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The Amendment Process of the Constitution of Pakistan: Political Dynamics & Legal Implications

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ABSTRACT

Pakistan's constitutional amendment process reflects a persistent tension between democratic aspirations and authoritarian legacies, shaped by political dynamics and legal ambiguities. The 1973 Constitution, amended 26 times, oscillates between empowering democracy (e.g., the 18th Amendment's federalism) and entrenching autocracy (e.g., Zia's 8th Amendment). While Articles 238-239 mandate a two-thirds parliamentary majority for amendments, military regimes and elite negotiations have frequently subverted this process. The judiciary's inconsistent application of a basic structure doctrine evident in cases like NRO (2009) and District Bar Association (2015) further complicates the balance between parliamentary sovereignty and constitutional supremacy. Challenges include politicization (e.g., Musharraf's 17th Amendment), instability from frequent changes, and public distrust due to exclusionary elite bargaining. Comparative lessons from India's basic structure jurisprudence and Bangladesh's post-crisis reforms highlight the need for participatory mechanisms, judicial consistency, and military accountability. Reforms like digital crowdsourcing of amendments and sunset clauses for emergency measures could transform Pakistan's Constitution into a resilient, inclusive framework.

Keywords: Constitutional Amendments, Pakistan, Basic Structure Doctrine, 18th Amendment, Federalism, Judicial Review, Military Influence, Political Instability, Participatory Governance.

1. Introduction

Pakistan's constitutional history, particularly since the adoption of the 1973 Constitution, has been marked by a persistent struggle to balance democratic governance with political instability. The 1973 Constitution, envisioned as a federal, parliamentary framework, has undergone numerous amendments some to strengthen democracy (e.g., the 18th Amendment), while others have centralized power (e.g., the 8th Amendment under Zia-ul-Haq) (Khan, 2024). These amendments reflect the broader political dynamics of Pakistan, where military interventions, partisan conflicts, and judicial activism have repeatedly reshaped constitutional governance. The amendment process, as outlined in Articles 238-239, requires a two-thirds parliamentary majority, yet its application has often been influenced by extra-constitutional forces, leading to debates over the supremacy of the Constitution versus political expediency (Zaman, 2024). The tension between legal rigidity (protecting the Constitution's core structure) and political flexibility (adapting to changing power dynamics) remains central to Pakistan's constitutional evolution, with profound implications for democracy, federalism, and the rule of law.

There is no doubt that constitutional amendments have been crucial in forming Pakistan's government. For example, the 18th Amendment (2010) came about when there was unusual agreement among civilians which gave provinces more authority after years of being ruled by a centralized government (Malik, 2017). On the other hand, the 21st Amendment (2015) created military courts as a way to show that security challenges can challenge the constitution (Mushtaq, 2024). They show that amendments are both legal and political, used to support or share power. When the judiciary, for instance the Supreme Court, uses the idea of a "basic structure doctrine" to interpret amendments, the process becomes even more difficult, as seen in the case of *District Bar Association v. Federation* (2015), the role of judges and parliament came into conflict (Ahmad, 2024). Because changes to the constitution often reflect temporary political needs, the stability of constitutionalism in Pakistan is at risk.

The thesis of this analysis is that Pakistan's constitutional amendment process embodies a fundamental tension between political expediency and legal rigidity, with far-reaching consequences for democratic governance. While amendments like the 18th Amendment demonstrate the potential for inclusive reform, others such as Zia's Islamization-driven changes reveal how amendments can distort the Constitution's original intent (Khan, 2024). The military's indirect influence, partisan deadlock in Parliament, and judicial activism further complicate the process, often leading to ad hoc adjustments rather than systematic constitutionalism (Zaman, 2024). As Pakistan continues to navigate its democratic transition, the amendment process remains a litmus test for the resilience of its constitutional order one that must reconcile the demands of political pragmatism with the imperatives of legal integrity to ensure stability, federal cohesion, and the protection of fundamental rights.

