

## The 18th Constitutional Amendment and Its Impact on Pakistan's Democracy

**Abstract:** As a result of the 2008 general elections, a power transition from the military to the civilians took place in Pakistan. The Pakistan People's Party, after assuming the powers, under its legislative drive restored the 1973 constitution to its original shape. Under the landmark 18th constitutional amendment, federal parliamentary democracy was restored, which ensured autonomy for provinces after removing the concurrent list. It ensured the independence of the judiciary, transparency of the Election Commission of Pakistan, and made arrangements for a peaceful transfer of power under the neutral caretaker government. Through this amendment, provinces were empowered and allowed to legislate on various matters under their jurisdictions. More and more powers were devolved to enhance provincial autonomy and to enable them to unearth their own resources. The present paper examines the 18th amendment and its role in the establishment of a viable federal democratic system based on participatory governance.

**Key Words:** Elections, Federalism, 18th Amendment, Parliamentary Supremacy, Democratic Transition, Provincial Autonomy

### Introduction

At the end of December 2007, the twelfth general elections were due in Pakistan, as the incumbent government, elected in 2002, was scheduled to complete its five-year constitutional term in 2007 (Homayoun, 2011). In response to the massive pressure of political parties, civil society groups, and media, on 11 November, General Pervez Musharraf announced that elections would be held before 09 January 2008. Therefore, to oversee the election process and peacefully transfer the power to the majority party Muhammad Mian Soomro was appointed as the caretaker prime minister, and Mr. Justice Qazi Muhammad Farooq was appointed as the new Chief Election Commissioner of

Pakistan on 15 November 2007. On 28<sup>th</sup> November 2007, General Pervez Musharraf handed over the command of the Army to General Ashfaq Kiyani and took the oath as the President of Pakistan (Khan, 2012). However, due to the tragic death of Benazir Bhutto on 27 December 2007, the elections were postponed to 18 February 2008 (Kanwal, 2011).

As a result of the February 2008 General elections, a power transition from military to the civilian government took place, and Pakistan People's Party came into the corridor of power.

During the 13<sup>th</sup> national assembly (2008-2013), through legislative initiatives, the PPP-led parliament seemed determined to

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restore parliamentary democracy in Pakistan under the 2006 Charter of Democracy (COD). After establishing its government, the former rivals, PPP and PML-N, through consensus, succeeded in passing 116 government and 18 private members bills (PMBs) from the parliament, out of which 94 became laws. Importantly 10 out of 18 private member bills (PMBs) became laws ([FAFEN, 2013](#)). Simultaneously, some meaningful constitutional amendments with far-reaching implications, including the constitutional 18<sup>th</sup> amendment, which brought structural changes in the governance, including; the reshaping of the 1973 constitution, revitalization of parliamentary democracy, and strengthening of federalism ([Hussain, 2020](#)).

### **Charter of Democracy (COD) May 2006: A Consensus Building for the Revival of Democratic Governance in Pakistan**

Earlier during the military government of General Pervez Musharraf, the two mainstream parties, the PML-N led by Nawaz Sharif and Pakistan People's Party headed by Benazir Bhutto in their exile at London, signed the May 2006 Charter of Democracy (COD), in which they pledged to resist against the dictatorship and restore parliamentary democracy in Pakistan (Dawn, 16 May 2006). The charter also outlined the future strategy of two major political parties, PPP and PML-N. It included: the resistance against the dictatorial and military governments, restoration of the 1973 constitution in its genuine shape, the merger of Federally Administered Tribal Areas (FATA) with Khyber Pakhtunkhwa, freedom of press and media, equal rights for the less privileged and marginalized groups including, women and minorities. The charter also provided for women empowerment electoral reforms for the conduct of free, fair, and transparent

elections, including the formation of an impartial Election Commission and a neutral caretaker government, through the mutual consultation of treasury and opposition benches and an identifiable voting system, to reduce corruption and floor crossing in politics ([Memon, 2009](#)).

