

# **The 17<sup>th</sup> Amendment to the Constitution of Pakistan:**

Seventeenth Amendment is basically the Legal Framework Order 2002 that has been accepted as part of the Constitution with minor modifications and may be, therefore, termed as an LFO-amended Constitution. After a surprise deal between PML(Q) and MMA (Mutahida Majlis-e-Amal), the 17th Amendment has now become part of the 1973 Constitution after the formal approval of President General Pervez Musharraf. A year-old constitutional deadlock was broken only because of “flexibility” shown by President General Pervez Musharraf and top MMA leadership. The amendment allows General Pervez Musharraf to serve out his term as President, which ends in 2007, and formalize special powers he had decreed himself giving him the right to sack the prime minister and disband parliament by decree. In return, Musharraf agrees to step down as army chief, supposed to be the main source of his power, by December 31, 2004. The seventeenth amendment now allows the provision for “vote of confidence for further affirmation of the president in office by majority of the members present and voting, by division or any other method as prescribed in the rules made by the federal government under clause (9), of the electoral college consisting of members of both Houses of Parliament and the provincial assemblies”. Accordingly a vote of confidence was passed in favor of the President on January 1, 2004 by members of both National Assembly and the Senate.

Despite the fact the MMA abstained from giving the vote of confidence to the President, it has indirectly accepted him as elected president by allowing vote of confidence from both houses of parliament and provincial assemblies. Under the Article 58(2)(b), “the President in case of dissolution of the National Assembly shall, within fifteen days of the dissolution, refer the matter to the Supreme Court and the Supreme Court shall decide the reference within thirty days whose decision shall be final”. Likewise, under the Article 112, the governor in case of dissolution of the provisional assembly shall also refer the matter to the Supreme Court with the previous approval of the president and the Supreme Court shall decide the reference within thirty days whose decision shall be final. Another amendment is the addition of the words “in consultation

with the Prime Minister” in place of “in his discretion” in Article 243 of the Constitution giving the Prime Minister a constitutional say in the appointment of services chiefs. Article 152(A) of the Constitution has been omitted that related to the establishment of a National Security Council. The National Security Council may be, however, created with the passage of a bill with simple majority.

17th Amendment has amended Article 41(1)(7)(b) of the Constitution whereby Article 63(1)(d) of the Constitution has been made inoperative till December 31, 2004. Article 63(1)(d) deals with the disqualification for membership of Parliament and under Article 41(2) only a person qualified to be elected as member of the National Assembly, can be elected as President. This means that for the duration that that Article 63(1)(d) is inoperative, the President is not barred from being elected as the President while he holds the office of COAS. But it is interesting to note that the Article 43(1) of the Constitution still remains intact that says: The President shall not hold office of profit in the service of Pakistan carrying the right to remuneration for the rendering of services, Since no amendment has been made in this clause, the Article 43(1) disallows a person simultaneously to be the President and the COAS of the country. The bill granted indemnity to all actions of President General Pervez Musharraf since military action of October 12, 1999 as according to the 270AA, the Parliament has “affirmed, adopted and declared to have been duly made by the competent authority all laws made between October 12,1999 and the date on which the Article comes into force”. In the Article 179, retirement age of the Supreme Court judges has now been fixed at 65 year. This was a huge concern for the lawyers of the country who have at least welcomed this move.

# Prime Minister; Yousaf Raza Gillani, PPP Govt. From 2008-13. A Democratic Era...

. In Polls 2008, PPP and PML- N aggrieved majority and formed a mixed government. On March 23, 2008, Yousaf Raza Gillani took the oath of the Prime Minister of Pakistan. Through the joint efforts of PPP and PML-N the “Resolution of Impeachment” against Pervaz Musharraf was passed. However, Musharraf acknowledge the fact and resigned before the impeachment process. Hence, the long spell of Pervaz Musharraf came to an end on August 18, 2008. Pervaz Musharraf extended almost near a decade, in which innovative political experiments were carried out, which were successful under the umbrella of military but no sooner the military umbrella was removed, the entire system was rolled as had been the fate of his predecessors.