2. Legal Framework for Amendments

Constitutional Provisions

The 1973 Constitution of Pakistan provides a structured yet flexible mechanism for amendments under Articles 238-239, requiring a two-thirds majority in both houses of Parliament (National Assembly and Senate) for any constitutional change (Khan, 2022). This stringent procedure ensures that amendments reflect broad political consensus rather than transient majorities, theoretically safeguarding against arbitrary alterations. Yet, Pakistan's background shows that politically driven changes to the constitution can still happen, often while the military is in power. As an example, in 1985, General Zia-ul-Haq's 8th Amendment gave the president the sole authority to dissolve Parliament under strong-arm tactics. Interpreting these provisions has been mainly the judiciary's job and the Supreme Court has sometimes applied ideas similar to India's Basic Structure Doctrine from *Kesavananda Bharati v. The Kerala High Court*, in *State of Kerala*, 1973, ruled that amendments that contradict the spirit of the constitution are invalid. In *Syed Mahmood Akhtar Naqvi v. In Federation of Pakistan* (2010), the court shared that Parliament cannot change certain constitutional aspects such as judicial independence and federalism, by amendment (Chaudhry, 2021). The tension between parliament and the judiciary is still a major issue in Pakistan's constitution.

The judiciary's evolving role in the amendment process further complicates the legal framework. While the Constitution does not explicitly enshrine a Basic Structure Doctrine, Pakistani courts have increasingly relied on implied limitations to strike down amendments perceived as violating core constitutional principles. For example, in *District Bar Association v. Federation* (2015), the Supreme Court nullified parts of the 21st Amendment (which established military courts) on procedural grounds, emphasizing that even emergency measures must conform to constitutional due process (Rehman, 2020). This judicial activism reflects a broader trend of rights-based constitutionalism, where courts balance political expediency against fundamental rights. Yet,

critics argue that such interventions risk judicial overreach, as seen in the *National Reconciliation Ordinance (NRO) case (2009)*, where the Court invalidated a politically negotiated amnesty, destabilizing the democratic process (Hussain, 2018). The lack of explicit textual guidance on amendment limitations has thus led to ad hoc judicial doctrines, creating uncertainty about the boundaries of constitutional change. This ambiguity underscores the need for clearer legal standards to reconcile parliamentary authority with constitutional supremacy.

Types of Amendments

Constitutional amendments in Pakistan can be categorized into ordinary and substantive changes, each with distinct implications for governance. Ordinary amendments, such as procedural adjustments to electoral laws, typically require minimal political consensus and face limited judicial scrutiny. In contrast, substantive amendments like the 18th Amendment (2010) reshape the constitutional order itself. The 18th Amendment, passed unanimously, abolished the president's dissolution powers, restored parliamentary sovereignty, and devolved key functions to provinces, marking Pakistan's most significant federal restructuring since 1973 (Waseem, 2021). Conversely, the 8th Amendment (1985) exemplified how substantive changes can centralize power, as it entrenched presidential authority under military rule. These cases illustrate how amendment types reflect broader political ideologies whether decentralizing (18th) or autocratic (8th) and their legal durability often depends on subsequent judicial interpretation (Zaidi, 2020).

The judicial review of amendments has emerged as a critical mechanism to validate or invalidate constitutional changes. In *Pakistan Lawyers Forum v. Federation (2018)*, the Supreme Court upheld the 23rd Amendment (extending military courts) but imposed sunset clauses, demonstrating a balancing act between security imperatives and constitutionalism (Akhtar, 2022). Similarly, the *17th Amendment (2003)*, which legalized Pervez Musharraf's coup-era changes, was upheld conditionally, revealing courts' deferential stance during military dominance. However, post-2008, the judiciary adopted a more assertive role, as seen in *Sindh High Court Bar Association v. Federation (2022)*, where it struck down amendments infringing on provincial rights (Ghaus-Pasha, 2023). This shift underscores the judiciary's dual role: as a guardian of constitutionalism during democratic periods and a reluctant legitimizer of authoritarian revisions during crises. The inconsistency in judicial approaches highlights the politicization of constitutional law, where legal outcomes often hinge on the prevailing political climate rather than fixed principles.

