the High Court, the President shall appoint a judge of a High Court after consultation with the Chief Justice of Pakistan.

### **3.4.5 Transfer of High Court Judges**

Article 200 clause (1) The President may transfer a Judge of a High Court from one High Court to another High Court, but no Judge shall be so transferred except ' with his consent and after consultation by the President with the Chief Justice of Pakistan and the Chief Justices of both High Courts: Provided that such consent, or consultation with the Chief Justices of the High Courts, shall not be necessary if such transfer is for a period not exceeding two years at a time. In this Article, "Judge" does not include a Chief Justice but includes a Judge for the time being acting as Chief Justice of a High Court other than a Judge of the Supreme Court acting as such in pursuance of a request made under' clause (b) of Article 196.in clause (2) Where a Judge is so transferred or is appointed to an office other than the principal seat of the High Court, he shall, during the period for which he serves as a judge of the High Court to which he is transferred, or holds such other office, be entitled to such allowances and privileges, in addition to his salary, as the President may, by Order, determine<sup>35</sup>

### **3.5 Presidential power through amendments**

We will discuss president power amendment according to seventh amendment, eight amendment act, thirteenth amendment act and seventeenth amendment act .Seventh amendment act made in 16<sup>th</sup> may in 1977 in zulfiqar ali Bhutto"s regime. It authorized the Prime Minister to advise the President to hold referendum on any issue of national importance. Than in 1985 there was a zia ul haq regime when eighth act amended. In this amendment authorized the president to dissolve the national assembly. Thirteenth amendment act effected on presidential powers in Nawaz Sharif"s regime in 1997. In this amendment the President and Governors of Pakistan were deprived of their powers to dissolve the assemblies. It also withdrew Presidents discretionary powers to appoint Chiefs of Armed Forces and the Governors of the Provinces. In 2003 Seventeenth act amendment empowered the President to dissolve the assembly.

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<sup>35</sup> Farzana Arshad, *Re-contextualizing the 18th Amendment: Working of Federalism in Pakistan* (Lahore: Journal of the Research Society of Pakistan, 2012),

- **Article 56 in 1973 constitution.** According to clause (3) the president may address either house or both houses assembled together and many for that purpose require the attendance of the members.
- **Amended article 56.** This Article amended by the constitution (Eight Amendment) act. In clause (3) the president may address either house or both houses. At the commencement of the first session after each general election to the National Assembly and at the commencement of the first session of each year the President shall address both houses assembled together and inform the Majlis-e-Shoora (Parliament) of the causes of its summons.<sup>36</sup>
- **Original Article 58 in 1973 constitution.** According to clause (1) President shall dissolve the national assembly if so advised by the prime minister, and national assembly shall, unless sooner dissolved at the expiration of forty eight hours after the prime minister has so advised. In Clause 2 the president may also dissolve the national assembly in his discretion where, in his opinion an appeal to the electorate is necessary. prime minister shall not be construed to include reference to a prime minister against whom a resolution for a vote of no confidence has been moved in the national assembly but has not been voted upon or against whom such a resolution has been passed or who is continuing in office after his resignation or after the dissolution of national assembly..
- **Amended article 58 by the constitution (Eight Amendment) act.** in 1985 this article 58 was amended. In (a) clause (1) "resolution for a vote of no confidence has been moved" the words "notice of a resolution for a vote of no-confidence has been given" shall be replaced; and (b) For clause (2) the following shall be replaced, specifically: President shall dissolve the national assembly if so advised by the prime minister, and national assembly shall, unless sooner dissolved at the expiration of forty eight hours after the prime minister has so advised. Besides anything contained in clause (2) of Article 48, the President may also dissolve the National Assembly in his discretion where, in his opinion.(a) A vote of no confidence having the pass against the prime minister no order of

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<sup>36</sup> Farzana Arshad, *Re-contextualizing the 18th Amendment: Working of Federalism in Pakistan* (Lahore: Journal of the Research Society of Pakistan, 2012),

the national assembly is likely to command the confidence of the majority of the members of the National Assembly in accordance with the provisions of the Constitution, as ascertained in a session of the National Assembly summoned for the purpose or.(b) A situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary<sup>37</sup>.

- **Article 58, amended by the constitution (Thirteen Amendment) act** .It was a shorttime amendment to the Constitution of Pakistan adopted by the elected Parliament of Pakistan in 1997. In the amendment in Article 58 clause (2) sub clause (b) was removed, which gave the President power to dissolve the National Assembly in his discretion where, in his opinion a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary
- **Article 58, amended by the constitution (Seventeenth Amendment act**. In 2003 regime of Pervez Musharraf again article 58 2(b) was amended. According to the article 58 after the clause (2) the few new clause shall be added. The president in case of dissolution assembly of the national assembly under paragraph b of clause (2) shall, written fifteen days of the dissolution, refer the matter of the Supreme Court and Supreme Court shall decide within thirteen days whose decision shall be final. <sup>38</sup>
- **Article 75 in 1973 constitution** .This amendment is about president power in assent to a bill. There are four time this amendment was made but we just discuss its clauses according to president power. Article 75 clause (1) The (1) when a bill is presented to the president for assent, the president shall, assist within forty five days or In the case of bill other than money bill, return the bill to the Majilis\_e\_shoora (parliament) with a message requesting that the bill, or any specified provision thereof, be reconsidered and that any amendment specified in the message be considered. After reconsidered of bill has again passed without

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<sup>37</sup> G.M.Chaudhry, *Annotated Constitution of Pakistan 1973* (Rawalpindi: Federal Law House, 2012).

<sup>38</sup> Ibid,

any amendment by the vote of majority with the total membership of both houses. Than if president has assented to a bill, it shall become law will be called act of parliament.

- **Article 75 as an amended by the constitution of 1973 (Eight Amendment)** According to the clause (1), for the word "forty-five" the word "thirty" shall be substituted; for the clause 2 the shall be substituted, namely that the (1)When the President has returned a Bill to the Majlis-e-Shoora (Parliament), it shall be reconsidered by the Majlis-e-Shoora (Parliament) in joint sitting and, if it is again passed, with or without amendment, by the Majlis-e-Shoora (Parliament), by the votes of the majority of the members of both Houses present and voting, it shall be deemed for the purposes of the Constitution to have been passed by both Houses and shall be presented to the President and the President shall not withhold assent therefrom."
- **Article 90 in the constitution.** This article is about the executive authority of Federal government shall be exercise in the name of president. According to the article 90 clause (1) Federal Government is consisted on prime minster and all federal minsters. The federal minsters of the federation shall be act through the prime minster, who shall be the chief executive of Federation.<sup>39</sup>
- **Article 90 as amended by the constitution 1973 (Eight Amendment) act** .In 1985 Zia ul haq regime the article 90 amended to increase president power According to be deemed transfer to the President any functions conferred by any existing law on the Government of any Province. (b) President has authority to prevent the parliament from the conferring by law functions on authorities.
- **Article 91 in the constitution.** This article is about general election to the national assembly, Which is only one time amended. According to this article clause (1) national assembly shall meet on the thirtieth day following the day on which a general election to the assembly is held, unless sooner summoned by the president. In clause (2) after the election of the speaker and the deputy speaker, the national assembly shall, to the exclusion

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<sup>39</sup> G.M.Chaudhry, *Annotated Constitution of Pakistan 1973* (Rawalpindi: Federal Law House, 2012).

of any other business, proceed to elect without debate one of its Muslim members to be the prime minister.<sup>40</sup>

- **Article 91 as amended by the constitution of 1973 (Eight Amendment)** act According to clause (2) new clause shall be inserted, namely (a) after the twentieth day of March, one thousand nine hundred and ninety, the President shall invite the member of the National Assembly who commands the confidence of the majority of the members of the National Assembly, as determined in a session of the Assembly called for the purpose in accordance with the provisions of the Constitution, to be the Prime Minister." Whereas the new clause inserted clause (5) in which The Prime Minister shall hold office during the pleasure of the President, but the President shall not exercise his powers under this clause unless he is satisfied that the Prime- Minister dose not command the confidence of the majority of the members of the National Assembly, in which case he shall called the National Assembly and require the Prime Minister to obtain a vote of confidence from the Assembly.<sup>51</sup>
- **Article 96A in 1973 constitution.** This article 96A is about referendum as to confidence in prime minister. According to the law of parliament, if any time, prime minister considered it necessary to obtain a vote of the people of Pakistan through referendum than he may advise the president to cause the matter to a referendum. Under clause (1) president shall call upon the referendum commission to conduct the referendum among those whose names appear on the electoral roll for the general elections to the national parliament held immediately before, as revised up to date.
- **Article 96A amended as a in the constitution 1973 (Seventh Amendment)** act In accordance to the article 96A with seventh amendment clause (1) If at any time the Prime Minister considers it necessary to obtain a vote of confidence of the people of Pakistan through a referendum, he may advise the President to cause matter to be referred to a referendum in accordance with law made by Parliament. Clause (3) on receipt of the advice of the Prime Minister under clause (1), the President shall call upon the Referendum

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<sup>40</sup> Lawrence Ziring, *Pakistan in the 20<sup>th</sup> Century: A Political History* (Karachi: Oxford University Press, 2010), <sup>51</sup> G.M.Chaudhry, *Annotated Constitution of Pakistan 1973* (Rawalpindi: Federal Law House, 2012).

Commission to conduct a referendum amongst the persons whose names appear on the electoral rolls for the immediately preceding general elections to the National Assembly as revised up-to-date.

- **Article 101 in the 1973 constitution.** This article is about appointment of the governor. This article has been eight times amended, but we will discuss clauses related to president powers. According to the article with the references of clause (1) governor of each province will be appointed by the president. Clause (3) is about Governor shall hold the office during the pleasure of the president. After that Clause (4) is about, Governor may, by writing under his hand addressed to the president, resign his office.
- **Article 101 as amended by the constitution of 1973 (Eighth Amendment)** act in clause (1) president shall appoint the governor of each province with the consultation of prime minister. After that in clause (5) president may, make such provision as he thinks fit for the discharge of the functions of a Governor in any contingency not provided for in this part. Article 101 as amended by the constitution of 1973 (thirteenth amendment) act According to thirteenth amendment In the Constitution, in Article 101 its clause (1) for the words "after consultation with" the words "on the" advice of "prime minister" shall be substituted.
- **Article 243 in the constitution 1973.** This article is related to military power of president. In this article clause (2) The president shall subject to law, have power (a) To raise and maintain the Military, Naval and Air forces of Pakistan, and the Reserves of such forces. After this in clause (b) to grant Commission in such forces and to appoint in his discretion the chief of the Army staff, the chief of the naval staff and the chief of the Air staff, and determine their salaries and allowances. <sup>41</sup>
- **Article 243 as amended by the constitution of 1973 (Thirteenth Amendment)** act. In this article the clause (2) in sub clause (c) the word "in his discretion" omitted. Article 243 as amended by the constitution of 1973 (seventeenth amendment) act. In Article 243,

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<sup>41</sup> , Hamid. *Constitutional and Political History of Pakistan*. Karachi: Oxford University Press, 2004.



clause (3), and the words "in his discretion" shall be replaced by the terms "in consultation with the Prime Minister."

### **Removal or transmitted of President**

The President may be removed from office for physical or mental incompetence, or impeached on an allegation of violating the Constitution or gross misbehavior, in line with the criteria of this Article, notwithstanding anything in the Constitution. (2) The Speaker of the National Assembly or, as the case may be, the Chairman of the House of Representatives may give written notice to the Speaker of the National Assembly or, as the case may be, the Chairman of the House of Representatives, of its intention to move a resolution for the President's removal or, as the case may be, impeachment; and such notice shall set out the particulars of his incapacity or charge against him. (3) If a notice is received under section (2), the Chairman must immediately convey it to the Speaker. (4) The Speaker shall send a copy of the notice to the President within three days after receiving it under paragraph (2) or (3). (5) The Speaker must call a joint session of the two Houses within seven days of receiving the notice and within fourteen days of receiving the notice. (6) The authority rests with the joint sitting. (7) The President has the right to appear and be represented during the investigation, if any, and before the joint sitting. Authority to investigate or cause an investigation into the ground or charge that the notification is founded on. (8) If a resolution is passed by not less than two-thirds of the total membership of 61[Majlis-e-Shoora (Parliament)] at the joint sitting, 61 determining that the President is unsuitable to hold the office owing to incapacity or is guilty of violating the Constitution or gross misbehaviour, the President shall immediately resign.

