

Law Affairs-2
19-1-2024
Friday

Q1: Discuss the significance of major constitutional amendments in Pakistan's political history - How have these amendments shaped the country's legal and political framework?

Introduction

"Constitution is the supreme law of the land"

A set of principles that guide a state and its different organs is called constitution. Whereas an amendment allows laws and policies to be refined over time rather than replaced. The constitution of 1973 has 26 amendments till point. They were made to refine the political system and strengthen democracy in different times in Pakistan. Given Pakistan's checkered history of martial laws and incomplete political cycles, the amendments provided breathing space to democracy. For example regarding the 18th Amendment, Saeed Shafiqat while presenting a paper at Oxford University said.

"18th Amendment has opened new vistas of national integration in Pakistan."

Significance of constitutional amendments in Pakistan's political history:

1974 - 1st Amendment - Redefined boundaries (Acceptance of Bangladesh)

The first amendment in constitution of 1973 redefined boundaries of Pakistan and removed all references to East Pakistan. This was the acceptance of "Fall of Dhaka" tragedy and onset to a new political chapter as Pakistan based on one territory.

1974 - 2nd Amendment - Definition of Muslim, (Reiteration of Islamic Republic principle).

The second amendment declared Qadiyanis / Ahmadis as non-Muslim. This put a rest to the Anti-Ahmadi movement going on in Pakistan ~~for~~ since independence.

1977 - 7th Amendment - Vote of confidence / (Political process supremacy)

The amendment enables the Prime Minister to obtain vote of confidence from the people of Pakistan to continue political processes. This was the last amendment by Z.A. Bhutto.

1985 - 8th Amendment - Article 58(2)b
(Turning point - Shift from Parliamentary to Semi-Presidential form of government)

The parliamentary democracy was threatened and removed/replaced with semi-presidential regime of Zia-ul-Haq. It was the start of Pakistan's difficult challenges of terrorism, insurgency, declining economic conditions and internal security. President had the powers to dissolve National Assembly without PM consent.

1987 - 10th Amendment - Interval period between Senate and National assembly sessions to not exceed 130 days.

Binding the two houses to hold sessions within 130 days of last one helped ensure legislative process is sailing smoothly. The backlog of bills and important decision making was addressed.

1997 : 13th Amendment : Article 58(2)b removed
(Parliamentary democracy restored)

The President was stripped off powers to dissolve National Assembly - This triggered New Election and dismissed the Prime Minister.

1997 : 14th Amendment : No Horse trading
This allowed political parties to hold majority in house in their political tenure and dismiss candidates who tried to sabotage political process through shifting to another party.

2003 - 17th Amendment : ^{Article} 58(2)b reintroduced
(Halt in democratic process)

President Pervez Musharraf, after emergency imposition, got ultimate powers to dissolve NA and rule the country as Chief Executive which was a road away from democracy.

2010 - 18th Amendment - Mini Constitution
(Provided framework for democracy)

Amendment of 103 articles under 18th Amendment yielded many results.

- Removal of ^{Article} 58 (2)(b), stripped presidential powers to dissolve NA unilaterally.
- More autonomy to provinces facilitated the "Devolution plan".
- ~~Federal~~ ~~Government~~ NWFP was renamed as KPK (Khyber Pakhtunkhwa)
- Empowered local governments.

Significance:

- Connection with the democracy
- Abolished the limits to promote sectarianism, racial hatred or hostility, militancy etc and promoted civil rights.
- Minorities were compensated through reserved senate seats.
- Parliament was strengthened through legislative authority.
- Cabinet members were deducted to meet the expense goal of exchequer.
- Set up of caretaker cabinet and election commission to run the system in between political vacuum.

2012 - 20th Amendment - (Caretaker government setup (Free and fair elections)
Equal representation from all political

parties to setup a caretaker setup within 3 days and conduction of free and fair elections through ECP (Election Commission of Pakistan) will help democracy strengthen

2015: 21st Amendment - NAP

(Counterterrorism measures in Pakistan)

Military Courts were set up under sunset clause for two years to deal with terrorism cases - Following APS tragedy (2014), a National Action plan to fight security threats was devised.

2016: 22nd Amendment - Election Commission process (Powers of CEC)

This amendment vested powers in Chief Election Commission for free and fair elections. The retirement ages were also changed. The members in ECP doesn't have to be from judiciary but other representations are also allowed. Therefore the provinces will also represent in the election commission (one member from each province).

2017 : 24th Amendment : Reallocation of Seats in National Assembly.

Following the 2017 consensus, more representation was granted to Khyber Pakhtunkhwa and Balochistan (8 seats reduced from Punjab and 4 seats given to each province in National Assembly).

2018 : 25th Amendment : FATA merger with KPK

The tribal districts got more representation in National Assembly through merger with KPK province. This helped address the grievances of local tribes in FATA region.

Impact on Legal Framework :

→ 3rd Amendment The period of preventive detention was extended thus potential crimes were prevented.

→ 4th Amendment The powers with High Court to grant bail for preventive detention were stripped. This promoted justice in true sense.

- **5th Amendment** | Restrictions on High Court widened - bench and Peshawar high court were separated
- **6th Amendment** | Retirement ages of Supreme Court and High Court judges changed.
- **12th Amendment** | Speedy trial Courts set up for 3 years which helped the backlog cases and justice delivery.
- **18th Amendment** | Judicial Commission was formed which facilitated the judges appointment process.

Conclusion:

The Constitution of 1973 in Pakistan served as the building block of democracy in Pakistan. Further amendments facilitated the political evolution, legal representation and democratic principles establishment in Pakistan. These amendments provided the framework for progress for the country.

Q2: Examine the trajectory of Pakistan's democratic system since 1971. Highlight the critical political and constitutional developments that have shaped it - Additionally evaluate how Pakistan's unique political culture has influence the functioning and evolution of its democratic institutions during this period:

Timeline of Political evolution since 1971:

1971 - Fall of Dhaka

- Yahya Khan overthrown
- Setback to Pakistani Military after tensions between East and West Pakistan
- Civilian Martial law - Z.A. Bhutto became president

1973 - Constitution of 1973

- Bhutto after formulating constitution became Prime Minister of Islamic Republic of Pakistan
- Fazl Elahi as President.
- Nuclear Program start
- Educational Reforms
- Turbulence in Balochistan
- Nationalisation

1977 - PNA formation

- An ~~8~~⁷ parties political alliance to overthrow Zia Bhutto called Pakistan National Alliance
- Martial law declared
- Bhutto arrested / jailed

1979 - Bhutto hanged

- Following controversial trial of corruption in Rawalpindi

1985 Martial law lifted

- M. Khan Jurejo as Prime minister

1988: Zia Plane Crash

- Benazir Bhutto became first female President after Zia-ul-Haq's death

1990: President Ghulam Ishaq sacks Benazir's govt

- On charges of corruption and incompetence, Benazir is dismissed
- 1990's - Benazir Bhutto and Nawaz Sharif gain govt alternatively

1998: Nuclear test conducted

- Pakistan gained Nuclear Deterrence

- 1999 :
- Benazir and husband sent to jail by
 - Nawaz Sharif
 - Kargil war
 - Gen Pervez Musharraf's administered Coup

2003 : Pakistan declared ceasefire
in Pak - India relations

2007 Lal Masjid attack

2008 PPP Government

- Aiyf Ali Zardari as President
- 18th Amendment (2010)

2012 : Supreme Court disqualified
Gilani

- 2013 Nawaz Sharif government

2014 Peshawar attack

2018 : Nawaz Sharif Disqualified

2020 : Covid - 19