

## **Non-Executive President in the Parliamentary Democracy: A Case Study of Pakistan in Post-18<sup>th</sup> Amendment Scenario**

Kamran Naseem,<sup>1</sup> Uzma Siraj,<sup>2</sup> & Tatheer Zahra Sherazi<sup>3</sup>

### **Abstract:**

The Parliament of Pakistan passed the 18<sup>th</sup> Amendment in 2010. The discretionary powers of the president were curtailed and role of the elected representatives and the prime minister was enhanced. This study thoroughly investigates the working of the Constitution of 1973 since its inception. An effort is made to deeply examine the 17<sup>th</sup> and 18<sup>th</sup> Constitutional Amendments and the Legal Framework Order (LFO) of 2002. Content analysis of the original texts of the 17<sup>th</sup> and the 18<sup>th</sup> Amendments and the LFO has been conducted as a qualitative study. The background of the 18<sup>th</sup> Amendment is discussed and conclusion is drawn in the light of content analysis of the aforesaid amendments and the LFO. This study endeavors to investigate the reasons behind the shift from the controlled democracy into a non-executive presidential model under the 18<sup>th</sup> Amendment. It is concluded that the 18<sup>th</sup> Amendment ensured a shift from controlled democracy to a genuine parliamentary democracy. The revision in Article 6 and Article 58 will certainly bright the future of parliamentary democracy in the country.

**Keywords:** Pakistan, 1973 Constitution, parliamentary democracy, non-executive president, LFO 17<sup>th</sup> Amendment, 18<sup>th</sup> Amendment

### **INTRODUCTION**

There are two popular models of modern democracy namely; the parliamentary and the presidential. The parliamentary model was introduced for the first time in the history of mankind in England. An absolute kingship continued in England for centuries. The year 1215 was a turning point not only in the constitutional history of England but for the West as well. The British King John signed an agreement on June 15, 1215 known as the Magna Carta. The king's powers were curtailed and the concept of rule of law was introduced. There were 63 Articles in the aforesaid Charter and the most prominent was that "everyone should have access to courts regardless of wealth and background". It was also an obligation of the king to follow the laws of the land in post-Magna Carta scenario (Stefanovska, 2015).

The British Parliament became more powerful and king's influence in the political realm was minimized after the Glorious Revolution of 1688. The British scholars Steven C. A. Pincus and James A. Robinson remarked that "the Glorious Revolution was actually an interlinked series of de facto institutional changes which came from a change in the balance of power and authority and was part of a broader reorientation in the political equilibrium of England" (Pincus and Robinson, 2011). The constitutional and political history of England reveals that king's powers were gradually decreased and powers of the British Parliament were increased. The British Parliament enjoys the sovereignty

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<sup>1</sup> Assistant Professor, Department of Political Science, Government Gordon College Rawalpindi, Punjab, Pakistan. Email: kamrann43@gmail.com

<sup>2</sup> Lecturer, Department of Pakistan Studies, Federal Urdu University of Arts, Sciences & Technology, Islamabad, Pakistan. Email: uzma.siraj@fuuast.edu.pk

<sup>3</sup> Visiting Fellow, Department of Politics & International Relations, International Islamic University, Islamabad, Pakistan. Email: tatheersherazi@gmail.com

while the Constitutional Kingship is not a hurdle in the way of liberal democracy. It is the main reason behind the continuation of this old institution of kingship.

Many countries in the World follow parliamentary model such as; Italy, Japan, Canada, New Zealand, India and Pakistan etc. There are some common characteristics of the parliamentary democracy such as; close relationship between the legislative and the executive branches, nominal role of the head of the state, nomination of cabinet from the parliament, ascendancy of the prime minister, limited separation of power, collective responsibility of the cabinet, election of the leader of the house (the prime minister) by absolute majority etc. However, powers and functions of the legislature, conditions for the prime minister, composition (unicameral or bicameral) and tenure of the legislature and role of the head of the state differs from country to country. It is pertinent to describe that in some states the king is head of the state (e.g. England, Malaysia and Japan etc.) and in some states the President is the head of the state (e. g. Pakistan, India and Bangladesh etc.). There are also different mechanisms for the election and removal of the head of the state in the parliamentary democracy.

This study endeavors to investigate the reasons behind the shift from the controlled democracy into a non-executive presidential model under the 18<sup>th</sup> Amendment. The 18<sup>th</sup> Amendment has been thoroughly examined to investigate the below-mentioned questions. This study focuses on the following question: Which were the salient features of the LFO and the 17<sup>th</sup> Amendment? Why was the 18<sup>th</sup> Amendment introduced? Which were the salient features of the 18<sup>th</sup> Amendment? And how did Pakistan make a shift from the controlled democracy into a non-executive presidential model under the 18<sup>th</sup> Amendment?