## National Assembly

| Party                              | Votes      | %     | Seats   |                |            |       |
|------------------------------------|------------|-------|---------|----------------|------------|-------|
|                                    |            |       | Elected | Reserved Seats |            | Total |
|                                    |            |       |         | Women          | Minorities |       |
| Pakistan People’s Party            | 10,666,548 | 30.79 | 91      | 23             | 4          | 118   |
| Pakistan Muslim League (Q)         | 8,007,218  | 23.12 | 38      | 10             | 2          | 50    |
| Pakistan Muslim League (N)         | 6,805,324  | 19.65 | 69      | 17             | 3          | 89    |
| Muttahida Qaumi Movement           | 2,573,795  | 7.43  | 19      | 5              | 1          | 25    |
| Muttahida Majlis-e-Amal            | 766,240    | 2.21  | 7       | 1              | 0          | 8     |
| Awami National Party               | 704,811    | 2.03  | 10      | 3              | 0          | 13    |
| Pakistan Muslim League (F)         | 685,684    | 1.98  | 4       | 1              | 0          | 5     |
| Pakistan People’s Party (Sherpao)  | 141,975    | 0.41  | 1       | 0              | 0          | 1     |
| National Peoples Party             | 148,892    | 0.43  | 1       | 0              | 0          | 1     |
| Balochistan National Party (Awami) |            |       | 1       | 0              | 0          | 1     |
| Independents                       | 3,865,954  | 11.16 | 30      | 0              | 0          | 30    |
| Invalid/blank votes                | 1,040,513  | –     | –       | –              | –          | –     |
| Total                              | 35,678,035 | 100   | 271     | 60             | 10         | 341   |
| Registered voters/turnout          | 80,910,318 | 44.10 | –       | –              | –          | –     |
| Source: ECP, IFES                  |            |       |         |                |            |       |

## Provincial Assemblies

| Parties                                 | Punjab     | Sindh      | NWFP       | Baluchistan |
|---|------------|------------|------------|-------------|
| Pakistan Peoples Party                  | 107        | 93         | 30         | 12          |
| Pakistan Muslim League (N)              | 171        | 0          | 5          | 0           |
| Pakistan Muslim League (Q)              | 84         | 9          | 6          | 18          |
| Muttahida Qaumi Movement                | 0          | 51         | 0          | 0           |
| Awami National Party                    | 0          | 2          | 48         | 4           |
| Muttahida Majlis-e-Amal Pakistan        | 2          | 0          | 14         | 10          |
| Pakistan Muslim League (F)              | 3          | 8          | 0          | 0           |
| Pakistan Peoples Party (Sherpao)        | 0          | 0          | 6          | 0           |
| Balochistan National Party (Awami)      | 0          | 0          | 0          | 7           |
| National Peoples Party                  | 0          | 3          | 0          | 0           |
| National Party                          | 0          | 0          | 0          | 1           |
| Independents                            | 4          | 0          | 11         | 12          |
| Total general seats                     | 297        | 130        | 99         | 51          |
| Reserved Seats (Women)                  | 66         | 29         | 22         | 11          |
| Reserved Seats (Minorities)             | 8          | 9          | 3          | 3           |
| <i>Declared results</i>                 | <i>370</i> | <i>166</i> | <i>124</i> | <i>65</i>   |
| <b>Total seats</b>                      | <b>371</b> | <b>168</b> | <b>124</b> | <b>65</b>   |
| Source: Election Commission of Pakistan |            |            |            |             |

# Constitution of Pakistan 1973

# **Is needed a major Overhaul?**

“In truth, laws are always useful to those with possessions and harmful to those who have nothing; from which it follows that the social state is advantageous to men only when all possess something and none has too much.” ? Jean-Jacques Rousseau, The Social Contract Famous French philosopher, Jean Jacques Rousseau wrote that laws were to protect and promote the general will of the people whilst restricting harmful freedom for those with selfish desires. However, in the case of Pakistan, the legislation and execution seems overwhelmingly dominated by self-serving motives of the rulers to secure and prolong their rules.

On August 14th, 1947, Pakistan was carved out on the map of the world for the Muslims of India to live in peace and harmony, according to the principles of Islam; free to pursue all spiritual and worldly endeavors in a homeland of their own. Today in 2018, I look back at history of the last 45 years, trying to evaluate whether the famous 1973 Constitution provided the guidance for governance and progress or not. By what I see is that we need to change course at the earliest as we are going down politically, economically, socially & morally. Should this constitution be given a major overhaul or should we start afresh? Is the present constitution serving the people of Pakistan or is it a tool for governing elite selectively apply rules to consolidate their hold on the power corridors & illiterate masses through a closed loop system of governance imposed by 1973 constitution, where we as public have one shot at elections, and are told to keep our ears, mouth and eyes shut for 5-years? Let us not forget that in last 45 years since 1973, Pakistan People Party has ruled federal government for 4 terms, Pakistan Muslim League- Nawaz (incl. IJI) for 4 terms (including Zia's period) and PMLQ- one term (under Musharraf). They all took oath to uphold the same constitution and yet not one government delivered what was stated in Article 37 and 38 that is the nutshell of what people would get from the successive governments. There have been no roadmaps, no progress evaluation and no accountability. The governance system has failed to meet any goals, in fact every successive government has sunk the nation financially, making Pakistan amongst the most corrupt nations. Imagine there is no watchdog institute to judge the governance performance. What we have seen in 45 years is that every successive government not only lacked governance capabilities but interfered in the normal functioning of government to achieve their personal financial targets through misuse of offices. So much so that till today, there

