ACADEMIA International Journal for Social Sciences
Volume 4, Issue 4, 2025 ISSN-L (Online): 3006-6638

Constitutional Amendments Process in Pakistan: Limits and Scope of Parliaments Power to Amend the Constitution

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Received: 17-10-2025 **Revised:** 15-11-2025 **Accepted:** 27-11-2025 **Published:** 13-12-2025

ABSTRACT

In this paper, we will discuss the amendment of the Constitution of 1973 by Parliament in Pakistan and the extent of authority that it actually possesses. Paper wise Parliament can alter nearly any element of the Constitution on obtaining a two thirds majority in both Houses. The courts are simply informed not to interfere. However, when you consider actual examples and the history of Pakistan politics, the situation is not that simple. This can be explained by key Supreme Court cases including Mehmood Khan Achakzai, Pakistan Lawyers Forum, Nadeem Ahmed and District Bar Association (Rawalpindi). The Court frequently discusses significant concepts that make up the essence of the Constitution such as democracy, federalism and judicial independence. Nevertheless, the Court hardly ever repeals a constitutional amendment. This implies that the authority of Parliament remains very strong, even in circumstances of pressure of the political front, as well as in circumstances influenced by the military such as the Eighth, Seventeenth and the Twenty one Amendments. The paper holds that this system has had both positive and negative outcomes. It enabled great democratic advances including the Eighteenth Amendment. It also made it easier to make contentious changes in governments when politics were strained or unjust. The paper does not propose additional control to the judges, instead, it proposes better amendment process. This involves improved community engagement, online feedback, allowance of more time before amendments, and placing expiry dates on urgent amendments. The other notion is that it is necessary to place a more powerful sanction on modifications to important constituents of the Constitution. The point is that; Pakistan should have a less secretive, cautious, and democratic manner of constitutional change and not use the courts to correct the issue after it has been rectified.

Keywords: *Constitution of Pakistan 1973; Parliamentary Sovereignty; Constitutional Amendments; Judicial Review; Supreme Court Jurisprudence; Basic Structure Doctrine; Democratic Constitutionalism*

INTRODUCTION

The constitutional amendments in Pakistan have been an uphill battle between democracy and dictatorial forces. Of the several amendments, the 1973 Constitution a product of consensus has been changed some 25 times in its first 5 decades. Some of those reforms were democracy and rights-enhancing (such as the historic 18th Amendment that fortified federalism), some were power-reinforcing to autocrats (7th Amendment in the 1980s that firmly established presidential powers). Theoretically, the constitution has a well-organized procedure to make amends: any form of change will take a two thirds super Majority in both Parliament houses. In reality, though, not all such a process has been above politics. This has sometimes been used by military regimes and back room politics by political elites to twist the amendment procedure to suit their interests casting doubt on the relationship between sovereignty of Parliament and the wider normalcy of constitutional governance. This context preconditions the realization of just how much the

powers of the amendments extended to Parliament and what can be achieved through the judiciary when it comes to interpreting (or even voiding) the amendments and whether Pakistan gasps some basic structure of the constitution to which Parliament should have no access. It is a subtle narrative, which tends to give the elected representatives all the powers, but implicitly, challenged by the crises, court proceedings, and the public opinion. It is well to begin by alluding to the mechanics of the amendment process which are, as on paper, on the one hand, so much more complex than on the other, and on the other by similar complaint, how it has been invoked (and sometimes abused) over the span of years before floundering into judicial doctrines and historic cases.

Constitutional Amendment Procedure in Pakistan

Under the 1973 Constitution, the procedure of a change to the constitution is simple enough, in writing. An amendment may originate in either house of the National Assembly or the Senate, as opposed to some nations where only one of the houses originates such bills. To pass it will require a two-thirds vote of all the members of each of Parliament's houses combined and then this bill is sent to the President for assent. The role of the President is much more ceremonial than elsewhere - once the necessary supermajorities have been achieved in parliament, the approval of the President is pretty much guaranteed. There is one important exception: if an amendment attempts to change the boundaries or name of a province it must be approved with a resolution of the assembly of the province in question. This proviso is there to protect the autonomy of the provinces, in case the territorial status of the latter is at stake. Other than that, no consent of provincial governments, nor that of the public at large is required of Parliament to amend the nation's highest law.

The Constitution does thus centralize the power of amending in the federal legislature. There is no requirement for a public referendum or multiple readings over years - just two-thirds support of both houses and a presidential signature. Compared to some constitutions in the world, this is quite a simple process. For example, amendments of the U.S. Constitution require not only two-thirds of Congress but also ratification by three-fourths of state legislatures, a very high hurdle for change. India's Constitution calls for a two thirds majority of the parliament and for some topics ratification by half of the states legislatures. Pakistan's framers did incorporate the provincial consent clause in territorial changes, but they left the power of amending the rest entirely with the Parliament. In a sense, this reflects the belief in the supremacy of representatives in defining the evolution of the constitution. It puts a lot of faith in the federal Parliament to take its action with wisdom and restraint when redrafting the nation's charter.

The amendment rules on the surface give a wide latitude to the Parliament. Any part of the Constitution can effectively be changed by a disciplined ruling coalition-or a consensus across parties-which can obtain two-thirds majority in the National Assembly as well as in the Senate. There is no explicit separation of what is considered to be ordinary and what is entrenched, as all the clauses of the Constitution, including fundamental rights and even the institutions, are subject to change provided the political will and numerical requirements are met. This was flexible legalism. The authors of the 1973 Constitution were thoroughly informed of past constitutional failure the previous constitutions of 1956 and 1962 which had culminated in coups and as such this is how the 1973 Constitution was written to be a bit flexible with the hope that it would outlives itself by adapting to the new realities. Amendments were also supposed to act as a safety valve to change and was to be done by the elected representatives and not by extralegal means.

Powers and Limits of Amendment Authority of Parliament

The wording of the Constitution is open ended; meaning that the power of Parliament to make amendments is practically unlimited- at least on a legal basis. Article 239(5) makes it clear that no constitutional amendment, on any basis, shall be referred to in any court and clause 6 makes it clear that it shall impose no restriction whatever on the authority of Parliament to amend any of the provisions. The Constitution itself, in natural language, tells the judicial to remain silent in the amendment process as well as confirms that Parliament can change everything whatsoever. This is in theory a blanket grant of power. It means that no court can subsequently quash such a change, as long as Parliament adheres to the proper procedure, and that there are no substantive restrictions, such as the fact that the nature of the state can never be democratized or something like that, in the text. This is similar to the parliamentary sovereignty in the British meaning, but Pakistan has a written constitution, the framers left the elected legislature to have the last word on what is in its texts, so that the judges or anyone else would not put particular things in concrete.

