

## History of Constitutional Amendments to 1973 Constitution

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In 2023, Pakistan is marking 50 years of the 1973 Constitution that has experienced many mutilations at the hands of both civil and military rulers. Having remained in abeyance a couple of times the Constitution has survived all the vagaries in the past half-century.

Here we discuss some of the Amendments that have had an impact on the Constitutional and judicial history of Pakistan. It is interesting to note that the first seven amendments that **Prime Minister Z A Bhutto** introduced from 1974 to 1977 paved the way for further mutilations of the constitutions in the years to come. Just to cite one example, the ban on the **National Awami Party (NAP)** in 1975 the **Bhutto government** had planned much earlier by introducing certain Constitutional amendments to pave the way for the dissolution of NAP. The First and the Second Amendments to the 1973 Constitution came about in 1974.

The **First Amendment** recognized **Bangladesh**, and the **Second** declared the Ahmadiyya community as non-Muslims. By amending Article 1 of the Constitution in April 1974, the parliament of Pakistan deleted any mention of the erstwhile eastern wing of the country-East Pakistan. February 1975 was an eventful month; the National Assembly passed a bill for terrorism trials by special courts. The situation became clear on February 8 when senior PPP leader Hayat Mohammad Khan Sherpao—who was also a former governor of the NWFP (now KP) lost his life in an attack in Peshawar and within a week the government banned NAP and declared it as an illegal party.

The Bhutto government introduced the **Third Amendment** to the Constitution curtailing the right of the detainees and extending the powers of the detaining authorities. The new chief justice of the Supreme Court of Pakistan was Justice Yaqoob Ali who took his oath of office on 1 Nov 1975, and the same month the **Fourth Amendment** to the Constitution curtailed the jurisdiction of courts. This amendment also limited the writ jurisdiction of the High Courts under Article 199 in cases of preventive detentions. Now the courts could not grant bail to a person or prohibit such detention.

### **5th and 6th Amendments to the Constitution of Pakistan-Overview and Context**

#### **5th Amendment (1976)**

In September 1976, the Bhutto government passed the Fifth Constitutional Amendment widening the scope of restrictions on courts. The period of separation of the judiciary from the executive increased from three to five years. The maximum tenure of the chief justices of the Supreme Court and high courts also became fixed as five and four years respectively. Now high courts could not issue any order subject to articles 175 (2) and 199 of the constitution. The government could transfer the judges of the high courts without their consent to another high court, and that too without giving any reason.

#### **Key Features:**

##### **1. Judicial Tenure Changes:**

- Reduced the tenure of the Chief Justices of the Supreme Court and High Courts from five years to four years, allowing the government more control over judicial appointments and retirements.
- Empowered the executive to transfer high court judges between provinces.

##### **2. Scope of Jurisdiction of Courts Limited:**

The amendment restricted the judiciary's power to hear cases against preventive detention and martial law actions.

### 3. **Impact on High Courts:**

Restricted the powers of High Courts to grant writs and interfered with the courts' role in providing relief under fundamental rights.

#### **Background and Motivation:**

Zulfikar Ali Bhutto's government sought to reduce the influence of the judiciary, which was seen as a potential challenge to executive authority. It was motivated by Bhutto's mistrust of the judiciary, especially in light of his experience with political instability and judicial decisions in Pakistan's early years (such as the doctrine of necessity). The government wanted to strengthen control over judicial appointments and limit the courts from interfering in politically sensitive matters.

#### **6th Amendment (1976)**

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#### **Key Features:**

##### 1. **Judges' Tenure Protection:**

Protected the tenure of judges already serving as Chief Justices of the Supreme Court and High Courts, ensuring they would serve their full four-year terms even if the retirement age was changed during their tenure.

##### 2. **Retirement Age:**

Specified that no Chief Justice shall be forced to retire unless he has served his full term, despite general laws on retirement age.

#### **Background and Motivation:**

The **6th Amendment** was aimed at **safeguarding judicial appointments made by Bhutto's government**. It ensured that any reforms to retirement ages or tenure would not displace the judges already installed in positions of power. It was **intended to consolidate political control over the judiciary** and protect Bhutto's allies in the judiciary, ensuring that they would not be removed prematurely by any subsequent legal changes.

Both the **5th and 6th Amendments** reflect the political climate under **Zulfikar Ali Bhutto**, who was trying to **limit the power of the judiciary** while ensuring that judicial appointees loyal to his government remained protected. These amendments reflect the tension between the **executive and the judiciary**, a recurring theme in Pakistan's constitutional history. They also set the stage for subsequent judicial activism, as the courts later pushed back against similar attempts to curtail their independence in later regimes.

