

## SOCIAL TRANSFORMATION OF PAKISTAN UNDER THE CONSTITUTION OF 1973

Sohaib Mukhtar

*The National University of Malaysia, Malaysia*  
*sohaibmukhtar@gmail.com*

### Abstract

The Objectives Resolution was passed from the Constituent Assembly of Pakistan under the leadership of the first Prime Minister of Pakistan *Liaquat* Ali Khan in 1949 which has been made the preamble of the Constitution of Pakistan 1973. The first Constitution of Pakistan was enforced in 1956 and was abrogated in 1958 and the second Constitution of Pakistan was promulgated in 1962 and abrogated in 1969. The current Constitution of Pakistan was enacted and promulgated in 1973. It has validated all actions of the ruler *Yahya* Khan and *Zulfiqar* Ali Bhutto from 21<sup>st</sup> March 1969 till the enforcement of the Constitution in 1973 and later on the actions of General Zia ul Haq and Pervez Musharaf as well. The present Pakistan belongs to different people, who are different in language and there are some cultural differences as well, but majority belongs to the religion of Islam that is why the present constitution states that the Islam is the state religion of Pakistan. Initially, the constitution worked a little well and it seemed that it is working in favour of the nation at large, but later on the ruling elite made several amendments in it for their benefits rather than making it beneficial for the people of Pakistan at large. It is the voice of the people of Pakistan that the current Constitution of Pakistan 1973 should be amended according to the will of the people of Pakistan at large and for their benefits and the fairly elected government should eradicate those later amendments which are giving benefits to the ruling elite only.

**Purpose** – This research is the social study of Pakistan under the Constitution of Pakistan 1973 to examine the current Constitution of Pakistan and analyse the current social system of Pakistan and to suggest changes in the current Constitution of Pakistan 1973 for the betterment of the social justice in Pakistan.

**Design/methodology/approach** – This study is routed in qualitative method to examine the current Constitution of Pakistan 1973 and analyse the existing social system under the current Constitution of Pakistan and to find and fix hurdles in the better social legal system under the current Constitution of Pakistan.

**Finding** – This study will help the honest political parties and competent legislators to understand the barriers in the upbringing of the people of Pakistan under the current Constitution of Pakistan and recommend useful changes in the current Constitution of Pakistan for a better social transformed society.

**Research limitations/implications** – This study is the examination of the current Constitution of Pakistan and an analysis of the social system of Pakistan under it and it will not go into the deep details of every aspect of life rather focusing on the sociology of Pakistan under the current Constitution of Pakistan, its bad effects and what changes are required in it for a better social transformed society.

**Practical implications** – This study will point out deficiencies in the current social legal system under the current Constitution of Pakistan and recommend changes in the current constitution of Pakistan to the legislature to do so for the benefits of the people of Pakistan.

**Originality/Value** – This study is the unique work on the topic and there are not many articles written on related topics and this research will be conducted keeping in mind the principles of piracy and illegal methods of doing research.

**Keywords:** The Constitution of Pakistan-1973, the Objectives Resolution, fundamental rights, the Federal and the Provincial Governments of Pakistan. The Judiciary of Pakistan.

**Research type:** This study is the general review of the sociology of Pakistan and a critical analysis of the Constitution of Islamic Republic of Pakistan 1973.

## Introduction

Islamic Republic of Pakistan took independence from the British Indian Empire on 14<sup>th</sup> August, 1947. Pakistan adopted the Indian Act of 1935 to use it as its initial temporary constitution. Later on in 1956, Pakistan managed to make its first constitution which was enforced on 23<sup>rd</sup> March, 1956 and which was abrogated by the first President of Pakistan General *Iskendar Mirza* on 7<sup>th</sup> October 1958. On 27<sup>th</sup> October, 1958 General *Ayub Khan* took charge as the second President of Pakistan and later in 1962 promulgated a new Constitution of Pakistan which went on until his resignation from the presidency and transferring power to General *Yahya Khan* in 1969. General *Yahya Khan* imposed emergency in Pakistan on 23<sup>rd</sup> November 1971 which was the last nail in the union of the East and West Pakistan and in result the East Pakistan become Bangladesh on 16<sup>th</sup> December, 1971. It is pertinent to mention here that the proclamation of emergency by *Yahya Khan* in 1971 has been validated by the Constitution of Pakistan 1973 which is a clear cut indication that there was a soft corner in the ruling elite of 1973 towards *Yahya Khan*. The executive power was shifted from *Yahya Khan* to *Zulfiqar Ali Bhutto* on 20<sup>th</sup> December, 1971. The new Constitution of Pakistan was approved by the National Assembly of Pakistan on 10<sup>th</sup> April, 1973 which was officially promulgated on 14<sup>th</sup> August, 1973. The ruling elite has been making amendments in the current Constitution of Pakistan for their own benefits rather than making it beneficial for the people of Pakistan at large. General *Zia ul Haq* abrogated the Constitution of Pakistan 1973 on 5<sup>th</sup> July, 1977 and later on stated that he has not abrogated it rather it was held in abeyance. The same thing happened again and the ruling elite further molded the Constitution of Pakistan 1973 in their favour when all actions done by the President *Zia ul Haq* validated by the Parliament in 1985. Time went on until a new military general took over the executive power and again abrogated the Constitution of 1973 on 12<sup>th</sup> October, 1999 and later on the Parliament validated his actions as well from 1999 till 2003. The three validation articles 270, 270A and 270AA are laying in the current Constitution of Pakistan 1973 and asking that whether I have been made for the people of Pakistan at large or for some people in the ruling elite only. Later in 2010, the government of Pakistan People’s Party under the leadership of Asif Ali *Zardari* initiated the 18<sup>th</sup> amendment in the Constitution of Pakistan 1973 to make it easy for the current politicians to come into the power and take all decisions in their hands while doing deals with the opposition parties.