However, there is an interesting and disturbing question concerning this seemingly absolute authority. Would the Parliament, with the ability to revise any section of the Constitution, not in theory be able to repeal rights of fundamental importance, destroy the federal system or to even repudiate elections and turn the country into a one-party state? Theoretically, such act would be allowed by the constitutional text. An example of how that would work is that a constitutional amendment would abolish the office of the Prime Minister or a provincial government in case a majority of legislators agreed. Even such drastic changes seem to be possible according to the literal meaning of Article 239. This problem creates controversy in regards to the meaning of the word amend. Would amending the Constitution mean that you could have a total rewrite of it, or is it a more humble meaning of getting it fixed and changed? Some jurists argue that an amendment that is actually a destruction of the basic tenets of the Constitution is not, in fact an amendment at all, but a revolution by another name. They appeal to the common meaning of the word amend, to have connoted the process of improving or making slight changes, and that this power cannot be used to impair the very nature of the Constitution. Through the reasoning of this, although there are no express limits in the text, there must be an implicit one: Parliament is not permitted to make changes to the very character or structure of the Constitution. By thus doing it, it would be doing what lay outside the power of amendment--doing what the people never empowered their representatives to do.

This type of reasoning is what the basic structure doctrine is all about and has taken root in a number of jurisdictions but most of all India. Basic structure doctrine holds that certain defining characteristics of a constitution, e.g. democracy, federalism, or basic rights, are sacrosanct, regardless of the size of the majority, and that the courts have the power to nullify amendments that violate these characteristics. In Pakistan, however, the basic structure doctrine meets the explicit wording of Articles 239 (5) 239 (6), which rejects judicial scrutiny of amendments. This creates a cliché battle between law and its spirit. This is the dilemma which Pakistani judges, Pakistani lawyers and Pakistani scholars have struggled to resolve over time: is the entire constitution really revocable, or are the meta-principles really of such weight that they cannot be changed by Parliament? The language of the Constitution is heavily biased towards unlimited power by the parliament, and so far, a court has never strictly vetoed an amendment on substantive grounds. However, the fact that these questions are asked at all indicates a certain vein of worry, the feeling that were a hypothetical Parliament to do anything arbitrary (such as to abolish all elections or all courts), there would be a constitutional crisis over whether this is a legitimate amendment or an abuse of power. In practice, the judicial reaction to this tension will be demonstrated.

The Interpretations of Judiciary and Basic Structure Doctrine

With the clear guidelines which are given in the Constitution, keeping in mind that the Constitution explicitly forbids judicial participation in amendments, it is possible to expect that the courts of Pakistan would assume a totally passive stance. To a large extent, this has been true to the expectations. The Supreme Court of Pakistan has reiterated on numerous occasions, that it has no power to strike down a constitutional amendment passed to avoid, since Article 239 of the constitution is left uncompromising. In contrast to their Indian counterparts, the Pakistani judges have not claimed the authority to strike down amendments by reference to a so-called fundamental structure or any other superior law to the text of the Constitution. The general character of the judicial has been that the power of the Parliament to amend is plenary and exclusive: that in case an amendment is enacted in due form of law, the courts will consider it a part and parcel of the Constitution and ask no questions as to its wisdom or validity. Simply put, the judiciary sees itself as the enforcer of the Constitution and not its protection against Parliament.

However, this story does not end there. Over the decades there have been debates and dicta (judicial observations) that touting in the peripheral of the basic structure although the final decisions end up stopping at having struck anything down. Early on, in such cases as Asma Jillani v. Government of Punjab (1972) and State v. Zia-ur-Rahman in 1973, the courts were not faced with an amendment but with the objection whether something could be done to circumvent the written constitution. In those cases, quite turbulent in the post-martial law period, some tried to argue that the Objectives Resolution of 1949, a pre-constitutional document which lays down a set of Islamic and democratic principles, constituted a sort of supra-constitutional "grundnorm" or basic tenet which could trump ordinary law. The Supreme Court emphatically refuted that, stating that it was the constitutional document of 1973 which was the supreme and no abstract principles could be invoked to overthrow its provisions. Even after General Zia then added the Objectives Resolution into the Constitution in 80s as Article 2A, the Court retained its inferior position. In Hakim Khan v. Government of Pakistan (1992), the Supreme Court said that Article 2A (Objectives Resolution) could be used in the course of its interpretation where necessary, but could not be used by judges to void any other part of the Constitution. In other words, an amendment adding Article2A did not make an imposition of an "higher law" above the rest of the Constitution-the entire document thus still had to be read as a harmonious whole, and no provision (including Article2A) was to have any superior effect. These cases encountered an early ability: Pakistan's judiciary stated a readiness to accept nothing written by way of unenunciated greater principles which can contradict the textual textual content of the constitution.

The first genuine flirting with something approaching the basic structure doctrine came in Mehmood Khan Achakzai vs. Federation of Pakistan (1997). This case had questioned certain aspects of the Eighth Amendment (the one passed under Zia) as well as other changes, and while the Supreme Court did not strike down the Eighth Amendment, it made an interesting observation. The Court recognized that the Constitution had certain "salient features" - it explicitly mentioned some principles such as federalism, parliamentary democracy, Islamic provisions etc. which it considered fundamental to the constitutional design. This sounded a lot like giving the general approval of the concept that there are certain features that are so important that they define the identity of the Constitution. However, the important caveat was that the Court still denied that any part of the Eighth Amendment cannot be invalidated. In fact, what the judges did in Achakzai's case was tie those salient features to the Objectives Resolution (Article 2A), and state that so long as future amendments did not go against the spirit of the Article 2A then they would, presumably, be acceptable. The Court stopped there from saying that it would strike down amendments that did not and

only suggested that Parliament should keep those fundamental principles in mind going forward. Therefore, Achakzai's verdict acknowledged a rudimentary structure in theory without its enforcement as a rule of law. It was a nudge, not a limitation but rather a nudge to the legislature.

In the post-2008 period, Pakistan has seen considerable constitutional reforms by elected governments, which were per se subject to judicial scrutiny through a host of petitions.

The 18th Amendment (2010), a sweeping reform package, was a good example of this trend. It was passed unanimously in democratically elected Parliament, and gave vast powers from the presidency to Parliament and the provinces. Nevertheless, a provision of the 18th amendment changed the way of judicial appointment through the creation of a judicial commission and a committee in parliament; some observers worried that this might compromise judicial independence, a feature that is widely seen to be a fundamental part of the Constitution. Consequently, a number of petitions prevailed that this provision violated the fundamental structure, in this case, independence of the judiciary.

