

Recent Constitutional Legal Debates, the Latest Constitutional Amendments & Important Legislations, Legal Cases and the Role of Higher Courts.

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Amendments

- **1st:** Redefined the boundaries of Pakistan & removed references to **East Pakistan**. (May 4, **1974**)
- **2nd:** Defined a Muslim and declared the status of **Ahmadis** as minority and 'non-Muslim'. (September 7, **1974**)
- **3rd:** Extended the period of **preventive detention**. (February 18, **1975**)
- **4th:** Decreed additional seats for minorities, it also **deprived courts of the power to grant bail** to any person detained under any preventive detention. (November 21, **1975**)
- **5th:** Widened the scope of restriction on the High Courts. (September 5, **1976**)

Amendments

- **6th:** Provided that Chief Justice of Supreme Court will be retired at the age of 65 and High Court judges at **age 62**. (December 22, 1976)
- **7th:** Enables the Prime Minister to obtain a **vote of confidence** of the people of Pakistan. (May 16, 1977)
- **8th:** Changed Pakistan's government from a **Parliamentary system** to a **Semi-presidential system** by giving the President a number of additional powers. (November 11, 1985)
- **9th:** Bill to impose Shariah law as the supreme law of land. The bill was passed by Senate but could never be passed by National Assembly owing to the latter's dissolution. (1985)
- **10th:** Fixed the interval period between sessions of the National Assembly to not exceed 130 days. (March 29, 1987)

Amendment

- **11th:** Revision of **the reserved seats for women** in the National and the provincial assemblies. The bill was withdrawn (1989)
- **12th:** **Created Speedy Trial Court** for 3 years. (1991) (ineffective in 1994)
- **13th:** Stripped the President of Pakistan of his reserve power to dissolve the National Assembly of Pakistan, and thereby triggering new elections and dismissing the Prime Minister. (1997)
- **14th:** Allowed **members** of parliament to be dismissed if they **defect**. (July 3, 1997)
- **15th:** Bill to impose **Shariah law** as supreme law of land. Was never passed. (1998)

- **16th:** Increased the term appointed for **quota system** as per 1973 Constitution from 20 to 40 years. (1999)
- **17th:** Made changes dealing with the office of the President and the reversal of the effects of the 13th Amendment. (2003)
- **18th:** Removed the power of President of Pakistan to dissolve the Parliament unilaterally. (April 8, 2010)
- **19th:** Provided for the appointment of the Judges of the Supreme Court of Pakistan and made amendments in the number of members of the **parliamentary committee** for the appointment of Chief Electoral Officers at Election Commission of Pakistan. (December 22, 2010)

- **20th:** For Free and Fair Elections. (February 14, 2012)
- **21st:** For Speedy Trial Military Courts to deal with terrorism. (January 7, 2015)
- **22nd:** "civil servants" and "technocrats" have now become eligible for appointment as the CEC and ECP members, in addition to serving or retired judges of the superior courts.
- The bill has set an age limit of 68 years for the CEC and 65 years for the ECP members.
- **23rd** amendment : passed to re-establish the military courts for further two years till 6th January 2019.
- **24th** amendment : delimitation of constituencies on the basis of provisional census results.

8th amendment

- ▶ Nov 1985
- ▶ 58(2)b added ,President empowered to dissolve assembly
- ▶ 1988,1990,1993,1996 president dissolved assembly
- ▶ 13th amendment in 1997 disarmed President to dissolve assembly
- ▶ 12th Oct 1999 Gen Musharaf declared himself Chief Executive, held constitution in abeyance
- ▶ President Tarar was allowed to continue

Musharaf 's era

- Illahi bux Somoro & Zafar Ali Shah challenged suspension of Parliament in SC
- SC Validated takeover and gave 3 years to govt

18th amendments

- Ordinance making may lead to abuse of power by executive,
- 18th amendment in fact doubled the life from 4 months to 8 months
- The power to promulgate ordinances has enabled the executive virtually to usurp the legislative functions of Parliament.
- The executive should have this power only when assembly stands dissolved

18th Amendment

- The 18th amendment enacts more than **100 changes**, both large and small to Pakistan's constitution

18th amendment

- NWFP renamed as **KP**
- 17th Amendment & Legal Framework Order as introduced by Musharaf **repealed**
- ban on **third** time prime minister ship and chief minister ship lifted
- Holding constitution in abeyance is tantamount to **high treason**
- The **council of Common Interest (CCI)** has been reconstituted with the prime minister as its chairperson and the body should meet at least once in 90 days
- A **judicial commission** will recommend the appointment procedure of superior judges and the final names of judges will be decided by **parliamentary commission**
- A **CEC** will be appointed through **consensus** between treasury & opposition
- Establishment of **Islamabad high court** & benches of high courts in Mengora & Turbat

