



CONSTITUTIONAL AMENDMENTS IN PAKISTAN (2008-2013): IMPLICATIONS FOR THE INSTITUTION OF PARLIAMENT

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ABSTRACT

The constitutional engineering of General Musharraf through the Legal Framework Orders (LFO) and later the 17th Amendment distorted the parliamentary spirit of the political system and weakened the political institutions. After the elections of 2008 resulted in a democratic transition, the democratic forces were again back to the corridor of powers. From 2008 to 2013, a series of three constitutional amendments enacted by the parliament aimed at fortifying the democratic process and institutions. The passage of the constitutional amendments from the 18th to the 20th Amendments through the parliament marked a legislative consensus that led to transformative changes in the governance structure. This paper aimed to explore the impacts of those amendments on the institution of parliament. The main question of this study is to find how the 18th, 19th and 20th Amendments affected the institution of parliament. By nature, this research is qualitative and descriptive. The analysis highlighted that the amendments of the era strengthened the parliament, restored its supremacy and widened its role in the political system. This paper critically examines the implications of the constitutional amendments of the era on the institution of the parliament.

KEYWORDS

18th Constitutional Amendment, Parliament, National Assembly, Senate

INTRODUCTION

Pakistan inherited a federal parliamentary system at the time of its birth. As a British legacy, the system worked in Pakistan with some modification throughout history, except in the Ayub era. The presidential system worked under the Constitution of 1962, but that ended with the end of the Ayub government. The parliamentary structure established under the original Constitution of 1973 (hereafter the Constitution) was disfigured by the military governments through constitutional amendments to monopolize powers and solidify their position (Muhammad, 2010; Burki, 2010; Siddiqi, 2016)

In parliamentary democracy, executive authority is normally vested in the cabinet headed by the prime minister who is collectively responsible to the legislature. The institution of the legislature has to play a central role in the parliamentary system, compared to other institutions. The LFO 2002 and 17th Amendments undermined the primacy of parliament in the political system. These amendments modified Article 58(2)(b) which empowered the president to dissolve the National Assembly (Khan K. A., 2008). These Amendments also empowered the president with discretionary powers to make some crucial appointments (Kennedy, 2005), and the political system was transformed near the presidential within the guise of the parliamentary one (Burki, 2010). Earlier, the 8th Amendment during the government of General Zia had the same impacts, reversed through the Thirteenth Amendment, but the Seventeenth Amendment restored them to the Constitution of 1973. These measures undermined the growth and development of the institution of parliament in the political system (Ozair & Khan, 2017). The elections of 2008 brought democratic forces back to power, and they decided to restore the Constitution to its pre-October 12, 1999 position (Khan, Khan, & Tariq, 2022).

Amendments to the period of research focused on strengthening the parliament as the primary institution in the country, restored parliamentary supremacy and redefined its relations with other institutions. Its roles and powers have been re-designed. It was assigned a significant role in the appointments of judges in superior courts, the Chairman and members of the Elections Commission of Pakistan (ECP), and the caretaker government (Khan, Khan, & Tariq, 2022). This paper examines the impacts of the 18th, 19th and 20th Amendments on the institution of parliament, focusing on the structural and functional implications.

This study consisted of six sections as a whole. The first section belongs to the introduction. The second section deals with a literature review. The third section focused on the theoretical framework. The fourth section elaborates on

the institution of legislature in Pakistan under different constitutions. The fifth is the most important of all the sections as it sorts out the impacts of constitutional amendments on parliament which was the main objective of this study, and was further subdivided into different subsections. The last section deals with conclusion.