## CHAPTER 4

### EIGHTEENTH CONSTITUTIONAL AMENDMENT

#### 4.1 Introduction

There have been many amendments made ever since the conception of 1973 constitution. Interestingly, the regime that formulated the constitution amended it six times in the span of mere four years. Whereas, the seventh amendment was also passed by Z A Bhutto under the guise of a referendum. This referendum was deemed as a temporary means to justify the outcome of 1977 controversial elections. The Eighth amendment was passed in order to curb the prime ministers power and to grant the president a clear superiority as far as state affairs were concerned. This deed was done in order to further cement the martial law imposed by General Zia-ul-Haq. From then on, a total of eight amendments were made by democratic government up until the 17<sup>th</sup> amendment. Just like his predecessor, General Pervaiz Musharraf made an amendment in cahoots with the political strata. This amendment was the product of the compromise between the military regime and the newly elected government formed after the 2002 general elections.

One can attribute the Eighteenth amendment as a serious effort to settle the impending issues in the Pakistani political landscape. At the time of its legislation, the government of that particular time was jubilant for passing it with unanimous support from the parliament. The Parliamentary Committee on Constitutional Reforms signed the draft under the leadership of Mian Raza Rabbani. This amendment carried the similar ambiance as the original 1973 constitution. Hence, it was dubbed as the second best constitutional package after the 1973 Constitution. The main reason for such attribution was the unanimous consent by the parliament that formulated both the 1973 constitution and the Eighteenth amendment respectively<sup>42</sup>. This indeed was a unique era in the history of parliamentary politics. For the first time in the history of Pakistan, a president voluntarily relinquished his power and authority. The same notion can be attributed toward the Pakistani parliament as for the first time the politicians displayed bewildering unity, maturity and

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<sup>42</sup> Hasan Tharani, *Letter to the Editor* (Dawn, 2010, April 5).

extraordinary tolerance towards each other perspectives. Meanwhile, the media was also praised for playing its part to support and spread the importance of this amendment<sup>43</sup>.

This chapter deals with the comparative analysis of the salient features of the eighteenth amendment. For that purpose, a better understanding of the addition and deletions in the former provisions is in order. The academia has pondered on the implications of the already existent provisions especially when compared to the concurrent state of constitution. This particular academic circle includes experts, political leaders and analysis of the researchers. Likewise, the press has also given its two cents on this matter thus its narrative has also served as the guideline for the researcher. Therefore, this research will serve as the first hand analysis of every major type of data available to the researcher.

## **4.2 Presidential Powers and the Eighteenth amendment**

In the past, all of the major military dictators opted for the presidential seat as a tool for their rule. This seat granted them unchecked and unrivaled authority to rule with an iron fist. The parliamentary form of government was always deemed by such individuals as redundant and unappealing. Thus the eighteenth amendment created a curb for such ambitions and action by employing following safeguards.

### **4.2.1 Constitutional articles related to Presidential Powers**

- Article 41 related to the election of the president was amended. It added a provision in the second paragraph of clause (7) which deterred any member of the assembly from holding any other office of profit. This article was to be put in effect on the 31st of December 2004. Even though, there was no such paragraph (b) present at the time of amendment. Therefore, through LFO, a new clause (8) was added to article 41 in order to meet the requirement. This was followed by a (9) clause that gave authority to chief election commissioner to regulate and conduct the procedure of vote casting and vote counting related to vote of

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<sup>43</sup> B. A. Malik, 18th Amendment and Way Ahead (*Dawn*.2010, April 18).

confidence for Musharraf. Both of these provisions were deemed as transitional provisions as they expired after the said procedure. These clauses (7) (8) and (9) shall be omitted.<sup>44</sup>

- In the article 46 is amended as a prime minister shall keep the president informed on all matters of internal and foreign policy and all legislative proposals the federal government intends to bring before parliament.
- In the article 58 of the constitution, a new clause number (3) was added in order to provide formal reference to the supreme court within the fifteen days after the dissolution of the national assembly due to impositions of article 58 (2) (b). The sub clause (b) in this particular article was previously removed in the thirteenth amendment act of 1997. Whereas now it was reinserted in the within the LFO 2002. Article 58 amended as if the Prime Minister so advises, the President shall dissolve the National Assembly, and the National Assembly shall be dissolved at the expiry of forty-eight hours after the Prime Minister has so recommended. With the reference of article A Prime Minister against whom a notice of a resolution for a vote of no-confidence has been given in the National Assembly but has not been voted on, or against whom such a resolution has been passed, or who is continuing in office after his resignation or the dissolution of the National Assembly is not included.<sup>45</sup>
- Article 70 is about passing a bill, (1) A Bill with respect to any matter on the Federal Legislative List may originate in either House and shall be transmitted to the other House if passed by the House in which it originated; and if the Bill is passed without amendment by the other House as well, it shall be presented to the President for assent. (2) If a Bill transmitted to a House under section (1) is passed with amendments, it is returned to that House, and if that House approves the Bill with those alterations, it is presented to the President for assent. (3) If a Bill transmitted to a House under clause (1) is rejected or not

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<sup>44</sup> G.M.Chaudhry, *Annotated Constitution of Pakistan 1973*. Rawalpindi: Federal Law House, 2012.

Shahid Javed Burki, *the 18th Amendment: Pakistan's Constitution Redesigned* (Lahore: Journal of Economics, 2012), 10.

passed within ninety days of its laying in the House, or if a Bill sent to a House under clause (2) with amendments is not passed by that House with those amendments, the Bill shall be considered in a joint sitting at the request of the House in which it originated, and if passed by a majority of the members present and voting in the joint sitting, it shall be presented to the President.

- According to Article 75 clause 2 When the President returns a Bill to the Majlis-eShoora (Parliament), it shall be reconsidered by the Majlis-e-Shoora (Parliament) in joint sitting, and if it is again passed, with or without amendment, by the votes of a majority of the members of both Houses present and voting, it shall be deemed to have been passed by both Houses for the purposes of the Constitution, and shall be presented to the president.
- Article 90 is about executive authority of federation. The Federation's executive authority is exercised in the name of the President by the Federal Government, which consists of the Prime Minister and Federal Ministers, and which acts via the Prime Minister, who is the Federation's chief executive. (2) All executive activities of the federal government must be expressed to be taken in the president's name,<sup>46</sup>
- According to the article 100 president shall select an attorney-general for Pakistan who is eligible to be appointed a judge of the Supreme Court. After the clause (2) "President" in Article 100, the words "and shall not engage in private practice while holding the office of the Attorney-General" should be added.
- The article 156 is about The President shall appoint a National Economic Council consisting of: (a) the Prime Minister, who shall serve as its Chairman; (b) the Chief Ministers and one member from each Province to be nominated by the Chief Minister; and (c) four other members as the Prime Minister may nominate from time to time.
- According to article 168 (3) The Auditor-General shall hold office for a term of four years from the date on which he assumes such office or attains the age of sixty-five years,

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<sup>46</sup> Mahboob Hussain, *Eighteenth Amendment in the Constitution of Pakistan: Success and Controversies* (Toronto: Center of Science and Education, 2012),

whichever is earlier, unless he sooner resigns or is removed from office in accordance with clause (5). The following new clause should be included after clause (3) has been altered as aforesaid: (3A) other terms and conditions of employment of the Auditor-General shall be set by Act of Majlis-e-Shoora (Parliament); and, until so determined, by Order of the President.

- Article 209 deals with the supreme judicial council .According to its clause (5) If the Council or the President believes that a Judge of the Supreme Court or a High Court.. - (a) may be incapable of performing the duties of his office due to physical or mental incapacity; or (b) may have been guilty of misconduct, the President shall direct the Council to investigate the matter, or the Council may do so on its own motion.
- Article 243 is about command of forces the federal government shall have control and command of the armed forces. (1) The Armed Forces are under the direction and command of the Federal Government. (2) Without limiting the extent of the preceding article, the President has Supreme Command of the Armed Forces. (3) Subject to law, the President has the authority to: (a) raise and maintain the Pakistani Military, Naval, and Air Forces, as well as their Reserves; and (b) not Commissions in such Forces. (3) On the suggestion of the Prime Minister, the President appoints the Chairman of the Joint Chiefs of Staff Committee, the Chief of the Army Staff, the Chief of the Naval Staff, and the Chief of the Air Staff, as well as determining their salaries and allowances.<sup>47</sup>
- Article 268 entails such enactment within constitution that cannot be touched without an approval from the president. This article applies on both provincial and national assembly. Before the advent of LFO, 24 law within the 6th schedule were protected by the constitution. Whereas, the LFO added 11 more law in the said list. This amendment further limited the protection to the provincial local government ordinances and police order to six years.

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<sup>47</sup> Mahboob Hussain, *Eighteenth Amendment in the Constitution of Pakistan: Success and Controversies* (Toronto: Center of Science and Education, 2012),

- According to the 270A article (a) The words, commas, brackets, and figures "under which, as a result of the referendum held on the nineteenth day of December, 1984, General Mohammad Zia-ul-Haq became President of Pakistan on the day of the first meeting of the Majlis-e-Shoora (Parliament) in joint sitting for the term specified in clause (7) of Article 41" shall be omitted from clause (1);

#### **4.2.2 Presidential Powers Confined**

The spirit of the 1973 constitution entails that the prime minister should be empowered whereas the powers of the president should be reduced. Therefore, the eighteenth constitutional amendment fulfilled the prerequisites laid down by the said constitution. Both General Musharraf and Zia Ul Haq delegated the powers of the president through forced amendments. This act tarnished the essence of the original constitution that was framed by Z A Bhutto who indeed was a parliamentary leader at heart<sup>48</sup>. This amendment abolished such actions taken by the aforementioned dictators. Instead of solely trusting the president with exclusive power, the executive authority was bestowed upon the federal government which exercised it in the name of the president. The functioning of federal government was trusted to the federal minister while the prime minister would serve as the chief executive of the government. The issue of the appointment of prime minister was also addressed in this amendment. Instead of the president appointing the prime minister, National Assembly was given the authority to elect their head of the house through the application of simple majority.

Now, the prime minister was no longer bound to report any thing correlating with the obligations relevant to the president. Such duties included providing notification about the cabinet decisions as well as relaying the information with regards to the administration and the decisions taken by the Prime Minister himself as well as of his cabinet ministers. After the eighteenth amendment, he was only required to keep the president informed about the interior matters, foreign policy and legislative proposals. According to the article 48, the functional capability of the president was now dependent on the advice of the prime minister and his cabinet. The president could only ask the cabinet to reconsider the advice. However, the time limit required to place the

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<sup>48</sup> Hamid Khan, *Constitutional and Political History of Pakistan* (Karachi: Oxford University Press, 2004), 129.

request for reconsideration was restricted to fifteen days. On the other hand, the president was instructed to act on the reconsidered advice within the span of ten days. The main function of such restrictions was to tilt the scale of power in favor of the cabinet and the prime minister. Thus, it limited the options for the president while providing leverage to the prime minister.

The presidential power to dissolve the national assembly was also abridged through this amendment. The president was given the discretionary power to exercise the dissolution only when the vote of no confidence was placed against the prime minister. None amongst the members of the national assembly possessed the confidence from their peers to do so. Article 58(2) (b) granted the president an unrestricted power to command the confidence of the national assembly.

Hence, the Eighteenth amendment abolished this dreaded article. Now, the president was dependent upon the advice and consent of the prime minister and the cabinet in order to dissolve the national assembly. Even after the dissolution of the assembly, the president was made liable to fix date for the next election within the span of ninety days. In the meanwhile, he would appoint a caretaker setup entailing a cabinet and prime minister. But still, this amendment never made this power the discretionary right of the president as he could only appoint the caretaker setup only after the consultation with the Prime Minister and the Leader of Opposition in the outgoing Assembly. Likewise, the decision to appoint any additional members of the cabinet would rest upon the advice of the caretaker prime minister.