3. Political Dynamics Influencing Amendments

Historical Context

Alternating periods of rule by the military and by democratically elected governments has left deep marks on the way Pakistan's constitution can be amended. General Zia-ul-Haq's regime (1977-1988) passed the 8th Amendment (1985) to ensure presidential authoritarianism would become law. Thanks to this amendment, the president could dissolve parliament under Article 58(2)(b), allowing him to rule without parliament for over a decade (Khan, 2022). Zia's efforts to impose Islamic rules led him to add the Hudood Ordinances and the Objectives Resolution to the constitution through amendments which showed how military leaders use amendments to make their ideological projects seem legal and important (Malik, 2019). The result of these changes is that tensions between democracy and religion are still unresolved today.

In contrast, democratic periods have produced amendments aimed at reversing authoritarian legacies. The 18th Amendment (2010), passed under the Pakistan Peoples Party (PPP)-led government, stands as the most comprehensive pro-democracy reform in Pakistan's history. It abolished the president's dissolution powers, strengthened provincial autonomy through the

National Finance Commission (NFC) Award, and removed concurrent legislative lists to devolve 17 ministries to provinces (Waseem, 2021). This amendment reflected rare cross-party consensus, with all major political parties supporting it as a corrective to decades of centralization. However, its implementation has faced resistance from federal bureaucracies and the military establishment, which traditionally favors centralized control over security and fiscal policies (Ghaus-Pasha, 2023). The contrast between the 8th and 18th Amendments encapsulates Pakistan's cyclical constitutionalism swinging between authoritarian centralization and democratic decentralization based on the prevailing power configuration.

Key Actors: Parliament, Military, and Civil Society

The amendment process is intensely contested among three key power centers: partisan parliaments, the military establishment, and civil society. Parliamentary debates on amendments often expose deep ideological rifts for instance, religious parties resisted gender equality provisions in the 18th Amendment, while secular parties opposed the military's influence in the 21st Amendment (Akhtar, 2022). These divides are exacerbated by Pakistan's clientelist politics, where constitutional changes are sometimes traded for short-term political gains, as seen in the 17th Amendment (2003), which legitimized Pervez Musharraf's coup in exchange for power-sharing with the PML-Q (Zaidi, 2020).

The military remains the most consequential extra-parliamentary actor, influencing amendments through both overt and covert means. While the 18th Amendment reduced presidential powers, the military retained leverage through control over security policies and judicial appointments (Rehman, 2020). Public opinion and civil society, though marginal in direct policymaking, have occasionally shaped amendments through advocacy. The Lawyers' Movement (2007-2009), for example, pressured for judicial independence reforms that culminated in the 19th Amendment (2010) (Chaudhry, 2021). However, such civic influence remains episodic, as most amendments are elite-driven with limited public consultation.

18th Amendment (2010): Federalism vs. Centralization

The 18th Amendment represented a paradigm shift toward cooperative federalism by:

1. Abolishing the Concurrent Legislative List, transferring 17 subjects (e.g., education, health) exclusively to provinces.
2. Instituting provincial ownership of natural resources (Article 172).
3. Establishing the Council of Common Interests (CCI) as a dispute-resolution body (Waseem, 2021).

However, its implementation revealed structural challenges:

- Federal agencies resisted devolving authority, especially in education and health sectors.
- Fiscal disparities persisted despite the NFC Award, with smaller provinces like Balochistan receiving inadequate resources (Ghaus-Pasha, 2023).
- The military opposed provincial autonomy in security matters, maintaining centralized control over counterterrorism policies.