### **THEORETICAL FRAMEWORK**

There is bifurcation of head of the state and head of the executive in a parliamentary system and it is a common practice that the prime minister is head of the executive. In some states such as Japan, Malaysia, England, Sweden, Netherland etc., the king is the head of the state enjoying titular powers. It is called constitutional/limited monarchy and the monarch enjoys ceremonial powers under the constitution. The president is the head of the state in some parliamentary democracies such as Pakistan, Bangladesh and India etc.

The term non-executive president is used when the president does not enjoy real powers and is given just a ceremonial role in the state affairs. He is not given any influential role in the policy matters and is given minimal discretionary powers. The president is given 'the legitimate constitutional authority of the state.' The president gives assent to the laws passed by the parliament, receives ambassadors, signs a treaty approved by the parliament etc. These are the ceremonial powers only and the president cannot refuse to do that. The real powers are enjoyed by the public representatives in a parliamentary system. There is too much polarization but the president maintains neutrality and does not belong to any political party. A non-executive president is an emblem of national unity and he also mediates political disputes. The states such as Italy, Malta, Mongolia, Bangladesh, Lebanon, India and Dominica etc. have non-executive presidents (Bulmer, 2017). Pakistan follows a non-executive presidential model in post-18<sup>th</sup> Amendment scenario.

## LITERATURE REVIEW

The 18<sup>th</sup> Amendment was ratified in April 2010 and many people wrote on it from different angles. Raza Rabbani, a veteran politician and the Chairman PCCR wrote a book entitled *Federalism: A Biography of Pakistani Federalism: Unity in Diversity*. He discussed the historical perspective and the Articles addressed under the 18<sup>th</sup> Amendment. Rabbani concluded that the said amendment delegated powers to the real custodian of the federation. He opined that a strong centre is not the assurance of a prosperous Pakistan. The empowerment of the provinces will certainly lead to a successful federation. Rabbani used the term 'participatory federalism' for the 18<sup>th</sup> Amendment (Rabbani, 2012). Seventeen federal ministries were devolved and the Concurrent Legislative List (CLL) was deleted from the 1973 Constitution and its subjects were transferred to the provinces. The implementation of the 18<sup>th</sup> Amendment was a pure technical issue and different problems in the implementation of the 18<sup>th</sup> Amendment were also observed.

Naseem and Mahmmod (2019) wrote on "Implementation of the 18<sup>th</sup> Amendment in Pakistan: An Analysis." They discussed issues such as the Higher Education Commission (HEC), oil and gas exploration, drug regulation, environmental protection, agriculture, Workers Welfare Fund (WWF) and Old-Age Benefits Institution (EOBI) in the post-18<sup>th</sup> Amendment period. The authors concluded that the subjects enumerated in the Federal Legislative List (FLL)-II should be decided at the forum of the Council of Common Interest (CCI) and the federal government should avoid taking unilateral decisions. The CCI should fully utilize its conflict resolution modus operandi to facilitate and resolve the emerging issues. The provinces should learn from experiences regarding the devolved functions. Rana examined the salient features and some of the implementation issues of the 18<sup>th</sup> Amendment. He observed that Pakistan's bureaucracy creates hindrances in the way of transfer of resources and powers to the lower level. Rana concluded that "...eventually less than one-third of the functions and departments of dissolved ministries were actually devolved to provinces" (Rana, 2020).

Ahmed viewed that the 18<sup>th</sup> Amendment reversed the LFO and the 17<sup>th</sup> Amendment and redesigned the power structure of Pakistan. One-third of the Constitution of 1973 was addressed, genuine parliamentary democracy was ensured and discretionary powers of the President were curtailed. He also discussed some issues in the implementation of the said Amendment. Ahmed opined that the 18<sup>th</sup> Amendment ensured provincial autonomy and transferred powers to the provinces but the provinces did not devolve powers in real terms to the local bodies, envisaged under Article 140-A (Ahmed, 2020). The scholars have already discussed the 18<sup>th</sup> Amendment from different angles and the present study fills the gap in the literature of the aforementioned topic.

## PARLIAMENTARY DEMOCRACY IN PAKISTAN: HISTORICAL BACKGROUND

Pakistan came into being on August 14, 1947 and Government of India Act was ratified as the Interim Constitution of Pakistan (ICP). Some amendments were brought in the 1935 Act and the powers of the centre were added. It will not be wrong to say that no serious endeavor was done between 1947 to 1956 to decentralize powers to the provinces (Callard, 1957). Under the 1935 Act, the Governor General enjoyed extensive powers including the residuary powers. It is pertinent to mention that the Governor General also enjoyed abundant powers and influential position under the ICP. A well-known justification is given that only a strong central government could tackle the

initial problems of a newly born state. The centre kept its tight control over the political, administrative and fiscal matters of the country (Shah, 1994). The centre also meddled in the provincial matters and even dissolved the provincial governments. Pakistan's first Constituent Assembly (CA) was dissolved by the Governor General Ghulam Muhammad in 1954 and that was restored by the Sindh High Court. However, the federal government entered a writ petition in the Federal Court which gave the decision in favor of the Governor General.

