

16

BRIEFING PAPER NO.

PILDAT

AUGUST 2004

BRIEFING PAPER

FOR PAKISTANI PARLIAMENTARIANS

Strengthening National and Provincial Legislative Governance

PART I

Introductory

(1) Pakistan shall be Federal Republic to be known as the Islamic Republic of Pakistan, hereinafter referred to as Pakistan.

(2) The territories of Pakistan shall comprise—

(a) the Provinces of Baluchistan, the North West Frontier, the Punjab and Sind ;

(b) the Islamabad Capital Territory, hereinafter

**Amendments to the Constitution of Pakistan**

(3) [Majlis-e-Shoora (Parliament)] may by law admit into the Federation new States or areas on such terms and conditions as it thinks fit.]

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**Abbreviations and Acronyms**

<b>ANP</b>	Awami National Party
<b>FATA</b>	Federally Administered Tribal Areas
<b>LFO</b>	Legal Framework Order
<b>MQM</b>	Muttahida Quami Movement
<b>NAP</b>	National Awami Party
<b>NSC</b>	National Security Council
<b>NWFP</b>	North West Frontier Province
<b>PLD</b>	Pakistan Legal Decisions
<b>PML(N)</b>	Pakistan Muslim League (Nawaz Group)
<b>PPP</b>	Pakistan Peoples Party
<b>RCO</b>	Revival of Constitution Order 1985
<b>SAARC</b>	South Asian Association for Regional Cooperation



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## FOREWORD

The Constitution works as the basic law of a country. The Parliament may make amendments in special circumstances if the need arises. Amendment to the Constitution is therefore considered a democratic parliamentary function. Almost every written constitution of the world contains rules and procedures to make amendments to it, albeit these procedures are more stringent than the procedures of amending ordinary legislation.

The Constitution of Pakistan has also undergone substantial changes since 1973. However, in the case of Pakistan, the Constitution has been amended not only by democratically elected parliaments but also by military dictatorships although these amendments were later ratified by the elected parliaments. The original fabric of the 1973 Constitution has thus been completely transformed and can not be comprehended without a meticulous understanding of its amendments.

**“Amendments to the Constitution of Pakistan”**, a Briefing Paper by PILDAT, is an effort in this regard. It aims to familiarise the parliamentarians with the details of constitutional amendments so far brought to the Constitution as well as provides them a critical analysis of the role that previous parliaments played in handling the amendments. Authored by **Mr. Hamid Khan**, an academic expert in Constitutional Law and a Senior Advocate, the paper concludes that “the Constitution as it stands today is a completely different legal and political document than it was when originally passed in 1973”; the transformation that has led to this conclusion is narrated in this briefing paper. It is developed by PILDAT, as a part of Pakistan Legislative Strengthening Consortium PLSC and funded by USAID.

The author and PILDAT have made significant efforts to ensure the accuracy of the contents of this paper. We however, do not accept any responsibility of any omission or error, as it is not deliberate.

The views expressed in this paper belong to the author and are not necessarily shared by PILDAT, PLSC or USAID.

Lahore  
August 2004.

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PROFILE OF THE AUTHOR



**Mr. Hamid Khan** is a Senior Advocate, Supreme Court of Pakistan. He is married and has three sons and a daughter. He has to his credit L.L.M. from University of Illinois, USA (1973) and LL.B from University Law College Punjab University (1966). He has also attended many academic programs; to name a few, the Orientation Program in American Law (OPAL) in 1970 and Academic Program at South Asia Institute, University of Heidelberg, Germany (1986).

His professional career as an advocate began in 1968, after which he enrolled as an Advocate in High Court (1970). Later in 1979 he enrolled as an advocate in Supreme Court. He was elected as Secretary, Lahore High Court Bar Association in 1978-79. Later he was elected as a Member of Punjab Bar council and served from 1979 to 1988 during which period he became Vice Chairman, Punjab Bar Council in 1986. He is a member of Pakistan Bar Council, elected in 1990 and reelected in 1995 and 2000. He is the Chairman of Legal Education Committee of Pakistan Bar Council since 1995. During 1992-1993 Hamid Khan became President of the Lahore High Court Bar Association. He has also been President for Supreme Court Bar Association of Pakistan for the years 2001-03. Hamid Khan is a partner of the reputed law firm - Cornelius, Lane & Mufti, Lahore.

Mr. Khan has an extensive teaching experience on the subject of law. He has been a guest speaker at the National Institute of Public Administration since 1978, a guest speaker at Pakistan Administrative Staff College and also a visiting lecturer of Law, Punjab University Law College in Lahore from 1973 to 1980. He has also served as a Head Examiner in 'Public International Law' at the University of Punjab from 1981 to 1984.

Hamid Khan has penned many books during his illustrious and high profile academic career. These include 'Constitutional and Political History of Pakistan' (2001), 'Principles of Administrative Law' (2000), 'Eighth Amendment Constitutional and Political Crisis in Pakistan' (1994), 'Administrative Tribunals for Civil Servants in Pakistan' (1990) and 'Islamic Law of Inheritance' (1980), just to name a few.

Over his brilliant career of more than 30 years, Hamid Khan has also written numerous articles on law related matters. Some of the prominent and highly acclaimed articles are 'Judicial Review of Administrative Actions in Pakistan' (1982), 'An Outline of Constitutional History of Pakistan' (1987), 'Government and Judiciary: 1994 to 1997, The Crisis of State' (1998) and 'A history of Legal Profession in Pakistan' (1998).

His insightful professional career has made him serve as a lecturer, an advocate, a researcher and he has attended many conferences in Pakistan and abroad. He represented Pakistan bar Council in Biennial Conference of International Bar Association (IBA) at France (1992), LAWASIA Business Law Conference in Hong Kong (1996) and SAARC Law Conference at Karachi (1997). He served as a resource person/keynote speaker at many of the conferences/workshops.

Hamid Khan was awarded the Dorab Patel Award for Rule of Law (2002) and Madar-e-Millat Award (2003).