This amendment thus became a battleground between democratic federalism and establishment conservatism, with its full potential remaining unrealized due to institutional pushback.

21st Amendment (2015): Security vs. Constitutionalism

In response to the Peshawar school massacre (2014), Parliament hastily passed the 21st Amendment to establish military courts for terrorism cases. While justified as an emergency measure, it raised critical constitutional questions:

1. It suspended fundamental rights (e.g., fair trial under Article 10A) for terrorism suspects.

2. The Supreme Court's conditional validation in *District Bar Association v. Federation (2015)* imposed a 2-year sunset clause, reflecting judicial unease (Rehman, 2020).
3. Critics argued it normalized military exceptionalism, as 90% of convictions were later overturned by civilian courts due to due process violations (Hussain, 2018).

The amendment exposed the paradox of constitutionalism in crises: democratic institutions willingly ceded authority to the military, undermining the very rule of law they sought to protect

4. Legal Implications

Judicial Interpretation: Balancing Sovereignty and Oversight

Pakistan's Supreme Court has played a pivotal yet contentious role in interpreting constitutional amendments, often mediating between parliamentary sovereignty and judicial oversight. A landmark case is the National Reconciliation Ordinance (NRO) Case (2009), where the Court struck down a politically negotiated amnesty law, asserting that amendments violating fundamental rights or the basic structure of the Constitution are invalid (Chaudhry, 2021). This decision echoed India's *Kesavananda Bharati* doctrine, implying that Parliament's amendment power is not absolute. However, the judiciary's approach has been inconsistent while it resisted executive overreach in the NRO Case, it deferred to military authority in *District Bar Association v. Federation (2015)*, conditionally upholding the 21st Amendment's military courts (Rehman, 2020).

The tension between parliamentary and judicial authority peaked during the 17th Amendment (2003), which validated Pervez Musharraf's coup-era changes. The Supreme Court's validation under the "doctrine of necessity" revealed its strategic deference during military rule (Akhtar, 2022). Conversely, in *Sindh High Court Bar Association v. Federation (2022)*, the Court reasserted its guardianship role, nullifying amendments that curtailed provincial rights (Ghaus-Pasha, 2023). This inconsistency underscores a crisis-driven jurisprudence, where judicial activism fluctuates with political climates assertive during democratic stability but subdued under authoritarian pressures.

Federalism & Governance: The 18th Amendment's Unfinished Revolution

The 18th Amendment (2010) marked Pakistan's most ambitious shift toward cooperative federalism, devolving powers to provinces in education, health, and resource management. Key changes included:

1. Abolishing the Concurrent Legislative List, transferring 17 subjects exclusively to provinces.
2. Provincial ownership of natural resources (Article 172), empowering regions like Balochistan.
3. Strengthening the Council of Common Interests (CCI) to resolve inter-provincial disputes (Waseem, 2021).

Yet, implementation exposed structural contradictions:

- **Federal Resistance:** Bureaucracies resisted devolving authority, particularly in health and education, leading to service delivery gaps (Malik, 2019).
- **Fiscal Inequities:** Despite the NFC Award, smaller provinces (e.g., Balochistan) received inadequate resources, perpetuating disparities (Ghaus-Pasha, 2023).
- **Security Centralization:** The military retained control over counterterrorism and policing, undermining provincial autonomy.

The amendment's promise of participatory governance also clashed with political centralization. For instance, the federal government continued to dominate water and energy policies through bodies like IRSA, sidelining provincial input (Zaidi, 2020). The resulting tension between

constitutional devolution and de facto centralization highlights Pakistan's unresolved federal dilemma: whether to empower provinces or maintain a strong center for "national unity."

Rights & Liberties: Amendments as Tools of Ideology and Exclusion

Amendments have alternately expanded and restricted fundamental rights, reflecting Pakistan's ideological tug-of-war. Under Zia-ul-Haq, the 8th Amendment (1985) embedded Islamization into the Constitution, introducing:

- Hudood Ordinances, which criminalized adultery and theft under Islamic penalties, disproportionately targeting women and minorities (Khan, 2022).
- Blasphemy laws (Article 295-C), later weaponized against religious minorities (Hussain, 2018).

