

The 27th Amendment Debate: Constitutional Entrenchment or Political Expediency

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ABSTRACT

This paper critically examines the proposed 27th Constitutional Amendment in Pakistan and evaluates whether it represents a genuine process of constitutional entrenchment or merely an instrument of political expediency. The study analyzes the potential constitutional, political, and institutional implications of the amendment, particularly its impact on federalism, judicial independence, parliamentary supremacy, and civil-military relations. Drawing upon comparative constitutional theory, the paper engages with the concept of the basic structure doctrine as developed by the Supreme Court of India and considers international democratic standards articulated by institutions such as the Venice Commission. The research further explores how constitutional amendments may either strengthen democratic governance or undermine the structural identity of the state when driven by short-term political interests. By examining historical precedents, constitutional practices, and evolving political dynamics in Pakistan, the paper argues that while constitutional amendments are legitimate democratic tools, their constitutional validity and moral legitimacy ultimately depend upon their consistency with the foundational principles, democratic character, and institutional balance envisioned by the Constitution.

Keywords: *Constitutional Amendment, Federalism, Judicial Independence, Basic Structure Doctrine, Political Expediency*

INTRODUCTION

A key feature of what is often referred to as a living constitution is amendments to the constitution, which is deemed flexible to be altered in response to emerging political, social and institutional conditions. All the constitutional systems are dynamic; they need to address new governance issues, evolving popular demands and new institutional requirements. The amendment process enables the states to refine the institutional structures, correct the structural defects and ensure that the constitutional structures suffice and work well in the long term. However, although constitutional flexibility is crucial, it creates a fundamental contradiction: between the lawful constitutional evolution and the alteration of the constitutional identity. As soon as constitutional amendments exceed the procedural and incremental adjustments and begin to influence the basic structural principles, they make the constitutional legitimacy questionable. These include the fears of whether or not such changes keep the original spirit of the constitution intact or whether they corrupt its spirit in a way that may cause instability in the long run.

This is of particular concern in countries with a political struggle of constitutional interpretation and enforcement processes or institutional infirmity. (Brewer-Carías, 2011)

In the past, the constitutional amendments have been conclusive in determining the direction of the governance as it applies in the Pakistani context. The political instability in Pakistan, military interventions, judicial activism and evolving civil-military relations are some of the factors that have resulted in the constitutional order of Pakistan passing through various phases of change since the adoption of the 1973 Constitution. The amendments have not only been used to create perfect structure of governance but in certain cases, they have been used to rearrange power dynamics amongst significant state institutions. The development of the constitution in Pakistan is thus tightly connected with the greater problems of the distribution of power, institutional independence and the very consolidation of democracy. Three areas of constitutional change in Pakistan have been in the limelight and they are those of federalism, judicial independence and civil relations between the military. Federalism remains a delicate issue where there are ever-raging wrangles between the federation and the provinces on how to share the resources, legislative authority and be in charge of the administration. Both judicial activism and executive have helped make the judiciary independent and there has been an ongoing conflict over the extent to which the judiciary should exercise its powers. Civil-military relations, in their turn, are one of the most typical and complicated features of the Pakistani constitutional past because the military previously had quite a significant impact on the political rule. (Chemersinsky, 2019)

In this broader constitutionalism, the 27th Constitutional Amendment has been the subject of a lot of academic and political debate. Its potential implications have already caused much concern among constitutional experts, policymakers, and legal scholars, despite being in debate. The key controversy regarding the amendment is whether the amendment is really aimed at improving constitutional governance or it is rather a short term political agenda in the bid to restructure institutional power relations. Those who advocate constitutional change feel that the constitutional changes such as the 27th Amendment are necessary in order to rectify the institutional inefficiencies, demystify the constitutional ambiguities, as well as, enhance better governance results. Constitutional change is seen in this perspective as a modernization and institutional balancing process. Criminals however caution that the amendments when influenced by the short term political interests could jeopardize the stability and integrity of the constitutional order. Such considerations are more relevant in those systems, in which checks and balances of the institutions are not established and are not exercised in a uniform way. (Ginsburg, 2018)