The prime minister was vehemently appointed as the chairman in the Council of Common Interest (CCI). The substituted article 153 made the role of the president within this council absolutely nominal. In the similar fashion, National Economic Council (NEC) was also placed out from the formal jurisdiction of the president. Instead, the power to nominate the four members was attributed to the chief ministers of the respective provinces. The rest of the four members would be nominated by the prime minister. And when it came to appointment of the Auditor General, the president was made obligated to choose the most senior official from the office of the Auditor General. Previously, the presidents appointed the desired individuals as Auditor General without any formal consideration for merit. In the same manner, the authority to appoint the officials for the election commission was also no longer made to be at the behest of the President. The



presidential discretion was seized as he could only nominate individuals but final authority to appoint the officials rested with the parliamentary committee.<sup>49</sup>

Furthermore, the Eighteenth amendment made sure that the appointments of the Chairman, Joint Chiefs of Staff Committee, the Chiefs of Army, Naval and Air Staffs, the Chairman of the Public Service Commission would be made by the president on the basis of his recommendation but not on his whims. All of the aforementioned appointments would be finalized on the advice of the prime minister. The president was given authority to appoint the governor for the provinces but this task could not be achieved without the advice of the prime minister. This amendment made sure that there would be no need for any consultation as it blatantly called for consent of the prime minister in the form of a formal advice.<sup>50</sup> A similar fate also befell upon the governors as their powers were also confined. In the past, the presidents used to influence the provincial leadership though the selectively appointed governors. But this amendment snatched the power away from both the president and governors alike.

On the legislative helm of affairs, the presidential authority encountered a huge obstacle. The discretionary power of the president to call for a referendum on any matter deemed as carrying national importance was also taken away by this amendment. Now, the burden of making of such a decision rested upon the discretion of the prime minister. And even he was given the incentive to do so with approval from the joint sitting of the Parliament. Before this amendment, there were thirty-five laws in Sixth Schedule that could not be altered, repealed or amended without the formal authorization from the president. The article 268 (2) omitted any such requirement for sanctions from the president. This action effected many important laws which were in need of major alterations but were neglected due to prior influences. Such laws included National Accountability Bureau Act 1999, The Local Government Ordinances 2001 of all the four provinces, the Election Commission Order, 2002, and the Political Parties Order 2002.

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<sup>49</sup> Asif Ezdi, *Reforming' the constitution Part II* (The News, 2010, February 18).

<sup>50</sup> Ibid,

### **4.2.3 The Implications of Article 58(2) (b)**

The president was vested with the authority to exercise his power as a „safety valve“ for the dissolution of National Assembly. The Eighteenth amendment took care of this looming danger thus it also took away the soft power from any inspiring outraged or ambitious martial law dictator. Without the 58(2) (b) that route was blocked for the would-be tyrants. Among all the previous martial law imposed on Pakistan, the Musharraf brand of 58(2) (b) was the most pragmatic. The reason being; the validation form the Supreme Court for presidential dissolution of the National Assembly within 45 days.<sup>51</sup> There is another narrative which opts for political check on the president rather than curtailing his powers. Article 234 serves the similar purpose as it deals with such contingencies in the provinces. Similar kind of apparatus was required in the federal level. Pakistani political history has witnessed many powerful prime ministers that enjoyed enormous power through overwhelming majority in the parliament. Despite this fact, most of such prime ministers were sent home while their governments toppled. Thus democracy was never given space to flourish in Pakistan<sup>52</sup>. There is a way to put a check on the presidential powers and ambitions. And that way is the consent from the parliament in the form of a vote of confidence from the newly elected National Assembly. If the president fails to garner endorsement from the parliament then he should be stripped of his title power<sup>53</sup>.

### **4.3 Emergency or High Treason**

The most pivotal attribute of the eighteenth amendment is its close proximity to democracy and disdain for the dictatorial rule. It secured the future against tyranny by creating egalitarian landscape. The path to democracy was opened in order to curb all other undemocratic means that paved the way for authoritarian marshal regimes. Senator Raza Rabbani deemed it as a “beginning of the democratic era in the country,” Now, the LFO (Legal Framework Order) along with the executive order of 2002 was declared null and void. Both respective orders were made unlawfully during Musharraf’s regime. Similarly, it also repealed the prior Seventeenth amendment made in that particular ere. All of the aforementioned legislative actions taken by General Pervaiz

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<sup>51</sup> Cyril Almeida, *Change but for the better* (Dawn, 2010, March 26).

<sup>52</sup> Asif Ezdi, *Reforming' the constitution Part II* (The News, 2010, February 18).

<sup>53</sup> Humayun Akhtar, *Some reflections on the 18th amendment* (Dawn, 2010, April 4).

Musharraf were nothing more than a brash attempt to make an encroachment in 1973 constitution. Therefore, repealing such actions gave clear message that there was no more space left in the political strata at least not in the pages within the constitution of Pakistan. This notion is evident when one goes through articles (i.e. 51, 59 and 62) of the constitution. These articles of constitution were either rephrased or rewritten as they were the concoction of dictators in their respective eras.<sup>54</sup>

In order to ensure the inviolability of the constitution, any mischievous act in the form of suspension or holding in abeyance of the constitution along with its abrogation and subversion had been decreed as high treason. In both respective martial laws, the terms – suspension and holding in abeyance – were utilized in order to legitimize coup. Hence, the inclusion these terms created deterrence for a military take over as it hinders the aspiring dictator from the way of taking some concession from the written law for legitimacy. Likewise, the facilitators and collaborators of a coup were also considered as traitors. This act ensured that other institutions such as Supreme Court or High court would refrain from giving validation for any unlawful annexation.

Since the advent of Ayub Khans era, the authority of declaring emergency has been utilized as a handy tool by the military leadership. For the purpose of discouraging such actions, the declaration of emergency was made much more difficult. The new arrangements in the operational procedure for the proclamation of emergency called for approval by both houses of the Parliament separately rather than in a joint session. The span for the approval was also set as ten days thus making it even more difficult for an individual president to impose emergency.

#### **4.5 Mutual Agreement Mandated on the Appointment of Judiciary**

Initially, the schedule for the signing of this amendment was set at March 24. But due to the abjections laid down by the PML-N it got delayed. The main concern showed by the PML-N was on the matter of appointment of judges and renaming of the NWFP<sup>55</sup>. After gaining the formal consent from the aforementioned party, another issue plague the passing of this amendment. Due to the renaming clause for NWFP (Northern Western Frontier Province), the issue of demand for

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<sup>54</sup> Farzana Arshad, *Re-contextualizing the 18th Amendment: Working of Federalism in Pakistan* (Lahore: Journal of the Research Society of Pakistan, 2012), 21.

<sup>55</sup> Ahmad. Hassan, *Parties Strike Accord on 18th Amendment* (Dawn, 2010, April 1).

the formation of new provinces reared its ugly head. An unfortunate event took place just a day before this amendment was about to be put in front the Senate of Pakistan. Seven protesters were killed due to the backlash from the authorities during the demonstration for the Hazara province. Meanwhile, many senators suggested that a nineteenth amendment was in order to address the issue. This whole scenario created a new discourse for the establishment of new provinces. The debate for the Saraiki province was not given formal space as it was not considered by the committee for official debate. Whereas, this debate gained public notoriety as many local political leaders openly voiced their opinion. Some local politicians of the Saraiki region threatened to vote against the constitutional package if their demand for the new province were not given ample consideration<sup>56</sup>.

The new provisions with regards to the procedure for the appointment of judges opened a Pandora box for the legislators. The procedure to appoint the chief justice of Pakistan remained the same as it was still up to the president to nominate the senior most judge of Supreme Court for the aforementioned post. On the other hand, the procedure was completely changed when it came to the appointment of other judges of Supreme, High and Shariat courts. Now it was left to the Judicial Commission to nominate the qualified individual for the post of a judge. This commission comprised of the Chief Justice of Pakistan, two senior judges of Supreme Court, a former judge or Chief Justice nominated by the Chief Justice, attorney general, Minister for law and a nominated lawyer from Pakistan Bar Council. After that, it was left to parliament committee to consider the recommendations put forth by the judicial commission. This parliamentary committee consisted of eight members taken equally from both senate and the parliament respectively. Both the prime minister and the leader of the opposition were given the authority to select members of the commission. Similarly, for the appointment of high court judges, it was made mandatory to take members of the committee and commission from the provincial assembly and provincial judiciary respectively. In both cases, by exercising three- fourth majority, the parliamentary committee was given the right to reject the nomination put forth by the judicial commission. The president could not appoint judges without the approval of parliamentary committee.

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<sup>56</sup> Asif Ezdi, *A Flawed Constitutional Package* (The News, 2010, March 15).

The one major flaw that legal experts found in this amendment pertained to its abuse when it came to the process for appointment of judges. The crafty politicians could abuse this addition during both at the nomination and the approval stages of atonement. Now the judges had to cross two new obstacles in the form of a vote in the judicial commission and the parliamentary committee. It is obvious that these judges will have to gain vote through political affiliation. Plus it was made impossible to hide such inclinations for a specific political parity. This in return creates a public perception for the judge that pictures him as a stooge for that specific political parity. Similarly, the provisions in this amendment also entail that the chief justice of Supreme Court will be chosen on the seniority basis. The length tenure that a judge serves has nothing to do with his competency and performance.

#### **4.6 Regard for Civil Rights**

Another prolific achievement of the eighteenth amendment was the excellent handling of the fundamental rights ensured by the constitution. This can be seen from the addition of the clauses pertaining to the Rights of education, fair trial and information. Similarly, the clause about right of association was also mended. In case of an arrest and detention by state institutions, it was insured that the state has an obligation to provide a fair trial and due process to the accused. This amendment also provided the right of information in the new article 19A. This addition was unprecedented in the history of Pakistan as the citizens were kept in dark about the information in all matters of public importance. Likewise, this amendment also ensured the right of education for the children between the age of 08 and 16. All of the previous renditions of the constitution refrained from acknowledging this primary right<sup>57</sup>.

Aligning with the interest of Pakistan, in the year 2002, through the chief executive order No. 24, right of association was restricted to curb the disturbance within the public realm of order. This action exploited the conduct of the political parties by charging them with demeanor related to sectarian, ethnic, regional hatred or animosity and militancy. To simply put, the eighteenth amendment completely removed such limitations. This resulted in the elimination of restraints put forth by the state on the politicians. Previously, the politicians were coerced by the fear of

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<sup>57</sup> Tahir Hasan Khan, *18th Amendment: Expectations Run Parallel with Dangers* (The News, 2010, April 5).

disqualification in election. This tactic by the state encompassed the action of maneuvering politicians through allegation of disruption of public order.

#### **4.6 Status of Politicians and Political Parties**

This amendment also raised questions due to the growing concerns regarding convicted felons in the parliament. This addition states that passing of five years after conviction will convert the disqualified politician into qualified one. This whole section pertains to dismissed and removed or compulsorily retired persons that served the sentence for five or three years. The apparent reasoning for this addition was to provide relief to the politicians that were wrongfully convicted during despotic rule of martial law administrators. But there is another side of the story when it comes to this whole scenario. A strong case can be made that these additions were made to provide safe heaven to criminals in the political landscape. This addition will cater to the persons that were involved in acts related to corruption, dishonesty and opposition to the ideology of Pakistan.

Any parliamentarian in the national assembly would now face disqualification on the basis of the defection from the political party. This action could be taken in response to voting or refraining to vote on a Constitution Bill against the policy of the political party. The head political party instead of the parliamentary party has been allotted the power carry out such defection. This action strengthened the parliamentary leaders outside of the parliament. It also strengthened the grip of party leaders on the internal structure of their respective organizations. Therefore, it would negate any kind of floor crossing or horse trading which would be detrimental to the party ethics.

The continuous and fair party elections would create a healthy political atmosphere in Pakistani party ethos. But there is another side of the coin as majority of Pakistani parties is dominated by political families. The members of such families often take part in patrimonial politics. So it can be argued that this amendment somewhat appeased these “dictatorial party leaders”.