### **Presidential Elections 2008**

In August 2008, the two major political parties of the country, the Pakistan People Party and Pakistan Muslim League-Nawaz, agreed to remove General Pervez Musharraf from the President's office, either through impeachment or resignation. Subsequently, on 18 August 2008, Pervez Musharraf resigned from the office of president to avoid the humiliation of impeachment. On the resignation of Pervez Musharraf, Asif Ali Zardari, husband of the slain Benazir Bhutto and Co-Chairperson of Pakistan People's Party, with the support of ANP, MQM, and JUI-F, elected as the 11<sup>th</sup> president of Pakistan, Saeed-uz-Zaman Siddiqui, and Mushahid Hussain Syed were the presidential candidatures of PML-N and PML-Q respectively ([Khan, 2012](#)). The political pundits perceived Asif Ali Zardari as a threat and obstacle to the revival of the democratic regime in Pakistan ([Jan 2010](#)). However, on 20 September 2008, in his inaugural address to the Joint session of parliament, Asif Ali Zardari, while rejecting the notion of political analysts, announced that;

*"The first step of his government will be to undo the constitutional changes done by the military regime of Pervez Musharraf and the restoration of parliamentary democracy in Pakistan where parliament would be sovereign, and the president would be subservient to it. As head of the state, I want to make it clear that the president and the government must seek guidance from the parliament in carrying out their duties and responsibilities. We are committed to upholding the supremacy of the constitution, the parliament, and the rule of law.*

*The cardinal principle of governance is the respect of people mandate" (PIPS, 2015).*

To fulfill the dream of Benazir Bhutto and revitalize parliamentary supremacy in the country, the newly elected President Asif Ali Zardari proposed an 'All-Party Committee' to revisit amendments in the constitution (Dawn, 21 September 2008).

### **The Formation of Parliamentary Committee on Constitutional Reforms (PCCR)**

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In December 2009, on the proposal of President Asif Ali Zardari, a multi-party committee to recommend amendments in the constitution was formed. Later on, a resolution was also passed by the national assembly to constitute a parliamentary committee comprised of all the stakeholders. Thus, the Speaker of the National Assembly constituted a 26-members Parliamentary Committee on Constitutional Reforms (PCCR) represented 14 political parties, headed by Senator Mian Raza Rabbani of People's Party, Raja Pervez Ashraf (PPP), Professor Khurshid Ahmad of Jamaat-i-Islami, Syed, Naveed Qamar (PPP), Aftab Ahmad Khan Sherpao Chairman of Pakistan People Party (Sherpao group), Babar Awan, Ishaq Dar (PML-N), Lashkar Raisani, Ahmad Khan Abbasi, Abdur Razzaq Taheem of Pakistan Muslim League (Functional), Ahsan Iqbal (PML-N), Waseem Sajjad, Hamayoun Saif Ullah of PML-Q, Dr. Farooq Sattar of MQM, Rehmat Ullah Kakar of JUI-F, Haji Adeel of ANP, Munir Khan Orakzai from the Federally Administered Tribal Areas (FATA) and Mir Israr Ullah Zehri (A Baloch Nationalist leader) were its other prominent members ([Rizwan et al., 2014](#)).

### **Pakistan's Leap towards a True Parliamentary Democracy**

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Under the chairmanship of veteran politician Mian Raza Rabbani, the parliamentary committee, in a brief period,