The elections of the Second CA were held in 1955 and Choudhary Muhammad Ali was elected as the Prime Minister. He took keen interest in framing the new Constitution of the state. The new Constitution was ratified on March 23, 1956 and it contained 234 Articles. The federal structure of the state was continued and the parliamentary system was introduced where the President was the head of the state, having a titular role to play. The commander-in-chief of Pakistan army General Ayub Khan imposed martial law, toppled the Government of the Prime Minister Feroz Khan Noon on October 7, 1958 and also abrogated the Constitution of 1956. The military takeover blocked the democratic process and weakened the federal structure of the State of Pakistan. It also created distrust in the minds of the citizens of the Eastern Wing. Ayub centralized powers in his hands and Pakistan looked like a unitary state (Kundi and Jahangir, 2002). He ratified the Constitution of 1962 and introduced the presidential system which was suitable to him.

Ayub resigned from the office of the President of Pakistan on March 25, 1969 and General Yahya Khan imposed martial law in the country and abrogated the Constitution of 1962. He held first general elections in the country in 1970. Regional politics was at its peak in the 1970s elections as Awami League emerged as the single largest political party in the Eastern Wing and Pakistan Peoples' Party as the largest party in the Western Wing. The political tussle between the leadership of both the wings and Pakistan-India War of 1971 caused the separation of East Pakistan on December 16, 1971. Yahya Khan gave resignation on December 20, 1971 and handed over power to Zulifqar Ali Bhutto (Rizvi, 2013). Bhutto became the civilian chief martial law administrator and also started working with political leadership to design a consensus-based constitution of Pakistan.

### **Constitution of 1973 and Aftermath**

The parliamentary political parties showed political consensus and unanimously cast votes in favor of the Constitution of 1973. Pakistan's new Constitution was ratified on August 14, 1973 and it was the first time that directly elected representatives made the constitution (Jaffar Ahmad, 1990). The main characteristics of the said Constitution were; federalism with true spirit of parliamentary democracy, bicameral legislature, Islamic characteristics and independent judiciary etc. The Islamic provisions were also inserted in the 1973 Constitution and Islam was declared as the official religion of the state. The President was not given the discretionary powers and was bound under Article 41 to act upon the advice of the Prime Minister. On 5<sup>th</sup> July 1977, General Zia ul Haq toppled the elected Government of Prime Minister Zulifqar Ali Bhutto and suspended the Constitution of 1973. Ziaul Haq implemented the Provisional Constitutional Order (PCO) on 24<sup>th</sup> March 1981 (Malik, 1997). He restored the 1973 Constitution on 2<sup>nd</sup> March 1985 under Revival of the Constitution Order (RCO). The 8<sup>th</sup> Amendment (1985) was incorporated in the Constitution of 1973 and some crucial powers were transferred from the office of the Prime Minister to the President. The decisions made by the military government were exempted from the judicial review. The said amendment made a shift from a true parliamentary democracy to a controlled democracy. The 13<sup>th</sup>

Amendment (1997) reversed the 8<sup>th</sup> Amendment and abolished the discretionary powers of the President and once again office of the Prime Minister was made powerful.

### **The Legal Framework Order 2002 and 17<sup>th</sup> Constitutional Amendment**

General Pervaiz Musharraf overthrew the elected Government of the Prime Minister Nawaz Sharif on 12<sup>th</sup> October 1999, suspended the Constitution of 1973 and implemented the PCO. The Supreme Court of Pakistan gave its judgment in the case titled “Zafar Ali Shah versus Pervaiz Musharraf” in favor of Musharraf and empowered him to amend the Constitution of 1973”. Musharraf had the utmost desire to secure himself before the restoration of the Constitution of 1973. On 22<sup>th</sup> August 2002, he implemented LFO and brought changes in the Constitution of 1973 including Article 58 (2) B (power of the President to dissolve the National Assembly) and shifted some crucial powers from the office of the Prime Minister to the office of the President. Article 112 (2-B) was also revived where the Provincial Governor could dissolve the Provincial Assembly by using his discretionary powers. The voters’ age limit was reduced from 21 years to 18 years, seats of the Senate (the Upper House) were increased to 100 and seats of the National Assembly (the Lower House) were also increased to 342 (Legal Framework Order, 2002).