In this study, the guaranteed fundamental rights of the Constitution of Pakistan 1973; but are not protected by the government of Pakistan in a true sense; are briefly discussed. Islamic provisions are also there in the Constitution of Pakistan 1973 but are not in effective to create a good transformed Islamic Welfare State. The current structure of the Federal Government and the Provincial Governments under the

Constitution of Pakistan 1973 are briefly discussed and then the current structure of the Judiciary of Pakistan under the current Constitution of Pakistan 1973. The study will point out the things which are benefiting the ruling elite only and will also point out those provisions which are still in the Constitution but the current government do not follow them in its true spirit and not giving benefits to the people of Pakistan at large.

### Islamic Provisions

The Constitution of Pakistan 1973 was approved by the National Assembly of Pakistan on 10<sup>th</sup> April, 1973 and was officially enforced; all over Pakistan; on 14<sup>th</sup> August, 1973. The Objectives Resolution; which was passed by the 1<sup>st</sup> Constituent Assembly of Pakistan on 12<sup>th</sup> March, 1949; has been made the preamble of the Constitution of Pakistan 1973. The preamble of the Constitution of Pakistan 1973 states that the sovereignty over the entire universe belongs to Al-Mighty Allah alone and the authority is to be exercised within limits prescribed by him by the people of Pakistan through its elected representatives and the principles of democracy, freedom, equality, tolerance and social justice shall be fully observed and the fundamental rights shall include the equality of status, the equal opportunity and the equality before law and includes the social, economic and political justice, freedom of thought, expression, belief, faith, worship and freedom of association; subject to law and public morality.

Muslims shall be enabled to order their lives in accordance with the teachings of Islam and minorities can freely profess and practice their religion and develop their culture whereas adequate provisions shall be made to safeguard the legitimate interests of minorities, backwards and depressed classes of Pakistan and units shall be autonomous within certain boundaries and limitations whereas their integrity, independence and sovereign rights on land, sea and air shall be safeguarded and the independence of judiciary shall be fully observed and Pakistan would be a democratic state based upon Islamic principles of social justice and will contribute towards international peace, progress and happiness of humanity.<sup>1</sup>

The Objectives Resolution has been made the operative part of the Constitution of Pakistan in 1985 through the addition of Article 2A in the Constitution. Islam is the state religion of Pakistan. No law can be enacted in Pakistan against the injunctions of the Holy Quran and the *Sunnah* of Prophet Muhammad ﷺ.<sup>2</sup> A Muslim is a person who believes in the oneness of Al-Mighty Allah and the prophet hood of the last prophet Muhammad ﷺ and a non-Muslim is a person who is not a Muslim and includes a Christen, Hindu, Sikh, Buddhist, *Parsi*, *Qadiani*, *Lahori*, *Ahmadi* and *Bihai*.

There is an Islamic Ideology Council in Pakistan which is consisted of a Chairman appointed by the President of Pakistan and there are other eight to twenty members of the Islamic Ideology Council of Pakistan; appointed for three years; which are well versed in Islamic Law and have knowledge of economics, politics, legal and administrative issues of Pakistan. The President or the Governor may ask the advice

<sup>1</sup> (1949). The Objectives Resolution. Islamic Republic of Pakistan.

<sup>2</sup> Lau, M. (2003). "Article 2A, the Objectives Resolution and the Islamisation of Pakistani Laws." SOAS University of London.

of the Islamic Ideology Council on any enactment of the National Assembly or a Provincial Assembly and it will reply on the advice of the President within 15 days in accordance with the injunctions of Islam. The Islamic Ideology Council shall recommend and compel; in a rightful manner; and advice the President, Governors, National and Provincial Assemblies to make Pakistani laws in accordance with the injunctions of Islam. The Islamic Ideology Council can make its rules of procedure with the approval of the President of Pakistan.<sup>1</sup> The problem with the Islamic Ideology Council is that the President of Pakistan appoints its chairman on political basis and members are also appointed on political affiliations that's why their rulings are biased due to political affiliations. The appointment in the Islamic Ideology council should have been made based upon the knowledge and competence in the area of Islamic Law and competency and knowledge in economic, political, legal and administrative matters which the State of Pakistan is facing nowadays.<sup>2</sup>