LITERATURE REVIEW

The 18th Amendment has been extensively analyzed by the researcher. The literature reviewed highlights the features of the 18th Amendment, its impacts on the federation of Pakistan, fiscal federalism, granting of provincial autonomy, decentralization or devolution of powers and issues in its implementation. Authors like Rabbani (2011), Faiz (2015), and Burki and Faisal (2013) focused impacts of the 18th Amendment on the federation, while Rana (2020) analyzed decentralization and division of powers after the Amendment between the center and provinces, Wolkwitz (2015), Naseem and Mahmood (2019) and Hanif and Hanif (2023) examined issues in the implementation of the 18th Amendment, Ialam (2013) and Burki (2010) described the salient features of the 18th Amendment, Zaman (2016) elaborated the impacts of the 18th Amendment on the provincial autonomy, Zehara and Hashmi (2022) examined the constructive role, cooperation and support of the opposition in the enactment and enforcement of the 18th Amendment. Adil (2020) pondered on the abolition of the Concurrent Legislative List (CLL) and highlighted that central and provincial legislatures still share powers in making legislation on the criminal justice system, criminal procedures and laws of evidence. The author also highlighted the making of laws regarding police, cooperation on the part of federal and provincial governments in the exercise of executive authority for the management of internal disturbances in provinces, the role of the federal government in the enforcement of fundamental rights, and making of laws regarding police which were intact. Ali and Rid (2021) and Osman and Subhani (2016) focused on transferring the Higher Education Commission to provinces. They highlighted issues and problems triggered by the shifting of HEC to the province. The authors argued that there is a need for such a body at the federal level. Iqbal, Mustafa and Arsalan (2021) claimed that despite the granting autonomy to provinces, the situation in Balochistan remained unchanged. The authors highlighted the need to implement the 18th Amendment with a wholehearted effort concerning the proper utilization of natural resources and the protection of fundamental rights there. Samra and Siddiqui (2021) explored the devolution of Zakat and Ushr.

The authors investigated Acts of Punjab, KP, Balochistan and Sindh assemblies. The provincial laws of Zakat have similar things to Nisab and its deduction from banks despite there being a need for an institutionalized mechanism for the collection of Ushr. According to Kamran and Muhammad (2016), the 19th Amendment reversed and neutralized the impacts of the 18th Amendment concerning judicial appointments in higher judiciary. To fill the gap in the existing literature this study is designed to explore the impacts of the constitutional amendments of the era under consideration, on the institution of parliament.

THEATRICAL FRAMEWORK

New Institutionalism is an umbrella term commonly used for Historical Institutionalism (HI), Sociological Institutionalism (SI) and Rational Choice Institutionalism (RCI). These theories provide theoretical perspective for analysis of institutional change. The HI describe the institutions as structures and outcome of the past struggles (Thelan, 1999). Moreover, these are routines, practices and structures inbuilt in organizational structures (Hall & Taylor, 1996). The SI assumes institutions as socially developed norms and scripts (Clemens & Cook, 1999), symbolize common cultural considerations (Thelan, 1999).

The RCI assumes that actors in institutions make collective choices to maximize benefits according to already fixed rules and norms (Peters, 1999). It is basically theory of economics and is widely utilized in political science to analyse the political processes and political institutions. This approach assume institutions as the outcome of rational choices of actors (Stacey & Rittberger, 2003), actors make decisions appraising and ranking of different available options (Downs, 1957), to maximize utility (Wegerich, 2001). The assumptions of RCT are rationality, optimality and self-regarding interest (Abell, 2000).

Elster advocated three modes of RCT i.e. empirical perspective mode, causal mode and functional and intentional mode. It means first the RCT explains background and analyse causes of Phenomena, second defines purpose of phenomena and third is the identification whether the phenomena is the product of intentional desire or belief of actors (Elster J. , 1979). This research will be conducted from the perspective of RCT.

CONSTITUTIONAL DEVELOPMENT AND HISTORICAL EVOLUTION OF LEGISLATURE IN PAKISTAN

Pakistan adopted the Government of India Act 1935 with some modifications as an interim constitution at its birth (Ahmed & Begum, 2015; Khan Z., 2013). The Indian Independence Act of 1947 empowered the Constituent Assemblies (CA) of Pakistan to make a permanent constitution for the countries (Ahmed & Begum, 2015) and exercise all powers, central legislature exercised under the Government of India Act 1935 (Hussain, 2011). The first CA worked till its dissolution in 1954 (Khan & Muhammad, 2016).

