

CONSTITUTIONAL MAZE

18TH AMENDMENT

MUHAMMAD AMIR SOHAIL



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Chapter 1: (Introduction)

1.1. The Reclamation of the Constitution through 18th Amendment.

The Constitution of Pakistan was suspended twice by known military dictators namely Generals Zia-ul-Haq & General Pervaiz Musharaf and after their regime; the constitution was revived by Benazir Bhutto Government and Nawaz Sharif Government. The earlier had a parliamentary structure while the later was a presidential form of Government. The 1973 Constitution [1] was drafted by an elected parliamentarians of Pakistan, who geared the nation towards the parliamentary form of Government. Not long after its declaration, the constitution of Pakistan experienced various reviews by Ayub Kahn; Yahya Khan; Fazal Illahi Ch; Ghulam Ishaq Khan; Farooq Laghari; Muhammad Rafiq Tarar; Zulfikar Ali Bhutto Government, trailed by Majles-i-shura of President Zia-ul-Haq, Prime Minister Muhammad Nawaz Sharif and thereafter the President General Pervaiz Musharaf; Asif Ali Zadari; Mamnoon Hussain and Dr Arif Alvi .

In 2008; the general elections were held by General Pervaiz Musharraf and out of the result of the elections; the Pakistan People's Party (PPP) emerged as ruling party.[2] Mr. Pervaiz Musharaf left the Government and Mr. Asif Ali Zardari was elected as President of Pakistan. In 2009, the Pakistan People's Party government constituted a Constitutional Amendment Committee for suggestion on proposed amendments with a precise goal to re-establish the 1973 constitution to its originality and its belief. The constitutional Amendment Committee consists of 26 individuals; who were selected from all major political parties, which finalised a consensus draft of constituent amendments. The said amendments were passed unanimously on 8th and 15th of April, 2010. The process of amendments ended up on April 19, 2010; after approval of the President [3] of Pakistan. Thereafter on May 4, 2010; the legislature [4] constituted an eighteenth Amendment Implementation Commission. [5] The Eighteenth Amendment faces the present and future stake of all the provincial governmental hierarchy with the undertaking to executing the same in true letter and spirit. [6] The politicians of the country considered a political milieu which is familiar with federalisation of organs of all government level i.e. Federation. [7] In order to understand it would be appropriate to go through the previous

constitutional provisions:

1.2. Constitution of Pakistan 1956:

On March 23, 1956; the first constitution was promulgated. Pakistan's status as a domain finished and the country was declared an Islamic Republic of Pakistan. The Constituent Assembly of Pakistan turned into the interim National Assembly Immediately and Governor General Iskander Mirza was elected as the 1st President of Pakistan.

One of the primary objects of the Constitution of Pakistan was its Islamic character. The president, who was required to be a Muslim of not less than 40 years old. The Objectives Resolution was made preamble of the Constitution. The Constitution of 1956 formed parliamentary type of government with a unicameral system of assembly. The Constitution perceived the idea of One Unit, and the seats were separated similarly between the two sides of the country. Accordingly the parameter of doctrines of equality was introduced. For the first ten years, five extra seats were held for ladies for both side of the parts of the country. National Assembly was to meet at least two times in a year with not less than one session at Dhaka. The Constitution unfold direct elections under adult franchise. Every citizen having age of 21 was allowed to vote in the general elections.

The Constitution of 1956 turned out to be short in duration as on 7 October 1958, President Iskander Mirza while organising resistance through a rebellion movement against the then Government had annulled the constitution of Pakistan, applied the military law forcibly and announced the General Muhammad Ayub Khan as the Chief Martial Law Administrator of the Pakistan. [8]

1.3. constitution of Pakistan 1962:

The 1962 constitution form of government the President was the leader of the state and the leader of the Government. The basic age for the president was thirty Five years and he couldn't hold the government for two successive terms and the first term, was of five years.

Standard of Basic Democracy was presented without any precedent for the nation and the arrangement of indirect election was introduced. Only 80,000 Basic Democrats were allowed to vote in the presidential decisions. The Eighteenth Amendment later broadened this number to 120,000. Half of them were to be from the Eastern side, the rest from the Western side of the country.

According to the Constitution of 1962, the Executive [9] was not separated from the Legislature. The President enjoyed veto power in the administrative matters and could even veto a bill passed by the National Assembly with a 2/3 rd. majority. He can re-promulgate the ordinances as and required and when the Assembly is not in session.

The President can dissolve the National Assembly. There was a federal government list of subjects over which the provinces had no authority and power. Governors [10] were to enjoy a similar position in the provinces, as President was to enjoy in the federation.

Both Urdu and Bengali languages were made the national dialects and English language was declared as the official dialect of the nation for the initial ten years. In the wake of accepting responsibility as Prime Minister, Chaudhry Muhammad Ali alongside his associates worked day and night to define the constitution for

Pakistan. [11]

1.4. CONSTITUTION OF PAKISTAN 1973.

1.4.1. “Chronology of the Constitution of 1973”.

i. “April 14, 1972: The first session of the National Assembly of Pakistan in the State Bank Building, Islamabad. 142 members took oath.

ii. April 15, 1972: Draft-Interim Constitution laid before the National Assembly of Pakistan April 17, 1972: The Interim Constitution was adopted and 25- member Constitution Committee was appointed to prepare a draft of the Constitution of Pakistan by 1 August, 1972. Mr. Mahmud Ali Kasuri was the nominated Chairman.

iii. April 22, 1972: First meeting of the Constituent Committee was held. August 14, 1972: The first meeting of the National Assembly of Pakistan as 'the Constituent Assembly'. Mian Mahmud Ali Kasuri moved a motion for extension of time for submission of a draft of constitution by the Constitution Committee up to the 31 of December, 1972. The motion was adopted on 16 August, 1972.

iv. October 9, 1972: Mian Mahmud Ali Kasuri vacated the Chair of the Constitution Committee and Mr. Abdul Hafeez Pirzada was unanimously elected to Chair the Committee October 9, 1972: Mian Mahmud Ali Kasuri vacated the Chair of the Constitution Committee and Mr. Abdul Hafeez Pirzada was unanimously elected to Chair the Committee.

v. October 17-20, 1972: In view of the impending constitutional discussions, President Zulfikar Ali Bhutto invited the leaders of all Parliamentary parties and groups. Subsequently a Constitutional Accord was signed on 20 October, 1972, which settled major issues pertaining to the future Constitution. To the extent that there has been dissent, the relevant minutes

were appended as 'Note of Dissent.' December 31, 1972: The draft-Constitution presented in the National Assembly of Pakistan by Mr. Abdul Hafeez Pirzada.

vi. February 2, 1973: The bill to provide a Constitution for the Islamic Republic of Pakistan was formally introduced. [12]

vii. February 17, 1973: Debate and discussion on the Constitution Bill started that continued in 34-sittings.

viii. April 10, 1973: The National Assembly (Constituent Assembly) passed the Constitution of 1973 with 125 votes.

ix. April 12, 1973: The President of Pakistan authenticated the Constitution of 1973 as passed by the National Assembly of Pakistan.

x. August 14, 1973: The Constitution of 1973 was enforced.” [13]

“No Constitution in the world is ever perfect. All Constitutions undergo transformation through amendments in the light of a nation's experience. But no Constitution is ever workable without the patience, the tolerance, the search for accommodation that is necessary to the preservation of democracy.” [14]

1.5. The Constitutional Committee that drafted the Constitution of 1973.

Chairman:

Mr. Abdul Hafeez Pirzada (NW-129, Karachi).

Members:

1. Malik Sikandar Khan (NW-125, Dadu)
2. Mr. Ghulam Mustafa Khan Jatoi (NW-113, Nawabshah)
3. Mr. Mahmud Ali Kasuri (NW-60, Lahore).
4. Malik Mohammad Jafar (NW-27, Rawalpindi)
5. Syed Qaim Ali Shah, (NW-114, Khairpur)
6. Dr. Ashraf Abbasi, (NW-143, Sindh)

7. Dr. Ghulam Hussain, (NW-32, Jhelum)

8. Begum Nasim Jahan, (NW-141, Punjab)

9. Ch. Barkatullah, (NW-83, Multan)

10. Malik Mohammad Akhtar, ((NW-58, Lahore)

11. Ch. Jahangir Ali, (NW-39, Sargodha)

12. Maulana Kausar Niazi, (NW-75, Sialkot)

13. Mr. Khurshid Hasan Meer, (NW-26, Rawalpindi)

14. Mrs. Jennifer Jehanzeba Qazi Musa, (NW-144, Balochistan) 15. Sheikh
Mohammad Rashid, (NW-61, Lahore)

16. Maulana Mufti Mahmood, (NW-13, Dera Ismail Khan)

17. Mr. Amirzada Khan, (NW-10, Mardan)

18. Khan Abdul Qaiyum Khan, (NW-4, Mardan/Hazara)

19. Mr. Mohammad Haneef Khan, (NW-11, Hazara)

20. Prof. Ghafoor Ahmed, (NW-132, Karachi)

21. Maulana Shah Ahmad Noorani Siddiqi, (NW-134, Karachi)

22. Mr. Niamatullah Khan Shinwari, (NW-12, Kohat)

23. Sardar Shaukat Hayat Khan, (NW-30, Campbellpur)

24. Mian Mumtaz Mohammad Khan Daulatana, (NW-84, Multan) Islamabad
December 30, 1972.

Dr. Mubashir Hasan, Mr. Ghulam Mustafa Khar, Mr. Miraj Khalid and Mr. Mumtaz Ali Bhutto; who were appointed to the Committee by the National Assembly resigned from membership of the Committee during its final session on account of other responsibilities connected with their Government offices. Mr. Ghous Bakhsh Bizanjo also resigned during the last session of the Committee. Malik Mohammad Jafar, Ch. Jahangir Ali, Ch. Barkatullah, Malik Sikander Khan and Mrs. Jennifer Jehanzeba Qazi Musa (the Father of Mr. Justice Qazi Faiz Aysa; now the judge of Supreme Court of Pakistan [15]) were appointed as members in their place.

The Constitutional Committee [16] that drafted the Constitution of 1973
Chairman: Mr. Abdul Hafeez Pirzada (NW-129, Karachi).

Members:

1. Malik Sikandar Khan (NW-125, Dadu).
2. Mr. Ghulam Mustafa Khan Jatoi (NW-113, Nawabshah).
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The National Assembly accorded the 1973 Constitution on April 10, 1973, and it happened on August 14. Mr. Bhutto assumed charge as the Prime Minister of Pakistan and Fazal Ilahi Chaudhry was selected as the President of Pakistan. The Constitution was again parliamentary in nature and the President is to be the Head of the State. The leader of the Government, as stated by the Constitution of 1973 [17], is the Prime Minister. The Prime Minister and his Cabinet are

accountable to the National Assembly. The Prime Minister will be elected by the members of the National Assembly with the majority vote. A Muslim can only be a President and should be over 45 years old and is to be elected by a joint session of members of the Parliament and the Senate. He can be re-elected; however can't hold office for in excess of two terms. Under Chapter 1 of the constitution; it is the duty of the Prime Minister to communicate all decisions of the cabinet and all information relating to administration of affairs of Federation or any other matter taken by Prime Minister or the cabinet. The President can be disqualified on the grounds of physical or mental insufficiency or impeached on charges of violating the provisions of the Constitution of Pakistan or gross misconduct. The President will appoint the Attorney General, Judges of Supreme Court of Pakistan and High Courts [18] of the provinces, and the Chief Election Commissioner. The 1973 Constitution set up a bicameral council at the Centre comprising of two Houses, the National Assembly and the Senate.

The National Assembly comprised of Two hundred seats; which are now 342 seats, 272 of which are directly elected, 60 are reserved for women and a further 10 for religious minorities and are to be chosen directly for five years. The President on the advice of the Prime Minister can dissolve the National Assembly.

The Senate is comprising of 63 members and now 102 members are in the present senate; every province is to choose 14 individuals initially. In the Provincial Government, every province will have a Governor nominated by the President.