The argument surrounding the 27th Amendment is therefore founded on three institutional dimensions. Firstly, the issue of federalism and provincialism is crucial, any changes in the distribution of powers between the federation and the provinces can have a devastating impact on the already weak federalism in Pakistan. Second, the autonomy of the judiciary and institutional balance is also at stake especially after the arguments of judicial activism, sua motu jurisdiction and judicial appointment took place in the past. The interaction between the judiciary and democratic control can be changed by any constitutional amendment in this sphere. Third, the civil-military relations and power distribution is a structural issue of the governance structure of Pakistan that is long-standing and the provisions of the constitution are likely to interact with the bigger political realities. A combination of these three dimensions implies that judging constitutional amendments in Pakistan is not that simple. The proposed 27th Amendment is not merely a technical reworking of the law but, perhaps, a revolutionary constitutional reworking that has far-reaching consequences within institutional balance and democracy. This paper therefore puts the discussion in a broader perspective of the constitution and theory to establish whether the amendment is used to entrench the constitution in its attempts to protect and preserve the original principles or it is a matter of political expediency which is influenced by short term institutionalized interests. (Hamilton, 2003)

Theoretical Framework

This study is grounded in two major constitutional theories:

Constitutional Entrenchment Theory

The Constitutional Entrenchment theory can be considered as the lens that the specified study can be evaluated through in regards to the legitimacy and the structural implication of the proposed 27th Constitutional Amendment in Pakistan. In its simplest form, it is assumed that constitutions are not merely flexible instruments of law that can be subject to continual political revision, but are documents that display an identity and principles of governance, and an institutional form of a state. Though they have to adapt to changes in social and political situations so that certain aspects are considered so fundamental that they must remain unchanged even when official amendment attempts are made. (Kennedy, 1993)

Such basic principles tend to be federalism, separation of powers, judicial independence and protection of basic rights. Federalism ensures that power is shared between the federal government and the sub-units hence preventing over centralization and regional autonomy. Separation of powers guarantees a balance of the institutions by spreading the authority of the legislature, executive and judiciary in a way that, there is no domination of an institution. Judicial independence safeguards the authority of courts to interpret the law free of political influence and favors, and fundamental rights protect the rights of individuals against oppressive government.

The classical constitutionalism and the contemporary democratic theory are the theoretical bases of constitutional entrenchment. Some of the philosophers that emphasize that constitutional democracies rest on higher order principles that cannot be easily changed by the passing political majorities include Bruce Ackerman and John Rawls. This view is that the powers of constitutional amendment are not absolute, but implicitly, they are limited by the need to preserve constitutional identity. Without these limitations, a constitution will tend to be turned into a majoritarian instrument, where temporary political coalitions can restructure the entire institutional structure of the state. (Khan, 2018)

The doctrine of entrenchment has most been articulated in the doctrine of entrenchment in comparative constitutional practice in which the doctrine of the basic structure of the Indian constitution that this or that type of constitutional features cannot be altered even by formal amendments has been widely embraced. Although this doctrine is not explicitly accepted in Pakistan, in the evaluation of constitutional change, theoretical applicability of entrenchment is also high. The constitutional identity maintenance problem has ever greater pressing role in political and scholarly discussion with no official limits on the amendment power. The constitutional entrenchment theory would be particularly relevant in the Pakistani context due to the institutional instability history in the country and the frequent constitutional amendments. The amendments of the constitution through the years have been utilized not only to fine-tune the mechanism of governance, but also to alter the balance of power in the various significant institutions of the state. This begs the question whether constitutional identity is being upheld, or is being rewritten in accordance with the current political interests. Applying this theory to the proposed 27th Amendment, the most important question would be whether the amendment respects or violates these established values. To illustrate, any alteration in federal form can impact provincial freedom, and any alteration in judicial sovereignty can impact the judicial sovereignty. Similarly, the change in civil-military relations could change the general balance of power within the state. In terms of entrenchment, these changes are not merely technical changes but they can be transformative changes that can alter the constitutional order itself. (Khan, 2005)

In this regard, Constitutional Entrenchment Theory is a normative standard within the context of this study which assists in determining whether the 27th Amendment strengthened or undermined the ideals which form the fabric of the Pakistani constitutional system. It emphasizes that the constitutional malleability must be taken into consideration and that the institutions must be stable, the democracy balanced and the governance of the rule.

