

# 18<sup>th</sup> Amendment in the Constitution and Analyze the Amended Provisions of the Constitution

Azra Qadir<sup>\*1</sup>.

*I\* Chairperson, Department of Law at Khwaja Fareed University of Engineering & Information Technology (KFUEIT), Rahim Yar Khan 64200, Pakistan.*

*Email: [xyz3747@gmail.com](mailto:xyz3747@gmail.com)*

**Received:** 21st January 2021

**Revised:** 13th March 2021

**Accepted:** 18th April 2021

---

**Abstract:** Pakistan consists of four constituents units and federal tribal areas. These units are different in sizes and population. The constitution of 1973 is a result of compromises. The constitution introduced bicameral legislature system in the country. The power of the federal government and provinces are defined by the constitution and the legislative powers are divided into two lists. Part V, chapter 1 of the constitution deal with the legislative powers between federal and provincial law. Chapter 2 deals with the administrative relations between federation and the provinces. Chapter 3 deals with special provisions relating to the institutions of Pakistan.

In all the amendments, 18th amendment is very important. It changed the situation and restored the true nature of the constitution. It restored the federal and parliamentary nature of the constitution. It creates political autonomy with the affective steps to the devolution of powers. In article 6; 58-2B, 140A, 175A has regenerated the true spirit of democracy, powers enhanced of provinces.

**Keywords:** Federalism, Provisions of the constitution, Provincial autonomy, Power distribution, 18th amendment.

---

## Introduction:

Federalism is adopted to organize and administer the relationship between the federating units and the center. Important national affairs by the central government and all other matters are referred to the provincial governments. This method of state administration become popular in the 20<sup>th</sup> century when several states adopt it after the World War II. This is the way to lead the US, Switzerland and Australian federation came into existence. This system was adopted as the alternate of Empire system as it allows the control of center with prescribed limited autonomy. This authority is given by the written constitution. This system is successful when all federating units are equal in all matters by economically and culturally but it does not show in the case of British Empire colony just like Sub-continent, East Bengal, East Pakistan, West Pakistan as East, West wing. Pakistan appears at the globe of world as country of diverse geography with 1000 miles difference between the two wings. These areas faced many problems by birth as poor economy, language and distribution of powers.

By birth Pakistan consist of Punjab, Sindh, NWFP now KPK and Baluchistan and Bengal. Each of these provinces work under separate administrative setting by Taje-Bartania on the partition of the Sub-Continent these provinces and areas become the part of Pakistan. According to the British policy some specific parties and persons are given favor to establish their roots in the province of Punjab. Punjabi soldiers and officers in the British army made the position of this this province more authoritative and prominent. All other parts of Pakistan had experienced many political, strategic and constitutional incidents.

### Constitutional History:

Pakistan adopted Government of India Act 1935 with the minor changes as the interim constitution. It create federal system but specific authority towards center the federating units.

In the 1956 constitution there was imbalance between two wings of one unit. It was suitable for the East Pakistan but not acceptable for Punjab and West Pakistan a bicameral legislature. Language problem also create instability in system. This constitution sanction thirty subjects to the center and ninety subjects for the federating units.

A federal court was established which was responsible of the interpretation of the constitution. This constitution was abrogated by the martial law and all powers are concentrated with in the hand of one man. There is no constitutional behavior and attitude.

The constitution of 1962 was given by Ayub Khan, a military dictator as one man power show. This constitution also show strong center with two lists, a central list with 49 items and the concurrent list. Unicameral legislature was created with no power check to the office of the President and same pattern as adopted in the provinces where Governor was present to speak on behalf of President and nominated by the President. Due to the lingual, cultural, political and imbalance power distribution. The system was collapse and powers are taken by the army. This situation broke the system and Pakistan divided into two pieces as East Pakistan separated named Bangladesh.

### Constitution of 1973:

The constitution was the result of many compromises as the wounds of East Pakistan bleeding yet. The constitution introduced bicameral legislature which was new thing. The position of the Prime Minister was strong and parliamentary system was adopted in the country. The President was the head of the state and representative of the people and the state units. This constitution issued two legislative lists, federal list and the concurrent list. This constitution creates great co-operation and power distribution policy between the center and the provinces in this special provincial autonomy scenario and the provision of the constitution are as:

### Part "V" Relation between Federation and Province.

#### Chapter 1 Distribution of legislative powers.

Art 141 Extent of the federal and provincial laws.

Subject to the constitution, Majlise-Shoora Parliament may make laws for the whole of Pakistan and a Provincial Assembly may make laws for the province or any part of the province.

Art 142 Subject matter of federal and provincial law

According to the constitution Parliament Majlis-e-Shoora have power to make laws in any matter in federal legislature list. Parliament and the Provincial Assembly also have power to make laws matter in the concurrent legislative list.

Art 143 Inconsistency between federal and provincial laws

Art 144 Power of Majlis-e-Shoora to legislate for two or more provinces by consent

Chapter 2 Administrative relations between federation and provinces

Art 145 Power of President to direct Governor to discharge certain functions as his agent

Art 146 Power of federation to confer power etc. on provinces in certain cases

Art 147 Power of the provinces to entrust function to the federation

Art 148 Obligation of provinces and federation

Art 149 Direction to provinces in certain cases

Art 150 Full faith and credit for public act etc.