The Constitution of Pakistan requires from the state of Pakistan to ensure the elimination of all forms of exploitation and the fundamental principles shall be gradually fulfilled to each according to his work and to each as per his ability. Every citizen in Pakistan is protected by law and shall be dealt in accordance with the provisions of law and no person shall be stopped from doing a lawful thing and shall not be compelled to do an unlawful thing. No person shall be deprived of life, liberty, body, reputation or property except in accordance with law. Every citizen of Pakistan must be loyal to his country and must be obedient to the Constitution of Pakistan. Any person who violates the Constitution of Pakistan 1973 is guilty of a high treason and shall be given a capital punishment if the offence of high treason is proved against him before the court of law.<sup>3</sup>

### **The Fundamental Rights**

The guaranteed fundamental rights in the Constitution of Pakistan 1973 include the protection of life and liberty, protection against illegal detention, right of due process and fair trial, protection against slavery and forced labor, protection against retrospective punishment, protection against jeopardy and self-incrimination, protection of home against torture, freedom of movement, freedom of assembly, freedom of association, freedom of trade, business and profession, freedom of speech, right to information, freedom of religion, protection against imposed religious taxation, protection against compulsory attendance of religious institution, right to acquire property, protection of property rights, right to access public places, protection against discrimination in services and the protection of language and culture.<sup>4</sup>

Nowadays the life of a political leader in Pakistan is considered more valuable than a life of a teacher or an engineer in Pakistan because the politician is in power and teacher is not in the power. Right of education is there in the Constitution of Pakistan 1973 but Government of Pakistan do not give a proper and good education facilities to the children of Pakistan, rather than making the Government School System better for all the children of Pakistan, politicians send their children abroad

<sup>1</sup> Munir, M. and B. Ahmad (1996). Constitution of the Islamic Republic of Pakistan: Being a Commentary on the Constitution of Pakistan, 1973, PLD Publishers.

<sup>2</sup> Articles 227 to 231, (1973). The Constitution of Islamic Republic of Pakistan. Islamic Republic of Pakistan.

<sup>3</sup> Butt, M. (1973). Constitution of Pakistan, Mansoor Book House, Lahore.

<sup>4</sup> Articles 08 to 28, (1973). The Constitution of Islamic Republic of Pakistan. Islamic Republic of Pakistan.

for studying or putting them in expensive private schools, they should start sending their children in Government Schools then they will realize to build the good education system in Pakistan. Any law which is made against the fundamental rights shall be declared void by the Supreme Court of Pakistan and the given fundamental rights shall not be suspended in any case except if it is expressly provided by the Constitution of Pakistan 1973 and there are certain provisions of the Constitution of Pakistan 1973 which give the Government of Pakistan right to suspend some of the fundamental rights in emergency situations for some days.

The fundamental rights can be imposed through the court of law in Pakistan but there are certain principles which are called Principles of Policy for the government to adopt during its tenure according to the available resources and those principles are not binding upon the Federal and Provincial Governments of Pakistan and cannot be enforced through the court of law. These principles include the adoption of the Islamic way of life while declaring the knowledge of Islamic studies and the Holy Quran compulsory and the knowledge of an Arabic language shall be highly encouraged, promotion of local bodies institutions, discouragement of parochial, racial, tribal, sectarian and provincial prejudices, participation of women in all spheres of life, protection of family, marriage, women and children, promotion of social justice and elimination of social evil, promotion of social and economic wellbeing of the people, participation of people in the armed forces of Pakistan, strengthening bond with Muslim world and participation in international peace and stability.<sup>1</sup> The Constitution of Pakistan enforced on 14<sup>th</sup> August, 1973 while all previous Constitutions of Pakistan are repealed with all their amendments and presidential orders. The President of Pakistan was empowered to issue directions for the smooth implementation of the Constitution of 1973.<sup>2</sup> The same power was granted to the Parliament in 2010 for the enforcement of the 18<sup>th</sup> amendment of the Constitution of 1973.

### **The Federal Government**

The Head of the State of Pakistan is the President. He is required to be a Muslim, 45 years of age and shall be elected for five years. He shall take oath from the Chief Justice of Pakistan and shall not hold any other office of interest during his presidency and shall not be a member of national or a provincial assembly. He can resign by giving the resignation to the speaker of the National Assembly. He has been given the power to pardon, reprieve and respite, permit, suspend or commute any sentence.

As per the provisions of the Islamic Law, no person can commute the sentence ordered by the judge. There is a famous tradition of Prophet Muhammad ﷺ that at the time of Prophet Muhammad ﷺ a women called *Makhzumia* was ordered to cut off her hand. One of the companion of Prophet Muhammad ﷺ *Usama* came and asked for the cancellation of the sentence, Prophet Muhammad ﷺ said that “do not transgress in the fixed rules of Al-Mighty Allah, previous nations were doomed because when their rich people used to commit an offence, they used to forgive them and when their poor

<sup>1</sup> Pakistan and S. Mahmood (1973). Constitution of the Islamic Republic of Pakistan, 1973, Legal Research Centre.