Political Expediency Theory

Another theory that can offer a different theoretical approach to the analysis of the constitutional amendments is the Political Expediency Theory, particularly when the system is very dynamic both politically and institutionally, as seen in the case of Pakistan. Unlike the constitutional entrenchment theory, which emphasizes structural stability and normative restraint, the political expediency theory assumes constitutional amendments to be the outputs of short-term political needs, political strategies, and power bargaining among the most powerful actors in the state.

According to this perception, constitutional amendment is a non-neutral and non-legal endeavor. Instead, they are widely embedded within the political contexts and are often linked to the interests of ruling elites, ruling coalitions or dominant institutions. The amendments might be offered to consolidate the political authority, to get rid of the institutional conflicts, to nullify opposition, or to redefine the power distributions to favor the most powerful actors. Change of the constitution is thus not regarded as a purely principled process but a pragmatic tool of government and political survival. (Mahmud, 1993)

Scholars, who ascribe to this school of thought, feel that in most third world democracies, including Pakistan, institutional design is dominated by short-term political interests, rather than a long-term constitutional design. Particularly, it can be observed in those cases when the political instability, the ineffective party system and civil-military tensions play the role in the outcomes of the ruling. These settings can utilise constitutional amendments to stabilise governments, institutional rivalries or legitimize power transitions instead of using it to impose abstract constitutional principles. This theory can be substantially supported using the Pakistani case with references to the historical experience. The constitutional amendments have been implemented during political change, stabilisation of the regime or institutional conflict. Constitutional change, be it in civilian regimes or military regimes, is frequently a device to diversify the balance of power between the legislature, executive, judiciary and military establishment. This process is a pointer that the constitutional development in Pakistan cannot be fully explained devoid of political undertones.

The application of political expediency theory to the proposed 27 th Constitutional Amendment raises some important questions of interpretation. The reforms of federalism could be discussed, as an example, not only as the administrative reforms but as the attempts to govern the relations between the centers and provinces according to the existing political interests. The developments in the independence of the judicial system or method of appointment can also indicate the motivation to re-brand the role of the judiciary in the political decision making. Even the reforms that are aimed at the creation of the civil-military balance may be interpreted as the attempts to balance the relations between the institutions under some political conditions. (Pakistan. 1973)

Here, the amendments of the constitution are not always assessed in terms of their compliance with the abstract principles but rather in terms of their usefulness in politics. The key point is whether the amendment is efficient to address the immediate problems of governance or to have the institutional power in a certain direction united. These reforms are capable of assisting in the enhancement of short term stability or efficiency, but it might also lead to constitutional uncertainty over the long run, since they have the potential to remodel institutional boundaries once more. Yet it is not necessarily true that

the theory of political expediency conflicts with the concept of constitutional change. Rather, it acknowledges that constitutions are not immune to political facts but must evolve to adapt to the evolving requirements of governance. This is of interest where expedient changes are widespread or are structurally transformative and will subvert constitutional coherence and predictability. When this occurs, constitutional amendments will most probably be approached as a means of political convenience rather than constitutional development.

In terms of the 27 th Amendment, this theory presents a critical way of looking at the deliberation of the proposed changes, whether on sound constitutional grounds or on pure political objectives. It encourages doubt regarding the timing, situation, and supporters of constitutional reformation, instead of interpreting amendments literally as a neutral lawmaking process. Lastly, Political Expediency Theory illuminates the political nature of constitutional change. It challenges the assumption that constitutional amendments are the mere theological or technical processes and locates them within the context of the greater exercise of power, government, and institutional bargaining. It does so in a manner that it provides the much-needed counterbalance to the normative theories of constitutional entrenchment and forms the second pillar of analysis in this study. (Rawls, 1971)

POTENTIAL IMPACT OF THE 27TH AMENDMENT

The 27th Constitutional Amendment, which is still a controversial issue, can have far-reaching implications on the constitutional and institutional architecture of Pakistan. It is important not only because it can bring certain changes to the law but because of its more general consequences relating to the balance of power between the federation, judiciary, and civil-military establishment. This part critically analyzes these possible impacts in three main dimensions; federalism and provincial autonomy, judiciary and institutional balance, and civil, and military relations. (Rosenfeld, 1994)

Federalism and Provincial Autonomy.