## INTRODUCTION

**I**t is a parliamentary function in any democracy to make amendments in the Constitution. No constitution in the World can be so rigid that it cannot be amended. Therefore every written constitution provides for the procedure of amendment of the Constitution which is generally different and more stringent than the manner and procedure of ordinary legislation. Article 51 of the Constitution of Pakistan 1973 provides that the Parliament of Pakistan consists of the President and two Houses to be known as the National Assembly and the Senate. The Constitution provides for procedure to amend the Constitution under its Article 238 and 239. The Constitution, or any of its provisions, can be amended by an Act of Parliament provided it is passed by the votes of not less than two-thirds of the total number of members of the National Assembly and the Senate, each House voting separately. However, no amendment of a constitutional provision affecting the limits of a province can be made unless such amendment had been approved by a resolution of its Provincial Assembly by not less than two-thirds of the total membership of that assembly.<sup>1</sup>

Unfortunately, ever since the commencement of the Constitution on 14 August 1973, Pakistan has suffered from absence of the Parliament for sustained periods of time. During the Martial Law of General Zia, both the Houses of the Parliament were suspended for about eight years (from July 1977 to March 1985). Similarly during the military regime of General Musharraf, both the Houses of the Parliament remained suspended for three years (October 1999 to October 2002). In addition, the National Assembly was dissolved in 1977, 1988, 1990, 1993 and 1996-97, the total period of dissolution adds up to more than one and half years. In this way, the Parliament did not exist or was not functional for a total period of twelve and half years out of thirty one years of the commencement of the Constitution. In other words, the Parliament in Pakistan has been functional only for less than nineteen years under the Constitution.

During the course of Pakistan's chequered constitutional and political history, the Constitution has undergone frequent and comprehensive changes in the shape of Constitutional amendments which are briefly discussed below.



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of Pakistan

## 1. First Amendment

Consequent to the recognition of Bangladesh in 1974, the Constitution (First Amendment) Act, 1974 was passed on 8 May 1974. The Act deleted Clause (2) from Article 1 which provided for representation of East Pakistan in the federation of Pakistan after the effect of foreign aggression over there were eliminated.<sup>2</sup>

Other important amendments to the Constitution brought about by the First Amendment were as under:

- Article 17 pertaining to the freedom of association was amended providing for reasonable restriction on this freedom to form associations imposed by law in the interest of sovereignty or integrity of Pakistan. Such law was also to provide that where the federal government declared that any political party had been formed or was operating in a manner prejudicial to the sovereignty or integrity of Pakistan, the federal government should, within fifteen days of such declaration, refer the matter to the Supreme Court whose decision on such reference would be final. It was under this provision of the amended constitution that NAP was later dissolved in 1975 and the matter was referred to the Supreme Court.
- The maximum period intervening the two successive sessions of the Senate, the National Assembly, and the Provincial Assemblies, was reduced from 130 days to 90 days.
- Chief Justice of a High Court could require a judge of another High Court to attend the sittings of his court provided the judge so asked had consented to it and the President approved the same after consultation with the Chief Justice of Pakistan and the Chief Justice of the High Court of which he was the judge.
- On the establishment of a service tribunal, all proceedings pending before any court, in relation to the terms and conditions of service of employees to which the jurisdiction of such tribunal extended, would abate.

## 2. Second Amendment

Clause (3) The Constitution (Second Amendment) Act,

1974 was passed on 21 September 1974 and added to Article 260 of the Constitution that explains as to who is a non-Muslim.<sup>3</sup> This Article pertains to definitions under the Constitution. The new clause stated that “a person who does not believe in the absolute and unqualified finality of the Prophet-hood of Muhammad (PBUH) as the last of the Prophets or claims to be a Prophet, in any sense of the word or of any description whatsoever, after Muhammad (PBUH), or recognizes such a claimant as a Prophet or a religious reformer, is not a Muslim for the purposes of the constitution or law”. Since this definition or explanation did not specifically refer to the Ahmedis, therefore, Article 106, which pertains to the formation of provincial assemblies and distribution of the seats within such assemblies, was also amended to make mention of Ahmedis amongst the non-Muslim faiths described in the Article for the purpose of reservation of special seats for them. They were referred to as “persons of the Qadiani group or the Lahori Group (who call themselves 'Ahmedis’)”.

## 3. Third Amendment

The Constitution (Third Amendment) Act, 1975 was passed on 18 February 1975. The Act was introduced to curtail the rights of a detenu detained under a law for preventive detention, extending the powers of the detaining authority.<sup>4</sup> Article 10 of the Constitution which provided for certain safeguards against preventive detention was amended in February 1975 under the Constitution (Third Amendment) Act, 1975 to the following effect:

- The period of preventive detention for a detenu was originally fixed at one month, beyond which period no law for preventive detention could authorize preventive detention unless the appropriate Review Board, after affording the detenu an opportunity of being heard in person, reviewed his case and reported that, in its opinion, there was sufficient cause for continuation of detention beyond one month. This initial period of detention was extended from one month to three months under the third amendment.
- Under the constitution originally, it was required that a detenu held under a law for preventive detention should be communicated the grounds of his detention not later than one week of such detention so that he could make

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representations against the order of detention at the earliest. The Third amendment extended this period from one week to fifteen days.

- The constitution limited the total period of preventive detention to the maximum of twelve months within a period of twenty-four months. However, an exception to this limitation was made for a person who was employed by, or worked for, or acted on instructions received from the enemy. Such person could be detained indefinitely. This exception was extended under the third amendment to include any person “who is acting or attempting to act in a manner prejudicial to the integrity, security or defence of Pakistan or any part thereof or who commits or attempts to commit any act which amounts to an anti-national activity as defined in a federal law or is a member of any association which has for its objects, or which indulges in, any such anti-national activity”.

#### 4. Fourth Amendment

Under the Constitution (Fourth Amendment) Act, 1975, passed on 25 November 1975, the High Courts were forbidden from prohibiting the making of an order for preventive detention of a person or to grant bail to any one so detained. The constitutional jurisdiction of the High Courts was also curtailed in the matter of stay of recovery, assessment, or collection of public revenues. Any stay order granted in such a matter would cease to have effect on the expiry of sixty days unless the matter was finally decided by the Court within such time. All such interim orders made by a High Court before the fourth amendment would cease to have effect on the expiry of sixty days<sup>5</sup>

The opposition in the Parliament strongly opposed this Amendment. The opposition members were forcibly removed by the security staff from the National Assembly. They included Ch. Zahur Ilahi, Mr. Mahmood Ali Kasuri, Malik Suleman, Mufti Mahmood, Prof. Ghafoor Ahmad, Mr. Ahmad Raza Kasuri, Dr. Ghulam Husain and Mr. Zulfiqar Ali Bajwa.

The redeeming feature of this amendment was the allocation of six special seats to the minorities in the National Assembly and an increase in the number of seats for the minorities in the provincial assembly of the Punjab

from three to five.