In the case of Nadeem Ahmed (2010), the Supreme Court was cautious and continued to take the case. It decided not to declare the amendment invalid, in fact it expressed its concerns and in effect referred it back to parliament to reconsider the mechanism of appointment. This was a diplomatic resolution: the judges did not exercise the power to ignore the amendment but they indicated that the mechanism was problematic. Parliament then passed the 19th Amendment (2011) which amended the process by which judges are appointed to address some of the Court's concerns. The end result was a compromise to maintain the validity of the amendment but with small changes. Crucially, the Supreme Court retained its record of not nullifying the amendment despite applying a consultative approach.

The ultimate study of the basic structure doctrine took place through the 21st Amendment case of 2015. Following the abhorrent act of terrorism at the Army Public School in Peshawar, the Parliament introduced the 21st Amendment in the first quarter of 2015 for the provision of special military courts for trial of terrorists. This amendment was basically creating an exception to the ordinary judicial system for a period of time (2 years), which was an uncommon and potentially rights-limiting measure. Numerous lawyers and representatives of civil society fought the 21st Amendment in the Supreme Court, as well as the challenge left pending to some sections of the 18th Amendment. A case of 17 judges of the Supreme Court heard these cases referred to as the District Bar Association case, etc. The petitioners clearly relied heavily on the basic structure argument in that the military courts were interfering with the fundamental structure of the constitution - i.e. the independence of the judiciary and the right to a fair trial - and therefore such an amendment, however passed in parliament, should be invalidated. This was an attempt in fact to make the Pakistan Supreme Court exercise the power which the Indian Supreme Court exercised in the Kesavananda Bharati case to invalidate a constitutional amendment which caused damage to the core of the Constitution.

In August 2015, the Supreme Court gave its judgment. It upheld 18th and 21st Amendment, trounced on this concept that it had the authority to nullify them on basic structure grounds. The Court recognised that the Constitution does have important under-lying features-the concept of salient or basic features had been recognised in previous cases discussed-but eventually held that ascertaining whether an amendment is favourable or harmful to salient or basic features constituted a political question for the parliament, not a legal question for the judiciary. The verdict highlighted that it is to be respected that Article 239 bars judicial review of amendments: provided that procedure is followed correctly, the amendment stands. The Chief Justice at the time (Nasir-ul-Mulk) in effect said the following: Judicial review is a powerful tool, but it is

not straightforward enough that it applies everywhere, and euthanasia crosses one of those limits - that limit being the boundary of a properly enacted constitutional amendment. In the eyes of judge, constitutional amendments are categorically outside the scope of ordinary judicial review. The Court distinguished ordinary legislation (which may be passed by the legislature and over which the courts have the power of judicial nullification in the event of unconstitutional legislation), and amendments to the Constitution (which become the Constitution itself upon passage of the amendment thus nullification of the question "unconstitutional" becomes moot in the same way). One of the judges said that it would be the same as asking the Court to strike down a constitutional amendment passed by Parliament by asking the Court to judge itself more sovereign than the Constitution - a step that the Court was not willing to take.

Nevertheless, the 2015 judgment was not entirely without nuance. Some judges wrote separately and there were some comments that "if Parliament were to do something absolutely outrageous in the future, we might go back to this" way of doing things. Yet those were hypothetical. The bottom line however remained that Pakistan has no formal recognition of a basic structure doctrine in the same way that India or Bangladesh did. Never a single constitutional amendment has been struck down by the Supreme Court of Pakistan. Judiciary preserves: maintains that its task is to interpret the Constitution as it is, and not fog up the Constitution making. In practice, this means that the power of Parliament to amend is supreme in the constitutional scheme. Courts will interpret new amendments in harmony with the rest of the Constitution; but they will not hear petitions that some amendment is void because it violates some supposed eternal principle. For example, when the 21st amendment introduced military courts, the Supreme Court had the foresight not to allow for such special courts to be entirely immune to limited judicial oversight for procedural fairness (to ensure they did not venture outside the narrow scope the amendment allocates them in). The Court also said the presence of military courts did not mean the other fundamental rights such as the right to a fair trial are nullified - rather they must be exercised to the extent possible by the military courts. This way the harshness of the amendment was ameliorated but it was not overridden.

There is no Basic Structure Doctrine, in its strict sense and form, that limits the power of the Parliament in amending the Constitution. The judiciary does not claim its power to declare amendments striking undefined features fundamental.

While the Preamble or the Objectives Resolution (Article 2A) have a significant role in the direction of constitutional interpretation, they cannot, in any way, have the effect of superseding or invalidating any other explicit provision of the Constitution. They are inspiring and hinting, but are not a higher law than the text of the Constitution itself.

The power to modify the Constitution is vested with the Parliament only, and not with the judiciary. If changes are needed in the basic law, they must be made by elected representatives, or, by implication, by the people through their representatives, and not by the courts through judicial pronouncements.

In Pakistan, judicial review is limited to the threshold of amending the constitution. Courts are free to examine ordinary laws and executive actions for their constitutionality, however once Parliament, by following the prescribed procedure, has put in the words of a new one, that new text is the reality. Judges see themselves as being bound by it.

This position reflects a specific philosophy: that all sovereignty lies ultimately with the elected legislature of the people in making a definition of the constitutional framework. One may therefore ask whether

Pakistan's Parliament has an omnipotence comparable to that of the British Parliament which was famously able to "make or unmake any law." Such a question always arises, especially considering the fact that Pakistan is a constitutional republic with a written constitution as well as professed ideals like Islam and democracy. Some scholars and even judges, in obiter remarks, have proposed that in an Islamic Republic which is bound by a written constitution, the power of Parliament is effectively restricted by those very identities - for example, it cannot revoke the Islamic or republican nature of the state, for doing so would unravel the very nature of the polity. Nevertheless, these reflections have not crystallized in binding doctrine. As things are, any significant check upon the power of Parliament to make amendments, is one which is more political than legal; public aversion, political resistance, or the fear of instability may be the check upon extreme amendments, but the courts are not likely to interfere.