Musharraf introduced a new local government system in the country and gave it the constitutional protection. Article 140 (A) was inserted in the Constitution and Local Government Ordinances of the four Provinces were put under the Sixth Schedule of the 1973 Constitution. It was quite interesting that Musharraf usurped powers at the central level and devolved some provincial powers to the local bodies to satisfy the common man. The National Security Council (NSC) was established under the chairmanship of the President through insertion of a new clause 152 (A). The chiefs of armed forces were members of the said council and military’s influence was dominant over the civilian authority. However, Article 152 (A) was removed under the 17<sup>th</sup> Amendment on the demand of the opposition. The insertion of Article 270 (AA) legalized all the decisions done by the Chief Executive/President Musharraf. The Sixth Schedule of the Constitution of 1973 was also amended and some new laws were inserted that could not be amended or revoked without the prior approval of the President (Legal Framework Order, 2002). Musharraf successfully endeavored to subordinate the Constitution of 1973 to the will of an individual through the introduction of the LFO. The revival of Article 58 (2-B) gave the discretionary power to the President to dissolve the National Assembly and sack the federal government (Khan, 2017). The restoration of the said Article was just like a sword and it certainly weakened the status of the elected Prime Minister.

Musharraf followed the practice of former military dictators; Ayub and Ziaul Haq and decided to hold referendum on 30<sup>th</sup> April 2002 after which he was easily elected as the President. He put a question to the voters on the ballot that: “do you want to make General Pervaiz Musharraf as the President of Pakistan for the next five years for the continuation of the system of the local government, establishment of democracy, continuation of democracy and reforms, elimination of sectarianism and extremism and attainment of ideals of Quaid-e-Azam?” (Khan 2017, 484).

Musharraf manipulated referendum 2002, used government’s machinery and received more than 97 percent votes. The general elections were held in the country on 10<sup>th</sup> October 2002. Musharraf supported the Pakistan Muslim League Quaid-e-Azam (PML-Q) and Mir Zafarullah Jamali was

elected as the Prime Minister. According to Anthony Bell, “the opportunity to withdraw is triggered when the regime encounters political difficulties consolidating its authority and faces off against a revitalized civilian opposition which requires the regime to wield to the military as an instrument of repression” (Bell, 2014). Musharraf accommodated Muthida Majlis Amal (MMA) the opposition in the Parliament, to gain support to pass the 17<sup>th</sup> Amendment. Both the sides agreed upon certain points such as; establishment of the NSC under the Act of Parliament, removal of local government laws from the Sixth Schedule of the Constitution of 1973, termination of extension in judges service, Musharraf’s vote of confidence from assemblies and imposition of sanction on the President to use Article 58 (2-B) and President’s consultation with the Prime Minister. Musharraf’s detachment from the Pakistan army by December 31, 2004 was also a part of the said agreement. The passage of the 17<sup>th</sup> Amendment manifested that the army had upper hand over the subservient civilian institutions (Alam, Bhatti and Alvi, 2020). The Parliament of Pakistan passed the 17<sup>th</sup> Amendment in December 2003 on the desire of Musharraf who wanted to secure his rule and policies. Under the said Amendment, the following Articles were amended such as; Article 41, 58, 112, 152-A, 179, 195, 243, 268 and 270-AA (The Seventeenth Constitutional Amendment Act, 2003).

According to the Article 41, the Parliament and the four provincial assemblies were the Electoral College for the election the President. The said procedure of the election did not suit to Musharraf and Article 41 was amended in this regard. The paragraph ‘B’ was inserted in Clause 7 of Article 41 under the LFO. The 17<sup>th</sup> Amendment legalized the election of Musharraf as the President through insertion of Clause 8 in Article 41. Under amended Clause 8, the election of the President was ‘not to be call in question in any court or forum on any ground whatsoever’. The amended Clause 9 of Article 41 empowered the Chief Election Commissioner of Pakistan to conduct the proceedings of vote of confidence of Musharraf (The Seventeenth Constitution Amendment Act, Article 41). Clause 8 and Clause 9 were temporary provisions and were applicable only for vote of confidence of Musharraf as the President and were deleted under the 18<sup>th</sup> Amendment.

The LFO 2002 restored the discretionary power of the President to dissolve the National Assembly through the insertion of Clause 2 (B) in Article 58. Under the 17<sup>th</sup> Amendment, a new Clause 3 was added in Article 58 which made it mandatory for the President to refer the matter to the Supreme Court within fifteen days in case of dissolution of the National Assembly. The Apex Court had to make its judgment within thirty days under the amended Clause 3 of Article 58. The LFO also restored Clause 2 (B) of Article 112 and restored the discretionary power of the Provincial Governor to dissolve the Provincial Assembly. Under the 17<sup>th</sup> Amendment, Clause 3 was added in Article 112 and the Governor had to refer the matter to the Supreme Court ‘with the previous permission of the President’ within fifteen days of the dissolution of the Provincial Assembly. The Supreme Court had to make its decision within thirty days under the amended Clause 3 of Article 112 (The Seventeenth Constitution Amendment Act, Article 58 and 112).