#### 5. Fifth Amendment

Under the Constitution (Fifth Amendment) Act, 1976, passed on 15 September 1976, the following major changes in the Constitution were brought about:<sup>6</sup>

- The Governor of a province was not to be a permanent resident of that province.
- The period for separation of the judiciary from the executive was enhanced from three years to five years.
- The Chief Justice of the Supreme Court, unless he retired earlier on attaining the age of sixty-five, would hold office for a period of five years.
- In the same manner, the Chief Justice of a High Court would hold office for a period of four years.
- On the completion of the term of office as the Chief Justice of the Supreme Court or a High Court, as the case may be, he would have either of the two options, to retire from his office and receive the pension to which he would have been entitled had he retired from office on attaining the age of retirement; or to assume the office of the most senior of the judges of the court concerned and to continue to receive the same salary which he was receiving while holding the office of Chief Justice.
- A Chief Justice, who continued after the completion of his term of office as the senior most judge, could not even be appointed as acting Chief Justice in the absence of the Chief Justice or when vacancy occur in the office of Chief Justice.
- The term of office of the Chief Justice was to apply to those Chief Justices too who were appointed prior to the enactment of the Fifth Amendment.
- The power of the Supreme Court to issue directions, orders, or decrees was made subject to the Article 175(2) of the constitution, which states that “No court shall have any jurisdiction save as is or may be conferred on it by the constitution or by or under any law”. Thus the Supreme

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Court's jurisdiction was restricted to what was expressly granted under the constitution or a law.

- The common High Court of Sindh and Balochistan was dissolved and separate High Courts for these two provinces were established.
- The Supreme Court and the High Court were forbidden from making any order under Article 199 prohibiting the making, or suspending the operation, of an order for the detention of any person under any law providing for preventive detention; releasing on bail any person detained under any law providing for preventive detention; releasing on bail, or suspending the operation of an order for the custody, of any person against whom a report or complaint had been made before any court or tribunal, or against whom a case had been registered at any police station, in respect of any offence, or who had been convicted by any court of tribunal; prohibiting the registration of a case at a police station, or the making of a report or complaint before any court or tribunal, in respect of an offence; or granting interim relief to any person referred to above.
- All the orders, whether made by the Supreme Court or a High Court, making of which was being forbidden under the Fifth Amendment, were to become ineffective after the commencement of the Fifth Amendment and all applications for such orders were to abate.
- A judge of a High Court could be transferred to another High Court for a period up to one year without his consent and without the consultation of the Chief Justices concerned.
- Article 204, regarding contempt of court, was amended and the power of the High Courts to punish a person for contempt of court was made subject to ordinary law.
- A judge of a High Court who refused to accept appointment as a judge of the Supreme Court would be deemed to have retired from his office.

## 6. Sixth Amendment

The Constitution (Sixth Amendment) Act, 1976 was passed

rather hurriedly on 4 January 1977.<sup>7</sup> While the National Assembly was having its last session before its dissolution prior to fresh elections, the Constitution (Sixth Amendment) Bill was placed before the parliament and was passed. The main provision of the Sixth Amendment pertained to extension in the tenure of the Chief Justices of the Supreme Court and the High Courts beyond the age of retirement. It was provided that the Chief Justice of the Supreme Court who had attained the retirement age of sixty-five, and a Chief Justice of a High Court, who had attained the retirement age of sixty-two but had not completed their term of office of five years and four years, respectively, would continue to hold office until the completion of their respective term of office, as the case may be.

## 7. Seventh Amendment

The Constitution (Seventh Amendment) Act, 1977 passed on 16 May 1977 provided for a referendum to demonstrate confidence in the Prime Minister.<sup>8</sup> The referendum was to be held in accordance with a law made by Parliament. A Referendum Commission was set up to hold the referendum, count the votes, and declare its result. If, on the final count of votes cast at the referendum, the Prime Minister failed to obtain a majority of the total votes cast, he would be deemed to have resigned from office. Another provision of the Seventh Amendment barred the High Courts from exercising jurisdiction under Article 199 in relation to any area in which the armed forces were acting in aid of the civil power in pursuance of Article 245. However, the proceedings pending before the High Courts were saved.

## 8. Revival of Constitution 1973 ORDER 1985 (RCO) and Eighth Amendment

The Supreme Court of Pakistan, in the case titled "Nusrat Bhutto V. Chief of Army Staff" (PLD 1977 S.C 657) conferred the power to amend the Constitution on General Zia-ul-Haq. Exercising such power, General Zia comprehensively amended the Constitution through a President's Order, known as Revival of the Constitution of 1973 Order (RCO), on 2 March 1985.<sup>9</sup> The RCO made fundamental alterations in the Constitution and made significant departures from its original concepts. As many as sixty-five Articles (Out of 280 Articles) were amended

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/substituted/added /modified/varied/deleted/omitted. RCO can be regarded with justification as part of the Eighth Amendment without which the Eighth Amendment cannot be fully comprehended.

Important changes brought about by the RCO are briefly enumerated below:

- Article 2A was inserted, making the Objectives Resolution of 1949 a substantive and effective part of the Constitution. The Resolution, with some modifications, had already been adopted as a preamble to the constitutions of 1956, 1962, and 1973. Now the resolution was reproduced as an annex and made an operative part, with significant modification. The sixth paragraph of the Objectives Resolution in its original form read as follows:

“Wherein adequate provision shall be made for the minorities freely to profess and practice their religions and develop their culture”.

While reproducing the above paragraph in the Annex, the word 'freely' was omitted.

- The electoral college for election to the office of the President was modified so as to comprise both Houses of Parliament and all four provincial assemblies (with equal weightage given in terms of votes to each Provincial Assembly).
- The President was supposed to act on the advice of the Cabinet, the Prime Minister, or the appropriate minister, but he could require the Cabinet to re-consider such advice.
- The President was empowered to dissolve the National Assembly at his discretion where, in his opinion, appeal to the electorate was necessary. On such dissolution, elections were to be called within one hundred days.
- On the dissolution of the National Assembly, the President could ask the Prime Minister to continue in office until his successor entered the office of Prime Minister. This apparently applied to the Prime Minister in the event of either his resignation from office or where the National Assembly was dissolved on his advice. Where the National Assembly was dissolved at the discretion of the President, a caretaker

Cabinet would be appointed till such time that the election of the Prime Minister had taken place on the reconstitution of the National Assembly after the general elections.

