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FOR PAKISTANI PARLIAMENTARIANS

Strengthening National and Provincial Legislative Governance

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**A Comparative Study
of the Constitutions of
PAKISTAN AND INDIA**

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Pakistan Institute of
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Prepared By

Pakistan Institute of Legislative Development And
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As a Part of
Pakistan Legislative Strengthening
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Abbreviations and Acronyms

ARD	Alliance for the Restoration of Democracy
CCI	Council of Common Interests
LFO	Legal Framework Order 2002
MMA	Muttahida Majlis-e-Amal
NFC	National Finance Commission
NSAB	National Security Advisory Board
NSC	National Security Council
PML(N)	Pakistan Muslim League (Nawaz Group)
PPP	Pakistan Peoples Party
Rajya Sabha	Upper House of Indian Parliament
RCO	Revival of Constitution 1973 Order 1985
SPG	Strategic Policy Groups



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FOREWORD

The governance of India and Pakistan shared the same political heritage of British rule. However over the years, both have evolved their own rules and procedures to govern and run the businesses of the states. While India has managed to establish democratic norms and institutions with continuity of its democratic political system, Pakistan has undergone several disruptions in this regard and is yet to establish a sustainable democratic political system.

Constitution is a fundamental law of a state. It describes rules and procedures for the ideology and functioning of state institutions. Any change in the constitution portrays the transformation in the real politics of its state. Thus a constitutional text mirrors the existing form of state governance.

Comparison of the Constitutions of India and Pakistan can assist in understanding not only the difference between the types of governance of these two countries but also the gradual transformation of their political systems, through the awareness of constitutional amendments. Therefore “**A comparative study of the Constitutions of Pakistan and India**”, a briefing paper by PILDAT, aims to provide parliamentarians with a critical comparison of these two constitutions. It brings to their knowledge some key differences of the constitutional structures of both countries as well as provides them an opportunity to analyze the strengths and weaknesses of their own system of governance. The paper is authored by **Dr. Muntzra Nazir**, Lecturer Political Science in Lahore College for Women University. It is developed by PILDAT, as a part of Pakistan Legislative Strengthening Consortium - PLSC and supported 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.

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Lahore
August 2004

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PAKISTAN AND INDIA

PROFILE OF THE AUTHOR



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She has attended academic courses and workshops on Human Rights Education, Dimensions of Democracy and Research Methodology.

1. INTRODUCTION

A constitution is the framework of a government's institutions; it describes structural arrangements, allocates functional powers and establishes limits to political authority. It is a supreme law of the nation-state and reflects its character and political culture. Therefore the performance of even artfully drafted constitution largely depends upon various historical, social, ideological, economic and political factors of the state it represents. The problem and issues of governance, thus, cannot be resolved solely through constitution making. Pakistan and India's experience represents a case in point.

India and Pakistan inherited the British Indian system of governance, modified to transfer all powers to the newly elected constituent assemblies of each state under the Indian Independence Act 1947. The Government of India Act 1935 was modified to serve as the interim constitutional document for each country, until they pass their own constitutions. After three years' discussions and debates, India adopted its Constitution in November 1949 which came into effect on 26th January, 1950. On the other hand Pakistan has had complex constitutional history. It has had four constitutions in its brief history including the inherited Government of India Act 1935 adopted at the time of independence and three indigenous constitutions (1956, 1962 & 1973). Pakistan has also been governed without the benefit of written constitutions, through Provisional Constitutional Orders. Pakistan's fourth Constitution was approved by the National Assembly on 10 April, 1973 and became operative on 14 August, 1973. Since then, the country has experienced two military rules; during these periods the 1973 Constitution was held in abeyance twice, from 1977-1985 and 1999-2002.

The 1973 Constitution of Pakistan calls for, like the Indian Constitution, federal and parliamentary systems of government. Both constitutions incorporate the lists of fundamental rights and directive principles. This paper focuses on five critical areas of the Indian and Pakistani Constitutions:

- Center-Province/State Relations
- President and Cabinet
- Supremacy of Parliament
- Civil-Military Relations, and
- Constitutional Amendments.