<sup>2</sup> Khosa, A. (1988). "The Constitution of Pakistan 1973." Lahore Kausar Brothers 175.

people used to commit an offence, they used to convict them and punished them. Indeed if my daughter *Fatima (RZ)* steals, I will cut off her hand”.<sup>1</sup>

The President shall be informed by the Prime Minister on every issue, he can be impeached; by the given notice of half of the members of either of the houses to move a resolution in the Parliament. The copy of the resolution shall be served to the president within 03 days and the joint sitting will be called within 7 to 14 days and if 75 % votes come against him; on the violation of the constitution and on a gross misconduct as well as on physical or mental disorder charges; he shall be removed from presidency. The President of Pakistan shall act on the advice of the Prime Minister and the Federal Cabinet.<sup>2</sup>

The Parliament of Pakistan includes the National Assembly and the Senate. The lower house of the Parliament is the National Assembly which is consisted of 342 seats, 183 from Punjab, 75 from Sindh, 43 from Khyber PAKHTUNKHWA, 17 from Baluchistan, 12 from FATA, 2 from the Capital Territory Islamabad and 10 seats are allocated to minorities. Members of the National Assembly shall be elected for five years. A member must be a citizen, 18 years of age, not declared an unsound mind person by any competent authority and his name should be in the official voter list. Speaker and Deputy Speaker of the National Assembly shall be elected in the opening session of the Assembly and they can be removed from their places if more than 50% members pass a resolution against them. The President of Pakistan shall call the sitting of the National Assembly at any time as well as more than 25% members of the Assembly can ask the speaker to call a sitting as well. At least three sittings must be held within one year, at least one within 120 days and if less than 25% members are in a sitting, the sitting will be adjourned. The President shall address the first joint sitting of the Parliament after the general elections as well as the first sitting of each year. The Prime Minister, Federal Ministers, Ministers of State, Advisors, and the Attorney Journal shall have the right to speak in the Parliament but they will not participate in the voting process. The President may dissolve the National Assembly on the advice of the Prime Minister and if the no confidence proceedings is initiated and successfully completed against the Prime Minister of Pakistan and there is no one else to take the vote of confidence, the President shall dissolve the National Assembly. The upper house of the Parliament is the Senate which is consisted of 104 members, 23 members from each province, 08 from FATA and 04 from Islamabad. The Senate shall be in place for six years while half of the members will retire after three years. Members of the senate shall elect the chairman and the deputy chairman for three years. Members of the Parliament should be citizens of Pakistan, 35 years of age for the Senate and 25 years of age for the National Assembly, have their names in the voter list, persons of good moral character, have adequate Islamic knowledge, have not indulged in big sins, truthful and trustworthy, must not go against the ideology of Pakistan and must not work against the integrity of Pakistan as well. Members of the Parliament must not be insane, insolvent, must be sole citizens of Pakistan and do not hold dual nationality, do not hold any other office of profit in government institution or privately, do not be disqualified from the Azad Kashmir Assembly, do not work against the ideology and state of Pakistan, must not have more than two years imprisonment upon conviction in an offence except if five years have passed after the completion of his punishment and must not be dismissed from the Service of Pakistan

<sup>1</sup> Tradition 4304, Ismail, M. b. Sahi Bukhari.

<sup>2</sup> Articles 41 to 49, (1973). The Constitution of Islamic Republic of Pakistan. Islamic Republic of Pakistan.

except if upon dismissal, five years have passed and upon removal three years have passed.

This provision was added in 2010 by the Government of Pakistan People’s Party under the leadership of Asif Ali Zardari, this provision is made to give a way to convicted people to enter the parliament of Pakistan again. A new provision 63A was also added in 2010 for the benefits of the ruling elite which states that if any member of the Parliament go against the decision of his political party head and votes against him or joins another political party, his seat will be considered vacant and new elections shall be conducted on his seat. This is also very clear that this is inserted to protect the interests of the political leaders rather than protecting the rights of the people of Pakistan at large. Members of the Parliament may give his resignation to the speaker and his seat will be considered vacant if he does not participate in the proceedings of the Parliament for consecutive 40 days.<sup>1</sup>

