The Politics of Federalism in Pakistan:

An Analysis of the Major Issues of 18th and 20th Amendments

Submitted by:

Kamran Naseem
Ph. D. Scholar Politics & I R
Reg. No.22-SS/ Ph. D IR/ F 08

Supervisor:

Dr. Amna Mahmood

Department of Politics and IR
Faculty of Social Sciences
International Islamic University Islamabad
Table of Contents

Introduction .......................................................................................................................... 20-30
I.I State of the Problem
I.II Scope of Thesis
I.III Literature Review
I.IV Significance of the Study
I.V Objectives of the Study
I.VI Research Questions
I.VII Research Methodology
I.VIII Organization of the Study

Chapter 1 Theoretical Framework ................................................................................... 31-56
1.1 Unitary System
1.2 Some Similarities in Characteristics of the Federal States
1.2.1 Distribution of Powers
1.2.2 Independence of the Judiciary
1.2.3 Two Sets of Government
1.2.4 A Written Constitution
1.3 Federalism is Debatable
1.4 Ten Yardsticks of Federalism
1.4.1 One: Comprehensive Control over Foreign Policy
1.4.2 Two: Exemption against Separation
1.4.3 Three: Autonomous Domain of the Centre
1.4.4 Four: The Federal Constitution and Amendments
1.4.5 Five: Indestructible Autonomy and Character
1.4.6 Six: Meaningful and Remaining Powers
1.4.7 Seven: Representation on parity basis of unequal Units and Bicameral Legislature at
    Central Level
1.4.8 Eight: Two Sets of Courts
1.4.9 Nine: The Supreme Court
1.4.10 Ten: Classifiable Distribution of Power

1.4.11 Debatable Results of Testing the Yardsticks of Federalism

1.5 Institutional theory

1.5.1 Old Institutionalism

1.5.2 The New Institutionalism (NI)

1.5.3 Historical Institutionalism (HI)

1.5.4 Rational Choice Institutionalism (RCI)

1.5.5 Sociological Institutionalism

1.6 The Liberal School of Thought

1.7 The Realist Theory

1.8 Dual Federalism

1.9 Co-operative Federalism

Chapter 2 ............................................................................................................................57-79

2.1 Federalism under Interim Constitution

2.1.1 Dominant Role of the Centre

2.1.2 Role of the Governor General

2.1.3 Role of the Centre in Administrative Affairs

2.1.4 Ascendancy of the Centre in Fiscal Relations

2.1.5 The Issue of Provincial Autonomy

2.2 Constitution-making (1947-56)

2.2.1 Objective Resolution 1949

2.2.2 Basic Principles Committee

2.2.3 Second Report of BPC

2.2.4 Muhammad Ali Formula

2.2.5 One Unit

2.3 The Constitution of 1956

2.3.1 Administrative Relations between the Centre and the Provinces

2.3.2 Financial Relations

2.3.4 Failure of the 1956 Constitution
2.4 Ayub Khan in Power
2.5 The Constitution of 1962
2.5.1 The Legislature
2.5.2 The President
2.5.3 The Judiciary
2.5.4 Structure at the Provincial Level
2.5.5 Basic Democracies

Chapter 3 The 1973 Constitution ................................................................. 80-108
3.1 Yahya Khan in Power
3.1.1 The LFO
3.1.2 The 1970 Elections
3.1.2.1 Election Campaign
3.2 East Pakistan Separation
3.2.1 Situation after the Elections
3.3 Interim Constitution
3.4 The 1973 Constitution
3.4.1 Salient Features of the Constitution
3.4.1.1 Islamic Provisions
3.4.1.2 The Parliament
3.4.1.3 The Executive
3.4.1.4 Judiciary
3.4.1.5 Legislative Powers
3.4.1.6 Emergency Powers
3.4.1.7 Financial Relations
3.4.1.8 The National Finance Commission (NFC)
3.4.1.9 The Council of Common Interest (CCI)
3.4.1.10 Civil-Military Equation
3.5 The 1977 General Elections
3.6 General Ziaul Haq in Power
3.7 The 1985 General Elections
3.8 The 8th Amendment
3.10 The 1990 Elections
3.11 The 1993 Elections and the Second Benazir Government
3.12 The 1997 Elections and Nawaz Sharif’s Second Term
3.13 The 13th Amendment in the 1973 Constitution
3.13.1 Amendment of Article 58
3.13.2 Amendment of Article 101
3.13.3 Amendment of Article 112
3.13.4 Amendment of Article 243
3.14 Military Coup of October 12, 1999
3.15 The LFO
3.16 The Elections 2002
3.17 The 17th Amendment

Chapter 4 Politics of the 18th and 20th Constitutional Amendments

(What Happened and Why) ............................................. 109-160

4.1. Need for Amendment in the 1973 Constitution
4.2 Journey towards the 18th Amendment
4.2.1 Charter of Democracy (CoD)
4.2.1.1 Amendments in the 1973 Constitution
4.2.1.2 Code of Conduct
4.2.1.3 Free and Fair Elections
4.2.1.4 Civil- Military Relations
4.3 General Elections 2008
4.4 The SPCCR
4.5 The 18th Amendment Bill
4.6 Main Features of the 18th Constitutional Amendment
4.7 Detail of Features of the 18th Amendment

4.7.1 Revival of Parliamentary system

4.7.2 Enhancement in the Role of the Prime Minister

4.7.3 Referendum Call

4.7.4 Approval of Bills

4.7.5 The Executive Authority

4.7.6 Session of the National Assembly after the General Elections

4.7.7 Governor’s Appointment, Powers and Functions

4.7.8 Provincial Cabinet

4.7.9 Appointments of the Chiefs of the Armed Forces

4.8 Enhancement in the Role of the Parliament

4.8.1 Dissolution of the National Assembly

4.8.2 Size of the Cabinet

4.8.3 Revision of the Legislative Powers

4.8.4 Withdrawal of Discretionary Powers

4.8.5 Appointment of Acting Governor

4.8.6 Appointment of the Judges

4.8.7 Appointment of the Chief Election Commissioner

4.8.8 Care-taker Cabinet

4.8.9 Declaration of the Emergency

4.8.10 Appointment of Chiefs of Armed Forces

4.8.11 Deletion of the Sixth and the Seventh Schedule from the Constitution

4.9 Revision in the Role of the Senate

4.9.1 Financial Bill in the Senate

4.9.2 Promulgation of the Ordinances

4.9.3 Responsibility of the Cabinet

4.9.4 Appointment of the Judges

4.9.5 Laying Reports before the Senate

4.9.6 Appointment of the Chief Election Commissioner
4.9.7 Proclamation of the Emergency
4.10 Provincial Autonomy
4.10.1 The Fourth Schedule
4.10.2 Electricity
4.10.3 Natural Gas and Hydroelectric Power
4.10.4 Borrowing of Loans
4.10.5 Ownership
4.10.6 Provincial Assemblies
4.10.7 Economic Sector
4.10.7.1 Regulations of the Business
4.10.8 Social Sectors
4.10.8.1 Culture, Tourism and others
4.10.8.2 Environment
4.10.8.3 Education
4.10.8.4 Health
4.10.8.5 Labour and Manpower
4.10.8.6 Population Welfare
4.11 Election Commission
4.12 Judiciary
4.12.1 Appointment of the Judges in the Supreme Court
4.12.2 Appointment of the Judges in the High Court
4.12.3 Appointment of the Judges in the Islamabad High Court
4.12.4 Appointment of the Judges in the Federal Shariat Court
4.12.5 Working of the Judicial Commission and the Parliamentary Committee
4.13 Fiscal Federalism
4.13.1 Historical View of Fiscal Arrangements in Pakistan
4.13.2 The NFC
4.13.3 The 7th NFC Award
4.13.4 Relationship between the Federal Government and the Provinces
4.13.4.1 The CCI
4.13.4.2 National Economic Council
4.14 Local Government
4.15 The 18th Amendment in the Supreme Court
4.16 The 19th Amendment
4.17 The 20th Amendment
4.17.1 The Care-taker Government
4.17.1.1 Appointment of the Care-taker Prime Minister
4.17.1.2 Appointment of the Care-taker Chief Minister
4.17.2 Election Commission

Chapter 5 Implementation of the 18th Amendment ........................... 161-231

5.1 The 18th Amendment Implementation Commission
5.1.1 Functions of the Implementation Commission
5.1.2 Performance of the Implementation Commission in Respect to Implementation of the 18th Amendment
5.1.3 Recommendations of the Implementation Commission
5.1.4 Approval of the Commission’s Proposals
5.2 Strengthened Role of the Prime Minister and the Parliament
5.3 Session of the National Assembly after the General Elections
5.4 Sessions of the Provincial Assemblies after the General Elections
5.5 Governor’s Appointment, Powers and Functions
5.6 Size of the Provincial Cabinet
5.7 Size of the Federal Cabinet
5.8 Care-taker Cabinet
5.8.1 Care-taker Cabinet at Federal Level
5.8.2 Care-taker Cabinet at Provincial Level
5.8.2.1 Punjab
5.8.2.2 Balochistan
5.8.2.3 KPK
5.8.2.4 Sindh

5.9 Provincial Autonomy
5.9.1 Allocation of Functions
5.9.2 Social Services
5.9.3 Utility Services
5.9.4 Transportation
5.9.5 Other Services
5.9.6 The 18th Amendment and Revision of Subjects

5.7 Fiscal Federalism
5.7.1 Devolution of Ministries
5.7.2 The 18th Amendment and Implications for Development and Finance

5.8 The CCI
5.9 The NEC

5.10 Local Government
5.10.1 Local Government in Pakistan: A Brief History
5.10.2 Local Government in some other Countries
5.10.2.1 India
5.10.2.1.1 Urban Local Bodies in India
5.10.2.2 Canada
5.10.2.3 South Africa
5.10.2.4 Brazil
5.10.2.5 Lessons for Pakistan

5.11 Election Commission
5.11.1 First General Elections (2013) after Passage of the 18th Amendment
5.11.1.1 Election Schedule
5.11.1.2 Reaction of Political Parties on Election 2013 Results
5.11.1.3 PILDAT’s Recommendation for Future Elections
5.11.1.4 The PTI’s Claim of Rigging in the General Elections 2013
5.11.1.5 The Judicial Commission
5.12 Some Key Issues after Passage of the 18th Amendment

5.12.1 The HEC
5.12.1.1 Constitutional Status

5.12.2 Gas
5.12.2.1 The 18th Amendment

5.12.3 Electricity
5.12.3.1 The 18th Amendment

5.12.4 Drug Regulation

5.12.5 Environmental Protection

5.12.6 Agriculture

5.12.7 Workers’ Welfare Fund (WWF) and Employees’ Old-Age Benefits Institution (EOBI)

5.12.7.1 WWF
5.12.7.2 EOBI

5.13 Regulatory Authorities

Conclusion ................................................................. 232-249

Endnotes ................................................................. 250-258

Reference List .......................................................... 259-266
Tables

Table: House of People ............................................................. 68-69
Table: House of Units ............................................................. 69
Table: National Assembly Candidates ........................................... 82
Table: Seats in the National Assembly .........................................82-83
Table: Seats in the Provincial Assemblies .................................... 83
Table: National Assembly Elections (1970-71) .............................. 84-85
Table: Provincial Assemblies Elections (1970-71) ............................ 85
Table: 1977 Elections Results ....................................................... 95-96
Table: Seats for the National Assembly under LFO, 2002 ................. 103
Table: Seats for the Senate under LFO, 2002 ................................ 104
Table: Seats for the four Provincial Assemblies under LFO, 2002 ........ 104
Table: Party Seats in the National Assembly Elections 2002 ............. 105-106
Table: Party Position General Elections 2008 ................................. 115
Table: Expenditures and Revenue Collection Shares by Order of Government .... 149
Table: Revenue Sharing Formula among the Provinces ..................... 151
Table: Provincial Shares in different Awards from Divisible Pool ......... 151-152
Table: Ministers in Provincial Cabinets after general elections 2013 .......... 168-169
Table: Members in the Federal Cabinet after general elections 2013 .......... 169
Table: Devolution of Subjects after the 18th Amendment ................... 182
Table: Significance of the 18th Amendment in Terms of Fiscal Autonomy .......... 183

Table: Fiscal Implications of the 18th Amendment ................................. 183-184

Table: Expenditures of the Federal Government ...................................... 184-185

Table: Increase in Current Expenditure Liability of Provincial Governments due to

18th Amendment ................................................................. 185

Table: Fiscal Effort by Federal Government and Provincial Governments

(Rs. In Billions) ................................................................. 187

Table: Fiscal Effort by Federal Government and Provincial Governments

(As Percentage of the GDP) .................................................... 188

Table: Fiscal Decentralization Experiments: Comparison of Pakistan’s Decentralization

with other countries in the developing world.................................190-191

Table: Key Fiscal Indicators of Decentralization for a Sample of Countries ........

Table: Panchayats (Ps) in India .................................................. 199

Table: Elected Representatives of Panchayats (Ps) in India ..................... 199-200

Table: Canadian Structure of the Governments ................................... 201

Table: Voting Turnout in Provinces in Elections 2013 in Pakistan ............ 207

Table: Party Position in the National Assembly in General Elections 2013

in Pakistan ............................................................................. 208-209

Table: Gap between Supply and Demand of Gas in Pakistan .................. 219
Table: Cumulative Change in Electricity Consumption per Consumer from 2006-07 to 2010-11 in Different Distribution Companies ........................................ 223-224
Table: Share of Coal in Total Electricity, Produced in Different Countries. .......... 224

Charts

Chart: Allocation of Functions in A Sample of Countries ...................... 173-174
Chart: Changes in Fourth Schedule of Constitution due to 18th Amendment .......... 176
Chart: Federal Ministries Abolished under the 18th Amendment ............... 176-177
Chart: Newly Established Federal Ministries/Divisions ............................. 177
Chart: Functions of two new and two old ministries .............................. 178-179
Chart: Taxing Powers under the 18th Amendment ................................. 181-182
Chart: Main features of intergovernmental reforms in different countries ....... 188-189
Chart: Composition of the CCI .............................................................. 192
Chart: Composition of the NEC ............................................................ 194
Abbreviations

Old Institutionalism (OI)

New Institutionalism (NI)

Rational Choice Institutionalism (RCI)

Historical Institutionalism (HI)

European Union (EU)

 Constituent Assembly (CA)

 North West Frontier Province (NWFP)

 Public and Representative Disqualification Act (PRODA)

 Basic Principles Committee (BPC)

 National Security Council (NSC)

 Council of Defence and National Security (CDNS)

 Pakistan National Alliance (PNA)

 Movement for Restoration of Democracy (MRD)

 Islami Jamhoori Ittehad (IJI)

 Pakistan Democratic Alliance (PDA)

 MuttahedaMajlisAmal (MMA)

 Pakistan AwamiTehrik (PAT)

 Special Parliamentary Committee for Constitutional Reform (SPCCR)
Constitutional Eighteenth Amendment Act (CEAA)

Charter of Democracy (COD)

Implementation Commission for Constitutional Reforms (ICCR)

Federal Legislative List (FLL)

Concurrent Legislative List (CLL)

Election Commission of Pakistan (ECP)

Council of Common Interests (CCI)

National Finance Commission (NFC)

Supreme Court (SC)

Judicial Commission (JC)

Local Government (LG)

Provisional Constitutional Order (PCO)

National Accountability Bureau (NAB)

Legal Framework Order (LFO)

Federal Public Service Commission (FPSC)

Workers Welfare Fund (WWF)

Employees Old- age Benefits Institution (EOBI)

Gross Domestic Product (GDP)

Capital Administration and Development Division (CADD)
Federal Agencies in Tribal Areas (FATA)

National Database and Registration Authority (NADRA)

Member National Assembly (MNA)

Higher Education Commission (HEC)

Public Sector Development Programme (PSDP)

University Grants Commission (UGC)

Compressed Natural Gas (CNG)

Sui Southern Gas Pipeline Limited (SSGPL)

Sui Southern Gas Pipeline Limited (SSGPL)

Oil and Gas Development Company (OGDC)

Mega Watt (MW)

Gigawatt hour (Gwh)

Peshawar Electric Supply Company (PESCO)

Islamabad Electric Supply Company (IESCO)

Gujranwala Electric Power Company (GEPCO)

Lahore Electric Supply Company (LESCO)

Faisalabad Electric Supply Company (FESCO)

Multan Electric Power Company (MEPCO)

Hyderabad Electric Supply Company (HESCO)
Quetta Electric Supply Company (QESCO)

Karachi Electric Supply Company (KESCO)

Pakistan Environmental Protection Act (PEPA)

National Environmental and Quality Standards (NEQS)

Environmental Protection Council (EPC)

Non-Governmental organizations (NGOs)

Federal Board of Revenue (FBR)

All Pakistan Muslim League (APML)

National Economic Council (NEC)

Council of Common Interests (CII)

National Economic Council (NEC)

(Pakistan Standard Quality Control Authority) PSQCA
Abstract

The Constitution of 1973 addressed the issues of federal-provinces relationship with promising arrangements. Under the 8th and 17th Amendments in the 1973 Constitution, powers of the President were increased. In the general elections 2008, the PPP emerged as the largest political party in the National Assembly and formed the coalition Federal Government. The Special Parliamentary Committee for Constitutional Reform (SPCCR) was formed under the Chairmanship of Senator Raza Rabbani. The Parliament passed the 18th Amendment Bill by more than the two-thirds majority. A consensus was shown by the political parties on the 18th Amendment.

The process of restructuring of federalism in Pakistan under the 18th Amendment was a significant development which needed to be properly examined. The political leadership in the Parliament showed extensive consensus and political maturity over the 18th Amendment. The amendment ensured parliamentary democracy and provincial autonomy. It has enhanced role of the elected representatives. The reversal of the discretionary powers of the President at the Federal level and the Governor at the Provincial level is a positive step. Role of the opposition has been recognized in appointment of the Judges of the Superior Courts and formation of the interim-government at the Federal level and the Provincial level. The 18th Constitutional Amendment delivers us optimism towards the settlement of major issues of federalism.

Seventeen Federal ministries were devolved to the provinces under the 18th Amendment. The Federal Government also created new federal ministries. It is noteworthy that new ministries are performing functions almost like of their predecessors. There is also a centralization tendency at the Federal level and the Provincial level. Two Provinces (Punjab and Sindh) deliberately delayed the conduct of
local government elections that is a negative sign and shows centralization tendency of the said provinces.

The issues of federalism under the 18th and the 20th Amendments have been examined in great detail. In past, the power of the central government to legislate included in the CLL was rationalized. Previously, the CLL had 47 items. The circumstances that eventually led to the abolishment of the CLL have been examined. The study is based on a detailed analysis of the 18th and the 20th Amendments. Under the 18th Amendment, seventeen ministries had been devolved to the provinces. The main issue is implementation of the aforesaid amendments. Implementation of the 18th and the 20th Amendments has also been examined. This issue of federalism was very significant and therefore required a comprehensive study. Hopefully this study will add to the existing body of knowledge on the subject. Qualitative research method has been utilized for this study. The research consists of five chapters.
INTRODUCTION

In a society where there are significant social cleavages a federal system works better because more space is available for various groups. Looking at in another way, a country which has a lot of diversity like Pakistan cannot be stable and prosperous if the system does not allow it. Therefore the federal structure has been liked by scholars. A unitary state can work in a country having a single ethnic group like Japan, France and Korea etc. They have homogenous population. But Pakistan has heterogeneous population and therefore federal set up is preferable. There is a strong consensus on this position.

Current process of restructuring of federalism in Pakistan is significant development which needs to be properly examined. In order to understand the matter, it is important the historical development in Pakistan be studied first. Quaid -i- Azam once said that Pakistan shall have a federal structure like Australia, United States and Canada and certain powers and functions will remain vested in the central government such as defence, federal responsibilities and monetary system (Ahmad, 1990). Since very beginning Pakistan had a very centralized system and the provinces were weak. The smaller provinces persistently demanded provincial autonomy. The ruling elite did not pay attention on the problems of federalism. The system of checks and balances was not adopted.

It is an irrefutable claim that Pakistan has suffered drastically from overly centralized government system. The society is diversified in nature. So the system of federalism is the best option for the country. A significant cause for separation of East Pakistan in 1971 was also the lack of a strong workable federal system. The federation consisted of two territorial wings separated from each other by almost one thousand miles of Indian territory (Oldenburg, 1985).
I.I Statement of the Problem

There is an important history of federalism which must be examined. The Objective Resolution (1949) was the first step towards constitution-making. Under the Objective Resolution, a federal system was recommended for the country (Safdar Mahmood, 1984). There were a number of reasons that caused delay in constitution-making. The issue of provincial autonomy remained problematic. Different natures of governments were established under the 1956, 1962 and 1973 Constitutions. It is important that federalism was maintained in the three constitutions. Under the 1956 Constitution, residual powers were given to the provinces. The decision was made to fulfill the demand for provincial autonomy. The Constitution of 1962 adopted presidential system and assigned nearly all powers in the office of the President. Particular consideration was given to the demands of the provinces in framing the Constitution of 1973. The Constitution of 1973 had both a federal list and a concurrent list. Between the central government and the provincial governments, a new power arrangement was adopted in the division of powers (Raza, 1985).

The Constitution of 1973 addressed the issues of federal-provinces relationship with promising arrangements. Under the 8th and 17th Amendments in the 1973 Constitution, powers of the President were increased (Kundi, 2002). The 1973 Constitution ensured federal domination and the provinces were at the mercy of the central government. Through centralization of powers, military governments of Zia ul Haq and Pervez Musharraf weakened the federation. Democratic regime also faced challenges regarding federalism.

In the general elections 2008, the PPP emerged as the largest political party in the National Assembly and formed the coalition Federal Government. The Special
Parliamentary Committee for Constitutional Reform (SPCCR) was formed under the Chairmanship of Senator Raza Rabbani. Representation was given to all the political parties sitting in the Parliament. The SPCCR was also given suggestions by the citizens. The Parliament passed the 18th Amendment Bill by more than the two-thirds majority. A consensus was shown by the political parties on the 18th Amendment.

I.II Scope of Thesis

The political leadership in the Parliament showed extensive consensus and political maturity over the 18th Amendment. The amendment ensured parliamentary democracy and provincial autonomy. It has enhanced role of the elected representatives. The reversal of the discretionary powers of the President at the Federal level and the Governor at the Provincial level is a positive step. Role of the opposition has been recognized in appointment of the Judges of the Superior Courts and formation of the interim-government at the Federal level and the Provincial level. The 18th Amendment has also strengthened democracy especially by revision of Article 6 (high treason) and Article 58 (dissolution of the National Assembly). The 18th Constitutional Amendment delivers us optimism towards the settlement of major issues of federalism.

Seventeen Federal ministries were devolved to the provinces under the 18th Amendment. The Federal Government also created new federal ministries. It is noteworthy that new ministries are performing functions almost like of their predecessors. There is also a centralization tendency at the Federal level and the Provincial level. Two Provinces (Punjab and Sindh) deliberately delayed the conduct of local government elections that is a negative sign and shows centralization tendency of the said provinces.
I.III Literature Review

The researcher has benefited from the following available literature on the subject.

Shah endeavors to identify the nature of federalism in Pakistan. His core focus is on federalism visualized in the 1962 and 1973 Constitutions. The 1962 Constitution concentrated all powers in the office of the President. There was a segment of citizens which disliked grant of limited fiscal powers to the National Assembly, the concentration of powers in the hands of the President and indirect system of elections (Shah, 1994). It appears that both the constitutions undermined provincial autonomy. It is a fact that the provinces were weak as compare to the centre (Shah, 1994). Nazir discusses the meaning of federalism, its concept, essentials as well the reasons for adoption of federalism by different states. The study of federalism in Pakistan has been undertaken with a historical and theoretical context. The author concludes that a considerate endeavor is needed to let the provinces enjoy the autonomy given to them in the constitution. It will support greater harmony and cooperation among the provinces. The federalism would also be strengthened. The assurance of provincial autonomy to the provinces is the primary requirement for establishment of unity in a heterogeneous society (Nazir, 2008).

Adeney recounts federal instability in India and Pakistan and future prospects for both the states. The author comments that the co-option and security of groups is imperative for federalism to perform its function as an apparatus of ethnic-conflict regulation. “Moving towards a consociational form of government authorizes access to the institutions that matter, but this would require a willingness to recognize identity politics, and historically Pakistan has not been willing to do so” (Adeney, 2007). Rizvi explicates the creation of federations, federation and other systems, prerequisites of a federation, federalism in Pakistan, structural issues of federalism in contemporary Pakistan. In the historical context of Pakistan, the Centre-Province relations remained problematic. He is
of the opinion that the dilemma in Pakistan is how to fill the gap between the theory and practice of provincial autonomy and federalism and the ground realities marked by centralization of power (Chema & Rashid Ahmad Khan, 2006).

Mehmood makes analysis of federalism in Pakistan in the Constitutions of 1956 and 1973. He concludes that a system of checks and balances will have to be instituted to contain the centre from arbitrary meddling in the functioning of the provincial governments. Accordingly, it may be obligatory to boost the quantum of provincial autonomy by eliminating the concurrent list of subjects, and limiting the federal jurisdiction to currency, trade, foreign affairs, developmental economic planning, defence and such other areas which may be agreed upon by consent among the provinces (Chema & Rashid Ahmad Khan, 2006). In the article, “Problems and Politics of Federalism in Pakistan” Husain and Fiza Saif examine the federalism in Pakistan in the Constitutions of 1956, 1962 and 1973. The confidence of the smaller provinces can be restored by bringing amendment in the 1973 Constitution to abolish the concurrent list and part two of the federal list, transfer some key taxation powers to the provinces and direct election to the Senate. These steps are very significant to sustain Pakistan as a federation (Chema & Rashid Ahmad Khan, 2006).

Ahmad observes the constitutional basis of federalism in Pakistan, division of powers, need for bicameral legislature and independence of judiciary. The author concludes that the system of federalism was maintained under the Constitutions of 1956, 1962 and 1973. But the federal schemes under the aforementioned constitutions had inherent flaws concerning both the spirit as well as form of federalism. The Constitution of 1973 provided a formal composition of a federal constitution but this constitution too came short in capturing the federal spirit of its articles (Jaffar Ahmad, 1990). Williams discusses framing of the constitution, a comparison between 1947 and 1971, the
challenge of Pakistan and social reforms and steps taken towards Centre-Province harmony after separation of East Pakistan. The author asserts that the federal government is not satisfied with promoting good relations with the provinces on administrative and official levels. The federal government apprehends the magnitude of educating the people themselves in the ideology of their country and in the absolute need to safeguard its harmony (Williams, 1975).

Salamat describes political parties, role of bureaucracy and search for a constitution. The author is of the opinion that the provinces were controlled through the strong measures during the early years of Pakistan. Unfortunately, this practice was continued when the need was over (Salamat, 1992). Ahmad remarks that Pakistan’s political life is a story of ups and downs. Bringing change to the fundamentals of federalism would not be an easy task. The provincial autonomy is still an unsolved issue. The main reason of instability is the Centre-Province conflict (Mushtaq Ahmad, 2001).

Mahmood argues that decentralization plays significant role in solving problems of different types. Through the local government, many countries of the world have empowered people. According to subsidiary principle, the appropriate decision-making should be made at the lowest level. In Pakistan, decentralization of power can solve governance problems (Sohail Mahmood, 2001).

Khan critically examines military government of General Pervaiz Musharraf’s venture to introduce political reforms from October 1999 to October 2002. To attain the political objectives, Musharraf has followed his military predecessors in bringing changes in the political system. The author concludes that military rulers in Pakistan desired to attain two objectives through the introduction of political reforms; “first, not to permit ejected political rivals to return back through impartial elections and second, to retain ascendancy in a civilian set-up” (Rashid Ahmad Khan, 2004).
Asghar Khan examines that influential bureaucracy and centralization of powers can be seen in the countries of Asia and Africa that got independence from colonial rule. In Pakistan, democracy could not flourish. The best way of devolution of power is devolving power from the Centre to the provinces and from provinces to the districts. To empower the people, the allocation of development funds must be given to districts rather than the members of the National Assembly and the Provincial Assemblies (Asghar Khan, 2005). Oquist reviews that power delegation facilitates enhancing the worth and efficiency of governance. It is a worldwide tendency (Oquist, 2006).

Ali discusses federalism and provincial autonomy and the concurrent list, (NFC) Award and experiences of federalism in different states. The 7th NFC Award was unanimously agreed to. A new multi-criteria system has been introduced in distribution of financial resources (Ali, 2010). The author remarks that we must architect a “National Resource Accord”, in the same cooperative and collaborative spirit which has enabled the federation to achieve consensus in the aforementioned area (Ali, 2010). Mehrunnisa talks about concept and genesis of federalism system, federalism in Pakistan under the Constitutions of 1956, 1962 and 1973. The author concludes that federation did not, or rather was not allowed to function smoothly. The need is to provide and create those conditions which are conducive and essential for its successful operation (Mehrunnisa Ali, 1996).

Rabbani, the Chairman PCCR has written a book entitled “Federalism: A Biography of Pakistani Federalism: Unity in Diversity”. The author discusses federalism in Pakistan in historical perspective, the 18th and 19th amendments in the 1973 Constitution. He remarks that the 18th Constitutional Amendment ensures delegation of powers to their real custodians. We must reject the thinking that a strong Centre is the assurance of a vigorous Pakistan. We will ensure a secure federation by strengthening the
The passage of federalism in Pakistan requires a paradigm shift (Rabbani, 2012).

I. IV Significance of the Study

Federalism in Pakistan has so far been examined from different angles. The conduction of this kind of research can be justified on a number of grounds. During the military Government of Musharaf, 17th Amendment in the 1973 Constitution was passed. An effort was made to centralize powers in the hands of the President. After the general elections of 2008, the PPP Government decided to overhaul the 1973 Constitution. So the 18th Amendment was unanimously passed by the both Houses of the Parliament. The important changes which have been brought through the 18th Amendment include revival of the spirit of the parliamentary system, enhancement in the quantum of provincial autonomy, introduction of new mechanism for appointment of Judges of the Superior Courts, Election Commission, interim-government, and abolishment of the Concurrent Legislative List (CLL).

Another important step was taken in the shape of implementation of the 7th NFC Award. So the issues of federalism under the 18th and the 20th Amendments have been examined in great detail. In past, the power of the central government to legislate included in the CLL was rationalized. Previously, the CLL had 47 items (Hamid Khan, 2001). The circumstances that eventually led to the abolishment of the CLL have been examined. The study is based on a detailed analysis of the 18th and the 20th Amendments. Under the 18th Amendment, seventeen ministries had been devolved to the provinces. The main issue is implementation of the aforesaid amendments. Implementation of the 18th and the 20th Amendments has also be examined. This issue of
federalism was very significant and therefore required a comprehensive study. Hopefully this study will add to the existing body of knowledge on the subject.

I.V Objectives of the Study

Followings are the main objectives of the study;

1. To examine the need for 18th and 20th Constitutional Amendments.

2. To examine whether the amendments have achieved their intended objectives.

3. To view the implementation status of the 18th and 20th Amendments.

4. To explain some emerging issues after implementation of the 18th and 20th Amendments.

I.VI Research Questions

The dissertation seeks answers of the following questions:

- Why did the parliament feel the need for amending the constitution?
- What were the motives for introduction of the 18th and 20th Constitutional Amendments and abolishment of the CLL?
- What significant changes were introduced under the 18th and 20th Amendments?
- What is the implementation status of the 18th and 20th Amendments?
- What are the effects of the NFC Award 18th and 20th Amendments?
- What are some emerging issues after implementation of the 18th and 20th Constitutional Amendments?
I.VII Research Methodology

Qualitative research method has been utilized for this study. The study is based on both primary and secondary source material. The primary source materials include; government documents, handouts, Constitution of 1973, text of the 18th and 20th Constitutional Amendments, text of the NFC Award and other official documents and statements. The secondary sources include books, research journals, periodicals, reports, encyclopedias, newspapers and internet material. Both primary and secondary source material has been used in the dissertation to understand the whole extent of the 18th and 20th Constitutional Amendments.

I.VIII Organization of the Study

The present research explored major issues of the 18th and 20th Amendments. One hundred and two Articles of the 1973 Constitution were addressed under the 18th Amendment. The parliamentary spirit of the 1973 Constitution has been restored. The CLL has been abolished. Seventeen Federal Ministries have been devolved to the Provinces. An attempt has been made to make analysis of the implementation of the 18th Amendment. The present research covers the period from 2010 to 2014.

The research consists of five chapters. Statement of the problem, significance of the study, main research questions, theoretical framework, research methodology and review of literature has been discussed in the introduction. The first chapter deals with the theoretical framework. In the second chapter, an effort has been made to discuss the historical background of federalism (1947-1971) in Pakistan. A detailed discussion has been made on the issues of federalism under the 1973 Constitution in chapter three. The fourth chapter explains politics of the 18th and 20th Amendments. An overall view and
major issues of the 18th Amendment and 20th Amendments have been discussed. In chapter five, the implementation issues after passage of the 18th and 20th Amendments have been discussed and conclusion has been drawn at the end.
Chapter 1

THEORITICAL FRAMEWORK

Lijphart argues that the system’s role structure must be directly examined. The tenet of majority rule is violated by consociational democracy but it does not differ too much from normative democratic theory. The government by elites designed to turn a democracy with a fragmented political culture into a steady democracy is defined as consociational democracy (Lijphart, 2008).

There is no fixed method to establish a federation. The system of federalism has variations. It is a fact that federal states have some common features. But every federal state is unique. It is not appropriate to call any federation as an ideal. The nature of federalism in any state may vary over time. Pakistan was a federal state according to the Constitution of 1956 with parliamentary democracy. Although the status of a federal state was maintained in the 1962 Constitution yet the presidential system was introduced instead of the parliamentary system. Both the Constitutions retained unicameral legislature. In contrast, the 1973 Constitution maintains bicameral legislature. The 18th amendment brought significant changes in the nature of federalism in Pakistan.

1.1 Unitary System

In a unitary state, there exists only one unit of the national government. The national government is the supreme body. It can establish sub-national units for its own assistance. However, it can easily abolish sub-national units. In contrast, the central government in a federal state cannot do so. In a federal state, there is a proper mechanism for the establishment, demarcation and creation of new units. The difference between the federal and the unitary states can best be judged through the nature of relationship between the central government and the regional governments. In a federal state, the
differences between the central government and the governments of the component units are resolved by the supreme court of the country. The powers and functions of both the governments are explained in the constitution. Devolution of power in a unitary state is ensured by the establishment of local governments. The examples of unitary state are Italy, Japan, Iran, Bangladesh, England etc.

1.2 Similarities in Characteristics of the Federal States

The historical background, political situation and social environment play essential role in designing the structures of any federal state (Nazir, 2012). The variations can be seen in different federations. Federal states can implement presidential or parliamentary system. Bicameral legislature at the Centre is considered vital for a federal state. Unlike Pakistan exercised unicameral legislature according to the constitutions of 1956 and 1962. Followings are some similarities in characteristics of the federal states.

1.2.1 Distribution of Powers

There is a distribution of powers between the central authority and the regional authorities. Unanimity is achieved on the crucial issues of the distribution of powers. There is no world-wide accepted formula. In a federal state, the internal pressures and political situation play important role in this regard. The distribution of powers is not an unchangeable item. The amendments can also be made. There was a concurrent list in the 1973 Constitution of Pakistan prior to 18th Amendment scenario. But the smaller provinces started demanding the abolishment of the concurrent list. As a result, the concurrent list was eliminated in the 18th Amendment. There are some matters like defense and foreign relations that are always run by the central authority in a federal state. The items are mentioned in the legislative lists. The residual powers can be assigned to the central authority or the regional authorities.
1.2.2 Independence of Judiciary

Judiciary plays a very important role in any type of the state, unitary or federal. However, the role of judiciary extends as it has to interpret the constitution in a federal state. It also makes judgments on disputes between the central government and the governments of the component units. Judiciary must be free from the influence of the executive or the legislature. There are different procedures for the appointment of the judges of the higher courts in different states. The supreme courts can also be given powers of the judicial review. The American Supreme Court can reject any law, passed by the Congress if it considers that law is against the basic law of the land.

1.2.3 Two Sets of Government

In a federation, there are two sets of government, one at the national (federal) level and the other at the provincial (component units) level. Both levels of government work within their limits. They also perform their powers and functions in a collaborative atmosphere. The names and number of component units vary. There are different terms used for the component units like states, provinces, regions, cantons, entities and republics. The number of component units depends on the size and population of a federal state. There are at least two component units in a federal state. The federal state may increase or decrease the number of the component units according to the situation. The mechanism for the establishment of the new component units is explained in the constitution.

1.2.4 Written Constitution

The British unwritten constitution is successful because of its unitary nature. In contrast, every federal state maintains a written constitution. At the same time, different governments function at central and regional levels. There are also chances of dispute between these two levels of government. The distribution of functions is explained in the
constitution. Any authority can take the matter to the highest court if it has some reservations against the other. The constitution is an esteemed document. It cannot be changed so easily in a federal state. The method to amend the constitution is also mentioned within the constitution. There are different procedures to amend the constitution. In different federal states, only the central legislature (for example Pakistan) can amend the constitution. In some federal states, (for example the USA) component units also participate in making amendments in the constitution. There is a difference between law-making and constitutional amendment. Generally the mechanism for making an amendment is difficult as compared to law-making. One of the main reasons of difficulty in amendment procedure in the US Constitution is its federal nature.

The American constitution of 1787 was enforced with the idea of a powerful center as compared to the Articles of Confederation. On the other hand the German constitution of 1949 had more decentralization provisions than that of Hitler’s Third Reich. Anarchism was not the goal in the German case and absolutism also was not the idea in the American case (King, 1982). As a political concept of balance, two major shortcomings, lack of organization and lack of stability can be traced in federalism. As a theory it talks about more devolution or more centralism. Practically the results are usually either good or bad (King, 1982). Many people are influenced by decentralist federalism due to its suggestive nature even it does not accept its principles. Kropotkin termed centralism and authority ‘evil”. He wanted social control through less possible using of the physical force. There must be distinction between absolute liberty and use of force. Kropotkin proposed three fundamental methods of maintaining social control; first unlikeable force, second unproductive preaching and moralizing, and third a very significant practice and an example of mutual aid (King, 1982).
The decentralist federalism and the powers of regional groups which it stimulates are occasionally advocated because such autonomy is wanted in itself. The core issue with local autonomy is that it obviously jeopardizes the safeties and rights of other sections (being fewer in number). Ensuring the safeguard to rights of local community may imperil rights of the minority of that area (King, 1982).

1.3 Federalism is Debatable

The term federalism is blurred and debatable because there is no consensus of the specialists in the field on any accepted theory of federalism. Generally it is defined as a method of unifying the component units for their mutual interests and ensuring decentralization of authority. Apart from differences among themselves, the experts agree on two fundamental principles. Firstly in a federation, the concept of the establishment of a solitary federal nation is accomplished. Secondly powers and functions are divided between two levels of authorities (Duchacek, 1987). The federal process that arises from below is a result of a compromise between the regional units. Certain aims are accomplished through establishment of a federation. It is important to note that a federation is not an end in itself. In contrast, it is a means to achieve the following aims:

1. Safeguard against any type of military adventure is attained.
2. Financial benefits might be achieved. But it cannot be understood as the only factor for establishment of a federation (Duchacek, 1987). According to Wiliam H. Riker federalism should not be established only on territorial links or ethnic amalgams but some profound passions also (Riker, 1964).
3. The process of federalism helps to uphold national harmony.
4. Component units handover their armed and diplomatic resources to a joint body and in return get interior safety (Duchacek, 1987).
1. 4 Ten Yardsticks of Federalism

Ivo D. Duchacek designed ten yardsticks of federalism to test states that declared or thought to be federal.

1.5.1 One: Comprehensive Control over Foreign Policy

An important purpose of the federal process is to concentrate on the establishment of a federal state, a sovereign and distinctive entity as compared to other states. A federal state having the mandate of the federating units with a single policy participates in international affairs. It is too difficult in a league or an alliance of the states. An alliance cannot be converted into a federation except the basic units do not make consensus to this rudimentary view. The East African countries Tanzania, Kenya and Uganda made an attempt to amalgamate into one federation. This endeavor failed because Uganda wanted to design its own foreign policy individually. The central government of Switzerland has the right to sign treaties, to join alliances and to declare war and peace with other sovereign states according to the 1848 Constitution. The Article 1, section 10 of the USA Constitution does not allow any state to enter into any Confederation, Treaty or Alliance. There is a common practice in many federal states that defense and foreign matters are solely handled by federal government. The basic purpose of discussing the first yardstick “Comprehensive control over foreign policy” is not to make a difference between unitary and federal state but to draw a line between an alliance or league of states and a federation. In the league of states or an alliance, the states have complete power over the foreign policy and defense ((Duchacek, 1987).

1.4.2 Two: Surrender of Sovereignty to the Federation

The establishment of a federation is impossible till the desire for formation of a common government is not arisen in the mind of people to protect their mutual interests. Constitutions of some states assert that federation is everlasting. In this case, federating
units are not allowed to get separation. There is no obvious interdiction of separation in the US Constitution. The first sentence of the Preamble accentuates a “more perfect Union.” There could be suspicion about right of self-determination of federating units during the first 70 years. The question whether a federating unit has a right in the constitution to get separation from the union was solved because of the Civil War. The Supreme Court in its ruling stated ‘ours is an indestructible union of indestructible states.’ In contrast, the Constitutions of Burma, Soviet Union and Yugoslavia acknowledged the right of separation and regional self-determination. It is explicable that practically no authority, unitary or federal, likes to allow separation to its area (Duchacek, 1987).

1.4.3 Three: Independent Role of the Centre

Powers and functions are distributed between central government and governments of the federating units in a federation. Both the governments perform their functions independently. The element of coordination can also be seen in their working relationship. Each government should be given independent domain to ensure division of the authority. If central government is relied on the federating units in every matter of finance and political, then the framework may be called as a confederation or an alliance. Fiscal matters are very significant. The federal government is authorized by the constitution to impose direct taxes and federal laws. It is the proof that dwellers of a federal state are federal citizens in addition to their component units’ citizenship. The federal government must be in position to fulfil its financial requirements to perform functions regarding foreign affairs, defense and welfare etc. The developing countries that have adopted federal system sometimes include certain provision in their constitutions to establish a mutual fund. The backward zones are given certain grants-in-aid from mutual fund. The Indian Constitution has such provisions in its Articles 266 and 268. Pakistan’s interim constitution also had such type of provisions regarding provincial
mass media. The central authority also relies on component units in indirect elections of one house of the central legislature. This method was in practice in the US Senate election. In 1913 the Seventeenth Amendment changed the method by introducing direct elections for the Senate. State Legislative Assemblies elect Indian members of the Council of the State. There are some other examples of indirect elections (Duchacek, 1987).

1.4.4 Four: The Federal Constitutions and Amendments

Majority of the political scientists agree that it is the best dependable standard of federalism when the manuscript of constitution is examined. If federating units have comprehensive control over constitutional amendments, it is understood that the system is not transformed from association of states to a new federal system. If approval of each component unit is inevitable for every amendment in the constitution then establishment of a supra-territorial authority is not possible. In contrast, if central legislature has power to amend the constitution on majority basis, it will be difficult to differentiate the procedure of amendment from unitary system. The Soviet central legislature can make any amendment by two-third majority of both the houses. In some countries the regional units only have the role to play in amendment process of the constitution if the matter is related to distribution of powers. Pakistan and India adopt this method. The Congress in the US can make amendments in the constitution if consent of three fourth of the states is attained. The constitution in a federal state acknowledges two separate authorities at national and regional levels. It also expounds duties and functions of both the governments (Duchacek, 1987).

1.4.5 Five: Indestructible Autonomy of Units

Nothing is stagnant in the sphere of politics. The word ‘indestructible’ is very absolute in this domain. We can compare political institutions with human beings.
Political institutions are established; they get maturity, success and sometimes tragic end. The appropriate words like longevity and eternity might be used instead of indestructibility. In a unitary system, local-self-rule is always ensured. There are two main causes; due to overload of functions, improve competency of the national authority and to assure esteem for local population. The provisions of constitutions of different unitary states encourage local autonomy by encouraging local taxation, legislation and executive powers. It is important that the unitary principle is maintained. Italy has set up regions, having official autonomous organs, taxing and fiscal powers. People’s Republic of China maintains a unitary constitution but ensures regional autonomy. It is a common practice that constituent units are drafted in the constitution of a federal state. Pakistan has also followed this suit. The names of founder states were not included in the US constitution. The delegates of the states were not sure that all would agree on their draft. As a result the words of the Preamble are “we the people” despite names of the component units. Only at the end of the last article, the names of 12 of the original states (Rhode Island state was not present) are written to mention the names of the delegates to demonstrate the states they had represented in Philadelphia (Duchacek, 1987).

All federal states do not show a compact between regions knowing their authority and identity. Very few have moved from a confederation or an alliance into a federal nation-state. Switzerland is a typical example of evolutionary process towards a federal state. There is an utmost need in a federal system to devise a mechanism in the constitution for the purpose of separation of prevailing component units, inside area changes and reorganization. In such type of constitutional arrangement, the standard of indestructibility appears to be fulfilled through ban on any transformation or elimination of local character without approval of the particular component unit. In a federal scheme, if the constitution permits establishment of new units or rearranging of present ones
without any difficulty especially without consensus of the concerning unit, such a system is sometimes termed as administrative federalism. On the other hand, in a federal bargain, different regions join into new mutual grouping while retaining their own distinctive personality. West Germany was a typical model of administrative federalism (Duchacek, 1987).

1.4.6 Six: The Issue of Residuary Powers

To secure a real federation from any breakdown, some powers and functions must be assigned to the central government. Similarly the governments of the component units should also have a handsome share in such responsibilities. It is more essential than allocation of residual powers to any tier of government (Wheare, 1964). Generally division of powers and functions between the component units and the federal government are not on the basis of fifty- fifty ratio. Some of the significant matters like war, taxation powers and defense are given to the central authority. It can be said that by definition the federal system always favors the central authority (Duchacek, 1987).

According to the 10th Amendment in the American Constitution, the powers are reserved to the people or to the states respectively. Some people in the US are of the opinion that the above mentioned mechanism is necessary to secure the federalism from centralization. Different types of constitutional provisions can be seen in the modern federal states. The powers given to the component units are listed and rest are reserved for the centre. Burma, Pakistan and India have extended lists of powers, reserved for the central authority i.e. Union List, some functions and powers are jointly exercised by both the levels Concurrent List, and some powers are exercised at provincial level i. e Union List (Duchacek, 1987).
1.4.7 Seven: The Principle of Geographical Parity among Units

As a result of the Connecticut Compromise,¹ the American statesmen decided to reserve some seats for the lower house on population basis and some for the upper house on parity basis. The American bicameral legislature enjoys factual powers. Both the houses have equal status in the legislative process. In other countries of the world, generally the upper house has ceremonial powers. Unlike a parliamentary system, the American legislature is not creator of the executive branch (the cabinet). The executive is as well not accountable to the legislature. The role of upper house (the Senate) is decisive regarding executive appointments and treaties (Duchacek, 1987).