Under the LFO, a new Clause, ‘A’ was inserted in Article 152 to establish the NSC but it was omitted under the 17<sup>th</sup> Amendment. The LFO amended Clause 1 of Article 179 and increased three years in the retirement age of the Judges of the Supreme Court, from sixty five years to sixty eight years. The 17<sup>th</sup> Amendment restored the previous age of retirement (65 years) of the Judges of the Apex Court. Likewise, the retirement age of Judges of the High Court was increased from sixty two to Sixty five through the revision of Article 195 under the LFO. Yet, the previous age of retirement (sixty two

years) of the Judges of the High Court was restored under the 17<sup>th</sup> Amendment. The LFO gave discretionary power to the President to appoint chiefs of the armed forces through insertion of Clause 3 in Article 243. The 17<sup>th</sup> Amendment revised the said clause and the President's discretionary powers to appoint the chiefs of the armed forces were reversed and now it was mandatory for him to consult the Prime Minister. Under the said amendment, Article 268 was addressed and the Provincial Local Government Ordinances and the Police Order 2002 were given constitutional protection for a period of six years (The Seventeenth Constitution Amendment Act, Article 152, 179, 195, 243 and 268).

Musharraf implemented the LFO and later on also brought amendments in it through the Chief Executive Orders. The LFO inserted Article 270-AA and its text was revised under the 17<sup>th</sup> Amendment. All the decisions, laws and policies made by Musharraf since 12<sup>th</sup> October 1999 were validated under the said clause. The LFO was an endeavor to undermine the supremacy of the Parliament and to maintain the superiority of the top military rank in the country. It is significant to point out that the LFO was not put before the Parliament for the approval. However, Musharraf and his team claimed that the LFO became part of the Constitution under Article 270-AA.

The 17<sup>th</sup> Amendment did not touch the following Articles which were amended/added/alterd under the LFO such as; Article 17, 51, 59, 62, 63, 63-A, 70, 71, 73, 75, 101, 140-A, 199, 203-C, 209, 218, 224, 260, 270-B and 270-C. Twenty nine Articles were added/amended under the LFO and became part of the Constitution of 1973 out of which twenty were not touched under the 17<sup>th</sup> Amendment. The Clauses of only nine Articles such as; Article 41, 58, 112, 152-A, 179, 195, 243, 268 and 270-AA were addressed under the said amendment (Khan, 2017). Musharraf introduced the 17<sup>th</sup> Amendment to attain three main objectives. First, Musharraf successfully and easily legalized his decisions, laws and policies made by him since 12<sup>th</sup> October 1999. Second, the position of the prime minister was undermined because the said amendment limited the application of Article 63 (A). Third, the discretionary powers of the President were enhanced (Muhammad, 2011).

### **THE 18<sup>TH</sup> AMENDMENT AND THE PARADIGM SHIFT**

Pakistan's two former Prime Ministers late Benazir Bhutto and Nawaz Sharif signed an agreement known as the Charter of Democracy (CoD) in London in May 2006. The main agenda of the CoD was restoration of the Constitution of 1973 in prior 12<sup>th</sup> October 1999 position including the revival the true parliamentary system, removal of the discretionary powers of the President and the Governor, empowerment of the provinces and announcement of the National Finance Commission etc. Pakistan's ninth general elections were held in 2008 and the Pakistan People's Party (PPP) and the Pakistan Muslim League Nawaz (PML-N) formed a coalition government at the federal level. A Special Parliamentary Committee on Constitutional Reform (SPCCR) was instituted under the headship of Senator Raza Rabbani. The SPCCR comprised 27 members, belonging to different political parties and its main purpose was to recommend amendments in the 1973 Constitution in the light of CoD, the LFO and the 17<sup>th</sup> Amendment (Naseem and Amna, 2019). The SPCCR took ample time, thoroughly studied the 1973 Constitution and designed a proposed draft of the amendment. The 18<sup>th</sup> Amendment was passed by both Houses of the Parliament (the National Assembly and the Senate of Pakistan) with a clear margin. The President of Pakistan, Asif Ali Zardari gave the assent to the Amendment Bill on 19<sup>th</sup> April 2010 (Daily Times, April 20, 2010). The

18<sup>th</sup> Amendment reexamined and overhauled the Constitution of 1973 as one hundred and two articles out of total two hundred and eighty articles were addressed.