This amendment has bestowed huge responsibility upon the parliamentary leaders. It has shifted the balance of power in the favor of the democracy. Now, the national assembly had the power to depose the prime minister. Whereas previously, this authority rested with the presidents

that misused it immensely. The power given to the party leader for the cancelation of parliamentary membership will indeed send shivers down the spines of many future prime ministers and opposition leaders alike. At the time of the passing of this amendment, the significance of the parliamentary leaders was eminent and the atmosphere of the assembly was filled to the brim with the ambiance of their dominance. The law makers did not have to make much of an effort in order to get this amendment passed. The parliamentary members were made obliged to endorse the decisions of their party leaders without any kind of verbal approval or disapproval on their part.

#### **4.7 Impact of Eighteenth Amendment on Parliamentary Sovereignty**

The parliamentary Sovereignty can be defined as „a system where the Parliament has the right to make or un-make any law whatsoever“<sup>58</sup>. The Westminster style of parliamentary systems of governance was founded on the basis of this definition. The 18th Amendment offered a return to the parliamentary supremacy in Pakistan. The President of Pakistan being the ceremonial head of state was again bound to act on Prime Minister's advice as narrated in the original text of the Constitution of 1973. This amendment achieved this task by following actions.

##### **4.7.1 The Parliament Empowered**

One prominent attribute of the eighteenth amendment was the successful feat which pertained to the empowerment of democratic institutions such as parliament and senate. The fate of any kind of referendum that was initiated by the prime minister hinged on the action taken by joint parliamentary session. Before this notion, solely parliament was held responsible for the organization of referendum. Thus the consolidation and compilation of result of such referendums also rested on their shoulders. Similarly, the legislation process was allocated to the parliament alone. In this regard, the role of mediation committee was tarnished as it granted other section of establishment control over legislation. Now, the national assembly and the senate were given power respectively in the form of joint session which passed or nullified any legislation. On the other

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<sup>58</sup> Sydney D. Bailey, *British Parliamentary Democracy* (Boston: Houghton Mifflin Company, 1966), 18.

hand, the span for the presidential consideration on legislation passed by the parliament was also decreased to ten days instead of one month<sup>59</sup>.

The growth of legislative parliamentary power was just tip of the iceberg when it came to the role of eighteenth amendment. The presidential authority to imposed emergency took a clubbing blow from this amendment as well. Now, the president was made compelled to make proclamation of emergency before the national assembly and the senate within a span of ten days. To simply put, the president required approval from both houses before reaching any kind of verdict about the imposition of emergency. It was also made mandatory for the Council of Common Interest to submit its annual report for consideration to the both house of parliament.

The similar fate befell upon the NEC as it had was also made to submit its finding in front of the parliament. Furthermore, the tedious task of appointments of judges and Election Commissioner was also assigned to the Parliamentary committees.

The subject of strengthening the senate was also the main focus in eighteenth amendment. Hence, this amendment boosted the power of the senate to a certain degree. All of the major units of federation are given adequate representation with in senate. When the voices and aspiration of these units are given reciprocal incentive, then only then the prerequisite of the federation are fulfilled. The senate was awarded with even more responsibility by increase in its working days to 110 instead of 90. For the first time in the history of constituent assembly, the president was bound to frame a report on the observance and implementation of the Principles of Policy not only before the National Assembly but the Senate as well. Thus both houses were given the privilege to dwell on the presidential report with regards to the observance and implementation of the Principles of Policy. Meanwhile, the responsibility of the cabinet were expanded to the both the senate and the national assembly. Whereas, the time period for the senate to consider the pros and cons with regards to bill of budget was increased to 14 days instead of 7 days. This action insured that the quality of the debate would be given preference over the blatant quantity.

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<sup>59</sup> Amjad. Abbas. Magsi, *Balance of Power at the Centre: The President, Prime Minister & Parliament in Eighteenth Amendment Revisited*. Maqsood Hasan Nori and Muhammad Hanif, eds (Islamabad: Islamabad Policy Research Institute, 2011), 67-68.



The authority of the president came under scrutiny and thus was curbed in this amendment. This restriction particularly pertained to the presidential power of promulgate ordinance. This capability to promulgate ordinance was put under check and balance by correlating it with the absence in the sessions of both the senate and the national assembly. Whereas prior to this arrangement, the president could issue a promulgate ordinance when the national assembly was alone not in session. While this time, the senate was given power to attain the report of Auditor General to be put under consideration.

#### **4.7.2 Restriction Put on the Size of Cabinet**

The initiative that has garnered much praise was the limitation put forth for cabinet members. The number of cabinet members taken from whole parliament was limited to eleven percent. Whereas, the chief ministers were allowed to have five advisers from their respective provincial assemblies. This action not only negated horse trading among parliamentarians but also lowered the expenses pertaining to the privileges enjoyed by cabinet members.

#### **4.7.3. The Revised Powers of Caretaker Cabinet and Election Commission**

In order to give the electoral process some credibility and to strengthen the electoral system from within, the caretaker prime minister and his cabinet were striped of the authority to contest the elections during their tenure. This rule was also applicable on their immediate family members such as spouse and children. This action deterred them to interfere in the election thus increasing their impartiality. In the same spirit, the elections in the form of secret ballot were barred for the purpose of increasing transparency. Prior to this arrangement, the buying and selling of sympathies by the parliamentarians was huge blemish on the history of parliamentary politics of Pakistan.

This amendment indeed was the product of its time as it was the result of many political blunders by the seasoned politicians. Thus, it is not hard to imagine why there was a sudden change witnessed for the procedure for appointment of the Chief Election Commissioner and other four members of Election Commission. For this purpose, after going through consultation with the leader of opposition, the prime minister was given the authority to provide three names to the parliamentary committee for the selection of the election commissioner. After that, it was left to the committee to choose one name from the list. It was up to the speaker of the national assembly

to constitute the twelve members aforementioned committee. This committee was bound to include at least one third members from senate and half of its members from the opposition. The leaders of the opposition parties had the power to nominate the member from their parties on the basis of their strength in the parliament. In case the parliament was dissolved, the senate members would form the committee.

#### **4.8 .Other Major Changes Related to Parliament**

The Islamabad high court was established by Pervez Musharraf during the lawyer's movement. But after the advent of this amendment its status got formally acknowledge through constitutional law. The bar on the number of terms for the prime minister was also lifted as now the prime minister could serve for more them two terms. This amendment also eliminated obscurities in the constitution. For example, the obscure requirements for becoming the Member of Parliament such as sagacious, righteous, non-profligate and honest were made obvious. Thus, the court was given the power to disqualify any parliamentarian through contrary declaration if he/she did not meet the required qualities. Other offences or acts against the ideology, security and integrity of Pakistan, defamation and ridicule of judiciary would also merit disqualification if sanctioned through court conviction.

The amendment has also modified the constitution in the major way. In many instances, this modification was in the form of spelling corrections. For example the pronoun „he“ was being used for the female parliamentarians when it came to acknowledgement of women seats in clause 62(b) (ii). The amendment corrected it with proper „she“. Similarly, pointless word „alone“ in 25(2) was omitted to encourage inclusion.

#### **4.9 Disregard for Issues of Common Public**

The most severe criticism for this amendment entails its disregard for problems of the common public. Among such critics was Ghinwa Bhutto who stated that the only way to garner the support from her party was to make an amendment which assured the common public's control over police and revenue departments. This perspective was also prevalent among other smaller parties as they considered the eighteenth amendment to be a concoction of provision that benefited

the elite but did nothing for the downtrodden. The smaller parties felt alienated during this entire process as they were not given ample space or recognition in this whole matter. The most prominent example of such conduct was the dissolution of the limitation on the terms served by the prime minister. This whole charade was done in order to benefit Mian Muhammad Nawaz Sharif of PML-N.

#### **4.10. The Federation after Eighteenth Amendment**

For eons, the provinces of Pakistan were denied the provincial autonomy which they desired.

This amendment gave a serious consideration to these aspirations through following actions.

##### **4.10.1 Abrogation of Concurrent List**

For the first time in the legislative politics of Pakistan as consensus was witnessed with regards to reshaping the precincts of provincial autonomy by abolishing all items from the Concurrent List; the list of legislative subjects. Fourth Schedule to the constitution required the approval and the acknowledgment for the legislation done in both national and the provincial assembly. Thus, handing over that burden to the provinces in order to share responsibility overcoming oncoming challenges in the foreseeable future. In all the previous renditions of the constitutions, the situation remained the same when it came to matters related to the framework of legislation with concurrent list. The omission of the concurrent list automatically dismantled many sections of federal government and in doing so took away unchallenged power from the center. Now the federal government had lost its fangs as the power to do legislation on the national level for the provincial matters was indeed gone<sup>60</sup>.

This effort to provide autonomy to the provinces also proved to be controversial. In order to reach middle ground, all of the major parties were somewhat made complacent to compromise. A case can be made that the federal government was unnecessarily weakened whereas the provinces also did not receive significant power from this action. It displeased the autonomous parties within the provinces as they only required four subjects with the federal government. Thus

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<sup>60</sup> Muhammad. Hanif and Muhammad Nawaz Khan, *Eighteenth Amendment Revisited, in Eighteenth Amendment Revisited. Maqsood Hasan Nori and Muhammad Hanif*, ed. (Islamabad: Islamabad Policy Research Institute, 2011),40.

these parties voice their concerns in their notes of reiteration. The parties such as the Sindh Nationalist and Progressive Alliance called for a strike against the amendment and rejected the autonomy provisions.

On the other end of the spectrum, the centrist parties also showed their disdain for the overall abolition of concurrent list. S.M. Zafar, (2010) was among the founding fathers of the 1973 constitution thus his perspective about this situation holds some water. He stated that historically speaking there was nil intent in the initial spirit of 1973 constitution to omit concurrent list altogether or after the passing of ten years<sup>61</sup>. Other analysts also consider this action redundant as there were other ways for transferring the subjects and funds to the provinces without driving a dagger through the concept of good governance. Such experts suggested the application and the implications of provisions within the Article 146 of the constitution. These provisions allowed the smooth transfer of resources, functions and responsibilities from the center to the provinces<sup>62</sup>. They also proposed that a better solution would have been the transfer of the provincially desired subjects from the federal list to concurrent list instead of the abolishment of the concurrent list altogether.

Now a new problem reared its ugly head as far as the power allocation for the provinces was concerned. In order to resolve this conflict a new framework to address such matters was in need. But this could only happen if the provinces showed maturity while setting aside the petty differences. In the past, the federal government aided the provinces in conflicts. But now, the provinces were on their own to find a solution to indigenous disputes. A responsible behavior was in order especially on the issue of expenditure pertaining to enhanced social welfare, provision of essential facilities to the poorest segments of the population, increasing levels of efficiency, or reducing levels of graft etc. The transfer of such legislative subject is double edged sword as it empowers the provinces but it also put strain on the already frail economy of the provinces. Previously, the federal government controlled these subjects but it also withstood the economic pressure thus it alleviated the economic stress of these provinces.

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<sup>61</sup> S. M. Zafar, *Note of Reiteration* (Report of the parliamentary Committee on Constitutional Reforms, 2010).

<sup>62</sup> Khalid Anwer, *One System Not Four* (Dawn, 2010, January 20)

This amendment gave the prime minister the responsibility to appoint governors and service chiefs. But it also opened the doors for sacrifice of merit on the altar of expedience and favoritism. The presidents in the past disregarded merit and awarded loyalty. But the same can happen with allocation of such powers to the prime minister. Now, the responsibility rests with the future prime minister to use this power without personal or biased intents.

#### **4.10.2 Compensation for Deprived Classes and Provinces**

Another major achievement of the eighteenth amendment is the consideration for the incentive related to the deprived and down trodden sections and classes of Pakistan. It acknowledged the state of all classes that serve Pakistan in their own respective ways. Simple measures were taken in the amendment for the arrangement that lawfully catered to the every section within the social stratification of Pakistani community. This ensured the removal of any kind of discrimination at least on paper. With the help of this initiative the issues pertaining to the deprived classes were redressed under the umbrella of constitution. The sub-clause in Article 38 ensured the shares of all provinces falling under all federal services. In the same line of order, it was made obligatory through a constitutional guarantee that all of the previous omissions in the shares of provinces would be resolved.