In federalism, bicameral legislature is established to eradicate the sense of deprivation in smaller federating units. It is difficult to assume whether representatives of the upper house really protect interests of their own state or not, especially in the presence of the political parties. Australia as a federal state has bicameral legislature. Upper house ‘the Senate’ was established to safeguard interests of states (a component unit in Australia is called state). Practically the members of the Senate blindly follow their party directions (Overacker, 1952). Most of the federal states have implemented the principle of parity having inequality between component units like Australia, Switzerland and countries of Latin-America. In contrast, some federal states like India do not follow the principle of equal representation. Bicameral legislature is considered indispensable for a successful federalism. However, sometimes a federal state establishes unicameral legislature like Pakistan (there was unicameral legislature according to constitutions of 1956 and 1962, but bicameral legislature was established in 1973 constitution) and Cameroun (Duchacek, 1987).

In bicameralism, both the houses should have equal powers in legislative as well as political process. Most federal states that have executed British system of cabinet, the
Prime Minister and the Cabinet are answerable to the lower house. It is the lower house that elects and passes the vote of no confidence against the Prime Minister. A federation having fewer component units may adopt proportional representation in the central cabinet. Australia and Canada do this practice (Duchacek, 1987).

1.4.8 Eight: Two Sets of Courts

Apparently two levels of courts take up nominal criteria. Some say that it is so essential in federalism. There are a few states like Brazil, Mexico and the US that have really instituted two parallel systems of courts. The courts at federal levels make judgments according to national laws and courts at regional levels make judgments according to local laws. The US has formed a comprehensive system of courts at federal and state levels. In other federal states, single cohesive structure of courts with diversities can be found. The provincial courts function at provincial level. There is federal court of appeal at upper level. Occasionally an extra federal court is also instituted. There is special federal court of admiralty and exchequer in Canada. In Switzerland, cantons have powers to manage the whole system of judiciary. The courts at canton level adjudicate laws at canton and federal levels (Duchacek, 1987).

In some states, there is a twofold (federal and provincial) system of judiciary. However, actually the state system functions in such type of states. Australia, India, and Pakistan have adopted this system. If a pivotal yardstick of federalism is an established system of judiciary at state and federal levels then the US and to some extent Brazil and Mexico fulfill this requirement (Duchacek, 1987). Herman Finer considered Soviet Union not a federal state. He presents eight standards of a federal state: establishment of a court above component units and the Union; creation of two autonomous sets of court, one for the units and other for the Union; different component units having their own party structure without any intervention; powers to make amendment in the constitution;
foreign policy formulation entirely by the Union; enumerating powers of the centre and residual powers to the units; non-interfering policy in fiscal resources and units having special representation along with veto powers in the upper house of the central legislature (Finer, 1949).

1.4.9 Nine: The Apex Court

There is an utmost need of a neutral judicial entity in all types of systems unitary or federal that can explain national laws. This practice has resulted in the shape of judicial review. According to this principle, the courts have the right to view validity of the laws passed by central or provincial legislatures. The courts can nullify such laws that are against the existing laws of the country. To some extent, a few other countries have tried to espouse the idea of American judicial review. Factually no other country is equal to the American Supreme Court as it has extensive powers (Duchacek, 1987).

The judicial agency has to explain meanings of the constitution. The disputes between the component units and the central authority are also adjudicated by this agency. Hence the neutrality of judicial body is substantial. It should be independent from influence of the federal and provincial governments. Only Switzerland can be considered as an ideal. The judges and citizens of Switzerland can query about validity of the federal laws. Till 1949, there was neutral constitutional agency in Canada Judiciary Committee of the Privy Council. It was situated in London and consisted of law lords of the British House of Lords. It does not exist nowadays. Only the Supreme Court is final court of appeal now. There may be apprehensions about selection of judges at federal level. Its substitution may be constitutional and legislative referendum like in Switzerland. At the end it can be said that the highest court in any state consists of men and men including judges of the highest court have definitely their social and political inclinations (Duchacek, 1987).
1.4.10 Ten: Principle of Distribution of Power

From different definitions of federalism it can be concluded that division of powers between central and provincial authorities is a principal matter. The study of constitution of any federal state illustrates that demarcation of powers and functions between federal government and governments of the component units’ are ambiguous. Sometimes there is intentionally or unintentionally overlap in distribution of powers. Five core issues overlap and cause a sense of confusion in clear demarcation of powers in a federal state: emergency powers of the federal government; domination of the federal government in defense and foreign relations; intentionally or unintentionally dearth of verbal precision; coefficient or elastic articles and the concurrent powers and functions (Duchacek, 1987).

1.4.11 Debatable Results of Testing the Yardsticks of Federalism

To judge a real federalism, ten yardsticks of federalism have been tested. However it is too difficult to reach on any precise definition of real federalism. One lesson has been learnt from this experience that we should not show any rigidity defining federalism as every state has varied conditions. It is not just to say that only American federalism is a real one. It has also been observed that some federal states consciously or unconsciously have adopted an amalgamation of different systems in their constitutions. It is the main reason that different terms are used like; quasi-federal, federal with unitary characteristics, pseudo federal, or unitary system with federal inclinations. Some states proclaim them as a unitary, still they ensure regional autonomy of different groups (Duchacek, 1987).

To some extent, the central authority in a federal state meddles in the regional matters of component units through different means, especially emergency powers. Generally the central authority uses these powers in the name of protection of the
federation from any collapse or protection of the democratic government. To avoid any critical situation, constitution of different federal states empowers reciprocal powers to the central and regional authorities (Duchacek, 1987).

1.5 Institutional Theory

Institutions play vibrant role in shaping the nature of relationship among members of the society. It is essential to look at the institutional change if we desire to perceive evolution of the society (North, 1990). The public institutions are established to work smoothly in all domains of social life. Social collaboration takes place within a framework set up by the institutions (Knight, 1992).

Institutional theory and institutional analysis are not a new entity in political science. Greek philosopher Aristotle in his inquiry depended upon formal features of governing and constitutions. Even after Aristotle, the institutional analysis remained focus of the political scientists. The institutionalism in pre-behavioral or scientific revolution stage in political science was absolutely formal and legalistic. A new mode was introduced to understand the institutions. Now the individual was given priority in research instead of formal structure of institution. The behavioral and the rational choice approaches did not give much importance to formal structures. Institutions are very essential because they influence individual’s action. Old institutionalism rejected the individual’s role. The “new institutionalism” has ignored some characteristics of old institutionalism. It gives much importance to building theory about institutions. The “new institutionalism” emphasizes empirical evidence to test the hypothesis. Some common features can be found in both the old and new approaches. Both do agree that institutions are of primary importance (Guy & Pierre, 2007). There are different varieties of Institutionalism approach. Although there are some differences among these varieties, yet
all the types do agree on the role of institutions as a mode to comprehend political problems (Guy & Pierre, 2007).

1.5.1 Old Institutionalism

The old Institutionalism explored how instruments, practices and customs become institutionalized. It also focused on the nature of relationship between stability and innovation through animated balance. Institutionalists always favored democracy. The old Institutionalism was narrative and historical in its observation (Guy & Pierre, 2007). The citizens of a state were considered as rulers and subjects with certain rights and duties. It was investigated how tenets, rights and ends must be adjusted with institutions as integral parts of political entity. The approach admitted various basic canons as incontrovertible rights. These rights must be safeguarded through constitution and law. Accordingly force is a prerequisite for constitution and law (Guy & Pierre, 2007). Law was used as a methodical discourse, both as system and history. Thus democracy comprised accountability, involvement and law. Democracy is a gradual process. There are some features of democracy like; checks and balances, accountability, sovereignty, constitution etc. The institutionalists included these ingredients in their discussion. We can find them in literature in the work of Harold Laski, Herman Finer, Kenneth Wheare, Woodrow Wilson, Ernest Barker, and Leon Dugit etc. Socialism, liberalism and utilitarianism were inducted within the structure of old institutionalism (Guy & Pierre, 2007).

We can say that old institutionalism chained together minimum correlated key features of politics: affiliation between state and nation; lawmaking, lawmakers and law; the apparatus of sovereignty and magistracy, along with political ideology both as a normative and rational framework discourse. The old institutionalism was an approach with different issues to be addressed, like how to determine policy through mode of law,
designed and enforced efficiently by the state, how to make power answerable and requisite compulsions on both state and citizens. The intuionalists also gave due importance to use of force by police, army, party or government but only within legal limits (Guy & Pierre, 2007).

1.5.2 The New Institutionalism

The New Institutionalism (NI) approach aroused as a response to the behavioral revolution of 1960s which interpreted institutions simply the abstract of individual actions. The basic idea of NI was that institutions do matter (March & J P Olsen, 1984). March and Olsen remarked that there were abundant political, economic and social institutions but the present-day thinkers do not consistently guide us to talk about these institutions. New Institutionalists endeavored to get rid of narrative style of OI with an objective to discover norms of formal and informal institutions which pattern political behavior (Mackay, Kenny, & Chappell, 2011). We can find different kinds of approaches within this paradigm like; historical institutionalism, rational choice institutionalism, sociological or organizational institutionalism and constructivist or discursive institutionalism. Institutional theory can be applied to various political issues due to its different varieties (Mackay, Kenny, & Chappell, 2011).

1.5.3 Historical Institutionalism (HI)

The group theories of politics and structural-functionalism were well known during 1960s and 1970s. Historical Institutionalism (HI) emerged as reaction to these theories. It also gave space to some of the assumptions of group theory and structural-functionalism. The HI acknowledged claim of the group theory that clash among different groups for limited resources is key point of the politics. It also gives due importance to explain in a better style to the national political aftermaths that come out due to the disparities. The HI believed in older credence of political science about
substantiality of formal political institutions and also added that institutions matter and how they matter (Hall, Rosemary & Taylor, 1996).

The HI experts were also inspired by structural functionalism point of view in which they understood state as a comprehensive arrangement of correlating part. They explained institutions as formal or informal processes, standards, conventions and schedules inserted in the structural functioning of the state (Hall, Rosemary & Taylor, 1996).

1.5.4 Rational Choice Institutionalism

The main emphasis of the rational choice perspective is given to micro-level. It is claimed that macro-level political aftermaths need to be apprehended in terms of the strategic conduct of individual actors. Institutions are taken as framework of voluntary cooperation by actors with the purpose to resolve joint action difficulties. Providing maximum benefit to the concerning actors, results in the shape of stability of the institutions. In institutional structures, the oppression, authority, ascendancy and harmonization can be found (Mackay, Kenny, & Chappell, 2011).

Rational Choice Institutionalism (RCI) emerged at the same time as HI but with a separate identity. Basically it was developed from the study of American congressional behavior. Institutions got attraction of the rational choice experts in the late 1970s. It was argued that composition and process of committees of Congress and informations accessible to its members could result in the shape of stable majorities for lawmaking. Joint action problems that are generally faced by lawmakers are resolved by institutions. The worthwhile research techniques of ‘new economic organization’ got attraction by the RCI experts in political science. With the objectives to operation and development of the institutions, the ‘new economic organization’ stresses impact of transactions’ costs,
property rights and rent-seeking. The elucidation in what way rules of Congress influence the behaviour of the lawmakers was main emphasis of RCI (Hall & Taylor, 1996).

In the following years, RCI analysts concentrated also on some other political matters like; the growth of political institutions, the strength of ethnic disputes and cross-national coalition behavior. Diversity in viewpoint can be found within RCI. Following are the four prominent characteristics of this perspective. Firstly, the RCI experts apply a characteristic set of behavioral postulations. They hypothesize that the concerning actors ensure a perpetual set of tastes or priorities. The concerning actors act instrumentally to achieve these priorities. They also ensure extremely deliberated attitude. Secondly, RCI theorists recognize politics as a series of collective action dilemmas. Thirdly, strategic collaboration plays a very crucial function in the determination of political upshots. It is perceived that strategic calculus regulates behavior of an individual actor. While clarifying in what way institutions determine individual actions, RCI experts take a classic ‘calculus approach’. Fourthly, RCI thinkers have advanced a unique approach to expound the question of how institutions are initiated. The procedure of establishment of institution circles around voluntary contract by the correlated actors (Hall & Taylor, 1996).

1.5.5 Sociological Institutionalism

The formation of set of theories by the experts of sociological institutionalism attracted many analysts of political science. The sociological institutionalism emerged from the sub branch of organization theory. It was originated at the end of 1970s. The specialists of this theory stressed that the bureaucratic practices must be expounded in cultural perspective. They also give much importance to resemblance in organizational forms and practices that firms demonstrate round the globe despite different kinds of
Sociological institutionalism is different from other three ‘new institutionalisms’ due to its three characteristics. Firstly, the specialists of sociological institutionalism explicate institutions in a larger perspective as compared to political experts. They discuss not only recognized procedures, guidelines and norms but also the moral pattern and symbol systems that impact individual actions. Secondly, the new institutionalists in sociology adopt a unique methodology in respect to relationship between institutions and individual actions. They follow the cultural approach but with some distinctive features. The stress is given to the way in which institutions affect behaviour. The institutions not only explain what one should do but also describe what one can think himself in any circumstances (Guy & Pierre, 2007).

The relationship of individual and institution is developed in the mechanism of ‘practical reasoning’. Thirdly, the new institutionalists in sociology espouse a distinctive viewpoint to give the answer of how institutional practices initiate and alter. They are of the view that one of the important causes of implementation of novel institutional practice is that it increases the social acceptability of the organization (Guy & Pierre, 2007).

The discipline of political science has to deal with three new institutionalisms as discussed above. The reciprocation among them is vital. It will lead them towards resolution of the problems within their own pattern. The sharing of ideas should be done at a maximum scale. It is a fact that each school proves unique and authentic aspects of individual’s behavior. It cannot be declared false. There are some mutual investigative foundations on which the views of one school of thought can be applied to reinforce
those of another. It is a fact that we can acquire knowledge from all types of new institutionalisms and all can get advantage from each other (Guy & Pierre, 2007).

1.6 The Liberal School of Thought

The authors like A. Spinelli, D. L. Elazar, K. C. Wheare and M. Burgees belong to the liberal school of thought. Wheare remarks that a federation can be created if there is a wish to “be under a single independent government for some purposes at any rate”. There must be a sentiment to be united. There must also be an aspiration of having governments of the federating units’. These governments should be assigned some responsibilities. Communities have created federations due to different objectives. It is significant that some of the vital objectives can always be found in the modern federations. These include; a feeling of military insecurity and the purpose of joint defence, a purpose to maintain independence, an aspiration to get economic advantage from the federation, common approach for the political institutions and geographical proximity. These factors played an important role in creation of federations like Australia, Canada, Switzerland and United States. However, role of the each factor varied in each case (Wheare, 1964).

According to Wheare, the aforementioned factors cannot create a federation by themselves. Role of the elite which takes responsibility of the leadership becomes important in this concern. The leadership, having negotiation and propaganda skill, can pave way towards formation of a union (Wheare, 1964). Burgees and Elazar are of the opinion that moral values play key role in formation of a federation. Elazar remarks that people must enter to a new covenant to create a union whose character is of a higher degree. People who believe in social justice and mutual respect show their willingness to enter to the moral order (Elazar, 1998).
Burgees called the act of entering to a union, “a political bargain”. The highest moral values like respect for each other, cooperative sentiments, responsibility and mutual recognition are of great importance for creation of a federation. Burgees remarked that Roman Catholic influence was found in the European Federalist thought. Some of the European Union (EU) founding fathers like Alcide de Gaspari, Konard and Robert Schuman used Catholic ideas (Dosenrode, 2010). William H. Riker criticized liberal theory of federalism’s inclination towards moral values. He takes it as unscientific (Dosenrode, 2010).

1.7 The Realist Theory

David Mckay and Riker belong to the realist theory of federalism. Riker is of the opinion that federalism has the capacity to tackle the problem of enlarging governments. He says that due to every new innovation in the means of transportation, it is possible to rule a larger area from one center, to gather a big army and to maintain a larger police and bureaucracy. When one state does so, the neighboring and the competing states also prepare themselves to maintain their territory. In a federation, there is a space to maintain political self-control and to utilize resources of the larger units (Riker, 1964).

Riker uses the term “the federal bargain” for integration of the unit. This bargain is based on voluntary principle. He mentions that due to two reasons the political leadership is involved in federal bargain. First, due to some external military threat, politicians accept the bargain by giving up some independence for the sake of the federation. Second, the politicians offer the bargain with a desire to expand peacefully the geographical boundaries due to the military threat or with the objective of diplomatic or military aggression. Those who offer the bargain, consider that through federalism, they can make possible the expansion in a peaceful manner (Riker, 1964).
1.8 Dual Federalism

Dual sovereignty is the fundamental characteristic of dual federalism. Under the Constitution, exclusive powers are divided into two spheres. The federal government and governments of the federating units function independently within their own domain and they are co-equals (Schutze, 2009). Grodzins first used the term ‘layer-cake federalism’ and ‘marble-cake federalism’. He used the metaphor, ‘layer-cake federalism’ to explain dual federalism. The federal government and the federating units’ government exercise powers in their own spheres like separated layers of the cake. Opposite to dual federalism, he calls marble-cake federalism if the federal government and the units’ government exercise concurrent and overlapping powers and functions. Political scientists are of the opinion that there was a turning point in the nature of American federalism during the Presidency of Franklin Roosevelt. In 1937, the Supreme Court declared the New Deal policies constitutional and dual federalism ended. To tackle the Great Depression, there was an overlap in the powers and functions of the states and the federal government. Due to critical circumstances, the federal government and the state governments functioned in a very close manner as compared to the past. The idea of dual federalism ended and the United States moved towards cooperative federalism.

1.9 Co-operative Federalism

Scholars such as Daniel J. Elazar, Jane Perry Clark and Morton Grodzins rejected dual federalism. In 1938, Clark used the term cooperative federalism for the first time. In the early 1960s, the federal government of the United States decided to introduce structural and social reforms and the concept got much importance. Some other federal states such as Australia, Canada, Germany, India and Switzerland also started to use the term cooperative federalism in the 1960s (Frenkel, 2007). Both parts of federalism (participation and autonomy) are influenced by cooperative federalism. As a magical
formula, cooperative federalism is found for each and any kind of relationship. Generally, the administrations and the executives are the cooperating partners. There are two main reasons; their sizes are small and also they are specialized, which enable them to negotiate. The legislatures and the citizens are not very often involved. Influence of the cooperative federalism can be traced in the autonomy of the units and assigning of the powers and functions (Frenkel, 2007).

Cooperative federalism having the characteristic of pragmatic technique, can flexibly achieve its objectives. The essence of the cooperative federalism is joint functions of the central government and the federating units’ governments. Instead of complete independence, there is manifestation of shifting power relationship. The federal government cannot intervene in the provincial matters through extra-constitutional manners. Generally the federal law has supremacy over state law. The collaborative attitude of the federating units can save them from further absolute centralization. Cooperative federalism emphasizes on cooperative institutions and cooperation in intergovernmental relationship (Frenkel, 2007). Philip J. Weiser defines Cooperative federalism as “Opposite to dual federalism, cooperative federalism manifests a sharing of regulatory authority between the federal government and the units’ governments. It permits states to function within a framework drawn by the federal law.” (Young, 2013).

The old federal states such as Australia, Canada and the United States made adequate changes in the functioning of federalism since the First World War. The aforementioned states introduced changes in their constitutions to give space to some extra-Constitutional mechanisms. The basic purpose was to enhance administrative cooperation between governments, the purchase of federal monopoly of the taxation of incomes and the coordination of state policies through conditional grants from the central government. States such as India, Malaysia, Pakistan (till 1958) and West Indies also
followed the above path. Thus the basic idea of classic Federalism remained only in theory. A new phase of federalism started in which it was not possible for federal government and state governments to function in complete isolation (Pal, 1985).

According to the idea of cooperative federalism, the federal government and governments of the units function as partners with the objective of service of the common citizens. The federal government and the units’ governments are not taken as rivals against each other. Different functions are performed jointly by the federal government and the units’ governments (Pal, 1985).

There are three main elements that promote cooperative federalism. First, it took birth to solve problems which emerged due to competitive nature of classic federalism. In other words, cooperative federalism was an alternative to classic federalism. In federalism, competition of power can be seen. In larger context of the public welfare, the power competition tendency, which is found in a federal state, must be wisely regulated. Second, According to M. P. Jain, there are three reasons responsible for emergence of cooperative federalism: (i) faster means of communications due to technological advancement; (ii) emergence of the idea of a social welfare state; (iii) danger of war, when the question of survival supersedes the idea of division of powers. Third, financial aid is the most crucial reason for emergence of cooperative federalism. The units need finance to spend on citizens’ welfare. The federal government is in a position to provide money to the federating units. There are also other factors that are also responsible for promotion of cooperative federalism such as hydro-electric projects, conservation of natural resources and control of floods etc (Pal, 1985).

Classic federalism goes for rigid relationship between the governments. In contrast, cooperative federalism works in a dynamic style. According to the American scholars who used the term ‘cooperative federalism’, cooperation among governments
can be found in terms of fiscal, political and administrative. According to the theory of cooperative federalism, the federal government and units’ governments work in a cooperative manner. In practice, however, there must be superiority of the federal government. In this way, the national standards can be maintained in cooperation between the two levels of government. Otherwise, there will be a cooperation of state (federating unit)-local standards which may be below those of the national standards (Pal, 1985). The theory of cooperative federalism provided the most convincing explanation of this thesis. Therefore the theory of cooperative federalism constitutes the theoretical framework of this thesis.
Chapter 2

HISTORICAL BACKGROUND

Constitution is the basic law of any state and is also an expression of the thinking and aspiration of the nation. Constitution is a proof of the freedom of a nation and protects the basic rights of the citizens. Constitution also explains functions and the nature of relationship that subsists between institutions of the state. The constitutional development in Pakistan from 1947 to Ayub era has been discussed in this chapter.

2.1 Federalism under Interim Constitution

According to the 3rd June 1947 Plan, the British Government put responsibility of framing the constitution on Constituent Assembly (CA). When Pakistan came into being on August 1947, the Government of India Act 1935 was implemented as interim constitution. It remained state’s interim constitution with certain amendments till 1956. The second CA approved the first constitution of Pakistan.

The fundamental character of federalism in 1935 Act was also maintained in interim constitution (Hodson, 1985). Karachi was declared as capital of Pakistan. The federation comprised the provinces of East Bengal, Balochistan, North West Frontier Province (NWFP), Sindh, West Punjab, princely states and other territories that wanted to join with approval of the federal government (Mehrunnisa Ali, 1996). The 1935 Act was demonstration of centralization of power. The reason behind centralization of power was the colonial status of India.

2.1.1 Dominant Role of the Centre

The amendments that were made in 1935 Act indicated ambition of the centre to increase its powers. In the early years 1947-56 no serious effort had been made to ensure autonomy of the provinces (Callard, 1957). The system of federalism in the interim
constitution was highly centralized. The centre had overriding position over the provinces in legislative, financial and administrative affairs. It was quite difficult to call Pakistan really a federal state (Mehrunnisa Ali, 1996).

According to the 1935 Act, legislative powers were divided into three lists; concurrent, provincial and federal. Supremacy was given to the federal government in the concurrent list (Mehrunnisa Ali, 1996). The concurrent list contained 36 subjects. Both provincial as well as central legislatures could pass laws on the subjects included in the concurrent list. In case of a dispute, the federal legislature could reverse the provincial law. Under section 102 of the interim constitution if emergency had been declared, the federal legislature could pass laws included in the provincial subjects. On request of two or more provincial governments, the federal legislature also had the right to make laws included in the provincial subjects. The provincial legislatures had fewer powers even over the provincial subjects. Some provincial functions like; regulations of mines, mineral development, oilfields and development of industries were controlled by the centre. The federal legislature had the right to make laws on these subjects if it was considered utmost in the national interest. The provincial governments were given the right to legislate on 54 subjects. The subjects included in the federal list were 59. The central government had full control over these subjects. Similarly domination of the central government over 28 industries including cotton and jute was ascertained by the development of industries (Federal Control) Act X111 1949 (Nazir, 2008).

2.1.2 Role of the Governor General

The 1935 Act was not executed in full extent. The federation of India which was mentioned under section 5 of the Act was never implemented. Thus practically the Indian central government worked under the 1919 Act till 1947 (Kundi & Jahangir, 2002). The 1935 Act assigned extensive powers to the Governor General. An important characteristic
of the Act was the allocation of residuary powers in the hands of Governor General. Both the federal legislature and the provincial legislature did not enjoy residual powers. The government functions under the 1935 Act were divided into three lists; the concurrent list, federal list and the provincial list. The Governor General had the power to ask either the provincial legislature or the federal legislature to pass a law on a subject which was not included in any of the three lists. The mechanism of division of powers ensured centralization of powers (Kundi & Jahangir, 2002).

The Governor General still had a very strong position in Pakistan under interim constitution. The tendency of centralization of powers was ensured soon after getting independence from the British rule. The newly born Pakistan started making endeavours to resolve its initial problems. So it was requirement of that time to make a strong central government. But there was no justification to carry on the process of centralization when Pakistan had to cope with these issues. The centre kept the control of administrative, fiscal and legislature affairs in its own hands (Shah, 1994).

The section 92 of the interim constitution was also amended. The Governor General could impose emergency in case of war, internal disturbance, security problem, any mass movement, or bad economic condition. After declaration of emergency by the Governor General, the federal assembly could pass laws for a province with regard to any matter not included in the 7th schedule (Nazir, 2008). On July 16, 1948 the Governor General issued an order to insert section 92-A in the interim constitution.

The centre increased its control over provincial administration through section 92-A. The Governor General had the power to declare emergency in a province. The Governor General had superiority over provincial government in respect to declaration of emergency (Nazir, 2008). The provinces were put on mercy of the centre. The centre could dismiss any provincial government during emergency. The failure of provincial
government to act upon the Act could also become reason of declaration of the emergency. The centre used this power on number of occasions against the provinces during early years of Pakistan. The provincial governments of Sindh (1951), East Bengal (1954) and Punjab (1953) were dismissed and central authority was established (Chaudhury, 1969).

2.1.3 Role of the Centre in Administrative Affairs

A strong Centre was established under the Act of 1935. The system of federalism that was designed soon after partition in Pakistan an also promoted centralization. The changes that were brought about in the Act of 1935 also enhanced powers of the Centre. The Governor General could make amendment in the interim constitution till 1949. After that the federal legislature could modify constitution by an act of constitution. The Centre used provincial governors as a tool to control the provinces.

The provincial Governor was appointed by the Governor General. He could hold his office till wish of the Governor General. In any situation, the provincial Governor had to comply with orders of the Governor General. The provincial governors always gave priority to the instructions of the Centre. He was not answerable to the provincial assembly or the provincial cabinet. Under section 51 of the constitution the provincial governor had to act as agent of the Governor General in his relations with the provincial cabinet. The section 51 laid down “In selecting and summoning and removal from office of the ministers, governor will be under the general control of and must obey to guidelines given by the Governor General” (Nazir, 2008).

The Centre played a very important role in dismissing the provincial ministries. When a provincial ministry was dismissed, the centre tried to impose a person of its own choice who was not even member of the provincial assembly. Sardar Abdur Rashid who was Inspector General Police in (NWFP) was appointed as Chief Minister in 1953.
Another decision was made in the same year through the appointment of Feroz Khan Noon as Chief Minister of Punjab who was governor of East Bengal (Mehrunnisa Ali, 1996). The Centre also used section 51 (5) of the interim constitution twice. In 1948, the governor of (NWFP) dismissed ministry of Khan Saheb on instructions of the Quaid-e-Azam. Dr. Khan Saheb was the Chief Minister of NWFP during partition of India. The NWFP became part of Pakistan through referendum by majority vote. The demand was made by the leadership of the Muslim League to get rid of the Congress ministry of Dr. Khan Saheb. The ministry of M. A. Khuhrui in the Sindh province was also dismissed in 1948 as the ministry was accused of official misconduct (Mehrunnisa Ali, 1996).

The Muslims of the sub-continent got independence under the flag of the Muslim League. After independence the League still had a very strong position. The Muslim League played dominant role in the centre and the provinces. The founder party of Pakistan faced its first defeat in provincial elections of East Bengal in 1954. The centralized structure of the Muslim League played crucial role towards growth of federal powers. Liaquat Ali Khan and Khawaja Nazimuddin were also presidents of the Muslim League even after holding the office of the Prime Minister. The Muslim League was ruling party at the centre and provincial levels. It was not difficult for the Muslim League to intervene in the provincial affairs (Mehrunnisa Ali, 1996). The central government was responsible for instability in the provinces. Section 92-A was boldly used to suspend the constitution and dismissal of the provincial governments. The Centre was in a position to take direct control of the province (Salamat, 1992).

In 1949, during Liaquat era Public and Representative Disqualification Act (PRODA) was implemented to control the provincial politicians. PRODA was used as a political instrument by the Centre to put pressure on provincial politicians. Although maintenance of law and order was a provincial subject yet the centre could control
situation through civil servants. The Act made sure party discipline and minimized the threats to the central government (Ziring, 1997). The courts or judicial tribunals could start proceeding after receiving a reference by the Governor General and provincial governors. From 1949-1954 seven such references were sent to judicial tribunals. In four cases 4 provincial ministers were disqualified (Mehrunnisa Ali, 1996). Through PRODA, Liaquat Ali Khan wanted to keep away undesirable politicians from political sphere. The Act was used by the Governor General Ghulam Muhammad for his own personal objectives (Ziring, 1997).

Liaquat Ali Khan inspired the Governor General Nazimuddin to use PRODA against Ayub Khuoro. The objective of PRODA to target the politicians resulted in form of lack of affection for the founder party the Muslim League. Khan of Mamdot was also victim of PRODA. Mamdot played a key role in Punjab to strengthen the Muslim League. After partition, he had differences with Mumtaz Daultana. A case was put by Pakistan Central Police against Mamdot. The case was challenged in the court. As a result disqualification could not be made possible. The central government was a big loser as compared to Punjab (Ziring, 1997). Likewise a case was filed against Hamidul Haq Choudhary, minister of finance of East Bengal on the basis of corruption charges. The central objective of the case was to defame him. PRODA was also cause of decline of the Muslim League (Ziring, 1997).

2.1.4 Ascendancy of the Centre in Fiscal Relations

After independence, the Centre intervened in provincial financial matters and also enhanced its control. The Centre collected those taxes that were given to the provinces under the Act of 1935. The main reasons to justify this practice were the defense expenditure and rehabilitation of the refugees. There was centralized financial structure.
The provinces did not oppose Centre’s encroachment in provincial fiscal powers because of the national interest.

Fiscal powers and balance under the Act of 1935 was modified due to migration in a very large scale and defense expenditures. The representatives of the Centre and the provinces participated in a conference that was held in November 1947. It was decided that the Centre will not share income tax with the provinces. The request was made by the Quaid-e-Azam. The provincial representatives agreed due to financial difficulties of the centre (Nazir, 2008).

Fiscal position of the provinces did not improve much. East Bengal had more than 50 percent of the whole population of Pakistan. The export duty on jute was the main source of revenue of the province. But its total revenue was less than one third of total revenues of all provinces of Pakistan. The economic condition of Sindh was also bad due to refugee’s rehabilitation and separation of Karachi from the province (Karachi was declared as capital of Pakistan). After 1953, the Punjab moved towards betterment. The Punjab could do so due to effective mechanism of collection of provincial taxes; urban immoveable tax and irrigation income tax. These two taxes were the source of 36 percent revenue of the province. NWFP faced financial problems due to lack of effective system of revenue collection (Mehrunnisa Ali, 1996).

Allocation of taxes as well as administration was a reason of clash between the Centre and East Pakistan (Salamat, 1992). In 1948, the Centre took control over income tax revenue on provisional basis that was included in the provincial list. It was decided that until 1950, the Centre would receive and impose sales tax. The Centre extended the period later to March 1952 (Nazir, 2008).

Under the Act of 1935, it was decided that 50 percent of the jute export duty will be given back to the jute cultivated provinces. The above mechanism was changed. The
Centre’s portion was increased to 62.5 percent on jute export duty through orders of the Governor General. Sales tax was given to the Centre on permanent basis in 1952. The central government had two hundred and ninety million surplus rupees in 1951-53. East Pakistan protested against centre’s intervention in the provincial matters (Mehrunnisa Ali, 1996). The Centre made some decisions to improve its financial position. On other side, the provinces demanded more share in revenue. As a result a British expert Sir Jeremy Raisman was appointed to see the financial conditions of the provinces and to suggest share for the centre and the provinces. In 1552, Raisman recommended that 50 percent of the income tax revenue must be given to the provinces. The sales tax was given under the control of the central government. East Pakistan was given 65.5 percent of basic jute duty. Raisman proposed increase in the provincial revenue. East Pakistan still demanded more financial allocation to the province (Salamat, 1992). The increase in the development loans to the provinces and the Raisman Award could not bring a marvelous change in the financial conditions of the provinces. The centre kept its control over important sources of revenues (Mehrunnisa Ali, 1996).

### 2.1.5 The Issue of Provincial Autonomy

Citizens have aspiration that their legal rights must be safeguarded by the state. They desire to protect their culture and identity. People show more interest in those affairs which concern their daily matters. They want to enter a bigger area having affection for their regional identity. Provincial autonomy is a vital issue in any federal state. Success of any federation depends on the contentment of the federating units. If the contention between the centre and the provinces increases, the result may come in shape of disintegration of the federation. To ensure political autonomy, distribution of functions between the federating units and the centre, supremacy of the constitution and
representation of the federating units at the centre is highly imperative. Each federating units is given highest level of autonomy (Frenkel, 2007).

Provincial autonomy was a critical issue before partition of India. Quaid-e-Azam was a great supporter of federalism. In 1929, he demanded system of federalism in his fourteen points. Quaid also demanded equal rights for all the provinces. There was a strong centre under the Act of 1935. After partition of India, centralization was maintained in Pakistan. Powers could be devolved during early years of Pakistan. The centre had the right to amend in the interim constitution (Callard, 1957).

The founding father of Pakistan wanted to establish a genuine federation with maximum autonomy to the federating units. The bureaucracy of the newly-born state had a suppressive trend. Some bureaucrats were included in the federal cabinet. The provinces started to demand for execution of the 1940 Resolution. According to the 1940 Resolution the matters of mutual interest were to be given to the Centre like; defense, trade, foreign affairs and communication. This issue of provincial autonomy caused a contention between the Centre and the provinces. The only goods which Pakistan could export were tea and jute from East province. East Pakistan felt financial and political exploitation (Ahmad Khan, 2004).

The Centre unnecessarily intervened in provincial matters of East Pakistan. In 1954, The Muslim League was defeated in provincial elections in East Pakistan by Jugtu Front under the leadership of Maulvi Fazulul Haq, a top-line leader of the freedom movement. But the provincial government of Haq was dismissed by the Centre. The only acceptable provincial governments were those which could gain favor by the Centre. Provincial autonomy was severely challenged by the Centre. The provincial governments of Sindh and NWFP having majority were dismissed by the Centre.
leaders who stood against the Centre faced the music in shape of PRODA (Ahmad Khan, 2004).

The nature of relationship between the centre and the provinces and powers of the Governor General were two central points in the discussion on provincial autonomy during initial years of Pakistan. The interim constitution empowered the Centre to intervene in the provincial affairs. Under Article 126 the central government could issue directives to the provincial government to take necessary steps in case of danger to peace and economy of the country. It was obligatory for the provincial government to act according to the directive. The Centre could proceed under the law against the provincial government on charges of maladministration. Under Article 122 it was compulsory for the provinces to show their respect for federal law while implementing their own authority (Ahmad Khan, 2005). There was a strong Centre and weak provinces in the federal structure of Pakistan under the interim constitution.

2.2 Constitution-making (1947-56)

Pakistan could not prepare its first constitution due to different debatable issues. Constitution making became a complicated issue since very beginning. The Muslim League was strong political parity during the early years of Pakistan. It could design the constitution within one or two years. As a result new political parities emerged on the political scene. The league was defeated in provincial election of East Pakistan in 1954. Division of powers and functions between the centre and the provinces was a critical issue. When Pakistan was created there was national unity and common thinking among the people. With the passage of time regional and provincial thinking emerged. The provincial leaders started to express their apprehensions against the centre. Apart from some of the initial problems which Pakistan faced during early years of its birth, the
process of constitution making continued and some important steps were taken in this regard.

2.2.1 Objective Resolution 1949

Approval of the Objective Resolution was the first step taken towards constitution making. The aims of the future constitution were mentioned in the resolution. The Islamic foundation of the state was approved by the Constituent Assembly. Liaquat Ali Khan, the first Prime Minister of Pakistan presented the Objective Resolution before the Constituent Assembly which approved it on 7th March 1949. It was mentioned that the areas which belong to Pakistan will form a federation. It was the best option to declare the country as a federation due to diversified nature of the society (Mehrunnisa Ali, 1996). It was laid down that equality, social justice, tolerance, freedom, and democracy will be guiding principles of the state. The sovereignty belongs to Allah. People of Pakistan will use power as a sacred trust. Pakistan was established on the basis of religion of Islam. People of Pakistan will be given opportunities to spend their lives according to the teachings of Islam. The minorities in Pakistan will also be free for religious practices. The resolution was quickly approved by the Constituent Assembly (Ziring, 1997).

2.2.2 Basic Principles Committee

After approval of the Objective Resolution by the Constituent Assembly, a Basic Principles Committee (BPC) was formulated. The BPC consisted of 25 members with Tamizuddin Khan as its President and Liaquat Ali Khan Vice-President. The fundamental task before the BPC was to design the constitution for the state. The report of the BPC was presented before the Constituent Assembly in 1950 (Ziring, 1997). The BPC proposed that: i) Urdu will be the national language; ii) residuary powers will be given to the centre; iii) there will be bi-cameral legislature with equal powers. The members of the House of Units will be elected by the provinces on parity basis (Mehrunnisa Ali, 1996). A
strong reaction came from East Pakistan when the recommendations of the BPC were publicized.

The politicians of East Pakistan rejected the recommendations of the BPC. They stressed that the centre will act as a unitary state. Equal representation in the legislature was also criticized. On 4-5 November 1950 political parties of the East Pakistan organized a constitutional convention. The convention recommended: a) a republican form of government; b) two autonomous regional administrations (one for East Pakistan and second for the West Wing); c) representation in the central legislature on the basis of population; d) only matters of defense, foreign affairs and currency should be given to the centre. The central government rejected these proposals (Ziring, 1997). The process of constitution making was delayed due to disagreement on fundamental issues.

2.2.3 Second Report of BPC

After seeing severe reaction against BPC report Prime Minister Liaquat Ali Khan visited Dacca. He announced that a new report will be prepared keeping in view the greater interest of the nation. Once again the committee started its work to solve the core issues. Meanwhile Prime Minister Liaquat Ali Khan was assassinated at Rawalpindi in a public gathering on October 16, 1951. Khawaja Nazimuddin, a leader from East Pakistan became Prime Minister. He presented the second report of the BPC in 1952 before the Constituent Assembly. The BPC recommended; federal structure for the country, parliamentary system, bi-cameral legislature (Ziring, 1997). The BPC tried to solve the critical matter of representation through the mechanism of equality between the two wings of Pakistan. The total members of House of People were 400. The total members of House of Units were 120 (Mehrunnisa Ali, 1996).

Table: House of People

<table>
<thead>
<tr>
<th>West Pakistan</th>
<th>200</th>
<th>East Pakistan</th>
<th>200</th>
</tr>
</thead>
<tbody>
<tr>
<td>Detail of Division of Seats</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Balochistan  5
Balochistan States  5
NWFP  25
Bhawalpur  13
Punjab  90
Khairpur  4
Sind  30
Federal Capital  11
Tribal Areas  17
Total  200

Source: (Mehrunnisa Ali, 1996, p. 76)

Table: House of Units

<table>
<thead>
<tr>
<th>West Pakistan</th>
<th>East Pakistan</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balochistan</td>
<td></td>
</tr>
<tr>
<td>Balochistan States</td>
<td>2</td>
</tr>
<tr>
<td>NWFP</td>
<td>6</td>
</tr>
<tr>
<td>Bhawalpur</td>
<td>4</td>
</tr>
<tr>
<td>Punjab</td>
<td>27</td>
</tr>
<tr>
<td>Khairpur</td>
<td>2</td>
</tr>
<tr>
<td>Sind</td>
<td>8</td>
</tr>
<tr>
<td>Federal Capital</td>
<td>4</td>
</tr>
<tr>
<td>Tribal Areas</td>
<td>5</td>
</tr>
<tr>
<td>Total</td>
<td>60</td>
</tr>
</tbody>
</table>

Source: (Mehrunnisa Ali, 1996, p. 76)

Bengalis were ready to accept the second report of the BPC. The smaller provinces of the western part Sindh, NWFP and Balochistan also liked the report. This time resentment came from Punjab. The leaders of the province showed their displeasure. It was said that the report is against the principle of democracy. Khawaja Nazimuddin was forced to adjourn the process of constitution-making by a strong reaction in Punjab.

2.2.4 Muhammad Ali Formula

The Governor General Ghulam Muhammad dismissed cabinet of Khawaja Nazimuddin on April 16, 1953. Muhammad Ali Bogra who was ambassador of Pakistan in America at that time was appointed as Prime Minister. He accepted the challenge of constitution-making. An important issue in constitution-making was the structure and representation of different provinces in the central legislature. The next endeavor to end the constitutional stalemate was ‘Muhammad Ali Formula’. The majority population of
East Pakistan was recognized in the formula. The total seats of the upper house were 50. The seats were equally distributed among Punjab, Sind, NWFP, Balochistan and East Pakistan. East Pakistan was given 165 seats out of 300 in the lower house (Mehrunnisa Ali, 1996). The differences emerged between the Governor General Ghulam Muhammad and the Prime Minister Muhammad Ali Bogra. The Governor General dismissed the CA on October 1954 (Safdar Mahmood, 2000). Molvi Tameezuddin who was speaker of the CA filed a petition in the Sind High Court. The court gave the decision against the Governor General. The central government took the issue in the Federal Court. In its verdict, the Federal Court remarked that the CA had lost its representative status as its members were elected in 1946 elections. So the highest court of the country endorsed decision of the Governor General.

2.2.5 One Unit

The elections of the second CA were held in 1955. Choudary Muhammad Ali was elected as Prime Minister. He formed a coalition government. There was difference among five provinces of Pakistan in terms of population. The BPC’s first and second report and Muhammad Ali Formula were rejected on the question of representation. Choudary Muhammad Ali found a solution to this particular issue of representation. It was decided to amalgamate the four provinces of the west wing. The second CA approved the establishment of One Unit in the west wing in 1955 (Mehrunnisa Ali, 1996). Now Pakistan had two provinces; East Pakistan and West Pakistan. The issue of representation was apparently solved by adopting the principle of equality between the two wings.

2.3 The Constitution of 1956

Choudary Muhammad Ali took great interest in making the constitution. He succeeded in his mission and the first constitution of Pakistan was implemented on
March 23, 1956. The constitution contained 234 articles. The system of federalism was also maintained in the new constitution. There were two provinces of Pakistan; East Pakistan and West Pakistan. The items in the provincial legislative list were enhanced as compared to the Act of 1935. The 1956 constitution had some other features like: establishment of the two high courts with the Supreme Court as the highest court of the country; parliamentary system; and the National Assembly as the central legislature. The Prime Minister was to be elected by the National Assembly. Generally there are two houses of central legislature in federal states. It is remarkable that as a federal state Pakistan had single house of the legislature under the 1956 constitution. The principle of parity was adopted between the two provinces of Pakistan in the National Assembly. Pakistan was declared as Islamic Republic under 1956 constitution.

2.3.1 Administrative Relations between the Centre and the Provinces

Under the 1956 constitution, the nature of relationship between the centre and the provinces showed the tendency of centralization. Different articles of the constitution gave powers to the central government to meddle in the provincial matters. The central government could appoint and dismiss the provincial government. Under Article 125, the central government could take control of the province due to external aggression and internal disturbance. It was obligatory for the provincial government to ensure that its actions were according to the provisions of the constitution (The Constitution of 1956, Article 125). The Centre had the right to give instructions to the provincial government in case of danger to peace or economy of Pakistan (The Constitution of 1956, Article 126). The central government could extend its authority to the provincial domain (The Constitution of 1956, Article 127). The central government could also delegate such functions which did not come within the authority of the National Assembly (The Constitution of 1956, Article 127-2).
2.3.2 Financial Relations

The nature of financial distribution between the centre and the provinces under the 1956 constitution was like the interim constitution. All the major resources of tax collection were granted to the centre. The provinces had limited fiscal autonomy. The important sources of revenue collection of the provinces were; tax on vehicles, excise and alcohol and drugs, taxes on land and buildings, taxes on electricity, taxes on boats, trades, animals and advertisement and taxes on minerals (Nazir, 2008). The centre also shared with provinces the proceeds from export duty, income tax, excise tax, and sales tax. On the whole, income tax was distributed between East Pakistan and West Pakistan in the ratio of 45:55. East Pakistan kept 50 percent of the net proceeds of the sales tax collected from its part. The Centre “provided funds in the shape of grants.” But these grants were on discretion of the Centre and the provinces could not claim it as their right (Nazir, 2008). The provinces had to rely on the Centre for loans due to lack of their financial resources. The amount which was received by the provinces from the Centre was less than their expenditures. The provinces could not fulfill their commitments due to scarcity of financial resources. About 60 percent of the total revenue was spent on defense by the centre (Mehrunnisa Ali, 1996).

All the major economic subjects which had been given to the centre contained; regulation of commerce with foreign countries, trademarks, weights and measures, copy rights and designs. All important sources of tax collection were allocated to the centre under the 1956 constitution. The structure, imposition and management of taxes are critical issues in a federation. The constitution empowered the federal government to impose and collect excise duty, taxes on sales and purchases, taxes on natural gas and mineral oil, taxes on the capital value of assets exclusive of agriculture land, export duty,
customs, terminal taxes on passengers or goods carried by sea or air, taxes on their fares and freights, income tax other than agriculture and corporation tax (Nazir, 2008).

The central government was in a position to dominate the provinces with regard to distribution of financial resources. The centre could issue directions to the provincial government. It was compulsory for the provincial government to act upon those directions. Under Article 194, the President could impose emergency after consultation with the governor if there was danger to financial stability and security of the country (Callard, 1957).