The CA passed the Objective Resolution in October 1949 (Kazimi, 2012), the Basic Principles Committee (BPC) was instituted to make recommendations and prepare a draft of a permanent constitution, which submitted two reports but were taken back due to severe criticism. The first and second reports of the Committee recommended a bicameral legislature (Khan, 2011; Rahman, 1973). Bogra became the next PM after the dismissal of Khawaja Nazimuddin's ministry. He successfully evolved a consensus on a new constitutional formula which allocated an equal number of seats to East Pakistan (EP) and West Pakistan (WP) in a bicameral legislature (Javed & Ahmed, 2018), but the CA was dissolved by the Governor General on October 24, 1954 (Ahmad D. R., 2002). The second CA passed "the One Unit Bill" (Khan Z., 2013) and later successfully enacted the Constitution of 1956 (Hussain M., 2011).

The Constitution of 1956 constituted a unicameral legislature consisting of 310 seats, out of which 10 were reserved for women. Seats were equally divided between the EP and WP (Burki, 2010). The members of parliament elected the PM, who along with his cabinet were accountable to the legislature. The Assembly could amend the Constitution with the support of a two-thirds majority (Amir & Ajmad, 2020). The parliament constituted by the Constitution of 1956 was dissolved along with the abrogation of the Constitution in 1958 (Ahmed & Begum, 2015).

The Constitution of 1962 also instituted a single-body legislature at the centre and in provinces. The Assembly consisted of 156 seats, six were reserved for women, and the EP and WP were given equal representation in it (Amir & Ajmad, 2020), elected indirectly by the members of Basic Democracies for five years (Rashiduzzaman, 1969-1970). Its financial powers were also limited. As an institution, the Assembly was weak as it was controlled by the executive, whereas, it lacked checks on the highhandedness of the president (Khalid I. , 2013).

Bhutto, after capturing power, successfully evolved consensus, and the Assembly passed the Constitution of 1973 accordingly. Unlike the previous two constitutions, the Constitution established a bicameral legislature as the Parliament of Pakistan. Both houses of parliament exercised equal powers except the matters of finance in which the lower house dominates. The parliament can amend the Constitution with a two-thirds majority of each House (Adeney, 2012).

All the constitutional documents in Pakistan were the product of the rational choice process. The Government of India Act 1935 was debated and concluded by the members of the British Parliament. The Constitutions of 1956, 1962 and 1973 were the product of collective choice of the rational actors. The Constitution of 1956 was enacted by the CA, after the labour of almost nine years. The draft of the Constitution of 1962 was prepared by a Constitution Commission headed by the ex-Chief Justice Shabuddin while the Constitution of 1973 was enacted by an Assembly elected in the elections of 1970.

IMPACTS OF CONSTITUTIONAL AMENDMENTS (2008 to 2013) ON THE INSTITUTION OF PARLIAMENT

The speaker of the National Assembly constituted the Parliamentary Committee on Constitutional Reforms (PCCR) in 2009 (Burki, 2010). The constitutional amendments of the era were the outcome of rational choice on the part of the actors. The amendments were thoroughly debated by the parliamentarians in the meetings of PCCR and later on the floor of both Houses of Parliament. At the time of preparation of the drafts of the amendments, various options, in the form of proposals from different political parties, were considered and finally, the best were adopted based on consensus (Hamid, 2010). The drafts of the 18th, 19th and 20th Amendments were rationally prepared and approved by the parliament. This study is an effort to analyze the impacts of constitutional amendments regarding the structure, functions and role of the parliament in the political system.