Historical and Political Dynamics of Amendments To fully appreciate the saga of constitutional amendments of Pakistan, it is important to observe the impact of political circumstances in bringing in many of the constitutional amendments. The amendment process has at times been used, or even abused, in context to the prevailing balance of civilian leadership and that of the military, between competing political forces. Some of the most noteworthy episodes in that history are outlined below:

Amendments in the Autocrat Era and their Effects: Constitutional amendments have been extensively used by the military dictatorship in Pakistan to legitimize their governments and increase their powers. One of them is the Eighth Amendment (1985) made by General Zia-ul-Haq. Since 1977, Zia had been under martial rule. In 1985, he used his own selection of a non-party parliament which he urged to approve the 8th Amendment. This amendment validated all the laws and orders that had been made by Zia under martial law and most importantly, it amended article 58(2)(b) to the constitution which allowed the President to dissolve the elected National Assembly at his own will. This shift at that time greatly favored an authoritarian presidency as Zia himself was President. It involved a radical departure with the parliamentary system of the 1973 Constitution (in which the Prime Minister was expected to be in charge and the President largely ceremonial). The 8 th Amendment effectively enshrined the personal preferences of Zia in the Constitution. The manner in which it was enacted was very dubious, the political parties were prohibited in that 1985 election, the opposition leaders were excluded and Parliament was debating under the keen eyes of Zia. Actually, Zia was only going to lift martial law when parliament passed his amendments package, and therefore, the legislators had no other option but to do so. It was not a free and democratic process; it was a dictatorial procedure of a strong man giving out terms to a subdued assembly. The 8 th Amendment was an influential legacy. It also rendered elected governments extremely insecure since presidential powers had a constitutional dismissal authority. Presidents invoked Article 58(2) (b) various times to dissolve governments during the 10 years following Zia, a factor that led to political instability. The changes to the 8 th Amendment were undone only after many years of democratic struggle - eventually, although not until 1997, the Amendment was partially repealed and then repealed in full in 2010 (see below).

General Pervez Musharraf had used the same strategy 20 years after Zia. Musharraf took over power through a coup in the year 1999 and at first he ruled without having any parliament. After a new parliament was elected in 2002, full of allies of Musharraf, he proceeded to legitimize his extra-constitutional acts by the Seventeenth Amendment (2003). This amendment reaffirmed the previous orders by Musharraf called Legal Framework Order. Under the 17 th Amendment, Musharraf recovered the authority of the President to dissolve Parliament (58(2)(b)) that a previous democratically elected government had eliminated. It also enabled Musharraf to serve two offices simultaneously (President and Army Chief) and formally established a National Security Council putting the military in another position directly in governance.

Musharraf needed two-thirds majority to pass this amendment, so he made a concession (such as a promise to step down as the Army Chief sometime) to the opposition religious alliance (the MMA) so they would vote in his favor. This would result in the 17th Amendment which was passed by the parliament as a result of the deal-making. Similar to the amendment made by Zia, the amendments introduced by Musharraf were not as a result of people requesting them or the people engaging in an open debate; it was a result of political bargaining in a semi-authoritarian scenario. The 8 th Amendment and the 17 th Amendment demonstrate that the military rulers manipulated the amendment procedure in order to secure their positions. These amendments increased the powers of the executive and military at the rate of the democratic institutions. They were legally considered as they were made through the amendment process but most individuals consider them as the unlawful products of oppressive eras. It is true that once democracy was restored again, there was the strong urge to undo these amendments. And in time these changes were mostly undone by subsequent democratization amendments such as the 13th one of 1997 and the 18 th one of 2010.

Amendments and Major Reform of Democratic Era: The Period also saw the Constitution being amended by elected civilian governments, both to enhance democracy and at other times, to serve their interests. In mid 1990s such as when Prime Minister Nawaz Sharif wielded his massive majority in the parliament to enact drastic amendments. Among them was the Thirteenth Amendment (1997), which removed the ability of the President to dissolve Parliament under the Article 58(2) (b). This was much perceived as a pro-democracy gesture. It struck the sword which was suspended over each and every government since Zia could no longer arbitrarily dispatch an elected government back home. The 13 th Amendment was hailed as reviving the zeitgeist of the 1973 Constitution to push Pakistan back to an entirely parliamentary government.

In the same year however, Nawaz Sharif also unveiled the Fourteenth Amendment (1997) whose amendment was more controversial. The 14th Amendment limited strongly the possibility of Members of Parliament to switch party or to go against his or her party line. Practically, it made any dissent in a political party virtually illegal by making one automatically lose his seat in case he/she voted against party order. This was so as to stop the hordering around and trading of horses that had been common in Pakistani politics (where members of parliament would tend to cross floors or sponsor no-confidence motions in return). Although it had the merit of stabilizing a situation whereby there was no-confidence votes all the time, critics argued that the 14th Amendment was anti-democratic in itself, which in a sense reinforced party bosses at the expense of the freedom of individual law-makers and healthy debate.

The government of Nawaz Sharif even tried to make a Fifteenth Amendment in 1998, which would have brought far reaching changes. The 15th Amendment suggested was aimed at presenting the Shariah (Islamic law) as the supreme law of the land. It contained language which might have given to the Prime Minister unparalleled power in his hands, and Nawaz was allegedly fantasizing about becoming an Amir-ul-Momineen (Commander of the Faithful). This terrified most people in Pakistan who interpreted it as power grabbing under the guise of religion. The resolution was passed in the National Assembly (lower house) in which Nawaz had a huge majority but it was not passed in the Senate due to opposition of the opposition as well as absence of two-thirds majority in the senate. The plan was later abandoned under massive criticism and retaliation. This episode demonstrated that even democratic leaders could seek to excite the amendments to serve themselves more power or advance a partisan ideological agenda, which is beyond what governance demands. The downfall of the 15th Amendment demonstrated that there were boundaries to which Parliament and popular opinion would tolerate.

In 2010, the most lauded reform on a civilian government was the Eighteenth Amendment. At this point, the General Musharraf was no longer in power and the principal political parties in Pakistan had learnt a lesson in the past. In 2006, the heads of the two biggest parties (the PPP and the PML-N) had signed a document named Charter of Democracy, which promised to collaborate to reverse the constitutional amendments by dictators and enhance parliamentary democracy. This resolve led to the 18th Amendment that was prepared by a special committee of parliament that included all the major parties. The 18th Amendment was unanimously passed by all parties in the political spectrum unlike many other amendments in the past which showed no sign of national consensus.

The 18 th Amendment (2010) was a sweeping amendment that aimed at restoring democracy and balance of parliament in the Pakistani system. It eliminated the power of the President to dissolve Parliament (58(2)(b)) forever - the power which Zia had had inscribed and which Nawaz had allowed to be suspended was now buried. Most of the powers that were passed onto the presidency by Musharraf were allocated back to the Prime Minister and Parliament, reflecting the fact that the Prime Minister is the principal executive. The amendment also highly expanded provincial autonomy: it repealed the so-called Concurrent List of subjects that could be legislated upon by both federal and provincial governments and gave those to the provinces. This gave the provinces the exclusive control of numerous provinces (such as education, health and local government) formerly shared with Islamabad making the regional governments the real partners in the federation.

The 18 th Amendment also brought in new basic rights of the citizens, which indicated a more progressive attitude. The right to children education and the right to information to the citizens were introduced to the Constitution, e.g. It reinforced the due process rights by including Article 10A that stated fair trial as a right. In addition, the amendment changed the method of appointment of judges: it established a Judicial Commission (comprising of judges, lawyers and few government representatives) who are to recommend the name of judges, and a Parliamentary Committee to endorse them. This was to render the process of judges being appointed more level and open unlike being under the jurisdiction of the judiciary or the government. As a token gesture, yet not without significance, the 18 th Amendment even changed the name of the North-West Frontier Province into Khyber Pakhtunkhwa, recognizing the name of the Pashtun folk in the region, a demand that had been long-standing.

