



RESEARCH PAPER

A Critical Analysis of Salient Amendments in the Constitution of Islamic Republic of Pakistan. 1973

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ABSTRACT

With reference to the 19th amendment to the Constitution, the document sought to emphasize judicial independence. The objective of the research is to create awareness and high light the importance of 19th amendment and this study will also examine judicial system of 18th and 19th amendment in this descriptive research along with its impact on judicial independence. In state where democracy is guaranteed, the legislative, executive, and judicial branches of government to carry out their constitutional duties. All individuals have direct access to these vital establishments, particularly the legal system. In the case of a duty or citizen's right being violated, the parties register their concerns with the state's administrative authority. The protection of the rights of the state's residents depends on judicial independence. The government implemented revolutionary changes through the 19th Amendment to the Constitution. The focus of study was descriptive and qualitative. At the end, it has been concluded. It will be helpful for students, teachers and legal fraternity for reference.

KEYWORDS Amendments, Appointments, Commission, Committee, Judicial Independence

Introduction:

This is a well-researched issue that has been the subject of extensive discussion among academics. Their results are crucial to be discussed here to assist in identifying the problems that have not received enough attention and that require attention in order to be addressed. In his 2012 paper "Judging Judiciary in Pakistan," Mr. Muhammad Waseem said that the nomination of judges is the most important issue pertaining to the independence of courts. In this instance, the political influence environment has had a major impact on the judiciary's institutional autonomy. The Al-Jihad trust case of 1996 represented a significant turning point in the history of judicial independence because it specifically dealt with the appointment of judges. The Chief Justice will be appointed by the President, in accordance with the Interim Constitution of 1972, and the President will appoint other judges only after consulting the Chief Justice. Additionally, it is said that the appointment process ought to be open and transparent so that the public could trust it to uphold justice and protect their rights. The Supreme Court interpreted several articles of the Constitution and attempted to clarify the process and requirements for appointments to the Superior Courts in the cases of AlJihad Trust vs Federation of Pakistan and Asad Ali v. Federation, but the matter was not resolved.

Literature Review

On December 21, 2010, the chairman of the constitutional reforms committee introduced the 19th amendment to the parliament. The bill received assent from the national assembly on the 22nd and the Senate on the 30th of the same month. January 1, 2011, was the day the president acceded to the constitution. The following articles were modified by this amendment: 81, 175A, 182, 213 and 246. Many of the amendments address judge

appointments and Pakistan's legal system. Senator Raza Rabbani was the head of the Parliamentary Committee for Constitutional Reforms. The 19th Amendment's final draft was approved on Sunday by the Parliamentary Committee for Constitutional Reforms. The amendment was also suggested for approval by all 24 committee members. The committee, led by Senator Raza Rabbani, was tasked by the Supreme Court with fixing certain issues with the 18th Amendment, which prompted the creation of the 19th Amendment draft. The 19th Amendment also outlines the procedure for appointing judges to lower courts (Constitution of Pakistan 1973).

The 19th Amendment Bill also suggested amending Article 175-A, which requires the legislative committee to provide justification for any decision it makes if it rejects a Judicial Commission nomination for judicial appointment. The Prime Minister was involved in the judicial appointment process. The prime minister will receive the name of the nominee validated by the parliamentary committee and convey it to the president. This Amendment's discussion of judicial appointments, their process, and Pakistan's legal system was one of its key components. By expanding its involvement and authority in the judge nomination process, it helped to rebuild the judiciary's trust (Kanwal, 2017).

A record of committee meetings' proceedings is to be kept, and committee meetings are to be held in camera, according to the 19th Amendment law. The Parliament will not have the authority to discuss or decide on judicial behavior; only a parliamentary committee may do so. The constitutional reforms committee has also suggested changes to the judicial commission's membership for the nomination of high court justices in the 19th Amendment draft. To make the judge-selection process feasible and consistent with the idea of judicial independence, the Court has offered a few recommendations (Federation of Pakistan vs Munir Hussain Bhatti, 2011).

The new law increases the number of parliamentary committee members for the nomination of the chief election commissioner to twelve and increases the number of senior judges serving as members of the judicial commission to four. After consulting with the judicial committee, the chief justice of the Supreme Court will suggest names for ad hoc judges in the lower courts. Only senators will be included in the parliamentary committee if the National Assembly is dissolved. The modification also allows the Islamabad High Court's financial and administrative costs to be approved. Moreover, it mandates that bar council members possess a minimum of 15 years of experience to be appointed to the judicial commission.

Material and Methods

The information we address in this paper is derived from reading a variety of articles about the 19th Amendment, including ones about Pakistan's judicial supremacy. Students were given a variety of constitutional study topics to research and write articles about. Individual assignments must be at least 2000 words long, and group assignments must be 5000 words long, with full citations to all published articles and journals.