Federalism is one of the most delicate and controversial historical dimensions of the constitution of Pakistan. The sharing of powers between the federal and provincial units has been an issue of political conflict especially when it comes to resource allocation, legislative and administrative powers. Any change in this balance by a constitutional amendment bears profound consequences on the stability and functioning of the federation. When 27th Amendment brings changes in terms of fiscal arrangements, legislative competencies or administrative authority, they might strengthen or weaken provincial autonomy depending on how it is designed. A shift to increased centralization, like the growth of federal control over resources or policy making, is likely to enhance the efficiency of administration in the short run, but might jeopardize the spirit of provincial self-government. This may possibly rekindle past conflicts between smaller provinces especially those that have always insisted on more independence and fair allocation of resources. Conversely, when the amendment enhances the powers of the provinces, it can help to bring about a more balanced federal system and increase political inclusion. Nonetheless, these decentralizations should be well controlled to prevent administrative fragmentation or lack of efficiency in governance. Thus, the federalism implications of the amendment will heavily hinge on whether it will give rise to cooperative federalism or strengthen central dominance. (Sajjad, 2020)

Balance between the judiciary and other institutions.

The second significant area of influence is the judiciary and the institutional balance in the state, in general. Pakistan courts have traditionally been involved in the interpretation of the constitution and governance, especially judicial review and suo motu jurisdiction. Any amendment that involves a change in judicial structure or powers thus has a great constitutional impact. The 27th Amendment can be used to

restructure the judicial appointment system by changing the form of the judiciary, the executive, and the legislature in the appointment process based on its provisions. These changes have the potential to improve transparency and democratic processes but have a possibility of political interference in judicial appointments, which may influence judicial independence. Moreover, the amendment can modify the judicial review, especially concerning the judicial system capacity to interpret the provisions of the constitution and interfere with issues of national significance. A restraint in the powers to do judicial review would be helpful to decrease judicial activism and encourage institutional restraint. Nevertheless, it can also restrict the power of the judiciary as a constitutional restraint on executive and legislative activities. Moreover, any redistribution of the powers between the parliament and the judiciary should be considered critically in regards to institutional balance. As much as the parliamentary power can be boosted to increase democratic legitimacy, it is not supposed to be at the cost of undermining the judicial powers as an independent adjudicator. This is because it is difficult to strike a balance between accountability mechanisms and judicial autonomy. (Sathe, 2002)

Civil–Military Balance

The third and, possibly, the most structurally important aspect is the civil-military balance which, historically, has influenced Pakistan in terms of political and constitutional growth. Military has taken a center stage in the field of governance both indirectly and directly affecting the policies, decisions of national security and arrangements of the institution. In case the 27th Amendment concerns the aspects of governance in national security, oversight, or institutional coordination, it can have some indirect though significant consequences in terms of civilmilitary relations. Although these constitutional changes may not necessarily be aimed at the military, those that impact the executive power, federalism, or institutional checks and balances can have an effect on the comparative power of civilian institutions and the military establishment. Historically, the various changes in civil-military relationships in Pakistan have been associated with constitutional and legal changes, which is a complex relationship between formal constitutional systems and informal power relations. Any change to the institutional power must therefore be evaluated in terms of its possible empowerment of civilian supremacy, or its ability to reinforce preexisting power asymmetries. The perfect constitutional system would be one that provides a strong civil leadership over the military, which should be backed by effective institutional checks and open governance systems. Nevertheless, this balance has continued to be a problem in the political system of Pakistan. (Zafar, 2021)

COMPARATIVE PERSPECTIVE: INDIA’S BASIC STRUCTURE DOCTRINE

An effective discussion of the 27 th Constitutional Amendment that Pakistan is proposing should be in a comparative constitutional approach, particularly in the examination of how other democracies regulate the limits of constitutional amendment powers. The most significant and widely-debated theory in this regard is the one of the basic structure, which the Supreme Court of India developed. This doctrine provides a powerful example of how constitutional regimes might find a middle ground between openness and protection of the basic values. The doctrine was developed due to the landmark case *Kesavananda Bharati v. State of Kerala* (1973) in which the judicial system of India resolved a critical constitutional question: was the Parliament boundless in its power to amend the Constitution under Article 368? The Supreme Court determined that in as much as Parliament has the vast power in making amendments to the provisions contained in the constitution, it lacks an absolute power. Instead, it is implicitly limited to be amended or abolished by Parliament, without reference to the basic structure, or the substance of the Constitution. This is a significant development in constitutional law through judicial invention of a doctrine, as it puts substantive limits on constitutional authority of amendment where there are no express textual limits. It ensures that constitutional change is realized in the context of normative limit in order to ensure that the values of the constitutional order are not ruined.