The positive example of changes in the constitution is the 18th Amendment. It was made by concession and wide consensus instead of domination of one party. It sought to enhance democracy, rule of law as well as federalism in Pakistan. Most observers termed it as a reversal of the distortions brought about by Zia regimes and Musharraf who had reigned. That is, it restored the Constitution to its old course of a parliamentary democracy and strong provinces and secure rights. In fact, when individuals seek to find an amendment that strengthened democracy in Pakistan, the 18 th Amendment is a good case in point.

Further amendments took place after 2010 and each was influenced by the time needs. The Nineteenth Amendment (2011) was in effect a sequel to the 18th: this time it made a few technical changes to the new judicial appointment process, since the Supreme Court questioned the way the Judicial Commission and Parliamentary Committee would liaise. The 20 th amendment (2012) streamlined the guidelines of the caretaker governments (the neutral interim governments that govern elections). This was possible following political parties differences on how these caretakers could be really objective a clear way on how to appoint these caretakers by both the government and the opposition was announced by the 20 th Amendment which assisted in ensuring fair elections.

Then followed two amendments concerning security, which indicated the struggle of the country against terrorism. The Twenty-First Amendment was enacted in 2015 following a gruesome terrorist attack of the Army Public School in Peshawar. It was agreed by all that exceptional efforts had to be made to deal with a surge of terrorism. The 21 st Amendment established military courts of my jurisdiction that were designed to prosecute terror suspects (the ordinary courts were perceived too slow or intimidable to deal with such cases). Realizing that this was a highly extraordinary measure (because military courts of civilians constitute a challenge to the customary concept of justice), Parliament wrote the amendment with a time limit of two years. The 21 st Amendment actually stated in its text that it would not be part of the Constitution after a some date. This type of inbuilt sunset provision was not common but this was one of the means by which everyone was assured that the military courts were a temporary solution and never a permanent adjustment of the justice system. The military courts were actually in operation during the next two years or so and it was expired in 2017 in the foreseen way. But upon the realization that the terrorism menace is not entirely over as of 2017, the Parliament enacted the Twenty-Third Amendment (2017) to revive those military courts on a two-year basis. That extension also was to be temporary and it lapsed in 2019. Such security amendments (21 st and 23 rd) indicate that the amendment power was exercised during times of crisis to do things that would be considered out of the constitutional order. The government preferred to pass one through Parliament rather than declaring martial law or some other extrajudicial regime on the spot, in order to enable it to have a more substantial legal foundation, arguably. Although the concept of the military courts was disputable, the fact that all the great parties signed and added an expiry date to the Constitution itself was a step to reach the necessary and precautious balance.

The reform of the status of the Federally Administered Tribal Areas was another important reform, the Twenty-Fifth Amendment (2018). The FATA region along the Afghan border had been enjoying a special status of semi-autonomous power with special laws that did not represent their provincial interests in the country. It was increasingly accepted that this colonial order was unjust and it was not conducive to development. The 25th amendment combined FATA with Khyber Pakhtunkhaw (KPK) province, completely becoming part of mainstream political and legal framework of Pakistan. It was a significant shift since it essentially eliminated another system of governance and accorded the people of FATA the same constitutional rights as other Pakistanis. The amendment did not receive much opposition and was passed widely by all the parties, and it also needed (and got) approval by the provincial assembly KPK which was because it changed provincial boundaries. FATA merger is widely referred to as a nationwide agreement-based far-reaching reform that expanded the provisions of the Constitution to a previously marginalized area.

By 2010s, Pakistan had already amended the 1973 Constitution more than 2 dozen times. There were small ones and there were, as we have seen, great changes. At the beginning of 2020s, unfortunately, the constitutional amendments were dragged into the political scandal once again. The above-mentioned changes (increasing seats of tribal districts) of the Twenty-Sixth Amendment (2019) was a good, albeit not very broad, change. However, as the years went by, it was discussed that more amendments might be made in 2024 and 2025 under the current government that raised many eyebrows. These have been occasionally called additional 26th and 27th Amendments in media analysis (to the point of confusion). In effect, in late 2024, the Parliament (with a government whose legitimacy was called into question and whose opponents demonstrated against it in masses) hastily passed an amendment, which altered the process of judiciary appointment and the period of its service, which seemingly gave the executive more influence over the judiciary. Then came another hurried amendment in mid 2025, which allegedly went further- it suggested the formation of a new constitutional court, lifetime legal protection to senior military officers and limited

the authority of the current Supreme Court. These were forced through very fast and there was all but no discussion or consensus just as the term of that Parliament was expiring. This Parliament was not elected through the proper way in which the people should have been elected and this Parliament did not reflect the will of people and therefore, they were not entitled to make such drastic changes according to the argument by the opposition (and even many legal experts). It was so rushed and one sided that it sparked up public protests, bar criticism (lawyers associations) and even some judges resigned to protest. This episode in 202425 is a clear view of how the process of amendments can be misused. Rather than a cautious, consensus-seeking amendment to ameliorate the Constitution, it was an instrument of an endangered ruling group to score points and safeguard its interests on the way out of office. As an example, immunity to military officials and wings to the judiciary were considered as attempts to protect their allies and undermine control over the government. It was compared with the tactics of Zia or Musharraf, in which endorsing power was more than the public good, as noted by many commentators. In general, the amendments of 202425 (when they are considered valid) have been regarded as being compromised by politics, and were enacted without good faith and a discussion about how such a situation may be avoided in the future.

Difficulties with the Amendment Process: The experience of Pakistan has made clear some issues with how constitutional amendments have been applied and administered

Politicization and Self-Interest: The amendments should be made in the long-term interest of the country, however, in Pakistan the amendments have been determined by the short-term interests of the rulers or the political groups. Dictators who were in the military changed the Constitution to justify their coups and accumulate power (the same case of Zia and Musharraf). There are also attempts of some civilian leaders to change the Constitution to put their opponents in check or strengthen their control. As an illustration, the proposed 15th Amendment by Nawaz Sharif in 1998 would have enhanced his personal power significantly in the name of religious law. A more recent amendment, the 2024,25 amendments, appeared to serve to cover up the government in power and its supporters (through judicial perquisites and granting generals immunity). Once amendments are employed as instruments of powers or self rule, it will hamper the sanctity of the Constitution. It is basically the alteration of the rules of a game to ensure that you win instead of making the game just and even fairer to all. Such degree of politicization creates cynicism among the people. People begin to view the Constitution not as the set of principles that should remain unchanged, but as the matter that the ruling parties can alter it whenever they feel like. That undermines confidence in the concept of constitutional rule. An example is the 17 th Amendment by Musharraf- it was indeed a backroom political compromise not a representation of the populace. These incidences cause citizens to question: is it being amended on our behalf or just on their behalf (the rulers)?