The 18<sup>th</sup> Amendment reversed the LFO and the 17<sup>th</sup> amendment and also inserted new clauses in the Constitution of 1973 which strengthened the parliamentary system and the federation of Pakistan as well. The military dictators abrogated the constitution twice, the Constitution of 1956 by Ayub Khan and the Constitution of 1962 by Yahya Khan. However, under Article 6 of the 1973 Constitution, the abrogation was declared as high treason. Pakistan's military dictators; General Ziaul Haq and General Musharraf did not abrogate but suspended the 1973 Constitution respectively in 1977 and 1999. The 18<sup>th</sup> Amendment secured the 1973 Constitution from suspension through substitution of Clause 1 of Article 6. The amended article states: "Any person who abrogates or subverts or suspends or hold in abeyance, or attempts or conspires to abrogate subvert or suspend or hold in abeyance, the Constitution by use of force or show of force or by any other unconstitutional means shall be guilty of high treason" (The Constitution of 1973, Article 6).

The amended Article 6 brightened the future of democracy in the country. It is worth mentioning that if a person is found involved in the conspiracy against the 1973 Constitution, he will be guilty of high treason under the said Article. The constitution of each state is a sacred document and it should be amended through the constitutional means. Article 41 describes the qualifications, procedure and Electoral College for the President of Pakistan. The LFO and the 17<sup>th</sup> Amendment addressed the said Article and paved the way for Musharraf to become the President of Pakistan. The 18<sup>th</sup> Amendment deleted certain words of Article 41 and restored its former position.

The 17<sup>th</sup> Amendment gave discretionary power to the President to dissolve the National Assembly under Article 58 (2 B). The 18<sup>th</sup> Amendment addressed the said Clause and reversed the discretionary power of the President (The Eighteenth Constitutional Amendment, 2010). The said Clause was inserted in the 1973 Constitution under the 8<sup>th</sup> Amendment (1985) and it caused political instability in the country. The National Assembly was dissolved by the President in 1988, 1990, 1993 and 1996. It is worth mentioning that not a single National Assembly (from 1985 to 1997) completed its tenure of five years. The said Clause was a sword hanging over the heads of the Prime Minister and the directly elected representatives. The 13<sup>th</sup> Amendment 1997 reversed Clause 2 (B) from Article 58 and it was again inserted in the Constitution under the 17<sup>th</sup> Amendment. The removal of Clause 2 (B) from Article 58 will certainly boost the confidence of the elected Prime Minister and it will also be helpful in smooth functioning of the parliamentary democracy in the country. In pre-18<sup>th</sup> Amendment scenario, the Provincial Governor could dissolve the Provincial Assembly by using his discretionary power, 'subject to previous approval of the President' under Article 112 (2-B). The Governor's discretionary power was reversed under the 18<sup>th</sup> Amendment.

Article 62 and Article 63 address the qualifications and disqualifications of members of the Parliament. Under the original text of the 1973 Constitution, there were very few qualifications and disqualifications. However, qualifications and disqualifications were added and substituted in Article 62 and 63 under the RCO and the LFO. The texts of Article 62 and 63 were substituted under the 18<sup>th</sup> Amendment. Article 70 troughs light on the introduction and passing of a Bill in both Houses of the Parliament. Under the LFO 2002, a Mediation Committee was instituted through Amendment in Article 71. It stated: "Both Houses of the Parliament shall, within fifteen days from the date of referral of the Bill by the House in which it was originated for consideration and



resolution by the Mediation Committee under Clause (2) of Article 70 nominate eight members each as member of a Mediation Committee” (The LFO, 2002, Article 71).

The text of Article 71 was omitted and the said committee was abolished under the 18<sup>th</sup> Amendment. In pre-18<sup>th</sup> Amendment scenario, the period for the presidential assent of a Bill, passed by the Parliament was thirty days under Article 75 which caused unnecessary delay in the ratification of laws. The 18<sup>th</sup> Amendment addressed the said Article and reduced the presidential assent period from thirty days to ten days and it will certainly speed up the law-making process. The Governor of a Province is the representative of the Federal Government and is appointed by the President under Article 101. In pre-LFO scenario, the Governor was appointed by the President on the advice of the Prime Minister. Under the LFO, the said Article was amended and the Governor was to be appointed by the President after consultation of the Prime Minister. The LFO undermined role of the elected Prime Minister and enhanced role of the President in this concern. Under the 18<sup>th</sup> Amendment (Article 101), the Governor is appointed by the President on the advice of the Prime Minister.

