

LANDMARK CONSTITUTIONAL AMENDMENTS

18th, 19th & 20th

Introduction

Constitution:

- The system of fundamental laws and principles of a government, state, society, corporation, etc., written or unwritten.
- It is a supreme law of Pakistan.

Constitution of Pakistan:

- Constitution of the Islamic Republic of Pakistan also known as the 1973 Constitution. Drafted by the government of **Zulfiqar Ali Bhutto**, with additional assistance from the country's opposition parties, it was approved by the Parliament on 10 April and ratified on 14 August 1973
- Pakistan, celebrates the adoption of the constitution on **23 March** when the first set was promulgated in 1956-each and every year as Republic Day.
- The country became a republic when its first constitution was approved in 1956 but this was abrogated in 1958 after a military Coup.

Amendments:

18th Amendment

- The **18th Amendment** to the Constitution of Pakistan passed in April 2010 is one such historic amendment that sought to decentralize power in important ways. First, it restored the parliamentary character of the Constitution by undoing several key changes made by military dictators on important matters like the powers of the President. Second, it redefined the Parliament–judiciary relationship by proposing parliamentary oversight on the appointment of judges in the Supreme Court and high courts. Third, it devolved several important functions to Provincial Governments by abolishing the Concurrent Legislative List in the Constitution and amending the Federal Legislative List.

19th Amendment

- The **19th Amendment** has taken powers from the Chief Justice of Pakistan for the appointment of judges and transferred them to the Judicial Commission of Pakistan (JCP).
- The President will now carry out the appointments on the recommendation of the JCP, under the new law 4 instead of 2 most senior judges will be appointed in the JCP.
- The Tribal Areas, adjoining Laki Marwat and Tank districts, are declared to be part of FATA.
- Passed by the National Assembly: **December 22, 2010**
- Passed by the Senate: **December 30, 2010**
- Assented to by the President: **January 1, 2011**

20th Amendment

- It has set down a process to install a caretaker set-up and hold free and fair elections and matters related to the office of Chief Election Commissioner and Member of Election Commission.
- The amendment reduced the number of committees at provinces for appointing caretaker chief ministers and their cabinets.
- Under the amendment the provision of not holding an office of profit will now also apply to the members of ECP like the Chief Election Commissioner.
- Passed by the National Assembly: **February 14, 2012**
- Passed by the Senate: **February 20, 2012**
- Received assent of the President: **February 28, 2012**

Key words

[Decentralization](#), [devolution](#), [constitutional history of Pakistan](#), [18th Amendment](#), 19th Amendment, 20th Amendment, Judicial system of Pakistan, Chief Election Commissioner.

Eighteenth Constitutional Amendment

The 18th Amendment sought to comprehensively amend the Constitution not only to restore its parliamentary character but also to resolve several other emerging issues, such as the renaming of the North-West Frontier Province (NWFP), the appointment of judges and strengthening certain key constitutional offices. For the sake of convenience, various provisions of the Amendment can be grouped into five categories: (a) Limits on presidential powers, (b) Greater role for parliament and the prime minister, (c) Judiciary composition and appointments, (d) Federal and provincial balance of powers and (e) Changing the Northwest Frontier Province's name.

Limits on presidential powers: The amendment limits presidential powers following years of a strengthened presidency under President Musharraf's military regime in a number of different ways. These include:

- Removing presidential powers to circumvent the normal legislative process and limiting the amount of time the president may consider bills passed by parliament before approving them (Article 75)
- Removing the infamous Article 58-2(b) instituted by President Musharraf, which granted the power to unilaterally dismiss parliament under vague emergency provisions
- Consulting with the outgoing prime minister and opposition leader on presidential appointments of caretaker governments to manage the transition to a new government when parliament is dismissed (Article 224)

Greater role for parliament and the prime minister: The amendment transfers greater authority to the parliament and prime minister through the following changes:

- Establishes the prime minister and his ministers as the federal government and transfers the position of chief executive of the nation from the president to the prime minister (Articles 90 and 99).

- Reduces the requirement for the prime minister to consult with the president to a duty to keep him “informed” of policy matters (Article 46).
- Requires that the president consult with the prime minister—whose recommendations are binding on all choices for provincial governors (Article 101) and military service chiefs (Articles 243 and 260), though the president remains the office charged with their appointments.

Judiciary composition and appointments: Judicial appointment procedures have been one of the most contentious parts of the amendment.

- Neither president nor prime minister will have a direct role in judicial appointments under the 18th amendment. The appointments will instead be handled by a two-tier system a Judicial Commission will propose nominees and a special parliamentary committee split evenly between the government and the opposition will confirm them (Article 175A).
- The Judicial Commission’s nominees appear to have their confirmation guaranteed absent an extremely high degree of parliamentary opposition to its suggestions. Rejecting a nominee requires a three-quarters majority from the parliamentary committee, and absent rejection a nominee is deemed confirmed within 14 days regardless of whether a vote was taken or not.

Federal and provincial balance of powers: Tensions between the central government and the provinces over the distribution of authority and revenues date back to Pakistan’s inception. The 18th Amendment takes important steps toward resolving some of these tensions through a devolution of authority and a strengthened role for the Council on Common Interests, a joint federal-provincial forum.