2. Center - Province/ State Relations

Both constitutions establish federal systems by distributing powers between the center and federal units. Nevertheless, both systems show a tendency towards centralized control and authority, tilting the balance in favor of the federal government. They provide for different schemes, while following the principle of division of powers. The Indian Constitution includes an elaborate scheme. Article 246, provides for three functional areas: an exclusive area of jurisdiction for the center, the area for states and common or concurrent areas in which both center and states could legislate. However, the concurrent field is subject to overall supremacy of the center. The residuary powers are also vested with the Parliament, which is authorized to legislate with respect to any matter, not enumerated in any of three lists. On the other hand, the Constitution of Pakistan (1973) provides only two lists of subjects, one deals with federal affairs on which the federal government has the authority to legislate; the second relates to concurrent affairs on which both the central as well as provincial legislatures can legislate, however the supremacy of central legislation is maintained in case of conflict. There is no separate list, dealing specifically with provincial jurisdiction. The residuary powers are given to provinces. Vesting the residuary powers to provinces does not provide a marked difference vis-à-vis Indian Constitution as both lists in 1973 Constitution are so exhaustive that they left limited scope for provinces.

Both constitutions provide for bi-cameral Legislature; whereas, 1973 Constitution of Pakistan provides for the equality of units in the upper house (Senate), the Indian Constitution does not follow the principle of equality of units in its upper house (Rajya Sabha). Instead of parity, the distribution of seats is mainly on population basis. An exclusive feature of the Indian Constitution is the center's authority to change the territorial boundaries of states. The Parliament can alter or abolish the boundaries to make a new state without obtaining state's approval, whereas in Pakistan any such legislation needs ratification from the respective provincial assembly.

2.1 Administrative Relations

The administrative relations between the center and provinces/states under both constitutions show the

tendency towards centralization. The constitutions provide that law and order is the primary responsibility of provincial/state government but if the center finds that the provincial/state government fails to provide required security to the people, it can intervene on the pretext of maintaining law and order. Moreover, the provincial/state government is obliged to exercise authority in such a way as to ensure compliance with Acts of Parliament. In certain matters, the center is entitled to direct the provincial/state government and they are bound to honor the directives. The center could exercise absolute authority over provincial/state's administration in times of emergency. But, even otherwise, the center can exercise considerable control over administrative machinery of province/state through Indian Central Services and Pakistan's Central Superior Services, who are responsible to center for their actions. Governor of a province/state is appointed by the president and is responsible to him. The governor, under Indian Constitution does not have any real executive powers and is considered a ceremonial position. The position of a governor in Pakistan has been strengthened after the passage of 17th Constitutional Amendment, which gives him the power to dissolve the provincial assembly, subject to adjudication by the High Court.

There are provisions in both constitutions, which provide for the establishment of certain institutions meant to coordinate and regulate the relations between the provinces/states and the center. Under the Indian Constitution, the president can establish an Inter-State Council to investigate, discuss and make recommendations upon any subject in which some or all states or the center have common interests. The Council is also to make recommendations for better coordination of policy and action with respect to the subject that causes disputes between the center and states or between two or more states. According to the 1973 Constitution of Pakistan, there is a provision for the establishment of the Council of Common Interests (CCI), consisting of all provincial chief ministers and equal number of members nominated by the prime minister. The Council is to formulate policies regarding the matters enumerated in the second part of the federal list such as railways, minerals, oil and gas, industrial development etc. The Council is also entitled to consider all disputes relating to the allocation of water resources; any central or provincial law concerning

the irrigation issues. It may refer the matter to the president with the request that a special commission should be formed comprising technocrats to deal with the issue in hand. The commission will submit its report to the Council, which would decide the matter in the light of commission's report.