- The seats reserved for women in the National Assembly were increased from ten to twenty. These special seats for women were only available until the holding of third general elections to the National Assembly under the Constitution.
- The number of members in the Senate was raised from sixty-three to eighty-seven, with five seats from each province reserved for technocrats, ulema, or professionals. The number of seats for federally administered areas was increased from five to eight. Seats for the federal capital were increased from two to three.
- The period of time provided for the President to give assent to the Bills passed by Parliament was increased from seven to forty-five days. The President could return a Bill (other than a Money Bill) within forty-five days for reconsideration. This gave the President a power to veto a Bill, but this could be overridden by passing the same Bill again by a majority of the members, present and voting, of both Houses of parliament in a joint session.
- The President could, at his discretion, appoint any member of the National Assembly as Prime Minister who, in his opinion, could command the confidence of a majority of the members of the National Assembly. However, a Prime Minister so appointed had to obtain a vote of confidence from the National Assembly within sixty days. The Prime Minister was to hold office during the pleasure of the President, but the President could not remove him unless he was satisfied that the Prime Minister did not command the confidence of the majority of the members of the National Assembly.
- Federal ministers and ministers of state were to be appointed by the President on the advice of the Prime Minister.
- Procedure for passing the motion of vote of no-confidence against the Prime Minister was altered and the requirement of giving the name of an alternative candidate in such a motion was omitted.

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- The provision for amendment to the Constitution was modified and under the new provision, an amendment to the Constitution could only be passed by a majority of two-thirds of the total members in the National Assembly and the Senate and by an absolute majority in all four Provincial Assemblies. The procedure for amendment to the Constitution was further modified under President's Order 20 of 1985, and the requirement of laying the Amendment Bill before the Provincial Assemblies was dispensed with except where such amendment had the effect of altering the limits of a province. In such a case, the Provincial Assembly of the concerned province had to pass the amendment by two-thirds of its total membership.
  - The Governor was supposed to act on the advice of the Cabinet or the Chief Minister, or appropriate minister, but he could require the Cabinet to reconsider such advice.
  - The period of time provided for the Governor to give assent to the Bills passed by the Provincial Assembly was increased from seven to forty-five days. The Governor could return a Bill (other than a Money Bill) within forty-five days for reconsideration. This gave the Governor power to veto a Bill but it could be overridden by passing the same Bill again by the votes of the majority of the total membership of the Provincial Assembly.
  - The Governor could appoint a member of the Provincial Assembly as Chief Minister who, in his opinion, could command the confidence of the majority of the members of the Provincial Assembly. However, a Chief Minister so appointed had to obtain a vote of confidence from the Provincial Assembly within sixty days. The Chief Minister was to hold office during the pleasure of the Governor but the Governor could not remove him unless he was satisfied that the Chief Minister did not command the confidence of the majority of the members of the Provincial Assembly.
  - Provincial ministers were to be appointed by the Governor from amongst the members of the Provincial Assembly on the advice of the Chief Minister.
  - Procedure for passing the motion of vote of no-confidence against a Chief Minister was altered and the requirement of giving the name of an alternative candidate was omitted.
  - The number of general constituencies (for Muslims) of the National Assembly was raised from 200 to 207. In addition to that, ten seats for minorities were reserved. Previously, under the Fourth Amendment, six seats were provided for non-Muslim minorities. However, previously the elections to the minority seats were held in the National Assembly itself, based on proportional representation with a single transferable vote. The RCO provided ten seats for minorities, four for Christians; four for Hindus and scheduled castes; one for Sikhs, Buddhists, and Parsee communities and other non-Muslims; and one for Ahmedis. These members were to be elected simultaneously with members from general constituencies, on the basis of separate electorates.
  - The seats in the Provincial Assemblies of Balochistan, the NWFP, the Punjab, and Sindh for minorities were raised from one to three, one to three, five to eight and two to nine, respectively. This allocation of seats to various non-Muslim communities is shown in the table. These members were to be elected, simultaneously with members from general constituencies, on the basis of separate electorates.
  - Separate electorates for minorities were given constitutional recognition for the first time in Pakistan. Zia had previously introduced separate electorates for minorities in 1979 by amendment to the Representation of the People Act, 1976. The RCO, however, gave constitutional status to the separate electorates.
  - One of the most striking changes brought about by the RCO was a large number of additions to the qualifications and disqualifications for membership to the parliament. Originally, the Constitution provided for a few qualifications which included requirements of citizenship and minimum age. The disqualifications provided originally in the Constitution were also few, which included insanity, insolvency, termination of citizenship, and holding of office of profit in the service of Pakistan. The RCO made wholesale additions to these qualifications and disqualifications.
- The qualifications added under Article 62 require a candidate for the parliament to be someone:

- a) of good character and not commonly known as



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**Table: Allocation of seats for non-Muslim communities  
in the Provincial Assemblies of Pakistan; provided in RCO 1985.**

Province	Christians	Hindus and others belonging to the scheduled castes	Sikh, Budhists and Parsi communities, and other non-Muslims	Those others belonging to the Qadiani group or the Lahori group (who call themselves Ahmedis)
Balochistan	1	1	1	—
The Nortwest Frontier Province	1	—	1	1
The Punjab	5	1	1	1
Sindh	2	5	1	1

- one who violates Islamic injunctions;
- b) with adequate knowledge of Islamic teachings and practices and obligatory duties prescribed by Islam as well as abstaining from major sins;
  - c) sagacious, righteous, non-profligate, honest and ameen;
  - d) with no criminal conviction involving moral turpitude or for giving false evidence; and
  - e) after the establishment of Pakistan, never to have worked against the integrity of the country or opposed the ideology of Pakistan.

The disqualifications added under Article 63 require a candidate for the parliament not to:

- a) be propagating any opinion, or acting in any manner prejudicial to the ideology of Pakistan, or the sovereignty, integrity, or security of Pakistan, or the maintenance of public order, or the integrity or independence of the judiciary of Pakistan, or which defames or brings into ridicule the judiciary or the armed forces of Pakistan;
- b) have been, on conviction for any offence which in the opinion of the Chief Election Commissioner

- involves moral turpitude, sentenced to imprisonment for a term of not less than two years, unless a period of five years has elapsed since his release;
- c) have been dismissed from the service of Pakistan on the ground of misconduct, unless a period of five years has elapsed since his dismissal;
- d) have been removed or been compulsorily retired from the service of Pakistan on the ground of misconduct unless a period of three years has elapsed since his removal or compulsory retirement;
- e) have been in the service of Pakistan or of any statutory body or any body which is owned or controlled by the government or in which the government has a controlling share or interest, unless a period of two years has elapsed since he ceased to be in such service;
- f) have been found guilty of a corrupt or illegal practice under any law for the time being in force, unless a period of five years has elapsed from the date on which that order takes effect;
- g) have been convicted under Section 7 of the



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Political Parties Act, 1962 (III of 1962), unless a period of five years has elapsed from the date of such conviction; or