anticipated around 80 meetings and enacted 100 amendments covering about 75 subjects. On 31<sup>st</sup> March 2010, the 18<sup>th</sup> amendment was unanimously approved by the parliamentary committee. On 8<sup>th</sup> and 15<sup>th</sup> April 2010, the eighteenth-amendment bill was approved by the National Assembly and Senate, respectively. Finally, on 19 April 2010, the President of Pakistan, Asif Ali Zardari, signed this landmark document. The 18<sup>th</sup> amendment paved the way for the democratic system in Pakistan under the 1973 constitution and stabs to block all the ways for future military interventions, in the past which were used to derail the democratic system (World times, May 2010; see also [Rizwan et al., 2014](#)). While speaking to the media, Senator Raza Rabbani, the architect of the 18<sup>th</sup> amendment, expressed, 'For the first time in the constitutional history of Pakistan, President of the country voluntarily surrenders his powers to the Prime Minister. He added, it is the beginning of a new democratic era in Pakistan based on parliamentary supremacy' (Geo, 2010). The Prime Minister of Pakistan, Syed Yousaf Raza Gillani, while addressing the occasion, commented, 'It is a momentous occasion in the political history of Pakistan, in which a leader willingly transferred his presidential powers to the elected parliament' (Sama, 2010). At the time of signing the document of the constitutional 18<sup>th</sup> amendment, President Asif Ali Zardari stated, "*It is my hope that the doors of dictatorship are closed forever*" (World Times, May 2010). Some of its important aspects are discussed below.

### **Provision to Resist the Military and Dictatorial Regimes**

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The passage of the 18<sup>th</sup> amendment by the 13-national assembly of Pakistan reinstated the 1973 constitution in its original shape. It deleted the name of the military dictator General Zia-ul-Haq from the pages of the constitution. The 12<sup>th</sup> October 1999 military

coup of General Pervez Musharraf was declared unlawful and illegal. It nullified and repealed the Legal Framework Order (LFO) 2002, Chief Executive Orders 2002, and the Constitutional 17<sup>th</sup> amendment passed during the military regime of General Pervez Musharraf. All these developments have been declared as unlawful, illegal, and encroachment of the original constitution; hence there is no place for the remnants of military regimes (World Times, 2010). The Parliamentary Committee on Constitutional Reforms also amended article 6 of the constitution dealing with the matter of high treason. It declared that the abrogation or holding in abeyance or subversion or suspension of the constitution will be considered an act of high treason and would not be validated by any court of law. Furthermore, it provided that any person found guilty under the amended article 6 of the constitution, he/would be added to the list of high treason (Dawn, 2019). As in the past, twice in 1977 and 1999, military dictators, with the collaboration of the judiciary, not only suspended the constitution but also validated their extra-constitutional actions through courts under the law of necessity. Hence, for the prevention of the constitution from such acts, it is provided that high treason would not get any validation from the court, including the high court and supreme court of Pakistan. Thus, under the amended article 6 of the constitution, concrete measures have been taken to close the doors of dictatorship once and forever ([Hussain & Ullah, 2012](#)). Recently in December 2019, after a trial of six years, the former chief of army staff and former president of Pakistan Pervez Musharraf was convicted to death in high treason case under article 6 of the constitution, which established the rule of law and acknowledged the ruling class that no one is above constitution/law of the state (Dawn, 2019).

## **Provision about Fundamental Rights**

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The 18<sup>th</sup> amendment, while dealing with the fundamental rights for the first time, made free education the fundamental right of every citizen from the age of 5 to 16. The amendment established the right to information through the insertion of Article-19A, which provides that every citizen has the right to have access to information in all matters of public importance. The Right to Association; under the 1973 constitution, every citizen has the right to form an organization or association, but through Chief Executive Order No. 24 of 2002, General Pervez Musharraf imposed restrictions on the right of association; however, under the constitutional 18<sup>th</sup> amendment the restrictions on 'Right to Association' has been removed (Crisis Group, 2011).

## **Devolution of Autonomy to the Provinces**

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Provincial Autonomy was a longstanding demand of the leading political parties of Pakistan since independence; however, under the 18<sup>th</sup> amendment, serious measures have been taken to address this issue. It abolished the concurrent list from the constitution, which devolved 40 of the 47 subjects, and handed over 20-25 ministries to the provinces. Hence for the first time since the enactment of the 1973 constitution, federalism has been established in Pakistan in true letters and spirit ([Islam, 2016](#)).