2.2 Financial Relations

In financial field too, under both constitutions, the center is more powerful than the state/province. In fact the states/provincial governments are heavily dependent on the center for their development plans. No province/state can afford to function without the active support of the central government. Division of subjects contained in both constitutions is such that center has all the important sources of revenues under its jurisdiction. According to Indian Constitution, the center is empowered to levy and collect taxes on items which are shared between the center and states, such as income, agriculture and duties on excise etc. The taxes on items such as succession to property, terminal taxes on goods carried by railways, airforce or navy, transactions in stock exchange etc, are also collected by the center and are to be appropriated to states. Similarly, Pakistan's Constitution also allows the center to levy and collect all important taxes i.e. income other than agriculture, mineral, oil and natural gas etc, and duties on customs, export and excise. The principal sources of income for the provinces are land revenue and tax on agricultural income, luxuries etc.

In both countries, the constitutions also incorporate the provisions to set up finance commissions for allocating the resources to states/provinces and center and fixing the federal grants in aid to the state/provincial governments. The commissions are to be reconstituted by the central government after regular intervals.

Having considered the constitutional provisions in relation to provincial autonomy, it is clear that both constitutions contain centralizing tendency. However, in Pakistan the issue of provincial autonomy has generated a continuing debate. It has posed serious challenges to its stability. The trend towards centralization does not hurt much if it is consensual and democratic. These attributes in Pakistan, as compared to India, are lacking. Indian political system represents a continuation of democratic and participatory

institutions and processes. In case of Pakistan, centralization has been accompanied by an authoritarian and non-participatory political and economic management. This deprived the provinces to have an effective voice in the system. The authoritative attitudes result in wide gap between constitutional structures and political practices. The institutions like Council of Common Interests (CCI) and National Finance Commission (NFC) are not constituted regularly and if constituted, they are not called to meet and settle the issues.

Another factor, which adversely affected the federation of Pakistan, is the issue of Punjabi domination. A clear edge of Punjab over other provinces in respect of education, industry, human resources, and representation in civil and military services, causes resentment in the smaller provinces. They perceive the increase in center's authority as an increase in Punjab's strength, because of Punjab's domination in civil and military bureaucracy. This sense of insecurity has strengthened due to frequent disruption of democratic process by military take-overs and with the weakening of democratic and participatory institutions.

3. President and Cabinet

In a parliamentary system, the cabinet headed by the prime minister is an instrument of executive power. Great Britain served as the model for the countries, which opted for this form of government. This system provides that the president's position as the head of the state should be one of great authority and dignity but at the same time strictly 'constitutional'. He represents the nation but does not rule the nation. He is generally bound by the advice of ministers. The Indian Constitution follows this principle by making the office of president strictly 'constitutional'. Indian president has been endowed very wide and far-reaching powers but at the same time, he is bound to act in accordance with the advice tendered by the council of ministers. Originally, he was not bound by the advice of ministers but 42nd Constitutional Amendment, which was introduced by the Congress Party in 1975, and passed by the Parliament in 1976, made it obligatory on the part of the president to act on the advice of the council of ministers. The Amendment was meant to strengthen the position of the prime minister vis-à-vis the president. So to speak, the executive authority of the Indian federation is now exercised in the name of the

president but on ground, by the cabinet led by the prime minister. The president, subject to the advice of the council of ministers is entrusted with various legislative, administrative and judicial functions. He is to convene, prorogue and adjourn parliament, can dissolve the lower house and all bills passed by the Parliament must receive his assent. He is also empowered to issue ordinances. Nevertheless, he exercises all these powers only on the advice of the council of ministers. Similarly, subject to the advice of the cabinet, the president is also entrusted with certain executive powers. The key appointments, such as Attorney General, Comptroller General, Heads of Armed Forces, members of several statutory bodies and commissions are made by him. He is also empowered to proclaim emergency and suspend the state government. He can grant pardon, reprieve or suspend sentence passed by court, subject to the advice of the cabinet.