- h) have, whether by himself or by any person or body of persons in trust for him or for his benefit or on his account or as a member of a Hindu undivided family, any share or interest in a contract, not being a contract between a co-operative society and government, for the supply of goods to, or for the execution of any contract or for the performance of any service undertaken by, government.
- The RCO also introduced the office of Adviser to the Prime Minister. The President could appoint up to five Advisers to the Prime Minister, on the advice of the Prime Minister. However, these Advisers could not participate in the proceedings of either House of the Parliament.
  - The executive authority of the federation would vest in the President which should be exercised by him, either directly or through officers subordinate to him, in accordance with the Constitution. This was a clear departure from the original scheme of the Constitution which provided that the executive authority of the federation should be exercised in the name of the President by the federal government consisting of the Prime Minister and the federal ministers which should act through the Prime Minister who was the chief executive of the federation. Thus, the President was given a preponderant position over the Prime Minister. A similar provision was made regarding the relationship between a Governor and the Chief Minister of a province.
  - The Supreme Court was empowered to transfer any case pending before any High Court to any other High Court.
  - RCO provided for the first time that the President could request one of the judges of the Supreme Court to act as Chief Justice of a High Court.
  - The permanent Benches of the High Courts were incorporated in the Constitution and thus their establishment was made part of the permanent Constitution. An effort was also made to establish divisional

courts and there was specific mention for their establishment.

- The President was conferred with the discretionary power to appoint the Chairman, Joint Chiefs of Staff Committee, and Chiefs of Army, Naval, and Air Staffs.
- All martial law regulations, martial law orders, laws framed during the martial law regime, and acts and orders made thereunder were validated under Article 270-A. Complete indemnity against suits and prosecution was extended to all people or authorities for or on account of or in respect of any order made, proceedings taken, or act done under such regulations, orders, laws, notifications and so on.
- Appointment of the Governor of a province was left to the discretion of the President.
- A National Security Council was to be constituted under Article 152-A which was to include the President, the Prime Minister, the Chairman of the Senate, the Chairman of the Joint Chiefs of Staff Committee, and the Chiefs of the three armed forces.

It was in these circumstances that the Constitution (Eighth Amendment) Bill was moved. It was passed on 11 November 1985.<sup>10</sup> Although the Eighth Amendment did not make extensive changes like the RCO, yet it modified some of the alterations already made under the RCO. Eighteen Articles in all were amended, added, modified, varied, or omitted. Their cumulative effect was to reduce the powers of the President a little bit and to correspondingly extend the powers of the Prime Minister and the Cabinet. While the powers of the President were not curtailed in material terms, the enactment of the Eighth Amendment led the way to the lifting of martial law.

Although the parliament was forced to accept most of the constitutional package of the RCO, certain material modifications were brought about by the Eighth Amendment which are discussed below:

- The President was required to act on the advice of the Prime Minister or Cabinet (but not the appropriate minister). The President could, however, require the Prime Minister or

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the Cabinet to reconsider such advice.

- The period for giving assent by the President to the Bills passed by the Parliament, was reduced from forty-five to thirty days, but the rest of the provisions of the RCO remained the same.

- The President retained the power to dissolve the National Assembly at his discretion, but this power was made conditional. He could dissolve the National Assembly provided that, in his opinion, the government could not be carried on in accordance with the provisions of the Constitution and an appeal to the electorate had become necessary. However, the period for holding elections after the dissolution of the National Assembly was reduced from 100 to 90 days.

- The President retained the power to appoint, at his discretion, Chiefs of armed forces and the Chief Election Commissioner.

- The power of the President to appoint the Prime Minister was limited to a period of five years, that is, until 20 March 1990 after which date, the President was required to invite that member of the National Assembly who commanded the confidence of the majority of its members, as ascertained in a session of the assembly summoned for the purpose, to assume the office of the Prime Minister. In other words, the procedure for the election of the Prime Minister by majority of total membership of the National Assembly was restored.

- The President retained the power to appoint, at his discretion, Governors of the provinces but in consultation with the Prime Minister.

- The power of the Governor to appoint the Chief Minister was limited to three years, that is, until 20 March 1988 after which date, the Governor was required to invite that member of the Provincial Assembly to be the Chief Minister, who commanded the confidence of the majority of the members of the Provincial Assembly as ascertained in a session of the assembly summoned for the purpose. In other words, the election of the Chief Minister by majority of total membership of the Provincial Assembly was restored.

- The Governor like the President could also dissolve the Provincial Assembly at his discretion, but subject to the previous approval of the President.

- Article 152-A, regarding the Constitution and establishment of the National Security Council, was omitted.

- Article 270-A, regarding validation of the laws, acts, and orders of martial law regime was extended to cover more cases. The word 'validation' was substituted by the word 'affirmation'. In addition to the President's order, ordinances, martial law regulations, martial law orders, Referendum Order, 1984, the RCO and other constitutional amendments by Zia from time to time were affirmed and validated.

## 9. Ninth Amendment

The Constitution (Ninth Amendment) Bill was moved in 1986 during Junejo's government. In this Amendment Bill, Article 2, which declares Islam as the State Religion of Pakistan, was to be expanded in order to include that the Injunctions of Islam as laid down in the Holy Quran and Sunna should be supreme law and source of guidance for legislation. However, such legislation was to be enacted by the Parliament and Provincial Assemblies and would also extend to policy making by the government. This Bill was also intended to enhance the powers of the Federal Shariat Court to make recommendations for bringing the fiscal laws and laws relating to the levy and collection of taxes in conformity with the Islamic Injunctions. However, this Amendment Bill was never passed by the Parliament.

## 10. Tenth Amendment

The Constitution (Tenth Amendment) Act, 1987 was passed on 29 March 1987 reducing the number of days from 160 to 130 working days that the National assembly is required to meet each year. Similarly, under this amendment, the days that the Senate was required to meet each year was also reduced from 160 to 130 days.

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### 11. Eleventh Amendment

The Constitution (Eleventh Amendment) Bill was introduced in the Senate on 31 August 1989. It was moved by Senators Mr. Muhammad Ali Khan, Dr. Noor Jehan Panezai and Syed Faseih Iqbal as a 'Private Members' Bill'. The proposed Amendment sought to restore twenty women seats in the National Assembly and the Report of the Standing Committee was presented on 29th August, 1990. However, two years later on 23 August, 1992, the Bill was withdrawn by its movers after an assurance given by the Minister for Law and Justice that the Government intends to introduce the same Bill very soon.

### 12. Twelfth Amendment

The Twelfth Amendment to the Constitution was passed by Parliament on 28 July 1991, the main purpose of which was the establishment of Special Courts for the trial of heinous offences.<sup>11</sup> For this purpose, Article 212B was added to the Constitution. It also provided for appeals against the judgment and sentence of Special Courts before Supreme Appellate Courts, each consisting of two High Court judges and a Supreme Court judge who presided such Courts.