Unstable Changes and Frequent: Within a relatively short period of fifty years since 1973, approximately twenty-five amendments have been made to the Constitution of Pakistan. That is one amendment a couple of years, which is quite common of a foundational document. A lot of these amendments could not be called small adjustments, but a significant change of the political system (changing political power between the President and the Prime Minister, changing the structure of the judicial system, changing the relations between the center and provinces, etc.). There is a feeling of instability as a result of constant changes. The institutions find it difficult to develop and the policies are not consistent when the constitutional ground varies. Even an example of a civil servant or an investor, when every few years the power structure is altered (one decade the President may fire governments, the next decade he may not, and then he may), then it becomes a source of uncertainty. Ideally a constitution ought to be a fixed system that can be modified only when the need be and with wide consensus. The fact that amendments are easy and frequent in Pakistan

implies one or two things: maybe the original 1973 agreement was not so fundamental, or the Governments of the day did not hold it seriously enough and considered the necessity of amending the Constitution to their preferences. It also indicates that achieving a two-thirds majority in Parliament (the amendment-need) has not proven to be a strong protection-even those governments that have hit that mark have often approached the Constitution almost as they would ordinary legislation, and amended it to fit current purposes. This weaker the sense of a lasting social contract of the Constitution. The common perception of the Constitution by the people when they observe amendments occurring in such a high rate is that it is not permanent and stable but is vulnerable to change.

Public Distrust and Exclusion: The problem is one of public choice: the average citizens are given very little direct participation in constitutional modifications. Pakistan is a country where the amendments are initiated and passed in their entirety by Parliament. No necessity exists to hold a popular referendum or general popular consultation of amendments. This implies that a small group of political leaders who may be holding a closed-door meeting will make decisions that will have an impact on the very law of the entire country. The amendments are only brought to the attention of most Pakistanis by the news channels, and usually, at the point of being a done deal. Even major alterations as the dozens of new provisions of the 18 th Amendment were never actually discussed with the populace in advance in any detail to provide kinds of feedback. Due to crises, such as the 21 st Amendment of the military courts, all-party decisions were made, once more out of sight, and then hastened through Parliament. The new controversial reforms of 202425 were extreme cases: they were written and enacted so quickly that even when the people got to know what occurred, it was already too late, and they were outraged. When individuals are excluded in making decisions about their constitution, it is only normal that they will question the validity of such decisions. It is said to be a document of We the People, and so when people feel that it is being changed without their understanding or agreement, this makes them feel they do not own it. This back-room, elite, practice, what the original abstract referred to as elite bargaining has tarnished the reputation of the Constitution. It puts a distance between the society and the state. Fair play, there are occasions when the civil society, lawyers and media do attempt to intervene and argue out proposed amendments (such as the lawyers associations arguing over judicial reforms, and talk shows deliberating on great amendment plans). Nonetheless, it does not have a formal mechanism to make sure that the public input is taken into account. In reality, the constitutional amendment process of the Pakistani republic has been top-down: the decisions to amend it have been made by the political elite, which has not always been informed of the amendment by the people. This omission is a predicament since the strength of a constitution is eventually judged by the belief of people. They may lose trust in constitutionalism itself, in case they think that amendments are merely a way of serving politicians.

Civil-Military Power Imbalance: The other underlying challenge is the current tug-of-war between the military and the civilian authorities and how this has affected the amendment process. The history of military coups in Pakistan has led to the situation where the military dictated the constitutional changes (such as under Zia and Musharraf) and at other times, the civilian regimes attempted to undertake constitutional changes to protect against military infiltration. This can also corrupt the amendment process in either direction. In fact, Zia and Musharraf practically undertook amendments to justify what in actual sense were unconstitutional changes of power. On the other side of the coin, democratic regimes added such provisions as the one in the 18 th Amendment (reinforcing Article 6) to overtly disenfranchise and discourage coups or military intervention. The existence of a strong military that is not in the constitutional system implies that some amendments are highly politicized. When an amendment aquires military interests, such as military justice, military influence on politics, or the accountability of generals, it is likely

to become very heated or virtually rammed down the throat. An example of this is the generation 2025 immunity of the generals: that was definitely the case since the military happens to be a strong stakeholder. A normal democracy would not even think of granting high-ranking generals a life pardon against prosecution but in Pakistan, it was incorporated into an amendment, which is indicative of the influence of the military on a weak civilian government. In conclusion, as long as the military has a lot of behind the scenes power then the constitutional process at no point can be totally independent or neutral. Some of the changes might occur not necessarily as the civilians desire them but rather as the military have required them or even tacitly supported them. It is a structural issue which dwarfs the constitutional evolution of the Pakistan- it is difficult to have the real constitutional supremacy until all the institutions are willing to respect the constitutional boundaries and this includes the military.

Judicial Role and Uncertainty: A court is expected to be a check normally in case something extreme is committed against the Constitution. However, in Pakistan, the very Constitution (through Article 239 clauses 5 and 6) does not allow the courts to invalidate any constitutional amendment. This has been largely upheld by the judiciary, which has ensured that all the amendments enacted by parliament - however contentious they might be - have remained in the books (unless subsequently repealed by sanother amendment). The position of the judiciary however has not been unambiguous over the years. Occasionally, particularly when judicial activism is high, some judges have already indicated that there are certain basic aspects of the Constitution that even the Parliament is not supposed to change. As one such example, in 2009, the National Reconciliation Ordinance (NRO, a law, not a constitutional amendment) that immunized the corrupt officers was struck down by the Supreme Court. By doing it, the court was talking about the principles of justice, equality and the rule of law. That raised the question: could even Parliament have enacted an amendment giving blanket immunity to a group of individuals (as the NRO attempted to do in the form of a law) and would that have been upheld by the Supreme Court or would the Supreme Court quash it saying That would render the fundamental tenets of accountability in the Constitution irrelevant? To a great extent, this question was answered in 2015 when a group of petitions were submitted to challenge the 21st Amendment (military courts). When it came to that case (District Bar Association case), it was a close call that the Supreme Court supported the amendment. Most of them simply indicated that, although military courts in civilian cases may appear to be contrary to the very basic rights such as fair trial, the amendment process as provided in the Constitution has been adhered to and the court has no mandate to overturn an amendment. This is to say that they reiterated the fact that Parliament has the ultimate power to amend, regardless of the outcome being uncomfortable.