In Pakistan, position of the president under the original 1973 Constitution was very weak. He, like his Indian counterpart, was a ceremonial head of the state. Similarly, he was entrusted with wide range of executive, legislative and judicial powers, subject to the advice of the cabinet, led by the prime minister. The federal cabinet headed by the prime minister exercised the executive authority in his name. The prime minister was the chief executive and enjoyed all powers. But the situation drastically changed with the passage of Eighth Constitutional Amendment in 1985. Accordingly, the president attained certain discretionary powers including the power to dissolve the National Assembly, if in his opinion; the government could not be carried on in accordance with the provisions of the constitution. He could also appoint chiefs of armed forces in his discretion. He also had discretionary powers to appoint the provincial governors in consultation with the prime minister. The Amendment compromised the spirit of parliamentary form of government. It introduced the 'presidential discretion' without an appropriate mechanism for checks and balances, which resulted in grave political instability (from 1988 to 1996, four assemblies were dissolved by the president). This position was changed when the Thirteenth Constitutional Amendment was introduced in 1997. It omitted Article 58(2) (b); inserted in the constitution by the Eighth Amendment. Thirteenth Amendment took away the discretionary powers to dissolve the National Assembly from the president, making

him once again titular head of the state. His discretionary powers to appoint the chiefs of armed forces were also taken away. However, the Seventeenth Amendment (2003) once again made the office of the president powerful. Under the existing Constitution (as amended) the president regained the powers to dissolve the National Assembly, albeit with modification; now the president is required to refer his action to the Supreme Court of Pakistan, within fifteen days of the dissolution of the National Assembly and the Supreme Court will have to decide the reference within thirty days and its decision will be final. The president also has the powers to appoint chiefs of armed services, in consultation with the prime minister.

In India, the president has always acted as the constitutional head of the state and never showed any inclination to increase his powers due to several reasons. From the very beginning, this tradition was strongly entrenched in the system. In the early days of political governance, there were no differences between the Congress Party that ruled the country and the president, who had not much to meddle in the national affairs; the government's decisions were accepted at all levels. The Party institutions were strong enough not to allow anyone to disregard Party policies and plans. The strong constitutional traditions also help to strengthen parliamentary norms. In Pakistan, these trends were never embraced. It had to face political turmoil from the very beginning. The Muslim League did not establish itself as an organized political party at central and provincial levels. It could not develop a consensus building mechanism to resolve internal conflicts. This resulted into factionalism within the party cadres and generated authoritarian trends in the system. Secondly, the Indian political history shows that the political parties selected only those persons as candidates to the office of the president who were politically non-ambitious and had no strong and long political career behind them. In Pakistan, the office of the head of the state with some exceptions remained with persons who aspired to become the center of power, thereby creating a situation of confrontation.

4. Supremacy of Parliament

The supremacy of the Parliament is a cardinal principle of a parliamentary system of government. The Indian Parliament can pass any law within its constitutional

competence and the president/executive has a limited power to veto legislation which can be overruled by the parliament. Nevertheless, in actual practice, the legislative initiative belongs to the cabinet and ruling party's majority generally enables it to get through without much difficulty. Strict party discipline does not allow the members to go against the wishes of the party leadership. Its powers are also checked by delegated legislation. Under this system, the broad lines are laid down by the parliament, whereas the executive works out details. It has strengthened the hands of bureaucracy. Another factor that undermines the supremacy of the Indian Parliament is the ordinance making powers of the president. Such an ordinance is to be laid before the Parliament and shall cease to operate at the expiration of six weeks from the reassembly of the Parliament. Since the inauguration of the Constitution, these presidential ordinances have been promulgated several times.

In Pakistan, the parliamentary system also suffers from the same constraints as the president of Pakistan is empowered to promulgate ordinances. This provision was basically designed to meet the needs of emergencies but in Pakistan, it has become a rule rather than exception. The executive's power to issue ordinances has become a restraint on the legislative powers of the Parliament. It also generates apathy and indifferent attitude on the part of members of the Parliament who instead of focusing their attention on their primary function of legislation for the public, have been engaged in political maneuvering. It can be judged from the fact that certain ordinances laid before the Parliament are allowed to lapse and are promulgated repeatedly.