Under Article 118, the President had to institute National Finance Commission (NFC). The purpose of establishment of NFC was to distribute between the centre and the federating units net proceeds of taxes like; taxes on sales and purchases, export duty on jute and cotton and any other specified export duty, specified duty of federal excise, taxes on income other than corporation tax and any other specified tax (Ahmad Khan, 2005). The members of the commission included finance ministers of the centre and the provinces and such members appointed by the President after consultation with the provincial governors (Callard, 1957). The central government tried to satisfy the provinces in their demand for provincial autonomy through establishment of the NFC. But the commission was not set up during the period while constitution of 1956 remained enforced.

2.3.4 Failure of the 1956 Constitution

The constitution of 1956 remained enforced only for a period of two years. There were two shortcomings in the 1956 constitution. First, there was no check on emergency powers of the President. He could even suspend the constitution. Second, the constitution failed to establish a strong and efficient central government. It was a common perception that the central government was unable to tackle the important matter (Diamond, n. d.).
Parliamentary system could become successful under the 1956 constitution. There were unstable ministries during 1956-58 and political parties weakened the federation. Political leadership played its negative role. Politicians changed their loyalties time and again and political parties promoted provincialism.

2.4 Ayub Khan in Power

Since independence till 1970, the general elections had never been conducted in Pakistan. The Muslim League decided to conduct the general elections in the country. On the other side, President Iskander Ali Mirza did not want so. He apprehended that the results might come against his will. Mirza who was dissatisfied with the parliamentary system because of the ceremonial powers of the head of the state, invited General Ayub Khan to impose martial law in the country. The military chief Ayub Khan had remained foreign minister during ministry of Muhammad Ali Bogra. He had also been taking interest in politics.

Toppling the democratic government had been finalized in mid-September (Noor Ahmad, 1985). General Ayub Khan who was commander in chief of Pakistan army seized power in a military coup on October 7, 1958. He made certain decisions including the termination of the Prime Minister Feroz Khan Noon (16 December 1957-7 October 1958) and his cabinet, dissolution of the National Assembly, imposition of sanction on the political parties, the annulment of the constitution of 1956, prohibition of all types of political functions. The military intervention in the politics was not taken as immoral action by majority of the public at that time. People were fed up with the intrigues of the politicians. On 27 October, 1958 Ayub Khan forced Iskander Ali Mirza to resign from office of the President (Burki, 1999).
2.5 The Constitution of 1962

The military intervention and dismissal of the democratic government weakened federal structure of Pakistan. Most importantly, the coup caused a negative impact on the correlation between the East and the West Wings of the country. Pakistan looked like a unitary state from 1958-1962 because of the absence of constitution and rule of Ayub Khan and his few generals (Kundi & Jahangir, 2002). According to Ayub Khan,

Iskander Mirza as President of the country exploited weaknesses of the 1956 constitution. He was not really sincere in holding the general election. Iskander Mirza was in search of an opportunity to abrogate the 1956 Constitution (Ayub Khan, 1967, p. 56-57).

After imposition of martial law in the country, Ayub Khan tried to propagate his own point of view among the common man. He made a promise that democracy will be restored. A constitutional commission was set up under the chairmanship of Justice Shahabudin to propose the new constitution. The report of the commission was presented before Ayub Khan in May 1961. The reasons of failure of parliamentary system were also mentioned in the report. It was not surprising that Ayub Khan ignored proposal of the constitutional commission and promulgated his own made constitution on June 8, 1962. The new constitution was not passed by any assembly. Ayub Khan introduced such articles in the 1962 Constitution that could secure his rule. Some of the characteristics of 1962 Constitution were the introduction of presidential system, federalism, unicameral legislature having equal representation for both the wings, indirect elections for members of national and provincial assemblies and the President. Under the 1962 Constitution there were two lists of subjects, the federal list and the CLL. The federal list contained 49 subjects and there was no separate provincial list resulting in a strong centre. The Governors enjoyed many powers at the provincial level. The federalism was limited to theory only (Naseer, 2007). Due to the centralization tendency, the idea of federalism remained absent.
2.5.1 The Legislature

There was unicameral legislature (The National Assembly) under the 1962 Constitution. The formula of equal representation was adopted for distribution of seats between the two provinces. The total membership of the National Assembly was 156 members. The term for the National Assembly was five years. The President had the power to dissolve the National Assembly. The President had the power to refer the matter to the Electoral College for a referendum, if a conflict arose between the President and the National Assembly. A bill passed by the central legislature was to be sent to the President for assent. The President had different options. He could give his assent within thirty days. The President could also send back the bill to the National Assembly for reconsideration. Now the National Assembly had to pass the bill by two-thirds majority of the total membership of the House. The President had the option to assent the bill or refer it to the referendum. Then the bill would become a law (Pardesi, 2012).

2.5.2 The President

Under the 1962 Constitution, Presidential system was implemented and the President enjoyed dual responsibility of the head of the executive and the head of the state. He had been given enormous powers under the 1962 Constitution. The Constitution provided two provisions to remove the President from his office before completing his tenure. It was either due to mental and physical inability or gross misconduct. Practically, it was too difficult to remove the President from his office (Pardesi, 2012).

2.5.3 The Judiciary

The Supreme Court was the apex court under the 1962 Constitution. It consisted of a Chief Justice and as many judges as were specified by law. The President had the power to determine the number of the judges in case of absence of such laws. The President also had the power to appoint the Chief Justice and other judges after
consultation with the Chief Justice. The Constitution provided advisory, appellate and original jurisdiction to the Supreme Court. The Supreme Judicial Council was established and the President could refer the matter to the council, if a complaint of incapacity to perform duties on the basis of mental or physical problems of a judge of the Supreme Court or the High Court arose to him. The President had the power to remove a judge on recommendation of the Supreme Judicial Council (Pardesi, 2012).

2.5.4 Structure at the Provincial Level

Under the 1962 Constitution, Governor was the constitutional head of the province. The President was empowered to appoint the Governor. There was a Council of Minister at the provincial level. In the performance of their functions, it was obligatory for the Governors and the Council of Ministers to act upon directions of the President. Pakistan had two provinces (East and West Wing). There were 155 seats of each Provincial Assembly, and the term of the Assembly was five years. However, the Governor had the right to dissolve the Provincial Assembly. There was a High Court in each Province (Pardesi, 2012).

2.5.5 Basic Democracies

The central and the provincial governments agreed on formulation of the three tiers of local government in both the provinces in Governors’ Conference at Nathiagali in June 1959. The lowest tier comprised Union Panchayats, Union Committees and Town Committees. The middle tier was called Tehsil Councils in West Pakistan while the same was called Thana Councils in East Pakistan. District Councils and then Divisional Councils were set up as the topmost tier. This new institution was named “Basic Democracies”. There was also a development advisory council in both the provinces to suggest development schemes for local government (Hasan, 1968).
The Basic Democracies Order was promulgated on October 27, 1959. Ayub Khan tried to convince the common man that the system of Basic Democracies would give them the opportunity to run their matters without any hindrance. He also ensured that the democracy had been brought to their doorway. The members of the Basic Democracies elected members of National Assembly in April 1962 and members of the Provincial Assemblies on in May 1962. On June 1962, Ayub Khan took oath as the President. On the same day he also announced to terminate Martial Law. After implementation of the constitution of 1962, Basic Democracies Order was amended and the provincial advisory councils were abolished (Hasan, 1968).

The Electoral College (EC) of the country was established through the Electoral College Act 1964 which comprised 80,000 members who were directly elected. Both the provinces were given equal representation in the EC. Ayub Khan won the presidential election of January 2, 1965 (Hasan, 1968).

The Basic Democrats had to elect members of the National Assembly, provincial assemblies and the president which was against the norm of universal franchise (Rose, n.d). As anticipated, the Basic Democrats cast their votes in favor of Ayub Khan. Basic Democracies were cornerstone during his government. Ayub Khan assumed the self proclaimed title of Field Martial. He had an influential control over the military and the armed forces (Ziring, 1997).

The Union Councils and the District Councils were given particular duties to perform. The Tehsil/ Thana Councils and the Divisional Councils mainly played a role of the coordinating agency. The Union Council had the powers to establish peace within its jurisdiction through conciliation courts. These courts could decide ordinary criminal and civil cases. The Union Council also had to look after matters of welfare of its citizens, industry and agriculture. It was also authorized to collect local tax to meet its
expenditures. The elected representatives at the Union Council level could also cast their votes for the elections of the National Assembly and the Provincial Assemblies (Sayeed, 1988).

In the beginning, Ayub Khan wanted to construct a non-party system but changed his plan due to its negative results. He founded his own political party and also legitimized the other political parties. Ayub Khan, through political manoeuvring, tried to legitimize his authoritarian rule and tried to handle opposition with tactics such as bribery and threats (Rose, n.d).
Chapter 3

THE 1973 CONSTITUTION

Yahya’s takeover, general elections of 1970, separation of East Pakistan and the Constitution of 1973 have been discussed in this chapter.

3.1 Yahya Khan in Power

Ayub Khan resigned on March 25, 1969. Yahya Khan, another military general, came in power. He imposed martial law on March 25, 1969. It was an era of political instability. The Constitution of 1962 was abrogated. The military regime could not meet the political, social and economic demands raised by the East Wing (Rizvi, 2010).

3.1.1 The Legal Framework Order (LFO)

Following significant decisions were taken in respect to 1970 general elections. First, the LFO was issued on March 30, 1970. It gave legal coverage to the general elections. Under the LFO, it was obligatory for the National Assembly to frame the new constitution within one hundred and twenty days since its first session. The constitution shall be authenticated by the President/Chief Martial Law Administrator. Failure of the National Assembly to frame the new constitution within the aforesaid period meant dissolution of the assembly (Rizvi, 2013). Second, in October 1955, one unit (four provinces of West Pakistan were merged into one province “West Pakistan”) was established in West Pakistan. From 1955 to 1970 Pakistan had only two federating units. On first July 1970, one unit was reversed. Now there were four provinces in the West Wing; Punjab, Balochistan, Sindh and NWFP (now KPK) (Rizvi, 2013). Third, under 1956 and 1962 Constitutions, there was principle of parity between the two wings for allocation of seats in the National Assembly. The principle of population based on
allocation of seats in the National Assembly was adopted. East Pakistan had more population than the West Pakistan. More than fifty percent seats were allocated to the East Pakistan (Rizvi, 2013).

3.1.2 The 1970 Elections

Yahya Khan did not impose ban on political parties. However, public and open political activity was forbidden. On 28 November 1969, Yahya declared that general elections would be held on October 5, 1970. The ban on political activities was lifted on January 1, 1970. The elections were postponed to December 7, 1970, due to floods in East Pakistan (Baxter, 1971).

3.1.1.1 Election Campaign

In East Pakistan, the Awami League (led by Mujeebur Rehman) staged an enthusiastic election campaign. The League demanded for maximum provincial autonomy for East Pakistan. It claimed that financial resources of the East Pakistan were utilized in the West Pakistan by the federal government. It was expressed by the League that the future relationship between the two parts of the country would be maintained on six-point formula.6

In West Pakistan, the political leadership was divided into right wing and the left wing. In November 1967, Bhutto established People’s Party. Later, the word “Pakistan” was included. The slogan of the party was; “Islam is our faith, democracy is our polity, and socialism is our economy and all power to the people” (Fledman, 1976). The religious political parties criticized Bhutto’s socialist agenda. They projected an Islamic political order to ensure social justice and economic uplift of the common man. Different
groups of the Muslim League adopted a middle way between the right and the left. However, they showed a tendency towards the right wing (Rizvi, 2013).

Table: National Assembly Candidates

<table>
<thead>
<tr>
<th>Name of Party</th>
<th>Candidates</th>
<th>Candidates</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>East Pakistan</td>
<td>West Pakistan</td>
</tr>
<tr>
<td>Awami League</td>
<td>162</td>
<td>07</td>
</tr>
<tr>
<td>Jamat-i-Islami</td>
<td>69</td>
<td>79</td>
</tr>
<tr>
<td>Convention Muslim League</td>
<td>93</td>
<td>31</td>
</tr>
<tr>
<td>Muslim League (Qayum)</td>
<td>65</td>
<td>67</td>
</tr>
<tr>
<td>Pakistan People’s Party</td>
<td>NIL</td>
<td>119</td>
</tr>
<tr>
<td>Council Muslim League</td>
<td>50</td>
<td>69</td>
</tr>
<tr>
<td>Pakistan Democratic Party</td>
<td>81</td>
<td>27</td>
</tr>
<tr>
<td>Jamiat Ulema-i-Pakistan</td>
<td>13</td>
<td>90</td>
</tr>
<tr>
<td>National Awami Party (Wali Khan Group)</td>
<td>36</td>
<td>25</td>
</tr>
<tr>
<td>National Awami Party (Bhashani Group)</td>
<td>15</td>
<td>05</td>
</tr>
</tbody>
</table>

Source: (Fledman, 1976).

The above table shows that only three political parties (Jamat-i-Islami,(Qayum) Muslim League, and Council Muslim League) were interested in both wings.

Table: Seats in the National Assembly

<table>
<thead>
<tr>
<th>Name of Province</th>
<th>General</th>
<th>Women</th>
</tr>
</thead>
<tbody>
<tr>
<td>East Pakistan</td>
<td>162</td>
<td>07</td>
</tr>
</tbody>
</table>
Table: Seats in the Provincial Assemblies

<table>
<thead>
<tr>
<th>Province</th>
<th>Seats</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>East Pakistan</td>
<td>300</td>
<td>10</td>
</tr>
<tr>
<td>Balochistan</td>
<td>20</td>
<td>04</td>
</tr>
<tr>
<td>Punjab</td>
<td>180</td>
<td>06</td>
</tr>
<tr>
<td>Sindh</td>
<td>60</td>
<td>02</td>
</tr>
<tr>
<td>NWFP</td>
<td>40</td>
<td>02</td>
</tr>
<tr>
<td>Centrally Administered Areas</td>
<td>07</td>
<td>NIL</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>300</strong></td>
<td><strong>13</strong></td>
</tr>
</tbody>
</table>

Source: LFO Schedule 1.

Justice Abdus Sattar of the Supreme Court was appointed as Chief Election Commissioner (Bizanjo, 2009). The election campaign continued for a long period of eleven months. On 7 December 1970, the citizens of Pakistan cast votes to members of National Assembly for the first time since creation of Pakistan. The voters also used their right to vote in favor of the members of provincial assemblies on December 17, 1970. The Awami League emerged as the largest political party in East Pakistan and the PPP in West Pakistan (Baxter, 1970).

Mujeeb won two seats from Dacca. In East Pakistan, the Awami League won 160 seats out of 162 in the National Assembly. The PPP won 81 seats in West Pakistan. Bhutto contested on six seats and won five seats. Many old political families like; Noon,
Gillani, Qizilbash, Shah Jiwana lost seats. Nawabzada Nusrullah Khan and Asghar Khan were also defeated. Shaukat Hayat and Daultana won their seats. Both belonged to CML (Baxter, 1970).

In a federation, political parties play very significant role in provision of linkages among the federating units. On the basis of same party and ideology, the people belonging to different federating units come closer to each other. As a result, the units maintain close relationship to the federal government. The national political parties promote national unity (Kokab & Abid, n.d.). The political parties at the national level did not exist in Pakistan. The main reason was non-existence of free political culture. Regional political parties flourished (Lodhi, 1980). During the election campaign, Yahya deemed that no political party would be in a position to get the simple majority. As a result, he would be in a position to play the political cards. The PML Qayyum and other religious political parties were supported (Kokab, 2012). Many old politicians joined the PPP and won their seats (Munir Ahmad, 1971).

Table: National Assembly Elections (1970-71)

<table>
<thead>
<tr>
<th>Party Name</th>
<th>East Pakistan</th>
<th>West Pakistan</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Awami League</td>
<td>160</td>
<td>Nil</td>
<td>160</td>
</tr>
<tr>
<td>PPP</td>
<td>Nil</td>
<td>81</td>
<td>81</td>
</tr>
<tr>
<td>PML (Q)</td>
<td>Nil</td>
<td>9</td>
<td>9</td>
</tr>
<tr>
<td>CML</td>
<td>Nil</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>JU (H)</td>
<td>Nil</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>MJU</td>
<td>Nil</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>NAP (W)</td>
<td>Nil</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>JI</td>
<td>Nil</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>Party</td>
<td>Punjab</td>
<td>Sind</td>
<td>NWFP</td>
</tr>
<tr>
<td>-----------</td>
<td>--------</td>
<td>------</td>
<td>------</td>
</tr>
<tr>
<td>AL</td>
<td>NIL</td>
<td>NIL</td>
<td>NIL</td>
</tr>
<tr>
<td>PPP</td>
<td>113</td>
<td>28</td>
<td>3</td>
</tr>
<tr>
<td>PML Q</td>
<td>6</td>
<td>5</td>
<td>10</td>
</tr>
<tr>
<td>NAP W</td>
<td>NIL</td>
<td>NIL</td>
<td>13</td>
</tr>
<tr>
<td>CML</td>
<td>15</td>
<td>4</td>
<td>1</td>
</tr>
<tr>
<td>MJU</td>
<td>4</td>
<td>7</td>
<td>NIL</td>
</tr>
<tr>
<td>JU H</td>
<td>2</td>
<td>NIL</td>
<td>4</td>
</tr>
<tr>
<td>PML C</td>
<td>6</td>
<td>NIL</td>
<td>2</td>
</tr>
<tr>
<td>PDP</td>
<td>4</td>
<td>NIL</td>
<td>NIL</td>
</tr>
<tr>
<td>JI</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Others</td>
<td>1</td>
<td>1</td>
<td>NIL</td>
</tr>
<tr>
<td>IND</td>
<td>28</td>
<td>14</td>
<td>6</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>180</strong></td>
<td><strong>60</strong></td>
<td><strong>40</strong></td>
</tr>
</tbody>
</table>

Note: Others include one member each from Jamat-i- Ahl-i-Hadees (Punjab), Sindh
Karachi Punjabi Pathan Muttahida Mahaz (Sindh) National Awami Party (Achakzai)
Regional politics was dominant in the 1970 general elections. There was not a single political party which could claim to be a national party. Awami League got simple majority in the National Assembly. It stressed to prepare the constitution strictly according to the six-point formula. Bhutto was of the opinion that the League should bring changes in the six-point formula. General Yahya did not agree to handover the power to Mujeeb without bringing changes in the six-point.

3.2.1 Situation after the Elections

Yahya Khan summoned session of the National Assembly in Dacca on March 3, 1971. Bhutto announced not to take part in the session of the National Assembly and demanded to postpone the session. He also announced a general strike. Yahya Khan decided to postpone the session. He made the decision for the lust of power (Rizvi, 2013). The strikes and protests started in East Pakistan against postponement of the session. On 25 March 1971, Yahya Khan decided to start military operation against the Awami League in East Pakistan. Seventy six members belonging to the League were disqualified in September 1971. Two other members died. Yahya Khan announced to hold by-elections on 78 seats. Sixty three were elected uncontested. The election to the remaining 15 seats was to be held. The situation in the East Pakistan had been worsening day by day (Rizvi, 2013).

Indian army attacked East Pakistan on November 21, 1971. The war started on West Border on December 3, 1971. It turned into a total war between India and Pakistan.
on both parts of the country. Pakistan lost the 1971 war. On 16 December 1971, Pakistani troops surrendered to Indian Army. Yahya Khan resigned on December 20, 1971. He handed over power to Bhutto (Rizvi, 2013). The following proclamation was signed by Yahya Khan,

… and whereas I have decided to resign the office of the Chief Martial Law Administrator and command of all the Armed forces of Pakistan. Now therefore I announce that Zulfiqar Ali Bhutto will be the Chief Martial Law Administrator and command all the Armed forces of Pakistan and shall also be the President of Pakistan (Masud Ahmad, 1983, p. 149).

3.3 Interim Constitution

Yahya Khan implemented LFO on March 30, 1970. It was mandatory for the National Assembly to prepare the constitution within 120 days since its first session. The political situation had been dramatically changed in East Pakistan. The end result was separation of East Pakistan. Bhutto, the President and Chief Martial Law Administrator called session of the National Assembly. Only two members (Nur-ul Amin and Raja Taredev Rai) elected as members of the National Assembly from East Pakistan came in West Pakistan. The primary objective of the session was to vote on three issues;

confidence in the President of Pakistan; continuance of martial law till August 14, 1972 and framing of the interim Constitution (Masud Ahmad, 1983, p. 173).

The National Assembly met on the aforesaid date. It showed confidence in Bhutto who assumed office as President of Pakistan on December 20, 1971. Bhutto promised in the session that martial law would be lifted on the implementation of the Interim Constitution. On 21st April 1972, the Interim Constitution was implemented and Martial law was withdrawn (Masud Ahmad, 1983).
3.4 The 1973 Constitution

The 1973 Constitution was ratified on August 14, 1973 (Masud Ahmad, 1983). It was for the first time in Pakistan that a directly elected constituent assembly made the Constitution. The Constitution was unanimously passed by the assembly. All the political parties present in the assembly voted in favour of the Constitution (Jaffar Ahmad, 2004).

3.4.1 Salient Features of the Constitution

According to Article 1 of the 1973 Constitution, Pakistan is a federal state. Preamble of the Constitution names the country as “Islamic Republic of Pakistan” (Rizvi, 2006). The distribution of powers between the federal government and the provincial governments was made in the Fourth Schedule of the Constitution. Two lists namely the CLL and the FLL were included in the Fourth Schedule. There were 59 subjects in the first part and 8 in the second part of the federal list. The CLL contained 47 items. The provinces could legislate on the remaining subjects. Both the federal and the provincial legislatures could legislate on the matters included in the CLL. In case of a conflict, the federal legislature had the upper hand (Rizvi, 2006).

The 1973 Constitution also provided articles regarding two sets of governments and their relationship in administrative, legal and fiscal matters. Institutional arrangement was made for financial management, hydro-electric power, natural gas, supply of water from natural resources, sharing of revenue and inter-provincial implications. The above matters were discussed and resolved in the National Economic Council (NEC), NFC and CCI (Rizvi, 2006).
3.4.1.1 Islamic Provisions

Under the 1973 Constitution, Islam was declared state religion of Pakistan (Constitution of the Islamic Republic of Pakistan, Article 2). The Objectives Resolution (1949) was incorporated as Preamble in the 1956 and 1962 Constitutions. The same was done in the 1973 Constitution. The Objectives Resolution became a substantive part of the Constitution under the 8th Amendment in 1985. (Constitution of the 1973, Article 2 (A).

The Constitution made the state responsible for “taking steps to enable the Muslims of Pakistan, individually and collectively, to order their lives in accordance with the fundamental principles and basic concepts of Islam, and to provide facilities whereby they may be enabled to understand the meaning of life according to the Holy Quran and Sunnah” (Constitution of the 1973, Article 31). The 1973 Constitution set conditions for the Prime Minister and the President to be Muslims.

Under Article 228, the Council of Islamic Ideology (CII) was established. The CII comprises “persons having knowledge of philosophy and principles of Islam as enunciated in the Holy Quran and Sunnah, or understanding of the administrative, legal, economic and political problems of Pakistan”. At least one woman is appointed as member. Representation of different schools of thought is ensured in the council. Each member is appointed for a period of three years. The council works under its Chairman. (Constitution of the Islamic Republic of Pakistan, Article 228). The functions of the CII are “to make recommendations to the Parliament and the Provincial Assemblies as to the ways and means of enabling and encouraging the Muslims of Pakistan to order their lives individually and collectively in all respects in accordance with the principles and concepts of Islam as enunciated in the Holy Quran and Sunnah”. The CII also performs
some other functions enumerated under Article 229 (Constitution of the Islamic Republic of Pakistan, Article 229).

3.4.1.2 The Parliament

The parliamentary system was adopted. Under Article 50 of the 1973 Constitution, the Parliament consists of two houses, National Assembly (lower house) and the Senate (upper house). The total membership of the National Assembly was two hundred. The term of the assembly is five years. The term of the first National Assembly was four years (from August 14, 1973 to August 14, 1977). The Senate consisted of 63 members. All the federating units are given equal representation in the Senate. Under Article 59, the Senate cannot be dissolved (Masud Ahmad, 1983).

3.4.1.3 The Executive

The Prime Minister enjoys absolute powers under the parliamentary system. The head of the state enjoys ceremonial powers only. According to the 1973 Constitution, the Prime Minister was the chief executive of the country. The executive authority was exercised in the name of the President. Under the 8th Amendment, the executive authority was given to the President. The National Assembly was given the right to elect its Prime Minister. It is obligatory that the Candidate for the Prime Minister must be a Muslim. The National Assembly can remove the Prime Minister through a vote of no confidence (Jaffar Ahmad, 2004).

The 8th Amendment strengthened position of the President. According to Article 41 of the 1973 Constitution, the President was bound to act upon advice of the Prime Minister. The President could not issue any order without concurrence of the Prime Minister. Article 48 (3) said:
Save as otherwise provided in any Rules made under Article 99, the Order of the President shall require, for their validity, the counter-signature of the President (Masud Ahmad, 1983, p. 179).

3.4.1.4 Judiciary

Judiciary is the custodian of the fundamental laws and liberties of the citizens. Independent judiciary is an important requirement of democracy (Khalid, 2012). Judiciary is the third organ of the government. It overlooks the smooth working of the Constitution and also ensures the execution of the laws. The matters of establishment and functions of the Supreme Court and the High Courts have been addressed in Part VII of the 1973 Constitution (Masud Ahmad, 1983).

In past, the judiciary remained under influence of the executive in Pakistan. In the original text of the 1973 Constitution, some of the reasons of the weak judiciary were addressed. Later on, its powers were curtailed through constitutional amendments. Under the 1973 Constitution, a time of five year was fixed to separate judiciary from the executive. Through the 8th Amendment, it was extended to fourteen years. Powers of the High Courts related to granting of bail to detain persons were curtailed by the 4th Amendment. Powers of the Supreme Court and the High Courts about “releasing on bail of any person, the passing of orders in the cases of preventive detention” etc. were further reduced under the 5th Amendment. According to the said amendment, a judge of the High Court could be transferred to another High Court without his/her consent and also without consent of the Chief Justices of the concerning Courts (Jaffar Ahmad, 2004). Through 4th 5th and 6th Amendment, independence of judiciary and political freedom was curtailed (Safdar Mahmood, 2000).
3.4.1.5 Legislative Powers

In a federal state, legislative powers are distributed between the federal government and the units’ governments. However, distribution of power varies in different states. There were two legislative lists in the original text of the 1973 Constitution. The Centre had full control over FLL. The FLL was divided into two parts. There were 67 subjects in the FLL. The CLL contained 47 subjects. The Centre and the provinces had powers to legislate on the subjects enumerated in the CLL. In case of conflict between the laws made by a province and the Centre on a subject enumerated in the CLL, it was the federal law that prevailed. In other words, the Centre had superiority on legislation over the provinces. The residuary powers were given under domain of the provinces (Jaffar Ahmad, 2004).

Bhutto assured that the CLL would be deleted within ten years. All the successive governments including the PPP Government (1988 and 1993) did not remove the CLL from the Constitution (Chandio, 2013). Under the 1973 Constitution, supremacy of the Centre was ensured. The federating units were at the mercy of the Centre. The Constitution was made by the elected representatives. It was expected that tax reforms would be introduced. The FLL contained 12 subjects related to imposition of taxes. There was centralization of taxation system (Shah, 1994).

3.4.1.6 Emergency Powers

The emergency provisions had been inserted in the Constitution. The President had powers to impose emergency in any province due to threat of war, internal disturbance or failure of the provincial government to control law and order situation. In case emergency was proclaimed in any province, the Parliament had powers to make laws for that province concerning to subjects not enumerated in the CLL or the FLL.
Federal Government could issue directions to the concerned province as to the manner in which the executive authority of that province was to be exercised. The declaration of the emergency also empowered the Federal Government to perform functions of the Provincial Government. The Federal Government could also direct the provincial Governor to perform functions of the provincial government on its behalf (Jaffar Ahmad, 2004). Role of the province was denied in proclamation of emergency. The provisions related to the emergency curtailed provincial autonomy. The 18th Amendment addressed the emergency provisions.

3.4.1.7 Financial Relations

The Federal Government had an upper hand over the provinces in financial matters. The Federal Government had been authorized to impose different taxes. The provinces were empowered to collect revenue through local trade, entertainment, transport and agriculture. The provinces depended mostly on the Federal Government to fulfill their financial needs (Shah, 1994).

3.4.1.8 The National Finance Commission (NFC)

According to the Article 160 of the 1973 Constitution, the NFC can be instituted to establish financial relations between the Federal Government and the Provincial Governments. The maximum interval between two awards is five years. Under Article 160, the NFC allocates revenues between the Federal Government and the Provinces. According to the said article, the President would institute the NFC. The members of the NFC would be the Federal Finance Minister, Finance Ministers of the Provinces and such other individuals as may be appointed by the President after consultation with the Provincial Governors. The NFC makes recommendations to the provinces (Constitution of the Islamic Republic of Pakistan, Article 160).
3.4.1.9 The Council of Common Interest (CCI)

The CCI was established under the 1973 Constitution. It was given powers to design and regulate policies related to Federal Legislative List (FLL) II. The council comprised of chief ministers of the provinces and an equal number of members from the Federal Government to be nominated by the Prime Minister. The Prime Minister might perform as chairman of the council. However, if the Prime Minister was not member of the council, the President had powers to appoint a federal minister, who was member of the council to act as its chairman (Constitution of the Islamic Republic of Pakistan, Article 153).

3.4.1.10 Civil-Military Equation

The military dictators abrogated Constitutions of 1956 and 1962. Article 6 of the Constitution said that “any person who abrogated or attempted, or conspired to abrogate, or subvert the Constitution by use of force, or by other unconstitutional means, would be guilty of high treason” (Constitution of the Islamic Republic of Pakistan, Article 153). However, two subsequent military regimes suspended and held in abeyance the 1973 Constitution.

General Ziaul Haq wanted to give legal status to role of the military in politics and political decision-making through establishment of the National Security Council (NSC), comprising the Chairman of the Joint Chiefs of Staff Committee, the Prime Minister, the President, the chief ministers and the Chairman Senate. The proposed function of the NSC was to make recommendations concerning to security of the country, proclamation of an emergency and other matters of national interest. The proposal was taken back on the occasion of passage of the 8th Amendment (Jaffar Ahmad, 2004).
The Council of Defence and National Security (CDNS) was instituted by President Farooq Leghari by amending Rules of Business in 1996. The decision was made after removal of Benazir Bhutto’s government. The members of the CDNS were; Chairman of the Joint Chiefs of Staff Committee, the three Services Chiefs, the Prime Minister, the President and four federal ministers. The basic function of the CDNS was related to national security matters. General Musharraf established National NSC in October 1999. The function of the NSC was to discuss and to give advice to executive on issues like; finance accountability, law and order, foreign affairs and corruption etc. (Jaffar Ahmad, 2004).

3.5 The 1977 General Elections

Bhutto announced to hold general election in March 1977. The opposition political parties formed an alliance, the Pakistan National Alliance (PNA) in January 1977 (Safdar Mahmood, 2000). There were nine political parties in the PNA; Jamaat-i-Islami (JI), Tehrik-i- Istiklal (TI), KhaksarTehrik (KT), National Democratic Party (NDP), Jamiat-i-Ulema-e- Pakistan (JUP) Jamiatul Ulema-e- Islam Mufti (JUI), Pakistan Muslim League Pagaro (PML- Pagaro) and Azad Kashmir Muslim Conference (AKMC). The Pakistan Muslim League Qayyum (PML-Q) took part separately in the elections. The Islamic and right wing conservative parties were included in the PNA. The PPP leadership was hopeful to win the elections (Rizvi, 2013).

Table: 1977 Elections Results

<table>
<thead>
<tr>
<th>Province</th>
<th>PPP</th>
<th>PNA</th>
<th>PML Q</th>
<th>Independent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Punjab</td>
<td>116</td>
<td>108</td>
<td>8</td>
<td>--</td>
</tr>
<tr>
<td>Sindh</td>
<td>43</td>
<td>32</td>
<td>11</td>
<td>--</td>
</tr>
</tbody>
</table>
The PNA refused to accept the election results and alleged the ruling party for rigging in the elections. It announced to boycott the elections of the Provincial Assemblies. The PNA started a movement against Bhutto. Under Article 245, Bhutto imposed Martial Law in the big cities like; Lahore, Faisalabad, Karachi and Hyderabad. A petition was filed in the Lahore High Court against imposition of the Martial Law. The full bench of the High Court declared Martial Law unconstitutional on June 2, 1977 (Chandio & Sumroo, 2012).

There were three main demands of the PNA; “resignation of Prime Minister Bhutto, appointment of new Election Commissioner and holding of fresh elections” (Kaushik, 1985). The government and the opposition started negotiations to solve the political crisis. Both reached a consensus to hold new elections. However, they could not prepare the mechanism to hold fresh elections and the care-taker governments. Some of the opposition leaders made it clear that they would not oppose Bhutto’s overthrow. (Safdar Mahmood, 2000)

3.6 General Ziaul Haq in Power

On 5th July 1977, General Ziaul Haq imposed Martial Law in the country. Bhutto was overthrown and arrested (Chandio & Sumroo, 2012). The 1973 Constitution was suspended. The toppling of the Bhutto was not opposed by the PNA (Rizvi, 2013). Once again failure of democracy was seen in Pakistan. The basic reason was inability of the politicians to resolve the political crisis. They had “narrow-based and personalized” thinking (Safdar Mahmood, 2000). On 5th July 1977, Ziaul Haq delivered first address to the nation. He said,
My only objective is to conduct free and fair elections which would be held in October 1977... I give a sincere assurance that I shall not deviate from this schedule... I would not like to waste my powers and energies as Chief Martial Law Administrative on anything else (Abbas, 1997, p. 41).

The early years were very significant for Ziaul Haq. “The regime had not yet settled down” (Hussain, 1990). The elections were postponed twice. The dates announced for the elections were, October 18, 1977 and then November 17, 1979. On 24th March 1981, the Provisional Constitutional Order (PCO) was implemented. Majlis-e-Shoora (Federal Council) was established under the PCO. Its members were nominated (Abbas, 1997). Majlis-e-Shoora was a powerless body. It was a financial burden only (Malik, 1997).

On 12th August 1983, Ziaul Haq expressed his scheme (18th month long) for the restoration of democracy in the country. According to the announced scheme, local bodies elections were to be held before the elections of the National Assembly and the provincial assemblies. Ziaul Haq wanted to know the voting trend in the local bodies elections (Abbas, 1997). On 19th December 1984, a referendum was held to elect the President. Official results of the referendum showed that 62 percent voters cast their votes. Ziaul Haq got 97 percent votes (Abbas, 1997). However, the independent sources claimed that the turnout was 10 to 20 percent (Safdar Mahmood, 2000). The Movement for Restoration of Democracy (MRD) boycotted the referendum (Baxter & Wasti, 1966).

3.7 The 1985 General Elections

In February 1981, the opposition political parties mainly belonging to the left-wing established the MRD (Rizvi, 2013). It demanded free and fair elections at the central and provincial levels. The PPP led the MRD. On 25th February 1985, the National Assembly elections were held. The elections for the provincial assemblies were held on February 28, 1985. These were the non-party based elections. The MRD

3.8 The 8th Amendment

It is a general perception that only 17 Articles of the 1973 Constitution were addressed under the 8th Amendment. About seventy Articles were altered under the said Amendment. The 8th Amendment changed the overall vision of the Constitution. A large number of Amendments made in the different Articles of the Constitution by Ziaul Haq were also validated under the 8th Amendment (Abbas, 1997). The RCO should be considered as part of the 8th Amendment (Hamid Khan, 2004).

The original text of the 1973 Constitution visualized parliamentary system. The Prime Minister was the real head of the executive. The President enjoyed only ceremonial powers. The 8th Amendment strengthened position of the President. The parliamentary system was changed into semi-presidential system. According to the amended Article 58, the President could dissolve the National Assembly in his discretion. Article 58 (2) (B) says:

A situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary.

Article 112 (2) also empowered the provincial governor to dissolve the Provincial Assembly in his discretion. The President had powers to nominate the Prime Minister, to appoint judges of the Supreme Court and the High Courts, governors of the provinces and the services chiefs (Safdar Mahmood, 2000). Under Article 165, (Abbas, 1997) the policies during the Martial Law period were excluded from the judicial review. ¹¹

After the general elections of 1985, Muhammad Khan Junejo was nominated as Prime Minister by Ziaul Haq. On 30th December 1985, the 8th Amendment became fully operative and Martial Law was lifted from the country (Rizvi, 2013). Differences emerged between Ziaul Haq and Junejo. Ziaul Haq dissolved the National Assembly on 29th May 1988 (Abbas, 1997). On 17th August 1988, Ziaul Haq died in an air crash (Safdar Mahmood, 2000). On 16th November 1988, elections of the National Assembly were held. The elections of the Provincial Assemblies were held on November 19, 1988. The expected major contest was between nine party alliance, Islami Jamhoori Ittehad (IJI) and the PPP (Rizvi, 2013). The right-wing religious political parties were part of the IJI.¹²

In 1986, Benazir Bhutto came back in Pakistan from self-exile. She took responsibility of the headship of the PPP. Both the IJI and the PPP gave priority to the socio-economic development during the election campaign. The IJI also stressed on Islamisation of the country. The turnout for the National Assembly was 42.7 percent. There were 217 seats for the National Assembly. The PPP emerged as the largest party by winning 93 seats. The IJI won 54 seats. On 2nd December 1988, Benazir Bhutto was elected as Prime Minister. The IJI played a role of the Opposition in the National Assembly. Nawaz Sharif belonging to the IJI, formed the government in the Punjab province. The Federal Government and the Punjab Government did not establish good relationship between them during the period 1988-1990. The President Ghulam Ishaq Khan dismissed the Government of Benazir Bhutto along with the dissolution of the National Assembly on August 6, 1990 (Rizvi, 2013).
3.10 The 1990 Elections

The elections for the National Assembly and the four Provincial Assemblies were held on 24 November 1990 and 27 November subsequently. Four political parties; PPP, Tehrik-i-Istaqlal, PML (Qasim) and Tehrik-e- Nifaze-e- Fiqah-e-Jafaria formed an election alliance “Pakistan Democratic Alliance” (PDA). The IJI won 106 seats for the National Assembly and also got simple majority. The PDA won 44 seats. Nawaz Sharif was elected as the Prime Minister. The National Assembly could not complete its tenure of five years. In January 1993, Nawaz Sharif expressed his intention to curtail discretionary powers of the President. As a result, tussle arose between the Prime Minister and the President. Nawaz Sharif addressed the nation on 17th April 1993, and alleged the President of doing conspiracy against the government. The President Ghulam Ishaq Khan dismissed the Sharif Government and dissolved the National Assembly by using his discretionary powers on 18th April 1993 (Rizvi, 2013). It was the third National Assembly that was dissolved by the President, under Article 58 (2) B.

3.11 The 1993 Elections and the Second Benazir Government

The real competition was between the PPP and PML-N. The elections for the National Assembly and the four Provincial Assemblies were held on 6th and 9th October 1993 subsequently. The PPP won 86 seats in the National Assembly. The PML-N was the second largest party in the National Assembly with 73 seats. On October 19, 1993, Benazir Bhutto became Prime Minister. On 13th November 1993, the PPP candidate, Farooq Ahmad Khan Leghari was elected as the President (Rizvi, 2013). Soon after winning the Presidential election Leghari gave a statement and criticized the 8th Amendment. Differences developed between the Prime Minister Bhutto and the
President Leghari. The National Assembly was dissolved and Bhutto’s Government was removed by the President Leghari on November 6, 1996 (Rizvi, 2013).

3.12 The 1997 Elections and Nawaz Sharif’s Second Term

The elections for the National Assembly and the four Provincial Assemblies were held on February 3, 1997. The JI decided to boycott the elections. On 25th April 1996, Imran Khan established Pakistan Tehrik-e-Insaf (PTI) and took part in the 1997 elections. However, it could not win a single seat in the National Assembly and the four Provincial Assemblies. The PML-N emerged as the largest party in the National Assembly by winning 136 seats out of 207 general seats. The PPP won only 18 seats (Rizvi, 2013). The religious political parties were decisively defeated. The PPP also lost support at the national level and at the provincial level except Sindh (Waseem, 1998). On 17th February 1997, Nawaz Sharif was elected as Prime Minister for the second time (Rizvi, 2013).

3.13 The 13th Amendment in the 1973 Constitution

The PML-N got overwhelming victory in the 1997 Elections. On 31st March 1997, Prime Minister Sharif while addressing the nation, showed his intention to reverse the 8th Amendment. The Parliament passed the 13th Amendment unanimously on April 1, 1997. Amendment was made in four Articles; 58, 101, 112 and 243.

3.13.1 Amendment of Article 58

In Clause 2 sub-clause (B) was omitted from the Constitution (The 1973 Constitution, Thirteenth Amendment Act, 1997). The amendment in the said article reversed the discretionary power of the President to dissolve the National Assembly.
3.13.2 Amendment of Article 101

In Clause (1) the words “after consultation with” the words “on the advice of” were substituted (The 1973 Constitution, Thirteen Amendment Act, 1997) Under the amended article, advice of the Prime Minister in appointment of Provincial Governors was binding on the President.

3.13.3 Amendment of Article 112

In Clause 2 sub-clause (B) was omitted from the Constitution. (The 1973 Constitution, Thirteen Amendment Act, 1997) The Governors’ discretionary powers to dissolve the provincial assemblies were reversed.

3.13.4 Amendment of Article 243

In Clause (2) sub-clause (C) the words “in his discretion” were omitted from the Constitution. (The 1973 Constitution, Thirteen Amendment Act, 1997) Under the amended article, the Prime Minister’s advice to the President for appointment of the Services Chiefs was binding on the President. The amendment in the above articles curtailed powers of the President and the Provincial Governors.

3.14 Military Coup of October 12, 1999

On October 12, 1999, elected Government of Nawaz Sharif was overthrown by General Musharraf. The 1973 Constitution was suspended. (Rizvi, 2010) Under the Provisional Constitutional Order (PCO) No. 1 of 1999, Musharraf designated himself as the Chief Executive of the country. He also gave constitutional protection to the Proclamation of Emergency. The PCO said, “No Court, tribunal or authority shall call in question, the Proclamation of Emergency of 14th Day of October 1999 or any order made
in pursuance of that” (Provisional Constitutional Order I of 1999). On October, 17, 1999, he announced seven-point agenda (Rizvi, 2000).

3.15 The LFO

In the judgment of the case titled “Zafar Ali Shah versus General Pervaiz Musharraf” (PLD 2000 S.C. 869), the Apex Court empowered Musharraf to amend the Constitution (Sarwar Khan, 2003). On August 22, 2002, Musharraf implemented LFO. It contained 29 items. The changes and additions were introduced in the 1973 Constitution. Article 58 (2) (B) was restored. The President was given the power to dissolve the National Assembly. Intra-party elections were made obligatory for every political party. Musharraf deemed to have been elected President for five years. The National Assembly seats were increased. (Legal Framework Order, 2002).

Table: Seats for the National Assembly under LFO 2002

<table>
<thead>
<tr>
<th>Province</th>
<th>General</th>
<th>Women</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balochistan</td>
<td>14</td>
<td>3</td>
<td>17</td>
</tr>
<tr>
<td>NWFP (now KPK)</td>
<td>35</td>
<td>8</td>
<td>43</td>
</tr>
<tr>
<td>Punjab</td>
<td>148</td>
<td>35</td>
<td>183</td>
</tr>
<tr>
<td>Sind</td>
<td>61</td>
<td>14</td>
<td>75</td>
</tr>
<tr>
<td>FATA</td>
<td>12</td>
<td>--</td>
<td>12</td>
</tr>
<tr>
<td>Federal Capital</td>
<td>2</td>
<td>--</td>
<td>2</td>
</tr>
<tr>
<td>Total</td>
<td>272</td>
<td>60</td>
<td>332</td>
</tr>
</tbody>
</table>


The voting age was reduced from 21 years to 18 years. The number of seats for the Senate was increased from 87 to 100 (Legal Framework Order, 2002).
Table: Seats for the Senate under LFO 2002

<table>
<thead>
<tr>
<th>Province</th>
<th>General</th>
<th>Women</th>
<th>Technocrat/Ulema</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balochistan</td>
<td>14</td>
<td>4</td>
<td>4</td>
<td>22</td>
</tr>
<tr>
<td>NWFP (now KPK)</td>
<td>14</td>
<td>4</td>
<td>4</td>
<td>22</td>
</tr>
<tr>
<td>Punjab</td>
<td>14</td>
<td>4</td>
<td>4</td>
<td>22</td>
</tr>
<tr>
<td>Sind</td>
<td>14</td>
<td>4</td>
<td>4</td>
<td>22</td>
</tr>
<tr>
<td>FATA</td>
<td>8</td>
<td>--</td>
<td>--</td>
<td>08</td>
</tr>
<tr>
<td>Federal Capital</td>
<td>2 (W/T)</td>
<td>2</td>
<td>--</td>
<td>4</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td></td>
<td>100</td>
</tr>
</tbody>
</table>


Seats for the four Provincial Assemblies were also increased.

Table: Seats for the four Provincial Assemblies under LFO, 2002.

<table>
<thead>
<tr>
<th>Province</th>
<th>General</th>
<th>Women</th>
<th>Non-Muslims</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balochistan</td>
<td>51</td>
<td>11</td>
<td>3</td>
<td>65</td>
</tr>
<tr>
<td>NWFP (now KPK)</td>
<td>99</td>
<td>22</td>
<td>3</td>
<td>124</td>
</tr>
<tr>
<td>Punjab</td>
<td>297</td>
<td>66</td>
<td>8</td>
<td>371</td>
</tr>
<tr>
<td>Sindh</td>
<td>130</td>
<td>29</td>
<td>9</td>
<td>168</td>
</tr>
</tbody>
</table>


A new Article 152 (A) was inserted to the Constitution. According to the said Article, NSC was instituted. The President was appointed the Chairman of the council. Article 152 (A) (1) said,

There shall be a National Security Council to serve as a forum for consultation on strategic matters pertaining to the sovereignty, integrity and security of the State; and the matters relating to democracy, governance and inter-provincial harmony.
Article 270 (AA) was inserted in the Constitution (Legal Framework Order, 2002). It validated all decisions made by Chief Executive/President Musharraf. The political parties manifested a mixed opinion over LFO. The expansion of women seats in the assemblies, restoration of joint electorate, increase in the seats of assemblies and the Senate was overall appreciated. The two major political parties, the PML-N and the PPP criticized restoration of Article 58 2 (B), educational condition for the contesting candidates and the NSC. Muttaheda Majlis Amal (MMA) expressed that LFO was unconstitutional. According to MMA, supremacy of the Constitution was lessened under LFO. In contrast, PML-Q, PTI, Millat Party and Pakistan Awami Tehrik (PAT) applaud LFO (Ahmad Khan, 2004).