However, even in that decision, not all judges showed no misgivings and it was a narrow move. The very presence of a debate indicated that the concept of a basic structure limitation (as in the case of India) was alluring to some judges but ended up being rejected. Due to this mixed signals, there has been some confusion regarding the role of the court. The petitioners still occasionally attempt to have the amendments reviewed by the court, where they hope that the court may alter its stance in an extreme situation. However, thus far the common occurrence has been that no amendment has been overthrown by the judiciary in Pakistan. The difficulty in this is two-fold: First, to entrust everything to Parliament imposes upon the political process the huge burden of self-police (which, as we have seen, it does not always perform very well). Second, the ambiguity or debates concerning salient features of obiter dictum (side comments) of court decisions can mislead the matter - is there a line Parliament cannot cross, or is there no such line? The answer to this question so far, given by the judiciary, is negative, there is no judicially binding line, provided that the Parliament has the two-thirds voting necessary, the amendment prevails. Some regard this as the correct move (judges are not supposed to be political), others fear it is the message that will make a

determined government find nothing to prevent its constitutive erosion other than political opposition. This is an ongoing controversy but in reality, the courts have been restrained in amendments.

To conclude, the amendment process of Pakistan has been a two-sided sword. It has enabled significant good changes (as well as bad power grabs), but it has also been employed and misused in a manner that has caused a distrust to the public. The major issues are political abuse, instability, exclusion of the populace, the disproportionate nature of the military, and the lack of a safety valve to extreme amendments. It can be concluded that being aware of these difficulties is the initial step towards changing the way, in which Pakistan copes with the constitutional changes in the future.

Comparison Stairs: Lessons of India and Bangladesh: The idea of comparing neighboring states in terms of dealing with constitutional amendments may help in the light of the potential solutions or alternatives. India and Bangladesh have certain historical and constitutional parallels with Pakistan but have followed different ways and particularly in regard to the principle of a basic structure doctrine and inclusion of the public in changes to the Constitution.

Basic Structure Doctrine of India: India has a constitution, similar to the Pakistani one, which did not initially declare the impossibility of amending any of its sections. In 1973, however, the Supreme Court of India in a case called Kesavananda Bharati case, laid down the doctrine of basic structure. This implies that even though the amendment of the constitution can be done by the Parliament of India, it cannot change or ruin the main characteristics of the constitution such as: the democratic system, secularism, federalism, separation of powers, and basic rights. This doctrine was a reaction to a time when the Indian government, led by Prime Minister Indira Gandhi was actively change the constitution to its liking (such as attempting to restrain property rights, and an attempt to put elections above the judiciary). The Supreme Court basically made a line: amendments cannot dis arm the essences of the constitution. This judicial check does not please Indira Gandhi. Her government enacted the Forty-Second Amendment (1976), a highly expansive amendment that, among other things, attempted to eliminate the ability of the courts to examine the constitutional amendments at all, during the Emergency (1975-1977).

It basically said any amendment, even one that abridged fundamental rights, could not be questioned in court. However, once the Emergency ended and more democratic rule returned, the Indian Supreme Court in Minerva Mills (1980) struck down parts of that 42nd Amendment, invoking the basic structure doctrine again. Over the years, the basic structure doctrine became firmly entrenched in India. The Supreme Court has used it sparingly – striking down only a few amendments outright – but its mere existence has acted as a warning to Parliament not to overreach. For example, when the government attempted to exert more control over the judiciary or weaken judicial review through amendments, the Supreme Court nullified those changes for violating the separation of powers, which it deemed a basic feature. Today, even India's Parliament factors in basic structure when drafting amendments, to ensure they don't get rejected by the Court.

What does this mean in practice? It means that in India, there is a constitutional safeguard against extreme amendments**.** No matter how big a majority a ruling party has, if they pass an amendment that e.g. tries to abolish elections or provincial autonomy, the courts would likely step in to invalidate it for violating the basic structure (since those elements are fundamental to the Indian Constitution's identity). Pakistan took the opposite approach – its Constitution explicitly bars the courts from such a role (Article 239(5) states no amendment can be questioned in any court). In effect, Pakistan doubled down on the principle of

parliamentary supremacy in constitutional matters. This has pros and cons. The Indian approach arguably prevented any one regime from permanently altering India's democratic fundamentals. Even during crises, there was a boundary that held – for instance, some of the worst changes Indira Gandhi made were eventually undone thanks to the Court's intervention. In Pakistan, unfortunately, when authoritarian amendments like the 8th or 17th were passed, there was no legal way to challenge them, so they remained until a political decision was made later to reverse them. The advantage of Pakistan's approach is that it avoids confrontations between the judiciary and legislature over who is supreme. There's clarity that Parliament's word is final on amendments. The disadvantage is that it relies entirely on the political process to safeguard the Constitution's core values. If the politics fail (as in a rigged or one-sided Parliament), the Constitution can be changed in dangerous ways and the courts will still uphold it.

There's an ongoing debate in Pakistan about whether to embrace some form of a basic structure limit despite Article 239. So far, the courts have resisted doing so, perhaps remembering how in India the tussle caused a lot of instability in the 1970s. Every country's context is different: India's democratic institutions proved strong enough that a check like basic structure could be asserted by the judiciary and eventually respected by politicians. Pakistan's judiciary, in contrast, often faced periods of being subservient to military regimes (especially in the Zia era) and did not assert such power when maybe it could have. By the time a more independent judiciary emerged in the late 2000s, Pakistan's Constitution itself clearly forbade judicial interference in amendments, and the court ultimately stuck to that rule in 2015. The Indian experience teaches that having some inviolable constitutional principles can protect a democracy from extreme political swings**,** but it also relies on a very bold judiciary and a political culture that accepts judicial decisions. Pakistan might draw inspiration from that, or it might conclude that its own path of political negotiation (like the Charter of Democracy leading to the 18th Amendment) is a preferable way to correct the Constitution.

Bangladesh's Path – Judicial Activism and Undoing Coups: Bangladesh, which was once East Pakistan, has had a constitutional journey with elements of both Pakistan's and India's experiences. Bangladesh's original 1972 constitution was quite similar in spirit to Pakistan's 1973 one – emphasizing democracy, nationalism, socialism, and secularism. However, Bangladesh also went through several military coups and periods of military rule (Gen. Ziaur Rahman in late 1970s, Gen. Hussain Muhammad Ershad in 1980s). Those military rulers, like in Pakistan, amended the constitution to solidify their power and even altered the founding principles (for example, they removed secularism and added references to Islam, and in one case put in provisions indemnifying their regimes).