The Provincial Assembly for every province comprised of 240 seats for the Punjab, 100 seats for Sindh, 80 seats for N W F P, and 40 seats for Baluchistan initially and now 22 seats for Baluchistan; 8 seats for FATA; 4 seats for federal capital; 23 seats for KPK; 22 seats for Punjab; and 23 seats for Sindh . [19]

The 1973 Constitution guaranteed a free and independent Judiciary. The

Constitution ensured a fundamental privilege to the citizens of Pakistan; to be secured/protected by law, and forced two obligations on them, loyalty to the Pakistan and submission to the law. The other important organs of the constitution of Pakistan 1973 are the National Finance Commission (NFC) [20], Council of Common Interests (CCI) and National Economic Council (NEC).

There are 25 constitutional amendments which are introduced in the constitution of Pakistan 1973. It contained some noteworthy constitutional amendments. The following is the comparison of Articles of different era.

1.6. Comparison Table of Provisions (1973; 1962; 1956; 1950; 1935) [21]

(1973)	Articles	(1962)	(1956)	(1950)	(1935)
1	The Republic and its territories.	1	1	1	1 & 5
2	Islam to be State religion.	—	—	—	—
2A	The Objective Resolution to form part of substantive provisions.	—	—	—	—
3	Elimination of exploitation.	—	—	—	—
4	Right of individuals to be dealt with in accordance with law, etc.	2	—	—	—
5	Loyalty to State and obedience to Constitution and law.	3-4	—	—	—
6	High treason.	—	—	—	—
7	Definition of the State.	5	3 & 23(1)	12	—
8	Laws inconsistent with or in derogation of Fundamental Rights to be void.	6	4	13	—
9	Security of person.	6(I.1)	5(2)	21	—
10	Safeguards as to arrest and detention.	6(I.2)	7	22	—
11	Slavery, forced labour, etc., prohibited.	6(I.3)	16	23	—
12	Protection against retrospective punishment.	6(I.4)	6	20(1)	—

13	Protection against double punishment and self-incrimination.	—	—	20(2)(3)	—
14	Inviolability of dignity of man, etc.	—	—	—	—
15	Freedom of movement, etc.	6(I.5)	11(a)	25	—
16	Freedom of assembly.	6(II.6)	9	19	—
17	Freedom of association.	6(II.7)	10	19	—
18	Freedom of trade, business or profession.	6(II.8)	12	19(1)	298(1)
19	Freedom of speech, etc.	6(III.9)	8	19	—
20	Freedom to profess religion and to manage religious institutions.	6(IV.10)	18	26	—
21	Safeguard against taxation for purposes of any particular religion.	6(IV.11)	21	27	—
22	Safeguards as to educational institutions in respect of religion, etc.	6(IV.12)	13	28	—
23	Provision as to property.	6(V.13)	11(b)	31	298
24	Protection of property rights.	6(V.14)	15	300A	299
25	Equality of citizens.	6(VI.15)	5(1)	14	—
26	Non-discrimination in respect of access to public places.	6(VII.16)	14	15(2)	—
27	Safeguard against discrimination in services.	6(VIII.17)	17	15(1)	—

28	Preservation of language, script and culture.	6(IX.18)	19	—	—
29	Principles of Policy.	7	—	39	—
30	Responsibility with respect to Principles of Policy.	8	—	37	—
31	Islamic way of life.	8[1A]	25	—	—
32	Promotion of local Government institutions.	—	—	—	—
33	Parochial and other similar prejudices to be discouraged.	8[2]	26	—	—
34	Full participation of women in national life.	—	—	—	—
35	Protection of family, etc.	—	—	—	—
36	Protection of minorities.	8[3]	27	29	—
37	Promotion of social justice and eradication of social evils.	8[4,6,7,8,13, 19 & 20]	28	38	—
38	Promotion of social and economic well-being of the people.	8[9,10,11,12 ,15 & 18]	29	38	—
39	Participation of people in armed forces.	8[17]	31(1)	—	—
40	Strengthening bonds with Muslim world and promoting international peace.	8[21]	24	51	—
41	The President.	9 & 10	32	52 & 54	—
42	Oath of President.	11	215	60	—

43	Conditions of President's office.	—	42	78	—
44	Term of office of President.	12	33	56	—
45	President's power to grant pardon, etc.	18	209	72	295
46	Duties of Prime Minister in relation to President.	—	42	78	—
47	Removal or impeachment of President.	13	35	61	—
48	President to act on advice, etc.	—	37(2) & (7)	74	9 & 10(4)
49	Chairman or Speaker to act as, or perform functions of, President. ²²	16	36	65	—
50	(Parliament).	19	43	79	18(1)
51	National Assembly.	20	44	81&326	18(2)(3)
52	Duration of National Assembly.	21	50(3)	83(2)	18(5)
53	Speaker and Deputy Speaker of National Assembly.	108	54	93	22(5)
54	Summoning and prorogation of (Parliament).	22	50-51	85(1)(2)(a)	19(2)(a) (b)
55	Voting in Assembly and quorum.	110(1)(b)&(2)	55(1)(b)&(2)	100(1)(3)&(4)	23(1)& (3)
56	Address by President.	25(1)	52	86	20
57	Right to speak in (Parliament).	25(2)	53	88	21

²² Ruling of the Chair on Placement of Regulatory Authorities under the line ministries, p 16.
<http://senate.gov.pk/web/ruling/2017/r20-2.pdf>

58	Dissolution of National Assembly.	23	50(1)(3)	85(2-b)	19(2-c)
59	The Senate.	—	—	80	18(2)(3)&(4)
60	Chairman and Deputy Chairman.	—	—	89	22(1)
61	Other provisions relating to Senate.	—	—	—	22(2)(3)&(4)
62	Qualifications for membership of Parliament.	103	45	84	—
63	Disqualifications for membership of Parliament.	103(2)	45	102	26
63A	Disqualification on grounds of defection, etc.	—	—	—	—
64	Vacation of seats.	107	47 & 49	101	25
65	Oath of members.	106	48	99	24
66	Privileges of members, etc.	111	56	105	28
67	Rules of Procedure, etc.	110	55	118	38
68	Restriction on discussion in Parliament.	—	—	121	40(1)
69	Courts not to inquire into proceedings of Parliament.	—	56(1)	122	41
70	Introduction and passing of Bills.	47	58	107	73
71	Mediation Committee.	—	—	—	—
72	Procedure at joint sittings.	—	—	108	31

73	Procedure with respect to Money Bills.	47	58	109	30
74	Federal Government's consent required for financial measures.	41(4)	59	117(3)	153
75	President's assent to Bills.	27(1)	57	111	32
76	Bill not to lapse on prorogation, etc.	—	—	—	—
77	Tax to be levied by law only.	48	60	265	—
78	Federal Consolidated Fund and Public Account.	37	61	266	—
79	Custody, etc., of Federal Consolidated Fund and Public Account.	38	62	283	151
80	Annual Budget Statement.	40	63(1-2)	112(1)	33
81	Expenditure charged upon Federal Consolidated Fund.	39	64	112(3)	33(3)
82	Procedure relating to Annual Budget Statement.	41	65	113	34
83	Authentication of schedule of authorized expenditure.	—	—	—	35
84	Supplementary and excess grants.	44	67	115	36
85	Votes on account.	—	68	116	—

86	Power to authorize expenditure when Assembly stands dissolved.	29	69(3)(4)	—	1st Schedule
87	Secretariats of Parliament.	35	—	98	—
88	Finance Committees.	—	118	280	2nd Schedule
89	Power of President to promulgate Ordinances.	29(2 to 6)	69(1)(2)	123	—
90	Exercise of executive authority of the Federation.	31	39(1)	53(1)	3rd Schedule
91	The Cabinet.	33	37(1)(3)	74(1)&75(1)	9
92	Federal Ministers and Ministers of State.	33	37(4)	75(1)(2)&(4)	10(1)& (5)
93	Advisers.	—	—	—	—
94	Prime Minister continuing in office.	—	37(9)	—	—
95	Vote of no-confidence against Prime Minister.	—	—	—	—
96	(Omitted).	—	—	—	—
96A	(Omitted).	—	—	—	—
97	Extent of executive authority of Federation.	135	39(2)	73	8(1)
98	Conferring of functions on subordinate authorities.	—	—	—	—
99	Conduct of business of Federal Government.	32	41	77	17

100	Attorney-General for Pakistan.	36	38	76	16
101	Appointment of Governor.	66	70(1) (2)&(4)	155	48(1)
102	Oath of Office.	68	215	159	—
103	Conditions of Governor's office.	—	70(5)	158	—
104	Acting Governor.	69	—	—	—
105	Governor to act on advice, etc.	—	71(1)(2)	163(1)	—
106	Constitution of Provincial Assemblies.	70-71	76-77	168 & 326	60
107	Duration of Provincial Assemblies.	72	83(1)(2)(3)	172(1)	61(2)&(3)
108	Speaker and Deputy speaker.	108(1) (a)&(b)	87(1)	178	65(1)
109	Summoning and prorogation of Provincial Assembly.	73	83(1)	174(1)(a)	63(1)(2)
110	Right of Governor to address Provincial Assembly.	75(1)	85	175	63
111	Right to speak in Provincial Assembly.	75(2)	86	177	64
112	Dissolution of Provincial Assembly.	74	83(1)	174(2)(b)	62(2)(c)
113	Qualifications and disqualifications for membership of Provincial Assembly.	103-104	78	173	69
114	Restriction on discussion in Provincial Assembly.	—	—	211	86

115	Provincial Government's consent required for financial measures.	—	92	—	—
116	Governor's assent to Bills.	77	90(1)(a)	200	75
117	Bill not to lapse on prorogation, etc.	—	—	—	—
118	Provincial Consolidated Fund and Public Account.	86	94	199(f)	—
119	Custody, etc., of Provincial Consolidated Fund and Public Account.	87	95	199(f)	151
120	Annual Budget Statement.	89	96	202	78
121	Expenditure charged upon Provincial Consolidated Fund.	88	97	199(e)	—
122	Procedure relating to Annual Budget Statement.	41	98	202(1)(a) (b)	78
123	Authentication of Schedule of authorized expenditure.	—	—	—	80(2)(3)
124	Supplementary and excess grant.	44	100	205	81
125	Votes on account.	—	101(1)(a)	206	—
126	Power to authorize expenditure when Assembly stands dissolved.	—	102(3)	—	—

127	Provisions relating to National Assembly, etc., to apply to Provincial Assembly etc.	—	—	—	—
128	Power of Governor to promulgate Ordinances.	79	102	213	88
129	Exercise of executive authority of the Province.	80	73(1)	154	49
130	The Cabinet.	82	71	163	50
131	Duties of Chief Minister in relation to Governor.	—	75	167	—
132	Provincial Ministers.	82	71	164	50
133	Chief Minister continuing in office.	—	—	—	—
134	(Omitted).	—	—	—	—
135	(Omitted).	—	—	—	—
136	Vote of no-confidence against Chief Minister.	—	—	—	—
137	Extent of executive authority of Province.	136	73(2)	162	49
138	Conferring of functions on subordinate authorities.	—	—	—	—
139	Conduct of business of Provincial Government.	81	74	166	59
140	Advocate-General for a Province.	85	72	165	55(1)(2)&(3)
140A	Local Government.	—	—	—	—
141	Extent of Federal and Provincial laws.	131-132	105	245	99

142	Subject-matter of Federal and Provincial laws.	133	106(1)(2)(3)(4)	246	100
143	Inconsistency between Federal and Provincial laws.	134	110	251&254	107
144	Power of Majlis-e-Shoora (Parliament) to legislate for two or more Provinces by consent.	135	107	252	103
145	Power of President to direct Governor to discharge certain functions as his Agents.	—	—	160	123
146	Power of Federation to confer powers, etc., on Provinces, in certain cases.	143	—	257	124
147	Power of the Provinces to entrust functions to the Federation.	—	—	258A	—
148	Obligation of Provinces and Federation.	—	125	256	122
149	Directions to Provinces in certain cases.	—	126	257	126
150	Full faith and credit for public acts, etc.	—	—	261	—
151	Inter-Provincial trade.	142	119	298	—
152	Acquisition of land for Federal purposes.	—	128	—	127
152A	National Security Council.	—	—	—	—
153	Council of Common interests.	—	130	263	135