- The 18th amendment eliminates the “Concurrent List,” an enumeration of areas where both federal and provincial governments may legislate but federal law prevails. Laws governing marriage, contracts, firearms possession, labor, educational curriculums, environmental pollution, bankruptcy, and 40 other diverse areas will now devolve to the provinces with the list eliminated, and each provincial assembly will be responsible for drafting its own laws on the issues.

- Another important but under-reported change now specifies that future [National Finance Commission agreements](#)—which set the distribution of national revenues between the central government and the provinces—cannot reduce the provinces’ share beyond that given in the previous agreement (Article 160).

Changing the Northwest Frontier Province’s name: The 18th amendment contains a substantive restructuring of the Pakistani government system, but it is the seemingly innocuous renaming of the country’s Northwest Frontier Province, or NWFP, that has produced some of the [most heated political rhetoric thus far](#) and rioting in some parts of the province that has killed up to 10. The Awami National Party, a nationalist party and governing coalition partner with its base of support in the NWFP’s Pashtun community, has long pushed for the renaming in order to bring it on par with the other provinces of Sindh, Balochistan, and Punjab.

Former Hazara Division residents in the NWFP are [culturally and linguistically distinct](#) from the rest of the majority Pashtun province, and both the PML-N and PML-Q parties, which possess electoral footholds in the area, oppose the change. The PML-N finally agreed to the [compromise name](#) “Khyber-Pakhtunkhwa” at the end of March, but the PML-Q [sharply opposed](#) the prospective name change, seeing an opportunity to press its rivals. Leaders from [both PML](#) parties have since then endorsed protesters’ demands for a separate Hazara province entirely.

Ninetieth Constitutional Amendment

The proposed amendment was presented on 21 December 2010 by the Parliamentary Committee on Constitutional Reforms' **Chairman [Raza Rabbani](#)** in the [National Assembly](#)

The Amendment was Passed by the National Assembly on **December 22, 2010**, by the Senate on **December 30, 2010** and assented to by the President on **January 1, 2011**.

- The 19th Amendment has taken powers from the [Chief Justice of Pakistan](#) for the appointment of Ad Hoc judges and transferred them to the Judicial Commission of Pakistan (JCP).

- The [President](#) will now carry out the appointments on the recommendation of the JCP, under the new law 4 instead of 2 most senior judges will be appointed in the JCP.
- The [Tribal Areas](#), adjoining [Laki Marwat](#) and [Tank](#) districts, are declared to be part of [FATA](#).
- Name of the High court of Islamabad was changed to [Islamabad High Court](#).
- The 19th Amendment Bill also proposed an amendment in Article 175-A which binds the parliamentary committee to justify its decision in case it rejected any nominee of the Judicial Commission for the appointment of judges.
- In the 19th Amendment bill, the constitutional reforms committee has also proposed amendments composition of judicial commission for the appointment of judges of the high court.

Twentieth Constitutional Amendment

The **Twentieth Amendment Bill to the Constitution of Pakistan** was passed by the [National Assembly of Pakistan](#) on **February 14, 2012**. It was then moved to upper house, [Senate](#) where it was passed on **February 20, 2012** and signed by the [President](#) on **February 28, 2012**. It has set down a process to install a caretaker set-up and hold free and fair elections and matters related to the office of [Chief Election Commissioner](#) and Member of [Election Commission](#).

- The amendment reduced the number of committees at provinces for appointing caretaker chief ministers and their cabinets.
- It requires to constitute an eight-member committee each at the Center and the Provinces to nominate the prime minister and the chief ministers respectively and their cabinets.
- The Amendment now requires the [Chief Justice of Pakistan](#) to administer oath of the new Chief Election Commissioner (CEC), who will then administer the oath to newly appointed members of the Election Commission.
- The amendment requires to follow the same procedure for extension in the tenure of members of ECP as specified for the Chief Election Commissioner, Similarly the procedure to remove an ECP Member would be same as the removal of Chief Election Commissioner.
- Member of the ECP is now required to send his resignation to the President.

Conclusion

It is clear that the 18th Amendment was a milestone in the constitutional history of Pakistan. It not only restored the parliamentary character of the Constitution by returning the functions and powers to the Prime Minister and his Cabinet that had been usurped by military presidents over the past four decades but also made important contributions in enhancing fundamental rights, strengthening institutions and specifying the procedure for the appointment of judges. Although the appointment of judges became controversial immediately after the passage of the Amendment and the procedure had to be partially modified in line with directions from the Supreme Court, it was a milestone in settling, at least for the time being, the contentious issue of appointments to the superior judiciary. Its most important contribution, however, was to strengthen provinces in the federation by abolishing the Concurrent Legislative List, enlarging the Federal List Part II, strengthening CCI, reducing powers of provincial governors and enhancing powers of the Senate. Devolution of functions to provinces and giving them a greater role in running federal affairs was indeed a major step in correcting the historical imbalance in federal–provincial relations. Remarkably, the parliamentary panel constituted to draft the Amendment was able to develop political consensus on such a wide range of constitutional issues and get this through the Parliament unanimously.

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