Essential Elements as per the Doctrine.

Later cases of the Indian Supreme Court have identified several significant features of the basic structure of the Constitution. These include:

- **Domination of the Constitution:** The Constitution is the highest source of law, and all the institutions should be directed by it.
- **Rule of law:** The government must be based on the rule of law and not some arbitrary decisions.
- **Judicial review-** the judiciary still reserves the right to review constitutionality of legislative and executive actions.
- **Federalism:** There should be a decentralization of powers among the states and the central government so as to have territorial and political balance.

Over time, other aspects such as secularism, democracy and separation of powers have also been found to be encompassed in the basic structure. The doctrine is thus a live yet a guardian procedure that does not prohibit constitutional identity, but allows such development. What makes this doctrine significant is that it does not permit the Constitution to be amended, in order to be politically repressed or reorganized in a way that would undermine the values of democracy. This is because it creates a strong shield against the erosion of the basic constitutional values as the judiciary can question any amendment made on the constitution. In this manner it establishes a constitutional equilibrium whereby the parliament or political majority of the day will not be able to alter the spirit of the state.

Implication on Constitutional Stability in India.

The basic structure doctrine has played a critical role in bringing about stability in the Indian constitution. It has ensured that despite all the thousands of amendments since the Constitution that have been undertaken over the decades, it has not altered the very spirit of the Constitution. It has also strengthened judicial autonomy since it asserted the judiciary as the ultimate decoder of the constitutional limits. At the same time, it has also elicited controversy over the issue of judicial supremacy since critics feel that it gives the courts undue powers to set constitutional boundaries.

But the doctrine is mostly viewed as stabilizing attribute of Indian constitutionalism particularly in preventing abrupt or politically engineered structural changes. It reflects a strong constitutional structure whereby the amendment authority is balanced with the judicially enforceable boundaries.

Pakistan's Constitutional Position

Pakistan does not publicly support a basic structure doctrine like India does. In the Constitution of Pakistan, Article 239 provides that the constitution may be amended by the parliament, but there are no explicit constraints on the magnitude of the power to amend. This means that in theory, Parliament can alter any provision of the constitution including the provisions concerned with institutional form and government. This absence of a formal restraint creates an essentially new constitutional environment. Despite the fact that judicial review is present in Pakistan, it has not been developed into a doctrine, which can be utilized to invalidate constitutional amendments on the basis that it infringes upon a fundamental structure. Therefore, change in the constitution of Pakistan is more based on practices of the political rather than a structural limitation imposed by the judiciary.

Implications of this Difference.

The absence of the basic structure doctrine has drastic implications to the constitution stability in Pakistan. On the one hand, it provides more freedom in the constitutional design and thus the state is able to respond to the evolving political and institutional needs without being restrained by the courts. This elasticity is also applicable in an expanding democracy whereby the government systems have not been determined. On the other hand, it also brings the questions of constitutional vulnerability. The constitutional amendments can also be abused to initiate major alteration of the institutional balances without structural limitation; particularly in the federalism, judicial independence and civilmilitary relations aspects. This introduces the threat of constitutional instability in which principles can be rebuilt by political majorities.

Relativity to the debate on the 27th Amendment.

The absence of a basic structure doctrine is highly brought into focus with the proposed 27th Amendment. Compared to India, where the judiciary can nullify amendments, which are inconsistent with the basic constitutional tenets, political and institutional restraints are the most significant in Pakistan. This increases the burden on legislators to ensure that changes in the Constitution do not undermine the identity and stability of the Constitution. As a result, the comparative analysis reveals that a significant conflict in the two models is that where India is preoccupied with a constitutional rigidity in order to make sure that the foundational principles remain intact, Pakistan is preoccupied with flexibility, which can bring about greater adaptability, as well as, vulnerability. This distinction is the key to evaluate whether or not the 27 th Amendment is the constitutional fortification or structural threat.