Some prominent political leaders from the opposition had their concerns regarding the guarantee of rights for the provinces. Ghinwa Bhutto, the chairperson of PPP-SB, was among such individuals who blatantly showcased their reservations regarding this matter. But the time proved the effectiveness of these measures as they provided the provinces the opportunity to prosper and safeguard their rights. For the purpose of insuring the interests of all of the provinces, the Council of Common Interest (CCI) was established. CCI was given a permanent secretariat in order to resolve the conflict between aggravated provinces.

The meeting between the CCI members was also made compulsory once every month. Furthermore, the prime minister was given authority to call a meeting on behest of request placed by the provincial representatives. Now, the CCI was given complete power to deal with the energy related matter especially pertaining to the issues of electricity. Likewise, the National Economic Council (NEC) was awarded an additional task which made sure the imposition of balanced

development and regional equity. And for the purpose of carrying out that task, NEC was made obligated to call a meeting at the very least twice a year. It was made imperative for both of these councils to submit their annual report to the parliament. This was done in order to keep both the CCI and NEC active as well as functional<sup>63</sup>.

The Eighteenth amendment weakened the hold applied by the center on the provincial recourses. For example, with the insertion of a new provision in the section 157 (1), the federal government had to consult the provincial institutions before taking any kind of decision to build a hydro-electric power station on indigenous grounds. Similarly, through inclusion of 160 (1) (b), the fair share in net proceeds of the duty on oil was acknowledged as provincial right. Even though, this duty was to be collected by the federal government yet a portion was allocated for the provinces. The duty on gas was apparently made to become the part of Federal Consolidated Fund. But this amendment allowed the provinces to escape such fate at least as far as duty on oil was concerned. Other than that, the initiative carried out through previous NFC Award (8th NFC Award) became the official part of constitution. In the same spirit, the decisions by the provincial government were made compelled to get ratified by the provincial assemblies within sixty days before getting allocated to the federal government.

One more major aspect of this amendment pertained to the political autonomy of the provinces as it provided the provinces the unprecedented liberty never seen before. It was made mandatory that the governor of the province should be indigenous to the soil. In order to ensure this requirement, the governor needed to have the domicile and name within the local voter list of his respective province. In order to provide leverage to the provinces, the power to impose emergency was made subservient to the consent of the local provincial governments. The federal dominance was regulated by opting for a condition which was fulfiller with the requirement of a resolution of the concerned provincial assembly.

The issues of nomenclature of the provinces were also settled in this amendment. For the first time, the spelling of the names of Sindh and Balochistan were rectified. Furthermore, the name of North West Frontier Province was changed to Khyber Pukhtunkhwa. These actions

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<sup>63</sup> Anwar Shah, *The 18th Constitutional Amendment: Glue or Solvent for Nation Building and Citizenship in Pakistan* (The Lahore Journal of Economics 17, September 2012), pp. 387–392

acknowledged, recognized and celebrated the ethnic identities of inhabitants and the political forces within provinces. Therefore, this notion fully appreciated the impending demand for acceptance of local identities of indigenous ethnic communities residing in Pakistan<sup>64</sup>. In the similar manor, the minorities also received similar treatment from the constitution. Four extra seats were allocated for the non-Muslims in the senate. The reservation of these seats made sure that there was an adequate representation of smaller class group from each province.

This amendment indeed proved to be a land mark in the history of Pakistan. After the advent of 1973 constitution, it turned out to be the second major turn on the road towards true democracy. It was unanimously acknowledged that the strong units create strong federation. It focused on the establishment of parliamentary form of government rather than a presidential one. For this purpose, it restructured Senate – election commission and judiciary on institutional basis. Even though, it had its flaws yet it paved the way for a democratic future. In the similar fashion, the eighteenth amendment also created new challenges for the policy makers as well. It attracted many controversies in the form of impending danger from the establishment. In the past, such bold stances taken by the politicians have always merited strict response from other state institutions.

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<sup>64</sup> Razia Musarrat, *Constitutional Provisions on Creation of Provinces and suggested Model, 1 in Eighteenth Amendment Revisited*. Maqsud Hasan Nori and Muhammad Hanif, eds. (Islamabad: Islamabad Policy Research Institute, 2011), 191-192.

# **CHAPTER-5**

## **COMPARATIVE STUDY OF 18TH AMENDMENT WITH THE PREVIOUS AND NEXT AMENDMENTS**

### **Introduction**

This chapter has covered the comparative analysis of the amendments made prior to and after the 18<sup>th</sup> amendment. Thus, this chapter divided into two sections. Section one deals with the amendment in the constitution that were enacted before the advent of the said amendment; while, section two deals with aftermath of the aforementioned amendment. This chapter also served as the conclusion while examining the role 18<sup>th</sup> amendment in the constitutional development of Pakistan.

### **5.1 The Amendments Prior to the 18th Amendments**

There have been many amendments made ever since the conception of 1973 constitution. Interestingly, the regime that formulated the constitution amended it six times in the span of mere four years. The seventh amendment was also passed by Z.A. Bhutto under the guise of a referendum. This referendum was deemed as a temporary means to justify the outcome of 1977 controversial elections. The 8<sup>th</sup> amendment was passed in order to curb the prime ministers power and to grant the president a clear superiority as far as state affairs were concerned. This deed was done in order to further cement the martial law imposed by General Zia Ul Haq. From then on, a total of eight amendments were made by democratic government up until the 17<sup>th</sup> amendment. Just like his predecessor, General Pervaiz Musharraf made an amendment in cahoots with the political strata. This amendment was the product of the compromise between the military regime and the newly elected government formed after the 2002 general elections.

#### **5.1.1 Amendments in the Bhutto Era**

Zulfiqar Ali Bhutto took over as Chief Martial Law Administrator and President of Pakistan's remaining provinces from Yahya Khan. From 1971 to 1973, he served as president and the first civilian Chief Martial



Law Administrator. Basically 1973 constitution was drafted by Zulfikar Ali Bhutto's government with extra help from the country's opposition parties, and it was adopted by Parliament on 10 April 1973 and ratified on 14 August 1973. Pakistan's law, political culture, and system are all governed by the Constitution. The 7th Amendment passed by the elected Parliament and implemented by Prime Minister Zulfikar Ali Bhutto's government. The 7th Amendment mandates and empowers the people-elected Prime Minister to seek a vote of confidence from the people elected members of Parliament. He became Prime Minister of Pakistan, which he held until 1977. Bhutto was removed as Prime Minister in 1977, Bureaucracy and the army remained the most important pillars of the state structure, instead of the citizens of Pakistan who were still struggling to be recognized in the democratic process. Despite the fact that Bhutto's PPP won the 1977 elections, the Pakistan National Alliance, a nine-party alliance, accused him with rigging vote. The army, led by General Zia-ul Haq, used violent urban unrest as an excuse to return to politics, and on July 5, 1977, Pakistan was placed under the uniform administration once more, and the 1973 Constitution was suspended.

In the previous chapter, the major changes in the constitution in that particular were addressed.

Yet to build an understanding, a brief introduction in order thus amendments in the era of Zulfikar Ali Bhutto are as follow

- The first amendment redefined the boundaries of Pakistan and removed references to East Pakistan.
- The second amendment defined a Muslim and declared the status of Ahmadis as minority and 'non-Muslim.
- The third amendment extended the period of preventive detention.
- The fourth amendment decreed additional seats for minorities, it also deprived courts of the power to grant bail to any person detained under any preventive detention.
- The Fifth Amendment widened the scope of restriction on the High Courts.
- The sixth amendment Provided that Chief Justice of Supreme Court will be retired at the age of 65 and High Court judges at age 62.

- The seventh amendment enabled the Prime Minister to obtain a vote of confidence of the people of Pakistan<sup>65</sup>.

### 5.1.2 Amendments in the Era of Zia-ul-Haq

General Zia Ul Haq imposed martial law with a promise that he will relinquish power after a span of three months. After that period, elections were supposed to be held for the seats in the national and the provincial assembly. In the meanwhile, the military establishment came with a promise that they will return to their barracks after sorting out political turmoil in Pakistan. Due to Bhutto's threats about dire consequences, Zia clanged to power until his ultimate foe was executed. Eventually, Bhutto had to face the gallows for the murder of Mehmood Ali Qasuri. Zia mustered up audacity to do this deed through the support of international and national establishment. In this regard, many prominent politicians gave their support to him. For example, prominent names like Ch. Fazal Elahi of PML, Dr. Naseer Ahmad of Jamaat-e-Islami and Muhammad Ali Kasuri of Awami League showed appreciation for Zia as he was a better option for them to deal with when compared with Bhutto. In the similar manner, Molvi Mushtaq Ahmad, the chief justice of the Lahore high court, displayed similar tendency which entailed shameless support for the establishment. Eventually, Bhutto's appeal to the Supreme Court was rejected and he was hanged on the 4<sup>th</sup> of April 1979<sup>66</sup>. The President established a Federal Council (Majlis-e-Shoora) on December 24, 1981, by Presidential Order (P.O.15 of 1981). The President nominated the group's members. The Council's inaugural meeting was conducted on January 11, 1982. As a result, limited and controlled political activity were resumed, and general elections for the National and Provincial Assemblies were held on a non-party basis on February 25, 1985. The resurrection of Constitution Order (P.O.14 of 1985) was issued on the 2nd of March 1985, containing a considerable number of constitutional amendments. The National Assembly convened for the first time on March 20, 1985. The President of Pakistan has appointed Mr. Muhammad Khan Junejo as Prime Minister (General Zia-ul-Haq). On the 24th of March, 1985, he was given a vote of confidence.

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<sup>65</sup> Philip E. Jones, *the Pakistan People's Party; Rise to Power* (Karachi: Oxford University Press, 2003), 07.

<sup>66</sup> Syed Mujawar Hussain Shah, *Religion and Politics in Pakistan 1972-1988* (Islamabad: Quaid-i-Azam Chair, National Institute of Pakistan Studies, Quaid-i-Azam University, 1996), 218-221,

In the Zia era, the constitution of 1973 was not fully abrogated as its many sections were held in abeyance. Ch Fazal Elahi continued his president ship but due to constant adversity by the Zia regime he was forced to retire. Zia utilized the orders and ordinances to put the aforementioned president in pressure. On the 16<sup>th</sup> of September of 1978, Zia sworn in as the president of Pakistan thus cementing his rule further. His martial law lasted till the 30<sup>th</sup> of December 1985. In that span, he amended the constitution numerous times as he pleased. After the passage of the 8<sup>th</sup> amendment the martial law was made obsolete. In the aftermath of the 1985 election, Muhammad Khan Junajo became the prime minister of Pakistan yet the power still lied with Zia.

At that time, the war against USSR was at its peak while the United States needed a strong ally in Afghanistan. On the other hand, the right wing conservative groups were also lending their support in the endeavor. Thus both of these parties lent their support to the martial law imposed by Zia ul Haq. Vice versa, Zia reciprocated with many regulations, orders and ordinances in order to spread his ideals of Islamization. For this purpose, many institutions were established.

On the 3<sup>rd</sup> of June 1980, Majlis-e-Shura was also established to provide a platform the religious scholars and prominent politician to discuss issues concerning Islamic principles. This council also came into being due to the presidential order of Zia ul Haq. Its tenure was set to be of 3 years while number of the members was set to 200. This council served as the rubber stamp for Zia as its establishment was nothing more the ploy by him to stay in power.

A provisional order was given in the year of 1981 by Zia. This order tainted the constitution of 1973 as it tweaked its basic essence. Both the Majlis-e-Shura and Ansari commission reached the decision to restore the constitution, but after going through certain amendments. Therefore, the elections were supposed to be held on the principle of adult franchise. There was an eminent disparity between the power of the prime minister and the president. Thus, a balance of power was suggested to be restored. In case of any kind of turmoil in the country, the president was given power to dissolve the parliament. National Security Council was also established in this regard. On both national and provincial level, the minorities were given the right of separate electorates to represent them in the parliament.