General Musharraf usurped powers at the federal level and devolved some provincial powers to local governments under Provincial Local Government Ordinances 2001. Under the LFO, Clause-A was added in Article 140 to grant constitutional status to local bodies. The 18<sup>th</sup> Amendment addressed Article 140 and a new Clause (A-2) was inserted where the responsibility of holding the elections of local government was put on the Election Commission of Pakistan. In the post-18<sup>th</sup> Amendment period, it was expected that the provinces will devolve administrative, political and fiscal powers to the local bodies but the provinces showed reluctance to do that. Article 199 (jurisdiction of the High Court) was addressed under the LFO and text of Clause (4-A) was amended. The 18<sup>th</sup> Amendment also substituted the text of Article 199 (4-A) that was inserted under the LFO. The Supreme Judicial Council (SJC) was empowered under the LFO (amended Article 209) to hold an enquiry regarding the misconduct of the Judges through its own motion. The 18<sup>th</sup> Amendment substituted the text of Clause 5 of Article 209 and conferred power to the SJC “to take notice of a case of the judge who is incapable of performing the duties of his office by reason of physical or mental incapacity or has been guilty of misconduct”. It is pertinent to mention that the Judges of the Superior Courts can only be removed through the reference made by the President of Pakistan.

The 18<sup>th</sup> Amendment addressed Article 218 and introduced a new composition and procedure for the appointment and removal of the Chief Election Commissioner (CEC) and members of Election Commission of Pakistan (ECP). The tenure for the CEC and the members is five years and they can be removed from the office in the same manner that is followed for the removal of the Judges of the Superior Courts. The said amendment provided an opportunity to the ECP to work in an independent atmosphere without taking pressure from the executive branch. Under the amended Article 224 (revised under the 18<sup>th</sup> Amendment), if the Assembly (National or Provincial) completes its fixed tenure, the new elections would be held within sixty days. The 18<sup>th</sup> Amendment designed a new mechanism for the caretaker Prime Minister and caretaker Chief Minister of a Province. If the National Assembly completes its tenure, the President in consultation with the Prime Minister and the Opposition Leader in the outgoing National Assembly, would appoint caretaker Prime Minister under Article 224. Likewise, the Governor would appoint caretaker Chief Minister in consultation

with the Chief Minister and the Opposition Leader in the outgoing Provincial Assembly. It has enhanced role of the elective representatives. The immediate family members (children and spouse) of the caretaker Prime Minister including members of the federal cabinet and the caretaker Chief Minister including members of the provincial cabinet cannot participate in elections under Article 224. Under the LFO, Article 270-AA was inserted and its text was revised under the 17<sup>th</sup> Amendment. All the decisions, laws and policies made by Musharraf since 12<sup>th</sup> October 1999 were validated under the said Clause. The 18<sup>th</sup> Amendment revised Article 270-(1)-AA and all the decisions/policies/laws made by General Musharraf and protected under the 17<sup>th</sup> Amendment were declared as illegal.

Table 1: Articles of the LFO and the 17<sup>th</sup> Amendment, addressed under the 18<sup>th</sup> Amendment

<b>The LFO 2002</b>	<b>The 18<sup>th</sup> Amendment</b>
Article: 17, 51, 59, 62, 63, 63-A, 70, 71, 73, 75, 101, 140-A, 199, 203-C, 209, 218, 224, 260, 270-B and 270-C.	Addressed
Article: 260 and 270- C	<b>Not Addressed</b>
<b>The 17<sup>th</sup> Amendment 2003</b>	
Article: 41, 58, 112, 152-A, 179, 195, 243, 268 and 270-AA <b>Note:</b> These Articles were also part of the LFO	Addressed
Article 152-A, 179, and 195	<b>Not Addressed</b>

Source: Author's own assessment based on original texts of the LFO, the 17<sup>th</sup> and the 18<sup>th</sup> constitutional amendments.

The above table shows that majority of the Articles which were amended through the LFO and the 17<sup>th</sup> Amendment, were addressed under the 18<sup>th</sup> Amendment. The said Amendment also addressed some other important issues which are beyond the scope of this study such as; provincial autonomy, revision in the legislative lists, transfer of seventeen federal ministries to the provinces, National Finance Commission and the Council of Common Interest etc.

## CONCLUSION

A consensus-based Constitution of 1973 envisaged a model of true parliamentary democracy. The prime minister and the parliament enjoyed real powers and the president had a ceremonial role to play. General Zia ul Haq imposed martial law in 1977, suspended the 1973 Constitution and restored it in 1985 through the RCO with the insertion of 8<sup>th</sup> Amendment. The said Amendment increased discretionary powers of the president and undermined role of the prime minister. It caused political instability in the country in the decade of 1990. The 8<sup>th</sup> Amendment was reversed under the 13<sup>th</sup> Amendment in 1997 and the discretionary powers of the president were reversed and true parliamentary democracy was restored. General Musharraf imposed martial law in the country on 12<sup>th</sup> October 1999 and suspended the Constitution of 1973. He brought changes in the 1973 Constitution through the LFO 2002 and the 17<sup>th</sup> Amendment 2003 and legalized his policies/decisions/laws.