Another check on the authority of the Parliament stems from the Islamic identity of the state. Theoretically, Parliament in Pakistan does not enjoy absolute sovereignty; the Objective Resolution which has been made a part of the Constitution provided that "sovereignty over entire universe belongs to Allah Almighty alone and authority which He has delegated to the state of Pakistan, through its people for being exercised within the limits prescribed by Him is a sacred trust". This provision is reinforced through the establishment of Federal Shariat Court. The Court has the jurisdiction to examine that whether or not any law passed by the Parliament is repugnant to the injunctions of the Holy

Quran and Sunnah. Initially, the role of the Court was limited but it has extended over the years.

5. Civil - Military Relations

Military dominates politics in most of the third world countries. India and Pakistan were ideologically different states but shared same military heritage at the time of independence. The military in British India served as its strong shield, but avoided an active involvement in politics and largely accepted the principle of supremacy of civilian government. The Indian military retained this tradition but Pakistan reflected a major shift. The Indian army is an outstanding example of an 'apolitical and professional force, almost a bureaucratic instrument of state policy' (despite its huge size and resources). On the other hand, Pakistan's army, due to various reasons, acquired the status of the most 'formidable and autonomous political actor', determining the national policies as well as priorities.

Generally constitutions restrict military's role to its professional field only. However, in case of Pakistan, over the period of time, military has acquired a political role. Since General Zia-ul-Haq's military rule, there were attempts to provide a legal or constitutional cover to the military's role in the politics and governance of Pakistan and a model of Turkish Constitution was aspired in this regard. An extended role for military was advocated on the plea that the military of Islamic Republic of Pakistan was not only responsible for the defence of territorial boundaries of the state but of its ideological frontiers as well. The proponents of this assertion argued that it's a prime duty of armed forces of Pakistan to "ensure that Pakistan's Islamic identity was protected and Pakistani society developed on Islamic lines." (Hasan Askari Rizvi. (2000) *Military, State and Society in Pakistan*, New York: St.Martin's Press, p181). Thus the military sought a constitutional role in the national affairs through the establishment of National Security Council (NSC). But political forces resisted this effort. The proposal for setting up the NSC as laid down in the Revival of the Constitution Order (RCO), March 1985, was dropped when the Parliament approved the RCO in the form of the Eighth Constitutional Amendment in 1985. Recently, Legal Framework Order (LFO), August 2002 issued by the military regime again included the provision for establishment of the NSC, headed by the president; however later the

Seventeenth Constitutional Amendment omitted this provision. Nevertheless, through an Act of Parliament, NSC has been established and its membership includes Services' Chiefs along with civil representation. The Council is supposed to give recommendations on internal and external security matters. The supporters of NSC argue that the same institution has also been incorporated by the Indian political system. However their argument is invalid as Indian NSC is basically a decision facilitating body to assist and advise the prime minister. It is a 'five tier' body with a six member committee headed by the prime minister at the top of the structure. At this level, the armed services are not given any representation; denying their participation in the decision making process. In addition, the Indian NSC consists of a Secretariat, Strategic Policy Group (SPG), National Security Advisory Board (NSAB) and a National Security Advisor. It was established in November, 1998, through an Executive Order and does not enjoy constitutional protection (Dr. Subash Kapila, India's National Security Council - A Critical Review, South Asia Analysis Group-Papers, downloaded from www.saag.org/papers2/paper123.html).