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The **Bhutto government** introduced its penultimate amendment in Dec 1976: the **Sixth Amendment** during the last session before the general elections. The main content of the amendment was about extension in the tenure of chief justices of the Supreme Court and High Courts beyond the retirement age of 65 and 62 respectively. This amendment specifically gave a chance to Chief Justice Yaqoob Ali to continue after his superannuation in mid-1977, as he had not completed his term in office for five years. Now through the sixth amendment, chief justices of the Supreme Court and high court could complete five and four years of tenure even if they got past the superannuation age of 65 and 62 respectively.

**Z A Bhutto** introduced the **Seventh Amendment** in May 1977. It had a provision for a referendum because Bhutto did not want any re-election after the opposition rejected the results of the March 1977 general elections. He wanted to hold a referendum so that people could once again demonstrate confidence in him. He could neither hold a referendum nor re-election as the army chief General Zia toppled him in a bloodless coup on July 5, 1977 and suspended the Constitution. In March 1985, General Zia issued a Presidential Order (PO 14 of 1985) as the Revival of the Constitution Order (RCO 1985) with which he made a large number of amendments to the Constitution.

This would later provide the backbone of the **Eight Constitutional Amendment**. The dictator appointed **M K Junejo** as the prime minister of Pakistan who received a vote of confidence in the last week of March 1985. **Gen Zia** reportedly threatened that if the bill were not to go through, he would consider the possibility of dissolving the National Assembly and send everything packing once again. The MNAs did not want to face that eventuality at the hand of the general. By October, the Eight Amendment was ready for approval in the Constitution which incorporated it in November 1985.

**The Ninth Amendment** Bill got stuck with a Select Committee of the National Assembly and it could not progress to change the Constitution. The National Assembly passed the **10th Constitutional Amendment** in March 1987 to reduce the duration of the interval between sessions of the National Assembly and the Senate from 160 days to 130 days. In the third year of his premiership, **M K Junejo** became increasingly assertive, much to the chagrin of **General Zia** who dismissed him in May 1988. Three months later Gen Zia died in a plane crash in August 1988.

By the end of 1988, **Benazir Bhutto** aged 35 had become the youngest prime minister in the country's history and the first leader in the Muslim world. The opposition members in the Senate of Pakistan presented the **11th Constitutional Amendment** in 1989 to restore the seats of women in the National Assembly to 20. The PPP government should have approved of it but perhaps it did not want the opposition to get the credit so Prime Minister Benazir Bhutto gave an assurance that the PPP government would introduce the same bill on its own.

The first **Nawaz Sharif government** introduced the **12th Constitutional Amendment** in July 1991 to establish Speedy Courts for the trial of dreadful offences for three years. The Amendment also raised the salaries of the judges of the Supreme Court and High Courts. In April 1997, the **second Nawaz Sharif government** moved and passed in minutes the **13th Constitutional Amendment** by relaxing the usual rules to pass such amendments. This amendment undid the powers of the president including 58-2 (b) but there were no changes related to the religious contents of the Eighth Amendment.

It is wrong to assume that the **13th Amendment** actually removed the Eighth Amendment, it simply reduced the power of the president of Pakistan and transferred them to the prime minister. It stripped the president of Pakistan of his power to dissolve the National Assembly and call for new elections or to dismiss the prime minister. Just three months after the 13th amendment, in July 1997 the **second Nawaz-Sharif government** introduced the **14th Amendment** which subjected members of parliament to fairly strict party discipline by giving party leaders the unlimited authority to dismiss legislators who failed to vote per the direction of the party head. In 1998, the **Nawaz Sharif government** introduced the **15th Amendment bill** to the Constitution of Pakistan which got through the National Assembly in August but when it moved to the Senate it could not get approval before the coup of General Musharraf. The proposed 15th amendment included the addition of a new Article 2B in the Constitution and an amendment to Article 239. It sought to impose Sharia Law as the supreme law in Pakistan in accordance with the Objectives Resolution of Pakistan that Gen Zia had incorporated into the main constitution. The **16th Amendment** passed in August 1999, increased the validity of the quota system from 20 to 40 years. Ultimately, the **13th and the 14th Amendments** could not save the prime minister when he tried to remove Army Chief **General Pervez Musharraf** in Oct 1999. To summarize, during the first 26 years of the Constitution of Pakistan there were all 13 approved amendments; and three proposed amendments that could not pass through both houses. **Of the 13 amendments passed, seven were in the first five years under the Z A Bhutto government from 1972 to 1977.**

The **Eighth Amendment** that **Gen Zia** introduced and imposed, was the most devastating that severely hampered the progress of democracy in the country and devoured four elected national assemblies. Benazir Bhutto during her two governments-which lasted for less than five years combined-did not pass any amendment. Whereas Nawaz Sharif managed to pass the 12th Amendment during his first government and the 13th, 14th, and 16th amendments during his second government from 1997 to 1999.

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