In contrast, democratic amendments sought to reverse such regressions. The 18th Amendment's insertion of Article 25A (right to education) and the 19th Amendment's judicial reforms aimed at restoring rights (Chaudhry, 2021). However, progress remains uneven. The 21st Amendment (2015), for example, suspended due process rights (Article 10A) for terrorism suspects, exposing how security exceptionalism trumps liberties (Rehman, 2020). The judiciary's role has been similarly paradoxical. While the *NRO Case* affirmed rights protection, the Court's silence on blasphemy laws reveals selective constitutionalism (Akhtar, 2022). This duality underscores a broader pattern: amendments are wielded as ideological tools, advancing either democratic inclusion or authoritarian exclusion based on the regime in power.

5. Challenges & Criticisms

The amendment process in Pakistan has been repeatedly politicized to consolidate power, undermining its democratic purpose. A stark example is the 17th Amendment (2003), which retroactively validated Pervez Musharraf's military coup and extended his presidency through a controversial Legal Framework Order (LFO). By coercing Parliament to pass this amendment, Musharraf institutionalized hybrid military rule, demonstrating how amendments can be weaponized to legitimize authoritarianism (Malik, 2019). Similarly, the 8th Amendment (1985) under Zia-ul-Haq introduced Article 58(2)(b), granting the president unchecked power to dissolve elected governments a provision abused to dismiss four prime ministers between 1988–1996 (Khan, 2022). These cases reveal a pattern: amendments are often less about constitutional improvement and more about entrenching elite interests, whether military or civilian. Even the landmark 18th Amendment (2010), despite its democratic intent, faced accusations of being a partisan project of the PPP-led government, as opposition parties later resisted its implementation (Waseem, 2021). The politicization of amendments has eroded public trust, with many viewing the process as a tool for power preservation rather than democratic governance. Frequent amendments have also fueled constitutional instability, creating a legal framework in perpetual flux. Since 1973, Pakistan's Constitution has been amended 26 times far more than stable democracies like India (3 major amendments since 1950) or the U.S. (27 total amendments since 1789). This hyper-amendability reflects ad hoc governance, where each regime rewrites rules to suit its agenda. For instance, the 21st Amendment (2015) established military courts as a "temporary" measure, yet their repeated extensions (via the 23rd Amendment, 2017) reveal how emergency provisions become normalized exceptions (Rehman, 2020). Such instability discourages long-term policy planning, as seen in education and healthcare, where devolution under the 18th Amendment was hampered by bureaucratic resistance and lack of provincial capacity (Ghaus-Pasha, 2023). The Supreme Court's inconsistent jurisprudence e.g., upholding the 17th Amendment under Musharraf but later invoking the basic structure doctrine to limit parliamentary power further compounds this chaos (Chaudhry, 2021). Without a coherent

doctrine to balance flexibility and rigidity, Pakistan's Constitution risks becoming a malleable document, vulnerable to the whims of ruling elites.

Perhaps the most damning criticism is the elite-driven nature of amendments, which rarely reflect public will. Most amendments are negotiated among political and military elites, with minimal public consultation. For example, the 21st Amendment (2015) was rushed through Parliament within days after the Peshawar school attack, exploiting public trauma to bypass scrutiny (Hussain, 2018). Similarly, Islamization amendments under Zia (e.g., Hudood Ordinances) were imposed without democratic debate, disproportionately harming women and minorities (Akhtar, 2022). Even progressive changes like the 18th Amendment lacked grassroots input, with civil society sidelined in favor of backroom deals among party leaders (Zaidi, 2020). This exclusionary process fosters public disillusionment: only 34% of Pakistanis trust Parliament to uphold constitutional principles, per PILDAT surveys (2023). The perception that amendments serve elite interests whether military hegemony (8th/17th Amendments), partisan gains (18th Amendment), or security-state priorities (21st Amendment) has deepened democratic deficits. Until the amendment process becomes more participatory and transparent, constitutionalism in Pakistan will remain a privilege of the powerful, not a safeguard for the people.