The 18th Amendment and Structural Impacts on the Parliament

The outcome of the removal of the LFOs and the 17th Amendment of Musharraf's era from the constitution resulted in structural changes (Khan, Khan, & Tariq, 2022). It transformed the political system from parliamentary cum presidential to parliamentary system, made the president nominal head of the state, and made the prime minister and his cabinet real executive who are responsible to the parliament, removed the sword of dissolution in the hand of

the president in the form of Article 58(2)b and supremacy of the parliament was reasserted, restored the position of the parliament as a sovereign body in comparison to other branches of government (Muhammad F. , 2010; Noonari & Noonari, 2019; Talbot, 2015). Yet, certain changes in the military regime were kept intact like the expansion of women's representation in parliament in the form of sixty seats and the lowering of voter age from 21 years to 18 years was unaffected by the 18th and other Amendments of the era of study. Four new seats were created to give minority representation in the Senate which increased its strength from 100 to 104. Before the 18th Amendment working days of the Senate were 90 days which were increased to 120. The Senators have more time to work on different matters (The Cons. of Pak. 1973, Article 61). In matters of legislation regarding budget or money bills, the number of days for consideration increased from seven to fourteen. It provided the Senators sufficient time to ponder on it. Likewise, the number of days for the president to sign a bill passed by both houses decreased from thirty to ten days. It reduced unnecessary delays on the part of the president (Javed & Ahmed, 2018). The strength of the cabinet at the federal level is linked with the strength of the NA (eleven per cent of its strength) and one-third of the members of the cabinet should be taken from the Senate.

The Senate was given equal representation along with the NA in the Parliamentary Committee, specifically constituted for the scrutiny and approval of a name, recommended by the Judicial Commission to fill a vacancy of judge in Higher Courts. Furthermore, it was given one-third representation in a specific Committee of the parliament for the scrutiny and selection of Chief Election Commissioner (Khan, Khan, & Tariq, 2022).

The 18th Amendment, Parliament, and its Legislative Powers

The foremost function of the parliament is to make legislation. The 18th Amendment affected the legislative capacity of the parliament, before it the parliament could make legislation on the subject enlisted in the Federal Legislative List (FLL) and Concurrent Legislative List (CLL). The CLL was abolished and some of its subjects were shifted to the FLL, Part II and others were devolved to the provinces. The subjects of the CLL enlisted in FLL Part II were to be managed by the Council of Common Interests, in case the Council failed to settle matters regarding the subjects of Part II of the FLL then the matter transferred to the parliament whose decision in this regard shall stand final (Khiyam & Ahmad, 2020; Khan K. , 2015; The Con. of Pak. 1973, Article 154(7)). As the Constitution of 1973 linked the extent of legislation of the

parliament with subjects included in the FLL, the removal of CLL lessened the legislative powers of the parliament. Nevertheless, the parliament and provincial assemblies still make legislation on matters including criminal laws, criminal procedure and laws of evidence. These subjects are called mixed subjects (The Cons. of Pakistan 1973, Article 142(b); Khiyam & Ahmad, 2020).

The 18th Amendment re-examined the role of parliament in respect of the 6th and 7th Schedules of the Constitution of 1973. Earlier, the parliament required special procedures for amending laws enlisted in these schedules as amendment of the 6th Schedule required prior approval of the president while the 7th Schedule needed two-third majorities (Hanif & Khan, 2014; Parvez, Rauf, & Faiz, 2021). The special character of the laws incorporated in these Schedules was altered by the 18th Amendment, parliament could modify these laws by following the procedure of ordinary laws. These measures enhanced the legislative role of parliament (Khalid I., 2012).

The 18th Amendment conditioned enforcement of emergency in the entire country with the approval of the parliament. Both houses of the parliament must meet for this within ten days (Rahman M. J., 2010-04-13). Similarly, the 18th Amendment endowed the parliament with the power to make decisions on the holding of a referendum. This matter would be decided in the joint sitting of both houses of parliament (Hussain & Kokab, 2012). Earlier the president decided on these matters.