is no system to manage national calamities like floods, earthquakes, health-care or terrorists emergencies, even though we almost have then as an annual event. The same political forces always call upon one institution – the Army for help, and yet malign it continuously otherwise. The Constitution is totally silent on what to do, when political stand-offs develop to create emergency situations. The only option given is vote-of-no-confidence, but the reality is that it is more applicable for an in-house change of the party leading Prime Minister or Chief Minister who already have a majority in the first place. The 1973 Constitution replaced earlier governance documents, with the intent of creating a roadmap on national political independence, economic progress, social uplift and technology expansion in a framework of socialized society where the government will be responsible for every citizen, very clearly stated in Paragraph 37 & 38 of Constitution that says:

- (a) Promote educational and economic interests of backward classes or areas;
- (b) Remove illiteracy and provide free & compulsory secondary education within minimum possible period;
- (c) Make technical and professional education available and higher education equally accessible to all on the basis of merit;
- (d) Ensure inexpensive and expeditious justice;
- (e) Make provision for securing just and humane conditions of work, ensuring children and women are not employed in vocations unsuited to their age or sex, and for maternity benefits for women in employment.
- f) Enable the people of different areas, through education, training, agricultural and industrial development and other methods, to participate fully in all forms of national activities, including employment in the service of Pakistan; Article 38, the core of the constitution, for developing a socialized state says: “The state shall provide basic necessities of life, such as food, clothing, housing, education and medical relief, for all such citizens, irrespective of sex, caste, creed or race, as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment.”

But unfortunately, none of this has occurred. As Nelson Mandela terms it, “Education is the most powerful weapon which one can use to change the world.” Let’s talk about the non-existent educational reforms. Article 25(A) under the 18th amendment of the constitution, inserted in 2010, reads: “Right to education: The state shall provide free and compulsory education to all children of the age of 5 to 16 years in such manner as may be determined by law.” This is an important undertaking by the state since education, in contemporary times, is considered an important tool for enhancing one’s chances for socioeconomic development. However, we see no improvement in education anywhere as there is no implementation. Another major implication of

the 18th Amendment for education was that the curriculum, syllabus, planning, policy, centers of excellence and standards of education will fall under the purview of the provinces. Basically, the provinces do not have the capacity or the financial resources to cope with the huge challenge in front of them. It has been argued that the contents of the curricula should remain with the federation since the provinces could take liberties, which may result in putting the unity and ideology of the country at risk. The question that raise here is how standards would be maintained across the provinces and how quality would be assured. The curriculum needs to be updated at the federal level. There needs to be one system of education for all provinces so that they can compete with each other this being one of the many things that need to be done. Also, the constitution does not allow anyone to head a political party if he/ she doesn't fulfill article (62) and (63) of the constitution which says he is Sadiq and Ameen. Our ex-PM Nawaz Shareef conveniently passed an amendment in an act of the constitution, taking his lawmakers onboard and became President of his party, the PMLN. Eventually, the Supreme Court of Pakistan intervened and disqualified him. Ideally, the constitution shouldn't allow this sort of act, which is done for anyone's self-interests. Law should facilitate the co-existence of freely living individuals, but Pakistan's law usually attempts to sap the freedom and diminish any accountability of the rulers. President Ayub Khan through the 1962 constitution, Prime Minister Z.A. Bhutto through the 1973 constitution and the first 6 amendments, President Zia ul Haq through the 8th amendment, President Musharraf through the 17th amendment and Prime Minister Nawaz Sharif through the 13th amendment of the 1973 constitution attempted to increase their powers and lessen the accountability checks on them. In my opinion, there is no overhaul of the constitution needed but it must be ensured that it is implemented in its true letter and spirit. The Supreme Court should act as a watchdog to prevent the constitution from being misused by our politicians for their self-interests. "...the constitution was made to guard the people against the dangers of good intentions.