Zia craved the power to amend the constitution according to his own whims. Thus he held a referendum to facilitate his aspirations. It should not come as a surprise that the majority of the participants gave him the authority that he desired. The aforementioned referendum was held in the year 1984. However, a whopping 62 percent of the voters awarded him with their votes. Throughout the history of Pakistan, such dictators have orchestrated such bogus referendums to acquire ultimate power. In this case, the situation was no different as the academia considers that referendum as nothing more a scam to manipulate the masses<sup>67</sup>.

In the year 1985, general elections were held on the basis of nonparty system. The elections for the national assembly were held on the 25<sup>th</sup> February. While the election for provincial assemblies were held three days after on the 28<sup>th</sup> of February. On the 2<sup>nd</sup> march of the same year, Zia issued a Revival constitutional order. This order made many crucial amendments in the constitution of 1973. He introduced the Eighth amendment in which Pakistan's government was converted from a parliamentary democracy to a semi-presidential one after the Eighth amendment. The Presidential authority was strengthened by the eighth amendment, which also gave him more ability to dismiss the elected Prime Minister's government, which increase presidential powers whereas;

- Article 56 is about The President should address both chambers assembled together and tell the Majlis-e-Shoora (Parliament) of the reasons for its summoning at the start of the first session after each general election to the National Assembly and at the start of the first session of each year.
- In article 58 2(b) is about president have authority to dissolve the national assembly of provision and in the other hand 8<sup>th</sup> amendment was was a compromise reached by the Parliament elected in the 1985 non-party elections and then-President Gen. Zia-ul-Haq.

During the six years leading up to the 1985 election, Gen.

- In article 75 When the President returns a Bill to the Majlis-e-Shoora (Parliament), it shall be reconsidered by the Majlis-e-Shoora (Parliament) in joint sitting and, if it is again

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<sup>67</sup> Wolfgang Peter Zingel, *Pakistan in the 80s* (Lahore: Vanguard Books Ltd, 1985), 44.

passed, with or without amendment, by the Majlis-e-Shoora (Parliament), by the votes of the majority of the members of both Houses present and voting, it shall become law.

- Article 90 President has the power to prevent the parliament from imposing powers on authorities by law.<sup>68</sup>
- According to article 91 prime minister shall hold the office during the pleasure of the president and president shall not exercise his powers under this clause unless he is satisfied that the Prime Minister does not command the confidence of a majority of the members of the National Assembly, in which case he shall summon the National Assembly and require the Prime Minister to obtain a vote of confidence from the Assembly."
- According to the article 101 The President shall invite the member of the National Assembly who commands the confidence of the majority of the members of the National Assembly, as determined in a session of the Assembly called for the purpose in accordance with the provisions of the Constitution, to be the Prime Minister.
- In Article 75 the president will appoint the governor of each province after consulting with the prime minister.

Zia flaunted his muscles and exercised his power as he dismissed the government of Junajo in 1988. This predicament was the result of mistrust between Zia and Junajo as both individuals were not Seeing Eye to eye with each other. Zia regime made drastic changes in the constitution of Pakistan. Zia enjoyed both internal and external support in his struggle for power. In November 1985, Parliament passed the 8th Constitutional Amendment. Aside from other changes to the Constitution, the President was given the power to dissolve the National Assembly under Article 58(2)(b). The President, using the power granted under Article 58(2), dissolved the Assembly on the 29th of May 1988.

This order was loathed by all of the major political parties and political leaders of that era. The 9<sup>th</sup> amendment included a bill to impose Sharia law as the supreme law of land. The bill was

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<sup>68</sup> Hamid Yusuf, *Pakistan: A Study of Political Development 1947-97* (Lahore: Sang-e-Meel Publications, 1997),

passed by Senate but could never be passed by National Assembly owing to the latter's dissolution. The 10<sup>th</sup> amendment in this regard determined the interval period between sessions of the National Assembly to not exceed 130 days. Whereas, <sup>69</sup>

After coming into power, Muhammad Khan Junajo showcased the audacity to challenge the martial law imposed on Pakistan. He was not without the support of his peers in the national and provincial assembly in this regard. Junajo remained cautious this endeavor as he was well aware about the fates of his predecessors. Therefore, he discreetly tried to prepare Zia for the upcoming situation. It seemed that Zia also harbored consent for this action. In the month of November of 1985, this whole predicament resulted in to the passing of the 8<sup>th</sup> amendment within the constitution of Pakistan. This amendment provided cover to all of the unconstitutional acts carried by Zia from 5<sup>th</sup> July 1977 to 30<sup>th</sup> December 1985. For this reason, the article no 270a became part of the constitution. The previously mentioned RCO was retained as it gave power to the president for dissolving the national and provincial assembly. This particular article became the means for the future presidents to send the assembly packing a whopping four time. Both Nawaz Sharif and Benazir Bhutto became victims of this article. In the similar fashion, the article no 90 was amended countless time to serve particular interests. The Zia era ended with his ultimate demise as he lost his life in a plane crash on the 17<sup>th</sup> of August 1988

### **5.1.3 Amendments in the Era of Nawaz Sharif**

On November 16, 1988, general elections for the seventh National Assembly were conducted. The President called the first meeting on November 30, 1988. On the 3<sup>rd</sup> of December 1988, Mr. Miraj Khalid was elected Speaker of the National Assembly. On the 2<sup>nd</sup> of December 1988, Mohtarma Benazir Bhutto was nominated as Prime Minister of Pakistan and took the oath of office. On August 6, 1990, the President, Ghulam Ishaq Khan, dissolved the Assembly under Article 58(2)(b).

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<sup>69</sup> Syed Mujawar Hussain Shah, *Religion and Politics in Pakistan 1972-1988* (Islamabad: Quaid-i-Azam University, 1996),

On the 24<sup>th</sup> of October 1990, Islamic Jumhoor-i-Itihaad (IJI) won the elections and took over where Bhutto left off. This alliance chooses Mian Muhammad Nawaz Sharif as the prime minister of Pakistan. Thus he took charge on 6 November 1990. Ghulam Ishaq Khan again use his power under the article 582b on Nawaz Sharif and dissolved his parliament .general elections were going to held on 1993 however Supreme Court rejected the presidential orders and reappointed Nawaz Sharif as a PM. The dissension grew and the army stepped in, Which cause both of them to resign from the position. On 1996 it was against used against Benazir Bhutto by farooq Leghori. president Ghulam Ishaq Khan. On the 19<sup>th</sup> of February 1997, he once more came to power and took charge as prime minister. This time he received the overwhelming majority that he desired. But this tenure was also short lived as it came to end at the hand of General Pervaiz Musharraf. Musharraf staged a coup to acquire the power to become the chief executive of the county. During his second tenure, Sharif tried to amend the constitution to deter any aspiring dictator from imposing martial law. But we all know how that turned out for him. Like his predecessor, Sharif was dispatched in the similar by a military dictator. The main amendment in this regard is the target of this study. <sup>70</sup>

When Nawaz Sharif acquired the seat of prime minister for the first time, he enjoyed 2/3 majority which was nonexistent in the tenure of his predecessor. He was able to garner the support of his allays in the form of IJI which consisted of notable political parties such as Jamaat-e-Islami among others. One major factor for this predicament was the establishment's support for him and disdain for Benazir Bhutto. Whereas, his second tenure was the result of his sole election campaign that did not require any political allays. Once more, he was able to achieve 2/3 majority, but this time, he was far more free form any kind of internal or external influence. Nawaz Sharif was always deemed as the pawn of the military yet his political independence and ambitions created a rift between him and his army patrons. Eventually, this rift leads to the coup of 1999. In the meanwhile, Nawaz Sharif went in the similar direction as Zulfikar Ali Bhutto in his quest for granting the prime minister the ultimate power as the chief executive of the country. Such ambitions were becoming a nuisance for the army thus the chief of army staff at that time by the name of General Musharraf seized power through martial law on the 12<sup>th</sup> of October 1999<sup>71</sup>.

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<sup>70</sup> Hamid Yusuf, *Pakistan: A Study of Political Development 1947-97* (Lahore: Sang-e-Meel Publications, 1997),

<sup>71</sup> M. Ahmad, *Tragedy of Benazir Bhutto* (New Dehli: JNU 2008), 171.

Even though, Sharif kept a good relation with military establishment in both of his tenures. Yet he was able to muster up the courage to nullify the dreaded article 58-2(b) through a constitutional amendment. This achievement relied upon the 2/3 majority that remained out of reach for Benazir Bhutto. The Sharif administration passed several other amendments that are in need of mentioning. In this regard, the first ever amendment that was formulated by said government was the 12<sup>th</sup> amendment which was passed in the July of 1991. This amendment addressed the issue of special courts for heinous offences and criminal acts. For this reason, the article 212 (b) was added in the constitution. As mentioned before, Nawaz Sharif was much more independent and bold in his second tenure as the result of zero constraints in the form of political allays. This time, he wanted to make the office of the prime minister as powerful as it was envisioned by Zulfiqar Ali Bhutto. For this purpose, in the April of 1997, he passed the 13<sup>th</sup> constitutional amendment which nullified the 7<sup>th</sup> constitutional amendment passed during the dictatorship of Zia ul Haq. The following articles were amended in 13<sup>th</sup> amendment.<sup>72</sup>

- Article 58 2(b) which gave the power to president dissolve the national assembly was omitted in this article.
- According to the article 101 president shall appoint the governor of each provinces with advice of prime minster,
- In article 243 prime minster advice the president on the appointment of three forces, thus the discretionary to appoint the chief of armed forces was taken away

He also somewhat solved the issue of defection of the members in the parliament through the 14<sup>th</sup> constitutional amendment. This amendment was carried out on the 3<sup>rd</sup> of July 1997. This amendment addressed floor crossing in the parliament by adding article 63-A which stated that any member that wanted to change his loyalty to the party that gave him ticket for the election had to not only resign from said party but from the parliament as well. The army chief of that time was not pleased with this action by the government. Thus he conspired with the president Laghari to dissolve the national assembly but to no avail. Instead, on the 2<sup>nd</sup> of December, Laghari was forced to resign as the president due to political pressure. On the last day of that particular year, Laghari

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<sup>72</sup> M. Ahmad, *Tragedy of Benazir Bhutto* (New Dehli: JNU 2008),



was preceded by Risqué Tarrar who was PML loyalist. With Tarrar on the president seat, Sharif became even more confident and somewhat careless about diminishing role of the military establishment.

One main criticism for the aforementioned amendments in that era pertains to the dictatorial attitude of Nawaz Sharif. As per rules and regulations for the conduct in the parliament, a comprehensive debate is mandatory before reaching a decision to pass a bill. Sharif suspended such formalities that were imperative for democratic business in the house. Such tendencies undermine the spirit and sanctity of the parliament. An argument in the form of an excuse can be made for Nawaz administration that it acted hastily due to impending danger of interference from the military establishment.

Despite all of the above mentioned factors, Sharif developed deference's with the chief justice Sajad Ali Shah, while his dealings with the federal government also entailed personal agenda. To top it all off, in the May of 1998, he allowed the detonation of six consecutive nuclear bombs. This action made him the target of international establishment as well. The United States America in particular was not much pleased with his decision. In the aftermath of

Kargil war, all such decisions came back to bite him. At first he came into direct conflict with Pervaiz Musharraf. And then the US did not come to his rescue when he was forced to relinquish power in the military coup. To simply put, both external and internal variables became the reason for his dishonorable departure on the 12<sup>th</sup> of October of 1999. <sup>73</sup>

#### **1.1.4 Amendments in the Era of Pervaiz Musharraf**

The regime of Pervaiz Musharraf started off as the forth martial law in the history of Pakistan. It lasted from 12<sup>th</sup> of October 1999 to August 19<sup>th</sup> 2008. He did not take over the country through the usage of familiar terms such as martial law or coup, but utilized the euphemism of emergency in order to give proclamation of his actions. Instead of calling himself chief martial law administrator, he stuck with the title of chief executive. This act was challenged by the democratic

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<sup>73</sup> Murtaza Razvi, *Musharraf the Tears of Power* (New Delhi: Harper Collins Publishers India, 2009),

forces under the banner of Nawaz Sharif. In this regard, this issue went to Supreme Court which gave it an extension of three years. This verdict was reached due to the recommendation of the chief election commissioner of that time as he stated that at least two years were in order to prepare for any elections. Thus Musharraf was given the authority to issue orders, ordinances and regulations as per his own accord. But the Supreme Court secured the right to counter check if his any of his actions were against the spirit of the constitution. But in reality, Musharraf was awarded with extra constitution rights that were against the norms of democracy that the original draft of the constitution entailed.