Other provisions of the Twelfth Amendment related to the enhancement of salaries of the judges of the Supreme Court and the High Courts under the Fifth Schedule to the Constitution. The Twelfth Amendment was a temporary amendment as far as Article 212B was concerned and was to last for a period of three years only. Article 212B thus became ineffective in July 1994.

### 13. Thirteenth Amendment

The Constitution (Thirteenth Amendment) Act, 1997<sup>12</sup> was moved and passed in a matter of minutes on 4 April 1997 by relaxing the usual rules regarding constitutional amendment, particularly those concerning advance consideration and repeated readings.

The most significant amendment was the deletion of Article 58(2)(b) of the Constitution vesting discretionary power in the President to dissolve the National Assembly. The corresponding power of the Governors to dissolve the

Provincial Assembly under Article 112(2)(b) was also done away with. The power of the president to appoint governors was watered down. Previously, such appointments were made by the president 'after consultation' with the prime minister. After the Thirteenth Amendment, such power was exercisable 'on the advice of' the prime minister. This change made all the difference because the advice of the prime minister is binding on the president. By the amendment of Article 243 of the Constitution, the discretionary power of the president to appoint chiefs of armed forces was also taken away.

### 14. Fourteenth Amendment

With two-thirds majority in both Houses of Parliament, Nawaz Sharif had the Constitution (Fourteenth Amendment) Act, 1977 passed on 3 July 1997.<sup>13</sup> This amendment was apparently introduced in order to put to an end to the problem of defections. Like the Thirteenth Amendment, this one too was also rushed through Parliament in a matter of minutes around midnight. Opposition attended the session and amendment was passed unanimously.

The Fourteenth Amendment added Article 63-A to the Constitution. It provides that if a member of Parliament or Provincial Assembly defects, then the head of the political party to which he belongs or on whose ticket he was elected himself or through another person authorized in this behalf may give notice to him to show cause within seven days on why disciplinary action be not taken against him. After the show cause notice, the disciplinary committee of the party would decide the matter if it pertains to breach of party discipline such as violation of the party constitution, code of conduct, or declared policies. In case of a decision against such a member, he can appeal to the head of the party whose decision would be final. In case a member votes contrary to any direction issued by the parliamentary party to which he belongs, or abstains from voting against party policy in relation to any Bill, the head of the party concerned, after examining his explanations, would determine whether or not such member has defected. The presiding officer of the House to which the member concerned belonged would be sent the decision who would transmit it within two days to the Chief Election

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Commissioner who, in turn, would give effect to the decision within seven days of its receipt.

## 15. Fifteenth Amendment

In August 1998, the Nawaz Sharif regime once again tried to amend the Constitution through introduction of The Constitution (Fifteenth Amendment) Bill on 28 August 1998. The proposed amendment would have had profound impact on the character of the Constitution, if passed by the Parliament. The Bill contained the following provisions:<sup>14</sup>

“Addition of new Article 2B in the Constitution:- In the Constitution of the Islamic Republic of Pakistan, hereinafter referred to as the said Constitution, after Article 2A, the following new Article shall be inserted, namely:

2B. Supremacy of the Quran and Sunnah:-

- (1) The Holy Quran and Sunnah of the Holy Prophet (peace be upon Him) shall be the supreme law of Pakistan.

Explanation:- In the application of this clause to the personal law of any Muslim sect, the expression 'Quran and Sunnah' shall mean the Quran and Sunnah as interpreted by that sect.

- (2) The Federal Government shall be under an obligation to take steps to enforce the Shariah, to establish salat, to administer zakat, to promote amr bil ma'roof and nahi anil munkar (to prescribe what is right and to forbid what is wrong), to eradicate corruption at all levels and to provide substantial socio-economic justice, in accordance with the principles of Islam, as laid down in the Holy Quran and Sunnah.
  - (3) The Federal Government may issue directives for the implementation of the provisions set out in clauses (1) and (2) and may take the necessary action against any state functionary for non-compliance of the said directives.
  - (4) Nothing contained in this Article shall affect the personal law, religious freedom, traditions or customs of non-Muslims and their status as citizens.
  - (5) The provisions of this Article shall have effect notwithstanding anything contained in the Constitution, any law or judgment of any Court'.
- Amendment of Article 239 of the Constitution:- In

the Constitution, in Article 239, after clause (3) the following new clauses shall be inserted, namely:-

(3A) Notwithstanding anything contained in clause (1) to (3), a Bill to amend the Constitution providing for the removal of any impediment in the enforcement of any matter relating to Shariah and the implementation of the Injunctions of Islam may originate in either House and shall, if it is passed by a majority of the members voting in the House in which it originated, be transmitted to the other House; and if the Bill is passed without amendment by the majority of the members voting in the other House also, it shall be presented to the President for assent.

(3B) If a Bill transmitted to a House under clause (3A) is rejected or is not passed within ninety days of its receipt or is passed with amendment it shall be considered in a joint sitting.

(3C) If the Bill is passed by a majority of the members voting in the joint sitting, with or without amendment, it shall be presented to the President for assent.

(3D) The President shall assent to the Bill presented to him under clause (3A) or clause (3C) within seven days of the presentation of the Bill”.

The Bill generated heated debate throughout the country. The opposition in the Parliament was almost united against the Bill and there was even some resistance from within the PML(N). Nawaz Sharif called upon the members of the Parliament from his party, who were opposed to the Bill, to resign. Consequently the opposition within the party caved in under such threat. Though the Bill was somewhat modified to appease such members of the party, the main provisions were retained. The clauses relating to executive directives and the constitutional amendment by simple majority were withdrawn. The Bill was tabled before the National Assembly on 9 October 1998 and it passed by 151 in favour and 16 against it. The members of the National Assembly voting in favour of the Bill included 143 from PML(N), seven FATA members and Hasil Bizenjo from Balochistan. Members belonging to the MQM remained absent from the House. The members belonging to minorities were present in the House but they did not participate in the vote. ANP and PPP members present in the House voted against the Bill.

The Bill was not presented before the Senate because



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Nawaz Sharif government did not have the required two-third majority there. The Bill was initially kept back to be tabled after March 2000, when elections to half the membership of the Senate were due to be held and it was expected PML(N) would then acquire two-third majority in the Senate. Later however, Nawaz Sharif government was overthrown through a military take over in October 1999, before Senate elections could take place.

## 16. Sixteenth Amendment

Article 27 of the Constitution provides for safeguards against discrimination in services on the ground of race, religion, caste, sex, residence or place of birth. However, an exception was made initially for ten years for reservation of quota for persons of disadvantaged class or area to secure their adequate representation in the service of Pakistan. This was indeed an affirmative action to promote the interest of the people living in areas which remained backward because adequate educational facilities were not available in such areas. This period was extended to twenty years under the Eighth Amendment.