### The Provincial Governments

There are four provinces in Pakistan namely: Punjab, Sindh, Baluchistan and Khyber *Pakhtunkhwa*. The Head of the Province is the Governor and the head of the executive is the Chief Minister. The Governor of the province shall be appointed by the President after consultation with the Prime Minister. He shall be eligible to be a member of the National Assembly. He can resign from his office to the President. Chief Justice of the concerned High Court of that province shall take oath from the newly appointed Governor of a particular province. He cannot hold another office of interest during the tenure of his office as governor. If Governor is not available, the Speaker of a Provincial Assembly or if both are not available, a person appointed by the President shall act as the governor of that province unless the prior arrives to hold office. The Governor shall act on the advice of the Chief Minister and the Provincial Cabinet of a Province. He is required to appoint a care taker cabinet if he dissolves a Provincial Assembly and announces new elections in a Province within 90 days. The Provincial Assembly of Punjab is consisted of 371 members, Sindh 168 members, Khyber *Pakhtunkhwa* 124 members and Baluchistan 65 members. A person living in the province who is a citizen of Pakistan, above 18 years of age, have a name in the voter list and of a sound mind, can vote in the elections of the Provincial Assembly. A Provincial Assembly is elected for the term of five years. Speaker and Deputy Speaker shall be elected at the first meeting of the Provincial Assembly after the general elections. The Governor can summons the meeting of the Provincial Assembly and can prorogue the meeting of the Provincial Assembly as well. He may address the meeting of the Provincial Assembly as well.

The Advocate General of the Province has a right to speak in the meeting of a Provincial Assembly but he does not have a right of vote in the meeting. The Governor may dissolve the Provincial Assembly on the advice of the Chief Minister for 48 hours and the Governor may also dissolve the Provincial Assembly if the vote of no confidence is passed against the Chief Minister and there is no other person who has taken a vote of confidence as the Chief Minister of that Province. On the advice of the Provincial Government, the Provincial Assembly shall determine duties and functions of the Provincial Institutions. All executive work in the Province shall take place with

---

<sup>1</sup> Musarrat, R., et al. (2012). "18th Amendment and its Impacts on Pakistan's Politics." *Journal of Sociological Research* 3(1): 1.

the name of the Governor. Governor shall appoint an Advocate General who shall have the qualification to become the Judge of the High Court and he will help the Provincial Government in Legal matters and he may resign from his office to the Governor. All provinces shall make Local Bodies Governments and shall transfer political, administrative and pecuniary liabilities to the Local Bodies Institutions. This is also one of the Principles of Policy as mentioned in Article 32 and again it is mentioned in Article 140A which was inserted in 2010 under the eighteenth amendment. The Provincial Governments are reluctant to give political, administrative and pecuniary powers and responsibility to the Local Bodies Institutions.

### **The Judiciary of Pakistan**

There is one Supreme Court in Pakistan, One High Court in every Province and one High Court in Islamabad. The President shall appoint the most senior judge as the Chief Justice of the Supreme Court of Pakistan.

The Supreme Court of Pakistan is consisted of the Chief Justice and certain other judges as are determined by the enactment or by the President of Pakistan. The judge of the Supreme Court of Pakistan must be a citizen of Pakistan and has been the judge of the High Court for five years or a lawyer of the High Court for fifteen years. The Chief Justice shall take oath from the President of Pakistan and other judges of the Supreme Court shall take oath from the Chief Justice of the Supreme Court of Pakistan. The age of retirement of the Supreme Court Judge is 65 years. In case if the Chief Justice of the Supreme Court is not available, the President shall appoint the acting Chief Justice among the other judges of the Supreme Court and in case if the Judge is not available the President shall appoint any retired or present Judge of the High Court to act as the Judge of the Supreme Court. An ad-hoc judge for the Supreme Court of Pakistan may be appointed for the want of quorum by the President after consultation with the Judicial Commission of Pakistan. The ad-hoc judge may be appointed if he has retired as the judge of the Superior Judiciary of Pakistan and three years has not passed after his retirement. The seat of the Supreme Court of Pakistan is at Islamabad. The original jurisdiction of the Supreme Court of Pakistan is to resolve a dispute between the Centre and the Province and give a declaratory judgment in this regard and to hear writ petitions concerning fundamental rights.<sup>1</sup>

High Courts of Pakistan shall have Chief Justices and certain other judges as are determined by the law or by the President of Pakistan. The judge of the High Court must be the citizen of Pakistan, 45 years old, either be an advocate of the High Court for ten years or at least worked as the District Judge or worked as a Civil Servant for ten years or hold a Judicial Office for 10 years. The Chief Justice of the High Court will take oath from the President of Pakistan and the other judges will take oath from the Chief Justice of the concerned High Court. The age of retirement of the High Court judge is 62 years. In the absence of the de jure Chief Justice, the President will ask one of the judges of the Supreme Court or the High Court to work as the Chief Justice.

There is one Federal *Shariat* Court in Pakistan at Islamabad consisted of eight judges including the Chief Justice of the Federal *Shariat* Court, he must be eligible to be a judge of a Supreme Court or a sitting judge of the High Court. Four judges should be eligible to be a judge of a High Court and three Islamic Jurists; who have fifteen years of experience in Islamic Law; for three years term, which can be renewed by the

<sup>1</sup> Khan, F. S. (2004). Quest for justice: Judicial system in Pakistan, Network Publications.