INTERNATIONAL STANDARDS AND VENICE COMMISSION PERSPECTIVE

The applicability of international constitutional norms in evaluating the validity and quality of constitutional amendments is especially crucial in those states where constitutional change has significant implications on institutional balance. The validity of the amendments in terms of the law is in the hands of the domestic constitutional set ups, but the international standards provide normative frameworks that judge whether the changes are aligned to democratic governance, rule of law and institutional integrity. In this case the recommendation of the Venice Commission is particularly significant, that is widely regarded as one of the largest experts on constitutional law and democracy in the world.

According to the Venice Commission, constitutional amendments are not required to only respond to the formal legal requirements but must also be grounded on substantive democratic values. This is what lies between procedural and substantive legitimacy that is vital in modern constitutionalism. Although an amendment is an acceptable method that can be adopted by the due process of parliaments, it is at question because it may undermine the same principle of democracy or even the protection of the institutions.

Major principles pointed out by the Venice Commission.

The Venice Commission states that when constitutional amendments take place, a number of principles are expected to be applied:

- Due respect to democratic ideals: Constitutional amendments must not weaken, but enhance democratic government. This will entail the presence of representative institutions, political accountability and big involvement in the decision making processes.

- Separation of powers: Amendments should provide a good balance between the legislature, executive and judiciary. Any reform that causes a significant imbalance in this balance is endangered to bring about institutional dominance and weaken the checks and balances.
- Ensuring of fundamental rights: The amendment in the constitution should not dilute the domain of fundamental rights or restrict them. Rather it should reinforce their protection and enforcement systems.
- Judicial independence: Independence of the judiciary to the political or institutional interference, adjudication and protection of the constitutional order.
- Integrity and continuity with the constitution: Amendments should not disrupt the identity or integrity of the constitutional system. Although this is permitted, structural disruptions and disruptions can be a threat to legal predictability and stability.

All these principles are an extended international consensus that constitutional changes should promote democratic stability and not a means of political restructuring in a short-term perspective.

Structural Disruption Warning.

The warning against constitutional change that may be structurally disruptive but is legal is one of the most important aspects of this guidance by the Venice Commission. This means that although the amendments have taken the right procedures, they may not be good when they basically alter the path of power within the state or the institutes.

Such issues are typically brought up in situations where amendments:

- Put excessive power into one arm of government.
- Undermine judicial independence or restrict judicial review.
- Minimize parliamentary control or control systems.
- Weakness of federal arrangements, or overcentralization.

The Venice Commission argues that institutional supremacy should not be based on constitutional systems. They need to be instead, stable structures that ensure balance in long-term governance through effective checks and balances.

Application to the 27th Constitutional Amendment.

Under this international experience, one cannot determine the legitimacy of the proposed 27 th Constitutional Amendment of Pakistan, based on the procedural manner in which the amendment was enacted by the Parliament. Even though the amendment can be passed in the way that the constitution demands, their implication on the balance of power within an institution should be considered. Where the amendment would change the independence of the judiciary or the structure of federalism or the balance of power between the state institutions, the amendment ought to be examined as to whether it would promote constitutional democracy or not. Using the example, reforms which may be made more transparent and accountable may be in compliance with the international standards but should not impair the independence of the judiciary and the institutional balance. Similarly, the restructuring of the judicial

appointment procedures or limitations on judicial authority, should also be revisited to ensure that they do not lead to excessive political interference and discourage the checks and balances. The structure of the Venice Commission is therefore quite a significant normative tool which may be utilized to establish whether such reforms will either introduce constitutional fortification or imbalance.

Substantive vs Procedural Legitimacy

Among the key contributions that the international constitutional standards make is the distinction between procedural and substantive legitimacy. The fact that an amendment has been passed in a way that complies with the required legal procedure, e.g. a parliamentary approval, is called procedural legitimacy. Substantive legitimacy, on its turn, examines how well the content of the amendment aligns with the principles of democracy and constitutional values.

This is particularly notable in the instance of the 27th Amendment. Even though the amendment can be procedurally legitimate within the constitutional system of Pakistan, it still needs to be considered within the wider democratic standards to determine the long term impacts of the amendment on the governance system, institutional balance and even constitutional identity.

In conclusion, the Venice Commission principles provide a critical international criterion based on which constitutional amendments can be considered. They are adamant that constitutional reform must not interfere with democratic rule, independent judiciary and institutional balance. The application of these standards to the 27th Amendment debate indicates that the issue of legitimacy is not merely a formality in the law but a substantive issue as well. This globalized perspective consequently enriches the analytical context to this study since it puts the constitutional developments in Pakistan in the perspective of global democracies of constitutionalism.