Art 151 Inter-provincial trade

Art 152 Acquisition of land for federal purposes

Chapter 3 Special provision of the constitution

Art 153 Council of common interest

Art 154 Function and rules of procedure

Art 155 Complaints as to interference with water supplies

Art 156 national economic council

Art 157 Electricity

Art 158 Priority of requirements of natural gas

Art 159 Broadcasting and telecasting

This part of the constitution explain the federation and the provinces to create institutions by federation for work together and cooperation for the betterment of people of the country and provincial autonomy.

18<sup>th</sup> amendment in the constitution and analyze the amended provisions. Articles of the constitution 8<sup>th</sup> and 17<sup>th</sup> amendment changed the parliamentary and federal features of the constitution and titled the balance of power in favor of the President. The discretionary powers of the President gave constitution a Quasi-federal look. In a Parliamentary democracy, Prime Minister had the actual powers as the elected representative of the people and the President is the head of the state and representative of the federation. In the amended constitution after 8<sup>th</sup> and 17<sup>th</sup> amendment, the situation was vice versa. 18<sup>th</sup> amendment

again changed the situation and exert to restore the original spirit of the 1973 constitution. The major changes by 18<sup>th</sup> amendment are the follows:

1. It restores the federal and parliamentary nature of the constitution.
2. The amendments incorporated by the authoritarian rules of General Zia-ul-Haq General Musharraf have been removed.
3. Provincial autonomy is increased by affective steps towards devolution of authority. Concurrent list is removed and residuary powers are transferred to the President.
4. The scope of council of common interest is increased. Members are taken from center and provinces to resolve the problem. National Finance Commission and National Economic Council play role as protector of this share in revenue.
5. Article 6 of this amendment enhanced sphere of definition of the offence of "high treason". According to this article suspension or keeping this constitution in abeyance or an attempt of doing so shall be regarded as a "high treason". Supreme Court cannot validate any such act.
6. Parliament has been given supremacy as the powers of president is transferred to th elected house of the people.
7. Article 62 and 63 have removed and introduced some codes of conduct regarding the qualification and disqualification of National Assembly and the Provincial Assemblies. These articles deals the parliamentarians and candidature who disqualified in political case.
8. The number of the ministers and ministers of the state has been limited to the 11% of the total membership of the Parliament. In the case of Provincial Assembles it cannot be more than 15% or 11% of the total membership.
9. The new article 140-A is added. This article devolution of powers to the local bodies' election will be held under the Election Commission of Pakistan.
10. Article 175A, According to this article a new high court of Islamabad has been created and the judges of this court shall be taken from all four provinces and Islamabad territory.
11. Term of the Election Commission will be increased from three to five years.
12. The caretaker is decided to consultation with leader of the house, leader of the opposition and Prime Minister. It is also decided that family of the caretaker shall not contest election.
13. In the past both the Parliament and the Provincial Assemblies were power to legislate on concurrent list but federal, parliament law is superior, but 18<sup>th</sup> amendment this authority is transferred to the provinces.
14. Article 58,2,B has regenerated the spirit of democracy.
15. The working days of the Senate have been increased from 70 to 100 and same is for the Provincial Assemblies.

After the 18<sup>th</sup> amendment provinces had empowered giving them constitutional voice. Where by the Federal Government could not impose emergency without the consent of the Provincial Government. This step empower the autonomy of the provinces. Article 140A was introduced the minimum standards for the establishment of local bodies governments by the provinces.

The fundamental rights such as right for fair trial, right to education and right to information were expanded.

The amendment introduced more than 100 articles changing 34% of the constitution. Sindh and Punjab have created provincial higher education commission and only Punjab had established its own curriculum authority.

### **Conclusion:**

Pakistan consist of four constituent units and federal tribal areas. These are unequal in sizes due to population and the land area. 1973 constitution is the result of compromises. This constitution introduced bicameral system legislature in the country. The power of the center and provinces were defined in the constitutional provisions in Part V Chapter 1, 2, 3. Article 141 to 159 explained the relations of the federal government and provinces. The amendments in the constitution in different regimes changed the true nature of the constitution. The landmark 18<sup>th</sup> amendment changed the balance of power in the federation, parliamentary original spirit of the constitution, promote co-operation, confidence and provincial autonomy between center and provincial relations. After the 18<sup>th</sup> amendment mostly articles are changed and regenerated. This act create provincial autonomy, decentralization for the betterment of federating units and good governance.

### **Recommendations:**

1. To unite the federating units
2. Distribution of powers among center and provinces in good way
3. To improve the provincial autonomy
4. Create new administrative units to control poverty
5. Arrangements for good governance
6. Revise the policies of governments

### **References:**

1. The Constitution of 1973, M. Mahmood, Al-Qanoon Publisher, 2 Mazang Road, Lahore.
2. Working relationship between Central and Provincial Governments in Pakistan, Somia Tasneem, Department of History, Pak Studies, G.C.University, Faisalabad, Pakistan.
3. 18<sup>th</sup> amendment: Implications for Provincial Autonomy and Governance. Cppg.fccollege.edu.pk
4. Azra Qadir, Issues of Federation and Constitutionalism in Pakistan. Palarch's Journal of Archaeology of Egypt/Egyptology 18(7)ISSN.1567214X.