President of Pakistan and he will take oath from all the judges of the Federal *Shariat* Court. The Federal *Shariat* Court cannot give decisions on the matters related to the Constitution, Islamic Personal Law, Procedural Law and Fiscal Laws for ten years. The Federal *Shariat* Court can take action on its own or on the request of the citizens of Pakistan or on the request of the Federal or Provincial Governments to declare a provision or a law against the injunctions of Islam.

The pleader before the Federal *Shariat* Court must be a Muslim and either be an advocate of the Supreme Court, or an advocate of the High Court for five years or an Islamic Jurist.

There is a *Shariat* Appellate Bench which is consisted of 03 Supreme Court Judges and 02 Islamic Jurists appointed by the President of Pakistan. An aggrieved party from the decision of the Federal *Shariat* Court may appeal before the *Shariat* Appellate Bench within 60 days and the Federal or Provincial Governments within 06 months. Decisions of the Federal *Shariat* Court and the *Shariat* Appellate Bench are binding on all subordinate courts. <sup>1</sup> The decision of the Federal *Shariat* Court should be implemented immediately and a time limit should be made for the decision of the appeal before the *Shariat* Appellate Bench.

### **Important Federal Authorities**

There is a Council of Common Interest, consisted of the Prime Minister, Chief Ministers of all Provinces and three members from the Federal Government. The council shall give its annual report to the Parliament. The council shall regulate and formulate policies and exercise supervision and control over certain institutions. The council shall meet at least once in 90 days and shall be formed within 30 days after the taken oath of the office by the Prime Minister. In water supplication complaints, the Federal Government and Provincial Governments may send the matter to the Council which shall give its decision or ask the President to form a commission.

There is a National Economic Council which is formed by the President of Pakistan and is consisted of the Prime Minister and four members appointed by him, Chief Ministers of all Provinces and one each member appointed by them. The National Economic Council shall formulate plans in respect to financial, commercial, social and economic policies. It shall meet at least twice a year and submit its annual report to the Parliament. The Federal Government may construct hydro-electric and thermal power installations in any Province. The Provincial Government may extend the electricity in the Province and require the supply, levy tax on electricity, install a grid station and power houses and determine tariff on distribution of electricity in a Province. In case of a difference between a Federal Government and a Provincial Government on electricity, the matter will be sent to the Council of Common Interest for the resolution. The gas resource shall be distributed first to the people of the Province, where it has been found. The Federal Government shall install a transmitter in a Province on its request of the Province and regulate a fee with respect to broadcasting and telecasting.<sup>2</sup>

<sup>1</sup> Articles 203A to 203J, (1973). The Constitution of Islamic Republic of Pakistan. Islamic Republic of Pakistan.

<sup>2</sup> Daud, M. (1998). "The Constitution of the Islamic Republic of Pakistan, 1973." Lahore: Irfan Law Book House.

There is a National Finance Commission which is consisted of the Federal Finance Minister and Provincial Finance Ministers and such other persons appointed by the President from time to time. The National Finance Commission shall distribute the money incurred through taxes, distribute the Federal grant to Provinces, exercise borrowing powers of the Federal and Provincial Governments and deal with other financial matters. Every year the sum of the Province should be increased and in no case it be decreased. The National Finance Commission shall submit its annual report to the National and Provincial Assemblies.<sup>1</sup>

There is a Judicial Commission for the appointment of the Supreme Court and High Court Judges. The Judicial Commission which is responsible for the appointment of the Judges of the Supreme Court of Pakistan is consisted of the Chief Justice of the Supreme Court, a former Judge of the Supreme Court; appointed by the Chief Justice for two years, four most senior Judges of the Supreme Court, an Attorney General, a Federal Minister of Law and Justice and the senior lawyer of the Supreme Court of Pakistan; appointed by the Pakistan Bar Council for two years and for the appointment of the High Court Judges, the following shall be added in the Commission: The Chief Justice of the concerned High Court; if his selection is in process, the previous retired Chief Justice or a senior Judge of the concerned High Court will take his place in the Commission; the senior Judge of the concerned High Court, the Law Minister and the senior Advocate of the High Court; appointed by the concerned Bar Association for two years and for the appointment of the Judges of the Federal *Shariat* Court the following shall be added, namely: the Chief Justice of the Federal *Shariat* Court and the senior Judge of the Federal *Shariat* Court. The Judicial Commission will send the approved name to the Parliamentary Committee which is consisted of 08 members, 04 from the Government and 04 from the opposition, they will approve the name within 14 days or disprove the name by 75% majority and then the Commission will be required to send a new name to the Parliamentary Committee and after approval from the Committee, the name will be sent to the Prime Minister and then to the President for final ratification and appointment.<sup>2</sup>

There is a Supreme Judicial Council which is consisted of the Chief Justice of the Supreme Court and two most senior judges of the Supreme Court and two most senior Chief Justices of the High Courts. The Judicial Council will see whether any judge of the Supreme Court or a High Court is physically or mentally ill or has done a misconduct and if so, it will call an inquiry and if the inquiry proves right then that judge will be removed from the judicial office after the approval of the President. The inquiry of the Supreme Judicial Council cannot be challenged anywhere in Pakistan.<sup>3</sup>

There is one Election Commission of Pakistan which is consisted of the Election Commissioner appointed by the President of Pakistan who is either a retired judge of the Supreme Court or a High Court or has the eligibility to be a judge of the Supreme Court or a High Court. The Prime Minister and the Opposition Leader will send three names to the Parliamentary Committee which is consisted of 12 members; 06 each from the government and opposition; and headed by the speaker, who will finalize one name for the seat of the Election Commissioner and send it to the President for the

<sup>1</sup> Articles 153 to 165A, (1973). The Constitution of Islamic Republic of Pakistan. Islamic Republic of Pakistan.