To ensure provincial autonomy, clause 70, 142, 143, 144, 149, 157, 160, 161, 167, 172, 232, 233, and 234 of the constitution have been amended. These clauses gave extensive powers to provinces to deal with the affairs related to the hydroelectric power generation, natural gas, and formulation of the NFC award and legislate on the matters falling within their jurisdiction ([Shah, 2012](#)). As noted by Farhat Ullah Babar; 'The constitutional 18<sup>th</sup> amendment was one of the greatest achievements of all political



parties that addressed the longstanding issue of provincial autonomy. It strengthened federalism, ensured participatory governance, and devolved autonomy to provinces (Babar, 2020).

Since its inception from British colonialism, Pakistan's political trajectory reveals a conflict between federal and provincial governments and inter-provincial tensions over the distribution of authority, resources, and revenue, which promoted some of its most traumatic upheaval, such as the separation of East Pakistan in 1971. Thus, under the 18<sup>th</sup> amendment, the existing arbitrary body the Council of Common Interest (CCI), under the chairmanship of the Prime Minister of Pakistan, was re-organized and strengthened to heal such issues. Instead of meeting at the cabinet division, a permanent secretariat was allocated to the Council of Common Interest at Islamabad, and it was made compulsory for CCI to meet at least once in three months (Cookman, 2010). The national economic council (NEC) has been reformed with an advisory function. It has been assigned the role to review the overall economic condition of the country and to advise the federal and provincial governments to plan accordingly (PIPS, 2015). Moreover, the North-West Frontier Province (NWFP) has been renamed Khyber Pakhtunkhwa, a long-standing demand of Awami National Party (ANP), a Pashtun nationalist party, which they consider as a recognition of their ethnic identities. The spellings of the two provinces, namely, Balochistan from Baluchistan and Sindh from Sind, have been corrected. The 18<sup>th</sup> amendment compensates for the grievances of less privileged provinces, and the other smaller groups, such as the minority community, also gained support by enhancing their seats in the Senate of Pakistan. In the upper house (senate), four additional seats were provided for minority (non-Muslims), one from each province (Cookman, 2010).

### Restoration of Parliamentary Supremacy

Another striking feature of the constitutional 18<sup>th</sup>

the amendment is the revitalization of parliamentary supremacy in Pakistan. Previously, Parliaments were either absent or rubber stamps in the hands of some well-established forces. During the times of military rulers Gen. Zial-ul-Haq (1977-1988) and General Pervez Musharraf (1999-2008), the constitutional 8<sup>th</sup> and 17<sup>th</sup> amendments were passed, which reshaped the original parliamentary constitution of 1973 into a presidential one, which delegated all the powers in the office of president while the prime minister and parliaments remained as a figurehead. However, under the 18<sup>th</sup> amendment, articles 46, 48, 75, 90, 91, 101, 105, 116, 129, 130, 131, 141, 139, 231, and 243 were amended, which once again restored the supremacy of parliament (Shah, 2012). Thus, under the 18<sup>th</sup> amendment, the executive authority was reversed into the parliament previously exercised by the president alone. The constitutional 18<sup>th</sup> amendment repealed Article 58(2b) of the constitution, which curtailed the presidential powers of dissolution of the assemblies. Now under the new legislation, for dissolution of the assemblies, the President has to follow the advice of the prime minister (Cookman, 2010).

Furthermore, under clause 90 of the amended article, the power to appoint Chief of Army Staff, Chief of Air and Naval Staff, Chairman Public Service Commission has been delegated to the Prime Minister of Pakistan, an earlier prerogative of the President. The new arrangement authorized the parliament, the national assembly, and the senate to pass or reject any legislation and bound the president to give his assent to the bill within 10 days instead of 30 days. Moreover, for appointing any provincial governor, the president has to follow the advice of the Prime Minister. A provincial governor could only dissolve the assembly

if the Chief Minister of the concerned province advises him to dissolve the assembly (World Times, 2010).