154	Functions and rules of procedure.	—	—	—	—
155	Complaints as to interference with water supplies.	—	129	262	130
156	National Economic Council. ²³	145	199	—	—
157	Electricity.	—	—	—	—
158	Priority of requirements of natural gas.	—	—	—	—
159	Broadcasting and telecasting.	—	131	—	129
160	National Finance Commission.	144	118	280	136
161	Natural gas and hydro-electric power.	—	—	—	—
162	Prior sanction of President required to Bills affecting taxation in which Provinces are interested.	—	—	274	141
163	Provincial taxes in respect of professions, etc.	141	117(1)(2)(3)	276	138
164	Grants out of Consolidated Fund.	138	114	275	142
165	Exemption of certain public property from taxation.	137	112	285	154

²³ Commission Awards in Pakistan: A Historical Perspective." PIDE Working Papers 2007: 33, Pakistan Institute of Development Economics, Islamabad, 2007

165A	Power of Parliament to impose tax on the income of certain corporations, etc.	—	—	276	—
166	Borrowing by Federal Government.	139	115	292	162
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168	Auditor-General of Pakistan.	191	120	148	166
169	Functions and powers of Auditor-General.	196	122	149	168
170	Power of Auditor-General to give directions as to accounts.	197	123	149	168
171	Reports of Auditor-General.	198	124	151	169
172	Ownerless property.	146	133	296	174
173	Power to acquire property and to make contracts, etc.	—	134 & 135	298 & 299	175
174	Suits and proceedings.	—	136	300	176(1)
175	Establishment and jurisdiction of courts.	49	30, 148 & 165	124	200
176	Constitution of Supreme Court.	49	148	124	200(3) & (4)
177	Appointment of Supreme Court Judges.	50	149	127	200(3) & (4)
178	Oath of office.	51	215	124(6)	200(4)
179	Retiring Age.	52	150	124(2)(a) (b)	—

180	Acting Chief Justice.	53	152	126	202
181	Acting Judges.	54	153	127	—
182	Appointment of ad hoc Judges.	55	15	127	—
183	Seat of the Supreme Court.	56	155	130	203
184	Original jurisdiction of Supreme Court.	57	156	131	204
185	Appellate jurisdiction of Supreme Court.	58	157-160	132	205
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186A	Power of Supreme Court to transfer.	—	—	139A	—
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188	Review of judgements or orders by the Supreme Court.	62	161	137	—
189	Decisions of Supreme Court binding on other courts.	63	163(1)	141	212
190	Action in aid of Supreme Court.	64	163(2)	144	210(1)
191	Rules of procedure.	65	—	145	214
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193	Appointment of High Court Judges.	92	166	217	220(2)
194	Oath of office.	93	215	219	220(4)
196	Acting Chief Justice.	95	168	223	222(1)

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198	Seat of the High Court.	97	165(3)	214	219
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203C	The Federal Shariat Court.	—	—	—	—
203CC	(Omitted).	—	—	—	—
203D	Powers, jurisdiction and functions of the Court.	—	—	—	—
203DD	Revisional and other jurisdiction of the Court.	—	—	—	—
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203F	Appeal to Supreme Court.	—	—	—	207
203G	Bar of jurisdiction.	—	—	—	—

203GG	Decision of Court binding on High Court and courts subordinate to it.	—	—	—	—
203H	Pending proceedings to continue, etc.	—	—	—	—
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234	Power to issue Proclamation in case of failure of Constitutional machinery in a Province.	30(5-6)	193	356	45
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242	Public Service Commission.	180	184	315	264
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245	Functions of Armed Forces.	—	—	—	—
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249	Legal proceedings.	—	227	—	—
250	Salaries, allowances, etc., of the President etc.	214	212	—	29
251	National language.	215	214	343	Omitted.
252	Special provisions in relation to major ports and aerodromes.	216	210	364	—
253	Maximum limits as to property, etc.	217	—	299	173
254	Failure to comply with requirement as to time does not render an act invalid.	218	—	365	—
255	Oath of office.	219	215	219	24,67,200(4) & 220(4)
256	Private armies forbidden.	220	—	—	—
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258	Government of territories outside Provinces.	222	2	—	294
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264	Effect of repeal of laws.	250	219	—	—
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268	Continuance in force, and adaptation of, certain laws.	225	224	372	292-293
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270AA	Validation and affirmation of Laws.	—	—	1st Schedule	2nd Schedule
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271	First National Assembly.	228	—	—	—
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273	First Provincial Assembly.	228	—	—	—
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²⁴ Entry 37 & 38, Concurrent Legislative List, Schedule IV, Constitution of Pakistan 1973; by M Mehmood. Al-Qanoun Publishers -2016.

6th Schedule	Laws not to be altered, repealed or amended without the previous sanction of the President.	—	—	—	—
7th Schedule	Laws to be amended in the manner provided for amendment of the Constitution.	3rd Schedule	—	—	—

1.7. Chart Of Amendments In 1973 Constitution To Till Date.

Sr. No: 1st

Amendments: Redefined the boundaries of Pakistan and removed references to East Pakistan.

Proposal date: 1974

Enactment date: May 4, 1974

Sr. No: 2nd

Amendments: Defined a Muslim and declared the status of Ahmadis as minority and 'non-Muslim'.

Proposal date: 1974

Enactment date: September 7, 1974

Sr. No: 3rd

Amendments: Extended the period of preventive detention.

Proposal date: 1975

Enactment date: February 18, 1975

Sr. No: 4th

Amendments: Decreed additional seats for minorities, it also deprived courts of the power to grant bail to any person detained under any preventive detention.

Proposal date: 1975

Enactment date: November 21, 1975

Sr. No: 5th

Amendments: Widened the scope of restriction on the High Courts.

Proposal date: 1976

Enactment date: September 5, 1976

Sr. No: 6th

Amendments: Provided that Chief Justice of Supreme Court will be retired at the age of 65 and High Court judges at age 62.

Proposal date: 1976

Enactment date: December 22, 1976

Sr. No: 7th

Amendments: Enables the Prime Minister to obtain a vote of confidence of the people of Pakistan.

Proposal date: 1977

Enactment date: May 16, 1977

Sr. No: 8th

Amendments: Changed Pakistan's government from a Parliamentary system to a Semi-presidential system by giving the President a number of additional powers.

Proposal date: 1985

Enactment date: November 11, 1985

Sr. No: 9th

Amendments: Bill to impose sharia law as the supreme law of land. The bill was passed by Senate but could never be passed by National Assembly owing to the latter's dissolution.

Proposal date: 1985

Enactment date: Not passed

Sr. No: 10th

Amendments: Fixed the interval period between sessions of the National Assembly to not exceed 130 days.

Proposal date: 1987

Enactment date: March 29, 1987

Sr. No: 11th

Amendments: Revision of the reserved seats for women in the National and the provincial assemblies. The bill was withdrawn in 1992.

Proposal date: 1989

Enactment date: Not passed

Sr. No: 12th

Amendments: Created Speedy Trial Court for 3 years.

Proposal date: 1991

Enactment date: 1991

Sr. No: 13th

Amendments: Stripped the President of Pakistan of his reserve power to dissolve the National Assembly of Pakistan, and thereby triggering new elections and dismissing the Prime Minister.

Proposal date: 1997

Enactment date: 1997

Sr. No: 14th

Amendments: Allowed members of parliament to be dismissed if they defect.

Proposal date: 1997

Enactment date: July 3, 1997

Sr. No: 15th

Amendments: Bill to impose Sharia law as supreme law of land. Was never passed.

Proposal date: 1998

Enactment date: Not passed

Sr. No: 16th

Amendments: Increased the term appointed for quota system as per 1973 Constitution from 20 to 40 years.

Proposal date: 1999

Enactment date: 1999

Sr. No: 17th

Amendments: Made changes dealing with the office of the President and the reversal of the effects of the Thirteenth Amendment.

Proposal date: 2003

Enactment date: 2003

Sr. No: 18th

Amendments: Removed the power of President of Pakistan to dissolve the Parliament unilaterally.

Proposal date: 2010

Enactment date: April 8, 2010

Sr. No: 19th

Amendments: Provided for the appointment of the Judges of the Supreme Court of Pakistan and made amendments in the number of members of the parliamentary committee for the appointment of Chief Electoral Officers at Election Commission of Pakistan.

Proposal date: 2010

Enactment date: December 22, 2010

Sr. No: 20th

Amendments: For Free and Fair Elections.

Proposal date: 2012

Enactment date: February 14, 2012

Sr. No: 21st

Amendments: For Speedy Trial Military Courts to deal with terrorism.

Proposal date: 2015

Enactment date: January 7, 2015

Sr. No: 22nd

Amendments: ECP powers deputed to Chief Election Commissioner.

Proposal date: 2016

Enactment date: June 8, 2016

Sr. No: 23rd

Amendments: The 23rd Amendment was passed to re-establish the military courts for further two years till 6th January 2019.[3] In 2015, National Assembly passed the 21st Amendment and created the military courts for the period of 2 years. The period of two years was expired on 6th January 2017 hence this 23rd Amendment was passed to re-establish the military courts for further two years till 6th January 2019. At the end of this period all the amendments will be expired/removed automatically. [25]

Proposal date: 2017

Enactment date: January 7, 2017

Sr. No: 24th

Amendments: Reallocation of National Assembly seats among federating units and allowing election authorities to update boundaries of constituencies based on provisional results of 2017 Census of Pakistan.

Proposal date: 2017

Enactment date: December 22, 2017

Sr. No: 25th

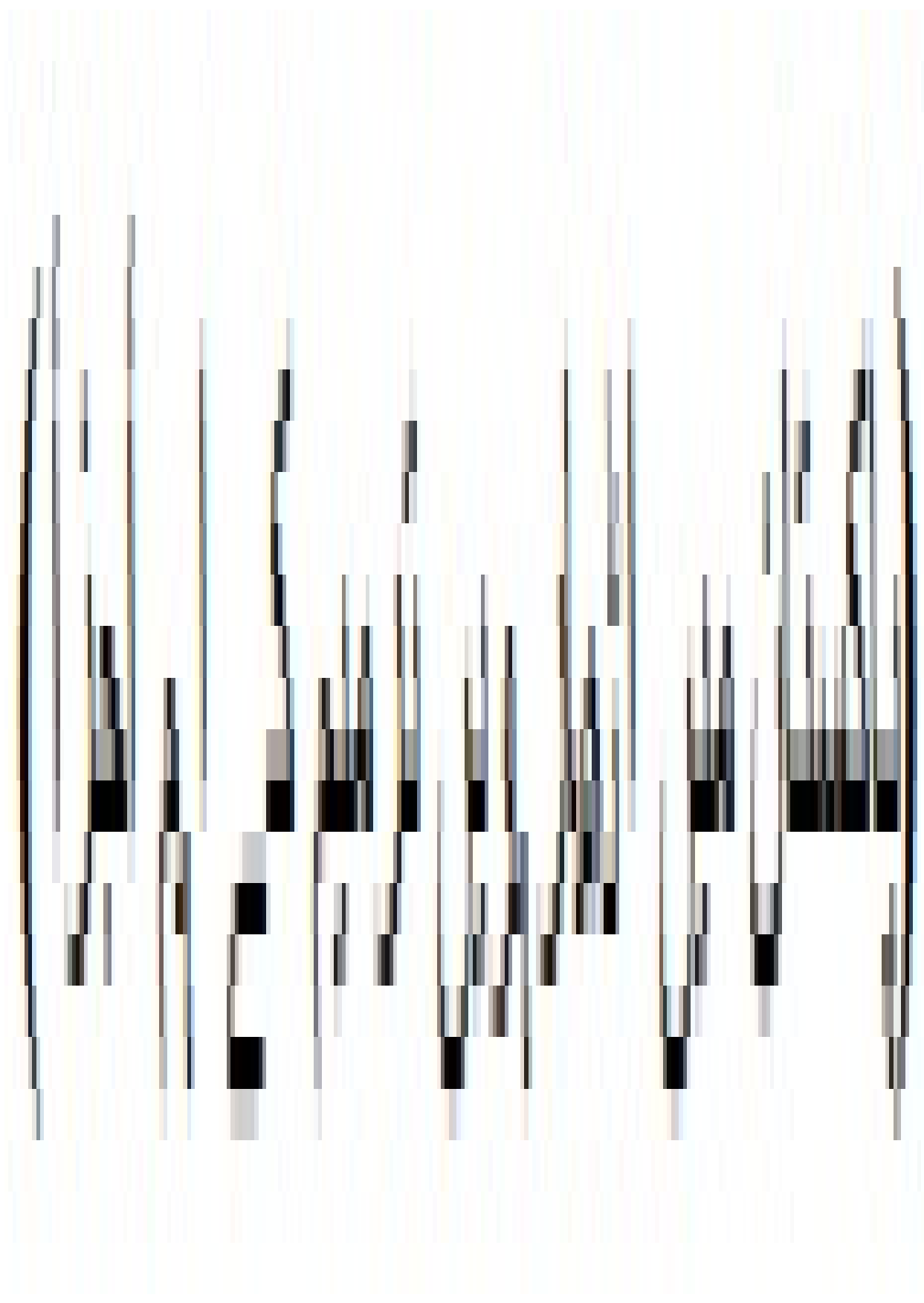
Amendments: Merges Federally Administered Tribal Areas with Khyber Pakhtunkhwa