The 18th Amendment replaced “mediation committee” with “joint session of the parliament. The mediation committee was there to resolve the deadlock on a bill between two houses means a house passed a bill while the other rejected it. After the new amendment to resolve a deadlock between the two houses, a joint session of both houses will be held and the bill will be passed with the support of the majority (The Con. of Pak. 1973, Article 71).

The 18th Amendment empowered the parliament to make law regarding the subject not included in the FLL, provided that a provincial assembly passed a resolution and requested it. In this situation, the law shall be applicable in a province whose assembly demanded so. The president promulgated ordinance even if the session of the Senate was in progress. The 18th Amendment prohibited him from this practice; accordingly, he cannot issue an ordinance in case the Senate is in session.

The 18th Amendment, Parliament and holding of Executive Responsible

In the parliamentary system, the executive is responsible to the parliament. Earlier, the executive was accountable only to the lower house, the 18th Constitutional Amendment made the cabinet, headed by the prime minister, answerable to both houses of the parliament i.e. NA and Senate. Different annual reports like the report of Accountant General of Pakistan (The Cons. of Pak. 1973, Article 171), report on the Principles of Policies (The Cons. of Pak. 1973, Article 29), National Economic Council (The Cons. of 1973 of Pak. Article 156) and CCI (The Cons. of Pak. 1973, Article 153) were presented to the Senate (Riaz, Khan, & Cheema, 2020), earlier these reports were tabled in the NA only and not in the Senate.

The 18th Amendment, Parliament and Judiciary

The 18th Amendment introduced a new mechanism for the appointments of judges in Higher Courts. It established a Judicial Commission for the recommendation of one name to fill the vacant position of a judge to a Parliamentary Committee, either approve or disapprove it. The Committee, in case, approved the recommended name forwarded that to the president for appointment (Khan, Khan, & Tariq, 2022). This new mechanism replaced the discretionary role of the Chief Justice in this regard with an institutional mechanism. The Judicial Commission replaced the Chief Justice and Parliamentary Committee with the president in the process of judicial appointments in higher courts (Wasim, 2012). The new mechanism introduced a system of checks and balances, replaced individual discretion with institutional setup and enhanced parliamentary role and oversight in the appointments of judges in higher judiciary. Yet, it does not mean that judicial independence was compromised by the 18th Amendment (Rizvi H. D., 2010-4-11).

The 18th Amendment was challenged in the SC, which passed an order to restructure the Judicial Commission. The Speaker of NA handed over the matter to the PCCR, which recommended the addition of two more senior judges to the Judicial Commission. The parliament enacted the 19th Amendment accordingly and increased the total strength of JC from seven to nine. Judges got a majority in the JC, which almost neutralized the efforts under the 18th Amendment. Moreover, the SC recommended the empowerment of the JC to override the rejection of its nominee by the PC, but that was not endorsed by the parliament. Yet the PC, in case of rejection of a nomination of JC, would provide its reasons (Munir, Khan, & Ahmad, 2021).

The 18th Amendment, Parliament and Elections Commission of Pakistan

The 18th Amendment reformed the process of appointments of Chief Election Commissioner (CEC) in the Election Commission of Pakistan (ECP), enhanced the role of parliament and removed presidential discretion in this matter. According to the new manner, the prime minister after consulting the leader of the opposition in the NA, recommended three names to the Parliamentary Committee, which confirmed one name and forwarded it to the president for appointment (The Cons. of 1973, Article 213). The Committee, composed of equal members from treasury and opposition benches and at least one-third belongs to the Senate, recommends one name to the president for appointments of CEC. The tenure of the CEC was also enhanced from three to five years. Later, the 20th Amendment further modified the mechanism according to which if there is a lack of consensus between the Prime Minister and the Opposition leader, both will submit their separate lists having three names to the Committee, which nominates one name after confirmation to the president for appointment. The reforms introduced by the Amendment strengthened the ECP on one side (Hussain & Kokab, 2012), and parliament got oversight in the induction process into the ECP on the other (Khan, Khan, & Tariq, 2022).