To conclude, military interference in Pakistan's politics has had different forms, ranging from assumption of direct control and authority of the state by displacing the civilian governments (Oct 1958, March 1969, July 1977, Oct-1999) to its manipulation of state affairs through collaboration with civil bureaucracy. The Indian military on the other hand, plays a remarkably small role in shaping of even security and defence related policies and it virtually has no role in shaping the policies outside this area. The Indian Constitution vests "the supreme command of defence forces of the Union" in the president but he is obliged to be "regulated by law" and defecto control is vested in the council of ministers led by the prime minister. Conventions established over the years ensured that "aid and advice" given by the council is authoritative and no president has ever attempted to exercise independent command over armed forces. A Sub-committee of Cabinet for Defence, now known as Political Affairs Committee, usually formulates Indian defence policies. The chiefs of armed forces are not the members but may be invited to attend the meetings. With the increase in the ministerial membership of the cabinet committee, the actual participation of Services chiefs has become more diffused

as there is a tendency not to invite them even when defence matters are under consideration. Therefore, the constitutionally determined role for Indian army is quite narrow and it provides a check on attempts to politicise the military.

6. Constitutional Amendments

Every modern constitution provides some mechanism for its change as the maintenance of status quo results in stagnation and degeneration. However, the procedure for changing the constitution is often more difficult than ordinary legislation so that the constitution is not changed without due considerations and consensus. This is done to ensure stability and continuity of the political system. Both Indian and Pakistani Constitutions strive to provide a balance between the requirements of change and the imperatives of stability. They are semi rigid or semi flexible constitutions. However, they follow different methods for amendments.

6.1 Methods of Amendments in the Constitution of India

The Indian Constitution is divided into four sections for amendments:

- Section 1 deals with important matters such as the creation of new states by altering the existing boundaries of states and abolition of second chambers of state legislatures. The provisions concerning these matters can be amended with simple parliamentary majority and state legislature's approval is required.
- Section 2 deals primarily with fundamental rights enumerated in the Constitution. It can be amended by two third majority of the Parliament.
- Section 3 deals with the fundamentals of government such as the office of the president, prime minister and the powers of Supreme Court etc. Amendments to this Section require not only two third majority of the Parliament but also need ratification from majority of states' legislatures.
- Section 4 states that the state assembly has also a power to amend certain constitutional provisions by

simple majority, which primarily relates to salaries and allowances of ministers, speaker, deputy speaker etc of that state's legislature.

In each of the aforesaid cases, the amendments can be initiated only by an introduction of a bill in either house of the Parliament and must receive the assent of the president. Since the inauguration of the Indian Constitution, eighty-six amendments have been introduced.

6.2 Methods of Amendments in the Constitution of Pakistan

Under the 1973 Constitution, the proposal to amend the constitution can be initiated in any house and should be approved by two third majority of both houses of the Parliament. It is then, presented to the president for his assent, who within 30 days must give his assent or send it back to the Parliament. Nevertheless, this partial veto can be overcome by a simple majority of the Parliament in a joint session. Any bill, which is to alter the boundaries of a province, however, should also be ratified (unlike India) by the respective provincial assembly with its two third majority.

So far, seventeen amendments have been introduced in the Constitution of Pakistan.

The real difference between Indian and Pakistan's system regarding amendments lies in the implementation of a constitutional provision. Whereas, in India, the constitutional procedure is strictly followed in letter and spirit, Pakistan has witnessed extra-constitutional tampering. Theoretically speaking, no individual is entitled to amend the constitution. But Pakistan's constitutional history narrates different story. Since the inauguration of 1973 Constitution, the country has experienced two military governments and under these regimes, the Constitution was held in abeyance. Before reviving it the military governments enforced the constitutional packages, making extensive changes in the original text of the Constitution without following the procedure for amendment as laid down in it. Two most important amendments (8th & 17th) that have affected the substance and spirit of the parliamentary form of governance were introduced to legitimize far reaching constitutional changes by the respective military rulers. These changes were made

on the plea that Supreme Court gave them the right to amend the constitution under the doctrine of necessity. These amendments are briefly discussed below.