Proposal date: 2018

Enactment date: May 31, 2018

Chapter 2: (Salient Features of 18th Amendment)

2.1. [26]



1. The eighteenth Amendment has reinstated the government; and parliamentary soul of the Constitution of Pakistan 1973.
2. Most of the martial regime changes embedded during tyrant administrations of General Zia and General Musharaf (counting 17th Amendment) have been revisited.
3. The 18th amendment renames the province NWFP as Khyber Pakhtunkhwa in acknowledgment of its ethnic position.
4. The 18th Amendment makes dynamic progresses towards devolution of upgrading the common self-sufficiency. It has rejected the Concurrent Legislative List of subjects and those subjects with couple of exemptions have been exchanged to the areas. The amendment additionally went to the extent of the Council of Common Interests (CCI). [27] The CCI after change has turned into an intense protected body included delegates of elected and civil governments to decide the key issues/problems. The National Economic Council (NEC) has been changed with a caveat part to survey generally speaking monetary state of the nation and to prompt the elected and civil governments to define policies in such manner. Another essential viewpoint is the distribution of national incomes that is secured by the National Finance Commission under the 18th amendment.
5. The meaning of "High Treason [28]" has been extended in Article 6. From now on, an "Act of suspending the "constitution" or "holding it in suspension" or "any endeavour to do" so will likewise be viewed as High Treason. It has additionally been added to the article that such "Demonstration of High Treason" can't be legitimized by the Supreme Court or a High Courts of Pakistan". This may probably is to discourage future military takeovers in Pakistan.

6. The number of Fundamental Rights has been added in the constitution. These incorporates the privilege of right of fair trial (Article 10-A), the right to data/information (Article 19-A) and the right to education (Article 25-A). It is currently the duty of the state to give free and compulsory education to all kids from age 5 to 16 years in such way as might be determined by law.

7. To shield against segregation in administrations, an arrangement has been made that under portrayal of any class or zone in the administrations of Pakistan is to be reviewed by an Act of Parliament and not otherwise.

8. The part of the Senate has been impressively improved. The President can't promulgate an Ordinance now; when the Senate is in session. The number of days that the Senate may take to give its proposals/amendments on money bills has been expanded from seven to fourteen days. The Prime Minister and his/her Cabinet will considered the matters mindfully both to the National Assembly and the Senate. The number of Senate Members has been expanded from hundred to one hundred and four by including four seats for Non-Muslims, one from every area. The quantity of necessary working days for the Senate has additionally been expanded from 90 days to 110 days.

9. Through the 18th Amendment Presidential powers has transferred to the Parliament. The President's discretionary powers to dissolve the National Assembly or to refer a question to a Referendum have been removed. To appoint the governors, the services chiefs and the Chairman Federal Public Service Commission; the advice of the Prime Minister has been made binding for the President. Time limits have been fixed for the President to act on the advice given to him by the Prime Minister and his cabinet. The position and powers of the Governors in the provinces have also been reduced to that of President in the Federation. According to the amendments made in Article 90, the executive Authority of the federation shall not now vest in the President but be exercised in the name of the President by the federal government comprising the Prime Minister and Federal Ministers. The Prime Minister shall be the Chief Executive

of the country. Rules of Business shall be made by the federal government and not the President. [29]

10. In Articles 62 and 63 of the constitution of Pakistan; which are relating to qualifications and disqualifications for elections to the Parliament and the Provincial Assemblies, there are both positive and negative changes. Earlier a person was not qualified if he had been convicted for an offence involving moral turpitude or giving false evidence. This has been deleted/ removed. This is not a good change since it clashes with the Islamic spirit of the constitution. On the positive side, in place of Musharraf regime lifetime bans, time limits for disqualifications, i.e., five years from date of release in case of jail terms, five years from date of dismissal from public service, two years from date of compulsory retirement, have been reintroduced in the constitution.

11. Article 63-A of the constitution is basically relating to defection clause, the main changes, to be effective after next general elections, are that disqualification for defection will be triggered on a reference made by Head of a Party (by whatever name called) in place of Head of a Parliamentary Party, and the Speaker or Presiding Officer will not be able to 'sit on' i.e., can delay the reference. With this amendment the position and power of party heads like Mr. Imran Khan Niazi of PTI; Mr Asif Ali Zardari in the PPP, Mian Muhammad Nawaz Sharif then and Mian Muhammad Shahbaz Shareef now in the PML-N, Mr. Farooq Sattar ; Rauf Sadique in the MQM, , Siraj ul haq of jammat islami, Mir Israr Ullah Zehri of BNP-A, Sardar Akhtar Jan Maingal BNP-M, Pie Pagaroo of PML-F, Mustafa Kamal of PSP, Mian Iftikhar Hussain of ANP Dr Abdul Hayee Baloch of BNM and some others has been more fortified and powerful.

12. Now a person can be selected for a 3rd time to be a Prime Minister and/or chief minister. Only a Muslim can be a Prime Minister of Pakistan. This change made room for Mr Nawaz Sharif and Shahbaz Sharif for getting to be PM and chief minister for the third time. Mr Imran Khan has crushed the dreams of sharif's brothers in 2018 elections.

13. The number of ministers, including ministers of state, has been constrained to 11% of the aggregate membership of the Parliament – 49 out of 446 members from Parliament. In case of the Provincial Assemblies, the number of members can't be more than 15 or 11% of the aggregate enrolment of a Provincial Assembly, whichever is higher.

14. Article 140-A is relating to devolution of capacity to local governments has been held and extended to give that elections of the local governments will be held by the Election Commission of Pakistan. This change will help in having reasonable fair elections throughout Pakistan.

15. A new High Court has been established at Islamabad with its judges to be drawn from every one of the four provinces and the Islamabad Capital Territory.

16. By revising Article 200 of the constitution the arrangement for mandatory retirement of a High Court Judge in the event that he declines to acknowledge transfer to another High Court has been deleted. High Court Judges can't presently be transferred starting with one court then onto the next without their particular assent notwithstanding for short periods.

17. The Election Commission of Pakistan has been made more authoritative. The term of office of the Chief Election Commissioner (CEC) has been expanded from three to five years. For the arrangement of the CEC; the Prime Minister and the leader of the Opposition in the National Assembly will agree on three names. The three names will be sent to a Parliamentary Committee comprising of not in excess of 12 members from whom half will be from treasury seats and half from Opposition seats. The member chosen by the Parliamentary Committee will be selected by the President. The Election Commission of Pakistan will have five perpetual members including the Chief Election Commissioner. The Commission will have capacity to get ready constituent moves, to hold decisions

and to choose provincial commissions and to select the staff of the Election Commission, and so forth. [30]

18. After dissolution of the Assembly, the president will select a Caretaker Prime Minister in a meeting with the out-going Prime Minister and the leader of the Opposition in the National Assembly. The Caretaker Ministers will be selected with the consent of the Caretaker Prime Minister. The close group/relations of the Caretaker Ministers i.e., mate and kids, will not be qualified to qualify to contest the elections being regulated by the Caretaker Cabinet. Comparative arrangements have been accommodated the Provincial Caretaker governments. This change will help in discouraging in rigging of elections”. [31]

19. According to Article 48 of the constitution, Parliament has been given powers to decide in a Joint session; whether the Prime Minister may refer any matter of national importance to a referendum. Previously as per Article 48(vi) of the constitution; the President of Pakistan at his discretion or on the advice of the Prime Minister could refer a matter of importance to a referendum. By amending the Article 59 of the constitution, the number of seats of the Senate has been increased from the present 100 to 104 to give representation to one non-Muslim from each province. These four members would be elected by the respective Provincial Assemblies. Another big boost to the authority of the Parliament is the deletion of the 6th and 7th schedule from the constitution and placing all laws mentioned herein under the scrutiny of Parliament. Previously laws in the 6th Schedule could not be amended without the previous sanction of the President while laws mentioned in the 7th Schedule could only be amended like amendments to the constitution of Pakistan.

20. The Senate has been allowed to give its recommendations to the National Assembly within 14 days instead of seven days from the date when a copy of the money Bill is transmitted to the Senate. As per amended Article 75 of the constitution; the President has been allowed 10 days to give his assent to a bill instead of 30 days allowed previously. Such assent shall be deemed to have been given in case the President does not give his assent within 10 days. Article 89 has

been amended in a major way which requires that the President can now issue ordinances only when both the National Assembly and the Senate are not in session. Previously the President could promulgate an ordinance when the Senate was in session. Re-promulgation of ordinances by the President has also been prohibited by the amended Article 89 of the constitution of Pakistan. Now only the National Assembly by a resolution can extend an ordinance concerning money matters for a further period of 120 days. Also, the life of other ordinances can be extended for further period of 120 days by a Resolution of either House. However, according to Article 89 this extension can be given only once. [32]

21. Article 91 of the constitution has also empowered the Parliament by allowing it to elect without debate one of its Muslim Members to be the Prime Minister of Pakistan. Previously the President had the authority to appoint a Prime Minister from amongst the members of the National Assembly whom he considered most likely to command the confidence of the majority of the Members of that House. Now the President is also required to call the first meeting of the National Assembly on or before the 21st day after the general elections.

22. Article 91 it has been stated that the cabinet and the Ministers of State will be collectively responsible to the Senate and the National Assembly. Previously the Cabinet was not answerable to the Senate. It has been provided in the Amended Article 104 that in the absence of the Governor for any reason, the Speaker of the Provincial Assembly shall perform the functions of the Governor of that province. Before, the president could nominate any person to act as Governor. According to Article 142 the Parliament has been given exclusive powers to make laws with respect to all matters pertaining to such areas in the federation, which are not included in any province. 3. Empowering the Prime Minister and Chief Ministers by amending some Articles of the constitution, the office of the Prime Minister has also been strengthened. By amending Article 48, the President has been restricted to act within 10 days in accordance with the advice tendered by the Prime Minister or the cabinet. Now according to the amended Article 156; the Prime Minister and not the President shall nominate four other Members to the Council of Common Interests. By amending Article 242 the President has also been restricted to appoint the Chairman of the Federal Public Service Commission on the advice of the Prime Minister. Previously, the

President had the discretion to make such appointment. Similarly, the Governors of the provinces have been restricted from appointing the Chairman of the Provincial Public Service Commissions on the advice of the Chief Ministers concerned. According to the amended Article 90, the President cannot exercise the executive authority either directly or through officers subordinate to him but shall exercise the authority through the federal government, consisting of the Prime Minister and the Federal Ministers, who shall act through the Prime Minister who shall be the Chief Executive of the Federation. It has been ensured by amending Article 153 that the Prime Minister is Chairman of the Council of Common Interests. Previously, the Prime Minister was not necessarily a Member. By amending Article 129, the Chief Ministers have been empowered. According to the article 129, the executive authority of the province shall be exercised in the name of the Governor by the Provincial Government, consisting of the Chief Minister and Provincial Ministers, which shall act through the Chief Minister. In the performance of his functions under the Constitution of Pakistan 1973; the Chief Minister may act either directly or through the Provincial Ministers.