### The Independence of Judiciary

The original constitution of 1973 empowered the president to appoint judges of the Supreme Court and High Court of Pakistan. That was a controversial procedure and was a question mark on the independence of the judiciary. However, under the new arrangement, for the appointment of superior judges, the Parliamentary Committee on Constitutional Reforms (PCCR) recommended establishing a seven-member judicial commission under article 175 A. The judicial commission is headed by the Chief Justice of Pakistan. Other members included the two seniors most judges, a retired judge of the Supreme Court, a federal law minister, the attorney general of Pakistan, and a senior advocate of the Supreme Court. The judicial commission shall forward a name for approval to an eight-member parliamentary committee constituted from both the government and opposition benches. After confirmation of the name, the parliamentary committee shall forward it to the president for appointment (Report of the Parliamentary Committee, 2010). The 19<sup>th</sup> constitutional amendment has increased the number of members of the judicial commission from eight to thirteen. It also provided that the judicial commission could not resend the nomination of a person whom the parliamentary committee once rejected. However, in case of rejection, the parliamentary committee would have to cite reasons. These amendments brought neutrality in the appointment procedure of apex judges and have reduced the chances of confrontation between executive and judiciary. The then Prime Minister of Pakistan, Yousaf Raza Gillani, called the 20<sup>th</sup> amendment as *"a Gift for the Nation"* (Tribune, 22 December 2010).

### Reformation of the Electoral System

Electoral rigging has hampered Pakistan's democratic progress and eroded its political stability. Successive military rulers in Pakistan, for the survival of their military regimes, rigged national, provincial, and local government elections. These elections resulted in nonrepresentative parliaments/councils, which served as a rubber-stamp in the hands of military rulers. Through constitutional and political reforms, these military rulers not only legitimized their rule but also centralized power in the military administration to suppress other civilian institutions, including the Election Commission of Pakistan. During the eight years of military rule, General Pervez Musharraf gravely eroded the limited independence and impartiality of the Election Commission of Pakistan, reducing the institution to provide a façade of legitimacy to the military regime. The handicap Election Commissioners, through widespread rigging in the local government elections, referendum, and general elections, massively distorted the political system of Pakistan. Pakistan People's Party, after taking charge of the government in 2008, brought extensive reforms in the electoral system of Pakistan in order to create a favorable environment for the conduct of free and fair elections. It put forward a unanimous and consentaneous formula between the treasury and opposition benches for the appointment of the Election Commission of Pakistan and its key officials (Crisis Group, 2011).

### The Election Commission of Pakistan

The Eighteenth amendment undid the electoral legacy of General Musharraf and enhanced the ECP independence by providing a transparent appointment procedure for the Chief Election Commissioner of Pakistan (CEC) and its four other permanent members. Under the new arrangement, the appointment of the

Chief Election Commissioner shall be carried out through mutual consultation between the prime minister of Pakistan and the opposition leader in the National Assembly. They will forward three names, after consultation, for Chief Election Commissioner to the twelve-member parliamentary committee constituted by Speaker of the National Assembly, from both the houses of parliament, having members from both the opposition and treasury benches. Then the parliamentary committee will confirm one name among them. A reputed political observer noted the new ECP appointment mechanism as "*No Parliament no Election commission of Pakistan.*" It also increased the tenure of the Chief Election Commissioner's office from three to five years. The amendment really strengthened the Election Commission of Pakistan and made it more independent and autonomous, which was a long-standing requirement for the conduct of fair and free elections in Pakistan ([Hussain, 2012](#)).

### **The Formation of a Neutral and Impartial Caretaker Governments**

The Electoral trajectory of Pakistan reveals that elections in Pakistan are always disputed, and there has always been a question mark on the role of a caretaker government. Since a neutral and impartial caretaker government, at the national and provincial level, was a sine qua non for the conduct of a free and fair elections, hence, the constitutional eighteenth amendment provides a neutral, fair, and impartial appointment procedure for the caretaker government. In the light of the new legislation, the President must consult the setting (out-going) prime minister of Pakistan and leader of the opposition in the national assembly for the appointment of a caretaker government. In provinces, alike, the procedure is provided for the provincial caretaker government. The new arrangement ensures impartiality during the elections and the transfer of power to the

newly elected representatives ([Rizwan et al., 2014](#)). As one of the political analysts says that there is a huge difference in the mechanism for the appointment of caretaker governments under the eighteenth amendment and the earlier practices. Moreover, he added, in the earlier practices, the candidates for a caretaker prime minister and the ministers were interviewed in army safe houses' (Crisis Group, 2013).