3.16 The Elections 2002

On October 10, 2002, elections for the National Assembly and the four Provincial Assemblies were held. The two major political parties, the PPP and the PML-N took part in the elections without their party heads. Before the 2002 elections, some political leaders left the PML-N and establish a new political party, PML-Q, under the leadership of Chaudhry Shaujjat Hussain. The PML-Q was supported by Musharraf. There was a split mandate in the 2002 elections. Mir Zafarullah Jamali was elected as Prime Minister (Rizvi, 2013).

Table: Party Seats in the National Assembly (Elections 2002)

<table>
<thead>
<tr>
<th>Party</th>
<th>Seats</th>
<th>Party</th>
<th>Seats</th>
</tr>
</thead>
<tbody>
<tr>
<td>PML-Q</td>
<td>126</td>
<td>PML-Jinnah</td>
<td>01</td>
</tr>
<tr>
<td>PPPPP</td>
<td>81</td>
<td>PML-F</td>
<td>05</td>
</tr>
<tr>
<td>PML-J</td>
<td>03</td>
<td>MQM-H</td>
<td>01</td>
</tr>
<tr>
<td>MMA</td>
<td>63</td>
<td>PAT</td>
<td>01</td>
</tr>
<tr>
<td>-------</td>
<td>----</td>
<td>-----</td>
<td>----</td>
</tr>
<tr>
<td>PML-N</td>
<td>19</td>
<td>PML-Z</td>
<td>01</td>
</tr>
<tr>
<td>MQM</td>
<td>17</td>
<td>PSPP</td>
<td>01</td>
</tr>
<tr>
<td>National Alliance</td>
<td>16</td>
<td>PTI</td>
<td>01</td>
</tr>
<tr>
<td>PPP (S)</td>
<td>02</td>
<td>PKMAP</td>
<td>01</td>
</tr>
</tbody>
</table>

**Total** | 342 |


### 3.17 The 17th Amendment

On April 30, 2002, General Musharraf was unopposed elected as the President of Pakistan in a manipulated referendum (Rizvi, 2010). The 17th Amendment in the 1973 Constitution was passed in December 2003 which addressed following Articles such as 41, 58, 112, 152 A, 179, 195, 243, 268 and 270 AA (Hamad Khan, 2004).

Article 41 of the Constitution which addresses election of the President of Pakistan has been amended. Additionally, in Clause 7, a proviso to paragraph ‘B’ has been inserted. It said that, “the qualification incurred by an MNA for holding another office of profit would become effective on December 31, 2004’. Musharraf’s election as President was endorsed by Clause 8 (Hamad Khan, 2004). Under the 13th Amendment (1997), Clause 2 (B) of Article 58 was deleted. Once again the said Section was inserted in the Constitution under the 17th Amendment. A new Clause 3 had been inserted in the Constitution (The 1973 Constitution, 17th Amendment Act). It said,

The President in case of dissolution of the National Assembly under paragraph (B) of clause (2) shall, within fifteen days of the dissolution, refer the matter to the Supreme Court and the Supreme Court shall decide the reference within thirty days whose decision shall be final.
Clause 2 of Article 112 which had earlier been deleted under the 13th Amendment was reinserted in the Constitution under the 17th Amendment. The Governor was empowered to dissolve the Provincial Assembly by using his/her discretionary power. Under the LFO, Clause (A), regarding the establishment of the National Security Council was inserted in Article 152. The said Clause was deleted under the 17th Amendment (Hamad Khan, 2004). Article 179 addresses retiring age of a Judge of the Supreme Court. Under the LFO, retiring age of a Judge of the Supreme Court was raised by three years. The 17th Amendment reversed the change introduced by the LFO. Article 179 said,

A judge of the Supreme Court shall hold office until he attains the age of sixty five years, unless he sooner resigns or is removed from office in accordance with the Constitution (The 1973 Constitution, 17th Amendment Act).

Retiring age of a Judge of a High Court is addressed in Article 195. The said article has been amended and under the 17th Amendment, the retiring age of a Judge of a High Court is sixty-two years (The 1973 Constitution, 17th Amendment Act). Under Article 268, protection was given to the Provincial Local Government Ordinances and the Police Order to six years up till December 2009. Under Article 270 (AA), validation was made to laws made from October 12, 1999 onward (Hamad Khan, 2004).

The 8th and 17th Amendments undermined spirit of the 1973 Constitution and role of the elected representative was minimized. The parliamentary democracy was envisioned in the original text of the 1973 Constitution. Under the 1985 RCO, 65 Articles were addressed and only 18 Articles were modified. Likewise, 29 Articles were addressed under the LFO 2002. However, only 9 Articles were modified under the 17th Amendment. Ziaul Haq and Musharraf amended as many as 67 Articles in the 1973 Constitution without any parliamentary debate on these amendments. Under Article 270 (A), the amendments introduced by the RCO were validated by the parliament. The
amendments introduced by the LFO were validated under Article 270 (AA). Both the military rulers introduced amendments to preserve their rule. Most of the Amendments in the 1973 Constitution were passed quickly and even the Amendment Bills were not referred to the Parliamentary Committees. In Pakistan, there has been need to develop a convention of parliamentary debate (Hamad Khan, 2004).
Chapter 4

POLITICS OF THE 18TH AND 20TH CONSTITUTIONAL AMENDMENTS: WHAT HAPPENED AND WHY

The parliamentary democracy was envisioned in the 1973 Constitution. So, it functioned in letter and spirit from 1973 to 1977. The President was head of the state having nominal role, which is a characteristic of the parliamentary system. In 1977, General Ziaul Haq imposed Martial Law in the country. The 1973 Constitution was held in abeyance. It was restored in 1985. The Parliament passed the 8th Amendment. According to the 8th Amendment, powers of the President were enhanced. He could dissolve the National Assembly under Article 58 (2) (B) by using his discretionary powers. As a result, not a single National Assembly could complete its tenure. The civilian presidents also used Article 58 (2) (B) which caused political instability in the country. In 1997, the Parliament passed the 13th Amendment in the Constitution. The powers of the President given by the 8th Amendment were reversed. Once again the 1973 Constitution was restored in its original form.

On October 12, 1999 the elected Government of the Prime Minister, Nawaz Sharif, was toppled by General Musharraf in a military coup. In August 2002, Musharraf executed LFO. The powers were kept in the hands of the President. General Elections were held in Pakistan in 2002. The 17th Amendment was passed on December 31, 2003 (Hanif & Khan, 2012). Although the Prime Minister plays a key role in the parliamentary system, the amendment minimized his powers. There was a quasi-presidential system in the country as the President could dissolve the National Assembly by using his discretionary powers.
4.1. Need for Amendment in the 1973 Constitution

The 8th Amendment, LFO 2002 and the 17th Amendment curtailed executive powers of the Prime Minister. In contrary to parliamentary traditions, the President had more than enough powers. The Parliament, a representative body at the national level was intentionally destabilized. There was need to review the 1973 Constitution by introducing amendments for the following reasons: to restore the Constitution as it was at the time of its origin; to eliminate the Presidential pressure on the Parliament; to maintain parliamentary system in its actual form; to strengthen democracy; to enhance quality of governance; to fulfill demand of the provincial autonomy; to ensure independence of the judiciary; to institute an independent Election Commission; to stop the way for military adventure in politics; to increase powers of the Senate; to remove grievances of the provinces; to minimize practice of issuing the Ordinances; to remove the Concurrent Legislative List (CLL) from the Constitution and approval of international treaties by the Parliament (Hanif & Khan, 2012).

The 18th Amendment was a paradigm shift in the political landscape of Pakistan. The parliamentary system which was visualized in the 1973 Constitution has been restored. After passage of the 18th Amendment, the President acts as only head of the state. The discretionary powers of the President had been reversed. In the past, the President caused political instability in the country. The 8th and 17th Amendments shifted some crucial powers in the hands of the President. Future military intervention in politics had been blocked by redefinition of treason under Article 6. Pakistan is a federal state and the smaller federating units have always been demanding provincial autonomy. The CLL has been removed from the Constitution. The concurrent powers shall be
exercised by the Provinces only. Change has also been made in the FLL-I and FLL-II. The sixth and the seventh Schedules have been abolished from the Constitution.

The 18th Amendment introduced a new mechanism for appointment of Judges in the Superior Courts. Instead of the President, the amendment puts responsibility on the elected representatives to form the care-taker Governments at the Central and the Provincial Levels. Likewise, the previous method for appointment of the Chief Election Commissioner has also been changed. Overall, 102 Articles of the 1973 Constitution have been revised. After the 1973 Constitution, the political leadership showed consensus on the 18th Amendment.

4.2 Journey towards the 18th Amendment

The background of the 18th Amendment has been discussed below.

4.2.1 The Charter of Democracy

An agreement was made on 36 points. There were four main agendas in the Charter; amendments in the 1973 Constitution, Code of Conduct, Free and Fair Elections and Civil-Military Relations (Rabbani, 2012).

4.2.1.1 Amendments in the 1973 Constitution

The following decisions were made with reference to the 1973 Constitution: The Constitution of 1973 will be returned to its original form as it was before the military action of October 12, 1999. The Legal Framework Order (LFO) and the 17th Amendment in the Constitution will be reversed. The Prime Minister will appoint the Services Chiefs and the Governors. A new mechanism will be adopted for appointment of judges in the Superior Courts. A commission, comprising members from Judiciary, Bar Councils and Executive will be established. The commission will recommend three
names for each vacancy to the Prime Minister. The Prime Minister will forward one name for confirmation to the Joint Parliamentary Committee. There will be equal representation of the Opposition and the Treasury Benches in the Committee. All special courts including accountability and anti-terrorism courts will be eliminated. There will be sanction for the Judges to take oath under Provisional Constitutional Order (PCO). A new court “Federal Constitutional Court” will be instituted. The basic function of the court will be to hear cases concerning the constitutional matters (Charter of Democracy, 2006).

It was decided that the CLL in the 1973 Constitution will be removed. A new NFC Award will be announced. The reserve women seats in the National Assembly and the Provincial Assemblies were allotted to the political parties according to the party position. It was decided that the women reserve seats will be allotted according to the votes received in the elections by the political parties. The representation of the minorities will be ensured in the Senate. Areas of FATA will be made part of NWFP with assent of the province. Development shall be extended to the Northern Areas of Pakistan. In Pakistan, elections of Local Governments were always held on non-party basis. It was decided that elections of Local Governments shall be held on party basis. The accountability and constitutional protection of the Local Government will be ensured and the powers of the Local Bodies will be increased (Charter of Democracy, 2006).

4.2.1.2 Code of Conduct

According to the 17th Amendment in the 1973 Constitution, there was sanction for a person to become Prime Minister for the third term. It was decided that this sanction will be removed from the Constitution. Truth and Reconciliation Commission shall be instituted. National Accountability Bureau (NAB) shall be abolished. An Independent Accountability Commission will be instituted. Chairman of the Commission will be
nominated by the Prime Minister after consultation with the Leader of the Opposition in the National Assembly. The Prime Minister shall send name of nominee to the Joint Parliamentary Committee for confirmation. There will be equal representation of the Treasury and Opposition Benches in the committee. The Chairman shall ensure the neutrality (Charter of Democracy, 2006).

There would be no pressure on media and it would function independently. The citizens shall have access to information. The Chairmen Public Accounts Committees in the National Assembly and the Provincial Assemblies would be appointed by Leader of the Opposition. Pakistan will establish good relations with its neighboring countries. The Kashmir issue must be resolved according to the UN resolutions. The standard of the governance will be enriched. There will be equality in provision of opportunities among all citizens belonging to different religions and sexes. The mandate of the voters at the national and the provincial levels will be duly regarded. Due role of the Opposition will be admitted. Both the Government and the Opposition will work according to the Constitution. No party will invite the military to topple the elected government. No party will become part of the military rule (Charter of Democracy, 2006).

There would be open identifiable ballot for the election of the Senators and other indirect seats and it was hoped that this single measure would help in abolition of bribery. The members who do not follow party directions in the voting process would be disqualified. All military and judicial officers would declare their annual income and assets. National Democracy Commission would be instituted. The purpose of the commission will be to encourage democratic values. Terrorist activities will be met with iron hands (Charter of Democracy, 2006).
4.2.1.3 Free and Fair Elections

An independent and neutral Election Commission will be formed. There will be a new mechanism for appointments in the Commission. The Prime Minister, in consultation with the Leader of the Opposition, will forward up to three names for appointment of each post of Chief Election Commissioner, Secretary and members of the Commission to the Joint Parliamentary Committee. If the Prime Minister and Leader of the Opposition do not agree then each will send his own list to the Committee. The same method will be adopted by the Committees in the Provincial Assemblies to appoint the Provincial Election Commissioners. The condition of graduation for a candidate shall be removed from the Constitution. After 90 days of the General Elections, Local Governments’ Elections will be held. Lastly, an impartial interim government shall be formed to hold fair elections (Charter of Democracy, 2006).

4.2.1.4 Civil-Military Relations

The intelligence agencies will be answerable to the Government. The political wings of all agencies would be removed. There would be re-examination of all indemnities in the Constitution, introduced by the military rulers. The Parliament shall discuss and approve the defence budget. The ministry of defence will have jurisdiction on military lands and cantonment areas. The structure of the Federal Government and the Provincial Governments will be adopted according to the principles of parliamentary system of government (Charter of Democracy, 2006).
4.3 General Elections 2008

In the 2008 General Elections, the PPP emerged as the largest political party in the National Assembly. The PPP formed the Federal Government and Syed Yosaf Raza Gillani was elected as Prime Minister of Pakistan.

Table: Party Position General Elections 2008

<table>
<thead>
<tr>
<th>Name of Party</th>
<th>Seats in National Assembly</th>
</tr>
</thead>
<tbody>
<tr>
<td>PPP</td>
<td>118</td>
</tr>
<tr>
<td>PML (N)</td>
<td>89</td>
</tr>
<tr>
<td>PML (Q)</td>
<td>50</td>
</tr>
<tr>
<td>MQM</td>
<td>25</td>
</tr>
<tr>
<td>Muttahida Majlis-e-Amal</td>
<td>08</td>
</tr>
<tr>
<td>ANP</td>
<td>13</td>
</tr>
<tr>
<td>PML (F)</td>
<td>05</td>
</tr>
<tr>
<td>PPP (Sherpao)</td>
<td>01</td>
</tr>
<tr>
<td>National Peoples Party</td>
<td>01</td>
</tr>
<tr>
<td>Balochistan National Party (Awami)</td>
<td>01</td>
</tr>
<tr>
<td>Independents</td>
<td>30</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>341</strong></td>
</tr>
</tbody>
</table>


4.4 The SPCCR

The SPCCR was formed under the Chairmanship of Senator Raza Rabbani and the total membership of the committee was 27. All the political parties sitting in the Parliament were given representation. Eighteen members belonged to religious and ethnic
parties. The three major political parties PML-N, PML-Q and PPP had nine members in the committee (Waseem, 2010).

At its initial stage, the SPCCR was directed to recommend proposals for Constitutional Amendment by keeping in view the CoD, and the 17th Constitutional Amendment. However, the Committee also gave due consideration to the proposals given to it (Hanif & Khan, 2012). The SPCCR was given 982 suggestions by the citizens. It spent 385 hours on discussions. It could not get agreement on some of the subjects. MQM wanted to reserve seats for overseas Pakistanis in the National Assembly and the Provincial Assemblies. PKMAP proposed a separate Chief Commissioner’s province to be called Khyber Pakhtunkhua Southern and renaming FATA as Khyber Pakhtunkhwa Central. JI asked for ban on the President to use his clemency power in cases related to Qasas or Hadood. The ANP pleaded for election of the President on rotation principle from the provinces (SPCCR Report, April 2, 2010). After a hard work, the SPCCR was the SPCCR was successfully able to devise a draft for Constitutional Amendment.

4.5 The 18th Amendment Bill

The National Assembly approved the Eighteenth Constitutional Amendment Bill on April 8, 2010 by casting 292 votes in its favour, more than the constitutional requirement of two-third majority (The News, April 9, 2010). The Senate also passed the Amendment Bill on April 15, 2010. Not a single vote was cast against the said bill while 90 Senators cast their votes in its favour (The News, April 16, 2010). Finally the President affixed his signature on Amendment Bill on April 19, 2010 (Daily Times, April 20, 2010). After the 1973 Constitution, political leadership showed extensive consensus on the 18th Amendment (Mujahid, 2012).
Prior to the 18th Amendment, the 1973 Constitution contained 280 Articles, 27 chapters, 5 schedules and 12 parts. One hundred and two Articles were reviewed under the 18th Amendment, 7 were inserted, 3 were omitted, 20 were substituted, 69 were amended, sixth and seventh schedules were omitted and the 17th Amendment was abolished (Chandio, 2013).

**4.6 Main Features of the 18th Constitutional Amendment**

Under the 18th Amendment, important changes have been made in the political structure of Pakistan. The 1973 Constitution was also amended during the military regime of Ziaul Haq (8th Amendment) and Pervaiz Musharraf (17th Amendment). According to both amendments, power center was shifted in the hands of the military rulers. Their actions then had been given Constitutional protection. The 18th Amendment has enhanced powers of the elected Prime Minister and the Parliament. The demand of the provincial autonomy has been fulfilled (Daily times, May 16, 2010). The regional political leadership has always demanded for a flexible Constitution in Pakistan (Bokhari & Kamran, 2013). The main changes brought in the 18th Amendment are briefly discussed below:

(i) Restoration of parliamentary sovereignty is ensured. The discretionary powers of the President to dismiss the National Assembly have been reversed. In the past, the President could dismiss the National Assembly under Article 58 (2) (B). Prior to the 18th Amendment, the President could hold referendum on any important national issue. According to the 18th Amendment, the Prime Minister can refer the matter to the Parliament. After approval of the Parliament, the Prime Minister can hold the referendum. (Constitution of the Islamic Republic of Pakistan 1973, Article 48).
(ii) The time for approval of the Bill by the President has been reduced from 30 to 10 days (Constitution of the Islamic Republic of Pakistan 1973, Article 75). After the amendment, the Governor to be appointed in a province must be a resident of that province (Constitution of the Islamic Republic of Pakistan 1973, Article 101-2). The provincial cabinet cannot be more than 11 percent of the total membership of the Provincial Assembly. The Chief Minister can appoint only five advisors (Constitution of the Islamic Republic of Pakistan 1973, Article 138). The President, on advice of the Prime Minister, shall appoint Chiefs of the Armed Forces (Constitution of the Islamic Republic of Pakistan 1973, Article 243-1).

(iii) The smaller provinces of Pakistan always demanded more provincial autonomy since 1947. The main demand by the provinces was to abolish the CLL. According to the 18th Amendment, the CLL has been abolished. Five objects of the Federal List 1 have been taken from the Center and given to the Provinces. The Federal Government cannot construct grid stations without consultation of the concerned province.

(iv) The President could appoint Chief Election Commissioner by using his discretionary powers. The 18th Amendment changed the mechanism. Now consultation between the Prime Minister and Leader of the Opposition in the National Assembly is obligatory (Constitution of the Islamic Republic of Pakistan 1973, Article, 213-2 A). The term of the Chief Election Commissioner has been fixed as five years.

(v) The Judicial Commission has been formed to appoint judges for High Courts, the Federal Shariat Court and the Supreme Court. Islamabad High Court has been established in the Federal Capital (Constitution of the Islamic Republic of Pakistan 1973, Article 175-A).
(vi) Role of the Upper House (the Senate) has been increased. Prior to the 18th Amendment, the Senate had to make recommendations on fiscal bill within seven days. The amendment has increased the period from seven to fourteen days (Constitution of the Islamic Republic of Pakistan 1973, Article 73). Now the Cabinet is answerable to both houses of the Parliament (Constitution of the Islamic Republic of Pakistan 1973, Article 91). The Senate has equal representation in the Parliamentary Committee for appointment of the Judges (Constitution of the Islamic Republic of Pakistan 1973, Article 175-A). The Senate has also one third representation in the Parliamentary Committee for appointment of the Election Commission (Constitution of the Islamic Republic of Pakistan 1973, Article 213).

(vii) The issue concerning the emergency provisions has also been addressed in the 18th Amendment. Role of the President has been lessened. The President can proclaim emergency after a resolution passed by the concerned Provincial Assembly. On the other side if the President proclaims emergency on his own behalf then both houses of the Parliament will have to approve the proclamation of the emergency (Constitution of the Islamic Republic of Pakistan 1973, Article 232).

(viii) According to the 18th Amendment the CLL has been deleted from the Fourth Schedule of the Constitution. The Parliament cannot make laws with respect to any issue not included in the FLL. However, the Parliament can make laws with respect to any issue included in the FLL (Constitution of the Islamic Republic of Pakistan 1973, Article 142).

(ix) The discretionary powers of the President have been curtailed. He cannot disqualify any person from taking part in the elections through an ordinance (Constitution of the Islamic Republic of Pakistan 1973, Article 63-A). Prior to the 18th Amendment, the
President could appoint any person as the Governor in the absence of the Governor or his inability to perform the functions. After the amendment, the Speaker of the Provincial Assembly acts as the Governor in the absence of the Governor (Constitution of the Islamic Republic of Pakistan 1973, Article 104). The President does not play key role in the appointment of the judges of High Courts and the Supreme Court. A new mechanism has been introduced for appointment of the Chief Election Commissioner (Constitution of the Islamic Republic of Pakistan 1973, Article 213). The President could appoint the caretaker Cabinet by using his discretionary powers. After the 18th Amendment, the President appoints the caretaker Prime Minister in consultation with the Prime Minister and the Leader of the Opposition in the outgoing National Assembly (Constitution of the Islamic Republic of Pakistan 1973, Article 224- 1-A). The discretionary power of the President to appoint the Chairman of the Public Service Commission has been withdrawn. The Chairman of the Public Service Commission shall be appointed on advice of the Prime Minister (Constitution of the Islamic Republic of Pakistan 1973, Article 242- 1-A).

(x) Changes have also been made in the list of Fundamental Rights. A new Fundamental Right “right to fair trial” has been added (Constitution of the Islamic Republic of Pakistan 1973, Article 10-A). It was ignored in the past. Another Fundamental Right “right to information” has been made the part of the 1973 Constitution (Constitution of the Islamic Republic of Pakistan 1973, Article 19-A). A new Fundamental Right “right to education” has been inducted. It is the state responsibility to provide free education to the children of the age of 5 to 16 years (Constitution of the Islamic Republic of Pakistan 1973, Article 25-A). According to a new Article 190 (A) the citizens of Pakistan will have the right to information in the matters of public concern. It will ensure transparency in the decision making process (Babar, 2011).
(xi) Article 1 was amended to change the name of two provinces, “Balochistan” and “Sindh”. NWFP was renamed as Khayber- Pakhtunkhwa. It is the third largest province of Pakistan. According to the national Census of 1998, the Pashtoons dominate within the province having population of 73.9 percent (Statistics Division Islamabad, December, 2004). The Hindko population of the province protested against renaming of the province (European Journal of Social Sciences, November 2011).

(xii) In the past, the 1956 and the 1962 Constitutions were abrogated by two military dictators. According to the 1973 Constitution, abrogation of the Constitution was declared as high treason. Both the military dictators Gen. Ziaul Haq and Gen. Pervaiz Musharraf suspended the 1973 Constitution. Framers of the 18th Amendment wanted to block the way of dictatorship in the country for which an amendment was made in Article 6. After the amended Article, suspension of the Constitution shall also be deemed as high treason. A new clause 2 (A) has been inserted in the Article 6. It states that any Court cannot validate act of treason described in clause 1 and 2 of the Article 6 (Constitution of the Islamic Republic of Pakistan 1973, Article 6).

Any person who abrogates or subverts or suspends or holds in abeyance, or attempts or conspires to abrogate or subvert or suspend or hold in abeyance the Constitution by use of force or show of force or by any other unconstitutional means shall be guilty of high treason.

(xiii) Article 140 (A) addresses the Local Government. According to the said amended Article, the Election Commission of Pakistan shall conduct elections of the local bodies. Each Province shall institute Local Governments and devolve political, fiscal and administrative powers to the public representatives at the local level (Constitution of the Islamic Republic of Pakistan 1973, Article 140).
5.7 Detail of Features of the 18th Amendment

Detail of features of the 18th Amendments has been discussed below.

4.7.1 Revival of Parliamentary system

The military dictators in Pakistan were major hindrance in the way of smooth working of the Parliamentary democracy (Mehboob & Ijaz, 2012). The parliamentary system of government was established under the 1973 Constitution. The Prime Minister was chief executive of the country. The President was the head of the state, having ceremonial powers and functions. The 8th Amendment in the 1973 Constitution shifted certain powers from the Prime Minister to the President. In 1997, the 13th Amendment and the 14th Amendment were passed by the Parliament. Once again the parliamentary system was restored. During Musharraf regime, the Parliament passed the 17th Amendment. Role of the President was increased under the aforesaid amendment. Revival of the parliamentary system has been ensured through the 18th Amendment.

4.7.2 Enhancement in the Role of the Prime Minister

The Amendment has increased powers and functions of the Prime Minister. Prior to the 18th Amendment, the Prime Minister had to convey all decisions of the Cabinet to the President in relation to the administration of matters of the federation and proposals for making laws. According to the 18th Amendment, the Prime Minister will give information to the President on all matters within the federation, related to foreign affairs and on schemes for making laws for the country (Constitution of the Islamic Republic of Pakistan 1973, Article 46). According to the amended Article 48, there is a limitation of ten days on the President to act upon the advice of the Prime Minister or his cabinet. After the amended Article 156, the Prime Minister has the power to nominate four other
members in the CCI. The President does not have the power to do so. Prior to the Amendment, the President had the discretionary power to appoint the Chairman of the Federal Public Service Commission (FPSC). After amendment in the Article 242, the President appoints the Chairman FPSC on advice of the Prime Minister. The discretionary power of the President in this respect has been removed. The prestige of an elected Prime Minister and an elected Chief Minister has been enhanced. According to the amended Article 153, the Prime Minister is the Chairman of the CCI (Hanif and Khan, 2012). The Chairman Public Service Commission at the Provincial level shall be appointed by the Governor on advice of the Chief Minister (Constitution of the Islamic Republic of Pakistan 1973, Article 242).

4.7.3 Referendum Call

Prior to the 18th Amendment, the President by using his discretionary power or on advice of the Prime Minister could hold referendum on any important national issue. The citizens had to answer the question in “Yes” or “No”. In the past, General Ziaul Haq and General Pervaiz Mushrraf had used the discretionary power of the President to hold referendums for their own benefits.

According to the 18th Amendment, the discretionary power of the President has been taken back from the President. Role of the public representatives has been enhanced. The Prime Minister can refer any matter of national importance to the joint sitting of the Parliament. After approval of the Parliament, the Prime Minister puts the matter before the citizens to answer the question in “Yes” or “No” (Constitution of the Islamic Republic of Pakistan 1973, Article 48-6). By amending Article 48, role of the elected representatives has been enhanced.
4.7.4 Approval of Bills

According to the 1973 Constitution, a bill passed by the Parliament was sent to the President for assent. Before introduction of the 18th Amendment, the President had the period of thirty days to assent the bill. He could also send back the bill, except the money bill, to the Parliament to revise. If the Parliament passed the bill again, it would be sent to the President for assent. The President could not reject the bill. The 18th Amendment has lessened the Presidential assent period from 30 to 10 days (Constitution of the Islamic Republic of Pakistan 1973, Article 75). It was then widely felt that there was no justification for 30 days period for the ceremonial Presidential assent.

4.7.5 The Executive Authority

The Prime Minister is the Chief Executive in the parliamentary system. Prior to the 18th Amendment, the executive authority vested in the President and was exercised by him, either directly or indirectly, through his subordinate officers. After the 18th Amendment, the Prime Minister became the Chief Executive of the Federation. He performs this authority directly or through the Federal Ministers. However, the executive authority is still exercised in the name of the President (Constitution of the Islamic Republic of Pakistan 1973, Article 90). Thus the true spirit of parliamentary democracy has been ensured.

4.7.6 Session of the National Assembly after the General Elections

Prior to the 18th Amendment, the President played a key role in formation of the Government. After the General Elections, the President could ask any member of the National Assembly to get the vote of confidence. It was a discretionary power of the President. In the past, the President had been unnecessarily involved in formation of the
Government. It was against the true spirit of parliamentary democracy. After March 20, 1990, the President could only invite member of the National Assembly to become the Prime Minister whose political party had attained majority in the National Assembly. According to the 18th Amendment, session of the National Assembly shall be held on the 21st day after the General Elections. In the past, the President had delayed in the summoning of the session of the National Assembly. Now, there is no limit of the term for the Office of the Prime Minister. Prior to the 18th Amendment, the Cabinet was answerable only to the National Assembly. After the 18th Amendment, the Cabinet is answerable both to the National Assembly and the Senate (Constitution of the Islamic Republic of Pakistan 1973, Article 91).

4.7.7 Governor’s Appointment, Powers and Functions

Prior to the 18th Amendment, the Governor of a province was appointed by the President after consultation with the Prime Minister. After the 18th Amendment, the Governor of a province shall be appointed by the President on the advice of the Prime Minister. In the past, Governors were appointed, not belonging to that province. After the 18th Amendment, a person appointed as the Governor must be a registered voter and dweller of that province (Constitution of the Islamic Republic of Pakistan 1973, Article101).

After the 18th Amendment, there is a specific period of time during which the Governor has to act on advice of the Cabinet or the Chief Minister. The Governor will act on advice of the Cabinet or the Chief Minister. The Governor can also send back the advice to reconsider within fifteen days. After such reconsideration, the Governor will act on the advice within ten days. The amendment has withdrawn power of the Governor which caused unnecessary delay. Prior to the 18th Amendment, the Governor could
appoint care-taker cabinet by using his discretionary power, by approval of the President (Constitution of the Islamic Republic of Pakistan 1973, Article 101). The 18th Amendment has changed mechanism for appointment of the care-taker cabinet.

Under the 18th Amendment, if the Provincial Assembly passes a Bill, The Governor shall have to assent it within ten days. He can also send back the Bill, except the Money Bill, to the Assembly for reconsideration. If the Assembly passes the Bill again, the Governor is restricted to assent the Bill within ten days. If the Governor now fails to assent the Bill, it will be considered as done assented (Constitution of the Islamic Republic of Pakistan 1973, Article 116). The period for assent of the Governor has been reduced from thirty to ten days.

The amendment has been made regarding executive authority of the Province. Prior to the 18th Amendment, the executive authority of the Province vested in the Governor and was exercised by himself or by his subordinate officers. After the amendment, the executive authority of the Province shall be exercised in the name of the Provincial Governor by the Provincial Government (Constitution of the Islamic Republic of Pakistan 1973, Article 129).

4.7.8 Provincial Cabinet

Prior to the 18th Amendment, there was no limitation on number of Provincial Ministers and Advisors to the Chief Minister. The 18th Amendment has addressed the strength of the Provincial Cabinet and Advisors. Now the Provincial Cabinet cannot be more than fifteen Ministers or 11 percent of the total membership of the Provincial Assembly. The Chief Minister cannot appoint more than five Advisors (Constitution of the Islamic Republic of Pakistan 1973, Article 130). The restriction on number of the Cabinet members will save money.
4.7.9 Appointments of the Chiefs of the Armed Forces

Before the 18th Amendment, the President, in consultation with the Prime Minister, could appoint the Chief of the Army Staff, the Chief of the Naval Staff, the Chief of the Air Staff and the Chairman Joint Chiefs of Staff Committee. After the amendment, the President shall appoint the Chiefs of the Armed Forces on advice of the Prime Minister. However, the President is still Supreme Commander of the Armed Forces (Constitution of the Islamic Republic of Pakistan 1973, Article 243).

After the 18th Amendment, parliamentary system has been restored. It has enhanced the prestige of the Prime Minister. He is the real executive of the country like in the parliamentary democracy. The Prime Minister has indirect role in the appointment of the Judges of the Superior Courts. As leader of the House, he nominates members of the Parliamentary Committee. The Premier has a role in the appointment of the Chief Election Commissioner and members of the ECP. The Prime Minister and Leader of the Opposition in the National Assembly now play key role in the formation of the caretaker government. The Prime Minister is head of the NEC and the CCI. In sum, the amendment has decreased powers of the President (Abbas Khan, 2012).

4.8 Enhancement in the Role of the Parliament

There was a strong Parliament in the original text of the 1973 Constitution. During the military regime of Ziaul Haq and Musharraf, powers of the Parliament were curtailed. An effort was made to shift powers of the Parliament and the Prime Minister in the hand of the President. Role of the Parliament has been enhanced in the 18th Amendment.
4.8.1 Dissolution of the National Assembly

The clause 58 (2) (B) was introduced in the 8th Constitutional Amendment in 1985 by a military dictator Ziaul Haq. It was the discretionary power of the President to dissolve the National Assembly. It was against the true spirit of democracy. The President was in a position to keep the National Assembly and the Cabinet under his pressure. The National Assembly was dissolved by the President by using his discretionary power in 1988, 1990, 1993 and 1996. In 1997, the Parliament passed the 13th Amendment and discretionary power of the President to dissolve the National Assembly was reversed. General Musharraf, a military dictator, introduced the 17th Constitutional Amendment and discretionary power of the President to dissolve the National Assembly was restored. After the 18th Constitutional Amendment, the clause (2) (B) has been removed from the Constitution. The President can dissolve the National Assembly on advice of the Prime Minister (Constitution of the Islamic Republic of Pakistan 1973, Article 58). The omission of the clause (2) (B) has maintained the dignity of the public representatives instead of a single person.

4.8.2 Size of the Cabinet

Limitation has been imposed on size of the Federal Cabinet. According to the 18th Constitutional Amendment, the size of the Federal Cabinet will not be more than 11 percent of the total figure of the both houses of the Parliament. This formula will be operative by next General Elections, after implementation of the 18th Constitutional Amendment (Constitution of the Islamic Republic of Pakistan 1973, Article 92). The decision was made because of the economic constraint of the country.
4.8.3 Revision of the Legislative Powers

The CLL has been omitted from the 1973 Constitution. Prior to the 18th Amendment, there was distribution of legislative powers between the Parliament and the Provincial Assemblies. An amendment has been made in Article 142 of the Constitution. According to the Clause (A), the Parliament had the power to legislate any matter enumerated in the FLL. There is the same position after the amendment. According to the clause (B), the Parliament and a Provincial Assembly had the power to legislate any matter enumerated in the CLL. An amendment has been made in the clause (B). After the amendment, the Parliament and a Provincial Assembly shall have the power to legislate regarding criminal procedure, evidence and criminal law. According to the clause (C), the Parliament shall not and a Provincial Assembly shall have right to legislate regarding any matter not included in the FLL (Constitution of the Islamic Republic of Pakistan 1973, Article 142).

(c) Subject to paragraph (b), a Provincial Assembly shall, and Majlis-e-Shoora (Parliament) shall not, have power to make laws with respect to any matter not enumerated in the Federal Legislative List.

4.8.4 Withdrawal of Discretionary Powers

The discretionary powers of the President at the Federal Level and of the Governor at the Provincial Level have been removed from the Constitution. The public representatives have been empowered. Prior to the 18th Amendment, the President had the discretionary power to qualify or disqualify any person from participating elections at the National and Provincial level through an ordinance. After the amendment, the Presidential power for such purpose has been withdrawn (Constitution of the Islamic Republic of Pakistan 1973, Article 63). After passage of the 18th Amendment, the
President shall act like a ceremonial head of state which is essence of the parliamentary democracy.

4.8.5 Appointment of Acting Governor

Prior to the 18th Amendment, if the Governor was outside the country or was unable to perform his functions, the President had the discretionary power to appoint a person as the Governor. After the 18th Amendment, the mechanism has been changed. In absence of the Governor, the Speaker of the Provincial Assembly will perform as the Governor. As acting Governor, the Speaker will not take a new oath (Constitution of the Islamic Republic of Pakistan 1973, Article 104). The amendment has minimized discretionary power of the President and increased esteem of the Speaker of the Provincial Assembly.

4.8.6 Appointment of the Judges

The discretionary power of the President to appoint Judges of the superior courts has been reversed. After the 18th Amendment, there is a new method for appointment of the Judges. The Judicial Commission and the Parliamentary Committee have been empowered to appoint Judges. The President cannot reject recommendations made by the Judicial Commission and the Parliamentary Committee (Constitution of the Islamic Republic of Pakistan 1973, Article 175 and 176).

4.8.7 Appointment of the Chief Election Commissioner

The matter of appointment of Chief Election Commissioner has been addressed in the 18th Amendment. The Presidential discretionary power has been removed. A new mechanism has been introduced. The Prime Minister and Leader of the Opposition in the National Assembly shall recommend three names to the Parliamentary Committee.
Speaker of the National Assembly shall form the Committee. In case of disagreement between the Prime Minister and the Leader of the Opposition, both shall recommend three names each. The Parliamentary Committee will decide the matter. There shall be equal representation of the Treasury and Opposition Benches in the Committee. The membership of the Committee is 12. It is obligatory that one-third members must be taken from the Senate (Constitution of the Islamic Republic of Pakistan 1973, Article 213). The 18th Amendment has provided an opportunity to the elective representatives to appoint a neutral Election Commissioner. Abolishment of the Presidential discretionary power is a positive step in this regard.

### 4.8.8 Care-taker Cabinet

Before the 18th Amendment, the President had the discretionary powers to appoint Care-taker Cabinet. Similarly, the Governor could appoint the provincial governments. After the 18th Amendment, the discretionary powers of the President and the Governor have been withdrawn. Spirit of the parliamentary system has been ensured. The President shall appoint the Care-taker Cabinet in consultation with the Prime Minister and the Leader of the Opposition in the outgoing National Assembly. Similarly, the Governor shall appoint the Care-taker Cabinet in the Province in consultation with the Chief Minister and the Leader of the Opposition in the outgoing Provincial Assembly. The members of the Care-taker Federal Cabinet will be appointed by the President on advice of the Care-taker Prime Minister. Likewise, members of the Care-taker Provincial Cabinet shall be appointed by the Governor on advice of the Care-taker Chief Minister (Constitution of the Islamic Republic of Pakistan 1973, Article 224).
4.8.9 Declaration of the Emergency

The discretionary power of the President to proclaim Emergency in a Province has been deleted from the Constitution. After the 18th Amendment, role of the Provincial Assembly and the Parliament has been enhanced in this regard. It is the constitutional prerequisite that the concerned Provincial Assembly must pass a resolution when the prevailing circumstances are beyond control of the Provincial Government. In case, the President declares the Emergency on his own, the matter will be put before both the Houses of the Parliament which will have to decide within ten days (Constitution of the Islamic Republic of Pakistan 1973, Article 232). The amendment in the aforementioned Article will strengthen the federation.

4.8.10 Appointment of Chiefs of Armed Forces

According to the 18th Amendment, the Chief of the Army Staff, the Chief of the Naval Staff, the Chief of the Air Staff and the Chairman Joint Chiefs of Staff Committee shall be appointed by the President on advice of the Prime Minister (Constitution of the Islamic Republic of Pakistan 1973, Article 243).

4.8.11 Deletion of the Sixth and the Seventh Schedule from the Constitution

An important characteristic of the 18th Amendment is removal of the Sixth and the Seventh Schedule from the 1973 Constitution. It has increased prestige of the Parliament. Prior to the Amendment, the laws in the sixth Schedule could only be amended with the previous sanction of the President whereas the laws in the Seventh Schedule could be amended like a Constitutional Amendment (Hanif & Nawaz Khan, 2012).
The powers of the Parliament have been increased under the 18th Amendment. According to the new procedure, the parliamentary committee has a role in the appointment of the Judges in the Superior Courts and the Chief Election Commissioner and members of the Election Commission. Representation of the Senate has also been ensured in the committee. Both the Houses of the Parliament have the powers to approve or disapprove proclamation of the emergency made by the President. The empowerment of the Prime Minister and the Parliament will certainly ensure unity among the nation. Likewise, the democratic values will flourish in the country (Abbas Khan, 2012).

4.9 Revision in the Role of the Senate

There is an equal representation of the federating units in the Senate. The 18th Amendment has increased the powers of the Senate.

4.9.1 Financial Bill in the Senate

According to the 1973 Constitution, the Senate did not have any powers concerning fiscal matters. The Senate was given a limited role in fiscal matters under the 17th Amendment. The Financial Bill would be put in the Senate. Within ten days, the Senate could make recommendations. It was not compulsory for the National Assembly to act upon recommendations made by the Senate. The period of ten days was too short. The 18th Amendment has extended the period from ten days to fourteen days (Constitution of the Islamic Republic of Pakistan 1973, Article 73).

4.9.2 Promulgation of the Ordinances

The 1973 Constitution gives powers to the President to promulgate an Ordinance in absence of session of the National Assembly. In past, the Ordinances have been re-promulgated by the Presidents bypassing the Parliament. After the 18th Amendment, the
President cannot promulgate an Ordinance if the Senate is in session. The period of the Ordinance is 120 days. The extension of the Ordinance shall be given after approval of a resolution by the National Assembly or the Senate. The extension shall be given only once (Constitution of the Islamic Republic of Pakistan 1973, Article 89). The amended Article 89 has minimized President’s role in respect to Ordinances.

4.9.3 Responsibility of the Cabinet

After the 18th Amendment, the Cabinet shall be collectively responsible before both the Houses of the Parliament (Constitution of the Islamic Republic of Pakistan 1973, Article 91). Prior to the 18th Amendment, the Cabinet was collectively accountable only to the National Assembly.

4.9.4 Appointment of the Judges

According to the 18th Amendment, a new mechanism has been introduced for appointment of the Judges in the superior courts. The Judicial Commission and the Parliamentary Committee have been empowered to appoint judges. The Senate has equal representation in the Parliamentary Committee (Constitution of the Islamic Republic of Pakistan 1973, Article 175-A).

4.9.5 Laying Reports before the Senate

Before introduction of the 18th Amendment, different reports were laid only before the Lower House. The Senate was ignored. After the 18th Amendment, the following reports will also be laid before the Senate: Reports of the NEC, Reports on the Principles of Policy, Reports of the Auditors-General of Pakistan and Reports of the CCI (Rabbani, 2012).
4.9.6 Appointment of the Chief Election Commissioner

Under the 18th Amendment, the Prime Minister and the Leader of the Opposition in the National Assembly shall recommend three names to the Parliamentary Committee to appoint the Chief Election Commissioner. The membership of the Parliamentary Committee cannot be more than 12. It is compulsory that one third membership must be from the Senate. In case of dissolution of the National Assembly, the Senate will act as the Parliamentary Committee (Constitution of the Islamic Republic of Pakistan 1973, Article 175-A). The Presidential power has been removed to appoint the Chief Election Commissioner.

4.9.7 Proclamation of the Emergency

After the 18th Amendment, role of the both the Houses of the Parliament and the Provincial Assembly has been enriched. It is the constitutional prerequisite that the concerned Provincial Assembly must pass a resolution if the circumstances are beyond the control of the Provincial Government. In case, the President declares Emergency on his own, the matter will be put before both the Houses of the Parliament. Within ten days, both the Houses will have to decide (Constitution of the Islamic Republic of Pakistan 1973, Article 232). Role of the Senate has been enhanced. The ruling party may not have majority in the Senate.

4.10 Provincial Autonomy

The institutional mechanism has been strengthened to establish good relationship between the Federal Government and the Federating Units. The subjects in the FLL-II have been increased. Role of the Provinces in the decision-making concerning federation has been increased. Some subjects of the FLL-I have also been removed. These are good
steps for ensuring the provincial autonomy (Tahir, 2012). The NFC and the CCI will play key role in resolution of the conflicts regarding devolved subjects of the CLL (Sultana, 2012). Naeema Kishwar, MNA (JUI-F), said that the 18th Amendment has ensured provincial autonomy. It is the core responsibility of the Federal Government to implement the said amendment in its true application (Kishwar, March 9, 2017, Personal Interview).

4.10.1 The Fourth Schedule

Prior to the 18th Amendment, there were two lists in the Fourth Schedule of the 1973 Constitution, namely the FLL (Part- I, and Part- II) and the CLL. After the 18th Amendment, the CLL has been removed. The Parliament and the Provincial Assembly can make laws regarding criminal law, criminal procedure and evidence. The Provincial Assembly shall and the Parliament shall not have powers to make laws concerning any matter not included in the FLL. The Parliament shall have powers to make laws regarding any areas that are not included in any Province (Constitution of the Islamic Republic of Pakistan 1973, Fourth Schedule). Four items; national economic coordination and national planning, census, major ports and extension of powers and authority of Provincial police force to railway and other Provinces have been transferred from Part-I of the FLL to Part-II (shared responsibility). The items in the CLL have been delegated to the Provinces. One item (Boiler) has been shifted to the FLL-1. Two items, medical, legal and other professions and electricity have been shifted to FLL-11 (Constitution of the Islamic Republic of Pakistan 1973, Fourth Schedule).

Five items have been removed from the FLL Part-1 and transferred to the Provinces; capital gains, duties concerning succession of property, general sales tax on services, state lotteries and estate duty regarding property (Constitution of the Islamic
Republic of Pakistan 1973, Fourth Schedule). Now, it is responsibility of the Provinces to get advantage from this opportunity. A new item (international arbitration, international agreements, treaties and conventions) has been added to the FLL Part-1. Five new items have been added to the FLL Part-11 (Constitution of the Islamic Republic of Pakistan 1973, Fourth Schedule).

4.10.2 Electricity

Before the 18th Amendment, electricity was item 34 in the CLL and was administered through the CCI. After deletion of the CLL, electricity has been transferred to the FLL Part-11. Article 157 has been amended in two aspects. Firstly, the Federal Government shall consult the concerned Provincial Government before construction of hydro-electric power station in that Province. Secondly, if any dispute arises between the Federal Government and the Provincial Government and, the issue shall be solved by the CCI (Constitution of the Islamic Republic of Pakistan 1973, Article 157). It is significant to note that the provincial authority has been duly recognized.

4.10.3 Natural Gas and Hydroelectric Power

According to the 18th Amendment, a new clause (B) has been included in the Article 161. The section (B) states that,

the net proceeds of the federal duty of excise on oil levied at well-head and collected by the Federal Government, shall not form part of the Federal Consolidated Fund and shall be paid to the Province in which the well-head of oil is located (Constitution of the Islamic Republic of Pakistan 1973, Article 161).

4.10.4 Borrowing of Loans

Prior to the 18th Amendment, the Article 167 addressed borrowing of the loans. The amendment inserted a new section (4) in the Article 167. The Provinces can now raise domestic as well as international loans. Previously the provinces had made many
requests to empower them in this regard (Constitution of the Islamic Republic of Pakistan 1973, Article 167).