23. The legislative competence and national legal orders vest with the federal government, however institutional design was the domain where provinces would have a say. Thus, there could be questioned views between the federation and provinces, as the Khyber Pakhtunkhwa assembly had submitted a summary that because of joint ownership of oil and gas, provinces should also have representation on the OGDC board.” [33]

24. “The Sixth and Seventh Schedules to the constitution have been omitted. The Sixth Schedule included 35 laws which could only be amended with the prior consent of the President. The Seventh Schedule included eight laws which could only be amended in the manner provided for amendment of the constitution.”

25. The said amendment will contribute the confidence of the minorities of Pakistan more and more.

26. “The Concurrent List containing subjects on which both the Parliament and the Provincial Assembly can legislate has been omitted. Hence these subjects have been transferred to the provinces except Criminal Law, Criminal Procedure and Evidence on which both the Parliament and the Provincial Legislatures can make laws. Some subjects are out of the Federal List Part I and out of the old but now abolished Concurrent List have also been included in Part-II of the Federal List which will be under the domain of CCI. These include electricity and major ship ports of Pakistan. National Planning and National Economic Coordination including Planning and Coordination of Scientific and Technological Research, legal, medical and other professions, standards in institutions for higher education and research, scientific and technical institutions and inter-provincial matters and coordination are now, find place in ‘National Planning and National Economic Coordination etc. at serial no. 32 of the Federal List Part-I “International treaties, conventions and agreements and International Arbitration” have been included.” [34]

27. “As per Article 153 of the constitution, the Council of Common Interests (CCI) has been given greater mandate [35] and strengthened to carry out the amplified responsibilities. Now the Prime Minister will be its Chairman. Earlier, according to Article 153, the membership or the chairmanship of the Prime Minister was not mandatory. The CCI shall meet quarterly once. It shall have a permanent secretariat. It shall consist of the Prime Minister, three Federal Ministers and the four Chief Ministers. The list of subjects on which the CCI will have policy control has been very substantially increased by transfer of some of the subjects from the omitted Concurrent List and some of the subjects from Part-I of the Federal Legislative List to Part-II of the Federal Legislative List as already mentioned. Now the CCI will also have policy control over reservoirs in addition to natural sources of water supply. Furthermore the Federation shall not build new hydro-electric stations in any province except after consultation with that province.” [36]

2.2. No Reduction in the NFC Share.

The National Finance Commission (NFC) shall not reduce the share of resources allocated to the provinces by the previous Commission. The present regime decided to cut 3% share of all the provinces and to give the same to FATA.

2.3. Distribution of Revenues.

“All provinces have become entitled, as of right to the entire proceeds of the excise duty on oil in addition to the excise duty on natural gas. The provinces have also been given power to raise domestic or foreign loans with the approval of the National Economic Council. The divisible pool of taxes namely taxes on income, wealth tax, capital value tax, taxes on the sales and purchase of goods imported, exported, produced, manufactured or consumed, Export duties on cotton, Customs duties, federal excise duties excluding the excise duty on gas charged at well head and any other tax which may be levied collected each year by the federal government will be distributed as follows: One per cent of the net proceeds of divisible pool taxes shall be assigned to government of Khyber Pakhtunkhwa to meet the expenses on war on terror. After deducting this amount as prescribed, of the balance amount of the net proceeds of divisible pool taxes, 56 per cent shall be assigned to provinces during the financial year 2010- 11 and 57 and half percent from the financial year 2011-12 onwards. The share of the federal government in the net proceeds of divisible pool shall be 44 percent during the financial year 2010-11 and 42 and half percent from the financial 2011-12 onwards.”

2.4. Shares of Provinces in Royalties.

Each of the provinces shall be paid in each financial year as a share in the net proceeds of the total royalties on crude oil an amount which bears to the total net process the same proportion as the production of crude oil in the province in that year bears to the total production of crude oil.

2.5. Tax on Services.

National Finance Commission recognizes the tax on services is a provincial subject under the Constitution of the Islamic Republic of Pakistan, and may be collected by respective provinces, if they so desired. This step will enhance financial resources of the provinces to some extent [37]. [38]

CHAPTER 3: (Implications, and Limitations of the 18th Amendment.)

3.1. The structural reforms in the constitution of Pakistan projected an impact on all pillars of state i.e. Legislature; the Executive; and Judiciary and has expanded the scope of constitutional fundamental rights. It's a novel concept of institutional power through the parliament; provincial assemblies and federal forums like the CCI and NEC. [39]

In order to make sense of these changes, an analytic segmentation of the contents of the 18th Amendment structured after the three pillars of the state is following:

i. The Legislature.

“The 18th Constitutional Amendment offers an opportunity to convert Pakistan in to a ‘genuine willing federation’ with a strengthened parliamentary role in running the affairs of State and government with democratic checks and balances. The amendment has introduced the concept of ‘shared responsibilities’ through a reformed Council of Common Interests (CCI) for subjects enlisted in the Federal Legislative List II [40]. The CCI has been made responsible to and is required to submit its annual report to both Houses of Parliament i.e. National Assembly and Senate. The Parliament may also in a joint sitting from time to time by resolution issue directions through the Federal Government to the Council. To take action generally or in a particular matter as the Parliament may deem just and proper. Such Parliamentary directions shall be binding on the Council of common interest. Similarly, if the Federal Government or a Provincial Government is dissatisfied with a decision of the CCI, it may refer the matter to the Parliament in a joint sitting whose decision in this behalf shall be final.

Although the amendment has failed to entrust financial powers to the Senate, however the number of its working days have been increased from 90 to 100 and the number of days to make recommendations on the money bill have been increased from 7 to 14. Four seats for religious minorities, one from each province, have been added to the Senate, raising its strength to 104 from 100 seats.

The 18th Amendment expanded the scope of fundamental human rights. The amendment affirmed three new rights, namely: the Right to Fair Trial and Due Process; the Right to Information; and the Right to Education. The amendment slightly modified three other fundamental rights. In Article 17 (Freedom of Association) provisions on the intra party election conditions have been deleted. Similarly, provisions related to sectarian, ethnic and regional hatred and militant party wings have been eliminated. These had been added by the Legal

Framework order 2002 and were retained by 17th amendment 2003. Pakistan has signed and ratified many international treaties on human rights like the International Covenant on Economic, Social and Cultural Rights (ICESR) and the International Covenant on Civil and Political Rights (ICCPR) as well as Convention Against Torture (CAT) in April 2008 and is already a party to the International Convention on the Elimination of Racial Discrimination (CERD), the International Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the core ILO Conventions. But all these obligations do not figure prominently in the reformed Fundamental Rights chapter and the federal and provincial governments have not taken tangible steps to practically enforce many of these rights.”

ii. The Judiciary

“The role of the apex judiciary vis-à-vis the democratic development in Pakistan has always been quite controversial. Since the dissolution of the first Constituent Assembly in 1955 (Federation of Pakistan versus Maulvi Tamizuddin); (PLD 1955 Federal Court page 240) till the last military intervention by General Pervez Musharraf in 1999 (Zafar Ali Shah versus General Pervez Musharraf, PLD 2000 SC page 869); the courts endorsed invasions upon democracy by invoking a ‘doctrine of necessity.’ In absence of the constitution the judges had to take oaths of allegiance on Provisional Constitutional Orders (PCO) and legitimize the usurpers in uniform. [41]

“In order to put an end to such practices the 18th Amendment changed the mechanism of appointment of judges for the superior judiciary. According to a newly inserted Article 175-A, now a multi stakeholder Judicial Commission of Pakistan headed by the Chief Justice by majority decision nominates to the Parliamentary Committee on Judicial appointments one name for each vacancy. This committee includes the four most senior judges of the Supreme Court, one former chief justice/judge, the Federal Law Minister, the Attorney General and a member nominated by the Pakistan Bar Council for appointments in the Supreme Court. For appointments to a High Court, the Commission also includes the Chief Justice of the respective High Court, the most senior judge of that High Court, the Provincial Law Minister and a nominee of concerned Bar Council. The Article has separate clauses for appointments in the Islamabad High Court, established through the 18th Amendment, and the Federal Shariat Court [42].

The eight-member Parliamentary Committee with equal membership from the Senate and the National Assembly and with 50 percent representation from the opposition parties confirms the nominees by majority of its total membership within fourteen days and could reject the nomination by three-fourth majority with recorded reasons.” [43]

After the passage of the 18th Amendment this Article along with many others were challenged by 21 petitioners and on October 21, 2010, the 17-member full bench of the Supreme Court through a short order referred the Article 175-A back to Parliament for revision. In order to avert any institutional clash the Parliament adopted the 19th Constitutional amendment in December 2010 and addressed the concerns of the Supreme Court.

It is interesting to observe that this article was the first one that had become operational on November 6, 2010 when the Judicial Commission adopted its rules and in the same month the Parliamentary Committee for Judicial Appointments (PCJA) became functional. Since then all appointments in the superior judiciary have been made through the new mechanism. As of today the Supreme Court has overruled all decisions taken by the PCJA that rejected the Judicial Commission nominations. Nevertheless, the process of appointment of judges has been democratized a little bit.

Equally important is the role of the superior judiciary to make Pakistani federalism work as outlined in Article 184 of the Constitution, while elaborating on the original jurisdiction of the Supreme Court, and assigns to it a role to pronounce declaratory judgments in any dispute between any two or more governments.”

iii. The Executive.

“The concept of a separation of power requires that the executive branch of the state enjoys the authority and responsibility to conduct day to day affairs and the administration of the state. The constitutional framework and laws made by the legislature are implemented by the executive branch.

According to the Rules of Business of 1973 of the Government of Pakistan, policy formulation and the undertaking of policy decisions is the mandate of the executive. The rules designate the secretary (civil servant) as the official head of a division/ministry and as principal accounting officer. Besides assisting the minister-in-charge of a division/ministry, the secretary also executes the sanctioned policies through a team comprised of civil servants.

Article 41 of the constitution of Pakistan outlines that the President of Pakistan is Head of State and represents the unity of the Republic, while Article 50 makes him part of Parliament. In absence of the Parliament from 1977- 1985 and 1999-2002 (i.e. the spells of military rulers), the presidents in uniform became the chief executives.

The 18th Amendment has made the Prime Minister as the chief executive of the federation, to be elected from the National Assembly. His/her team (i.e. the Cabinet) comes from the National assembly (75 percent or more) and the Senate (maximum 25 percent) with a provision of maximum five advisors. The 18th Amendment has fixed the size of the Cabinet after the 2013 election to a maximum of 11 percent of the total membership of the Parliament and the respective provincial assemblies, with a modest premium of a fixed ceiling of 15 ministers for two smaller provinces, namely Balochistan and Khyber-Pakhtunkhwa. The amendment also makes the chief ministers the executive heads in the provinces.

In this way we can say that only a small but driving part of the executive comes from the legislature and the federal and provincial civil servants remain the consistent thread in this scheme. The Constitution specifies these services and entrusts the Federal Public Service Commission and the provincial public service commission to recruit them.