So basically Musharraf was given the power to amend the constitution according to his own will and aspirations. A prime example of this situation is the maneuvers of crafty Musharraf after the 2002 general elections. In the aftermath of those elections, Musharraf influenced the legislative process by installing his cronies in the parliament. Such parties include PML (Q) and MQM among others. He made many amendments in the constitutions in order to fulfill his lust for power. Whereas, after coming to power, his allied parties legitimized his actions through legislation in the national assembly. All of his ordinances, orders and regulations were given official recognition by the legislative assembly through the dreaded 17<sup>th</sup> amendment

As mentioned before, Supreme Court of that era legitimized the unconstitutional actions of Pervaiz Musharraf. After this verdict, president Tarrar was removed in a haste on the 20<sup>th</sup> of June 2001. In the meanwhile, Musharraf became the president and took his place. As stroke of good luck, the incident of terrorism on the 11<sup>th</sup> of September provided Musharraf with external incentive to remain in power. At that particular time, the USA required an ally for war against terror in Pakistan. It also required a dictator in Pakistan in order to provide support of all kinds with optimum efficiency. Thus, the so-called champion of democracy supported the dictator in Pakistan in order to serve its own interests. Some academic may dare to say that the coup of 1999 entailed support from the United States as an insurance policy of the future. The further actions of Musharraf in the regard somewhat strengthen this argument as Pakistan jumped in to that was head on. An agenda based media campaigned declared that war as indigenous endeavor for Pakistan and Pakistani

interest. The other reason entailed the monetary support that Pakistan was receiving for its services<sup>74</sup>.

Like any other previous dictator, Musharraf also wanted to give a democratic cover to his dictatorship. Plus, he was also under international pressure to somewhat ensure democracy in Pakistan. For this reason, on the 30<sup>th</sup> of April 2002, he held a referendum to get consent from the common public of Pakistan. And just like his predecessor, Zia ul Haq, he seemingly won the referendum and got elected as the chief executive for further five years. Needless to say, this referendum like any other referendums in Pakistan was nothing more than a sham to swindle the people. This action was preceded by a legal framework order (LFO) in order to further cement his rule. The main features of that order are as follows:

- The president is to hold the office for five years.
- The seats in the national assembly are to be increased to 342.
- Women will be given 60 reserve seats.
- Minorities will be given 10 reserve seats.
- Article 58 2(b), which was nullified in the 16<sup>th</sup> amendment, is to be revived (This article empowered the president to dissolve the national assembly).
- Article 63A added by the 14<sup>th</sup> amendment is also to be discharged.
- Article 112 2(b) nullified the 13<sup>th</sup> amendment (which was made in order to give the president the power to dissolve the national assembly). This article is also to be discharged.
- The article 140A is to provide legal protection to the newly formed local government system.

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<sup>74</sup> Mahboob Hussain, *Eighteenth Amendment in the Constitution of Pakistan: Success and Controversies* (Toronto: Center of Science and Education, 2012), 12.

- The article 152A was nullified in the 8<sup>th</sup> amendment. This order is to revive said article. In every move made by Musharraf, there was method to his madness. He move in a very calculated manor in order to reach his goal of achieving power. Hence the conduct of the upcoming elections was issued on the 27<sup>th</sup> of February 2002. Subsequently, election were held on the 10<sup>th</sup> on October of the same year. Mir Zafarullah Jamali was elected as the prime minister on the basis of these elections. Even though, Jamali secured the support of 172 members yet he considered himself as a loyal sidekick of Musharraf, whom he regarded as 'Boss'. The major big parties that supported the 17<sup>th</sup> amendment included PML (Q), MMA and MQM.
- Article 41 related to the election of the president was amended. It added a provision in the second paragraph of clause (7) which deterred any member of the assembly from holding any other office of profit. This article was to be put in effect on the 31st of December 2004. Even though, there was no such paragraph (b) present at the time of amendment. Therefore, through LFO, a new clause (8) was added to article 41 in order to meet the requirement. This was followed by a (9) clause that gave authority to chief election commissioner to regulate and conduct the procedure of vote casting and vote counting related to vote of confidence for Musharraf. Both of these provisions were deemed as transitional provisions as the expired after the said procedure.
- In the article 58 of the constitution, a new clause number (3) was added in order to provide formal reference to the supreme court with in the fifteen days after the dissolution of the national assembly due to impositions of article 58 (2) (b). The sub clause (b) in this particular article was previously removed in the thirteenth amendment act of 1997. Whereas now it was reinserted in the within the LFO 2002. The article 112 was also met with similar fate as it covered the dissolution of provincial assembly by the governor of the province. Said article was also nullified by the 17th amendment. To simply put, the supremacy of the president and governor was insured in the oath the federation and

province through this amendment. One may simply call it a martial law that catered to every whim of Musharraf.<sup>75</sup>

- Article 152a was deleted even though it did not hold any matter due being the product of LFO.
- Article 179 entailed the process of substitution of new text in any article of constitution. It was utilized to extend the retirement age of Supreme Court judges by three years as the age limit was already mentioned in the previous draft of the constitution. In the similar manor, article 195 was amended as it pertained to the age of limit high court judges.
- Article 268 entails such enactment within constitution that cannot be touched without an approval form the president. This article applies on both provincial and national assembly. Before the advent of LFO, 24 law within the 6th schedule were protected by the constitution. Whereas, the LFO added 11 more law in the said list. This amendment further limited the protection to the provincial local government ordinances and police order to six years.
- A new text was added to the article 270a. This article was also the product of LFO. It validated all of the unconstitutional amendments made by the LFO in the constitution of Pakistan. Likewise, it also provided a similar cover to the laws made from the 12th of October 1999 to onwards. The major gist of such law addressed the adoption and declaration made by the competent authority such as order and appointments made, proceedings taken and official acts. The article 270A also validated the acts of the presidency as appropriate legislature done by 'competent authority'. In all actuality, the LFO was declared as legislation of similar caliber as it was made by constituent assembly.

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<sup>84</sup> <sup>75</sup> Murtaza Razvi, *Musharraf the Tears of Power* (New Delhi: Happer Collins Publishers India, 2009),

<sup>76</sup> Anwar Shah, *The 18th Constitutional Amendment: Glue or Solvent for Nation Building and Citizenship in Pakistan* (The Lahore Journal of Economics 17, September 2012), pp. 387–392

### 5.1.5 Presidential powers after 18<sup>th</sup> amendment

After 18<sup>th</sup> amendment presidential powers were decreased he ceremonial just a ceremonial head .with reference to the following constitutional article president's power will explained

- In Article 58, the Prime Minister so advises, the President shall dissolve the National Assembly, and the National Assembly shall be dissolved at the expiration of forty-eight hours after the Prime Minister has so advised. article; A Prime Minister against whom a notice of a resolution for a note of no-confidence has been given in the National Assembly but has not been voted on, or against whom such a resolution has been passed, or who is continuing in office after his resignation or after the dissolution of the National Assembly is not included in the definition of "Prime Minister" in this Article
- In the Article 75, of the constitution When the President returns a Bill to the MajliseShoora (Parliament), it shall be reconsidered by the Majlis-e-Shoora (Parliament) in joint sitting, and if it is again passed, with or without amendment, by the votes of a majority of the members of both Houses present and voting, it shall be deemed to have been passed by both Houses for the purposes of the Constitution, and shall be presented to the president.
- In Article 90, (1) Subject to the Constitution, the Federal Government, consisting of the Prime Minister and Federal Ministers, shall exercise executive authority in the name of the President through the Prime Minister, who shall be the Federation's chief executive. (2) The Prime Minister may act directly or through the Federal Ministers in carrying out his constitutional responsibilities.<sup>77</sup>
- **Article 91**, (1) The President shall have a Cabinet of Ministers, led by the Prime Minister, to assist and advise him in the performance of his duties. (2) Unless the President summons the National Assembly sooner, the National Assembly shall meet on the twenty-first day after a general election to the Assembly is held. (3) After the election of the Speaker and the Deputy Speaker, the National Assembly shall, to the exclusion of any other business, proceed to elect without debate one of its Muslim members to be the Prime Minister. (5)

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<sup>77</sup> murtaza Razvi, *Musharraf the Tears of Power* (New Delhi: Happer Collins Publishers India, 2009),

The President shall call upon the member elected under clause (4) to assume the office of Prime Minister, and he shall take an oath in the form set out in the Third Schedule before the President: Provided, however, that there shall be no limit on the number of terms for the office of Prime Minister.

- **Article 101**, In place of clause (1), the following is substituted: "(1) Each Province shall have a Governor, who shall be nominated by the President on the advice of the Prime Minister." It faced stark opposition by democratic force with Pakistan. The support from US somewhat facilitated this regime. But eventually, it came crumbling down like a house of cards. After the general elections held in the February of 2008, PPP came to power while Musharraf became a toothless president. Another reason the departure of this regime was its tussle with supreme judiciary of Pakistan. Both Benazir Bhutto and Nawaz Sharif participated in the movement to restore chief justice Iftikhar Muhammad Chaudary. When this movement picked momentum, the countdown for Musharraf era started. This time, the international establishment aligned itself with the democratic forces which resulted in the restoration of the judiciary along with democratic norms within the country.

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<sup>78</sup> Farzana Arshad, *Re-contextualizing the 18th Amendment: Working of Federalism in Pakistan* (Lahore: Journal of the Research Society of Pakistan, 2012), 17.

## **5.2 Brief Glimpse at the Amendments made after the 18th Amendment**

A brief account of the salient features within amendments that came after the 18<sup>th</sup> amendment is given below.

**5.2.1 The 19<sup>th</sup> constitutional amendment** was carried out in order to deal with the problems that were created by the 18<sup>th</sup> amendment especially related to the judiciary of Pakistan. It dealt with the process of appointment for the judges of Supreme Court of Pakistan. It also changed the number of the members within the parliamentary committee responsible for the appointment of Chief Electoral Officers at Election Commission of Pakistan. Needless to say that the prior movement to restore judiciary and the judicial activism of Justice Iftikhar Chaudhary lead to this amendment. This amendment was presented on 21<sup>st</sup> of December 2010 by the Parliamentary Committee on Constitutional Reforms in the National Assembly. The Amendment was Passed by the National Assembly on December 22, 2010, by the Senate on December 30, 2010 and assented to by the President on January 1, 2011.

**5.2.2 The 20<sup>th</sup> constitutional amendment** was carried out in order to ensure free and fair elections in Pakistan; it targeted the electoral process and the conduct of the election commission. New general elections were to be held in the upcoming year of 2013 thus this amendment was a necessity in order to ensure uncontroversial electoral process. Thus it was passed by the National Assembly of Pakistan on February 14, 2012. It was then moved to upper house, Senate where it was passed on February 20, 2012 and signed by the President on February 28, 2012.

**5.2.3 The 21<sup>st</sup> constitutional amendment** was carried out in the aftermath of the terrorist attack on the Army Public School. It allowed the establishment of the military courts in order to ensure speedy justice for the victims of terrorism and to punish the terrorist in an ample manor for their heinous crimes. It was passed by both the National Assembly of Pakistan and Senate of Pakistan on January 6, 2015, and received the assent of the President on January 7, 2015. The Bill amended the Article 175 and the First Schedule of the Constitution. It also had a self-contained sunset clause, which caused the amendments to expire on January 7, 2017.<sup>88</sup>



**5.2.4 The 22<sup>nd</sup> constitutional amendment**, once more, dealt with the issues related to election commission of Pakistan. The post of election commissioner had become a controversial and politicized affair. Thus this amendments main target pertained to the powers allocated to the Chief Election Commissioner. In order to do so, the procedure entailing the appointment, qualifications and other prerequisites for the chief election commissioner (CEC) and four

members of the Election Commission of Pakistan (ECP) was put under scrutiny. Eventually this process was amended in order to ensure free and fair election that were to be out of the reach for any aspiring manipulating forces. It was passed on the 8th of June 2016.