4.10.5 Ownership

In the past, ownership of natural resources and its revenue was an important cause of conflict between the Federal Government and, specially, the small provinces. Prior to the 18th Amendment, the originated Province was paid federal excise on natural gas. However, it was not given on oil (Tahir, 2012). Amendment has been made in the Article 161 (1). It says:

(a) the net proceeds of the Federal duty of excise on natural gas levied at well head and collected by the Federal Government, shall not form part of the Federal Consolidated Fund and shall be paid to the Province in which the well-head of natural gas is situated;
(b) the net proceeds of the Federal duty of excise on oil levied at well-head and collected by the Federal Government, shall not form part of the Federal Consolidated Fund and shall be paid to the Province in which the well-head of oil gas is situated (Constitution of the Islamic Republic of Pakistan 1973, Article 161-1).

The Article 172 addresses the ownership. According to the 18th Amendment, a new section (3) has been inserted. It states that the natural gas and mineral oil within the boundary of the Province or the territorial waters in its adjacent area shall vest commonly and equally in that Province and the Federal Government (Constitution of the Islamic Republic of Pakistan 1973, Article 172).

4.10.6 Provincial Assemblies

After 18th Amendment, the Presidential discretionary powers to dissolve the National Assembly have been removed. After deletion of the paragraph (B) of clause 2 of the Article 112, the Governor cannot dissolve the Provincial Assembly by using his discretionary powers. The CLL has been abolished and the provincial responsibilities have been increased. An amendment has been made in the Article 127. The working days for the Provincial Assembly have been increased from 70 to 100 (Constitution of the
Islamic Republic of Pakistan 1973, Article 127-G). The Article 128 has also been amended. The Provincial Assembly can extend the Ordinance through passing a resolution. The extension can be given only once (Constitution of the Islamic Republic of Pakistan 1973, Article 128).

After the 18th Amendment, the legislative and administrative powers of the provinces have been increased. The CLL has been removed from the Constitution. The provinces have greater control over the natural resource as compare to the past. Powers of the CCI and the Senate have been enhanced. After the 18th Amendment, it is difficult for the President to proclaim the emergency in a province. The amendment has ensured that the Governor of a province must be resident of that province. After the 18th Amendment, more subjects had come under jurisdiction of the provinces.

4.10.7 Economic Sector

4.10.7.1 Regulations of the Business

The CLL contained a number of entries relating to transactions for better working of the economic sectors such as:

- arbitrations; contracts, including partnership, contracts of carriage, agency and other particular forms of contracts concerning agricultural land; bankruptcy, administration-general and official trustees; trusts and trustees; actionable wrongs; registration of documents and deeds, transfer of property other than agricultural land and succession, wills, save as regard agricultural land (Constitution of the Islamic Republic of Pakistan 1973, Concurrent Legislative List).

Prior to the 18th Amendment, the Federal Government and the Provincial Governments had powers to legislate on the above mentioned subjects. After the amendment, only provinces can legislate on these subjects. Regulation of professions which was previously included in the CLL, has been moved to FLL-II. The provinces also have complete authority on carriage of goods and passengers on inland waterways,
navigation and shipping on inland waterways. In the past, the Federal Government usurped various subjects not included in the FLL like; local government and rural development, livestock and dairy development, parts of petroleum and natural resources, women development, sports, food and agriculture, youth and textile (Tahir, 2012).

**4.10.8 Social Sectors**

Under the 18th Amendment, changes brought in the social sectors such as culture, tourism, environment, education, health, labour and manpower and population welfare have been discussed below.

**4.10.8.1 Culture, Tourism and others**

Ministry of Culture has been devolved to the provinces. The Provincial Government is responsible to look after historical monuments and archeological sites and remains. Books, newspapers and printing press already exist in the provincial jurisdiction. It is implication for Federal Ministry of Information to leave it completely under provincial control. The Provincial Government has absolute jurisdiction on print media cinematograph films. *Auquaf* has been given under provincial jurisdiction. Subject of Islamic Education is under domain of the province (Tahir, 2012).

**4.10.8.2 Environment**

Prior to the 18th Amendment, environment was on the CLL. Under the amendment, this subject has been given under absolute jurisdiction of the province. Policies concerning sanitation, environmental degradation and forests must be implemented by the provinces (Tahir, 2012).
4.10.8.3 Education

After the 18th Amendment, the education sector is under complete jurisdiction of the provinces except international students exchange and standards of higher education. Provinces have jurisdiction on policy formulation. Although, prior to the 18th Amendment, education was primarily a provincial subject yet the Federal Government played a key role concerning planning, standards of education, centres of excellence, Islamic education, syllabus, policy and curriculum. After the amendment, the Federal Government can establish Federal institutes and agencies for betterment of special studies, for research and for technical or professional training. It also deals foreign students in Pakistan and Pakistani Students in abroad (Constitution of the Islamic Republic of Pakistan, Fourth Schedule, FLL-I, Entry 16-17). However, the subject of “standard in institutions for higher education and research, technical and scientific institution are part of FLL-II (Constitution of the Islamic Republic of Pakistan, Fourth Schedule, FLL-I, Entry 12). After insertion of the new Article 25 (A), education is compulsory and free. The aforesaid Article says,

The state shall provide free and compulsory education to all children of the age of five to sixteen years in such manner as determined by law.

There is a constitutional requirement that the above law must be enacted by the Provincial Assemblies within a period of two years and a half (Tahir, 2012).

4.10.8.4 Health

Prior to the 18th Amendment, health was mainly a provincial subject. However, the Federal Government played a key function in this sector that was not given to it by the Constitution. Except for port quarantine, there was nothing concerning to health in
the FLL-I (Tahir, 2012). Regulation of medical profession has been placed on the FLL-II (Constitution of the 1973, Fourth Schedule, FLL-I, Entry 11).

As a result of deletion of the CLL from the Constitution, three major matters of the health sector have been given under jurisdiction of the Provinces: Firstly; “drugs and medicines, poisonous and dangerous drugs”, secondly; “prevention of the extension from one Province to another of infectious or contagious diseases or pests affecting men, animal or plants”, thirdly; “mental illness and mental retardation, including places for the reception or treatment for the mentally ill and mentally retarded” (Constitution of the Islamic Republic of Pakistan, CLL, Entry 20-23.) Federal health policy is not required now. So, there is no justification of Federal Health Ministry (Tahir, 2012).

4.10.8.5 Labour and Manpower

After the 18th Amendment, Provinces have complete jurisdiction on the matters relating to labour. Provinces have already been performing functions concerning to labour. However, the amendment devolved following matters to the Provinces (Constitution of the 1973, CLL, Entry 20-23.) There is an inclusive shift of functions to the Provinces related to labour. Labour policies can be formulated by the provinces. It is essential to handover to the provinces, organizations like Workers Welfare Fund (WWF) and Employees Old-age Benefits Institution (EOBI). The labour class has serious concerns related to issues of pensions and after-pension benefits. These serious matters can be solved without hurting spirit of the 18th Amendment (Tahir, 2012).

4.10.8.6 Population Welfare

Prior to the 18th Amendment, the Provinces ran the population welfare programmes. There had been Population Welfare Departments at the Provincial Level.
The Federal Government funded these departments. After the amendment, the subject has been completely come under the provincial jurisdiction (Tahir, 2012).

4.11 Election Commission

Before introduction of the 18th Amendment, the President had the discretionary powers to appoint the Chief Election Commissioner under Article 213 (1) of the 1973 Constitution. The 18th Amendment has removed these discretionary powers. A new mechanism has been introduced for appointment of the Chief Election Commissioner. The role of the elected representatives has been enhanced. Two new sections 2 (A) and 2 (B) have been inserted in the Article 213. According to clause 2 (A), the Prime Minister in consultation with the Leader of the Opposition in the National Assembly, shall recommend three names to the Parliamentary Committee for appointment of the Chief Election Commissioner. The Treasury and the Opposition Benches shall be given equal representation in the Committee. The membership of the Committee shall not be more than 12. It is compulsory that one-third members of the Committee shall be taken from the Senate. In case the National Assembly is dissolved, all members of the Parliamentary shall be taken from the Senate. If the Prime Minister and Leader of the Opposition do not agree on a single name, each shall recommend separate names to the Parliamentary Committee (Constitution of the Islamic Republic of Pakistan, Article 213). The equal representation of the Opposition and the Treasury Benches in the Committee is a step towards openness in appointment of the Chief Election Commissioner.

The term of the office of the Chief Election Commissioner has also been addressed in the 18th Amendment. Prior to the amendment, the term was three years. It was too short. The term of the National Assembly is five years. So term of the Commissioner has been increased from three to five years (Constitution of the Islamic
Republic of Pakistan, Article 215). An amendment in the Article 218 has also been made. According to the clause (2) of the stated Article, the words ‘sitting Judges’ of the High Court have been substituted by ‘retired Judges’. Prior to the amendment, the Chief Election Commissioner had the discretionary powers to appoint servants and to make rules for them. The 18th Amendment has removed discretionary powers. The Election Commission shall perform this duty (Constitution of the Islamic Republic of Pakistan, Article 221).

4.12 Judiciary

Judiciary plays significant role in a democratic society. This important pillar of the Government can help in development of the democratic norms. It can only be possible if the Judiciary is not under influence of the executive. It must have its own rules and regulations (Haq, 2005).

The new mechanism introduced in the Constitution through the 18th and the 19th Amendments for appointment of the judges in the Superior Courts, has made Judiciary more independent as compared to that of the past. According to the Article 175 (1) of the 18th Amendment, a new High Court has been established in Islamabad Capital Territory. There is a new mechanism for appointment of Judges in the High Courts and the Supreme Court. An amendment has been made in the 175 (A) (1). A Judicial Commission shall function for appointment of judges of the Federal Shariat Court, High Court and the Supreme Court (Hanif and Nawaz Khan, 2012).

According to the amended Article 175 (A), the executive and the judiciary play a vital role in the appointment of Judges of the Superior Courts. The discretionary powers of the executive branch vary from country to country. It can even reject recommendations of the Chief Justice. The absolute power of the Chief Justice and his senior colleagues for
appointment of Judges is practised in a very small number of countries. In Pakistan and India, the Supreme Courts attained this power through their judgments. It was not written in the original text of the constitution. In the US, the Chief Justice does not play any role in the appointment of the Judges. The names of the Judges are recommended by the President. The Senate has the power to approve or reject recommendations made by the President. The mechanism of impeachment by Congress is adopted to remove the Judges of the Supreme Court in the US. The Judiciary cannot be undermined even if the Judges in the Superior Courts are not appointed by the Judiciary (Khalid, 2012).

After the 18th Amendment, the Judiciary has a primary role to play for appointment of the Judges in the Superior courts. The members belonging to the Judiciary in the Judicial Commission are in majority. The Chief Justice, two senior Judges of the Supreme Court and a retired Judge nominated by the Chief Justice are members of the Judicial Commission. The Parliamentary Committee comprises of eight members. There is an equal membership of the Government and the Opposition benches in the committee. The committee cannot stop the recommendations sent by the Judicial Commission. However, if six out of eight members of the committee disagree, the recommendations can be sent back to the commission. To ensure independence of the Judiciary, institutionalism and democracy are very significant (Khalid, 2012).

4.12.1 Appointment of the Judges in the Supreme Court

The chief Justice of the Supreme Court shall be the chairman of the commission for appointment of the Judges in the Supreme Court. The other members shall be; two senior most Judges of the Supreme Court, a former Chief Justice or a former Judge of the Supreme Court recommended by the Chief Justice in consultation with the two member-Judges for two years, Attorney-General, Federal Minister for Justice and Law and a
senior advocate of the Supreme Court recommended by Pakistan Bar Council for two years (Constitution of the Islamic Republic of Pakistan, Article 175-A).

4.12.2 Appointment of the Judges in the High Court

For appointment of the Judges of the High Court, the members shall be Chief Justice of the High Court, the senior most Judge of that High Court, Minister for Law of that Province and a senior advocate for two years to be nominated by Bar Council of the Province (Constitution of the Islamic Republic of Pakistan, Article 175-A).

4.12.3 Appointment of the Judges in the Islamabad High Court

For appointment of Judges in the Islamabad High Court, members of the commission shall be the Chief Justice of the Islamabad High Court and the senior most Judge of that Court (Constitution of the Islamic Republic of Pakistan, Article 175-A).

4.12.4 Appointment of the Judges in the Federal Shariat Court

For appointment of the Judges in the Federal Shariat Court, members of the commission shall be the Chief Justice of the Federal Shariat Court and the senior most Judge of that Court (Constitution of the Islamic Republic of Pakistan, Article 175-A).

4.12.5 Working of the Judicial Commission and the Parliamentary Committee

In the 18th Amendment, working of the Judicial Commission and the Parliamentary Committee has been addressed. The Judicial Commission shall nominate name of an individual for each vacancy of a Judge in the Federal Shariat Court, the High Court and the Supreme Court. The Parliamentary Committee shall consist of eight members. The Senate and the National Assembly shall be given equal representation in the Committee. Four members shall be taken from both Houses of the Parliament.
Likewise, the Opposition and the Treasury Benches shall be given equal representation in the Committee from both Houses. The Leader of the House and the Leader of the Opposition in the National Assembly shall nominate members of the Committee. Upper House, the Senate shall perform as the Secretary. The Parliamentary Committee may confirm a nominee recommended by the Judicial Commission, within fourteen days by majority of its total membership. If the Committee fails to do so, it will be considered confirmed. The Committee has the right to reject the nomination made by the Commission with three-fourth majority of its total membership. The Committee, after confirmation of a nominee, shall forward the names to the President for appointment (Constitution of the 1973, Article 175-A).

The equal representation of the Senate and the National Assembly in the Committee is a good decision. The Opposition and the Treasury Benches are also given equal representation. It will help in appointing the neutral Judges in the superior Courts. There is an effective role of the Judicial Commission. The parliamentary Committee cannot nominate any person. It can only confirm or reject the nominee. Three organs of the Government involve for appointing Judges. The procedure of consultation has been extended. The Executive shall not play any major role. There is a less membership of the Executive in the Judicial Commission.

After amendment in the Article198, two new benches have been instituted, Balochistan High Court bench at Turbot and Peshawar High Court bench at Mangora. Before the amendment, if the Judge of the High Court did not accept the transfer to another High Court, he was taken as retired from the office under the Article 200. After the amendment, the transfer of a Judge from one High Court to another High Court cannot be done without the consent of the Judge (Hanif & Nawaz Khan, 2012).
4.13 Fiscal Federalism

A brief history of fiscal federalism has been discussed below.

4.13.1 Historical View of Fiscal Arrangements in Pakistan

The passage of the 18th Constitutional Amendment was a significant development. The unanimity of the politicians made possible restoration of the 1973 Constitution in its original form. In the past, Pakistan’s military rulers were also responsible for financial centralization in the hand of the Federal Government. The Taxing powers were given to the Federal Government in 1956. The Provinces willingly surrendered their right to collect sales tax and agreed on shared formula. Ayub Khan imposed martial law in the country in a military coup of October 1958. The 1956 Constitution was abolished and a new Constitution was implemented in 1962. Ayub Khan was elected by the BD members. Powers of the local bodies were increased but under control of the bureaucracy. After assuming power, Zulfiquar Ali Bhutto introduced a policy of nationalization. The result was financial decline (Anwar Shah, 2012).

General Ziaul Haq came in power in 1977 in a military coup. Not surprisingly, powers were centralized by the military dictator. The General died in a plane crash in 1988. From 1988-1999, there was a period of instability as every elected Government was dismissed by the President. Once again the military came in power when General Pervaiz Musharraf staged a military coup on October 12, 1999. The powers were centralized in the hands of the Federal Government. Decentralization of powers was claimed through a new system of local government. Musharraf resigned in 2008 (Anwar Shah, 2012).
Decentralization of powers was envisaged through the first Constitution of Pakistan which was implemented in 1956. The lower levels of the government were assigned major public spending functions and had been empowered to generate revenues. The Federal Government also had enough powers for revenue collection (Anwar Shah, 2012). According to the 1973 Constitution, a centralized revenue method was adopted. The Federal Government had the right to collect sales tax. There was a CLL in the Fourth Schedule of the Constitution. Both the centre and the provincial legislatures could legislate on the subject included in the CLL. The center intruded on provincial as well local government responsibilities. Consequently, the provinces followed suit and also intervened in local government affairs (Anwar Shah, 2012).

Table: Expenditures and Revenue Collection Shares by Order of Government

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal</td>
<td>60</td>
<td>60</td>
<td>65</td>
<td>67</td>
<td>70</td>
<td>66</td>
<td>67</td>
</tr>
<tr>
<td>Provincial</td>
<td>35</td>
<td>30</td>
<td>30</td>
<td>29</td>
<td>20</td>
<td>25</td>
<td>25</td>
</tr>
<tr>
<td>Local</td>
<td>5</td>
<td>10</td>
<td>5</td>
<td>4</td>
<td>10</td>
<td>9</td>
<td>5</td>
</tr>
<tr>
<td>All</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal</td>
<td>70</td>
<td>85</td>
<td>90</td>
<td>90</td>
<td>93</td>
<td>94</td>
<td>93</td>
</tr>
<tr>
<td>Provincial</td>
<td>25</td>
<td>10</td>
<td>5</td>
<td>5</td>
<td>6</td>
<td>5</td>
<td>6</td>
</tr>
<tr>
<td>Local</td>
<td>5</td>
<td>5</td>
<td>5</td>
<td>5</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>All</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
</tr>
</tbody>
</table>

Source: Anwar Shah, 2012, p. 3.

The above table indicates that during the period 1955-2010, there had been a tendency of less tax collecting and spending powers at the provincial level. Spending powers of the local government were enhanced during the military regimes. During the democratic
period, local government’s spending powers were reduced. The octroi tax which was collected by the local government was removed in the late 1990s. The Federal Government ensured the local government to provide revenue. The result was a feeble local government. It can be concluded that the military regime supported the local government to acquire legitimacy by bypassing the political parties. The democratic governments perceived that the local government might reduce its popularity among the masses (Anwar Shah, 2012).

4.13.2 The NFC

The core objective of the NFC is to distribute resources between the Federal Government and the federating units. In 1996, the fifth NFC Award was given. The sixth NFC Award was instituted in 2000. However, it could not announce the award and its period expired in July, 2000. In July, 2005, the seventh NFC Award was established and announced in 2010. The new Award was announced after a long period of fourteen years (H. Khan, 2012). According to the 18th Amendment, two new Sections 3 (A) and 3(B) have been added in Article 160. According to the Clause 3 (A), the share of the Province shall not be less than the share allocated to the Provinces in the former Award. Clause 3 (B) assigns duty to the Federal Finance Minister and the Provincial Finance Ministers to look after the affairs of the Award and present their reports before the National Assembly, the Senate and the Provincial Assemblies twice a year (Constitution of the Islamic Republic of Pakistan 1973, Article 160).

4.13.3 The 7th NFC Award

The signing ceremony was held at Gwader (Balochistan). The Chief Ministers of the four Provinces signed on the historic Accord on December 30, 2009. The Prime Minister Yousaf Raza Gillani was also present at that occasion. The Award was enforced
on July 1, 2010 (Burki, 2010). The 7th NFC Award was an important step towards fiscal federalism. A consensus was made by the political leadership for distribution of resources. In the past, population was the key factor for distribution of resources among the provinces. The share of the provinces in the federal divisible pool has been raised from 47.5 percent to 57.5 percent, an important increase of percent. According to the 7th NFC Award, poverty, revenue generation and population are given importance for distribution of resources. Khyber Pukhtunkhwa (KPK) is the most affected province of Pakistan in “war on terror”. An additional 1 percent was kept for the province for this purpose. Unanimity was also made by the center upon arrears of KPK on net hydel profits and Balochistan on gas development surcharge. According to the Article 160 of the Constitution, the provincial share cannot be reduced in the future NFC agreement as given in the 7th NFC Award. It is an important step taken for fiscal federalism (Ahmad, 2010).

Table: Revenue Sharing Formula among the Provinces

<table>
<thead>
<tr>
<th>Tax</th>
<th>Sharing Criteria</th>
<th>Weight</th>
</tr>
</thead>
<tbody>
<tr>
<td>NFC 1991</td>
<td>Divisible Taxes</td>
<td>Population 100 percent</td>
</tr>
<tr>
<td>NFC 1996</td>
<td>Divisible Taxes</td>
<td>Population 100 percent</td>
</tr>
<tr>
<td>Presidential Order 2006</td>
<td>Divisible Taxes</td>
<td>Population 100 percent</td>
</tr>
<tr>
<td>NFC 2009</td>
<td>Divisible Taxes</td>
<td>Population 83 percent</td>
</tr>
</tbody>
</table>


Table: Provincial Shares in different Awards from Divisible Pool

<table>
<thead>
<tr>
<th>Province</th>
<th>NFC</th>
<th>NFC</th>
<th>President Order</th>
<th>NFC</th>
</tr>
</thead>
</table>

151
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Punjab</td>
<td>57.87</td>
<td>57.37</td>
<td>57.37</td>
<td>51.74</td>
</tr>
<tr>
<td></td>
<td>(57.87)</td>
<td>(57.87)</td>
<td>(57.36)</td>
<td>(57.36)</td>
</tr>
<tr>
<td>Sindh</td>
<td>23.29</td>
<td>23.29</td>
<td>23.71</td>
<td>24.55</td>
</tr>
<tr>
<td></td>
<td>(23.29)</td>
<td>(23.29)</td>
<td>(23.71)</td>
<td>(23.71)</td>
</tr>
<tr>
<td>KPK</td>
<td>13.54</td>
<td>13.54</td>
<td>13.82</td>
<td>24.55</td>
</tr>
<tr>
<td></td>
<td>(13.54)</td>
<td>(13.54)</td>
<td>(13.82)</td>
<td>(13.82)</td>
</tr>
<tr>
<td>Balochistan</td>
<td>5.30</td>
<td>5.30</td>
<td>5.11</td>
<td>9.9</td>
</tr>
<tr>
<td></td>
<td>(5.30)</td>
<td>(5.30)</td>
<td>(5.11)</td>
<td>(5.11)</td>
</tr>
<tr>
<td>Total</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
</tr>
</tbody>
</table>


Note: Figures in brackets show population of provinces according to the census conducted before the Award.

Under the 18th Amendment, change in a big quantum has been made in the Fourth Schedule of the 1973 Constitution. The Federal Government has absolute control on the subjects included in the FLL-I. Prior to the amendment, there were 59 subjects in the FLL-I. After the amendment, there are 53 subjects in the FLL-I with four revisions of four sub-entries. Four subjects “economic and scientific research coordination, census, national planning and major ports” have been shifted to FLL-II. The subjects included in the FLL-II lie under the jurisdiction of the Federal Government. However, the Federal Government and the Provincial Governments perform joint responsibility on the subjects included in the FLL-II, through the CCI. Prior to the 18th Amendment, there were eight subjects in the FLL-II. After the amendment, there are eighteen subjects in the FLL-II. Role of the federating units has been enhanced in the decision-making at federal level (Tahir, 2012).
Both the Federal Government and the Provincial Governments had joint jurisdiction on 47 subjects, included in the CLL. Under the 18th Amendment, the CLL has been removed from the Constitution. Subject (29), boilers, has been moved to FLL-I. Two subjects, (34) electricity and (43) medical, legal and other professions have been moved to FLL-II. The residual subjects fall under realm of the provinces. According to the Article 142 (C), the provinces have absolute jurisdiction to legislate on subjects that are not included in the FLL (Tahir, 2012).

4.13.4 Relationship between the Federal Government and the Provinces

Prior to the 18th Amendment, the Federal Government and the Provinces enjoyed concurrent functions. The core matters of the CLL were natural resources, electricity and regulatory functions. The concurrent list is abolished in the 18th Amendment. Functions of the federal government have been reexamined (Anwar Shah, 2012). The 18th Constitutional Amendment brought significant changes in the relationships between the Federal Government and the Provincial Governments. The provincial representation has been reinforced through the CCI and the NEC. The CLL has been deleted.

4.13.4.1 The CCI

The CCI was established first time in the 1956 Constitution. The Prime Minister was the head of the council. There was equal representation of the Federal Government and the Provincial Governments in the CCI. The council had authority over the FLL and the electricity. Its meetings were not held regularly. The Federal Government did not want to strengthen the CCI (Anwar Shah, 2012).

An attempt has been made to strengthen the CCI through the 18th Constitutional Amendment. All issues concerning the federation are discussed in the council. The Prime
Minister is to be chaired the CCI. It consists of the four Chief Ministers and three members nominated by the Federal Government. It is obligatory for the council to meet at least once every quarter. The council has been given the power concerning supervision, decision making, monitoring and control over the FLL-II. It contains the following:

- conflict resolution
- norms in education and research
- regulation of the medical, legal and other professions
- regulation of public debts
- provincial police powers beyond provincial boundaries
- census
- federal regulatory authorities
- fiscal coordination and national planning
- industrial policy
- electricity
- railways
- minerals, oil and natural gas

4.13.4.2 National Economic Council

The National Economic Council (NEC) was established under the constitution. The Prime Minister was head of the council. In the past, the President could nominate its members. It was compulsory that at least one member must be nominated from each province. The composition of the council has been revised under the 18th Constitutional Amendment. There are two members including the Chief Ministers from each province and four members from Federal Government, appointed by the Prime Minister. The provinces are more powerful as compare to the past. The council has to meet after every six months. According to the Article 156 (5), the council will have to submit its annual report to both houses of the Parliament (Constitution of the Islamic Republic of Pakistan 1973, Article 156). The NEC has been shifted from FLL-I to FLL-II. Now, the subject of national planning is performed jointly by the Federal Government and the Provinces (Constitution of the Islamic Republic of Pakistan 1973, Fourth Schedule, FLL-II, Entry 7).
4.14 Local Government

Strengthened foundation of democracy at local level is required for its survival at the national level. Local governments should be given more powers. They should be given powers to generate revenue to spend on public welfare (Lipman, 1949).

The amended Article 140 (A) says,

1. Each Province shall, by law, establish a local government system and devolve political, administrative and financial responsibility and authority to the elected representatives of the local governments.

2. Elections to the local governments shall be held by the Election Commission of Pakistan.

4.15 The 18th Amendment in the Supreme Court

The 18th Amendment was challenged in the Supreme Court. About fifteen petitions were filed by individuals, political parties and bar associations against the amendment. There were two main points in these petitions. Firstly, the independence of the Judiciary will not remain under the 18th Amendment. Secondly, the Supreme Court has the authority to declare the amendment unconstitutional if it is against the basic structure of the Constitution. The Supreme Court in its interim order gave space to the Parliament to re-amend the constitution. The positive sign was that the institutions did not collide with each other (Sattar, 2012). The Supreme Court also gave two recommendations, the session of the Parliamentary Committee would be held in camera and enhancement of the number of serving Judges would be increased from 3 to 5 in the Judicial Commission (Sattar, 2012).
4.16 The 19th Amendment

Under the 19th Amendment, five Articles (81, 175 A, 182, 213 and 246) were amended (Constitution of the Islamic Republic of Pakistan 1973) According to the 19th Amendment, the membership of the senior Judges in the Judicial Commission has been increased up to four. If the Parliamentary Committee rejects name of a nominee made by the Judicial Commission, it will send its decision along with recorded reasons to the Judicial Commission through the Prime Minister. The Judicial Commission shall again send another name of the nominee to the Parliamentary Committee. In case the Parliamentary Committee approves a nominee, it shall send the name of the nominee to the Prime Minister who shall forward it to the President for appointment. The meetings of the Parliamentary Committee shall be held in camera. The record of the meeting shall be maintained. In case the National Assembly is dissolved, all members of the Parliamentary Committee shall belong to the Senate. It is essential for the members of the bar council to have experience of at least 15 years practice in the High Court to be appointed as member of the Judicial Commission for a term of two years (Constitution of the Islamic Republic of Pakistan 1973, Article 175-A).

The membership of the Parliamentary Committee for appointment of the Chief Election Commissioner has been raised to 12. One-third members of the Parliamentary Committee shall be taken from the Senate (Constitution of the Islamic Republic of Pakistan 1973, Article 213.) Islamabad High Court was established under the 18th Amendment. According to amended Article 81 of the 19th Amendment, the expenditures of the Islamabad High Court shall be paid from Federal Consolidated Fund (Rabbani, 2012). In the 19th Amendment, the Parliament gave due respect to the recommendations of the Supreme Court. The institutions did not collide with each other (The News,
December 23, 2010). It is a positive sign for the better future of democracy in Pakistan. The Supreme Court recommended its Order of October, 2010 that in case the name of a nominee is rejected by the Parliamentary Committee, the matter must be sent for the judicial review. However, the Parliament did not include it in the 19th Amendment (Islam, 2013).

4.17 The 20th Amendment


4.17.1 The Care-taker Government

Appointment of care-taker governments at the federal level and at the provincial level has been discussed below.

4.17.1.1 Appointment of the Care-taker Prime Minister

According to the amended Article 224 of the 18th Amendment, the President had the power to appoint the Care-taker Government in consultation with the Prime Minister
and the Leader of the Opposition in the outgoing National Assembly. Likewise, the Provincial Governor had the power to appoint the Care-taker Government in consultation with the Chief Minister and the Leader of the Opposition in the outgoing Provincial Assembly. Article 224 says,

Provided that the care-taker Prime Minister shall be selected by the President in consultation with the Prime Minister and the Leader of the Opposition in the outgoing National Assembly, and a care-taker Chief Minister shall be appointed by the Governor in consultation with the Chief Minister and the Leader of the Opposition in the outgoing Provincial Assembly (Constitution of the Islamic Republic of Pakistan, 1973)

According to the Article 224 of the 18th Amendment, members of the care-taker Cabinet had to be appointed on advice of the Prime Minister and the Chief Minister. The article imposed sanction on immediate members of the care-taker Cabinet from taking part in the immediately following elections. Under the 20th Amendment, a new clause (A) has been inserted in the Article 224 of the Constitution. It gives the mechanism, if the Prime Minister and the Opposition Leader in the outgoing National Assembly do not agree on the name of the care-taker Prime Minister. In case the Chief Minister and the Opposition Leader in the outgoing Provincial Assembly do not agree on the name of the care-taker Chief Minister, the procedure is also written in clause (A) (Constitution of the Islamic Republic of Pakistan, 1973).

According to the Article 224 (A), if the Prime Minister and the Opposition Leader in the outgoing National Assembly do not agree on name of a person to be appointed as the care-taker Prime Minister within three days of dissolution of the National Assembly, each will send two separate names for the Care-taker Prime Minister to the Committee. Speaker of the National Assembly shall instantly form the Committee. There shall be eight members of the Committee, taken from the National Assembly or the Senate or both. The Opposition and the Treasury Benches will be given equal representation in the Committee. The Prime Minister and the Opposition Leader shall separately nominate
members of the Committee. The Committee shall finalize a name for the care-taker Prime Minister within three days. If the Committee fails to make a consensus, the matter shall be referred to the Election Commission. Finally, the care-taker Prime Minister shall be appointed by the Election Commission within two days. The incumbent Prime Minister shall perform duties till appointment of the care-taker Prime Minister. If members of the Opposition are fewer than five in the Parliament, then all of them shall be considered as members of the Committee (Constitution of the Islamic Republic of Pakistan, 1973, Article 224-A).

4.17.1.2 Appointment of the Care-taker Chief Minister

Article 224 (A) also addresses the appointment of the Chief Minister. If the Chief Minister and the Opposition Leader in the outgoing Provincial Assembly do not agree on the name of a person to be appointed as the care-taker Chief Minister within three days of dissolution of the Provincial Assembly, each will send two separate names for the care-taker Chief Minister to the Committee. Speaker of the Provincial Assembly shall instantly form the Committee. There shall be six members of the Committee. The Opposition and the Treasury Benches will be given equal representation in the Committee. The Chief Minister and the Opposition Leader shall separately nominate members of the Committee. The Committee shall finalize a name for the care-taker Chief Minister within three days. If the Committee fails to make a consensus, the matter shall be referred to the Election Commission. Finally, the care-taker Chief Minister shall be appointed by the Election Commission within two days. The incumbent Chief Minister shall perform duties till appointment of the care-taker Chief Minister. If members of the Opposition are fewer than four in the Provincial Assembly, then all of them shall be considered as members of the Committee (Constitution of the Islamic Republic of Pakistan, 1973, Article 224-A).
4.17.2 Election Commission

Under the 18th Amendment, term of the Election Commissioner was increased from three to five years (Constitution of the Islamic Republic of Pakistan, 1973, Article 215). Under the 20th Amendment, tenure of the members of the Commission is also fixed five years (Constitution of the Islamic Republic of Pakistan, 1973, Article 215).
Chapter 5

IMPLEMENTATION OF THE 18TH AND 20TH AMENDMENTS

The 18th Amendment is the longest amendment in the 1973 Constitution. It addressed 102 Articles of the Constitution. The amendment was not designed by any military ruler. The PCCR gave enough time to prepare the 18th Amendment. An effort has been made to strengthen democracy and the parliamentary system. A new mechanism has been introduced for appointment of Judges of the Superior Courts, establishment of neutral care-taker governments at the Federal and the Provincial Levels.

The CLL has been deleted and its 40 out of 47 subjects have been transferred to the Provinces (Waseem, 2010). Thereby ensuring provincial autonomy seventeen Federal Ministries have been devolved to the Provinces. In this chapter, an effort has been made to discuss implementation-status of the 18th Amendment.

5.1 The 18th Amendment Implementation Commission

The amended Article 270 (AA) says,

Clause (8) On the omission of the Concurrent Legislative List, the process of devolution of the matters mentioned in the said List to the Provinces shall be completed by the thirtieth day of June, two thousand and eleven.

Clause (9) For purposes of the devolution process under clause (8), the Federal Government shall constitute an Implementation Commission as it may deem fit within fifteen days of the commencement of the Constitution (Eighteenth Amendment) Act, 2010 (Constitution of the 1973).

On May 4, 2010, the Federal Government established an Implementation Commission. Senator Mian Raza Rabbani was appointed as Chairman and Senator Ishaq Dar as Deputy Chairman. To achieve its objectives, the Implementation Commission had the powers to appoint any person, with prior approval of the Federal Government (Report of the Implementation Commission).
5.1.1 Functions of the Implementation Commission

The following functions were assigned to the Implementation Commission: a) To perform such functions as are essential for implementation of clause (8) of the amended Article 270 (AA) and the 18th Amendment; b) To monitor such activities as capacity building, policy, programmes and other decisions taken by the Provincial Governments or by the Federal Government, for implementation of the devolution process; c) To reexamine all procedures and rules that had been affected due to this restructuring; d) To make rules and supervise institutional framework to accomplish the task of devolution process till June 30, 2011; e) To evaluate and guide for fulfillment of fiscal needs for the devolution process; f) To analyze the prevailing administrative procedures at the Federal Level, related to the subjects, devolved to the Provinces due to abolishment of CLL; g) To take necessary decisions for achievement of the objectives assigned to the commission (Report of the Implementation Commission).

5.1.2 Performance of the Implementation Commission in Respect to Implementation of the 18th Amendment

The following functions were performed by the Implementation Commission for implementation of the 18th Amendment: (Report of the Implementation Commission).

i) On May 26, 2010, the commission issued a new notification of composition of the NEC. ii) Amendments were brought in the Rules of Business of the Provincial Governments, enabling them to perform devolved functions. iii) The Provincial laws were drafted concerning the devolved functions. iv) An effort was made to fulfil Constitutional provisions in respect to the calendar of sessions of the Senate and the National Assembly. v) With the prior approval of the CCI, new Rules of Procedure of the Council were notified. vi) The Federal Board of Revenue was directed not to design any
tax proposal about any subject that is not enumerated in the FLL or part of the removed CLL. vii) Each clause of the 18th Amendment was carefully discussed by the Commission. It pointed out such provisions as were necessary to convey to different departments for information and necessary action. The Commission forwarded these informations to the President and the Prime Minister, the Chairman Senate, the Speaker National Assembly, the Chief Secretaries of the four Provinces, the Speakers of four Provincial Assemblies. viii) The Commission forbade the Divisions/Ministries that were devolved under the 18th Amendment, to make decisions related to promotion cases of the employees and fresh appointments. However, indispensable recruitment was allowed by the Commission. ix) On July 18, 2010, the Prime Minister chaired meeting of the CCI. A briefing on “Implementation of the 18th Amendment” was also given by the Commission. x) The devolved Ministries/Divisions were advised to prepare a report related to timeframe of devolution and its after-effects. The Commission also directed the Establishment Division to give a comprehensive report on transition consequences (especially staff) of all devolved Ministries. xi) On May 20, 2010, the Chairman Implementation Commission held a meeting with Federal Secretaries and shared information and also received their suggestions about implementation of the 18th Amendment. xii) The CCI in its meeting of July 18, 2010 approved Rules of Procedure of the Implementation Commission. xiii) To tackle the devolution process, was purely a technical matter. The Commission instituted sub-committees and appointed legal experts. The basic objective was to receive their proposals for making amendments in rules, matters of employees and assets of the devolved Ministries/Divisions. xiv) The Commission also concentrated on legal, administrative and fiscal aspects of the devolution. xv) The Federal Ministries/Divisions whose functions completely or partly had to be transferred to the Provinces were marked by the Commission. Under Article 70
(4) of the Constitution, the Parliament can make laws on matters included in the FLL. However, there were such Federal Ministries whose activities were not included in the FLL or the CLL. The Commission considered scrutinizing and rephrasing of the Schedule II of Rules of Business. xvi) On July 7, 2010, a committee was instituted under Ishaq Dar, the Deputy Chairman of the Implementation Commission, to view the fiscal matters of the devolved Ministries/Divisions. Later on Ishaq Dar resigned and the committee could not complete its work. xvii) The Commission held meetings with the concerning Ministers and Secretaries of the ministries whose functions totally or partially had to be devolved to the Provincial Level. The Commission also received information from the Chief Secretaries of the Provinces about their preparedness of the devolved ministries. On the other side, the Commission formed teams to visit the Provincial Headquarters and examine preparedness of the Provincial Governments for taking responsibilities of the devolved ministries. xviii) The Prime Minister also chaired four meetings of the Implementation Commission. He ensured the Commission about the Federal Government’s sincere intentions to implement the 18th Amendment. xix) The Commission decided to transfer the Federal Ministries/Divisions to the Provincial Level in two stages. A decision was made that five Ministries will be transferred to the Provinces in each stage. The Commission mentioned that the devolution process will be completed before June 30, 2011.

5.1.3 Recommendations of the Implementation Commission

The Commission made recommendations to wind up five Federal Ministries, Ministry of Culture, Ministry of Education, Ministry of Livestock and Dairy Development, Ministry of Social Welfare and Special Education, and Ministry of Tourism at the second stage. Some functions of the below mentioned Federal Ministries were abolished under the 18th Amendment, Ministry of Communications, Ministry of Finance, Ministry of Interior, Ministry of Law, Justice and Parliamentary Affairs, Ministry of Ports and Shipping, and Revenue Division. The Commission made recommendation that a new Division must be established to deal with the matters of the devolved Ministries. As a result, on March 31, 2011, a notification for establishment of CADD was issued. The Commission recommended abolishment of seven Federal Ministries, Ministry of Environment, Ministry of Food and Agriculture, Ministry of Health, Ministry of Labour and Manpower, Minorities Affairs Division, Ministry of Sports and Ministry of Women Development, at the third/final stage.

5.1.4 Approval of the Commission’s Proposals

The Federal Cabinet approved proposals for deletion of five Federal Ministries on December 1, 2010 at the first stage. On March 3, 2011, the Cabinet approved abolishment of five Ministries at the second stage. The Cabinet, at the third stage, approved winding up of seven Ministries on June 28, 2011. Seventeen Federal Ministries have been removed and functions of these ministries have been transferred to the Provinces. The staff members of the devolved Ministries/Divisions were adjusted in other Ministries/Divisions. The Implementation Commission held its sixty eight meetings from
May 5, 2010 to June 26, 2011. The Commission completed its assignment within due time.\textsuperscript{21}

5.2 Strengthened Role of the Prime Minister and the Parliament

The powers of the Prime Minister have been enhanced under the amended Articles 48, 75, 153, 156, 242. After the amendment, the system reflects purely parliamentary in its nature. All important appointments will be made on advice of the Prime Minister. The elected representatives will have to show political wisdom. The institutions must function according to the limits assigned under the 18th Amendment (Hanif and Khan, 2012). It will result in political stability and success of democracy. The President, being head of the state, must not intervene in the affairs not assigned to him in the Constitution. Leader of the opposition in the National Assembly, Khurshed Shah stated that the 18th Amendment was a remarkable attainment of PPPP Government. The said amendment has ensured provincial autonomy. Article 58 2-b was amended that strengthened the parliamentary system. Implementation of the 18th Amendment in letter and spirit can result in solution of many problems (Shah, March 9, 2017, Personal Interview). According to Asad Omer, MNA (PTI), the 18th Amendment was a good step, however, both the PPPP and the PML-N Governments have failed to implement it in its true spirit. Smaller provinces are still struggling for their rights and have feelings of a strong sense of deprivation. The President could dissolve the National Assembly by using Article 58 2-b before implementation of the 18th Amendment. However, reversal of the said article has stopped the way to oust the corrupt government that is unfavorable for the country (Omer, March 9, 2017, Personal Interview).
5.3 Session of the National Assembly after the General Elections

In the past, the President delayed in summoning the session of the National Assembly after general elections. According to the 18th Amendment, the session of the National Assembly shall be held on the 21st day after the general elections (Constitution of the 1973, Article 91). On June 1, 2013, the session of the National Assembly was called by the President. The members took oath on the same day (The News, June 2, 2013). On June 3, 2013, Sardar Ayaz Sadiq was elected as Speaker of the National Assembly and Murtaza Javed Abbasi was elected as Deputy Speaker. Both belonged to the PML (N) (The News, June 4, 2013). The 18th Amendment, under Article 91, lifted the sanction on becoming the prime Minister for the third term. The Article 91 says,

…that there shall be no restriction on the number of terms for the office of the Prime Minister.

Mian Muhammad Nawaz Sharif was elected as the Prime Minister for the third term by securing 244 votes out of 317 members present in the National Assembly (The News, June 6, 2013).

5.4 Sessions of the Provincial Assemblies after the General Elections

Sessions of the Provincial Assemblies of Sindh and KPK were held on May 29, 2013. The members took oath on the same day (The News, May 30, 2013). Sessions of the Punjab and Balochistan Provincial Assemblies were called on June 1, 2013. The members took oath on the same day (The News, June 2, 2013).

5.5 Governor’s Appointment, Powers and Functions

According to the 18th Amendment, the Governor of a Province shall be appointed by the President on the advice of the Prime Minister. A person to be appointed as the
Governor must be a registered voter and dweller of that province (Constitution of the 1973 of Pakistan, Article 101). The Governor Punjab, Mohammad Sarwar (August 5, 2013 to date) belongs to District Faisalabad (Punjab Province). The Governor Sindh, Dr. Ishrat Ul Ebad Khan (December 27, 2002 to date) belongs to Karachi (Sindh). The Governor Balochistan, Muhammad Khan Achakzai (June 13, 2013 to date) belongs to District Qilla Abdullah (Balochistan) (The Nation, June 12, 2013). The Governor KPK Sardar Mehtab Ahmad Khan Abbasi (April 15, 2014 to date) belongs to District Abbottabad KPK (Province) (Pakistan Observer, April 16, 2014).

It is a positive development in the political system of the country. It will certainly strengthen the federation. In past, the appointment of a Governor belonging to another province, created a sense of deprivation among dwellers of that province. The 18th Amendment has eradicated this sense of deprivation. Powers of the provincial Governors have been curtailed under the said amendment. Role of the elected representatives has been enhanced at the provincial level.

5.6 Size of the Provincial Cabinet

According to the 18th Amendment, the Provincial Cabinet cannot be more than fifteen Ministers or 11 percent of the total membership of the Provincial Assembly. The Chief Minister cannot appoint more than five Advisors (Constitution of the Islamic Republic of Pakistan, Article 130). The total membership of the four Provincial Assemblies and Provincial Cabinets is given below.

Table: Ministers in Provincial Cabinets after General Elections 2013

<table>
<thead>
<tr>
<th>Province</th>
<th>Members of Provincial Assembly</th>
<th>Ministers</th>
<th>Advisors to the Chief Minister</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balochistan</td>
<td>65</td>
<td>13</td>
<td>3</td>
</tr>
</tbody>
</table>
The above table shows that the size of the Provincial Cabinets is according to the amended Article 130. It will certainly save money.

Under the 18th Amendment, powers of the elected representatives have been increased at the federal level. The President has no more powers to dissolve the National Assembly. Prior to the 18th Amendment, the President could dissolve the National Assembly under Article 58 (2) (B). The said article has been amended. Now the National Assembly will perform its functions with more freedom. It will also cause political stability in the country.

### 5.7 Size of the Federal Cabinet

According to the 18th Amendment, size of the Federal Cabinet will not be more than 11 percent of the total figures of the both houses of the Parliament (Constitution of the 1973, Article 92).

<table>
<thead>
<tr>
<th>National Assembly</th>
<th>342</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senate</td>
<td>104</td>
</tr>
<tr>
<td>Total Members of the Parliament</td>
<td>446</td>
</tr>
<tr>
<td>Federal Ministers</td>
<td>20</td>
</tr>
<tr>
<td>Ministers of State</td>
<td>10</td>
</tr>
<tr>
<td>Advisors to the Prime Minister</td>
<td>3</td>
</tr>
<tr>
<td>Total</td>
<td>33</td>
</tr>
</tbody>
</table>

The above table shows that size of the Federal Cabinet is within the limit determined under the amended Article 92 of the Constitution.
5.8 Care-taker Cabinet

Under the amended Article 224, appointment of care-taker governments at the federal level and at the provincial level has been discussed below.

5.8.1 Care-taker Cabinet at Federal Level

Under the amended Article 224, discretionary powers of the President to appoint the Care-taker Cabinet at the federal level have been reversed. Role of the public representatives has been enhanced. After dissolution of the National Assembly (March 16, 2013), the Prime Minister Raja Pervaiz Ashraf and the Leader of the Opposition in the outgoing National Assembly Chaudhry Nisar Ali Khan had time till March 19, 2013 to finalize the name of the care-taker Prime Minister (The News, March 18, 2013). But both could not reach on a unanimous decision in this concern. According to the Article 224 (A) of the Constitution, the parliamentary committee was formed by the speaker National Assembly to make a consensus on the care-taker Prime Minister. There was equal representation of the Government and the Opposition Benches in the committee.26 The committee had a period of three days to finalize name of the caretaker Prime Minister according to the Article 224 (A) of the Constitution. The Committee decided to reach a consensus on the caretaker Prime Minister with a majority of six members, out of its total eight members (The News, March 21, 2013). The parliamentary committee discussed names of four nominees sent by the Prime Minister and the Opposition Leader in the outgoing National Assembly. But the committee could not reach on a unanimous decision and the matter was referred to the Election Commission of Pakistan (The News, March 23, 2013).