The Parliamentary Committee on Constitutional Reforms recorded its commitment in this context by recommending that the federation and the provinces will require a different set of skills to make post-18th Amendment federalism work [44]. The committee recommended that in view of a major devolution of powers and responsibilities to the Provinces in the constitutional reforms package, it is imperative that the extent of and modalities for distribution of work between the Federal Public Service Commission, Provincial Public Service Commissions and the respective services be reworked and the services reorganized as to ensure provincial autonomy and good governance. It is also recommended that adequate indigenization of the services should take place as part of this reform.”

3.2. A Brief on Political System after 18th Amendment.

a. Article 58(2) (b) of the constitution has been repealed where under this the president had the discretion to dissolve the National Assembly if, in his opinion, the Government of the federation could not be carried on and appeal to the electorate was thus necessary.

b. Article 190-A provides for the right of access to information to all citizens in all matters of public importance, subject to regulation and reasonable restrictions imposed by law. This amendment will help in making public decisions transparent which is necessary for a democracy to progress and to strengthen it.

c. After 18th Amendment, the working days of the Senate have been increased from 90 to 110 and the Provincial Assemblies from 70 to 100. Article 140-A has been amended by adding a new Section 10 according to which local bodies elections shall also be held by an independent Election Commission. This will ensure holding of fair elections. A provision has been added to Article 147, stating “that if the executive authority of any province is entrusted to the federal government, it shall be subject to ratification by the concerned Provincial Assembly”. The “Council of Common Interests” (CCI) has been strengthened by amendments in Article 153 and 154 by entrusting it with powers to formulate and regulate policies in relation to matters in part II of the Federal Legislative List. Moreover, by amendment of fourth schedule of the constitution where some subjects from the Concurrent List have been added to the Federal Legislative List II, has further strengthened the CCI. A broad based consultative process for the selection and appointment of a Parliamentary Committee which will select the Chief Election Commissioner (CEC) has been laid down by amending Articles 223 and 224. The term of office of the Chief Election Commissioner has also been extended from three to five years to ensure continuity. Another measure which will boost democracy is strengthening political parties by amending Article 226 of the constitution; which provides that all elections under the constitution other than those of the Prime Minister and Chief Ministers shall

be by secret vote. The election of the Prime Minister and the Chief Ministers shall be by division. This will also strengthen political parties because no member will be able to vote against the party candidate. [45]

d. According to amended Article 232, where the President has imposed emergency due to internal disturbances, it will now require a Resolution of the Provincial Assembly. In case an emergency is imposed by the President in the country it shall be placed before both Houses of Parliament for approval by each House within 10 days. [46]

e. Amendment in Article 270-A sub clause 6 has provided for amendment of laws mentioned in the seventh schedule of the constitution like any ordinary law, which could previously be amended on the lines of a constitutional amendment. According to sub clause 2 of the amended Article 270-AA power has been given to the appropriate legislatures to amend laws detailed in sub clause 1 including the “LFO 2002” and other laws and amendments introduced by the Chief Executive of the country”. [47]

3.3. Institutional Implications:

The 18th Constitutional Amendment is a landmark in legislation because it has introduced basic fundamental changes in the institutions of intergovernmental coordination. The most significant of these changes is the reassertion of two institutions of the federation i.e. “Council of Common Interests” (CCI) and the “National Economic Council”, which aims to strengthen provincial representations.”

3.4. The Council of Common Interests:

“The “Council of Common Interest” was initially created by the 1956 constitution. It was chaired by the prime minister or by a federal minister on his/her behalf and comprised equal membership from the provinces and federal government. The Council of Common Interest had jurisdiction over the federal legislative list and electricity, and was intended to serve as a forum to seek provincial input in the conduct of federal responsibilities.

The 18th Amendment attempts to strengthen this institution to deal with all matters relating to the federation. The Council of Common Interest is to be chaired by the prime minister and includes four provincial chief ministers and three federal government nominees as members. It will have a permanent secretariat and is required to meet at least once every quarter. The Council of Common Interest has been entrusted with decision making, monitoring, supervision, and control responsibilities over the Federal Legislative List Part II, which includes the following: railways; minerals, oil, and natural gas; hazardous materials; industrial policy; electricity; major ports; federal regulatory authorities [48]; national planning and economic coordination; supervision and management of public debt; censuses; provincial police powers beyond provincial boundaries; legal matters; regulation of the legal, medical, and other professions; standards in education and research; interprovincial coordination; and conflict resolution.” [49]

3.5. National Economic Council.

“The 18th Amendment has tilted the balance of power on this council in favour of the provinces by mandating two members each, including the chief ministers of each province, and four federal members appointed by the prime minister. The Council must now meet at least once every six months. In addition to strengthening these two institutions of the federation, the 18th Amendment has also introduced significant changes to the division of powers amongst the three organs of the constitution.” [50]

3.6. Constitutional Rearrangements after 18th Amendment.

“The 18th Amendment has deleted the list of federal/provincial i.e. concurrent responsibilities and reassigned selective functions to the federation to be guided by the CCI and devolved others to the provinces. The former list consisted primarily of natural resources, electricity, and regulatory functions. The latter encompasses most economic and social services. The federal government has given Impact of 18th Constitutional Amendment on Nation Building and Citizenship completely stripped of its responsibilities in planning, industry, agriculture and rural development, and social services and welfare (including social protection). This has resulted in the abolition of 17 ministries - with a combined budget of PKR in billion including the ministries of food and agriculture, education, and health. These functions have been absorbed on a selective basis by the provinces in existing departments. The federal government has also been constrained in terms of its authority over banking, finance, and insurance as its regulatory authority no longer extends to provincially owned entities or private entities operating in a single province. The federal government has been mandated to consult the provinces prior to initiating any hydroelectric projects. The provinces, on the other hand, have been given a free hand in all public services delivered within their territory, and control over all local government institutions. All the residual functions not enumerated in the constitution also fall within the provinces’ domain. Additionally, a new article has been inserted to provide the right to free education.

Article 25-A states that, “the state shall provide compulsory education to all children of the age of five to sixteen years in such manner as may be determined by law.” Since education is a provincial responsibility, this article mandates the provinces to provide free secondary school education to all citizens seeking this service.” [51]

3.7. Analysis of centre - Province Relations after 18th Amendment.

The 18th Amendment has scrapped the Concurrent Legislative List that was a bone of contention between the federation and the provinces. In addition to all subjects in the Concurrent List, except boiler (shifted to Federal List-I) and electricity (shifted to Federal List-II), four subjects from the Federal list including state lotteries, duties in respect of succession of property, estate duty on property and sales tax on services have gone to the provinces.

Part V and VI of the Constitution (Articles 141-174) specifically deal with relations between the federation and provinces. Out of these thirty- four articles, seventeen have been amended. The major amendments included: redefining legislative competence of the Parliament and provincial assemblies after the abolition of the concurrent list, mandatory consultations with concerned provincial governments prior to a decision to construct hydro-electric power stations, and the provincial power to raise domestic or international loans within the prescribed limits by the NEC. Furthermore, there is a provision for joint and equal ownership of natural resources like oil and gas.

The amendment has empowered the provinces to exercise joint control with the federal government over 18 subjects of Federal Legislative List- II including some key subjects like sea ports, all regulatory authorities, national planning and national economic coordination, supervision and management of public debt, census and natural resources through the Council of Common Interests (CCI). The CCI has been made a powerful constitutional body comprising the Prime Minister as chairman, three representatives of federation and all the four provincial chief ministers. The new constitutional scheme envisages the Council to become an effective dispute resolution, economic planning and development forum with a sense of joint responsibility. It has been mandated to meet once every quarter and the provinces have been empowered to requisition its meeting.

The National Economic Council (NEC) has been reformed with an advisory role to review the overall economic condition of the country and to advise the federal and provincial governments to formulate plans in this regard. Another significant step forward is the consent of the concerned Provincial Assembly for the imposition of emergency rule in any province. Similarly the distribution of national revenues through National Finance Commission have been protected under this amendment that provinces' share cannot be reduced beyond that decided in the previous Award.

The amendment envisaged an Implementation Commission to transfer powers to the provinces after the abolition of the Concurrent List within a specified deadline of June 30, 2011. For the first time, a constitutional deadline was met and seventeen ministries that fell under the abolished concurrent list had been transferred to the provinces. Some functions of six other ministries were also devolved and the Pakistanis celebrated a Day of Provincial Autonomy on July 1, 2011.

The 18th Amendment reallocated powers between the Parliament, Federal Government and the provinces. The amendment proposed to create only three new institutions with specific objectives and mandate: first the Implementation Commission to transfer ministries and subjects of the abolished Concurrent List with a sunset clause; second, the permanent secretariat of the Council of Common Interests with due provincial representation; and third, the High Court of the Islamabad Capital Territory. During the process of implementation, one new ministry (i.e. the Capital Administration and Development Division (CADD)) was created to take care of the devolved subjects and functions for the Federal Capital.

3.8. The Judiciary in the light of 18th Amendment

The 18th and 19th constitutional Amendments have introduced sufficient changes which have made the Higher Judiciary more independent by giving it more powers as a whole in the appointment of judges of the Superior Courts.

A new Article 175-A, inserted in the Constitution provides for a Judicial Commission, which will nominate Judges of the Supreme Court, High Courts and the Federal Shariah Court to the Parliamentary Committee. This has certainly strengthened the Judiciary wherein six Judges out of a total of nine Members of the Commission shall decide on the appointment of Judges for the Superior Courts. The Commission has been empowered to make its own rules while the Chief Justice has been empowered to nominate former judges to the Judicial Commission. According to this new Article, the president is required to appoint the most senior Judge of the Supreme Court as the Chief Justice of Pakistan.

Previously, the words “senior most Judges” were not included in Article 177 of the constitution, which is concerned with the appointment of the Chief Justice of Pakistan.¹⁶⁴ Article 175-A carries the provision of constituting a Parliamentary Committee consisting of four members of the Senate and four members from the National Assembly, which shall on receipt of a nomination from the Judicial Commission, confirm the nominee by majority of its total membership within 14 days, failing which the nomination shall be deemed to have been confirmed. According to the provision, the Committee may not confirm the nomination by three-fourth majority of its total membership within the said period, in which case the Commission shall send another nomination. However, instead of giving absolute powers to the Chief Justice, the Judiciary as an institution has been entrusted with powers to appoint judges to the higher judiciary, which previously was the domain of the Chief Justice.

The 19th constitutional Amendment has ensured that the meeting of the Parliamentary Committee shall be held proceedings in camera and would record reasons for not accepting a nominee. It also raised the number of the Members of the Judicial Commission from three to five including the Chief Justice; as per amended Article 175 a High Court has been provided for the Islamabad Capital Territory. By amending Article 198 a bench each of the Peshawar High Court at Mingora and Balochistan High Court at Turbot has also been provided. Article 200 which required that if a Judge of High Court did not accept transfer to another High Court, he shall be deemed to have retired from his office has been deleted. Now, no judge can be transferred from one High Court to another without his consent. Article 203-C has been amended by adding clause 4b which provides for the same method for removal of the Chief Justice as is provided for the Judge of the Supreme Court.

3.9. the Military cannot overthrows the govt. after 18th Amendment.

“The definition of “high treason” has been expanded in Article 6 of the constitution of Pakistan. Now an act of suspending the constitution or holding it in abeyance or any attempt to do so shall also be considered High Treason. It has also been added to the article that high treason cannot now be validated by the Supreme Court or a High Court. This amendment is likely to discourage future military takeovers in Pakistan. After 18th Amendment no one is to suggest that there is a threat of martial law, after all, the military has been consistently saying that all it is doing is worrying about accountability and federalism [52] in the country and a coup is never going to happen.”

3.10 . Socio-Economic Impact on Pakistan Society.