### **Strengthened the Senate (the Upper House of Pakistan's Parliament)**

The parliament, the supreme legislative body of Pakistan, is *bi-cameral*, comprised of two chambers, the Senate and National Assembly. The Senate or *Aiwan-e-Bala* is the upper house, and the national assembly is the lower house of parliament. Members of the national assembly are elected through direct election for a term of five-year, while members of the Senate are indirectly elected by an electoral college, comprised of MNA's and provincial legislatures, through the system of proportional representation by a single transferable vote. Senate enjoys a variety of powers and has a great role in the legislation since 1973 (Javid & Ahmad, 2016). But the eighteenth amendment reformed the structure, role, and powers of the senate. Prior to the 18<sup>th</sup> amendment, the Senate was comprised of hundred (100) members, but under Article 59 of the amended constitution, with four additional seats of minorities, the strength of the senate was increased from 100 to 104. Article 89 provided, as for National Assembly, in case senate is in session, no ordinance will be issued. In the parliamentary committee, for the appointment of apex judges, equal representation is given to the senate, while for the appointment of the Chief Election Commission (CEC), one third members represent the senate in the parliamentary committee. Under article 91, a federal cabinet with ministers of the state are collectively responsible to the national

assembly and senate. Apart from these, reports on Principles of Policy, Council of Common Interest (CCI), NFC award, and report of the auditor general of Pakistan, were previously placed before the national assembly only, are now will be placed before the senate of Pakistan as well (Senate of Pakistan, 2012). Apart, the Senate rules were amended, which explicitly empowered the senate committees to biannually examine budgetary allocations and expenditure. This considerably enhanced the senate's role in overseeing the economic policy and its execution ([Nazeer, 2018](#)).

## **Conclusion**

The 2008 elections put an end to the long spell of General Pervez Musharraf's military regime and revived the civilian rule under Pakistan People Party (PPP). Following the Charter of Democracy (COD), the PPP led a coalition government with the consensus of all stake holders in the parliament successfully passed the milestone 18<sup>th</sup> amendment to the 1973 constitution, which turned Pakistan from a presidential to parliamentary republic. The constitutional 18<sup>th</sup> amendment curtailed the powers of the president and bestowed them on Prime Minister and the Parliament. Under the 18<sup>th</sup> amendment, the executive authority was reversed into the prime minister, which was previously exercised by the president. The constitutional 18<sup>th</sup> amendment repealed article 58(2) b of the constitution, which curtailed the presidential powers to dissolve the assemblies, now under a new arrangement for dissolution of the National assembly, the president has to follow the advice of the prime minister, which is the actual spirit of parliamentary democracy. Under clause 90 of the amended article, the

power to appoint chief of Army staff, chief of Pakistan Airforce and Naval, Chairman Public Service Commission has been delegated to the prime minister of Pakistan, which was earlier prerogative of the president.

The PPP led the government by activating the committee system, establish the culture of consensual politics, which further strengthened parliamentary democracy. The parliamentary committees were constituted from treasury and opposition benches of the parliament. This practice not only acknowledged the role of opposition but also ensured the smooth functioning of parliament. The parliamentary committees play an important role in the appointment of judges, high rank officials of the ECP including chief election commissioner and care taker governments to ensure peaceful transfer of power from one party to another through impartial electoral process.

The amendment redefined the center-provincial relationship in order to strengthen federalism in Pakistan. Besides other changes, by eliminating the concurrent list, the amendment provide greater autonomy to the provinces which transferred forty-seven subjects and 20-25 ministries to the provincial governments. The national revenue was distributed between federal and provincial governments under NFC award while for future under national finance commission the formula was set for resource sharing. As a symbol of parliamentary democracy, the council of common interest (CCI) and national economic council (NEC) was reactivated and strengthened under the chairmanship of prime minister.



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