Purpose of Amendments

With the addition of two additional senior judges, the judicial commission's strength was expanded from seven to nine members by this change. In the event that the current chief justice of the high court is unavailable for whatever reason, the chief justice will have the authority to choose a former judge or chief justice of the high court to be a member of the judiciary. The capacities of technology and other relevant issues were obviously outside the purview of the Parliamentary Committee. A Judicial Commission appointment that has been approved by the Parliamentary Committee needs to be signed by the President. The President's and Parliamentary Committee's roles have been drastically trimmed considering these decisions. Following the passage of the 19th Amendment, the JCP (Judicial

Commission of Pakistan) gained influence over the nomination process (Khan, 2019). The person chosen from the Supreme Court bar council ought to have fifteen years of professional advocacy experience. This change ensured that the judicial commission consists solely of devoted and seasoned experts.

Eight members of a parliamentary committee were appointed. The nomination of judges suggested by the Supreme Judicial Council will eventually be approved by this committee. The list of proposed judges will be given to the Prime Minister's residence following this committee's approval, and the president will then ratify the names. If the parliamentary committee rejects the names, they will be required to provide the rationale and supporting documentation (*Munir Hussain Bhatti v. Federation of Pakistan*, 2011). The prime minister was granted a role in the nomination of judges, despite never having had one before. The prime minister has the option to reject the committee's list of nominees, in which case further names would be taken into consideration.

The legislative committee will have eight members, all of whom will come from the Senate if the assembly is dissolved. Members will be able to examine judges' conduct during in-camera sessions, but they will not be permitted to discuss issues pertaining to judges' conduct in the parliament building or in public. The Parliamentary Committee does not exclude the possibility of choosing the Judicial Commission only based on morals, financial honesty, and character. The selection and assessment of competence are solely within the purview of the judicial panel (*Sind High Bar Association v. Federation of Pakistan*, 2012).

Appointment of Judges

To the current six articles of the constitution, 26 amendments were suggested. The Chief Justice of Pakistan lost authority over ad hoc judge appointments with the 19th Amendment, and the Judicial Commission of Pakistan (JCP) now holds that authority. The JCP will now suggest appointments to the President; under the new law, four judges, as opposed to two, will be selected by the JCP. This method gave the Joint Parliamentary Committee and the Prime Minister a great deal of discretionary power. The Pakistan Bar Council advocated the creation of a Judicial Commission composed of people, members of the bar, and members of the judiciary (*Charter of Democracy*, 2006). As to the ruling in *Al-Jehad Trust v. Federation of Pakistan* (PLD 1996 Supreme Court 324), the selection process has a direct bearing on the judiciary's independence, to which no isolation is possible.

Results of Amendments:

The committee included the prime minister in the process of appointing judges by amending clause 13 of Article 175-A. The draft bill for the 19th amendment states that the parliamentary committee will forward the name of the nominee to the president once it has confirmed it or is deemed to have confirmed it. In the 18th Amendment, the prime minister was not involved in the process and the parliamentary committee was responsible for forwarding the nominees to the president.

A record of committee meetings' proceedings is to be kept, and committee meetings are to be held in camera, according to the 19th Amendment Bill. Parliament will not be permitted to debate judge behavior; but parliamentary committees will be permitted to examine and analyze judge conduct. It has also been highlighted how the provincial bar councils must be represented on the Judicial Commission for high court chief justices to be chosen. Included in the JC will be the senior advocate with fifteen years of experience from the provincial bar council.

Pakistan's Committee System appears to be stronger and more effective than it has ever been, particularly after the National Assembly implemented the Rules of Procedure and

Conduct of Business in 1992 and enhanced and revised them again in 2007 (Tasleem & Zaidi, 2013).

The constitutional reforms committee has also suggested changes to the judicial commission's membership for the nomination of high court justices in the 19th Amendment Bill, "A judge who is running for chief justice will not sit with the chief justice of the high court and the two most senior justices in the JCP. The amendment states that the top justice of Pakistan, in the absence of a province chief justice, shall appoint a previous chief justice or a judge in the Judicial Commission of Pakistan after consulting with the four senior-most justices.

Petitions by Bar Councils

Adopting a resolution at the Pakistan Lawyers' Convention, the Supreme Court Bar Association, Pakistan Bar Council, Sindh High Court Bar Association, and other bar representatives from the provincial bars demanded that the Judicial Commission, in collaboration with the Bar and parliamentary committee, establish transparent and objective standards and guidelines for the appointment of judges at all levels and make the necessary changes to the Judicial Commission's regulations.