● Eighth Amendment

On March 02, 1985, General Zia-ul-Haq (then President and Chief Martial Law Administrator) issued an ordinance, known as the Revival of the Constitution 1973 Order (RCO), which made fundamental changes, making significant departures from the original concepts of the Constitution. The RCO was made a part of the Constitution, which was later passed by the Parliament with some changes in November 1985. It gave protection to the presidential orders issued during 1977 to 1985, while the Constitution was in abeyance. It changed the parliamentary nature of the Constitution by giving certain discretionary powers to the president.

● Seventeenth Amendment

Similarly, General Pervez Musharraf (President and Chief Executive of the Military Government) issued a decree, entitled 'the Legal Framework Order (LFO) in August 2002; introducing significant changes in the existing Constitution. LFO elevated the status of the president by giving him powers to dissolve the National Assembly and appoint the chiefs of armed forces. The issue of LFO, however, generated heated controversy. The main stream opposition political parties, PPP and PML (N) in the Parliament joined hands on the opposition of LFO. They questioned the legitimacy of president's authority to amend the Constitution in his discretion. They demanded the Parliament's endorsement of the amendment before it became a part of the Constitution. They argued that even RCO introduced by General Zia had to seek Parliament's approval before becoming a part of the Constitution through the 8th Amendment. The MMA initially also pursued a hard line policy but afterwards agreed to compromise. After long drawn negotiations between the government and MMA on the LFO, an agreement to resolve the LFO controversy was signed. Another leading opposition group the ARD stayed away from the dialogue and the agreement. In accordance with the government-MMA agreement, 17th Constitutional Amendment was passed by the Parliament on December 29, 2003. It is worth noting that opposition's demand and

argument that LFO must receive parliamentary endorsement before it was made the part of the Constitution was not accepted. The 17th amendment bill proceeded 'from the premise that LFO had become the part of the Constitution already and the presented bill only modified certain provisions of LFO'. The passage of the 17th Amendment Bill represents that MMA accepted the LFO as part of the Constitution even without the formal approval by the Parliament in exchange of some changes in it through 17th Amendment. No such example is found in Indian constitutional history.

7. Conclusion

Constitution is a body of rules or precedents governing the affairs of state. It establishes the structure and purpose of an organization and rights of citizens. India and Pakistan started with same constitutional heritage but after independence, they embarked on remarkably different directions of political and constitutional development. Indian experience represents constitutional continuity and stability since the introduction of its Constitution in January 1950. Pakistan has gone through many ups and downs. It has experienced four constitutions; its existing Constitution (1973) has also under gone various changes, altering the very nature of it.

A comparative study of the Indian and Pakistani Constitutions in five areas: provincial autonomy, president's relations with the cabinet, supremacy of the Parliament, civil- military relations and constitutional amendments shows that Indian political system has been established on the basis of democratic parliamentary norms. President's office is strictly 'constitutional' and real executive powers are vested in the council of ministers headed by the prime minister. The issue of provincial autonomy, due to democratic and participatory institutions and processes did not pose serious threat to national solidarity. Whatever problems arose, these are settled within the framework of the constitution. The civil-military relations have developed in a way that ensures civilian primacy over military establishment and Parliament's authority in bringing amendments to the constitution is an established rule.

Pakistan's constitutional history on the other hand shows constitutional breakdown and inconsistencies. Under the

1973 Constitution, a parliamentary form of government was envisaged but different amendments introduced in the constitution changed its substance and spirit, tilting the balance in favor of the president. The issue of provincial autonomy is becoming serious, partly due to centralising trends introduced by the Constitution but mainly because of frequent disruptions of democratic and participatory processes and institutions. Military establishment has expanded its influence in the society and is major determinant of national policies. Its role is now institutionalised through the National Security Council. The authoritarian trends are dominant regarding the constitutional amendments. Formal constitutional procedures were ignored by military regimes while introducing amendments. Even civilian leaders were not averse to introduce changes in the Constitution to accommodate their vested political interests. The authoritarian attitudes reflected their disregard for parliamentary norms and spirit. (for details, see Hamid Khan (2001) *Constitutional and Political History of Pakistan*, Oxford, Karachi).

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