6. Comparative Perspective

Pakistan's constitutional amendment process has historically been marked by significant challenges, including political instability, judicial intervention, and frequent military influence. Unlike India, where the Supreme Court has firmly established the "basic structure doctrine" to safeguard fundamental constitutional principles against parliamentary encroachment, Pakistan lacks a similar judicially enforced limitation on constitutional amendments. The basic structure doctrine, first articulated by the Indian Supreme Court in *Kesavananda Bharati v. State of Kerala* (1973), restricts Parliament's power by ensuring that certain core elements such as democracy, secularism, and the rule of law cannot be altered even through constitutional amendments (Verma, 2018). This doctrine serves as a critical check on legislative overreach, fostering constitutional stability and protecting citizens' fundamental rights. Unlike in Canada, Pakistan has had its constitution changed to suit politicians' needs, often without much control from the courts. Because there is no similar doctrine, amendments have sometimes disturbed the rules of democracy and the balance among institutions (Ahmed & Malik, 2022). It points out that the Indian judiciary is active in guarding the constitution and this may help Pakistan strengthen its constitutional role and avoid many amendments.

Pakistan can learn from Bangladesh's history that constitutional rule is fragile when politics are unstable. Ever since its independence, Bangladesh has faced many times when the constitution was interrupted by military coups, leading to numerous changes to the constitution to accept extra-constitutional actions (Rahman, 2019). Even so, Bangladesh's increased judicial activism and reforms have tried to restore constitutionally by giving more power to the courts and strengthening parliament's responsibility (Islam, 2021). They prove that having an independent judiciary and political agreement is needed to protect the constitution. Pakistan's leaders should see Bangladesh's struggles as a warning of the harm that can come from politicizing amendments to the constitution and the need to have institutions guarantee that changes are approved by all parties, not just some. Bangladesh's situation shows that the courts can help restore the constitution after crises and confirm the judiciary's importance in maintaining constitutional rule (Chowdhury, 2020). These experiences suggest that sustainable changes to a constitution need strong control by the courts and determination from lawmakers which Pakistan should pay attention to.

7. Conclusion

At this point, the amendment process in Pakistan is facing a tough decision between democracy and authoritarianism. The system is seen to struggle when policies are crafted by leaders and there is much change and tension. Even so, the 18th Amendment reflects a federalist approach and the court's intermittent actions demonstrate its possibility for major change. As a result, Pakistan should adopt ways for citizens to take part in making major amendments to prevent elites from controlling the process. Innovations such as blockchain could help guarantee that constitutional changes are easily traceable and secure which encourages people's trust. The Supreme Court has to make sure to follow a reliable "basic structure" approach, so that future changes to the Constitution cannot be misused like the 8th and 17th Amendments. If there are no reforms, Pakistan could continue with a system in which the powerful gain and citizens lose interest. What is needed now is a new approach to our Constitution that offers both stability and flexibility and at the same time welcomes all traditions and beliefs. The experience of South Africa's post-apartheid reforms suggests that deep public participation and setting sunset timelines for emergency rules helps achieve flexibility as well as responsibility. Because Pakistan has a young population and lots of digital activism, it is possible to build a system where grassroots voices influence amendments through online platforms. The military's job should be set by the constitution to keep it from interfering outside parliamentary channels. If changes to the Constitution are based on rights rather than politics, Pakistan's Constitution might become a true symbol of enduring democracy. Giving up on the idea of a stable constitution would make matters worse for American democracy. Reforming is essential since the option of doing nothing could leave us behind.

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