The 18th Amendment, Parliament, and Appointment of the Caretaker Setup

The 18th Amendment introduced a new mechanism for the appointments of the caretaker setup, which was further improved by the 20th Amendment. The 18th Amendment provided that the president would appoint a caretaker prime minister after consulting the outgoing prime minister and opposition leader in NA, yet lack of consensus on their part might cause a deadlock. To avoid such a situation, the 20th Amendment provided for the composition of a Parliamentary Committee. The function of this Committee is to evolve consensus on one name to designate as prime minister from the lists of departing prime minister and leader of the opposition within three days. But if the PC also fails, the matter will be transferred to the ECP, which will decide on the matter within two days and forward the name of one person to the president from the lists of outgoing prime minister and leader of the opposition, on the basis of consensus for appointment as caretaker prime minister (Adil & Afridi, 2020). The parliament got a role in the appointments of caretaker setup through its Committee (The Nation, 2012-2-17).

The 18th Amendment, Parliament and Conditions for Election Candidate

The 18th Amendment removed the presidential discretionary power to define the terms for qualification or disqualification of the parliamentary candidates. Earlier, if a person was convicted of moral turpitude or indulged in giving false evidence, stood disqualified was removed. Moreover, a five-year ban was fixed in case of release from jail, dismissal from service, imprisonment and two years bane for compulsory retirement, and a candidate who has been a bank defaulter or has not paid any utility bills was disqualified (PILDAT, 2010).

Article 63(A) was added to the Constitution, according to which if a member of the parliament violates party guidelines in matters of vote of no confidence, money bill, or election of the prime minister and chief minister, will be disqualified. These measures were adopted to check floor crossing. Yet it resulted in the strengthening of the position of the party leader on its affairs. Similarly, party members cannot cast their vote according to their free will as it binds the party members in parliament to follow party guidelines.

The 18th Amendment, after the general elections, fixed twenty-one days for calling the session of NA. It bound the president to the holding of a session of the Assembly to avoid unusual delaying tactics on his part.

CONCLUSION

The constitutional amendments removed the constitutional engineering of the military dictator and restored it to pre-October 12, 1999, position. It transformed the political system from parliamentary cum presidential to a parliamentary system and restored parliamentary democracy on the other side. The president became a titular head of the state as his discretionary powers were taken away and shifted to the office of the prime minister. He can dissolve NA now on the advice of the prime minister.

Autonomy was granted to the provinces by removing the CLL and devolution of seventeen ministries along with forty subjects to the provinces. It limited the power or capacity of legislation of the parliament. If controversial issues regarding the FLL Part II, are not resolved in the CCI, the matter will be forwarded to the parliament whose decision shall be final. The prime minister and his cabinet were made the real executives who were responsible to the parliamentarians. The cabinet was made answerable to both houses of the parliament instead of the lower house only. Minorities got representation in the Senate, and the working days of the Senate were increased. Different reports which were earlier presented and discussed in NA only, will be placed and discussed in the Senate also and were given due representation in parliamentary

committees for the appointment of judges in judiciary, ECP, and caretaker government.

The role of the parliament was enhanced in the political system. The institutional mechanism was introduced for the appointments in the higher judiciary, ECP, and caretaker set up by which the parliament got a significant role through its committees in the process of these appointments. The 19th Amendment increased the strength of judges in the JC which almost neutralized the efforts under the 18th Amendment, as judges got a majority in the JC and could play a decisive role in the appointments in higher judiciary. The 20th Amendment further improved the process of appointments in the ECP and caretaker setup. The role of the parliament strengthened additionally through PC in these appointments.

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