The Election Commission was the final forum to decide the name of the care-taker Prime Minister. The period given to the commission is two days. The Election
Commission named Mir Hizar Khan Khoso as the care-taker Prime Minister by majority vote. The Chief Election Commissioner including three other Members of the Election Commission cast their votes in favor of Khoso. The Member Election Commission belonging to the Punjab Province cast his vote in favor of Justice (Retd.) Nasir Aslam Zahid. Khoso took oath as the caretaker Prime Minister on March 25, 2014. The President Asif Ali Zardari administered the oath (The News, March 26, 2014).

5.8.2 Care-taker Cabinet at Provincial Level

Appointment of care-taker cabinet at provincial level has been discussed below.

5.8.2.1 Punjab

The Governor, on advice of the Chief Minister dissolved the Punjab Assembly on March 20, 2013 (The News, March 20, 2013). The Punjab Chief Minister and the Opposition Leader in the outgoing Provincial Assembly could not make a consensus on name of the caretaker Chief Minister. The matter was referred to the provincial parliamentary committee. Two names, Najam Sethi and Justice (Retd.) Zahid Hussain were proposed by the Opposition Leader. The Chief Minister proposed names of Justice (Retd.) Amir Raza Khan and Khawaja Zaheer. The committee made a consensus on the name of Najam Sethi as the care-taker Chief Minister (The News, March 27, 2013).

5.8.2.2 Balochistan

On March 18, 2013, the Balochistan Provincial Assembly was dissolved by the Governor on advice of the Chief Minister (The News, March 19, 2013). The Government and the Opposition unanimously agreed on name of Nawab Ghaus Bakhsh Barozai as the care-taker Chief Minister of the Province (The News, March 22, 2013).
5.8.2.3 KPK

The KPK Provincial Assembly was dissolved by the Governor on advice of the Chief Minister on March 19, 2013 (*The News*, March 20, 2013). A consensus was made by the Chief Minister and the Opposition Leader in the outgoing Provincial Assembly on name of the caretaker Chief Minister. The Government and the Opposition successfully reached on a unanimous decision. Justice (Retd.) Tariq Pervez Khan was nominated as the caretaker Chief Minister of the KPK (*The News*, March 16, 2013).

5.8.2.4 Sindh

On March 19, 2013, the Provincial Assembly was dissolved by the Governor on advice of the Chief Minister (*The News*, March 20, 2013). The Chief Minister and the Opposition Leader in the outgoing Provincial Assembly agreed on name of Justice (Retired) Zahid Qurban Alvi as the caretaker Chief Minister. So, the matter was not referred to the committee (*The News*, March 20, 2013).

Article 224 (A) was acted upon for formation of the caretaker governments at the Federal Level and the Provincial Levels. At the Federal Level, the Prime Minister and the Opposition Leader in the outgoing National Assembly and the parliamentary committee failed to make a consensus on name of the caretaker Prime Minister. Finally, the Election Commission of Pakistan appointed the caretaker Prime Minister.

5.9 Provincial Autonomy

Federating units perform major role in provision of social services in different countries. Provincial autonomy under the 18th Amendment has been discussed below.
5.9.1 Allocation of Functions

Functions (social services, utility services, transportation and other services) performed by different levels of governments of a sample of countries are mentioned below.

Chart: Allocation of Functions in A Sample of Countries (C= Central, I= Intermediate State/Provincial, L=Local)

**Function**

<table>
<thead>
<tr>
<th>Function</th>
<th>Argentina</th>
<th>Brazil</th>
<th>Mexico</th>
<th>Peru</th>
<th>India</th>
<th>Pakistan</th>
<th>South Africa</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Social Services</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Primary Education</td>
<td>I</td>
<td>L</td>
<td>I</td>
<td>I</td>
<td>I</td>
<td>I</td>
<td>C, I</td>
</tr>
<tr>
<td>Secondary Education</td>
<td>I</td>
<td>I</td>
<td>I</td>
<td>I</td>
<td>I</td>
<td>I</td>
<td>C, I</td>
</tr>
<tr>
<td>Universities</td>
<td>C</td>
<td>C, I</td>
<td>I</td>
<td>I</td>
<td>C, I</td>
<td>C, I</td>
<td>C</td>
</tr>
<tr>
<td>Hospitals</td>
<td>I</td>
<td>C, I, L</td>
<td>C, I</td>
<td>I</td>
<td>I, L</td>
<td>I, L</td>
<td>C, I</td>
</tr>
<tr>
<td>Nutrition Programs</td>
<td>I</td>
<td>C</td>
<td>C, I</td>
<td>I</td>
<td>C, I</td>
<td>C</td>
<td>C</td>
</tr>
<tr>
<td>Housing</td>
<td>I</td>
<td>I</td>
<td>C, I</td>
<td>C</td>
<td>C, I</td>
<td>C</td>
<td>C, I, L</td>
</tr>
<tr>
<td><strong>Utility Services</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Waste Collection</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Electricity</td>
<td>I</td>
<td>C</td>
<td>C, I</td>
<td>C, I</td>
<td>C, I</td>
<td>C</td>
<td>L</td>
</tr>
<tr>
<td>Telecommunications</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Transportation</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Urban Highways</td>
<td>L</td>
<td>I, L</td>
<td>I, L</td>
<td>I, L</td>
<td>I, L</td>
<td>I, L</td>
<td>L</td>
</tr>
<tr>
<td>Ports</td>
<td>C, I</td>
<td>C, I</td>
<td>C</td>
<td>C</td>
<td>C, I</td>
<td>C</td>
<td>C</td>
</tr>
<tr>
<td>Airports</td>
<td>C, I</td>
<td>C, I, L</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C, I, L</td>
</tr>
<tr>
<td>Urban Transportation</td>
<td>I, L</td>
<td>I, L</td>
<td>I, L</td>
<td>I, L</td>
<td>I, L</td>
<td>I, L</td>
<td>C, I, L</td>
</tr>
<tr>
<td>Other Services</td>
<td>C, I</td>
<td>I</td>
<td>C, I, L</td>
<td>I</td>
<td>I</td>
<td>C</td>
<td></td>
</tr>
<tr>
<td>---------------</td>
<td>------</td>
<td>---</td>
<td>--------</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td></td>
</tr>
<tr>
<td>Police</td>
<td>I</td>
<td>C</td>
<td>I</td>
<td>I</td>
<td>I</td>
<td>C</td>
<td></td>
</tr>
<tr>
<td>Irrigation</td>
<td>I</td>
<td>C</td>
<td>I</td>
<td>I</td>
<td>I</td>
<td>C</td>
<td></td>
</tr>
</tbody>
</table>


5.9.2 Social Services

The above table shows that intermediate (provincial/state) government plays key role in provision of social services. However, differences can also be found. The function of Primary and secondary education is performed by intermediate governments in these countries. In Brazil, primary education is responsibility of the local governments. In South Africa, function of primary and secondary education is jointly performed by the central government and the intermediate governments. Universities are either complete responsibility of the central government or joint responsibility of the central government and the intermediate governments. Health (preventive and current services) appears responsibility of the intermediate governments. However, there is also some involvement of local governments in countries like Brazil, India and Pakistan. Function of social welfare is jointly performed by the central and the intermediate governments.

5.9.3 Utility Services

Function of waste collection (municipal function) is performed by the local governments. Water supply and sanitation is joint responsibility of the intermediate and the local governments. In Argentina, Brazil and Mexico, the central government also has some role in water supply and sanitation. Electricity is largely joint responsibility of the central and the intermediate governments. However, the local government performs this function in South Africa. The central government absolutely performs responsibility of telecommunications in these countries.
5.9.4 Transportation

Urban highways are joint responsibility of the intermediate and local governments in these countries. Whereas, the central government and the intermediate governments jointly perform function of inter urban highways. The ports are largely under jurisdiction of the central government. The intermediate governments manage smaller ports in Argentina, Brazil and India. Airports are largely under domain of the central government. The responsibility of urban transport is over-all performed by the intermediate and the local governments.

5.9.5 Other Services

Function of law and order is performed by the intermediate governments in these countries. However, the central government also has some role concerning to the aforementioned function in Argentina and Mexico. In South Africa, law and order is responsibility of the central government. Irrigation is largely under jurisdiction of the intermediate governments.

5.9.6 The 18th Amendment and Revision of Subjects

The CLL has been abolished under the 18th Amendment. The subjects included in the former CLL have been devolved to the provinces. As a result, responsibilities of the provinces have been increased.
Chart: Changes in Fourth Schedule of Constitution due to 18th Amendment

<table>
<thead>
<tr>
<th>FLL I</th>
<th>FLL II</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Omitted</strong></td>
<td><strong>New Entries</strong></td>
</tr>
<tr>
<td>Sales tax on services</td>
<td>All regulatory authorities established under federal law</td>
</tr>
<tr>
<td>Tax on capital value of immoveable property</td>
<td>Supervision and management of public debt</td>
</tr>
<tr>
<td>State lotteries</td>
<td>Inter-provincial matters and coordination</td>
</tr>
<tr>
<td>Duties in respect of succession to property</td>
<td><strong>Shift of Subjects from FLL I to FLL II</strong></td>
</tr>
<tr>
<td><strong>New Entry</strong></td>
<td>Census</td>
</tr>
<tr>
<td>International treaties</td>
<td>Major Ports</td>
</tr>
<tr>
<td>Conventions and agreements and international arbitration</td>
<td>Extension of powers and jurisdiction of members of a police force (inter-provincial with consent of provinces)</td>
</tr>
<tr>
<td><strong>CLL</strong></td>
<td><strong>Shift of Subjects from CLL to FLL II</strong></td>
</tr>
<tr>
<td>(Abolished)</td>
<td>Standards in higher education</td>
</tr>
<tr>
<td></td>
<td>Legal, medical and other professions</td>
</tr>
<tr>
<td></td>
<td>Electricity</td>
</tr>
</tbody>
</table>

Source: Social Development 2012, p-77.

Chart: Federal Ministries Abolished under the 18th Amendment

<table>
<thead>
<tr>
<th>Culture</th>
<th>Environment</th>
<th>Health</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minorities</td>
<td>Tourism</td>
<td>Youth affairs</td>
</tr>
<tr>
<td>Population welfare</td>
<td>Special initiatives</td>
<td>Food and agriculture</td>
</tr>
<tr>
<td>Livestock and dairy</td>
<td>Labor and manpower</td>
<td>Women development</td>
</tr>
<tr>
<td>Zakat and usher</td>
<td>Local government and rural development</td>
<td>Social welfare and Special education</td>
</tr>
<tr>
<td>Sports</td>
<td>Education</td>
<td>Total (17)</td>
</tr>
</tbody>
</table>

As a result of the 18th Amendment, 17 federal ministries were abolished. The federal government has also created 8 new ministries/ divisions. There might be two reasons for creation of new federal ministries. Firstly, the PPP government wanted to accommodate its coalition partners by creating new ministries. After creation of new ministries, 11 ministers and ministers of states were appointed and 6 belonged to the coalition partners. Secondly, after the 18th Amendment, the federal government wanted to continue with retained services and functions especially those which are national in character (Social Development, 2012).

Raza Rabbani, ex Chairman SPCCR and Chairman the Senate of Pakistan opposed to create new federal ministries. He remarked that it was illegal to create new ministries after implementation of the 18th Amendment. He articulated that approval of the 18th Amendment by the Parliament was a remarkable achievement of the PPPP Government. All the members of SPCCR worked with great zeal. Unfortunately, the PPPP Government and also the PML-N Government did not give due importance to the said amendment. One hundred and two articles of the constitution were addressed under the 18th Amendment. The federation is strengthened by giving autonomy to the federating units. Regrettably, the provinces are still deprived of their constitutional rights.
Seventeen federal ministries were devolved under the 18th Amendment and the PPPP Government established federal ministries with new names. On the other hand, the PML-N Government has a more centralized approach towards governing the federation and therefore, still exhibit ignoring conduct in dealing with the provinces. Rabbani remarked that the Federal Government has designed “a “new concurrent list,” that presently and in future could prove harmful for the federation (Rabbani, March 9, 2017, Personal Interview).

Chart: Functions of two new and two old ministries

<table>
<thead>
<tr>
<th>Ministry of Climate Change (New)</th>
<th>Ministry of Environment (Abolished)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 National Disaster Management authority</td>
<td>1 National policy plans &amp; Programmes regarding: Environmental planning pollution and ecology; Physical planning &amp; human settlements including urban water supply, Sewerage &amp; drainage</td>
</tr>
<tr>
<td>2 Pakistan Environmental Protection council</td>
<td>2 Dealing &amp; agreements with other countries &amp; international organizations in the fields of environment, housing, physical planning and human settlement</td>
</tr>
<tr>
<td>3 Pakistan environmental planning &amp; Architectural consultants Ltd.</td>
<td>3 Pakistan environmental planning &amp; Architectural Ltd.</td>
</tr>
<tr>
<td>4 Global environmental study centre Islamabad</td>
<td>4 Economic planning &amp; policy making in respect of forestry &amp; wildlife</td>
</tr>
<tr>
<td>5 Coordination, monitoring &amp; implementation of environmental agreements with other countries, agencies and forums</td>
<td>5 Administrative control of</td>
</tr>
<tr>
<td></td>
<td>i National council for conservation of wildlife in Pakistan</td>
</tr>
<tr>
<td></td>
<td>ii Pakistan forest institute</td>
</tr>
<tr>
<td></td>
<td>iii Zoology survey of Pakistan</td>
</tr>
<tr>
<td></td>
<td>6 Administrative control of ENERCON</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Ministry of National Harmony (New)</th>
<th>Ministry of Minorities (Abolished)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Policy &amp; legislation with regard to interfaith harmony</td>
<td>1 Safe guarding the rights of minority</td>
</tr>
<tr>
<td>2 International agreements &amp; Commitments in respect of all religious communities &amp; implementation thereof</td>
<td>2 Promotion of welfare of minorities</td>
</tr>
<tr>
<td>3 Representation of Pakistan at UN Sub-Commission on prevention of Discrimination to minorities</td>
<td>3 Protection of minorities against discrimination</td>
</tr>
<tr>
<td>4 Minorities welfare fund</td>
<td>4 Representation of Pakistan in international bodies &amp; conferences, relating to minorities including to Sub-commission on prevention discrimination to minorities</td>
</tr>
<tr>
<td>5 National commission for minorities</td>
<td>5 International agreements &amp; commitments in respect of minorities &amp; their implementation</td>
</tr>
<tr>
<td>6 Evacuee Trust Property board</td>
<td>6 All other matters relating to minorities</td>
</tr>
<tr>
<td></td>
<td>7 Evacuee Trust Property board</td>
</tr>
<tr>
<td></td>
<td>8 Policy &amp; legislation with regard to</td>
</tr>
</tbody>
</table>
In place of Ministry of Minorities, a new Ministry of National Harmony has been established. Likewise, Ministry of Climate Change has been instituted in place of Ministry of Environment. It is noteworthy that some new ministries are performing functions almost like of their predecessors.

Table: Devolution of Subjects after the 18th Amendment

| Number of entries in the allocated Business of devolved ministries | 301 |
| Number of functions retained At federal level | 207 |
| Number of functions devolved to provinces | 94 |

Prior to the 18th Amendment, there were 301 entries in the allocated business of devolved ministries and divisions. Only 94 functions were devolved to the provinces. The federal government did not devolve 207 functions to the provinces. There is need to legislate at the federal level and the provincial level to implement the 18th Amendment in its full context.

Article 142 of the Constitution says:

(a) Subject to paragraph (b), a provincial assembly shall, and Parliament shall not, have power to make laws with respect to any matter not enumerated in the Federal Legislative List.
(b) Parliament and a Provincial Assembly shall have power to make laws with respect to criminal law, criminal procedure and evidence (Constitution of the 1973, Article 142).

Under Article 142 of the Constitution, the Parliament can legislate on matters included in FLL. However, the Parliament and a Provincial Assembly have powers to legislate with respect to criminal law, criminal procedure and evidence. Under the 18th
Amendment, the CLL has been deleted. The federal government has no more powers on the subjects enumerated in the CLL. Jillani remarked that the irony was that the Provinces were failing to legislate on these subjects while the Centre was also not moving to repeal the laws that no longer fall within its jurisdiction” (The News, December 28, 2011). Under the 18th Amendment, Article 270 (AA) was inserted in the Constitution.28

Protection has been given to the existing federal laws and statutory bodies under Article 270 (AA) (6). In spite of deletion of the subjects (included in the deleted CLL), the federal laws shall remain in force until repealed or amended by the competent authority. Under the 18th Amendment, the term ‘competent authority’ has not been mentioned. The provincial assembly cannot intervene in the federal laws. As a result, the provincial governments are faced with this issue (The News, December 28, 2011).

The provincial governments can raise the issue at the federal level. The provinces can also avail two other options. Firstly, all the four provinces or any of them may invoke Article 144 (1) of the Constitution. If any province feels that the subject matter of the law is such that it should remain at the central level, it can pass a resolution in the Provincial Assembly, empowering the Parliament to continue regulating the subject.29

Secondly, the province can ask the federal government to abolish the law. If the federal government shows hesitation to do so, the continuous existence of the federal law can be challenged by the province in the Apex Court. The CLL has been deleted from the Constitution. If such a law continues to exist at the federal level in spite of the intention of a province to regulate the subject by its own then the whole spirit of the 18th Amendment is dead. Thirdly, the provinces can legislate on their own within their jurisdictions, notwithstanding the existence of the federal law (Constitution of the 1973, Article, 144-A).
Due to the 18th Amendment, more than 100 laws and more than 200 minor acts need to be amended or replaced. There are few examples of such laws as the Companies Profits (Workers’ Participation) Act 1968, Workers’ Welfare Fund Ordinance 1971, Employees Old-Age Benefit Act 1976, Higher Education Commission Ordinance 2002 (Social Development, 2012).

5. 7 Fiscal Federalism

After the 18th Amendment, the scope of tax collection at the provincial level has been enhanced. The sales tax on services is the best example of this development. Now, it is the responsibility of the Provinces to get advantage from this new opportunity. The efficient imposition of the aforesaid tax by the Provinces can generate 0.5-1 percent of the Gross Domestic Product (GDP). The Provinces can also produce income through environmental tax, inheritance tax, capital value taxes on estate and property. It has been observed that the Provinces demanded much larger share in the NFC Award. They gave less concentration on generation of revenue through their own resources (Shah, 2012). The 18th Amendment has opened the doors for the Provinces to borrow loans from abroad.

Chart: Taxing Powers under the 18th Amendment

<table>
<thead>
<tr>
<th>Taxing Power at the Federal Level</th>
</tr>
</thead>
<tbody>
<tr>
<td>Removed</td>
</tr>
<tr>
<td>VAT on services zakat and usher</td>
</tr>
<tr>
<td>Estate and inheritance tax</td>
</tr>
<tr>
<td>Wealth tax including agricultural wealth</td>
</tr>
<tr>
<td>Added</td>
</tr>
<tr>
<td>Taxes on the sales and purchase of goods</td>
</tr>
<tr>
<td>Taxes on the value of assets, excluding immovable property</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Taxing Power at the Provincial Level</th>
</tr>
</thead>
<tbody>
<tr>
<td>Added</td>
</tr>
<tr>
<td>Taxes on immovable property</td>
</tr>
<tr>
<td>Zakat and Usher</td>
</tr>
</tbody>
</table>
5.7.1 Devolution of Ministries

Under the 18th Amendment, seventeen Federal Ministries have been devolved to the Provinces. Consequently, nearly all direct public services are within the domain of the Provinces. Some of the functions performed by the devolved ministries were retained at the Federal Level. After abolishment of seventeen ministries, Capital Administration and Development Division (CADD) was established at the Federal Level. The retaining functions of the devolved ministries which were not allocated to the other remaining Federal Ministries were assigned to CADD. The Peoples’ Work Program was given to the Cabinet Division. Under the 18th Amendment, expenditures as well as taxing powers were devolved to the Provinces. The Federal Government decided to facilitate the Provinces for implications related to expenditure and revenue for a transition period of three years. The Federal Government promised to give grants to the HEC, the Planning Commission, Health Programs (National TB Program, Expanded program for Vaccination, National Program for Family Planning and Health Care) during the transition period of three years. The Provinces were hesitant to accept nearly 65,000 employees of the devolved Federal Ministries. The Federal Government will have to take responsibility of these employees. The Provincial Governments have accepted only 15,000 employees who were posted at Provincial field offices (Shah, 2012). The CCI meeting was held on May 29, 2014. The provinces agreed upon permanent absorption of the employees of the devolved federal ministries. They ensured to make necessary laws as soon as possible (The News, May 29, 2014).
### Table: Significance of the 18th Amendment in Terms of Fiscal Autonomy

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Indicator</th>
<th>Federal Share</th>
<th>Provincial-Local Share</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fiscal Year 2010</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>FY 2009/2010</td>
<td>Revenue Collection</td>
<td>94</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>Revenues retained</td>
<td>65</td>
<td>35</td>
</tr>
<tr>
<td></td>
<td>Expenditure Share</td>
<td>66</td>
<td>34</td>
</tr>
<tr>
<td></td>
<td>Residual Fiscal gap</td>
<td>-1</td>
<td>1</td>
</tr>
<tr>
<td>Fiscal Year 2011</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fiscal Year 2011</td>
<td>Revenue Collection</td>
<td>90</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>Revenues retained</td>
<td>61</td>
<td>39</td>
</tr>
<tr>
<td></td>
<td>Expenditure Share</td>
<td>64</td>
<td>36</td>
</tr>
<tr>
<td></td>
<td>Residual Fiscal gap</td>
<td>-3</td>
<td>3</td>
</tr>
<tr>
<td>Fiscal Year 2015</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>FY 2014/2015</td>
<td>Revenue Collection</td>
<td>85</td>
<td>15</td>
</tr>
<tr>
<td></td>
<td>Revenues retained</td>
<td>45</td>
<td>55</td>
</tr>
<tr>
<td></td>
<td>Expenditure Share</td>
<td>45</td>
<td>55</td>
</tr>
<tr>
<td></td>
<td>Residual Fiscal gap</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

Source: (Shah 2012, p.17).

Hopefully, the system would be matured in FY-2015 (Shah, 2012).

### Table: Fiscal Implications of the 18th Amendment

<table>
<thead>
<tr>
<th>Expenditure</th>
<th>F</th>
<th>P</th>
<th>L</th>
<th>Total</th>
<th>F</th>
<th>P</th>
<th>L</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Function</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
5.7.2 The 18th Amendment and Implications for Development and Finance

Establishment of new Divisions at the federal level is an additional financial burden.

Table: Expenditures of the Federal Government

<table>
<thead>
<tr>
<th>Expenditures on New Divisions (2012-13)</th>
<th>Rs. in Millions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Climate Change</td>
<td>309</td>
</tr>
<tr>
<td>National Harmony</td>
<td>209</td>
</tr>
<tr>
<td>Human Resource Development</td>
<td>304</td>
</tr>
<tr>
<td>Professional and Technical Training</td>
<td>996</td>
</tr>
<tr>
<td>National Regulation and Services</td>
<td>439</td>
</tr>
<tr>
<td>National Heritage and Integration</td>
<td>775</td>
</tr>
<tr>
<td>Capital Administration and Development</td>
<td>8946</td>
</tr>
<tr>
<td>Food, Security and Research</td>
<td>2586</td>
</tr>
<tr>
<td>Total</td>
<td>14,563</td>
</tr>
</tbody>
</table>

Source: (Shah, 2012, p.18).
The above table indicates that the current expenditure on the devolved Divisions was Rupee 21.5 billion in 2010-11. Most probably it could have been saved. The establishment of new Divisions has put an additional burden of Rs. 14.5 billion in 2012-13.

Table: Increase in Current Expenditure Liability of Provincial Governments due to 18th Amendment

<table>
<thead>
<tr>
<th></th>
<th>(Rs. in Millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012-13</td>
<td></td>
</tr>
<tr>
<td>KPK</td>
<td>433</td>
</tr>
<tr>
<td>Balochistan</td>
<td>773</td>
</tr>
<tr>
<td>Punjab</td>
<td>1205</td>
</tr>
<tr>
<td>Sindh</td>
<td>2555</td>
</tr>
<tr>
<td>Total</td>
<td>4966</td>
</tr>
</tbody>
</table>

The above table shows that in 2011-12, the increase in current expenditure liability of the provincial governments due to devolution was estimated at Rs 5.0 billion. Different...
projects of the federal government (relating to devolved ministries) were transferred to the provinces. Financing of these projects was a major problem. The 7th NFC Award was announced before the 18th Amendment. The provinces took a plea that additional liabilities transferred to the provinces were not coupled with transfer of additional resources. They stressed that implementation of these projects will be impossible without transfer of additional resources. On the other side, the federal government took a stance that the provincial share has already been enhanced under the 7th NFC Award (Social Development, 2012). However, the following decisions were made in the CCI meeting held on April 28, 2011.

(a) The Federal Government shall finance the universities till the next NFC Award (the next NFC Award is due in 2014-15).

(b) The provinces except those being executed under the Presidential/Prime Ministers directives would finance all provincial projects.

(c) The federal government would provide financing for vertical programmes of health and population sectors. However, financing for current activities devolved to the provinces would be borne by the provinces (The Nation, April 29, 2011).

Over the last two decades, Pakistan and other regions also moved towards decentralization. An important feature of the decentralization was spending side than revenue side. Little effort has been made to enable federating units to generate their own source–revenue. It is obligatory to ensure success of tax reforms to achieve goals of the 18th Amendment (Ahmad, 2013). However, after the 7th NFC Award, tax collection of the FBR decreased. Growth in FBR taxes was more than 16 percent during 2006-07 to 2009-10. It declined to 13.5 percent during 2011-11 to 2013-14. Tax revenues of the Provincial Governments increased with 43 percent during 2010-11 to 2013-14 (Sabir, 2014).
Table: Fiscal Effort by Federal Government and Provincial Governments

(Rs. In Billions)

<table>
<thead>
<tr>
<th></th>
<th>2006-07</th>
<th>2007-08</th>
<th>2008-09</th>
<th>2009-10</th>
<th>ACGR %</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Federal Government</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>FBR Tax Revenues</td>
<td>846.5</td>
<td>1007.2</td>
<td>1157.0</td>
<td>1327.4</td>
<td>16.2</td>
</tr>
<tr>
<td>Other Tax Revenues</td>
<td>6.4</td>
<td>2.7</td>
<td>1.6</td>
<td>1.8</td>
<td>-33.9</td>
</tr>
<tr>
<td>Petroleum Levy</td>
<td>29.7</td>
<td>14.5</td>
<td>112.0</td>
<td>88.7</td>
<td>44.1</td>
</tr>
<tr>
<td><strong>Total Federal Taxes</strong></td>
<td>882.5</td>
<td>1024.4</td>
<td>1270.6</td>
<td>1418.0</td>
<td>17.1</td>
</tr>
<tr>
<td><strong>Federal Government</strong></td>
<td>2010-11</td>
<td>2011-12</td>
<td>2012-13</td>
<td>2013-14</td>
<td>ACGR %</td>
</tr>
<tr>
<td>FBR Tax Revenues</td>
<td>1550.2</td>
<td>1881.5</td>
<td>1936.1</td>
<td>2666.3</td>
<td>13.5</td>
</tr>
<tr>
<td>Other Tax Revenues</td>
<td>1.9</td>
<td>3.8</td>
<td>2.7</td>
<td>4.7</td>
<td>35.9</td>
</tr>
<tr>
<td>Petroleum Levy</td>
<td>82.7</td>
<td>60.4</td>
<td>109.7</td>
<td>103.5</td>
<td>7.8</td>
</tr>
<tr>
<td><strong>Total Federal Taxes</strong></td>
<td>1634.8</td>
<td>1945.7</td>
<td>2048.5</td>
<td>2374.5</td>
<td>13.3</td>
</tr>
<tr>
<td><strong>Provincial Governments</strong></td>
<td>2006-07</td>
<td>2007-08</td>
<td>2008-09</td>
<td>2009-10</td>
<td>ACGR %</td>
</tr>
<tr>
<td>Punjab</td>
<td>19.6</td>
<td>20.2</td>
<td>22.1</td>
<td>29.9</td>
<td>15.0</td>
</tr>
<tr>
<td>Sindh</td>
<td>14.0</td>
<td>17.1</td>
<td>21.0</td>
<td>21.6</td>
<td>15.5</td>
</tr>
<tr>
<td>KPK</td>
<td>2.4</td>
<td>2.6</td>
<td>2.2</td>
<td>2.3</td>
<td>-0.5</td>
</tr>
<tr>
<td>Balochistan</td>
<td>0.8</td>
<td>0.8</td>
<td>0.9</td>
<td>1.0</td>
<td>8.3</td>
</tr>
<tr>
<td><strong>Total Provincial Taxes</strong></td>
<td>36.8</td>
<td>40.8</td>
<td>46.1</td>
<td>54.8</td>
<td>14.2</td>
</tr>
<tr>
<td><strong>Provincial Governments</strong></td>
<td>2010-11</td>
<td>2011-12</td>
<td>2012-13</td>
<td>2013-14</td>
<td>ACGR %</td>
</tr>
<tr>
<td>Punjab</td>
<td>32.6</td>
<td>42.1</td>
<td>77.4</td>
<td>96.5</td>
<td>43.6</td>
</tr>
<tr>
<td>Sindh</td>
<td>27.5</td>
<td>60.4</td>
<td>68.1</td>
<td>79.1</td>
<td>42.1</td>
</tr>
<tr>
<td>KPK</td>
<td>3.5</td>
<td>3.7</td>
<td>4.1</td>
<td>11.7</td>
<td>49.6</td>
</tr>
<tr>
<td>Balochistan</td>
<td>1.0</td>
<td>1.0</td>
<td>1.1</td>
<td>2.8</td>
<td>41.2</td>
</tr>
<tr>
<td><strong>Total Provincial Taxes</strong></td>
<td>64.6</td>
<td>107.2</td>
<td>150.7</td>
<td>190.0</td>
<td>43.3</td>
</tr>
</tbody>
</table>


A change can also be seen in the tax-to-GDP ratio of the Federal Government and the Provincial Governments during the post 7th NFC Award. Figures in the below table indicate that on average tax-to-GDP ratio of the Federal Government declined. In
contrast, on average tax-to-GDP ratio of the Provincial Governments increased during the aforesaid period. In Pakistan, more than 90 percent revenue is collected at the federal level despite this growth.

Table: Fiscal Effort by Federal Government and Provincial Governments

(As Percentage of the GDP)

<table>
<thead>
<tr>
<th></th>
<th>Federal Government</th>
<th>Provincial Governments</th>
</tr>
</thead>
<tbody>
<tr>
<td>FBR Tax Revenues</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2006-07</td>
<td>8.08</td>
<td>0.19</td>
</tr>
<tr>
<td>2007-08</td>
<td>9.61</td>
<td>0.19</td>
</tr>
<tr>
<td>2008-09</td>
<td>8.84</td>
<td>0.17</td>
</tr>
<tr>
<td>2009-10</td>
<td>9.05</td>
<td>0.20</td>
</tr>
<tr>
<td>Average</td>
<td>8.89</td>
<td>0.19</td>
</tr>
<tr>
<td>Other Tax Revenues</td>
<td>0.06</td>
<td>0.13</td>
</tr>
<tr>
<td>2006-07</td>
<td>0.03</td>
<td>0.16</td>
</tr>
<tr>
<td>2007-08</td>
<td>0.01</td>
<td>0.16</td>
</tr>
<tr>
<td>2008-09</td>
<td>0.01</td>
<td>0.15</td>
</tr>
<tr>
<td>2009-10</td>
<td>0.01</td>
<td>0.12</td>
</tr>
<tr>
<td>Petroleum Levy</td>
<td>0.28</td>
<td>0.02</td>
</tr>
<tr>
<td>2006-07</td>
<td>0.14</td>
<td>0.02</td>
</tr>
<tr>
<td>2007-08</td>
<td>0.86</td>
<td>0.02</td>
</tr>
<tr>
<td>2008-09</td>
<td>0.61</td>
<td>0.02</td>
</tr>
<tr>
<td>2009-10</td>
<td>0.47</td>
<td>0.01</td>
</tr>
<tr>
<td>Total Federal Taxes</td>
<td>8.42</td>
<td>0.35</td>
</tr>
<tr>
<td>2006-07</td>
<td>8.58</td>
<td>0.18</td>
</tr>
<tr>
<td>2007-08</td>
<td>9.11</td>
<td>0.20</td>
</tr>
<tr>
<td>2008-09</td>
<td>8.45</td>
<td>0.34</td>
</tr>
<tr>
<td>2009-10</td>
<td>8.92</td>
<td>0.38</td>
</tr>
<tr>
<td>Average</td>
<td>8.77</td>
<td>0.28</td>
</tr>
<tr>
<td>Other Tax Revenues</td>
<td>0.01</td>
<td>0.15</td>
</tr>
<tr>
<td>2006-07</td>
<td>0.02</td>
<td>0.29</td>
</tr>
<tr>
<td>2007-08</td>
<td>0.02</td>
<td>0.48</td>
</tr>
<tr>
<td>2008-09</td>
<td>0.01</td>
<td>0.41</td>
</tr>
<tr>
<td>2009-10</td>
<td>0.01</td>
<td>0.41</td>
</tr>
<tr>
<td>Petroleum Levy</td>
<td>0.46</td>
<td>0.46</td>
</tr>
<tr>
<td>2006-07</td>
<td>0.29</td>
<td>0.48</td>
</tr>
<tr>
<td>2007-08</td>
<td>0.48</td>
<td>0.41</td>
</tr>
<tr>
<td>2008-09</td>
<td>0.48</td>
<td>0.41</td>
</tr>
<tr>
<td>2009-10</td>
<td>0.41</td>
<td>0.41</td>
</tr>
<tr>
<td>Total Federal Taxes</td>
<td>9.05</td>
<td>8.94</td>
</tr>
<tr>
<td>Provincial Governments (2010-11)</td>
<td>2011-12</td>
<td>2012-13</td>
</tr>
<tr>
<td>2006-07</td>
<td>0.19</td>
<td>0.18</td>
</tr>
<tr>
<td>2007-08</td>
<td>0.19</td>
<td>0.20</td>
</tr>
<tr>
<td>2008-09</td>
<td>0.17</td>
<td>0.34</td>
</tr>
<tr>
<td>2009-10</td>
<td>0.20</td>
<td>0.38</td>
</tr>
<tr>
<td>Average</td>
<td>0.19</td>
<td>0.28</td>
</tr>
<tr>
<td>Punjab</td>
<td>0.19</td>
<td>0.19</td>
</tr>
<tr>
<td>Sindh</td>
<td>0.13</td>
<td>0.16</td>
</tr>
<tr>
<td>KPK</td>
<td>0.02</td>
<td>0.02</td>
</tr>
<tr>
<td>Balochistan</td>
<td>0.01</td>
<td>0.01</td>
</tr>
<tr>
<td>Total Provincial Taxes</td>
<td>0.35</td>
<td>0.35</td>
</tr>
<tr>
<td>Provincial Governments (2010-11)</td>
<td>2011-12</td>
<td>2012-13</td>
</tr>
<tr>
<td>2006-07</td>
<td>0.18</td>
<td>0.20</td>
</tr>
<tr>
<td>2007-08</td>
<td>0.20</td>
<td>0.34</td>
</tr>
<tr>
<td>2008-09</td>
<td>0.34</td>
<td>0.38</td>
</tr>
<tr>
<td>2009-10</td>
<td>0.38</td>
<td>0.28</td>
</tr>
<tr>
<td>Average</td>
<td>0.28</td>
<td>0.28</td>
</tr>
<tr>
<td>Punjab</td>
<td>0.18</td>
<td>0.20</td>
</tr>
<tr>
<td>Sindh</td>
<td>0.15</td>
<td>0.29</td>
</tr>
<tr>
<td>KPK</td>
<td>0.02</td>
<td>0.02</td>
</tr>
<tr>
<td>Balochistan</td>
<td>0.01</td>
<td>0.01</td>
</tr>
<tr>
<td>Total Provincial Taxes</td>
<td>0.36</td>
<td>0.52</td>
</tr>
<tr>
<td>Provincial Governments (2010-11)</td>
<td>2011-12</td>
<td>2012-13</td>
</tr>
<tr>
<td>2006-07</td>
<td>0.18</td>
<td>0.20</td>
</tr>
<tr>
<td>2007-08</td>
<td>0.20</td>
<td>0.34</td>
</tr>
<tr>
<td>2008-09</td>
<td>0.34</td>
<td>0.38</td>
</tr>
<tr>
<td>2009-10</td>
<td>0.38</td>
<td>0.28</td>
</tr>
<tr>
<td>Average</td>
<td>0.28</td>
<td>0.28</td>
</tr>
<tr>
<td>Punjab</td>
<td>0.15</td>
<td>0.29</td>
</tr>
<tr>
<td>Sindh</td>
<td>0.15</td>
<td>0.30</td>
</tr>
<tr>
<td>KPK</td>
<td>0.02</td>
<td>0.02</td>
</tr>
<tr>
<td>Balochistan</td>
<td>0.01</td>
<td>0.01</td>
</tr>
<tr>
<td>Total Provincial Taxes</td>
<td>0.36</td>
<td>0.52</td>
</tr>
<tr>
<td>Source: (Sabir, 2014, p. 25).</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Chart: Main features of intergovernmental reforms in different countries.

Federal (F) Unitary (U)

<table>
<thead>
<tr>
<th>Country</th>
<th>Characteristics</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>F</td>
<td>Early 2000s reforms: center administers VAT</td>
</tr>
<tr>
<td>Belgium</td>
<td>F</td>
<td>Based on linguistic divisions</td>
</tr>
<tr>
<td>Bolivia</td>
<td>U</td>
<td>Transformed from unitary to federal state</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Powers of municipalities increased</td>
</tr>
<tr>
<td>Country</td>
<td>Type</td>
<td>System/Arrangement</td>
</tr>
<tr>
<td>-----------</td>
<td>------</td>
<td>-----------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Brazil</td>
<td>F</td>
<td>three layers</td>
</tr>
<tr>
<td>Canada</td>
<td>F</td>
<td>Asymmetric federation (special treatment with Quebec)</td>
</tr>
<tr>
<td>China</td>
<td>U</td>
<td>unitary Constitution</td>
</tr>
<tr>
<td>Colombia</td>
<td>U</td>
<td>three layered system</td>
</tr>
<tr>
<td>Denmark</td>
<td>U</td>
<td>Strong municipal governments</td>
</tr>
<tr>
<td>France</td>
<td></td>
<td>Regional system</td>
</tr>
<tr>
<td>Germany</td>
<td>F</td>
<td>extended concurrent responsibilities</td>
</tr>
<tr>
<td>Indonesia</td>
<td>U</td>
<td></td>
</tr>
<tr>
<td>Italy</td>
<td>U</td>
<td>asymmetric arrangements</td>
</tr>
<tr>
<td>Mexico</td>
<td>F</td>
<td></td>
</tr>
<tr>
<td>Pakistan</td>
<td>F</td>
<td>interludes of military rule</td>
</tr>
<tr>
<td>Peru</td>
<td>U</td>
<td>moving towards a quasi-federation</td>
</tr>
<tr>
<td>Poland</td>
<td>U</td>
<td></td>
</tr>
<tr>
<td>South Africa</td>
<td></td>
<td>quasi-federal system</td>
</tr>
<tr>
<td>Spain</td>
<td></td>
<td>quasi-federal system</td>
</tr>
<tr>
<td>Switzerland</td>
<td>F</td>
<td></td>
</tr>
<tr>
<td>UK</td>
<td>regional</td>
<td></td>
</tr>
</tbody>
</table>

Source: (Ahmad and Brasio, 2009 p. 6-8).

Under the 18th Amendment, the CLL was deleted from the 1973 Constitution. Now the subjects of the CLL, including health and education, are run by the provinces. The spending functions were devolved to the provinces but less attention was given to the issues like role of regulations, role of subsidiary and coordination of functions with associated externalities such as natural disasters, university education, primary
healthcare, environment and climate change. Since very beginning, the provinces realized that they could not bear gigantic expenditures of the HEC. The provinces requested to the CCI to return the function to the Centre. Due to lack of funds, the Centre planned to move the function to a line ministry instead of an independent commission. It was widely felt that if the provinces are unable to run the devolved functions, it will be problematic for the Centre to reinstitute the old institutional arrangements (Ahmad, 2013).

Table: Fiscal Decentralization Experiments: Comparison of Pakistan’s Decentralization with other countries in the developing world (Federal: F Others: O)

<table>
<thead>
<tr>
<th>Country</th>
<th>Subnational Expenditures as% of Total Expenditures</th>
<th>Subnational Revenues as% of Total Revenues</th>
<th>Vertical Imbalance</th>
<th>Subnational Expenditures as% of Total GDP</th>
<th>Subnational Revenues as% of Total GDP</th>
</tr>
</thead>
<tbody>
<tr>
<td>India</td>
<td>F 45.2</td>
<td>33.0</td>
<td>12.2</td>
<td>12.6</td>
<td>6.1</td>
</tr>
<tr>
<td>Brazil</td>
<td>F 42.8</td>
<td>33.8</td>
<td>9.0</td>
<td>18.3</td>
<td>12.5</td>
</tr>
<tr>
<td>Argentina</td>
<td>F 42.3</td>
<td>39.8</td>
<td>2.5</td>
<td>11.3</td>
<td>9.2</td>
</tr>
<tr>
<td>South Africa</td>
<td>F 34.2</td>
<td>10.2</td>
<td>24.0</td>
<td>15.5</td>
<td>3.1</td>
</tr>
<tr>
<td>Pakistan</td>
<td>F 30.0</td>
<td>5.6</td>
<td>24.4</td>
<td>6.0</td>
<td>0.7</td>
</tr>
<tr>
<td>Mexico</td>
<td>F 29.0</td>
<td>22.9</td>
<td>6.1</td>
<td>6.6</td>
<td>4.4</td>
</tr>
<tr>
<td>Malaysia</td>
<td>F 19.1</td>
<td>15.1</td>
<td>4.1</td>
<td>5.1</td>
<td>4.7</td>
</tr>
<tr>
<td><strong>Average</strong></td>
<td><strong>34.6</strong></td>
<td><strong>22.9</strong></td>
<td><strong>11.8</strong></td>
<td><strong>10.8</strong></td>
<td><strong>5.8</strong></td>
</tr>
<tr>
<td>China</td>
<td>O 53.9</td>
<td>51.3</td>
<td>2.6</td>
<td>10.7</td>
<td>6.6</td>
</tr>
<tr>
<td>Peru</td>
<td>O 19.9</td>
<td>6.0</td>
<td>13.9</td>
<td>4.8</td>
<td>1.1</td>
</tr>
<tr>
<td>Indonesia</td>
<td>O 10.1</td>
<td>3.1</td>
<td>7.0</td>
<td>2.0</td>
<td>0.5</td>
</tr>
<tr>
<td>Chili</td>
<td>O 8.5</td>
<td>8.2</td>
<td>0.3</td>
<td>2.0</td>
<td>2.0</td>
</tr>
<tr>
<td>Thailand</td>
<td>O 8.4</td>
<td>8.0</td>
<td>0.4</td>
<td>2.0</td>
<td>1.4</td>
</tr>
<tr>
<td>Bangladesh</td>
<td>O 4.0</td>
<td>2.8</td>
<td>1.2</td>
<td>0.4</td>
<td>0.3</td>
</tr>
<tr>
<td>Country</td>
<td>O</td>
<td>3.7</td>
<td>3.6</td>
<td>0.1</td>
<td>1.2</td>
</tr>
<tr>
<td>------------</td>
<td>----</td>
<td>-----</td>
<td>-----</td>
<td>-----</td>
<td>-----</td>
</tr>
<tr>
<td>Sri Lanka</td>
<td>O</td>
<td>3.5</td>
<td>5.4</td>
<td>-1.9</td>
<td>1.3</td>
</tr>
<tr>
<td>Kenya</td>
<td>O</td>
<td>14</td>
<td>11.0</td>
<td>3.0</td>
<td>3.0</td>
</tr>
<tr>
<td>Average</td>
<td></td>
<td>14</td>
<td>11.0</td>
<td>3.0</td>
<td>3.0</td>
</tr>
</tbody>
</table>

Source: (Social Development, 2012, p. 60).

The above table shows a comparison of key decentralized indicators between federal states and those that are not federations. Share of subnational governments (state, provincial + local) in total expenditures is one of the key indicators. China (not a federal state) leads with the highest percentage of about 54. Figures show that the federal countries have higher average share (India: high 45 percent, Malaysia: low 19 percent).

In fiscal decentralization, Pakistan occupies almost in the middle (Before the 7th NFC Award and 18th Amendment, 30 percent). In some of the unitary states, expenditure-shares at subnational levels are too low (Bangladesh, Sri Lanka and Kenya) (Social Development, 2012).

Share of revenues generated by the subnational governments in federal states is higher. Only China is the exceptional case. Argentina, Brazil and India have highest percentages. The table shows that very low share of revenues is generated by subnational governments in Pakistan. In some federal states, vertical imbalance is quite large (Pakistan and South Africa 24%). As a result, the central government fills the gap through larger transfers. The estimate of subnational expenditure as a percentage of the GDP is also given in the table (Top: Brazil 18 % and Low: Pakistan 6% and Malaysia 5 %). Pakistan occupies the lowest position with less than 1 percent (of the GDP) revenues generation at subnational level (Social Development, 2012).
5.8 The CCI

Under the 18th Amendment, some subjects of the FLL I have been transferred to FLL II. Subjects of the FLL II came under the CCI. There is much need of coordination between the federal government and the provincial governments due to more autonomy. The CCI can play very effective role in this concern. The past history shows that the CCI played a major role in settling the disputed issues. In the CCI meeting, the provinces agreed upon 1991 Water Accord (*Social Development*, 2012).

The composition of the CCI has also been addressed under the 18th Amendment.

Chart: Composition of the CCI

<table>
<thead>
<tr>
<th>Before the 18th Amendment</th>
<th>After the 18th Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chief Ministers of the Provinces</td>
<td>Chief Ministers of the Provinces</td>
</tr>
<tr>
<td>Equal numbers of members from federal government</td>
<td>Three members from federal government</td>
</tr>
<tr>
<td>Note: Prime Minister will be Chair if he/she is a member,</td>
<td>Prime Minister (Chair)</td>
</tr>
<tr>
<td>otherwise a federal minister nominated by the President</td>
<td></td>
</tr>
</tbody>
</table>

Source: (Basit, 2013, p.113).