<sup>2</sup> Hussain, F. (2011). The judicial system of Pakistan, Supreme Court of Pakistan.

<sup>3</sup> Articles 209, 210 & 211, (1973). The Constitution of Islamic Republic of Pakistan. Islamic Republic of Pakistan.

final approval. The Chief Election Commissioner of Pakistan will take oath from the Chief Justice of Pakistan and will held office for three years and he cannot hold any other office of interest during his tenure and cannot held any office in the government of Pakistan within two years after his retirement as the Chief Election Commissioner of Pakistan. In case of the absence of the Chief Election Commissioner, the Chief Justice of Pakistan will appoint any other sitting judge of the Supreme Court of Pakistan to perform functions of the Election Commissioner. The Chief Election Commissioner is the Chairman of the Election Commission and there are four other members of the Election Commission; one each from every province; a judge of the High Court, appointed by the President. Duties of the Election Commission of Pakistan is to prepare electoral rolls and revise it annually, forming Election Tribunals and holding National, Provincial and Senate Elections in Pakistan. All administrative authorities will work in aid to the Election Commission of Pakistan in the completion of its functions. The Commission shall make rules for the appointment of employees in the Election Commission of Pakistan. The Parliament can make legislation for the allocation of the seats, related to constituencies, electoral rolls and elections but the Parliament cannot decrease the powers of the Election Commission of Pakistan. One person cannot hold a seat of the National Assembly and a Provincial Assembly together at the same time and cannot hold two seats of the same assembly at a time. Within 60 days of the completion of the period of the assembly, the Election Commission of Pakistan will held a new general elections in Pakistan but in case of the dissolution of the assembly, the election will be held within 90 days. The Election Commission of Pakistan will announce results of elections within 14 days. When after the general elections, a National Assembly or a Provincial Assembly's seat is vacant, the election will be held on that seat within 60 days and in case of the empty seat of the senate, the election will take place within 30 days. <sup>1</sup>

There is a Federal Public Service Commission of Pakistan whose Chairman is appointed by the President of Pakistan on the advice of the Prime Minister and at the Provincial level the Punjab, Sindh, Baluchistan and Khyber *Pakhtunkhwa* Public Service Commissions, their Chairman's are appointed by governors of their Provinces on the advice of their Chief Ministers. Rules for services of Pakistan at Federal level shall be enacted by the National Assembly of Pakistan and at Provincial level by the Provincial Assemblies of Pakistan. The President is the supreme commander of the Armed Forced and appoints the Chief of Army Staff, Chief of Naval Staff, Chief of Air Force and the Joint Chief of Staff Committee on the advice of the Prime Minister and determine their salaries and allowances. The Armed Forces of Pakistan work against the external threat towards Pakistan and in aid to the Civil Government of Pakistan.

### **Conclusion and Recommendations**

The Constitution of Pakistan was passed by the National Assembly of Pakistan on 10<sup>th</sup> April, 1973 and officially promulgated on 14<sup>th</sup> August, 1973. The Objectives Resolution was passed in 1949 which is made the preamble of the Constitution of Pakistan 1973. The constitutional name of Pakistan is Islamic Republic of Pakistan which is consisted of four provinces namely: Punjab, Sindh, Baluchistan and Khyber *Pakhtunkhwa*, capital territory Islamabad and the Federally Administered Tribal

---

<sup>1</sup> Khan, H. (2005). Constitutional and political history of Pakistan, Oxford University Press, USA.