The abolition of quota is very sensitive political issue particularly with the disadvantaged small provinces and backward areas within each province. In order to avoid this issue, Constitution (Sixteenth Amendment) Act, 1999 was promulgated on 5 August 1999 amending Article 27 and extending period of quota system in services to forty years; that is, until August 2013.

## 17. Legal Framework Order (LFO) and Seventeenth Amendment

The Supreme Court of Pakistan granted power to amend the Constitution to General Musharraf in the judgment of the case titled "Zafar Ali Shah V. General Pervaiz Musharraf" (PLD 2000 S.C. 869). Musharraf in purported exercise of such power promulgated Legal Framework Order 2002 (LFO) on 21 August 2002 amending 29 Articles of the Constitution. Important features of LFO are enumerated below:-

- Political parties are required to hold intra party elections to elect their office bearers and party leaders. It has also been provided that no political party should

promote sectarian, ethnic, regional hatred or animosity.

- Musharraf would relinquish the office of Chief Executive on such day that he might determine in accordance with the judgment in Zafar Ali Shah's case. However, he would hold office of President of Pakistan for a term of five years from the day he assumed such office.

- The seats in the National Assembly were increased to 342 with 60 seats reserved for women and 10 seats reserved for non Muslims. The number of seats in provincial assemblies were also increased. In Balochistan, the number of seats were raised to 65 (11 seats reserved for women and 3 for non Muslims); in NWFP, seats were raised to 144 (22 seats reserved for women and three for non Muslims); in the Punjab, seats were raised to 371 (66 seats reserved for women and 8 seats for non Muslims); and in Sindh, seats were increased to 168 (29 seats reserved for women and 9 seats for non Muslims). The seats in the Senate were increased to 100 with 16 seats reserved for women i.e. 4 from each province.

- Article 58(2)(b), deleted from the Constitution by 13th Amendment, was revived. The President is again empowered to dissolve the National Assembly at his discretion.

- New disqualifications were added to Article 63 which includes persons convicted and sentenced to imprisonment as absconders, defaulters in the payment of loan from banks or cooperative societies amounting to Rs.2 million or more, defaulters of the payment of government dues and utility bills etc.

- Article 63A, added by the 14th Amendment, was drastically changed and the defection clause would only be applicable to a member of a political party who votes against the direction of his parliamentary party in relation to election of the Prime Minister or the Chief Minister; or in a vote of no confidence; or a money Bill. Defection clause would only apply to a member of a parliamentary party, if composed of a single political party in a House, on his resignation from membership of that political party or joining of another parliamentary party.

- In case of difference of opinion between the two

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Houses of the parliament on a Bill, it would be referred to a mediation committee consisting of 16 members, 8 members from each House of the parliament.

- Whenever the Money Bill would originate in National Assembly, its copy would be transmitted to the Senate which may make its own recommendations on the Bill to the National Assembly within seven days. However, National Assembly can pass the Money Bill with or without incorporating the recommendations of the Senate.

- Where a Bill is passed by both the Houses of the Parliament and is presented to the President for assent, he may return the Bill to the parliament for reconsideration. However, the Bill can only be passed with or without amendments by the parliament after going through the process of mediation committee.

- A governor of a province would be appointed by the President after consultation with the Prime Minister.

- Article 112 (2)(b), deleted by the 13th Constitutional Amendment, was revived, thus, conferring discretionary powers on a Governor to dissolve Provincial Assembly at his discretion subject to the previous approval of the President.

- Article 140A has been added so as to confer constitutional status to the local government system.

- Article 152A (National Security Council), which was deleted under the 8th Constitutional Amendment, was added. It includes four men in uniform namely the Chairman Joint Chiefs of Staff Committee and three Chiefs of Staff of the Pakistan Army, Pakistan Navy and Pakistan Air Force. The functions of National Security Council (NSC) include consultation on strategic methods like sovereignty, integrity and security of the State and democracy, governance and inter provincial harmony.

- Article 209 has been modified conferring power in the Supreme Judicial Council to enquire into the matter of misconduct of judges on its own motion.

- The Election Commission of Pakistan has been enlarged by including four judges of the High Courts, one

from each Province.

- A provision has been made whereas the President would appoint caretaker government on the dissolution of National Assembly. The Governors would have the same power in the event of dissolution of Provincial Assemblies.

- Article 270AA has been added validating all the laws made during the period of suspension of the constitution and actions taken thereunder.

- Article 270B has been added declaring that the elections held in October 2002 would be deemed to have been held under the constitution.

- Article 270C has been added declaring that all the judges who had taken oath under the Oath of Office of Judges Order 2000 would be deemed to have been appointed under the Constitution. Similarly those who had not taken oath under the said Order would be deemed to have ceased to continue as judges.

- Schedule VI was amended and a number of laws were added to the list of laws that could not be altered, repealed or amended without previous sanction of the President. These laws include State Bank of Pakistan Act, National Accountability Bureau Ordinance, Election Commission Order 2002; Conduct of General Elections Order 2002, Political Parties Order 2002, the Police Order 2002 and all the four Local Government Ordinances for the four provinces, passed in 2001.

However, LFO was never submitted before the Parliament and Seventeenth Amendment Bill only contained amendments which were being made in the Constitution under the assumption that LFO had become part of the Constitution. In fact the amendments were made in the provisions that were altered/amended/added/varied by the LFO. The amendments made in Articles 17, 51, 59, 62, 63, 63A, 70, 71, 73, 75, 101, 140A, 199, 203C, 209, 218, 224, 260, 270B and 270C of the Constitution by LFO were not touched by the Seventeenth Amendment Act. These were deemed to have been validly made in the Constitution under the language used in Article 270AA. In this behalf, the relevant words in the LFO are reproduced as under:



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“(1) The Proclamation of Emergency of the fourteenth day of October, 1999, all President's Orders, Ordinances, Chief Executive's Orders, including the Provincial Constitution Order No.1 of 1999, the Oath of Office (Judges) Order, 2000 (No.1 of 2000), Chief Executive's Order No.12 of 2002, *the amendments made in the Constitution through the Legal Framework Order, 2002 (Chief Executive's Order No.24 of 2002), the Legal Framework (Amendment) Order, 2002 (Chief Executive's Order No.29 of 2002), the Legal Framework (Second amendment) Order, 2002 (Chief Executive's Order No.32 of 2002)* and all other laws made between the twelfth day of October, one thousand nine hundred and ninety nine and the date on which this Article comes into force (both days inclusive), having been duly made or accordingly affirmed, adopted and declared to have been validly made by the competent authority and notwithstanding anything contained in the Constitution shall not be called in question in any court or forum on any ground whatsoever.” (Emphasis added)