The strength of the CCI has not been changed under the 18th Amendment. However, role of the elected Prime Minister has been enhanced. He has been appointed a permanent member as well as Chairman of the CCI. Role of the President has been abolished. Only eleven meetings of the CCI were held in thirty seven years (Council of Common Interests, 2014). After passage of the 18th Amendment, it is compulsory that meeting of the CCI be held at least once within ninety days.
One hundred and five agenda items have been discussed by the CCI in the last sixteen meetings held in the last five years. Ninety nine summaries were moved by different federal ministries, whereas the provinces moved only six summaries during the aforementioned period. The CCI approved following bills and policies in the last five years such as “Private Power and Infrastructure Board Bill, 2010, Draft Securities and Exchange Commission of Pakistan Bill 2011, Policy Guidelines for Power Generation through Small Independent Power Projects below 50 MW Capacity, Special Economic Zones Bill 2011, Distribution of Zakat Funds to Federal Areas and Provinces and Distribution of Areas of Unutilized Zakat Funds claimed by the provinces and lastly the 6th Population Housing Census with a shared fiscal responsibility from divisible pool” *(The News, April 12, 2015)*.

The provinces also have a say in the CCI. The Chairman of the CCI can call a meeting of the CCI on a request made by the provinces. The agenda for the CCI meeting can also be set by the provinces. On February 1, 2011, the CCI decided in its meeting that the summaries initiated by the federal ministries/divisions must be circulated to the provinces and their suggestions must also be included in the summary *(The News, April 12, 2015)*.

**5.9 The NEC**

Under the 18th Amendment, changes have been brought in the strength of the NEC. The provinces have an upper hand over the federal government. Eight out of thirteen members will belong to the provinces.
Chart: Composition of the NEC

<table>
<thead>
<tr>
<th>Before the 18th Amendment</th>
<th>After the 18th Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prime Minister (Chair)</td>
<td>Prime Minister (Chair)</td>
</tr>
<tr>
<td>One member from each province nominated be the President on recommendation of the provincial government</td>
<td>Chief Ministers of the Provinces</td>
</tr>
<tr>
<td></td>
<td>One member nominated by the Chief Minister</td>
</tr>
<tr>
<td></td>
<td>Four other members as the Prime Minister may nominate from time to time</td>
</tr>
</tbody>
</table>


Under the 18th Amendment, the NEC has been strengthened. Size of the NEC has been changed. Now, the provinces have a strong position in the council. Role of the NEC has been increased. In policy making, the council will have to ensure regional parity and balanced development.

5.10 Local Government

A brief history of local government in Pakistan has been discussed below.

5.10.1 Local Government in Pakistan: A Brief History

Soon after getting independence, there was a tendency to transfer powers in favor of the federal government (Salamat, 1992). Instead of development, the institution of local government was deteriorated in Pakistan’s history (Quddus, 1989). Ayub Khan introduced BDs system (local government). It had four levels; union council or committee, tehsil council or town committee, district council and divisional council. The total membership of BDs members was 80,000 (Khan, 2004). BDs were also an Electoral College for election of the President. During Ayub’s regime, as an institution of local
self-government, importance of BDs lessened (Afzal, 2001). BDs played a role of a front wall to a despotic rule. Democratic values could not flourish during Ayub regime (Qureshi, 2002).

The system of BDs disappeared with the fall of Ayub in 1969. Bhutto assured the nation to establish a better local government system (Choudary, 1988). Pakistan’s first democratically elected government did not give significance to initiate a system of representative local government. Two Ordinances (1972 and 1975) were issued. But there was no implementation of any kind of local government (Quddus, 1989). When Ziaul Haq came in power, he announced his scheme of local government. Local Government Ordinances were executed.30

Ziaul Haq centralized powers at the federal level and decentralized powers from the provinces to the local governments in order to legitimize his despotic rule (Aziz, 1989). Local government elections were held in 1979. On completion of four-year term, elections were held in 1983 for the next term (Pakistan 1986: 1986). Local governments remained stagnated during the period of Zulfiqar Ali Bhutto, Nawaz Sharif and Benazir Bhutto. It is a fact that democratic governments did not strengthen local governments in Pakistan (Hasan, 2005).

On October 12, 1999 General Musharraf toppled the elected government of Sharif and announced seven point agenda on October 17, 1999.31 On 14 August 2001, the four provincial governments of Pakistan implemented Local Government Ordinance 2001. There were three tiers of the local government; District, Tehsil and Union (Devolution Reforms, 2010). There was no independent or autonomous district government under Devolution Plan 2001. Local Government Ordinances were designed in Islamabad. The provincial governments just implemented them (Cheema and Khan, 2006).
Article 29 of CoD says “local bodies elections will be held within three months of the holding of general elections” (*Text of Charter of Democracy, 2006*).

The PPP ruled for five years (from 2008-2013) in the centre, Sindh and Balochistan. The PML-N was ruling party in Punjab. Local government elections were not held during the aforementioned period. After the general elections 2013, the PML-N is ruling party in the centre and the most populated province Punjab and the PPP in Sindh. It was hoped that local government elections would be held after general elections. The PPP and PML-N made a consensus in the CoD to hold local government elections but it did not happen. After the general elections 2013, local government elections were held in Balochistan in the same year. The chairman PTI Imran Khan announced in a press conference on April 2013, to hold local government elections in 90 days after coming into power. After the general elections 2013, the PTI formed provincial government in KPK but it did not hold local government elections in 90 days after coming into power. (*Pakistan Today, September, 25, 2013*). Provincial Governments of KPK, Punjab and Sindh held local government elections in 2015.

Regarding the issue of local government in Pakistan there arise two questions. Why military rulers in Pakistan take much interest in the local governments and why democratic elected governments are reluctant to establish them? Military dictators are interested in grassroots democracy. They try to sideline political leadership at the national level. Sometimes political parties are banned and sometimes fragmented by military regime. An endeavour is made to prepare new politicians loyal to them through local governments. The democratically elected governments consider local governments as rival to their authority. The MNAs and Member Provincial Assembly (MPAs) do not want to lose their authority on development schemes. They think that if powers of the development schemes are given to the local government, their influence in respective
constituencies will be affected. The political leadership must understand that representatives at the central level and the provincial level are elected to make laws. The local governments perform duties of development schemes (Pakistan Today, September, 25, 2013). Elected representatives of the local government better understand the local problems.

5.10.2 Local Government in some other Countries

Local governments in India, Brazil, Canada and South Africa have been discussed below.

5.10.2.1 India

Local government is a state (federating units are called states in India) function in India. Article 243 of the Indian constitution allocates powers, authority and responsibilities to the local governments. In 1992, seventy third and seventy fourth amendments were brought in Indian constitution (The Constitution of India, Article 243). Article 243 (W) of the Indian constitution says:

Subject to the provisions of this Constitution, the Legislature of a State may by Law, endow-

(a) The Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such laws may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein… (The Constitution of India, Article 243-W).

In every state union territory a state election commission is established. Under Article 243 (Y), a state finance commission is instituted in every union territory and state, for a period of five years, to promote bottom-up planning and to recommend mechanisms
to strengthen finances of the local governments (The Constitution of India, Article 243-Y).

Local government in India is divided into two parts; urban and rural. The urban local bodies are called municipalities and rural *Panchayat* (the organization). The rural and urban local bodies perform functions related to administration, development and planning. The powers, authority and responsibilities of local bodies are mentioned in Article 243 (G) of the constitution (The Constitution of India, Article 243-Y).

In 1952, Community Development Programme was initiated in India. It failed due to lack of public support. As a result, a fact finding committee was set up under the leadership of Balwantri Mehta. The committee recommended that there should be an elected body at the village level to implement different schemes. Mehta endeavored to achieve local self-government through *Panchayats*. Ashok Metha Committee was instituted in 1977 to reexamine functioning of the *Panchayats*. The committee reached on the conclusion that “*Panchayati Raj* is the soul of democracy and therefore it should be empowered with more authority”. The *Panchayat* s those formed after 1977 are called Second Generation *Panchayats* (*Local Bodies*, Chapter 42, 2013).

In 1990s, the Indian Central Government had felt that local bodies would not be able to deliver effectively without constitutional powers. In 1992, the Parliament passed the 73rd Amendment to reform local bodies in the country. The local bodies have powers over 29 subjects. The *Panchayats* are given funds from three sources; state governments allocate fund to the local bodies on recommendations made by the State Finance Commissions, funds for implementation of schemes initiated by the central government and local body grants (*Local Bodies*, Chapter 42, 2013).
In 2004, the Ministry of *Panchayati Raj* was established at central level. The Ministry looks into all affairs concerning to the Panchayati *Raj* Institutions and *Panchayati Raj* 

33 The basic purpose of the establishment of the aforesaid Ministry was to supervise implementation of the Part IX of the Constitution (Part IX was inserted in the Constitution under the 73rd Amendment), the *Panchayats* Extension to the Scheduled Areas Act (PESA) 1996 and Article 243 (Z) (D) concerning to District Planning Committees. In the past, the *Panchayats* were significant part of the rural life in India. However, the above mentioned Articles institutionalized the *Panchayati Raj* Institutions (at district, intermediate and village levels) as third tier of government (*Local Bodies*, Chapter 42).

Table: Panchayats (Ps) in India

<table>
<thead>
<tr>
<th>Village (Ps)</th>
<th>Intermediate (Ps)</th>
<th>District (Ps)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001</td>
<td>2001</td>
<td>2001</td>
</tr>
<tr>
<td>227590</td>
<td>5906</td>
<td>474</td>
</tr>
<tr>
<td><strong>2009</strong></td>
<td><strong>2009</strong></td>
<td><strong>2009</strong></td>
</tr>
<tr>
<td>232855</td>
<td>232855</td>
<td>633</td>
</tr>
</tbody>
</table>


The above table shows that the number of *Panchayats* increased with the passage of time.

The state Election Commission conducts elections of the *Panchayats*. Article 243 (K) of the Indian Constitution says, (*The Constitution of India, Article 243-K*).

The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of all elections to the *Panchayats* shall be vested in State Election Commission consisting in a Chief Election Commissioner to be appointed by the Governor…

Table: Elected Representatives of *Panchayats* (Ps) in India

<table>
<thead>
<tr>
<th>Village (Ps)</th>
<th>Intermediate (Ps)</th>
<th>District (Ps)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>2001</strong></td>
<td><strong>2001</strong></td>
<td><strong>2001</strong></td>
</tr>
</tbody>
</table>
The above table shows that the number of elected representatives increased at intermediate and district levels whereas number of elected representatives decreased at village level. The tenure of every Panchayat is five years. Article 243 (E) (1) says,

Every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer.

The Panchayats also have powers to impose taxes. Article 243 (H) says,

The Legislature of a State may, by law- (a) authorize a Panchayat to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits as may be specified in the law (The Constitution of India, Article 243-H).

In 1996, the Parliament passed an Act (as an Annexure to the 73rd Amendment) containing special provisions for the Panchayatin Schedule V Areas. Separate provisions have been made for the administration in Tribal Areas in Tripura, Mizoram, Assam and Meghalaya (The Constitution of India, Article 244-2 and Article 275-1).

5.10.2.1.1 Urban Local Bodies in India

Under the 74th Amendment, local self-government was strengthened in towns and cities. If a state government dissolves a Municipality, it is compulsory to conduct elections of that Municipality within a period of six months. The elections of the Municipalities are held by the State Election Commission. The Municipalities have been given such powers like implementation of development schemes, social justice and planning for economic development (Local Bodies, Chapter 42, 2013)
5.10.2.2 Canada

In Canada, services are provided by the municipalities. Social cohesion and foundations of economic sustainability can also be found at municipality level. It is widely acknowledged that the country has a stable system at the federal, provincial and local (municipal) levels. The functions and responsibilities of governments have been changed with the passage of time. Close relationship can be seen in roles of governments. The federal government, the provincial governments and the municipal governments have played their effective roles for maintaining world’s highest living standards in Canada. There is a well-established system of municipalities in Canada. The municipal governments perform functions like planning, management, and maintenance of infrastructure, land and communities. They have been empowered to solve problems swiftly. They also prepare long-term schemes, plan and manage essential services and implement schemes for local economic development (Quesnel and Hammel, 2006).

Table: Canadian Structure of the Governments

<table>
<thead>
<tr>
<th>Order of Government</th>
<th>Number</th>
<th>Expenditure Distribution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal</td>
<td>1</td>
<td>50 percent</td>
</tr>
<tr>
<td>Provincial and Territorial</td>
<td>13</td>
<td>42 percent</td>
</tr>
<tr>
<td>Municipal(Including rural and urban)</td>
<td>3664</td>
<td>08 percent</td>
</tr>
</tbody>
</table>


Management of health programs and social issues has been vested under domain of regional and local bodies, governed by a Board of Directors. Education at the primary and secondary levels is responsibility of the local or regional authorities called “School Boards”. The provincial assemblies have powers to create municipalities. They can also bring changes in the boundaries of the municipalities. There is a Ministry of Municipal Affairs in each province. Public services at the local level are provided by regional,
municipal, inter-municipal and metropolitan authorities. There are two kinds of municipal institutions in Canada. First kind is called upper-tier municipalities. They encompass a vast area. The upper-tier municipalities consist of the lower-tier municipalities like counties, urban agglomerations and districts. They are also called metropolitan municipalities or regional municipalities. Second kind is called lower-tier or single-tier municipalities. They are not part of upper-tier body. A majority of municipal institutions like towns, townships and cities are part of this category. Single-tier municipalities have absolute responsibility for provision of municipal public services in their respective areas (Quesnel and Hammel, 2006).

About 10 percent of municipal resources are spent on protection of persons and property. A similar amount is reserved for protection of environment. Five percent to seven percent expenditures of local governments are reserved for social services, culture and recreation. A smaller part is reserved for other categories like industrial development, urban and regional planning, health, resource conservation and housing. Almost 40 percent municipal revenue is collected through taxes. Service charges and sales of goods contribute 15.5 percent share in revenue collection (Quesnel and Hammel, 2006). In Canada, municipal governments raise 83 percent revenues from their own sources. The provinces empower local governments through legislation (Social Development, 2012).

5.10.2.3 South Africa

There are three phases of local government transition in the country; the pre-interim phase (1993-95), the interim phase (1995-99) and the final phase (1999 to the elections of December 5, 2000) (Nyalunga, 2006). Pieterse remarks that the reform process that began in 1990 in South Africa was also due to crisis of the local government (Nyalunga, 2006).
There are nine provinces in South Africa. In each province, there are three-tiers of municipal authorities; local councils, districts and metropolitan. Currently, there are 284 municipalities in South Africa. Local governments perform different functions like electricity, water and sanitation, housing, public health, waste collection, urban highways and urban transportation. The municipalities generate their revenues. They also receive funds from the central government and the respective provincial government. In 2006/2007, pattern of local government revenue collection was: 24 percent self-generated, 18 percent external loans, 8 percent other income and donations and 50 percent subsidies and grants (Social Development, 2012).

5.10.2.4 Brazil

In Brazil, a new constitution was passed in 1988 after twenty years of military dictatorship. Municipalities are part of the federation along with the states. Same legal status has been given to all municipalities. There are 5560 municipalities in the country. Public resources were centralized during military rule. Under the 1988 Constitution, local governments’ share of public revenue was increased from 18.2 percent to 22.8 percent (3.5 percent of GDP). As compare to other developing countries, municipalities in Brazil are financially sound. Between the period 1988 to 1998, locally owned revenue increased by 197 percent. The municipalities did a great job in raising local revenue (Souza, 2013).

In the developing world, Brazil is one of the most decentralized countries. Process of decentralization of social services has mixed results. It contains both failures and successes. Good results have been achieved in health and education. Social welfare, housing and sanitation failed. The main reasons were absence of proper scheme of resource transfers (welfare), past debt (housing) and unavailability of resources (sanitation) (Souza, 2013).
Decentralization has been ensured through federal legislation in Brazil. It goes down to communities to ‘community councils’. The responsibilities of allocation of resources, protection of rights, evaluation and monitoring of use of resources are performed by these councils. An important feature of local government in Brazil is ‘participatory budgeting’. Members of a community take part in preparation of budget for infrastructure schemes (Social Development, 2012).

5.10.2.5 Lessons for Pakistan

Generally local governments are creations of the second tier (subnational level). However, local governments are still funded by the federal government and the subnational governments (provincial /state). Different factors like financial conditions, history, languages, ethnicity, political legacy, social and living standards of different segments of the population also play very important role. The systems of local governments adopted by different countries have following lessons for Pakistan.

There must be a clear demarcation of responsibilities and functions performed by the local governments. Local governments must have powers to generate revenues to meet the expenses. However, if the expenditures of the local governments are more than the generated revenues, they must be provided extra funds. Monitoring committees must be established at the local level. They can play very effective role. A village level development planning mechanism must be adopted. Community involvement must be encouraged in development process. The system of local government can play very effective role in provision of social services particularly education and health. Local governments must really be local in their structure (Social Development, 2012).
5.11 Election Commission

The 18th Amendment has reversed discretionary powers of the President to appoint Chief Election Commissioner. Role of the elected representatives has been recognized. The term of the Commissioner has been increased from three to five years. After passage of the 18th Amendment, Justice Mian Shakirullah Jan (June 5, 2012 – July 13, 2012) was appointed as acting Chief Election Commissioner. Under the amended Article 213, Justice (retired) Fakhruddin G. Ebrahim (From July 20, 2012 to July 31, 2013) was the first Chief Election Commissioner appointed by the parliamentary committee. He did not complete his tenure of five years and resigned on July 31, 2013 (The News, August 1, 2013).

Justice Tassaduq Hussain Jillani was appointed as acting Chief Election Commissioner. He resigned from the office on 30 November 2013. Justice Nasir-ul-Mulk was appointed as acting Chief Election Commissioner on 30 November 2013 (The News, December 1, 2013). The government should appoint a regular Chief Election Commissioner rather than the acting.

5.11.1 First General Elections (2013) after Passage of the 18th Amendment

First general elections (2013) after Passage of the 18th Amendment have been discussed below.

5.11.1.1 Election Schedule

The elections for the National Assembly and all the four Provincial Assemblies were held on May 11, 2013. The contesting candidates at the national and provincial levels submitted nomination papers till March 29, 2013. Scrutiny of the nomination papers was taken from March 30, to April 5, 2013. The contesting candidates could
appeal against rejection of their nomination papers to the returning officers from April 6, to April 9, 2013. The last day for final decision for appeals was scheduled till April 16, 2013. The contesting candidates had the right to withdraw their nomination papers till April 17, 2013. The final list of the candidates was displayed on April 18, 2013. The above schedule was also applied on reserved seats for non-Muslims and women (The News, March 3, 2013).

The political parties which boycotted the general elections of 2008 also participated in 2013 general elections. All Pakistan Muslim League (APML) boycotted the election. A great enthusiasm was observed in the candidates at both the national and the provincial levels. Overall 5000 candidates contested for 272 general seats of the national assembly and 11692 for 728 provincial assembly seats. Political parties and candidates gave importance to act upon code of conduct, announced by the ECP. Before the general election of May 2013 independent survey by Gallup Pakistan showed that the top three parties were the PML-N, PPP and PTI. The election results also validated the survey. The Gallup Pakistan survey of February 2013 indicated that Pakistan PML-N will secure 37 percent votes, PPP and PTI 16 percent each at the national level (Political Weather Forecast for General Election 2013, March 2013).

Although candidates were killed in suicide attacks during the election campaign yet voters in large number used their right to vote. According to the figures announced by the ECP, the turnout in the May 2013 election was 55.02 percent. It was the highest turnout since 1988. The highest turnout was 84.77 percent in NA 191 Bahawalnagar and the lowest turnout in NA South Waziristan. Over 64.2 million registered voters cast their votes. The PML-N under the leadership of former Prime Minister Nawaz Sharif emerged as the largest political party in the National Assembly by getting 1,47,94,188 votes. The PTI under leadership of Imran Khan succeeded to form its provincial government in KPK
and secured 75, 63,504 votes. The PPP got good results only in Sindh province and overall received 68, 22,958 votes. The MQM having its vote bank in urban Sindh attained 24, 22,656 votes. Political parties in any democratic state play very important role. However, the independent candidates received 57, 73,494 votes (*The Tribune*, May 21, 2013). The highest turnout in the history of general election in Pakistan was 59.8 percent in 1970 (*The Nation*, May 22, 2013). The voting turnout was 44.22 percent in the 2008 general election. It rose with the ratio of 10 percent in 2013 as 55 percent voters used their voting right (*The News*, May 21, 2013).

Table: Voting Turnout in Provinces (Elections 2013)

<table>
<thead>
<tr>
<th>Punjab</th>
<th>Sindh</th>
<th>KPK</th>
<th>Balochistan</th>
</tr>
</thead>
<tbody>
<tr>
<td>57%</td>
<td>53%</td>
<td>42%</td>
<td>36%</td>
</tr>
</tbody>
</table>


The turnout in the election was important for two reasons. Firstly, the citizens of Pakistan had rejected those people who wanted to keep voters away from the electoral process. Secondly, the high turnout indicated that the people of Pakistan had attained firm belief in democracy (*The Nation*, May 17, 2013). The hot season and the terrorist activities could not keep voters away from using their right of vote. Media played positive role in educating the people (*The News*, May 17, 2013).

Fourteen Election Tribunals were established to review the complaints of the contesting candidates. According to the decision of the ECP the maximum period for hearing of the complaints was fixed at 120 days. It is a fact that in the past hearings of such type of cases were unnecessarily delayed. Some cases were not decided even till the assembly was dissolved (*Daily Jang Urdu*, May 15, 2013).
According to the European Union Election Observation Mission Pakistan 2013, the general election in Pakistan was a fine process towards a consolidated democracy. Despite suicide attacks during election campaign, political parties, candidates and the public showed remarkable interest. Some important steps were taken to hold free election like constitutional amendments and improvement in the voting lists. The appointment of Chief Election Commissioner and Care-taker Prime Minister and Chief Ministers through consultation between the Government and the Opposition was explained in the eighteenth constitutional amendment. Confidence level in the ECP improved. But the ECP did not use extensively its legal powers. Throughout the country media coverage was allowed except some of the few areas. Overall polling was appreciable. Head of the European Union Observer Mission Mickle Gillar expressed his satisfaction in the electoral process apart from the terrorist activities (Daily Jang Urdu, May, 15, 2013).

Table: Party Position in the National Assembly in General Elections 2013 in Pakistan

<table>
<thead>
<tr>
<th>Party Name</th>
<th>Seats</th>
<th>Party Name</th>
<th>Seats</th>
</tr>
</thead>
<tbody>
<tr>
<td>PML (N)</td>
<td>189</td>
<td>PML</td>
<td>2</td>
</tr>
<tr>
<td>PPPP</td>
<td>45</td>
<td>NPP</td>
<td>3</td>
</tr>
<tr>
<td>PTI</td>
<td>33</td>
<td>BNP</td>
<td>1</td>
</tr>
<tr>
<td>MQM</td>
<td>24</td>
<td>QWP (S)</td>
<td>1</td>
</tr>
<tr>
<td>JUI (F)</td>
<td>13</td>
<td>PML (Z)</td>
<td>1</td>
</tr>
<tr>
<td>PML (F)</td>
<td>5</td>
<td>NP</td>
<td>1</td>
</tr>
<tr>
<td>PMAP</td>
<td>4</td>
<td>AMLP</td>
<td>1</td>
</tr>
<tr>
<td>JI</td>
<td>4</td>
<td>AJIP</td>
<td>1</td>
</tr>
<tr>
<td>ANP</td>
<td>2</td>
<td>APML</td>
<td>1</td>
</tr>
<tr>
<td>IND</td>
<td>8</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Total 339

Total seats in the National Assembly 342

(Three vacant seats NA 19, NA 38 and NA 53)

Note: There are 272 general seats in the National Assembly. Sixty seats are reserved for women and ten seats are reserved for non-Muslims.

Source: Election Commission of Pakistan

According to the 17th Amendment in the 1973 Constitution, there are 272 general seats whereas 60 seats are reserved for women and 10 for non-Muslims in the National Assembly. The PML-N got simple majority by securing 185 seats. The PML-N won seats from all parts of Pakistan. However it got 160 National Assembly seats out of 183 seats including women and non-Muslims in the Punjab Province. Other political parties including independent candidates won 23 seats (Election Commission of Pakistan, Official Website). It won 213 general seats out of 297 in the Punjab Provincial Assembly. The PML-N was also the ruling party from 2008-2013 in the Punjab Province (Election Commission of Pakistan, Official Website).

The PPP which was the ruling party during 2008-2013, stood second in the National Assembly by securing 41 seats. Khursheed Shah belonging to the PPP was appointed as the Opposition Leader (*The News*, June 8, 2013). The PPP won 37 seats from its stronghold Sindh Province. The party also won 63 general seats of the Sindh Provincial Assembly out of 130 and established its Provincial Government. The PTI boycotted the 2008 general elections. This time it won 35 seats in the National Assembly. The PTI got main support from the KPK by winning 21 seats out of 43. It also formed its Provincial Government in the KPK. It is remarkable that the ruling party in KPK from
2008 to 2013, the ANP, won 4 Provincial seats in KPK and only one seat in the National Assembly. The MQM won 23 seats in the National Assembly, 2 seats less than those in the 2008 general elections. It also won 37 seats in the Sindh Provincial Assembly. The MQM has its vote bank in the rural Sindh. The party could not win any seat from other Provinces. The JUI-F won 14 seats in the National Assembly. Its candidates won only in two Provinces, the KPK and the Balochistan. The PML-N stood first by winning 9 general seats out of 51 in the Balochistan Provincial Assembly but Prime Minister Nawaz Sharif nominated Abdul Malik Baloch, a nationalist, non-tribal chief and head of the National Party as a candidate for the Chief Minister of the Balochistan Province. Abdul Malik Baloch was unopposed elected (The DAWN, June 09, 2013).

In a federation there may be governments of different political parties in the component units. So is the case in Pakistan after May, 2013 elections. The PML-N is the ruling party in the Centre and the Punjab Province. The PPP is the ruling party in the Sindh Province and the PTI in KPK. It is essential that mandate of the political parties must be recognized.

5.11.1.2 Reaction of Political Parties on Election 2013 Results

The major political parties in the National Assembly showed their apprehensions regarding May, 2013 general elections. The ruling party PML-N joined protest rallies arranged by Pakistan PML-F on rigging in Sindh Province. The PTI under leadership of Imran Khan succeeded to form the government in KPK Province. It loudly protested on election results except the KPK. The PPP which was ruling party during 2008-2013 showed its reservations on election results in the Punjab Province. The JUI-F did not accept victory of PTI in KPK. The MQM boycotted re-polling in Karachi. Writ petitions
were filed in the election tribunals by candidates belonging to different political parties (Assessment of the Quality of General Election 2013, 2013).

There were many criticisms launched on elections by various political parties. The main criticisms are given below.

a) The polling agents belonging to political parties were not provided with the results of the polling stations. b) Somewhere result was given to polling agents on simple paper instead of specific form (xiv), provided by the Election Commission of Pakistan. c) Polling staff illegally provided stamps and ballot papers to the candidates. d) The Presiding Officers intentionally delayed in submission of results to the Returning Officers. e) Unauthorized persons were allowed to affix their thumb-impressions on counterfoils of the ballot papers. It was demanded by the candidates that those thumb impressions must be verified by National Database and Registration Authority (NADRA). f) Staff favoured previous ruling party in casting fake votes. g) Some polling staff members were unable to guide people due to lack of training. h) In some polling stations voters belonging to a specific party were allowed to cast votes while others were not allowed. i) In some localities the security system was not properly planned, especially in Karachi. j) At some stations polling was started late after schedule of time. k) In some instances the gangs snatched ballot boxes from the polling staff (Assessment of the Quality of General Election 2013, 2013).

5.11.1.3 PILDAT’s Recommendation for Future Elections

Following recommendations were given to the Election Commission of Pakistan to conduct election in future in a more transparent way. a) The Session Judges and the Additional Session Judges belonging to the district judiciary were appointed as Returning Officers. The Election Commission of Pakistan must assign this duty to its own staff. b)
Electronic voting machine must be used to remove mistakes at the time when the election results are prepared. c) Polling staff must be appointed into another district to avoid any pressure from the local influential personalities. It is also suggested that some mechanism must be there to encourage the polling staff work independently without any intervention by the ex-provincial governments. d) The Election Commission of Pakistan must work to provide the best transparent apparatus for voter-identification. Thumb impression of the voter is the best manner in this regard. e) The polling stations may be established at the places where voters can easily cast their votes. f) The ECP should not extend polling duration at the eleventh hour. g) Time for the scrutiny of nomination papers for the contesting candidates was just seven days. It must be increased. h) It is essential that training of the polling staff must be given in a better way (Assessment of the Quality of General Election 2013, 2013).

In the general elections 2013, 55 percent of total registered voters used their right to vote which shows their confidence in democracy. The Taliban could not create disturbance on May 11, 2013. The European Union observers expressed their satisfaction in 90 percent polling stations. The apprehensions that had been shown in the remaining 10 percent about rigging belonged to Karachi, Peshawar and Balochistan (Daily Jang Urdu, May 16, 2013). Terrorist acts could not influence voters who came out on the election-day to cast their votes. Maturity had also been shown by the politicians. This time party office-bearers, particularly of PPP resigned due to party defeat in the general elections (The Nation, May 22, 2013).

The voters showed their confidence in Nawaz Sharif to solve their problems (The News, May 17, 2013). Nawaz Sharif was elected as the Prime Minister for the third time by getting 244 votes out of the 317 in the NA. The PPP’s candidate Makhdoom Amin Fahim received 42 votes and Javed Hashmi of PTI 31 votes (The Nation, June 06, 2013).
Single political party gained majority. It is a fact that in the past coalition governments faced many complications in Pakistan. The elected government of PML-N in the Centre will have to face problems like terrorism, economy and load shedding (The Nation, May 22, 2013). Completion of tenure of the National Assembly and conduct of the general elections with regular interval will help in strengthening democracy in Pakistan.

5.11.1.4 The PTI’s Claim of Rigging in the General Elections 2013

The PTI alleged that the 2013 general elections had been rigged also issued a white paper regarding irregularities in election. The PTI categorised the rigging into three categories; pre-election rigging, polling day rigging and post-election rigging and suggested reforms in the electoral system (White Paper; Massive Rigging in The General Elections 2013, 2013). On 14th August 2014, the PTI began Azadi March (Freedom March) from Lahore to Islamabad over the claim of rigging in the general elections 2013. The PTI demanded that the Federal Government institute a judicial commission to investigate the rigging in the general elections 2013 (The News, December 18, 2014).

On 16th December 2014, terrorists attacked the Army Public School and College Warsak Road Peshawar which caused death of 141 persons including 132 innocent students (The News, December 17, 2014). Due to the sad incident of the Army Public School and College Peshawar, the PTI announced to end its sit-in in the federal capital Islamabad the very next day which had been continuing for 126 days. The chairman PTI, Imran Khan had been demanding the Prime Minister Nawaz Sharif to institute a judicial commission to investigate the rigging allegations. The Prime Minister applauded the PTI’s decision to end its Islamabad sit-in and ensured to address the PTI’s demands on 2013 election rigging. Other political parties also welcomed the PTI’s decision to end its
sit-in in solidarity with the victims of Peshawar school attack (*The Express Tribune*, December 18, 2014).

### 5.11.1.5 The Judicial Commission

On April 2, 2015, an agreement was signed between the PTI and ruling party. The PML-N was to form a judicial commission through a Presidential Ordinance to investigate allegations about rigging in 2013 general elections. Both the political parties agreed that the commission would investigate the rigging allegations within 45 days. The agreement said,

> The Commission shall enquire into and determine whether or not: (a) the 2013 general elections were organised and conducted impartially, honestly, fairly, justly and in accordance with law; and (b) the 2013 general elections were manipulated or influenced pursuant to a systematic effort or by design by anyone; and (c) the results of the 2013 general elections, on an overall basis, are a true and fair reflection of the mandate given by the electorate (*The Express Tribune*, April 3, 2015).

On April 3, 2015, the Presidential Ordinance was promulgated to investigate allegations about rigging in 2013 general elections (*The Express Tribune*, April 3, 2015). The Chief Justice of the Apex Court approved the formation of the judicial commission which consisted of three judges Nasir-ul-Mulk (Chief Justice), Justice Amir Hani Muslim and Justice Ejaz Afzal (*The News*, April 08, 2015). Thirty nine hearings of the judicial commission were held. The three main allegations of the PTI were theft of the public mandate in the 2013 general elections, organized rigging and non-transparent polling. The judicial commission started its proceedings on April 9, 2015 and ended its eighty five day work on July 3, 2015. During the proceedings, the PTI, PML-N, Jamat-i- Islami, PML-Q and other political parties presented their witnesses. The commission’s report rejected the aforementioned rigging allegations of the PTI in the 2013 general elections. (*The News*, July 23, 2015).
5.12 Some Key Issues after Passage of the 18th Amendment

After passage of the 18th Amendment, different emerging issues are discussed below. Under the 18th Amendment, provinces have access to the foreign loans. The Executive Committee of the National Economic Council (ECNEC) has not been able to frame necessary laws in this concern yet. Some other unsettled issues are: Employment Old-Age Benefit Institution (EOBI); Pakistan Tourism Development Corporation (PTDC) and Port Authorities; Evacuee Trust Property Board (ETPB); Workers Welfare Fund (WWF); allocation of hunting areas to Foreign Ministry; federal employees’ resettlement; Aerial Survey; Pakistan Agricultural Storage and Services Corporation (PASSCO; Pakistan Sports Board; National College of Arts; Aiwan-i-Iqbal and Pakistan Baitul Mal” (The News, April 12, 2015).

According to the 18th Amendment, seventeen federal ministries were devolved to the provinces. The employees of the devolved seventeen federal ministries were transferred either to the provincial level or in other federal ministries. At the stage of retirement, both levels of government do not own the employees who were transferred to the provincial level. It has created a sense of embarrassment in the aforementioned employees. Some of them have filed writ petitions in the court against the government (The News, April 12, 2015).

Confusion has prevailed about the mandate to regulate, especially for devolved subjects, because the Entry 6 of the FLL Part II gives the CCI the powers to regulate the devolved subjects. Recently, Sindh High Court has annulled (Pakistan Standard Quality Control Authority) PSQCA’s notifications specifying the standards of agricultural products clarifying that it is a provincial subject. Now the SC is hearing an appeal against this decision and it is expected to set a precedent on this subject. In the past, similar
problems arose in the regulation of medicines as the jurisdiction of the Drug Regulatory Authority of Pakistan is also ambiguous. Its validity is also being assessed by the SC. Some regulatory problems are at the core of strained relationships between federation and provinces about higher education. Assets and liabilities also remain a bone of contention. Moreover there are not sufficient number of focal institutions at federal level to facilitate the donors who cannot deal with the provinces directly. It is causing a loss of donations as well as the opportunities of international co-operation (The News, April 12, 2015).

Under the 18th Amendment the federal government does not have constitutional power and jurisdiction to create equality between the provinces. That’s why, Balochistan is far behind other provinces vis-a-vis development. The federal government can only act when a province clearly asks it to intervene, under article 147 of the constitution through a resolution passed by provincial assembly. Hence, this capability of the federal government will be of utmost significance in the next NFC Award. The role of the federal government is very important in a federation as it is responsible for keeping the provinces intact in a common economic union through various incentives. So the effects of the 18th Amendment should be cautiously examined especially in the matter of the reservoirs of mineral oil and natural gas. The CCI should be a body to make effective decisions about the delineation of the boundaries between federal and provincial areas of jurisdiction (The News, April 12, 2015).

5.12.1 The HEC

In Pakistan, University Grants Commission (UGC) dealt all matters of higher education in the past. It was under Federal Ministry of Education. In 2002, the HEC was established through an Ordinance. Under section 22 of the said Ordinance, the University
Grants Commission Act, 1974 (XXIII, 1974) was annulled. The Prime Minister was the controlling authority of the HEC (Higher Education Commission Ordinance 2002).

5.12.1.1 Constitutional Status

The subjects of the deleted CLL were transferred to the provinces. Entry number 38 of the former CLL dealt only with “Curriculum, syllabus, planning, policy, centres of excellence and standards of education”. However, some functions related to the higher education have been retained at the federal level.38

Since 2002, the HEC has performed extraordinarily. In 2002, there were 59 universities in the country. The number of universities increased since 2002 as there were 132 universities in 2011. As a result, enrollment of the students increased from 276,000 in 2002 to 100,000 in 2011. After implementation of the 18th Amendment, an attempt was made to devolve the HEC functions. A petition was filed by the HEC in the Supreme Court. In its judgment, the Supreme Court issued a stay order. It stated that the status of the HEC as has been enshrined in the HEC Ordinance, 2002, with its functions covered by constitutional provisions… shall remain intact unless the same is changed through legislation in this regard. The HEC shall continue discharging its functions and duties it had been doing in the past unless fresh legislation is promulgated (Social Development, 2012).

The CCI made certain decisions: the HEC has been permitted to work independently till 2014-15; the federal government and the provincial governments will devise educational plans in collaboration with the Inter-Provincial Coordination Committee and the CCI; changes will be brought in the HEC Ordinance (Social Development, 2012). The CCI can play very effective role in resolving issues related to HEC. It seems that financing of the HEC will be transferred to the provinces.
During the last day of the previous government, the Provincial Assembly of Sindh passed Provincial Higher Education Commission Act. It was challenged in the Sindh High Court. In KPK, the newly elected government of the PTI instituted a working group to review the matter along with its recommendations. The Balochistan provincial government is also deliberating the issue in the same direction. However, the ruling party PML-N intends to keep the HEC at federal level as an autonomous, resourceful and strong body (The Express Tribune, May 1st, 2014). Prior to the 18th Amendment, the vice chancellor of the university was appointed by the provincial governor of the concerned province. Under the 18th Amendment, the vice chancellor of the university will be appointed by the chief minister of the concerned province (The Express Tribune, May 1st, 2014).

Under the 18th Amendment, education ministry was devolved to the provinces. Provincial higher education commissions were established in Punjab and Sindh. The Federal Law Ministry and the central HEC viewed that the establishment of the higher education commission at the provincial level was unconstitutional. A task force was established to settle the issues between the central and the provincial HECs by the CCI in its meeting held in March 2015 (The News, April 12, 2015).

5.12.2 Gas

Currently Pakistan is facing a worst situation in supply of gas. The industry and agricultural sectors have tremendously suffered. It has also affected economic growth rates of the country. The citizens are facing a difficult situation due to energy crisis. There are governance and technical reasons for the current crisis in the gas sector. According to former advisor to the Prime Minister on petroleum and natural resources Dr. Asam Hussain, there were almost 200 Compressed Natural Gas (CNG) stations
involved in gas theft. There is also 380 million cubic feet per day theft of gas in the country. By 2026, the domestic gas production will decline to less than 1000 mccfd (Masood, 2013). Pakistan is the largest CNG consuming country in the world. About 350,000 vehicles are refilled by the CNG per day (Ahmad, Chaudhary, Farooq and Riaz, 2013).

Table: Gap between Supply and Demand of Gas in Pakistan

<table>
<thead>
<tr>
<th>Years</th>
<th>Demand</th>
<th>Supply</th>
<th>Net Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004-2005</td>
<td>3173 Mcf/Day</td>
<td>4033</td>
<td>860</td>
</tr>
<tr>
<td>2009-2010</td>
<td>4565 Mcf/Day</td>
<td>4424</td>
<td>-141</td>
</tr>
<tr>
<td>2019-2020</td>
<td>9114 Mcf/Day</td>
<td>3001</td>
<td>-6113</td>
</tr>
<tr>
<td>2029-2030</td>
<td>19035 Mcf/Day</td>
<td>2299</td>
<td>-16736</td>
</tr>
</tbody>
</table>

Source: Rober Hathway and Michell Kugelmn, 32.

5.12.2.1 The 18th Amendment

The 18th Amendment has also addressed the natural resources (Constitution of the 1973, Article 158, 161 and 172). Article 158 says,

The Province in which a well-head of natural gas is situated shall have precedence over other parts of Pakistan in meeting the requirements from that well-head, subject to the commitments and obligations as on the commencing day (Constitution of the 1973, Article 158).

A change has been observed in the per consumer consumption over the last decade. It has been increased by six percent in Sui Southern Gas Pipeline Limited (SSGPL) (serving Balochistan and Sindh). However, it has by five percent in Sui Northern Pipeline Limited (SNGPL) (serving KPK and Punjab). In presence of the Article 158, the available option is to deregulate prices of gas to overcome the crisis. It will enhance efficiency of the gas sector (Social Development, 2012).
Article 172 (3) says,

Subjects to the existing commitments and obligations, mineral oil and natural gas within the Province or the territorial waters adjacent thereto shall vest jointly and equally in that Province and the Federal Government.

There arises an issue from the term *jointly and equally*. It relates to granting of concessions for gas and oil exploration. At present, Federal Ministry of Natural Resources issues these licenses. The provinces may also plead that they should also be involved in this activity. They can also demand for formation of companies like Oil and Gas Development Company (OGDC) at the provincial level. The Constitution recognizes joint ownership in oil and gas. The federal government should also recognize role of the provincial governments in formulation of the policies and determining prices of oil and gas (*Social Development*, 2012).

Article 172 (3) permits the oil and gas producing provinces to have fifty percent ownership and management control on oil, gas and mineral resources in their respective areas. The Federal Ministry of Petroleum and Natural Resources and the provinces interpret the aforesaid article in their own ways. Balochistan is in favour of dissolution of the Federal Ministry of Petroleum and Natural Resources. Sindh demands that it has a legal right in the extension of exploration licenses to oil and gas companies. In 2013, the exploration of oil and gas in 50 blocks was allotted to national and international oil exploration companies in different provinces. Due to lack of consensus between the Federal Ministry of Petroleum and Natural Resources and the respective provinces, the companies could not start their work (*The News*, April 12, 2015). Several issues have emerged between provinces and the Federal Government that resulted impediment in exploration of oil and gas resources and also discouraged investment of foreign companies. These issues include:
1. The provinces asserted their role in the executive and legislative authority.

2. Licenses- Provinces requested the authority to issue licenses and the direct dealing with the E&P companies.

3. The provinces claimed equal share in the existing fields.

4. The provinces demanded that the State entities; Oil and Gas Development Company Limited (OGDCL), Government Holdings (Private) Limited (GHPL) and Pakistan Petroleum Limited (PPL) should be bifurcated and the ownership should be handed to provinces in accordance with the resources lying in those provinces.

5. The provinces demanded 50 percent ownership in production without any investment.

6. The provinces demanded for the establishment of provincial regulatory authorities as well as provincial oil and gas exploration and development organizations (Seminar Report, 2016).

The exploration and production of oil and gas sector was effected in the post 18th Amendment scenario and resulted following consequences:

1. Bidding scheduled for June 2010 was called off and the Federal Government finally awarded the blocks in 2015.

2. Petroleum Policy 2012 was postponed for more than two years. However, in the bidding process, not even a single new foreign company took part under the said petroleum policy.

3. Provinces showed unnecessary delay in sanction of Model Petroleum Concession Agreement / Joint Operating Agreement that resulted in delay in award of exploration license. In March 2013, bidding took place but it could not be finalized till March 2014. Legal framework was not followed in bidding and as a
result, no foreign company participated in bidding. However 80% blocks were awarded to ODGCL and PPL. Foreign companies like BHP of Australia and British Petroleum of UK have left the country earlier and others like OMV and Premier are at different exit stages (Seminar Report, 2016).

Lack of homework and distorted approach of the associated authorities along with mismanagement or misinterpretation caused the aforementioned issues and implications. The Federal Ministry of Petroleum and Natural Resources instituted a technical committee to settle the regulatory issues, under the headship of Director General Petroleum Concessions and provinces were also given representation. Performance of the said committee was nominal. Provincial representation was raised under Petroleum Policy 2012, however, issues of conflict still stand there. Increased participation of the provinces in the light of the 18th Amendment and apposite management of oil and gas sector is settlement of the problem. Choosy interpretations and dearth of understanding of the 18th Amendment resulted confusions in oil and gas sector. Following suggestions can bring improvement in the current situation:

1. An inter-ministerial committee or an authority under the rules of business can be instituted that can play a role of coordination between the Federal Government and the Provinces, with an objective to find impediments and confusions over implementation of Article 172.

2. There is need to be interpreted that “Ownership” denotes sharing of royalty equally by the owners and does not automatically confer the legislative and executive authority on the Provinces.

3. Amendment can also be brought in Regulation of Mines and Oil-fields or Mineral Development (Government Control) Act of 1948 and other acts to enhance the role of Provinces other than sharing the royalty.

4. The Provinces can be made co-license with the Federal Government to guarantee flow of foreign investment (Seminar Report, 2016).
5.12.3 Electricity

Since the last so many years, Pakistan has been facing a crisis in energy sector. There are different reasons for this crisis like circular debt, enhancement in oil prices, accelerating system losses, shortage of gas reserves and non-utilisation of full capacity due to poor operation and maintenance. Since 2006-2007, generation of electricity has reduced from 98, 400 Gigawatt hour (Gwh.) to 88,900 Gwh. However, the demand of electricity has been increased at over six percent per annum in 2011-2012 (The News, April 12, 2015).

5.12.3.1 The 18th Amendment

Under the 18th Amendment, electricity has been shifted from the deleted CLL to FLL II. Article 157 of the Constitution addresses electricity. According to the Article 157 (3), if any dispute arises between the Provincial Government and the Federal Government, the issue shall be solved by the CCI.

Table: Cumulative Change in Electricity Consumption per Consumer from 2006-07 to 2010-11 in Different Distribution Companies

<table>
<thead>
<tr>
<th>Name of Company</th>
<th>Industrial Consumer</th>
<th>Total Consumer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Peshawar Electric Supply Company (PESCO)</td>
<td>4.5</td>
<td>14.0</td>
</tr>
<tr>
<td>Islamabad Electric Supply Company (IESCO)</td>
<td>-15.7</td>
<td>-10.0</td>
</tr>
<tr>
<td>Gujranwala Electric Power Company (GEPCO)</td>
<td>-15.7</td>
<td>-10.1</td>
</tr>
<tr>
<td>Lahore Electric Supply Company (LESCO)</td>
<td>-11.2</td>
<td>-10.8</td>
</tr>
<tr>
<td>Faisalabad Electric Supply Company (FESCO)</td>
<td>-18.2</td>
<td>-18.3</td>
</tr>
<tr>
<td>Multan Electric Power Company (MEPCO)</td>
<td>-23.8</td>
<td>-18.3</td>
</tr>
<tr>
<td>Hyderabad Electric Supply Company</td>
<td>-8.5</td>
<td>9.8</td>
</tr>
<tr>
<td>(HESCO)</td>
<td>Quetta Electric Supply Company (QESCO)</td>
<td>-32.3</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>----------------------------------------</td>
<td>---------</td>
</tr>
<tr>
<td>Karachi Electric Supply Company (KESCO)</td>
<td>9.1</td>
<td>0.0</td>
</tr>
</tbody>
</table>


The above table shows per consumer decline in electricity in different parts of the country. In Balochistan and the Punjab, the biggest decline has been observed in industrial consumers.