The Judicial Commission firmly adheres to the seniority standards in the appointments to the highest court and from the district judiciary to high courts until a permanent body representing the views of the Bars is established, as desired by the Bar councils and associations. The Bar representatives also decided to challenge appointments made against seniority standards in a petition to the Supreme Court.

The attorneys' convention was against Ahmed Ali M. Sheikh, the Chief Justice of the Sindh High Court, being appointed as an ad hoc judge in the Supreme Court without his agreement. As the senior most CJ, it suggested that Justice Sheikh be nominated as a permanent judge of the supreme court.

To foster trust in the institution, the convention questioned the Chief Justices of superior courts' authority to fix cases and schedule roster sittings. It also demanded that roster sittings be regulated and controlled, and that the relevant rules be changed to guarantee that this authority is transferred to a larger committee and adheres to certain predetermined guidelines.

The Lawyers' Convention demanded that rules be framed to govern suo motu cases that ensure that the bench that takes suo motu notice was not permitted to hear it and/or confer a right of appeal to larger benches. The convention held the opinion that the unchecked power of the suo motu has replaced the objectivity of the judicial process with personal agendas and desires.

The leadership of the bar believed that it is the Chief Justice of Pakistan's responsibility to unite the judiciary and encourage goodwill and comradery among judges. When the Pakistani judiciary commission meets on September 9 to discuss Justice Ayesha Malik's elevation from the Lahore High Court to the Supreme Court and to convene a lawyers' convention in Islamabad, the leaders of the bar have declared that they would observe a total strike.

According to PBC Khushdil Khan, vice chairman, bar associations have chosen to petition the Supreme Court on the standards for judge elevation at lower courts. President of the Supreme Court Bar Association Abdul Lateef Afridi urged that seniority of judges be respected while promoting female justices to higher positions on the court.

Hamid Khan, the former president of the SCBA, asked that the Supreme Court have a comparable number of justices from each province. He took issue with the Pakistani Judicial Commission's notice of SHC Chief Justice Sheikh's appointment as an ad hoc judge, saying that one commission member's conditional vote overrode the panel's lack of a majority vote.

JCP member Akhtar Hussain stated that seniority must be followed while formulating criteria and rules for the recruitment and advancement of judges in the higher courts. Salahuddin Ahmed, President of the SHCBA, stated that the court must restrict its discretion and use restraint while exercising its discretionary powers. On this day, speakers from high court bar organizations and all provincial bar councils gave speeches as well.

Conclusion

Hamid Khan, the former president of the SCBA, asked that the Supreme Court have a comparable number of justices from each province. He took issue with the Pakistani Judicial Commission's notice of SHC Chief Justice Sheikh's appointment as an ad hoc judge, saying that one commission member's conditional vote overrode the panel's lack of a majority vote.

Based on the debate above, we may draw the following conclusions: (1) this amendment makes the process more equitable by prohibiting biased appointments to higher courts; (2) it also gives the prime minister and JCP a significant role in the selection of higher justice. Most of the changes in this have to do with Pakistan's judicial system and judge appointments. The parliamentary committees have a crucial role in the selection of justices as well. Following this modification, the committee will be required to provide a rationale for rejecting candidates. Second, the scope and jurisdiction of the federally managed agencies expanded with the inclusion of Tank and Lakimawar in FATA. Finally, while members will be able to examine judges' conduct, they will not be permitted to debate issues pertaining to it in public or in the parliament building.

Recommendations

Effective Consultative Process

The process of consultation between the institutions must not be ceremonial but conclusive and meaningful. It has been observed by the researcher that the consultation between constitutional functionaries is not contributing to opinion and deliberation, and it has been averted as a formality. The constitution allows meaningful and effective consultation between all the organs of the state to achieve better outcomes.

Role of Parliamentary Committee

As can be seen from the rulings of the highest court, the Parliamentary committee's function is not independent in the current situation, and it is unable to oppose any incorrect suggestion. The Parliamentary Committee's autonomous role, which allows it to make independent recommendations and conclusions, must be recognized in the constitution. The supervision provided by the Legislature will grow and eventually reduce the absolute influence of a single institution by fortifying the role of the Parliamentary committee.

Role of Judicial Commission

The role of the Judicial Commission is unrestricted throughout the whole process. Compared to other organs engaged in judicial nominations, it possesses the most authority. It plays an authoritative and autocratic function in Pakistan's current system. However, this commission has the last say over the Parliamentary committee's authority. Because of this,

these two entities' powers ought to be comparable to provide an effective check and balance. The Judicial Commission was tasked with choosing and endorsing a nominee to the Parliamentary Committee for confirmation. It is sent to the President for nomination if the committee receives no objections. The establishment of the Pakistan Supreme Court results from the use of novel approaches (Chaudhry, 2010).

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