The Seventeenth Amendment Act made amendments in the following Articles of the Constitution:-

- Article 41 (Election of the President) has been amended. It adds a proviso to paragraph (b) in Clause (7) to the effect that the disqualification incurred by an MNA for holding another office of profit would become effective on December 31, 2004. However, there was no paragraph (b) in the Constitution. It was introduced by the LFO. Clause (8) has been added to the Article 41 which provides only for endorsement of Musharraf's election as President. Clause (9) has been added to Article 41 which authorizes the Chief Election Commissioner to regulate and conduct the proceedings for vote of confidence for Musharraf and to count the votes cast during such proceedings. The Clauses (8) and (9) are transitional provisions and have already become dead letter.
- In Article 58, a new Clause (3) has been added to provide for reference to the Supreme Court within 15 days of dissolution of National Assembly under Article 58(2)(b). The sub clause (b) of clause (2) of Article 58 was deleted by the Thirteenth Amendment Act 1997. It was reinserted by the LFO in 2002. An identical amendment has also been made in Article 112 (Dissolution of a Provincial Assembly by the Governor), which was also deleted by the Thirteenth

Amendment Act, 1997.

- Article 152A (National Security Council) has been deleted. However, this Article did not exist in the Constitution and was only added by the LFO.
- Article 179 purports to substitute new text in the Article. The new text (Retiring age of Supreme Court judges) was already there in the Constitution before it was changed by the LFO. This amendment erases the change in the Constitution deemed to have been affected by the LFO whereby the judges retirement age was raised by three years.
- The substitution of Article 195 (Retirement age of High Court judges) is similar to that of the substitution in Article 179.
- Article 268 lists the enactments that cannot be amended or even discussed in the Parliament or the Provincial Assemblies without the prior approval of the President. Before the LFO was issued, 24 laws listed in the Sixth Schedule were so protected. The LFO added eleven more laws to the list. The Seventeenth Amendment Act reduces the protection to provincial local government ordinances and the Police Order to six years.
- Article 270AA, inserted by LFO, was replaced with a new text. It affirms and validates all amendments made by the LFO in the Constitution. It also validates laws made from 12 October 1999 onward as having been validly made or accorded affirmation, adoption and declaration by the competent authority. All orders made, proceedings taken, appointments made, acts done by any authority or person under such laws from 12 October 1999 onwards have also been validated and affirmed under Article 270AA. “Competent authority” is defined as the appropriate legislature in respect of President's Orders, Ordinances, Chief Executive's Orders and enactments, including amendments in the Constitution. Since LFO and its amendments were made through Chief Executive's Orders, therefore it would be deemed that the amendments made in the Constitution by LFO were made by the Parliament itself.

LFO had amended / added twenty nine Articles in the Constitution out of which twenty have been left untouched

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by the Seventeenth Amendment. Only the provisions of nine Articles namely 41, 58, 112, 152A, 179, 195, 243, 268 and 270AA have been amended / deleted / substituted by the Seventeenth Amendment. Thus, LFO was deemed to have become part of the Constitution.

### Conclusion

From the above narration it is self-evident that the Constitution of Pakistan has been repeatedly and frequently amended. Some of these amendments particularly the Eighth and the Seventeenth Amendments have virtually changed the face of the Constitution. The Constitution as it stands today is completely different legal and political document than it was when originally passed in 1973. Its structure, particularly in terms of provisions relating to the parliamentary system of government and the provincial autonomy, has undergone a complete volte-face. Another important feature of these amendments is that only 18 out of 65 Articles amended by the RCO were modified by the Eighth Amendment. Similarly, only 9 out of 29 Articles introduced by LFO were modified by the Seventeenth Amendment. Thus Generals Zia-ul-Haq and Pervez Musharraf have been able to incorporate amendments in as many as 67 Articles of the Constitution without any meaningful parliamentary debate on these amendments. The validity of these amendments is based on the validation / affirmation provisions set out in Article 270A (for the RCO) and Article 270AA (for the LFO). In this way, the Constitution of Pakistan has a unique rather dubious distinction of a history of its amendments, some by the parliament and others by the military rulers who made such amendments with the primary purpose of perpetuating themselves in power.

First seven Amendments were passed during the government of Zulfikar Ali Bhutto. The Eighth Amendment was passed in 1985 during the Prime Ministership of Junejo but under the gaze of General Zia. Tenth Amendment was also passed during Junejo government. Twelfth Amendment was passed during the first government of Nawaz Sharif. Thirteenth, Fourteenth and Sixteenth Amendments were passed during the second government of Nawaz Sharif. The Seventeenth Amendment was passed during Jamali Government but obviously at the behest of

General Musharraf.

A peculiar feature of the history of the Constitutional Amendments is that most of the Amendments were passed hurriedly without reference to Parliamentary Committees. Even there were no readings of the amendment Bills and the vote of both Houses on such Bills were rushed on the basis of brute majority. In the case of Fourth Amendment, the opposition members were physically thrown out of the Parliament at the time of the passing of the Amendment. There have been amendments where Amendment Bills were moved and passed around mid night. Even the parliamentarians did not have the copy of the Bill before it was actually moved in the Parliament. Where there was an impression that the amendment Bill would not be favoured by the President or the Establishment, clandestine strategies were adopted, particularly in case of Thirteenth and Fourteenth Amendments so that the Establishment would not have time to react and defeat such Amendment Bills. The Eighth Amendment was passed after lengthy Parliamentary debate spread over six to eight weeks. There was some Parliamentary debate over the Second and Fifth Amendment. The Sixth Amendment, which was meant to favour one person, was passed clandestinely without any debate. The Seventeenth Amendment was deliberately rushed through the Parliament with Establishment breathing down the neck of the Parliament in order to ensure that it was passed by both Houses before the holding of the SAARC Conference in the first week of January 2004.

Hence, in Pakistan, the convention of Parliamentary debates, an essential feature of Parliamentary democracy, is yet to develop. It has been mainly stifled by the military rulers but unfortunately some of the civilian rulers have not fared much better.

## REFERENCES

1. Khan, Hamid, Constitutional and Political History of Pakistan, Edition 2001, Oxford University Press, Karachi, p.504
2. Ibid, pp.514-15
3. Ibid, pp.515-18
4. Ibid, pp.522-23
5. Ibid, pp.523-24
6. Ibid, pp.532-36
7. Ibid, p.538
8. Ibid, pp.565-66
9. Ibid, pp.668-74
10. Ibid, pp.676-79
11. Ibid, pp.748-49
12. Ibid, pp.817-18
13. Ibid, pp.818-19
14. Ibid, pp.927-30



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