The federal government awarded special powers to Federal Investigation Agency to take legal actions against those who were involved in stealing electricity. The provincial task forces at the provincial levels were also instituted (*The Express Tribune*, July 19, 2013).

In Pakistan, there is the World’s fifth largest coal reserve (approximately 185.175 billion tons). Thar (in Sindh Province) has the largest coal reserve of the country (approximately 75.5 billion tons). The fact is that Pakistan can produce 100,000 Mega Watt (MW) of electricity for the next thirty years by using its coal reserves. Approximately 39 percent of the total global energy demand is contributed by coal (Shah and Bhatti, 2013).

Table: Share of Coal in Total Electricity, Produced in Different Countries

<table>
<thead>
<tr>
<th>Country</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>China</td>
<td>81 percent</td>
</tr>
<tr>
<td>UK</td>
<td>58 percent</td>
</tr>
<tr>
<td>USA</td>
<td>56 percent</td>
</tr>
<tr>
<td>Pakistan</td>
<td>0.79 percent</td>
</tr>
</tbody>
</table>

Source: Shah and Bhatti, 2013.
Thar Coal Power Project was inaugurated on January 31, 2014. It will generate 660 MWs electricity. The project will be completed by 2017 (The News, February 01, 2014). On May 9, 2014 Bahawalpur solar power park was inaugurated. It will generate 100 MWs electricity. By 2015, it will be enhanced to generate 300 MWs electricity. It will generate 600 MWs electricity by 2016 (The News, Islamabad, May 10, 2014).

Article 157 (2) states,

> The Government of a Province, may- (c) construct power houses and grid stations and lay transmission lines for use within the province (The Constitution of the 1973, Article 157-2).

In Pakistan, electricity is distributed through national grid. Electricity generated by a province is integrated in the national grid. However, the province which constructs a grid station must be given a special incentive in supply of electricity. It can produce good results.

**5.12.4 Drug Regulation**

Under the 18th Amendment, the CLL has been deleted. The subjects included in the CLL have been transferred to the provinces. Following entries of the former CLL were related to drugs.

Entry 19. Opium, so far as regards cultivation and manufacture.
Entry 20. Drugs and medicines.

It is function of the federal government to regulate opium export (The Constitution of the 1973, Fourth Schedule FLL I, Entry 26). “All regulatory authorities established under a Federal law”, have been put under the FLL II, entry 6. Before the 18th Amendment, the federal ministry of health regulated drugs functions under Drugs Act 1976. In January 2012, about 70 patients died at Punjab Institute of Cardiology
(PIC). The death reason was substandard medicines (The News, January 25, 2012). The Supreme Court took suomoto notice of deaths due to drug reaction (The News, January 31, 2012). The Court directed to institute the Drugs Regulatory Authority (The Dawn, February 7, 2012). On 13th November 2013, Pakistan Drugs Regulatory Act was issued (The Gazette of Pakistan, November 13, 2013). Regulation of drugs at the federal level is significant.

5.12.5 Environmental Protection

In the 1956 Constitution, the subject of ‘Environment’ was not included in the FLL, the Provincial Lists or the CLL. It was also not mentioned in the (single) LL in the 1962 Constitution. In the both above mentioned Constitutions, ‘Environment’ was under absolute domain of the Provinces. However, both the Constitutions empowered the central legislature to legislate for implementation of agreements with other countries and international organizations. In the 1973 Constitution, ‘Environmental pollution and ecology’ was mentioned at the entry no. 24 of the CLL. In 1983, Pakistan Environmental Protection Ordinance was implemented. In 1997, the Parliament passed Pakistan Environmental Protection Act (PEPA) (Hamid, 2013).

‘Environmental Pollution and Ecology’ (entry 24) has been transferred to the provinces due to deletion of the CLL. Thus, there have been many complications for environmental governance in the country. It includes Pakistan’s commitments under multi-national environmental agreements and implementation of existing environmental laws (Hamid, 2013).

There is also a major issue related to formulation and implementation of National Environmental and Quality Standards (NEQS) like liquid and industrial waste, water and air quality. Prior to the 18th Amendment, the NEQS was formulated by Environmental
Protection Council (EPC). The council existed at the federal level. The coordination between EPC of each province with the NEQS is an important issue. Some Non-Governmental organizations (NGOs) opposed transfer of Ministry of Environment to the provinces. They claimed that the provinces lacked capacity and preparedness. After the 18th Amendment, Federal Ministry of Climate Change was established. The said ministry should have marginal regulatory functions. The provincial governments should play a key role in enforcement of the existing environmental laws. On the other hand, the federal EPC may carry on performance of functions of formulation and monitoring of NEQS. There is also a need to strengthen the environmental departments at provincial level (Social Development, 2012).

5.12.6 Agriculture

The federal ministry of Food and Agriculture performed functions of planning related to food grains and agriculture, economic coordination and policy-making. The ministry played significant job in national food security (Pasha, 2012). Under the 18th Amendment, ministry of Food and Agriculture was devolved to the provinces. On the other side, a new federal ministry ‘National Food and Security Research’ was instituted. It performs responsibilities like provision of regulatory and assessment services and stabilization of consumer prices/farm income. The fixation of support prices for different crops is a major issue. Devolution of this responsibility to the provinces can cause different implications. Any province will determine the support price of its abundant produced crop. As a result, other provinces can suffer. Different prices of the same crop in provinces can encourage smuggling. In India, the Commission for Agricultural Cost and Prices determines the support prices for different crops. The central ministries and states’ governments play key role in this regard. In Pakistan, this responsibility can be fulfilled by the Agriculture Policy Institute (originally named the Agricultural Prices
Commission). The support price for a particular crop can then be determined by the CCI (Social Development, 2012).

5.12.7 Workers’ Welfare Fund (WWF) and Employees’ Old-Age Benefits Institution (EOBI)

The issues related to WWF and EOBI have been discussed below.

5.12.7.1 WWF

WWF was instituted under the Workers’ Welfare Fund Ordinance 1971. According to the section (1), it extends to the whole of Pakistan. The federal government contributed ten crore rupees in the fund (The Workers’ Welfare Fund Ordinance 1971). Under section (4) of the Ordinance, “Every industrial establishment having the total income of five lakh rupees or more pays to the fund in respect of that year a sum total of 2 percent of its total income to the federal government”. The governing body was established under section (7). The federal secretary of the concerned ministry performs duties of the chairman. The representation of workers and employees from all the provinces is ensured in the governing body (The Workers’ Welfare Fund Ordinance 1971). In 2010-11, the total revenue collected by the Federal Board of Revenue (FBR) were rupees five billion (Social Development, 2012).

5.12.7.2 EOBI

The functions of the social security of workers were mentioned in the former CLL (Item No. 26 and Item No. 31). As result of the 18th Amendment, these functions stand transferred to the provinces. In 1976, the EOB Act was implemented (Official Website of EOBI). Its basic purpose was to attain the objective of Article 38 (C) of the Constitution. According to the section (2) of the Act, old-age benefit extends to “old-
age pension (at the time of retirement), invalidity pension (in case of disability), survivor’s pension (in case an insured person has dead), old-age grant and such other payments as may be determined by the Federal Government from time to time”. The chairman of the EOBI is appointed by the federal government. The total income of the EOBI is approximately 30 billion (rupees) per year. About 8 billion are paid as annual benefits. Financially, the EOBI is a sound body (Social Development, 2012).

Ministry of labour has been transferred to the provinces. According to the Article 142 (C), the provincial assemblies can make laws and establish new institutions for welfare of the workers. The transfer of funds of the EOBI and WWF to the provinces can result two problems; firstly, the distribution of physical and fiscal assets among the provinces and second, collection and distribution of funds. The workers can face problems if they work in another province and return to their home province after the retirement. The said problems can be tackled by following two suggestions. One, the WWF can be easily transferred to the provinces. Secondly, the EOBI can be kept at federal level continuing with the operations of the EOBI Act, 1976. In this way, uniformity of benefits across provinces can be attained (Social Development, 2012).

5.13 Regulatory Authorities

On 19th December 2016, Prime Minister Sharif took a decision to transfer the administrative control of the five key regulatory authorities; National Electric and Power Authority (NEPRA), Oil and Gas Regulatory Authority (OGRA), Pakistan Telecommunication Authority (PTA), Frequency Allocation Board (FEB) and Public Procurement Regulatory Authority (PPRA) to the relative ministries. OGRA had been brought under the control of petroleum and natural resources division, FAB and PTA to the information and telecom division, PPRA under finance division and NEPRA under
the control of water and power division (The DAWN, December 20, 2016). The Federal Government clarified that only administrative control of these regulatory authorities has been handed over to the relevant ministries, however, the regulatory powers would remain with the regulators. Whilst the PPPP, opposition political party in the National Assembly was of the opinion that the Federal Government took the decision to curtail the regulatory powers of the aforementioned regulatory authorities (Only administrative control of regulators given to ministries, (APP, December 20, 2016).

The Provincial Chief Minister Sindh, Murad Ali Shah opined that the Federal Government’s decision would undercut independence of these regulatory bodies. Regulatory authorities are anticipated to independently regulate the commercial operations of the companies. He said that under Article 154 (1) and (3), regulatory authorities should be controlled by permanent Secretariat of CCI. However, “as a stop gap arrangement, Cabinet Division is controlling these entities” that indicates small intention of the Federal Government. Policy formulation and supervision of these authorities fall under the jurisdiction of CCI. Shah wrote a letter to the Prime Minister and asserted that:

the federal government’s unilateral decision to transfer control of such regulatory authorities from Cabinet Division to line ministries, without the approval of CCI is transgress into the domain of CCI, and it is unconstitutional.

Shah made a request to the Prime Minister to cancel the notification and proposed to call the session of CCI to discuss the subject matter (The News, December 21, 2016). The Senate’s Functional Committee on Devolution viewed that the decision of the Federal Government was unconstitutional and expressed that the regulatory authorities should remain independent (The Nation, January 12, 2017). The member of core committee of PTI, Jahangir Tareen (MNA) and a citizen named Ali Irfan filed identical petitions in the Lahore High Court against the decision of the Federal Government to
transfer the administrative control of the five key regulatory authorities to the relative ministries. The said Court suspended the notification of the Federal Government and observed that, “the Prime Minister should have sought approval from the CCI before issuing the notification” (*The DAWN*, February 22, 2017).
Conclusion

A unitary state can work in a country having a single ethnic group. In a society where there are significant social cleavages a federal system works better because more space is available for various groups. Pakistan has heterogeneous population and therefore federal set up is preferable and there is a strong consensus on this position.

When Pakistan came into being on August 1947 the Government of India Act 1935 was implemented as interim constitution. It remained state’s interim constitution with certain amendments till 1956. The feature of federalism was maintained in the interim constitution, however, the system of federalism was highly centralized. Supremacy was given to the federal government in the CLL. Under section 102 of the interim constitution, the federal legislature could pass laws included in the provincial subjects in case of declaration of emergency. The provincial legislatures had fewer powers even over the provincial subjects.

Under the interim constitution, the Governor General had a very strong position. He had the powers to declare emergency. The provinces were also put on mercy of the centre. The system of federalism that was designed soon after independence also promoted centralization. The changes that were brought about in the Act of 1935 enhanced powers of the centre. The center played a very important role in dismissing the provincial ministries. When a provincial ministry was dismissed, the centre tried to impose a person of its own choice who was not even member of the provincial assembly.

The Muslim League that was the founder party of Pakistan faced its first defeat in provincial elections of East Bengal in 1954. The centralized structure of the Muslim League played crucial role towards growth of federal powers. Liaquat Ali Khan and Khawaja Nazimuddin were also presidents of the Muslim League even after holding the
office of the Prime Ministers. In 1949, during Liaquat era, PRODA was implemented to control the provincial politicians. After independence, the centre intervened in provincial financial matters and also enhanced its control. The centre unnecessarily intervened in provincial matters of East Pakistan. The issue of provincial autonomy caused a contention between the centre and the provinces. The interim constitution empowered the centre to intervene in the provincial affairs. There was a strong centre and weak provinces in the federal structure of Pakistan under the interim constitution.

Constitution-making became a complicated issue since very beginning. Pakistan could not prepare its first constitution due to different debatable issues. Approval of the Objective Resolution (1949) was the first step taken towards constitution making. The option of federalism was recommended under the said resolution. The first constitution of Pakistan was ratified on March 23, 1956. The system of federalism was also maintained in the new constitution. There were two provinces of Pakistan; East Pakistan and West Pakistan. The items in the provincial legislative list were enhanced as compared to the Act of 1935. The 1956 constitution had some other features such as; establishment of the two high courts with the Supreme Court as the highest court of the country and parliamentary system. Generally there are two houses of central legislature in a federal state. It is remarkable that Pakistan had single house of the legislature under the 1956 constitution, having a federal system. The principle of parity was adopted between the two provinces in the National Assembly.

Different articles of the constitution gave powers to the central government to meddle in the provincial matters. The central government could appoint and dismiss the provincial government. Under the 1956 constitution, the nature of relationship between the centre and the provinces showed the tendency of centralization. The nature of financial distribution between the centre and the provinces under the 1956 constitution
was like the interim constitution. All the major resources of tax collection were granted to the centre and the provinces had limited fiscal autonomy. The central government was in a position to dominate the provinces with regard to distribution of financial resources. The constitution of 1956 remained enforced only for a period of two years. There were unstable ministries during 1956-58. Political parties weakened the federation and political leadership played its negative role. Politicians changed their loyalties time and again and political parties promoted provincialism.

General Ayub Khan who was commander in chief of Pakistan army seized power in a military coup on October 7, 1958. Ayub Khan introduced such articles in the 1962 constitution that could secure his rule. The federalism was limited to theory only and a powerful centre was established. The Governors enjoyed many powers at the provincial level. Ayub Khan resigned on March 25, 1969, Yahya Khan, another military general, came in power and announced to hold general elections. On 7 December 1970, the elections for the National Assembly were held. The elections for the Provincial Assemblies were held on December 17, 1970. The Awami League emerged as the largest political party in East Pakistan and the PPP in West Pakistan.

In the 1970 general elections, regional politics was dominant. Yahya Khan summoned session of the National Assembly in Dacca on March 3, 1971. However, he decided to postpone the session and decided to start military operation against the Awami League in East Pakistan. Indian army attacked East Pakistan and Pakistani troops surrendered to Indian Army on 16 December 1971. East Pakistan was separated on 16th December 1971 and on 20th December 1971, Yahya Khan resigned and handed over power to Bhutto.
On 14th August 1973, the constitution of 1973 was ratified. Under the 1973 constitution, parliamentary democracy was envisioned. So, it functioned in letter and spirit from 1973-1977. In 1977, General Ziaul Haq imposed martial law in the country and the 1973 constitution was held in abeyance. The Parliament passed the 8th Amendment and the 1973 constitution was restored in 1985. According to the 8th Amendment, powers of the President were enhanced. In 1997, the Parliament passed the 13th Amendment in the constitution. The powers of the President given by the 8th Amendment were reversed. Once again the 1973 constitution was restored in its original form.

On 12th October 1999, the elected government of the Prime Minister Nawaz Sharif was toppled by General Musharraf in the military coup. The 17th Amendment was passed on December 31, 2003. Despite the Prime Minister plays a key role in the parliamentary system, the said amendment minimized powers of the Prime Minister. There was a quasi-presidential system in the country. The President could dissolve the National Assembly by using his discretionary powers. The 8th Amendment, LFO 2002 and the 17th Amendment curtailed executive powers of the Prime Minister.

1. The 18th Amendment

The CoD was a first step towards the 18th Amendment. The CoD was signed in London in May 2006 by two former Prime Ministers of Pakistan, Nawaz Sharif and Benazir Bhutto. There were four main agendas in the Charter; amendments in the 1973 constitution, code of conduct, free and fair elections and civil-military relations. In the 2008 general elections, the PPP emerged as the largest political party in the National Assembly. The SPCCR was formed under the chairmanship of Senator Raza Rabbani. The total membership of the committee was 27 and all the political parties sitting in the
Parliament were given representation. After a hard work, the SPCCR was successfully able to devise a draft for constitutional amendment. The National Assembly approved the Eighteenth Constitutional Amendment Bill by casting more votes than the constitutional requirement of two-third majority. The Senate also passed the Amendment Bill by consensus. Not a single vote was cast in against the Bill. After the 1973 constitution, political leadership showed extensive consensus on the 18th Amendment.

One hundred and two Articles were reviewed under the 18th Amendment. Under the 18th Amendment, important changes were made in the political structure of Pakistan. The parliamentary system has been revived and the powers and functions of the Prime Minister have been enhanced. According to the amended Article 48, there is a limitation of ten days on the President to act upon the advice of the Prime Minister or his cabinet. After the amended Article 156, the Prime Minister has the power to nominate four other members in the CCI. The prestige of an elected Prime Minister and an elected Chief Minister has been enhanced.

According to the Article 48, the discretionary power of the President to hold referendum has been taken back from the President. The Prime Minister can refer any matter of national importance to the joint sitting of the Parliament. After approval of the Parliament, the Prime Minister puts the matter before the citizens to answer the question in “Yes” or “No”. According to the Article 75, the Presidential assent period for a bill has been reduced from 30 to 10 days.

According to the 18th Amendment, session of the National Assembly shall be held on the 21st day after the general elections. In the past, there had been unnecessary delay in summoning session of the National Assembly by the President. There is no limit of the term for the Office of the Prime Minister under the said amendment. According to
the Article 101, the Governor of a Province shall be appointed by the President on the advice of the Prime Minister. In the past, Governors were appointed, not belonging to that province. It created a sense of dissatisfaction in the smaller provinces. After the 18th Amendment, a person appointed as the Governor must be a registered voter and dweller of that province which is a positive step.

According to Article 130, the Provincial Cabinet cannot be more than 11% of the total membership of the Provincial Assembly and the Chief Minister cannot appoint more than five Advisors. The limitation on number of the Cabinet will save money. According to Article 243, the President shall appoint the Chiefs of the Armed Forces on advice of the Prime Minister. However, the President is still Supreme Commander of the Armed Forces. Before the 18th Amendment, the President in consultation with the Prime Minister could appoint the Chief of the Army Staff, the Chief of the Naval Staff, the Chief of the Air Staff and the Chairman Joint Chiefs of Staff Committee. The Prime Minister and Leader of the Opposition in the National Assembly play key role in the formation of the care-taker government. The 18th amendment has enhanced prestige of the elected Prime Minister.

After passage of the 18th Amendment, role of the Parliament has been enhanced. Under Article 58 2 (B), it was the discretionary power of the President to dissolve the National Assembly that was against the true spirit of democracy. After the 18th Constitutional Amendment, clause (2) (B) of Article 58 has been removed from the constitution. The President can dissolve the National Assembly on advice of the Prime Minister. It has maintained dignity of the public representatives. According to Article 92, the size of the Federal Cabinet shall not be more than 11 percent of the total figure of the both houses of the Parliament.
Under the 18th Amendment, legislative powers have been revised. The CLL has been removed from the 1973 Constitution. After passage of the 18th Amendment, the President shall act like a ceremonial head of the state which is essence of the parliamentary democracy. The discretionary powers of the President at the Federal Level and of the Governor at the Provincial Level have been omitted from the constitution. The elected representatives have been empowered.

The matter of appointment of the Judges has been addressed in the 18th Amendment. According to the Article 175, a new mechanism for appointment of the Judges of the superior courts has been introduced. The discretionary power of the President to appoint Judges of the superior courts has been reversed. After the 18th Amendment, the judicial commission and the parliamentary committee have been empowered to appoint Judges. The President cannot reject recommendations made by the judicial commission and the parliamentary committee.

Under Article 213, a new mechanism has been introduced to appoint the Chief Election Commissioner and abolishment of the Presidential discretionary powers is a positive step in this regard. Role of the public representatives has been enhanced. According to Article 213, the discretionary powers of the President and the Governors to appoint Care-taker Cabinet have been removed. According to the said article, the President shall appoint the Care-taker Cabinet in consultation with the Prime Minister and Leader of the Opposition in the outgoing National Assembly. Similarly, the Governor shall appoint the Care-taker Cabinet in the Province in consultation with the Chief Minister and Leader of the Opposition in the outgoing Provincial Assembly.

According to the Article 232, the discretionary power of the President to proclaim emergency in a Province has been deleted from the constitution. Role of the Parliament
and the Provincial Assembly has been enhanced in this regard. According to Article 243, the Chiefs of the Armed forces shall be appointed by the President on advice of the Prime Minister. The Sixth and the Seventh Schedule have been removed from the 1973 Constitution. The amended Article 89 has minimized President’s role in respect to Ordinances. In past, the Ordinances have been re-promulgated by the Presidents and the Parliament was bypassed. Prior to the 18th Amendment, the Cabinet was collectively accountable before the National Assembly and Upper House, the Senate was ignored. According to the amended Article 91, the Cabinet shall be collectively responsible before both Houses of the Parliament. The prestige of the Senate has been enhanced in this regard.

Some subjects of the FLL-I have also been removed. The subjects in the FLL-II have been increased. It is a positive step for ensuring the provincial autonomy. After deletion of the CLL, electricity has been transferred to the FLL Part-II. According to Article 157, the Federal Government shall consult the concerned Provincial Government before construction of hydro-electric power station in that Province. If any dispute arises between the Provincial Government and the Federal Government, the issue shall be solved by the CCI. A positive change has been brought under the amended section (B) of Article 161 that net proceeds of the federal duty of excise on oil levied at well-head shall be paid to the Province in which the well-head of oil is located.

According to Section (4) of Article 167, the Provinces can raise domestic as well as international loans. Prior to the 18th Amendment, the originated Province was paid federal excise on natural gas. Under the amended Article 161 (1) (B), oil has also been included. According to the Article 172 Section (3), the natural gas and mineral oil within the boundary of the Province or the territorial waters in its adjacent area shall vest commonly and equally in that Province and the Federal Government. After the 18th
Amendment, more subjects are given under jurisdiction of the provinces. The legislative and administrative powers of the provinces have been increased. The CLL has been removed from the Constitution. The provinces have greater control over the natural resources as compared to the past. It is a fact that during the period 1955-2010, there had been a tendency of less tax collecting and spending powers at the provincial level. During the democratic period, local government’s spending powers were reduced. However, spending powers of the local government were enhanced during the military regimes.

According to Article 160 of the 1973 Constitution, the NFC can be instituted to establish financial relations between the Federal Government and the Provincial Governments. The basic purpose of the NFC is to distribute resources between the Federal Government and the federating units. The seventh NFC Award was established and announced in 2010. The new Award was announced after a long period of fourteen years. A consensus was made by the political leadership for distribution of resources. According to the 7th NFC Award, poverty, revenue generation and population are given importance for distribution of resources. According to Article 160 of the Constitution, the provincial share cannot be reduced in the future NFC agreement as given in the 7th NFC Award is also a positive decision.

The Fourth Schedule of the 1973 Constitution has been addressed under the 18th Amendment. The Federal Government has complete control on the subjects included in the FLL-I. Before the 18th Amendment, there were 59 subjects in the FLL-I. After the amendment, there are 53 subjects in the FLL-I with four revisions of four sub-entries. The amendment has reduced subjects of the FLL-I. The subjects included in the FLL-II lie under the jurisdiction of the Federal Government. However, through the CCI, the Federal Government and the Provincial Governments perform joint responsibility on the subjects included in the FLL-II. After the 18th Amendment, role of the Provinces in
decision-making at the Federal Level has been increased. Before the 18th Amendment, there were eight subjects in the FLL-II. After the amendment, there are eighteen subjects in the FLL-II. Prior to the 18th Amendment, the CLL consisted of 47 subjects. Both the Federal Government and the Provincial Governments had joint jurisdiction on subjects included in the CLL. The CLL has been removed under the 18th Amendment. One subject has been moved to FLL-I. Two subjects have been moved to FLL-II. The residual subjects of the CLL fall under realm of the Provinces and role of the Provinces has been enhanced in this respect.

Through the 18th Amendment, an attempt has been made to strengthen the CCI. All issues concerning the federation are discussed in the council. In Past, its meetings were not held regularly, however, after the said amendment, it is obligatory for the council to meet at least once every quarter. The CCI has been assign the power concerning supervision, decision making, monitoring and control over the FLL-II. The composition of the NEC has been revised under the 18th Constitutional Amendment. The provinces are more powerful as compare to the past. According to the Article 156 (5), the council will have to submit its annual report to both houses of the Parliament. The council has to meet after every six months.

The 18th Amendment was challenged in the in the Supreme Court. The Supreme Court in its interim order gave space to the Parliament to re-amend the constitution and also gave recommendations. The Supreme Court and the Parliament did not collide with each other that is a positive sign for smooth functioning of democracy in Pakistan.

Under the 19th Amendment, five Articles (81, 175 (A), 182, 213 and 246) were amended. According to the amended Article 175 (A), the membership of the senior Judges in the Judicial Commission has been increased to four. The meetings of the
Parliamentary Committee shall be held in camera and record of the meeting shall also be maintained. According to the amended Article 213, the membership of the Parliamentary Committee for appointment of the Chief Election Commissioner has been raised to 12. One-third members of the Parliamentary Committee shall be taken from the Senate. In the 19th Amendment, the Parliament gave due respect to the recommendations of the Supreme Court.

Under the 20th Amendment, 7 Articles (48, 214, 215, 216, 218, 219, 224), Second Scheduled and Third Scheduled were amended. An effort has been made to make Election Commission an independent body and establish a neutral care-taker Government at the Central and Provincial Levels to hold free and fair elections.

2. Implementation of the 18th Amendment

The Federal Government instituted an Implementation Commission of the 18th Amendment. The primary objective of the commission was working on implementation of the 18th Amendment. Under the amended Articles 48, 75, 153, 156, 242, powers of the Prime Minister have been enhanced. All important appointments will be made on advice of the Prime Minister.

According to the amended Article 91, session of the National Assembly shall be held on the 21st day after the general elections. After the general elections 2013, sessions of the National Assembly and the four Provincial Assemblies were held within the period prescribed in the 18th Amendment that is a positive sign. Under Article 91, sanction on becoming the prime Minister for the third term has been deleted. Mian Muhammad Nawaz Sharif was elected as the Prime Minister for the third term in 2013.
According to the amended Article 92, size of the Federal Cabinet will not be more than 11% of the total figure of the both houses of the Parliament. According to the amended Article 130, the Provincial Cabinet cannot be more than 11 percent of the total membership of the Provincial Assembly. The Chief Minister cannot appoint more than five Advisors. On March 11, 2014, data of the Federal and the four Provincial Cabinets was taken. It showed that the size of the Federal Cabinet and the four Provincial Cabinets was according to Article 92 and Article 130. Imposition of sanction on size of the Cabinet will save the money. Under the amended Article 224 (A), a new mechanism has been introduced to appoint the care-taker governments at the Federal Level and the Provincial Levels. Before the 2013 general elections, the care-taker governments at the Federal Level and the Provincial Levels were appointed according to the Constitution.

The elections for the National Assembly and all the four Provincial Assemblies were held on May 11, 2013 and the turnout was 55.02 percent. It rose with the ratio of 10 percent as compare to 2008 general elections. The major political parties in the National Assembly showed their apprehensions regarding 2013 general elections. It is an irrefutable fact that conduction of free and fair elections can strengthen democracy in Pakistan.

It is fact that only eleven meetings of the CCI were held in thirty seven years. Under the 18th Amendment, it is compulsory that meeting of the CCI be held at least once within ninety days. The strength of the CCI has not been changed under the 18th Amendment. However, role of the elected Prime Minister has been enhanced. One hundred and five agenda items have been discussed by the CCI in the last sixteen meetings held in the last five years. The provinces also have a say in the CCI. The Chairman of the CCI can call a meeting of the CCI on a request made by the provinces. The agenda for the CCI meeting can also be set by the provinces.
Under the 18th Amendment, changes have been brought in the strength of the NEC. The Provinces have an upper hand over the Federal Government. Eight out of thirteen members will belong to the provinces. Now, the provinces have a strong position in the council and role of the NEC has been increased. In policy making, the council will have to ensure regional parity and balanced development. Under the 18th Amendment, the scope of tax collection at the provincial level has been increased. The sales tax on services is the best example for it. Now, it is the responsibility of the Provinces to get advantage from this situation. Under the 18th Amendment, the Provinces have also been given an opportunity to borrow loans from abroad.

Seventeen Federal Ministries have been devolved to the Provinces. As a result of the 18th Amendment, 17 federal ministries were abolished. Consequently, nearly all direct public services are within the domain of the Provinces. The federal government has also created 8 new ministries/ divisions. After the 18th Amendment, the federal government wanted to continue with retained services and functions. It showed centralization tendency by the Federal Government.

Soon after getting independence, there was a tendency to transfer powers in favor of the Federal Government. Ayub Khan introduced BDs system (local government). The BDs played a role of a front wall to a despotic rule and the system of BDs disappeared with the fall of Ayub in 1969. Pakistan’s first democratically elected government of Bhutto did not give significance to initiate a system of representative local government. Zia-ul-Haq centralized powers at the Federal Level and decentralized powers from the provinces to the local governments in order to legitimize his despotic rule. It is a fact that democratic governments did not strengthen local governments in Pakistan. During Musharraf regime, Local Government Ordinances were designed in Islamabad and the Provincial Governments just implemented them.
The PPP ruled for five years (from 2008-2013) in the centre, Sindh and Balochistan and the PML-N in Punjab. Local government elections were not held during the aforementioned period. After the general elections 2013, the PML-N is ruling party in the centre and the most populated province Punjab and the PPP ruling party in Sindh. The PPP and PML-N made a consensus in the CoD to hold local government elections. After the general elections 2013, local government elections were held in Balochistan in 2013. Provincial Governments of KPK, Punjab and Sindh held local government elections in 2015. The political leadership must understand that representatives at the central level and the provincial level are elected to make laws. The local governments perform duties of development schemes. The elected representatives of the local government understand the local problems in a better way.

The 18th Amendment has reversed discretionary powers of the President to appoint the Chief Election Commissioner and role of the elected representatives has been recognized. The elections for the National Assembly and all the four Provincial Assemblies were held on May 11, 2013. According to the figures announced by the ECP, the turnout in the May 2013 election was 55.02 percent. It was the highest turnout since 1988. The European Union Election Observation Mission Pakistan expressed its satisfaction in the electoral process. The major political parties in the National Assembly showed their apprehensions regarding 2013 general elections. The writ petitions were filed in the election tribunals by candidates belonging to different political parties. There were many criticisms launched on elections by various political parties. The PILDAT also gave its recommendations to the ECP to conduct election in future in a more transparent way.

After passage of the 18th Amendment, different issues emerged. Under the 18th Amendment, the provinces have access to the foreign loans. The Executive Committee of
ECNEC has not been able to frame necessary laws in this concern yet. Some other unsettled issues are: EOBI; PTDC and Port Authorities; ETPB; WWF; allocation of hunting areas to Foreign Ministry; federal employees’ resettlement; Aerial Survey; PASSCO; Pakistan Sports Board; National College of Arts; Aiwan-i-Iqbal and Pakistan Baitul Mal.

The subjects of the deleted CLL were transferred to the provinces. Entry number 38 of the former CLL dealt only with Curriculum, syllabus, planning, policy, centres of excellence and standards of education. However, some functions related to the higher education have been retained at the federal level. The CCI made certain decisions: the HEC has been permitted to work independently till 2014-15; the federal government and the provincial governments will devise educational plans in collaboration with the Inter-Provincial Coordination Committee and the CCI; changes will be brought in the HEC Ordinance. The CCI can play very effective role in resolving issues related to HEC. It seems that financing of the HEC will be transferred to the provinces.

Article 172 (3) permits the oil and gas producing provinces to have fifty percent ownership and management control on oil, gas and mineral resources in their respective areas. The Federal Ministry of Petroleum and Natural Resources and the provinces interpret the aforesaid article in their own ways. In 2013, the exploration of oil and gas in 50 blocks was allotted to national and international oil exploration companies in different provinces. Due to lack of consensus between the Federal Ministry of Petroleum and Natural Resources and the respective provinces, the companies could not start their work. A consensus on the said issue can bring fruitful results.

The decisions on the subjects that fall under FLL-II, must be taken at the forum of CCI. It would be unconstitutional if the Federal Government takes decisions unilaterally.
on the aforementioned subjects by ignoring the provinces. It can also produce negative results. On 19th December 2016, Prime Minister Sharif took a decision to transfer the administrative control of the five key regulatory authorities to the relative ministries. Under the 18th Amendment, all regulatory authorities established under a Federal Law, have been put under FLL-II (entry no. 6). The Lahore High Court suspended the notification of the Federal Government. The Prime Minister should have sought approval from the CCI before issuing the notification. The Federal Government should avoid making such decisions in future.

Pakistan is a federal state and it has to remain as such because Pakistani society is heterogeneous. Therefore the need of the hour is that supremacy of Constitution of Pakistan (1973) should be established. Every institution should remain within its sphere by adhering to the constitution. Similarly Federal Government and Provincial Governments should perform their duties according to the constitution.

- One hundred and two Articles of the 1973 constitution were reviewed under the 18th Amendment and political leadership showed extensive consensus.
- The 18th Amendment ensured parliamentary democracy, provincial autonomy, enhanced role of the elected representatives and strengthened democracy especially by revision of Article 6 and Article 58. The reversal of the discretionary powers of the President at the Federal level and the Governor at the Provincial level is a positive step.
- Role of the opposition has been recognized in appointment of the Chief Election Commissioner, Judges of the Superior Courts and formation of the interim-government at the Federal level and at the Provincial level, which is good for the
conduct of fair and free electoral process and also to address the blame game by different political parties.

- Role of the Provinces in decision-making at the Federal Level has been increased, which was the demand of especially the small provinces.
- The 18th Amendment has not been implemented in letter and spirit yet because it faced number of hurdles in implementation process including bureaucratic inertia.
- A tendency of centralization of powers has also been observed at the Federal Level and at the Provincial Level.

**Recommendations**

- Seventeen Federal Ministries were devolved to the Provinces under the 18th Amendment. Consequently, nearly all direct public services are within the domain of the Provinces. The Federal Government also created 8 new ministries/divisions. The Federal Government should abolish the newly created ministries/divisions.
- Under the 18th Amendment, changes have been brought in the strength of the NEC and the provinces have an upper hand over the Federal Government. The Federal Government should ensure regional parity and balanced development.
- After passage of the 18th Amendment, the provinces have access to the foreign loans. The Executive Committee of ECNEC has not been able to frame necessary laws in this concern yet. The said committee should frame necessary laws as soon as possible.
- Some unsettled issues such as EOBI; PTDC and Port Authorities; ETPB; WWF; allocation of hunting areas to Foreign Ministry; federal employees’ resettlement;
Aerial Survey; PASSCO; Pakistan Sports Board; National College of Arts; Aiwan-i-Iqbal and Pakistan Baitul Mal should be resolved on priority basis.

- The CCI should play effective role in resolving issues related to the HEC.
- The Federal Ministry of Petroleum and Natural Resources and the provinces interpret Article 172 (3) in their own ways. The exploration of oil and gas is effected due to lack of consensus between the Federal Ministry of Petroleum and Natural Resources and the respective provinces. A resolution of the aforementioned issue should be made which can produce fruitful results.
- The Federal Government should not take decisions unilaterally by ignoring the provinces on the subjects that fall under FLL-II and the decisions of the said subjects must be taken at the forum of CCI.
- The Federal Government took an unconstitutional decision to transfer the administrative control of the five key regulatory authorities to the relative ministries and the notification was suspended by the Lahore High Court. The said government should not repeat the same practice in future.
- The Provinces should strengthen local governments and hold elections of the local governments on regular basis.
Endnotes

1. The Connecticut Compromise is also known as the Great Compromise of 1887. It was an agreement between big and small states during the Constitutional Convention of 1887. Initially, there were a lot of differences among the states on the question of representation. At last a consensus was made.

2. A series of domestic policies which were implemented in the United States from 1933 to 1936, and some that came later. They included both laws passed by American Congress and presidential executive orders during the first term of Franklin Roosevelt (1933-1937). The policies were reaction of the Great Depression. The main focus was on Recovery, Reform and Relief. (Recovery of the economy to the normal levels, Reform of the financial system to prevent depression again and Relief for the poor and unemployed) These are also named as 3Rs.

3. The Governor General had the powers to declare emergency, to get control of the provinces and to issue instructions to provincial governors to take direct control of the province on his behalf. The amendments made in the interim constitution further increased powers of the Governor General to impose emergency. According to the 1935 Act Governor General could declare emergency because of war or internal disturbance. *The Government of India Act 1935*, Section 102.

4. Actually it was section 93 of Government India Act 1935. The section 92-A of the interim constitution was new shape of the 1935 Act which was abolished through Independence Act 1947.

5. PRODA, designed by first Prime Minister Liaquat Ali Khan empowered the Governor General to ban for public office for a maximum time of ten years,
members of central or provincial assemblies, ministers and parliamentary secretaries due to official misconduct and corruption.

6. “(1) There shall be federal government with parliamentary characteristic. There shall be direct election at the federal level and at the provincial level on the basis of adult franchise. The distribution of seats in the central legislature shall be based on population. (2) The federal government shall be responsible for foreign affairs and defence only. (3) There shall be two separate currencies. (4) The federating units shall devise financial policy. (5) There shall be separate accounts of the federating units to maintain the foreign exchange. (6) For the purpose of national security, the federating units shall have power to keep a militia or a para-military force.” See Shafique Ali Khan, Pakistan: Federation or Confederation, (Karachi: Industrial Printing Press, 1986), 64-65.

7. “(A) Taxes on income including Corporation Tax. (B) Taxes on Sales and Purchases Export Duty on jute and cotton and Excise Duties levied by the Federal Government and such other taxes and duties as specified by the President.”

8. A question was referred to the referendum: “Whether the people of Pakistan endorse the process initiated by General Muhammad Ziaul Haq, the President of Pakistan for bringing the laws of Pakistan in conformity with the injunctions as laid down in the Holy Quran and Sunnah of the Holy Prophet (peace be upon him), and for the preservation of the ideology of Pakistan, for the continuation and consolidation of that process and for the smooth and orderly transfer of power to the elected representatives of Pakistan” Ibid., 46.

9. The political parties included in the MRD were; the PPP, National Awami Party, Tehrik-e-Istiqlal, National Democratic Party, Pakistan Muslim League, Pakistan
National Party, Quami Mahaz-i-Azadi Awami Tehrik, Mazdoor Kisan Party and Jamiatul-Ulema-i- Islam.

10. “All orders made, proceedings taken and acts done by any authority or person, which were made, taken or done, or purported to have been made, taken or done, before the commencement of the Constitution Amendment Order, 1985, in exercise of the powers derived from any law referred to in clause (1), or in execution of any orders made by any authority in the exercise or purported exercise of powers as aforesaid, shall, notwithstanding any judgment of any court, or tribunal, including the Supreme Court and a High Court, be deemed to be and always to have been validity made, taken or done and shall not be called in question in any court, including the Supreme Court and a High Court, or any ground whatsoever.” (Abbas, *Poleaxe or Politics of the 8th Amendment*, 74).

11. The IJI was established in 1988. The political parties included in the IJI were; Jamiat- i-Islami, MarkaziJamiat-e-Ahel-e-Hadith (Lakhvi Group), Hizbullah Jihad, Jamiat-e- Mashaikh, JamiatUlema-e- (one group), Nizam-e- Mustafa group and Pakistan Muslim League, Azad Group and National People’s Party. The Pakistan Muslim League was the dominant party. The First Ten General Elections of Pakistan: A Story of Pakistan Transition from Democracy Above Rule of Law to Democracy under Rule of Law (1970-2013), *PILDAT 2013*, 20.

12. He said, “I myself have struggled against this irritant and I intend that it should go as early as possible because its removal is in the best national interest and the democracy also. I shall not become part of any conspiracy in the future.”

(Abbas, *Poleaxe or Politics of the 8th Amendment*, 98).

13. “…other members shall be the Prime Minister, the Chairman of the Senate, the Speaker of the National Assembly, the Leader of the Opposition in the National
Assembly, the Chief Ministers of the Provinces, the Chairman Joint Chiefs of Staff Committee, and the Chiefs of Staff of the Pakistan Army, Pakistan Navy and Pakistan Air Force.”

14. Article 270 (AA) (1) “The Proclamation of Emergency of the fourteenth day of October, 1999, all President's Orders, Ordinances, Chief Executive's Orders, including the Provisional Constitution Order No.1 of 1999, the Oath of Office (Judges) Order, 2000 (No. 1 of 2000), the Referendum Order, 2002 (Chief Executive's Order No. 12 of 2002) and all other laws made between the twelfth day of October, one thousand nine hundred and ninety-nine and the date on which this Article comes into force, are hereby affirmed, adopted and declared notwithstanding any judgment of any court, to have been validly made by competent authority and notwithstanding anything contained in the constitution shall not be called in question in any court on any ground whatsoever.”

15. The other members included; Haji Khuda Bux Rajar Member National Assembly (MNA), Syed Naveed Qamar (MNA), Farooq Sattar (MNA), Aftab Ahmad Khan Sherpao (MNA), Afrasaiab Khattak (Senator), Abdul Malik (Senator) Waseem Sajjad (Senator) and Rahmatullah Kakar (Senator). (Senator Ishaq Dar resigned. Aftab Ahmad Khan Sherpao became member after death of Abdul Razzaq A. Thaim (Senator). Report of the Implementation Commission, 3-4.


27. The members who represented the Government in the committee were Ghullam Ahmed Bilour, Farroq Naek, Khursheed Shah and Chaudhry Shujaat Hussain. The members from the Opposition were Khwaja Saad Rafique, Parvez Rasheed, Sardar Yaqoob and Sardar Mehtab Abbasi. Ghulan Ahmed Bilour was elected as the chairman of the parliamentary committee. The Prime Minister nominated two names as the caretaker Prime Minister, Justice (Retd.) Mir Hazar Khan Khoso and

28. He said that, “the rights of provinces had been usurped after the 18th Amendment. The ruling party senator questioned as to what was the need for the new ministries. He said that if there was an objection to the devolution of ministries, why did the cabinet approve it in the first place? He opined that some political personalities did not want the implementation of the 18th Amendment. Rabbani said that the standing committees, headed by Syed Khurshid Shah and Maula Bakhsh Chandio, had laid the foundation for rollback of the 18th Amendment.” Rabbani Terms New Ministries Illegal, *The News*, August 7, 2012.

29. “Notwithstanding omission of the Concurrent Legislative List by the Constitution (18th Amendment) Act, 2010, all laws with respect to any of the matters enumerated in the said list (including ordinances, orders, rules, byelaws, regulations and notifications and other legal instruments having the force of law) in force in Pakistan or any part thereof, or having extra-territorial operation, immediately before the commencement of the Constitution (Eighteenth Amendment) Act, 2010, shall continue to remain in force until altered, repealed or amended by the competent authority.” Article 270 (AA). Source: (Basit, 2013, p. 219-222).

30. “If one or more Provincial Assemblies pass resolutions to the effect that the Majlis-e-Shoora (Parliament) may by law regulate any matter not enumerated in the Federal Legislative List in the Fourth Schedule, it shall be lawful for Parliament) to pass an act for regulating that matter accordingly, but any act so passed may, as respects any province to which it applies, be amended or repealed
by Act of the Assembly of that Province.” (Constitution of the 1973, Article 144 (1).


The NWFP Local Government Ordinance, 1979.


32. (1) “Rebuilding national morale and confidence. (2) Strengthening the federation while removing inter-provincial disharmony. (3) Restoring and reviving investor confidence. (4) Ensuring law and order and dispensing speedy justice. (5) Depoliticizing political institutions. (6) Delegating power to the grassroots. (7) Ensuring speedy and across the board accountability.”

33. “Agriculture, including agriculture extension; land improvement, including land reforms, land consolidation and land conservation; minor irrigation, water management and watershed development; animal husbandry, dairy and poultry; fisheries; social forestry and farm forestry; minor forest produce; small scale industries, including food processing industries; khadi, village and cottage industries; rural housing; drinking water; fuel and fodder; roads, culverts, bridges, ferries, waterways and other ways of communication; rural electrification, including distribution of electricity; non-conventional energy sources; poverty alleviation programme; education, including primary and
secondary schools; technical training and vocational education; adult and non-formal education; libraries, cultural activities; markets and fairs; health and sanitation, including hospitals, primary health centres and dispensaries; family welfare; women and child development; social welfare, including welfare of handicapped and mentally retarded; welfare of the weaker sections, and in particular, of Scheduled Casts and Scheduled Tribes; public distribution system and maintenance of community assets.”

*The Constitution of India, Eleventh Schedule, Article 243 (G).*

34. Ministry of Panchayati Raj.


35. Through the PESA Act, an extension has been made in Part IX of the Constitution to the areas listed under the Fifth Schedule. The Ministry of through Panchayati Raj supervises the implementation of the PESA Act by nine States namely; Andhra Pradesh, Chattisgarh, Gujarat, Maharashtra, Jaharkhand, Himachal Pradesh, Madhya Pradesh, Orrisa and Rajasthan (These States have areas listed in the Fifth Schedule). According to the PESA Act, the Panchayat at the higher level is prohibited to take authority and functions of any lower Panchayat.


National party won 7 general seats in the Balochistan Provincial Assembly.

FLL Part I No. 16 “Federal agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies”. No. 17 “Education as respects Pakistani students in foreign countries and foreign students in Pakistan.” FLL Part II No. 12 “Standards in institutions for higher education and research, scientific and technical institutions”.

Item No. (26) “Welfare of labor; conditions of labor, provident funds; employer's liability and workmen's compensation, health insurance including invalidity pensions, old age pensions”. Item No. (31) “Unemployment insurance”.

Article 38 (C) States, “Provide for all persons employed in the service of Pakistan or otherwise, social security by compulsory social insurance or other means”.

Item No. 26 of the deleted CLL addressed labour matters, “Welfare of labor; conditions of labor, provident funds; employer's liability and workmen's compensation, health insurance including invalidity pensions, old age pensions”.

en.pdf&ei=f0ucUdORE4zFPbjgJAM&usg=AFQjCNGB9DybCbHDkZ2V1odpMGelTEty2A&sig2=o0g2bgm2jHsLic0VeEwpMA&bvm=bv.46751780,d.ZWU
Reference List

Secondary Sources

Books


Rizvi, Hasan Askari. (2013). The First Ten General Elections of Pakistan: A Story of Pakistan Transition from Democracy Above Rule of Law to Democracy under Rule of


Interviews

Research Journals


**Primary Sources**

Legal Framework Order.