ANALYSIS: ENTRENCHMENT OR EXPEDIENCY

The basic analytical question of the proposed 27th Constitutional Amendment is whether this is a constitutional entrenchment move that will entrench the principles of governance or a political expediency move to restructure institutional power to produce short run strategic payoffs. This distinction is crucial because it will either make the constitutional stability of the long-term, or will introduce even greater ambiguity to the constitutional order in the country undergoing changes. Theoretically, constitutional entrenchment indicates that amendments cement and cement the constitution itself. This is through strengthening institutional independence, preservation of federal balance and the rule of law as the governance principle. The 27th Amendment may be regarded as a good intention to augment constitutional government unless the amendment attempts to achieve these goals, whether by making judicial more independent through the establishment of transparent procedures, provincial autonomy or by strengthening the checks and balances between the institutions. In this instance, the amendment would not only be able to realign the institutional structures, but would also enhance the integrity and sustainability of the constitutional system as a system.

However, it is also possible to have constitutional change being politically expedient in the sense that amendments are influenced by short term political interests as opposed to long term constitutional planning. At that, the 27th Amendment could be regarded as the means of centralizing the power, of taming the conflicts within the institutions, or of solving the short-run problems in governance. One such case is that, where the amendment alters the balance of power so drastically towards one of the institutions such as the executive or legislature without adequate safeguards, it can be considered a politically motivated restructuring rather than a restructuring, which is motivated by principle. Similarly, when current political conflicts influence judicial independence/federal structure, the validity of this

change can be questioned on the long-run constitutional integrity. The distinction between these two opinions is not always so evident in practice. The purpose of amendments on the constitution is generally lawful and political. They may be both justified by institutional reforms, and reflect the existence of political bargains among great actors. This duality makes it difficult to strictly establish any amendment as either being entirely entrenched or as being entirely expedient. Instead, most changes in the constitution fall between these two extremes.

The situation with Pakistan is even more complicated by the fact that there is no formally established limit on constitutional amendment power, such as a basic structure doctrine. In comparison to the jurisdictions in which the courts can strike down the amendments against some fundamental constitutional principle, the Pakistani constitutional system emphasizes more on the sovereignty of parliaments and political discretion. This means that constitutional amendments are constrained primarily by political rather than judicial reasons. As a result, Pakistan is relying on the political consensus, institutional restraint, and normative constitutional culture to balance the constitution. As much as this flexibility allows the adaptive governance, it also poses a threat that the constitutional amendments may be manipulated by varying political agendas and not the principles of the constitution. The circumstance in which entrenchment and expediency may be drawn out comes to the fore in such an environment, and is of immediate consequence to the stability of the constitutional order in the long run.

Those systems, which have judicially enforceable borders that are stronger such as the basic structure doctrine of India- provide a superior system with which to distinguish constitutional evolution and structural change. In the absence of these provisions, then in Pakistan, interpretive analysis and political responsibility will have to be used in ascertaining the degree of upholding the tenets or corrupting the tenets by the provisions of the constitution. In this way, the evaluation of the 27th Amendment is based on its substantive meaning, but not its constitutionality. When it strengthens the institutional independence, enhances the democratic accountability, and provides the balance between the state organs, it may be considered as a legal act of constitutional entrenchment. Conversely, it is more likely to be characterized as political expediency when it results in concentration of power, weakening of checks and balances, or simply when it is a form of political bargaining in the short run. In conclusion, the clash of entrenchment and expediency is the essence of the constitutional development of Pakistan. A 27 th Amendment is a highly significant test to discovering whether constitutional amendment in Pakistan is grounded on the long term principles of governance or made under the impact of the momentary political considerations.

CONCLUSION

The scandal of the 27th Constitutional Amendment is suggestive of a larger constitutional issue: the necessity to balance democratic malleability with constitutional permanence. Though the amendments of the Constitution are necessary in the development of the political life, it must not compromise the principles of governance. An examination of India and recommendations by foreign bodies such as the Venice Commission is that the sustainable constitutional development should not just be founded upon the legal validity, but also structural integrity and institutional balance. Lastly, the design, motive and the long term institutional implications of the 27th Amendment will be that which will decide whether it will be a constitutional fortification or expediency tool.

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