New Article, 25-A provides for the right to free and compulsory education to all children of the age from five to sixteen years. This would raise the literacy level of the population. Two Articles namely 27 and Article 38 have been amended. The first provides that under representation of any class or area in the services of Pakistan may be redressed in such manner as may be determined by an act of Parliament. A new Para (g) added to Article 38 provides that the shares of the provinces in all Federal Services, including autonomous bodies and corporations established by or under the control of the federal government shall be secured and any omission in the allocation of the shares of the provinces in the past shall be rectified. According to a new provision added to Article 92, the strength of the cabinet has been limited, including the Ministers of State to 11 percent of the total Membership of Parliament. On the same lines, Article 130(6) restricts the Provincial Cabinets to 11 percent of the total Membership of a Provincial Assembly or 15 Ministers whichever is higher. This will curtail the current expenditure of the federal and provincial governments and will thereby release more funds for socio-economic uplift of the people of Pakistan. [53]

The following are the certain entries have been deleted from the “Federal Legislative list Part I and have not been included in any other list. These entries are now within the domain of residuary subjects that are not included in any legislative list and thus have automatically been shifted to the provinces. These are as under:

- Entry 33. State Lotteries.
- Entry 45. Duties in respect of succession to property.

- Entry 46. Estate duty in respect of property.
- Entry 50. Taxes on Capital value of immovable property”.

A few entries have been moved from the Federal Legislative List Part I to Federal Legislative List Part II. These entries are thus no longer the exclusive domain of the Federation. Like other entries of Federal Legislative List Part II these entries and the resources and related institutions thereof will now come under the joint supervision of the Federation and the Provinces. This control and supervision shall be exercised now through the Council of Common Interest (CCI Article 153) whose functioning has now been greatly enhanced and made provincial autonomy oriented. These very important entries are:

Entry 21. Major Ports.

Entry 32. National Planning and national economic coordination including planning and coordination of scientific and technological research.

Entry 38. Census.

Entry 39. Establishment of standard of weights and measures.

The Concurrent List now stands abolished in Toto. Entries previously included in the Concurrent List (except a few) are now residuary entries falling under the provincial domain. Certain key entries of the Concurrent List now coming over to the Provinces that are going to have significant economic impact are:

- Drugs and medicines.
- Environment. [54]
- Population planning and social welfare.
- Labour welfare, trade unions, labour exchanges, unemployment insurance.
- Zakat.
- Tourism.

Under Article 167 (4) of the constitution; “A province may raise domestic or International loan, or give guarantees on the security of the Provincial Consolidated Fund within such limits as may be specified by the National Economic Council”.

“Significant changes which bring additional resources to the Provinces have been made in Article 172 of the constitution of Pakistan. In Article 172 (2) the word ‘within’ has been changed by ‘beyond’ and thus ‘lands, minerals and other things of value’ underlying the ocean in the territorial waters of Pakistan will be owned by the Provinces instead of the Federal Government. Similarly with the addition of the new clause (3) in Article 172 ‘mineral oil and natural gas within the Province or the territorial waters adjacent thereto shall vest jointly and equally in that Province and the Federal Government’. [55]

3.11. Pre Eighteenth Amendment Framework Of Higher Education:

In the aftermath of inclusion of education in the concurrent legislative list it has remained a joint function, federal as well as provincial. At federal level, Ministry of Education formulated policies, plans as well as the national curriculum,

Whereas the provinces developed their own planning and implementation schemes in the larger framework as envisaged in the national policies and curriculum. [56]

The primary responsibility of development and coordination of national policies and plans of education rested with the Policy and Planning Wing of the federal ministry of education. The key roles as prescribed by the Rules of Business 1973 included; formulation of national policies, collection of vital statistics; diagnose system & performance issues, development of physical and financial norms at each level of education in terms of unit costs, students teacher ratio, physical facilities and general improvement in the learning environment, and proposing alternate strategies to maximize returns on investment made in education. It was also mandated to prepare and monitor implementation of PSDP, Medium Term Plan (MTP) and Perspective Plan (PP). Assist and coordinate with Provincial Education, Finance and

The formulation, evaluation and approval of curriculum have remained the mandate of Federal Bureau of Curriculum (Curriculum Wing) a constituent section of the Federal Ministry of Education [57]. It was established under the Federal Supervision of Curricula, Text Books and Standards Act 1976¹⁷. The Federal Bureau of Curriculum has been supported by the Curriculum Bureaus in each province [58]. These bureaus provided the academic support to the Federal Bureau of Curriculum (Curriculum Wing). [59] The authority of finalization of curriculum rest with the Federal Ministry.

For the improvement, promotion, coordination and regulation of Higher Education, University Grants Commission (UGC) was established in 1974 through an act of parliament. UGC was replaced by the Higher Education Commission (HEC) in 2002. Besides improvement and development, HEC also played the role of regulator of Higher Education in Pakistan. In order to ensure quality and uniformity across the country Inter-Board Committee of Chairmen (IBCC) was formed in 1976 under a notification from Ministry of education in 1976. IBCC was established under a resolution by Federal Ministry of Education. Another important institution functional under the auspices of the Federal Education Ministry has been the “Interprovincial Education Ministerial Committee”. The forum not only helped coordinate a uniform system of education in all the federating units but also had a fundamental role in the approval of scheme of studies.

The Provinces besides their supporting roles in curriculum and policy formulation implemented and administered education affairs in their respective areas. All the provinces have similar administrative structures; Department of Education with Secretaries as administrative head of the organisation, supported by a provincial directorate as well as divisional and district formations. Punjab and Khyber Pakhtunkhwa have separate departments for School (Elementary & Secondary) and Higher Education, whereas in Sind and Baluchistan all the functions are performed by single Department of Education. Education management and direction is mainly done at district level, under the administrative supervision of Provincial Directorates and Provincial departments of education. [60]

3.12. POST 18th AMENDMENT FRAMEWORK OF HIGHER EDUCATION:

The significant changes altering the governance framework include the following i.e.:

INTRODUCTION OF NEW ARTICLE 25-A:

The amendment has inserted a new Article in the chapter dealing with fundamental rights in the Constitution of 1973. Article 25-A obligates the state to provide free and compulsory quality education to children of the age group five to sixteen years. However the manner and method of the provision is made contingent upon law

“The State shall provide free and compulsory education to all children of the age of five to sixteen years in such a manner as may be determined by law”. [61]

The concurrent legislative list which included the subjects in the shared legislative jurisdiction of Federation and provinces has been omitted. The omission has resulted in delegation of a number of subjects to the legislative and executive jurisdiction of the federating units. In context of education the two key entries of concurrent list which stand devolved include:

- Entry 38: Curriculum, syllabus, planning, policy, centers of excellence, standard of education. &

- Entry 39: Islamic Education.

NEW ENTRIES IN FEDERAL LEGISLATIVE LIST PART II:

Part II of the Federal Legislative list, which is in the mandate of reconstituted and more empowered Council of Common Interest (Article 153-154), has been reconfigured. A number of new entries have been inserted; the entries which have direct bearing on Education include the following:

- Entry 6: All regulatory authorities established under a federal law.
- Entry 12: Standards in institutions of Higher education and research, scientific and technical institutions
- Entry 13: Interprovincial matters and Coordination. [62]

CHAPTER 4: (IMPLEMENTING THE 18TH AMENDMENT :)

4.1. 18th Amendment has now become part of 1973 Constitution, its proper implementation is needed to realize the true spirit of the 1973 [63] Constitution and the parliamentary system. This is needed to ensure that federal and provincial governments are elected and function smoothly with stability so that these can contribute for development and prosperity of Pakistan and its people [64]. The implementation commission on 18th Amendment already constituted by the government on May 4, 2010. It has largely done its job of shifting the concerned ministries and subjects to the provincial governments and left over tasks of the commission are likely to be completed within a short frame of time. In this regard the federal and provisional governments have to understand the challenges facing the implementation of the 18th Amendment and find out the solution to those challenges with a view to ensure implementation of the amendment in the shortest possible time for drawing real benefits for the socio-economic development of Pakistan and welfare of its people. Challenges to Implementation of 18th Amendment Under the 18th Amendment, 40 of the 47 subjects in the old Concurrent List have been devolved to the provinces for which they need to legislate and create necessary infrastructure to use those subjects for the benefit of the provinces and their people. The charge of an estimated 20 ministries and divisions and 100 autonomous bodies and institutions some of which have already been transferred to the provinces and others are in the process of being handed over to the provinces will require a lot of work in creating new ministries in the provinces and absorbing almost 250,000 federal employees of the dissolved ministries. In this regard, the government is likely to face stiff resistance from bureaucrats with reservations over their transfer to provinces from the federal capital. Federal government and the parliament have also to legislate for making an effective accountability department to end corruption and mal practices in the country. The 18th Amendment contains very significant provisions regarding Centre-Provinces relations and measures to give sufficient autonomy to the provinces. To empower the people at grass roots level, the provinces have also to devolve powers to the local governments for which a system has to be evolved quickly in the light of the 18th Amendment. This would require well-structured and planned regular functioning of Council of Common Interests with the spirit of mutual accommodation in decision making by the federation and the provinces. All provisions of the 18th Amendment and the NFC Award affecting the economy have to be translated into a viable economic policy by

the central and provincial governments in order to bail out the economy [65] from its present crisis situation and ensure sustained economic development which is necessary for country's sovereignty and prosperity. It is also important for achieving provincial autonomy ensured through cancellation of Concurrent List and alleviation of their grievances through financial self-sufficiency to be attained in the light of the NFC awards and 50% share of natural resources. According to the 18th Amendment package, the Implementation Commission has to carry out the major task of the restructuring of the Federal Public Service Commission and Provincial Public Service Commissions in each province. The implementation of the 18th Amendment would be a test of strong political will of the governments at the Centre and Provincial levels, including bureaucracy's sincerity and efficiency. [66]

4.2 Federalism in Pakistan after 18th Amendment

Article 1(2) of the amended constitution defines that the Federation of Pakistan consists of territories, the provinces of Baluchistan, Khyber Pakhtunkhawa, Punjab and Sindh, the federal capital Islamabad, the federally administered tribal areas and such other states and territories as are and may be included in Pakistan. It is imperative to note that the territories of Azad Kashmir are not mentioned in Article 1 of the constitution of Pakistan but they become part of Pakistan under article 1(2) clause (d) of the constitution. The territories of Kashmir may be included in Pakistan according to Article 257 of the constitution of Pakistan, which describes that “when the people of the state of Jammu and Kashmir decide to accede to Pakistan, the relationship between Pakistan and the state shall be determined in accordance with the wishes of the people of that state”; Further, part XI article 239 clause 4 states that “A bill to amend the constitution which would have the effect of altering the limits of a province shall not be presented to the president for assent unless it has been passed by the provincial assembly of the province by the votes of not less than two-third of its total membership. Under the 18th Amendment there is no merger of FATA in Khyber Pakhtunkhawa [67]. But it is imperative to note that Article 247(1) of the constitution defines that “subject to the constitution, the executive authority of the Federally Administered Tribal Areas, and the executive authority of a province shall extend to the provincially administered areas therein. [68] A federation should have a special procedure of amendment for the creation of new constituent units; the consent of existing units should also be acquired because it is essential that the constituent units must agree among themselves. If the units have a large enough population, either heterogeneous or homogeneous, and the people of far flung areas are deprived of their rights then a new province may be created. In case of Pakistan, Pukhtoon leadership would not favour the reorganization of the province on linguistic basis because there is a Hindko speaking population. It is a fact that the British rulers drew boundaries of the provinces according to their administrative requirement. They did not consider linguistic differences. At the time of emergence of Pakistan, millions of people migrated and this situation changed the demographic structure of the provinces. When in 2010, the 18th Amendment was made to the constitution; the NWFP was renamed as Khyber Pakhtoonkhawa. The Hindko speaking people reacted