Limits on Presidential powers

- Removing presidential powers to **circumvent** the normal legislative process & limiting the amount of time the president may consider bills passed by parliament before approving them (Article 75)
- **Removing** the **infamous Article 58-2(b)** instituted by President Musharaf, which granted the power to unilaterally dismiss parliament under vague emergency provisions
- Consulting with the outgoing prime minister and opposition leader on **appointments** of caretaker governments to manage the transition to a new government when parliament is dismissed (Article 224)

Greater role for parliament & PM

- Establishes the prime minister & his ministers as the federal government
- Transferred the position of chief executive of the nation from the president to the prime minister (Articles 90 and 99).
- Reduces the requirement for the prime minister to consult with the president to a duty to keep him “informed” of policy matters (Article 46).
- Requires that the president consult with the prime minister—whose recommendations are binding—on all choices for provincial governors (Article 101) and military service chiefs (Articles 243 and 260), though the president remains the office charged with their appointments.
- Removes limits on prime ministers serving more than two terms (Article 91).

Judiciary

- Neither president nor PM will have a direct role in **judicial appointments** under the 18th amendment.
- The appointments will instead be handled by a **two-tier system**—a Judicial Commission will propose nominees and a special **parliamentary committee** split evenly between the government and the opposition will confirm them (Article 175A).
- The seven-member Judicial Commission will be chaired by the **chief justice**, who will effectively control four of the seven seats (with the remaining three comprising the *federal law minister, the attorney general, and a senior lawyer of the Pakistan Bar Council*).

Concurrent List

- The 18th amendment eliminates the “Concurrent List,” where both federal and provincial governments may legislate but federal law prevails. Laws governing marriage, contracts, firearms possession, labour, educational curriculum, environmental pollution, bankruptcy, and 40 other diverse areas will now devolve to the provinces
- with the list eliminated, and each provincial assembly will be responsible for drafting its own laws on the issues

Renaming of NWFP

- Renaming of NWFP as KPK an achievement for Pushtoon Nationalists and identity for the residents of NWFP
- Gave birth to debate for creation of new provinces
- Hazara Movt

Unresolved Questions

- FATA
- FCR

Theme of 20th amendment

- Appointment of CEC and the 4 provincial members of the ECP will be done after reaching a consensus on their names with the opposition leader.
- Tenure increased to five years.
- Appointment of a caretaker PM and CMs in consultation with the opposition leader in the assembly.

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Theme

- The mechanism formulated after negotiations empowers a parliamentary committee comprising 6 members from Treasury and Opposition benches on parity basis to decide the names of the PM and CMs.
In case of no consensus
- If the PM/CM and opposition leader fail to nominate one with consensus, the commission will forward the list of nominees to the ECP, which will make the final appointments to form a caretaker government setup before the elections.

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A Step in Right Direction

- laid the foundation for a powerful election commission which will also act as a barrier to any undemocratic force.
- The decision on election petitions should be made in a timeframe of no more than three months.
- More financial and judicial autonomy for the ECP

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21st amendment

- special measures for speedy trial of offences relating to terrorism, waging of war or insurrection against Pakistan and prevention of acts threatening the security of Pakistan.
- Amended Article # 175
- Efficacy of the ATCs questioned

22nd Amendment

civil servants” and “technocrats” have now become eligible for appointment as the CEC and ECP members, in addition to serving or retired judges of the superior courts.

The bill has set an age limit of 68 years for the CEC and 65 years for the ECP members.

23rd Amendment

- Due to extraordinary situation and circumstances the military courts are established to expedite the disposal of certain offences related with terrorism,

- Judiciary is answerable to nobody
- A judiciary subservient to executive can be disastrous
- Spineless judges have legitimized military rule, thus hampered democratic growth
- On the pretext of public interest our judges encouraged public interest litigation
- Suo motu powers being exercised too frequently

- Intervention of court in cases of “disappearance”
- The judiciary often interferes in cases where it lacks expertise.
- The Pakistan Steel Mills, whose privatisation was blocked in 2006 by the Supreme Court under Iftikhar Chaudhry.
- In short order halted its privatisation cited ‘undue haste’ in the process as one of the reasons for the decision.
- The steel mill’s accumulated liabilities in 2008 stood at Rs26 billion; they are now over Rs415bn, with the government having pumped in Rs85bn.(Judicial Freedom by Irfan Hussain 6th May 2017 ,Dawn)
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Judicial activism

- Interest of courts in cases related to conduct of politicians ,water and sanitation facilities
 - census after 19 years due to a Supreme Court order
 - In a constitutional petition related to clean drinking water and a safe environment for the people of Sindh, the court imposed tough conditions upon the Sindh government, while sessions court officials in the province went around checking educational and healthcare institutions.
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- Orange Line in Lahore allowed
 - The Islamabad High Court and the Supreme Court also intervened in the matter of the Faizabad sit-in.
 - present IG of Sindh Police
 - A Supreme Court order has imposed restrictions on the construction of multi-storeyed buildings in Karachi, due to the limited availability of water. This has caused anxiety amongst the ranks of builders and contractors, who are still pursuing the matter in court.

- Almost every provincial government has made the regulatory apparatus under its control toothless.