Area. Islam is the State religion of Pakistan and no law can be made in Pakistan which is contrary to the injunctions of Islam laid down in the Holy Quran and the *Sunnah* of Prophet Muhammad ﷺ. There is one Islamic Ideology Council of Pakistan which gives its recommendations to make the legislation of Pakistan in accordance with the injunctions of Islam. The Head of the State of Pakistan is the President. A non-Muslim cannot become the President of Pakistan. The bicameral legislature was formed under the Constitution of Pakistan 1973, the upper house is the Senate and the lower house is the National Assembly. The Constitution of Pakistan 1973 may be amended by  $\frac{2}{3}$  majority in the Parliament. 21 amendments have been made in the Constitution of Pakistan 1973 until now. The Federal Government of Pakistan is consisting of the President, two legislative houses at the federal level namely: the upper house, Senate, which is consisted of 104 members and the lower house, National Assembly, which is consisted of 342 members. The head of the executive at the federal level; in Pakistan; is the Prime Minister, which is elected among the members of the National Assembly. The Provincial Governments of Pakistan are consisted of the Governor and the Provincial Assembly. The Provincial Assembly of Punjab is consisted of total 371 members, Sindh 168 members, Khyber *Pakhtunkhwa* 124 members and Baluchistan 65 members. The Head of the Executive in a Province is the Chief Minister, which is elected by the Provincial Assembly. There is one Supreme Court in Islamabad and five High Courts respectively in Islamabad, Lahore, Karachi, Quetta and Peshawar. There is a Council of Common Interest, a National Economic Council and a National Finance Commission. There is a Judicial Commission of Pakistan for the appointment of the judges of the Supreme Court and High Courts of Pakistan and a Supreme Judicial Council which conducts an inquiry on misconduct charges of the judges of the superior judiciary.

The Chairman and members of the Islamic Ideology Council of Pakistan are appointed on the basis of political affiliations rather than looking into the competency of the person in Islamic law, economics, politics, law and administration. I would like to recommend that the Islamic Ideology Council of Pakistan should be separated from political influence and it should be made an independent body whose members and chairman should be selected by a group of people from the Judiciary while making consultations with all major Islamic scholars of Pakistan of all sects and there should be some members in the council who should be well versed in economics, politics, law and administration.

The right of education is guaranteed in the Constitution of Pakistan 1973 but there are three education systems in Pakistan namely: The religious institutes, which are free of charge but only focus on religious studies. The Private School System, which is very expensive and away from the reach of the poor people. The Government School System, which is not very expensive but the quality of education and facilities are not good because of the damaged political and administrative system of Pakistan. I would like to recommend that there should be only one education system for all the children of Pakistan. One curriculum for all the students to make them feel equal, which will give them confidence and which will enhance their capabilities and will decrease the inferiority complex.

The President of Pakistan is the Head of the State of Pakistan and according to Article 45 of the Constitution-1973, he can pardon, reprieve, respite, permit, suspend and commute any sentence. This provision of the Constitution is against the injunctions of Islam and as mentioned earlier that no law in Pakistan can be made

against the injunctions of Islam thus this provision should be removed from the constitution as no person is above the law and no one has the right to pardon except the inheritors of the deceased murdered.

A convicted person who has been imprisoned for less than two years if more than two years have passed and a convicted person who has been punished for more than two years' imprisonment if five years have passed after conviction and a person who has dismissed on misconduct charge from the Service of Pakistan if five years have passed after dismissal and three years have passed after removal from the Service of Pakistan can become a member of the Parliament of Pakistan. It is very clear that this type of provision is added to make a way to the convicted people to enter Parliament of Pakistan and they will harm the people of Pakistan again. This provision should be removed immediately from the Constitution of Pakistan as well as the article 63A which states that a member of the parliament cannot go against the decision of his political party leader.

It is the principle of policy of the Federal and Provincial governments to promote local bodies institutions under Article 32 of the Constitution of Pakistan 1973, secondly it is a clear cut duty imposed by the Constitution of Pakistan 1973 under Article 140A, on every provincial government to make Local Bodies Governments and shall transfer political, administrative and pecuniary liabilities to the Local Bodies Institutions, but it has never been materialized in true sense. It is strictly recommended that the duties of the Provincial Governments under the Constitution of Pakistan 1973 should be fully observed and required powers should be fully transferred to the local government's institutions under the local bodies' governments.

## References

- Butt, M. (1973). Constitution of Pakistan, Mansoor Book House, Lahore.  
 Constitution of Islamic Republic of Pakistan. Islamic Republic of Pakistan (1973).  
 Daud, M. (1998). "The Constitution of the Islamic Republic of Pakistan, 1973." Lahore: Irfan Law Book House.  
 Hussain, F. (2011). The judicial system of Pakistan, Supreme Court of Pakistan.  
 Ismail, M. b. Sahi Bukhari.  
 Khan, F. S. (2004). Quest for justice: Judicial system in Pakistan, Network Publications.  
 Khan, H. (2005). Constitutional and political history of Pakistan, Oxford University Press, USA.  
 Khosa, A. (1988). "The Constitution of Pakistan 1973." Lahore Kausar Brothers 175.  
 Lau, M. (2003). "Article 2A, the Objectives Resolution and the Islamisation of Pakistani Laws." SOAS University of London.  
 Munir, M. and B. Ahmad (1996). Constitution of the Islamic Republic of Pakistan: Being a Commentary on the Constitution of Pakistan, 1973, PLD Publishers.  
 Musarrat, R., et al. (2012). "18th Amendment and its Impacts on Pakistan's Politics." Journal of Sociological Research 3(1): 1.  
 Objectives Resolution. Islamic Republic of Pakistan (1949).  
 Pakistan and S. Mahmood (1973). Constitution of the Islamic Republic of Pakistan, 1973, Legal Research Centre.