against it. It is not the first time that Hindko speaking population is showing resistance against the renaming of the province. In 1997 when Provincial Assembly of NWFP passed a resolution, the protest was started by Hazara Qaumi Movement (HQM) and MQM was organized in late 1980. It claimed to be the champion of the rights of Hindko population. They claimed that Hindko was a separate language; on the other hand, the Pushtuns claimed that Hindko was a dialect of Pushtuns. The Hindko speaking population is 40 percent of the province's population and they are demanding that Hindko should be recognized as a separator language in national census. It may be noted that Hindko speaking areas include Mansehra, Abbotabad, Peshawar city, Haripur, Kohat, Nowshera and D.G.Khan. It is a fact that in case of creation of Hazara province, the area of Khyber Pushtuns will be reduced. This would not be acceptable to the leadership of the province. FATA and the Pushtuns belt of Balochistan are the areas outside the Khyber Pakhtoonkhwa. They are against the inclusion of their territory in Khyber Pakhtoonkhwa, particularly FATA is excluded from the province. It will also affect the strategic position of the province. Pushtuns are also settled in the northern part of Baluchistan. The Baloch leadership is also against the reorganization of their province on the basis of language because the result would be loss of northern area of the province. The Mengal tribesmen are Brahvi speaking. The province is small in terms of population and the division will further decrease its population. When we turn our attention towards Sindh, we find confusion regarding the creation of new provinces. Sindhis and Muhajirs are divided on linguistic basis. Demand for the creation of Karachi province has been heard off and on over the years. Recently the Chief Minister of Punjab, Shahbaz Sharif, was reported hinting at such a possibility. The MQM however denies any such plans. Muhajirs are living in Karachi and in other urban areas of Sindh. Rural Sindh is Sindhi speaking. There is no need to create new province on linguistic basis. Thousands of Pushtuns are settled in Karachi. Moreover there is a large number of Baloch population in Sindh. Accordingly "the four major geographic divisions retained their specific character, harboured special interests and endeared diversities made essential the realization of a viable constitution which can satisfy aspirations of the people of Pakistan." As we know Sindh became a separate province in 1936, with Karachi as its capital. The Muslim League had no candidate to contest the election of 1937 in the Muslim majority province of Sindh. In 1938, G.M. Sayed and Sheikh Abdul Majeed who were members of Sindh Assembly joined the party and attempted to pass the resolution for the creation of separate homeland for Muslims. After the creation of Pakistan, the Quaid-i-Azam decided that Karachi will be the capital of Pakistan. This decision brought resentment among Sindhis because Karachi

district was separated from Sindh on July 2, 1948. It was considered as a big loss to Sindh. The establishment of One Unit in 1955 was also resented by the people of Sindh. The representation of Sindhis in civil services and army was low. There also was polarization between Sindhis and Mohajirs which resulted in riots of January 1971. Mohajirs and students of Karachi University demanded Urdu to be official language along with Sindhi. During the Ayub era, the study of Sindhi language was dropped from schools, colleges and universities. Sindhis perceived that if Urdu was accepted as a provincial language, Sindh would be considered as a multi-ethnic province. Actually both communities were of the view that one community's language was against the interests of the other community. The Sindhis feel that they have become a minority in Sindh. They are not in favour of acceptance of ethno-linguistic division of the province. In Punjab, there are two political movements: One is for the Saraiki province and the other is the movement for the province of Bahawalpur. The demand for the Saraiki province reflects the feeling of deprivation among the people of that part of southern Punjab. The other issue is related to income and expenditures. They argue that their area generates more income than their expenditures because this area produces wheat and cotton, which contributes 10 per cent and 23 per cent of the total production of Pakistan. Urdu and Punjabi speaking people are against the creation of the Saraiki province on linguistic basis. The Rulers of Bahawalpur signed an agreement with the government of Pakistan on April 30, 1951, according to which the state of Bahawalpur was to enjoy the same rights as provinces in the matter of legislation, administration and grants and loans. It is imperative to note that before One Unit (1955) Bahawalpur enjoyed provincial status. But on March 30, 1970 when One Unit was dissolved and provinces were restored, Bahawalpur was merged into Punjab though it had been assured at the time of merger that whenever One Unit was dissolved, Bahawalpur would be restored its pre-One Unit status. Economically, Bahawalpur is a rich region. It is a major producer of cotton. [69]

Chapter: 5 (Current Dilemma /Problem.)

5.1. The genuine yields of decentralization, devolution of intensity and strengthening of individuals at grassroots level still couldn't be benefited by Pakistani nationals. Despite consistent choices of multi-party Constitutional Implementation Commission headed by Senator Mr. Raza Rabbani constituted under Article 270 AA of the Pakistan's Constitution, a portion of the basic issues still stay uncertain. [70] These include: joint responsibility for assets; foundation of Commission on Standards in Higher Education and Research; and strategy direction and supervisory control of Council of Common Interests (CCI) over the subjects enrolled in the Federal Legislative List Part II, for example, railroads, advanced education, government administrative bodies, statistics, power, and rail routes, legitimate, restorative and other elected proficient bodies. The yearly distributions for these subjects under the space of the CCI are being made without its audit and endorsement. [71]

The Senate of Pakistan ought to likewise assume its part towards execution of the article 38(g) of the Constitution of Pakistan, which guarantees the offer of the territories in every government benefit, including elected self-sufficient bodies and enterprises. It can likewise help with tending to the complaints of littler areas in regards to the China-Pakistan Economic Corridor and other improvement ventures reported by government.

5.2. THE LITERATURE REVIEW.

The 18th Amendment in the Constitution of Pakistan ensures the strengthening of federating units and the federation overall. It is the mutual responsibility of both the federal and provincial governments to implement this amendment in true letter and spirit. On the one hand, provincial governments need to exercise their respective authority to legislate on the provincial subjects while on the other hand the federal government needs to trust its federating units and be responsive in this regards. This needs political will and seriousness towards the implementation of the amendment. Due to the 18th Amendment the legislative and executive authorities of the federal and provincial governments have been delimited by assigning the exclusivity of fifty three subjects to the federal government, eight subjects to the Council of Common Interests (CCI) and all residual subjects to the provincial governments. In the aftermath of this amendment, not only the regulatory authorities on provincial level came into existence but also the federal government has placed functioning of five Regulatory Bodies i.e.; 1.National Electric Power Regulatory Authority (NEPRA), 2.Pakistan Telecommunication Authority (PTA), 3.Frequency Allocation Board (FAB), 4.Oil and Gas Regulatory Authority (OGRA) and 5.Public Procurement Regulatory Authority (PPRA) under concerned ministries. An important question arises with respect to the validity of regulatory authorities to regulate the subjects which has been devolved to the provinces in consequences of the aftermath of 18th Amendment. Also, how are they going to affect the exercise of powers at the provincial level? Therefore, this paper will deal in same issue is of utmost importance and hopefully will be source of re-emphasizing the issue for future discussions. The constitution of any country ensures the existence of the social contract between the state and its citizens and, therefore, directly deals with them on all levels, and 18th Amendment is no different in this perspective. The academicians, activists and representatives of civil society are all equally important when it comes to the implementation of the 18th Constitutional Amendment in the constitution of Pakistan. [72]

5.3. RESEARCH METHODOLOGY APPLIED IN THE THESIS.

After designing the case study qualitative approach has been used. Individual Interviews of eminent lawyers; Journalists and judicial officers and members of national Assembly [73] of Pakistan, members of concerned standing committees, legislatures, bureaucracy etc. were conducted. Mostly the structured interviews were also conducted with some open ended research questions. All interviews were recorded. Sample size is around 100. The objective of this study was also to conduct an institutional appraisal of the provincial departments to mark the achievements, problem areas and issues, as well as to formulate the recommendations in the post-devolution scenario. It is an in-depth literature review comprising papers found on, Google Scholar, reports published by the government departments, independent research works, academic papers, and documents produced by the development agencies in Pakistan, covering 18th constitutional amendment and its implications on all sectors. Following 18th amendment, the provincial Governments formulated implementation strategy which is being implemented in a phased approach. Most of the Districts have developed their three years rolling out plans. Development agencies have in principle committed to support all sectors strategy till 2017. Fair investments in improving governance, service delivery structure, human resource, health information, education and medical products are expected more than ever in the post 18th amendment scenario. This is the chance for the provinces to serve the vulnerable people of the provinces, saving them from shocks. [74]

5.4. Conclusion

The Provincial and federal stakeholders views on some of the critical issues which are listed below.

i. Mainly the 18th amendment is to build up a common guide of operationalizing vital changes in essential enactment/legislations, principles of business/ authoritative audits/review and revisions, and financial standards under the new constitutional framework.

ii. The 18th amendment Identify the mechanisms to improve linkages between political mandate bearers and duty bearer such as strengthening capacity of provincial standing committees to provide direction and oversight.

iii. The 18th amendment is to Identify the means to strengthen the new institutional arrangements, such as role of Counsel of Common Interest in policy making, implementation of constitutional provisions, and articulation of federal and provincial roles within legal framework, as well as ways to promote inter-provincial cooperation, information sharing, communication and coordination on areas of common interest, particularly with regards to federally relocated/retained institutions.

iv. To identify institutional development requirements such as reviewing/devising rules of business that govern the provincial executive machinery.

v. To identify capacity building requirements of provinces for training the

officers of the executive in realizing the changes introduced by new framework under 18th amendment.

vi. To identify mechanisms for institutional response to citizens' concerns as per the new constitutional granted Right to Information.

vii. Establishment of local government according to the spirit of Article 140-A is an urgent need for effective service delivery.

5.5. Recommendations.

a. The federation of Pakistan has become mired in crisis. A variety of conflicts [75] between the people and the state are raising at an alarming pace, fuelled by anger over bad governance, lack of basic service provision, and a growing radicalization in Pakistan. Even with the relatively empowered parliament, independent judiciary, free media and vibrant civil society, Pakistan has yet to fully align itself on the path to substantial democracy and democratic federalism based on a complete autonomy for the constituent federating units. Democratic changes, while deceptively attractive, are merely a superficial façade painted over fractured rule. Little doubt remains on the sheer incompetence and ineffectiveness of democratic institutions. The pendulum of public opinion once again may have swung back in favour of a civilian government.

b. National matters like curriculum, higher education [76], standard of drugs, and environment [77] should remain under federal government [78].

c. Democratic institutions have to be strengthened for military interventions resisted.

d. Proper resources should be provided to parliamentary committees to function effectively.

e. Like other provinces, Baluchistan Assembly should also make parliamentary committees to help resolve the problems of the Baloch people.

f. To achieve sovereignty and national integrity, laws enshrined in the

constitution should be respected.

g. The distribution and devolution of power is better than concentration and centralization of power and the devolution should be from center to provincial level and from provincial to district and tehsil levels.

h. The regularity in holding of elections should be introduced within each political party. The elimination of this requirement in the 18th Amendment will strengthen dynastic leadership.

i. For stable political system, balance of power and social justice is necessary and to this affect necessary amendments be made in Rules of Business.

j. Media should not only be a source of information and awareness for the people. It should not give judgments on sensitive issues and it should be regularised through some independent authority. The regulation of the media normally should takes place within a broader framework of principle and policy in accordance of law.

k. Hand-binding constraints on the provinces be imposed to generate a targeted surplus consistent with overall fiscal deficit target.

l. There is a dire need to improve the working of lower judiciary as it affects the common people and are increasing the hardships of the common man.

m. Corruption has to be eliminated for effective working of institutions and

organizations like Federal Board of Revenue; police; district administration and local Tax offices.

n. There should be cooperative federalism and not coercive federalism.

O. Trust has to be built between provinces and federal government.

p. The Election Commission has to be empowered to play its vital role in developing the democracy.

q. New provinces should be made on the basis of administrative needs and not on linguistic or ethnic basis.

r. Effective land reforms are required in the country of Pakistan.

s. The body of Council of Common Interest (CCI) should ensure the cooperation amongst the provinces.

t. Bilateral and collective discussions should take place to evaluate provincial resources taking into the considerations of Geo-Political and socio-cultural conditions of provinces, and funds must be distributed for development with some criteria of poverty, education, medical facilities etc. This will help a lot in developing cooperative centre [79]–

u. The political culture of Pakistan also needs to be addressed so that the unity

and integration can be achieved as a nation.

v. As long as the inter province grievances are concerned, they can be eradicated by bringing land reforms. So that the representatives in Assemblies will not be landed aristocracy rather a true representative of the people will defend the interest of his / her people over his / her personal interests.

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