**5.2.5 The 23<sup>rd</sup> constitutional amendment** was passed to extent the span of military courts by two more years. This means that this extension was to be made null and void on the 6<sup>th</sup> of January of the 2019. As mentioned above, the national assembly formulated the 21<sup>st</sup> amendment in order to create military courts for two subsequent years. Yet the issue of terrorism turned out to be much more severe than the previous expectations. In the main while, this span of said amendment was to expire on 6th of January 2017. Therefore, a new amendment was in order for the extension of such courts. 23<sup>rd</sup> Amendment was passed just for that purpose in order to further re-establish the military courts for the span of next two years. After the passing of the expiration date, all of the amendments were to be nullified automatically. In those circumstances, it was impossible for the regular judiciary to deal with the emerging wave of causes related to terrorism thus this amendment granted legal cover to military courts. The amendment was assented to by President Mamnoon Hussain in March 2017.<sup>79</sup>

**5.2.6 The 24<sup>th</sup> constitutional amendment** was carried out in order to relocate the seat within the national assembly for all of the federating unit functioning in the government. It also gave the relevant electoral authorities the power to update the boundaries of constituencies based on

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<sup>79</sup> Anwer, Khalid. "One System Not Four". *Dawn*, 2018, January 20.

provisional results of 2017. Likewise, it also equipped the parliament with the option to adjust the seats according to the provisional results of the 2017 Census. This amendment did not affect the overall number of the seats in the national assembly of Pakistan. On the other hand a major reshuffling was done in the provinces as Punjab ended up with losing seats, while Balochistan and Khyber Pukhtunkhwa ended up with gaining seats, and Sindh retaining the same number of seats as before.<sup>80</sup>

**5.2.7 The 25<sup>th</sup> constitutional amendment** was a joint venture of the parliament of Pakistan and the Khyber Pukhtunkhwa Assembly that was carried out in the May of 2018. This amendment called for the merger of Federally Administered Tribal Areas (FATA) with the province of Khyber Pukhtunkhwa (KP). This process was long overdue as it resolved many internal and external conflicts of Pakistan and the people those regions were now given the recognition that they deserved and yearned for.

**5.2.8 The 26<sup>th</sup> constitutional amendment** also targeted the issues related to the seats of tribal districts within the national assembly of Pakistan. It entered the affray on May 13th, 2019 and declared that the seats of tribal districts in the National Assembly of Pakistan were to be retained to 12. In the meanwhile their seats in the Khyber Pukhtunkhwa Assembly were to be increased to 24 from the previous number of 16<sup>81</sup>

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<sup>80</sup> Malik, B. A. "18th Amendment and Way Ahead". *Dawn*.2010, April 18.

<sup>81</sup> Anwer, Khalid. "One System Not Four". *Dawn*, 2010, January 20.

<sup>82</sup> Arshad, Farzana, Muhammad Iqbal Chawla and Anjum Zia, "Re-contextualizing the 18th Amendment: Working of Federalism in Pakistan", *Journal of the Research Society of Pakistan*, vol. 55, no. 2 (Jul.-Dec. 2018):

2535.

## CONCLUSION

Pakistani politics has gone through a much checkered constitutional development. In this regard, the 18<sup>th</sup> amendment turned out to be it turned out to be the second major turn on the road towards true democracy. The 18<sup>th</sup> amendment has restored the parliamentary form of government in the country according to the original Constitution of 1973. This amendment entirely repealed the 17<sup>th</sup> Amendment. The President's powers were reduced in several aspects.

For instance, before the 18<sup>th</sup> Amendment, the executive authority of the federation vested in the President who could exercise such authority either directly or through officers subordinate to him (Article 90). However, the amended Article clearly states that the executive authority of the federation is to be exercised by the Federal Government and that the Prime Minister shall be the chief executive of the federation.

Rules of Business are also to be framed by the Federal Government and not the President. The power of the President to delay the Assembly session after the elections and/ or to appoint in his discretion a member of the National Assembly as the Prime Minister who, in his opinion, was likely to command the confidence of the majority of members has been abolished. Now, the Assembly must meet 21 days after the elections and elect a Prime Minister, whom the President must just call upon for assuming office of the Prime Minister.

Under the amended Article, a proclamation of emergency may be issued by the president only after a resolution to this effect has been passed by the Provincial Assembly concerned. If the President has to act in his discretion, the Proclamation has to be placed before Parliament for approval by each House within 10 days. Failing such approval, the declaration shall cease to be effective upon 2 months of its pronouncement. Fundamental rights can still be suspended during emergency under Article 233, but every such order has to be placed before each House of the Parliament separately, thereby giving the Senate a key role in protecting the rights of provinces vis-à-vis undue interference by the Federal Government.

Article 58 was also amended to delete the infamous 2(B), which empowered the President to dissolve the National Assembly in his discretion. After the deletion of 58 (2[b]) and amendment of 58 (1[a]) was added that the National Assembly can only be dissolved on the advice of the Prime Minister or when a vote of no confidence has been passed against a Prime Minister and no other member of the Assembly)) commands the majority of the members as ascertained in a session so summoned. The President reserves the right to be informed on all matters of internal and foreign policy, but he has to act on the advice of the Prime Minister (and his Cabinet) in all important matters. The President now appoints governors, chairmen of Federal Public Service Commission and services chiefs on the advice of the Prime Minister, which is binding.

Furthermore, time limits have been specified for the President to act on the advice of the Prime Minister. The period during which the President has to grant his assent to a bill passed by the Parliament has been reduced to 10 days. The President's power to refer a question to a referendum in his discretion has also been removed. Similar powers of governors in provinces have been reduced likewise.

This amendment is considered a mile stone in the constitutional history of Pakistan. It's not only restored the constitution of Pakistan to its original spirit but also defined the role of parliamentary politics by restoring the provincial and judicial autonomy. It was unanimously acknowledged that the strong units create strong federation. It focused on the establishment of parliamentary form of government rather than a presidential one. For this purpose, it restructured Senate – election commission and judiciary on institutional basis. Even though, it had its flaws yet it paved the way for a democratic future. It insured democratic norms by emancipating the election commission from external influence. It striped the unjustifiable privilege that the presidents had enjoyed in the past. Now the parliament could function without any fear from the president to dissolve the national assembly.

The eighteenth amendment also created new challenges for the policy makers as well. This amendment can be criticized for not disbanding important ministries like Health, Culture and Education. It attracted many controversies in the form of impending danger from the establishment.

In the past, such bold stances taken by the politicians have always merited strict response from other state institutions. Despite this fact, as a whole, it can be labeled as victory for the democratic forces within Pakistan.

## **BIBLIOGRAPHY**

### **Books**

Ahmad, Riaz. *Constitutional and Political Development in Pakistan 1951-1954*. Rawalpindi: Pak American Book (1988).

Bailey, Sydney D. *British Parliamentary Democracy*. Boston: Houghton Mifflin Company, 1966, 18

Govt. of Pakistan. *Constitutional Documents Pakistan Vol. III* (Karachi: Ministry of Law and Parliamentary Affairs, Law Division, 1964).

Jones, Philip E. *The Pakistan People's Party; Rise to Power*. Karachi: Oxford University Press, 2003.

Keeton, George W. *The British Commonwealth: The Development of Laws and Constitution, Vol. 8*. London: Steins and Sons, 1967.

Khan, Hamid. *Constitutional and Political History of Pakistan*. Karachi: Oxford University Press, 2004.

M. Chaudhry, G. *Annotated Constitution of Pakistan 1973*. Rawalpindi: Federal Law House, 2012. Muqem Khan, Fazal. *Pakistan Crisis in Leadership*. Islamabad: National Book Foundation, 1973. Razvi, Murtaza. *Musharraf the Tears of Power*. New Delhi: Harper Collins Publishers India, 2009.

Shah, Syed Mujawar Hussain. *Religion and Politics in Pakistan 1972-1988*. Islamabad: Quaidi Azam University, 1996.

William, L. F. Rushbrook. *Pakistan under Challenge*. London: Stacy International, 1975.

Yusuf, Hamid. *Pakistan: A Study of Political Development 1947-97*. Lahore: Sang-E-Meel Publications, 1997.

Zafar, S. M. *Note of Reiteration*, Report of the parliamentary Committee on Constitutional Reforms, 2010.

Zingel, Wolfgang Peter. *Pakistan in the 80s*. Lahore: Vanguard Books Ltd, 1985.

Zirig, Lawrence. *Pakistan in the 20<sup>th</sup> Century: A Political History*. Karachi: Oxford University Press, 2010.

Zirig, Lawrence. *The Ayub Khan Era: Politics of Pakistan 1958-1969*. Karachi: Paramount Publishing Enterprise 2009.

## **Journals**

Arshad, Farzana, Muhammad Iqbal Chawla and Anjum Zia, “Re-contextualizing the 18th

Amendment: Working of Federalism in Pakistan”, *Journal of the Research Society of Pakistan*, vol. 55, no. 2 (Jul.-Dec. 2018): 25-35.

Arshad, Farzana. “Re-contextualizing the 18th Amendment: Working of Federalism in Pakistan”. *Journal of the Research Society of Pakistan*, 2012: 14-30.

.Burki, Shahid Javed. “The 18th Amendment: Pakistan’s Constitution Redesigned”, *ISAS Working Paper* No. 112 – 3 (September 2010): 1-18.

Hanif, Muhammad, and Muhammad Nawaz Khan, *Eighteenth Amendment Revisited*, in *Eighteenth Amendment Revisited*. Maqsd Hasan Nori and Muhammad Hanif, ed. Islamabad: Islamabad Policy Research Institute, 2011.

Magsi, Amjad Abbas. *Balance of Power at the Centre: The President, Prime Minister & Parliament in Eighteenth Amendment Revisited*. Maqsd Hasan Nori and Muhammad Hanif, eds. Islamabad: Islamabad Policy Research Institute, 2011.

Hussain, Mahboob, and Rizwan Kokab, “Eighteenth Amendment in the Constitution of Pakistan: Success and Controversies”, *Asian Social Science* Vol. 8, No. 1 (January 2012): 81-88.

Islam, Fakhr-ul-. "The 18th Amendment in the 1973 Constitution", *The Dialogue*, vol. 8, no. 2 (2013): 186-197.

Musarrat, Razia. *Constitutional Provisions on Creation of Provinces and suggested Model, in Eighteenth Amendment Revisited*. Maqsood Hasan Nori and Muhammad Hanif, eds.

Islamabad: Islamabad Policy Research Institute, 2011.

Rizwan, Muhammad, Muhammad Arshad and Muhammad Waqar "Revitalization of Parliamentary Democracy in Pakistan under 18<sup>th</sup> Amendment", *Journal of Humanities and Social Science*, vol. 19, no 2 (Feb. 2014): 149-156.

Shah, Anwar. "The 18th Constitutional Amendment: Glue or Solvent for Nation Building and Citizenship in Pakistan". *The Lahore Journal of Economics* 17, September 2012.

### **Newspapers**

Akhtar, Humayun. "Some reflections on the 18th amendment". *Dawn*, 2010, April 4.

Almeida, Cyril. "Change but for the better". *Dawn*, 2010, March 26.

Anwer, Khalid. "One System Not Four". *Dawn*, 2010, January 20.

Ezdi, Asif. "A Flawed Constitutional Package". *The News*, 2010, March 15.

Khan, Tahir Hasan. *18th Amendment: Expectations Run Parallel with Dangers*. *The News*, 2010, April 5.

Hassan, Ahmad. "Parties Strike Accord on 18th Amendment". *Dawn*, 2010, April 1.

Malik, B. A. "18th Amendment and Way Ahead". *Dawn*. 2010, April 18.

Tharani, Hasan. "Letter to the Editor". *Dawn*, 2010, April 5.