In a bold move, Bangladesh's Supreme Court later took a stand against these authoritarian-era changes. In 1989, in a case known as the Eighth Amendment case (Anwar Hossain Chowdhury v. Bangladesh), the Bangladesh Supreme Court adopted the basic structure doctrine, much like India did. They struck down a portion of the 8th Amendment which had aimed to decentralize the Supreme Court (by setting up regional High Court benches, which the court felt undermined the fundamental unitary character of the judiciary as laid out in the constitution). This was the judiciary saying: certain core setups can't be changed by Parliament. But the even more dramatic decisions came in the 2000s. In 2005 and 2010, the Bangladesh Supreme Court delivered judgments on the Fifth and Seventh Amendments – these were amendments that had validated the coups of 1975 and 1982 respectively. The court declared those amendments null and void, essentially saying that the usurpation of power by those military regimes and the constitutional changes they made were illegitimate from the start. These rulings were a direct repudiation of the idea that a

dictator's actions could be made legal by later parliamentary approval**.** The courts in Bangladesh basically expunged the legal legacy of two military governments.

Following up on these court decisions, Bangladesh's Parliament (once a civilian government was firmly in charge) passed the Fifteenth Amendment (2011) to formally implement some of the court's directives and to make other changes. The 15th Amendment in Bangladesh restored "secularism" as a fundamental principle of the state (while still keeping Islam as the state religion, an interesting compromise). It also included a clause that is very significant: it forbids any future extra-constitutional takeover. It says that if anyone suspends or abrogates the constitution (like a coup), it will be considered treason, and no court can legitimize such an action. Pakistan's constitution has Article 6 which says the same about high treason, and the 18th Amendment even strengthened that by saying no court shall validate it, very much in line with what Bangladesh did. Another big part of Bangladesh's 15th Amendment was it removed the provision for a neutral caretaker government during elections. Previously, Bangladesh had a system (put in by a 13th Amendment in 1996) where at election time, the government would resign and a neutral caretaker administration would take over to ensure fair polls.

To ensure the constitutional amendment process of Pakistan is more democratic and strong, the following steps can be used:

Involve the Public

Allows citizens to offer comments on suggested amendments via websites, forums in the community, or town halls. Issue share drafts in simple language and local languages which would help more citizens to read and take action.

Add a Waiting Period

Prevent hastened amendments by asking a 60 to 90 day time interval between the presentation and voting of an amendment. This allows time to debate and be covered by the media. Significant changes might even be taken to referendum.

Use Sunset Clauses

To make changes in case of emergency or security, add expiry dates to ensure that such powers are not renewed automatically. This does not make temporary changes permanent.

Protect Core Values

Certain provisions of the Constitution such as elections, rights and federalism ought to require two-thirds of the vote to amend. Perhaps also must have provincial acceptance or popular consent to major alterations.

Ask Courts for Advice

Allow the Supreme Court to provide non-binding discussions on draft amendments. It will not put a halt to Parliament, but can help point out hazards at an early stage and introduce transparency.

Limit Military Overreach

Drive home the point that the army should not be involved in politics. Article 6 should be strengthened and coups punished. Demand discussion and explanation of any change in the constitution related to military.

Promote Civic Education

Educate the people as to what the Constitution is about. Make plain descriptions of any amendment to make its citizens aware of what and why it is changing.

The constitutional amendment in Pakistan has been a rocky yet also an educative process. It demonstrates the strength of changing a constitution and the dangers of abusing it. On one hand, dictators such as Zia-ul-Haq and Pervez Musharraf have been using amendments to institutionalize authoritarian regimes that disfigure the system to the will of the people. Conversely, the amendments have also helped to place Pakistan back on its toes and bring democracy as witnessed in the repealing of the legacies of Zia and the blanket change of the 18 th Amendment. Simply put, the amendment process has been a soul-sucking exercise on the political machinery of Pakistan, and has been at times a source of oppression and at times, a source of liberation and change.

The only thing that is consistent in this story is that the Supreme Court of Pakistan unlike its counterparts in India or Bangladesh has not decided to cross over to the amendment arena. The judiciary has largely followed the constitutional provision that anything that Parliament changes becomes law, however controversial it may be. This position did not put judges and legislators head-on (which would risk a destabilization of democracy in another aspect), but it also implied that it is the political process that is charged with the duty of preserving the core values of the Constitution. This is risky when such a process is hijacked or is one-sided as was the case in certain cases. The courts were occasionally expressing their anxieties - such as judges worrying over the right of fair trials in supporting the military courts - but ultimately they did not strike down the decisions of Parliament. Pakistan, therefore, is an oligarch in its Constitution: it can be, and has been, amended extensively by whoever can raise the numbers in Parliament. This flexibility was useful in the reversal of the harm caused by the dictators comparatively fast once democracy was restored (there was no need to have a lengthy and costly court battle to do away with 58(2)(b); a parliamentary vote sufficed). Yet the very same flexibility gave the opportunity to these dictators (as well as other power-loving leaders) to bring the harmful clauses on board in the first place.

In the future, the question ought to be how to make it so that the Constitution is still a living, flexible document without compromising on its integrity and democratic ethos. The above recommendations are expected to reach the balance: to ensure that the amendment process becomes more open, inclusive, and secure. The Constitution must not be an object of interim regimes or even a stone tablet which can do nothing. It must be safeguarded against cynical manipulation, but can be improved wisely.

To realize this, all the stakeholders must assume a responsible role in Pakistan. Parliament should use its power of amendment wisely and find a consensus rather than brute majority power. Still, despite the fact that the judiciary does not interfere with the sphere of Parliament, it is possible to enforce the constitutional values with the help of moral suasion and interpretation of other laws in accordance with the constitutional values. The military command should not intervene in politics it is the history of the amendments to the Constitution that the most perverse distortions took place when the military left its professional field. And

above all, the Pakistani people should not be left behind. It is the acceptance of the people that gives ultimate authority to a constitution. When the citizens insist on accountability, transparency and debate on constitutional matters, then leaders will be no exception. The demonstrations and media talk of the controversial amendments in the recent past can be termed as a good move in the right direction as people understand what they are losing.

To conclude, the history of the amendment of the constitution of Pakistan can teach us that this process is not a joke, it may either make or break a state. It was also applied in the strengthening of democracy (as in 2010) and in sabotaging democracy (as in 1985). It is now time to ensure that the lessons learned are institutionalized: to establish such mechanisms to ensure that future amendments are not made by a few individuals but rather by the general interest and opinion of the nation. In this manner, Pakistan would be able to make sure that its Constitution is a solid grounding to the nation, one that is strong enough to give it continuity and stability, but is adaptable enough to adapt to the emerging challenges with the approval of the people. Simply put, the Constitution ought to be owned by the people, and whatever changes made in the Constitution ought to be on behalf of the people. This will enable the constitutional framework of Pakistan to be much firmer and its democracy to be better equipped to face any storms that may occur.

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