General Musharraf remained successful in rewriting the Constitution of 1973. The LFO and the 17<sup>th</sup> Amendment undermined role of the elected prime minister and increased discretionary powers of the president. Pakistan could not be called a model of genuine parliamentary democracy in the presence of the LFO and the 17<sup>th</sup> Amendment. The 18<sup>th</sup> Amendment was designed keeping in view the past political and constitutional history of the country. The SPCCR took enough time in

preparing the draft of the 18<sup>th</sup> Amendment and the political parties showed broad harmony. Both Houses of the Parliament passed the said Amendment with a clear margin. The 18th Amendment is a paradigm shift in the political landscape of Pakistan.

The Constitution of 1973 was suspended twice (in 1977 by Zia and in 1999 by Musharraf). This study concludes that the 18<sup>th</sup> Amendment revised Article 6 and declared the suspension and conspiracy against the 1973 Constitution as unconstitutional. It will check the military adventure in the future and will certainly strengthened parliamentary democracy in the country. The 18<sup>th</sup> Amendment reversed the discretionary powers of the president, reversed Article 58 (2-B) and enhanced role of the elected prime minister. The said amendment ensured a non-executive president model in Pakistan.

### References:

- Ahmad, S. J. (1990). *Federalism in Pakistan: A constitutional study*. Karachi: Pakistan Study Centre.
- Ahmed, I. (2020, Sep. 4). *The 18th Amendment: Historical Developments and Debates in Pakistan*. ISAS Insights, No. 641. <https://www.isas.nus.edu.sg/wp-content/uploads/2020/09/EDITED-Insights-641-Imran-HS-converted.pdf>
- Alam, S., Bhatti, M. N., & Alvi, A. S. (2020). Civilianization of military rule in Pakistan: A study of Musharraf Era (1999-2005). *Pakistan Social Sciences Review*, 4(2), 150-63.
- Bell, A. (2014, Jun. 10). Military derangement from politics: The case study of Pakistan's revolving barracks door. *Georgetown Security Studies Review*. <https://georgetownsecuritystudiesreview.org/2014/06/10/military-disengagement-from-politics-the-case-of-pakistans-revolving-barracks-door/>
- Bulmer, E. (2017). *Non-Executive presidents in parliamentary democracies*. Stockholm: International Institute for Democracy and Electoral Assistance. <https://www.idea.int/sites/default/files/publications/non-executive-presidents-in-parliamentary-democracies-primer.pdf>
- Callard, K. (1957). *Pakistan: A political history*. London: Oxford University Press.
- Khan, H. (2017). *Constitutional and political history of Pakistan*. Karachi: Oxford University Press.
- Kundi, M. A., & Jahangir, A. M. (2002). Federalism in Pakistan: Problems & Prospects. *Asian & African Studies*, 11(1), 37-48.
- Legal Framework Order, 2002. (2002). [http://www.pakistani.org/pakistan/constitution/musharraf\\_const\\_revival/lfo.html](http://www.pakistani.org/pakistan/constitution/musharraf_const_revival/lfo.html)
- Malik, I. H. (1997). *State and civil society in Pakistan: Politics of authority, ideology and ethnicity*. London: Macmillan Press Ltd.
- Muhammad, F. (2011). Exploring power politics and constitutional subversions in Pakistan: A political and constitutional assessment in Pakistan. *Loyola University International Review*, 7(2), 229-40. [https://www.luc.edu/media/lucedu/law/students/publications/ilr/pdfs/mohammed\\_constitution.pdf](https://www.luc.edu/media/lucedu/law/students/publications/ilr/pdfs/mohammed_constitution.pdf)
- Naseem, K., & Mahmood, A. (2019). Implementation of the eighteenth amendment: An analysis. *Pakistan Vision*, 20(1), 1-18.
- Pincus, S. C. A., & Robinson, J. A. (2011, Jul.). *What really happened during the glorious revolution?* (Working Paper 17206). National Bureau of Economic Research, Cambridge. <http://www.nber.org/papers/w17206>

- Rana, M. A. (2020). Decentralization experience in Pakistan: The 18th constitutional amendment. *Asian Journal of Management Cases*, 17(1), 61-84. <https://journals.sagepub.com/doi/pdf/10.1177/0972820119892720>
- Rizvi, H. A. (2013). *The first ten general elections of Pakistan: A story of Pakistan transition from democracy above rule of law to democracy under rule of law (1970-2013)*. Islamabad: PILDAT.
- Shah, S. M. H. (1994). *Federalism in Pakistan: Theory and practice*. Islamabad: National Institute of Pakistan Studies.
- Stefanovska, V. (2015, Dec.). The legacy of Magna Carta and rule of law in the Republic of Macedonia. *SEEU Review*, 11(1), 197-205.

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