



# CONSTITUTIONAL RIGHTS AND FEDERALISM IN PAKISTAN

# Understanding Constitutions and Laws

## 1. What is a constitution?

- Definition: A constitution is a fundamental and paramount law of a country, outlining the framework for its government and legal system.
- Function: It establishes the structure, procedures, powers, and duties of government institutions and sets out fundamental rights, directive principles, and duties of citizens.

## 2. Why is there a Need for a Constitution?

- Organizing Government: Defines the structure and delineates the powers of different branches.
- Rights Protection: Ensures the fundamental rights and freedoms of citizens.
- Legal Framework: Provides the foundational law that governs all individuals and entities.
- Conflict Resolution: Establishes a system for resolving disputes among citizens and between citizens and the government.
- Stability: Grants legitimacy and stability to the government and legal system.

## 3. Different Types of Constitutions

- Written and Unwritten: Some countries have a single, written document (e.g., the U.S., Pakistan Constitution), while others have constitutions formed from various documents, statutes, and traditions (e.g., the U.K.).
- Flexible and Rigid: Flexible constitutions can be easily amended (simple majority), while rigid constitutions have stringent amendment processes (two-third or three fourth majority).
- Federal and Unitary: Federal constitutions allow for power-sharing between central and regional governments, whereas unitary constitutions centralize power.

## 4. Difference Between Constitution and Law

- Hierarchy: The constitution is the supreme law, while other laws are subordinate to it (For example Art. 25-A of the constitution grants citizen the Right to Information, The Right of Access to Information Act 2017 is the sub-ordinate law.)
- Scope: Constitutions govern the overall framework and system of the country; laws deal with specific matters.
- Amendment: Constitutions generally require special procedures for amendments, while laws can typically be amended more easily.

## 5. How Constitutions are Made and Amended

- Making: Typically involves a constituent assembly or a similar body, often followed by a referendum.
- Amending: Usually requires supermajority approval in the legislative body and, sometimes, via referendum.

## **6. How Laws Are Made and Amended**

- Making: Generally, involves proposal, discussion, and approval through a legislative body (e.g., Congress or Parliament).
- Amending: Laws can be amended or repealed through a similar legislative process.

## **An Overview of Pakistan's Constitutional History**

Pakistan has promulgated several constitutions to govern its people and territories.

### **1. The 1956 Constitution**

- First Constitution: Pakistan became a republic on March 23, 1956.
- Salient Features:
  - o Federal System: Power was distributed between the center and provinces.
  - o Parliamentary System: Bicameral legislature, with a president as the ceremonial head and a prime minister as the executive head.
  - o Islamic Provisions: Islamic law was declared the highest law.

### **2. The 1962 Constitution**

- Background: After martial law, a new constitution was introduced by Ayub Khan.
- Salient Features:
  - o Presidential System: Centralization of power with the president.
  - o Unicameral Legislature: Introduced a single-house parliamentary system.
  - o Basic Democracies System: Local government system as an electoral college.
  - o Islamic Provisions: Renewed emphasis on Islamic ideology.

### **3. The 1973 Constitution**

- Inception: Enacted on August 14, 1973, and is the current constitution.
- Salient Features:
  - o Federal System: Defined roles for federal and provincial governments.
  - o Parliamentary System: Bicameral legislature with a National Assembly and Senate.
  - o Islamic Provisions: Islam declared the state religion; the introduction of

the Council of Islamic Ideology.

- o Human Rights: Protection of fundamental rights and equality.

- o Prime Minister: Established as the head of government, with significant powers.

#### **4. Transition Periods and Military Rule**

- Pakistan has experienced several periods of military rule and constitutional suspension, notably in 1958, 1977, and 1999.

- During these periods, the constitution was often held in abeyance or altered to accommodate the ruling regime.

- Legal Framework Orders (LFOs) and Provisional Constitutional Orders (PCOs) were introduced during military regimes to legitimize their rule and make constitutional amendments.

#### **5. Amendments to the 1973 Constitution**

- Pakistan's constitution has undergone several amendments to address political, social, and administrative issues.

- Some of the notable amendments include:

- o 8th Amendment (1985): Granted the president the power to dissolve the National Assembly and dismiss the prime minister.

- o 18th Amendment (2010): Significant, encompassing devolution of power to provinces and removal of the president's power to dissolve the assembly.

- o 21st Amendment (2015): Established military courts for trying terrorism-related cases.

### **Exploring the 1973 Constitution of Pakistan**

#### **Introduction:**

The 1973 Constitution of Pakistan, enacted on August 14, 1973, forms the foundation of the nation's democratic system, shaping its political, social, and economic frameworks. It was framed by an elected parliament and introduced a parliamentary system, wherein the President is the ceremonial head of state and the Prime Minister is the head of government. It consists of seven parts and 280 (original) articles. Accounting for new articles and omitted articles, the Constitution currently consists of 298 articles.

#### **1. Silent Features:**

- Bicameral Legislature: Comprising the National Assembly (lower house) and the Senate (upper house).

- Parliamentary System: With clear roles for the President and the Prime Minister.

- Islamic Provisions: Recognizes Islam as the state religion and aims to enable Muslims to lead their lives according to Islamic principles.

- **Fundamental Rights:** Ensures citizens' basic rights such as equality, freedom of speech, and religious freedom.
- **Federal Structure:** Balances power between the Central and Provincial Governments.

## **2. Fundamental Rights:**

- **Equality:** All citizens are equal before the law.
- **Freedom of Speech and Expression:** Allows citizens to express their views freely within the parameters set by law.
- **Freedom to Practice Religion:** Guarantees religious freedom and allows religious communities to establish their own institutions.
- **Right of Information:** Citizens have access to the information held by public offices
- **Right to Education:** All children from 5 to 16 yrs have the right to get free education.

## **3. Principles of Policy**

- **Promotion of Local Government Institutions:** The state shall Promote local government composed of elected representatives with special representation to women, peasants, and workers.
- **Strengthening of Bonds with the Muslim World:** Develop cooperative relationships with Muslim countries based on Islamic unity.
- **Promotion of Social Justice and Eradication of Social Evils:** Ensure equality, fairness, and the eradication of social evils. Promote education and economic interest of backward classes; ensure inexpensive and expeditious justice; prevent prostitution, gambling, taking injurious drugs, consumption of liquor
- **Protection of Minorities:** Safeguard the legitimate rights and interests of minorities.
- **Promotion of Social and Economic Well-being:** Elevate citizens' socio-economic status and quality of life.
- **Parity in All Spheres:** Ensure parity amongst citizens in all facets of life.

## **4. Islamic Provisions:**

- **Islam as State Religion:** Affirms the role of Islam in the state's governance.
- **Islamic Ideology Council:** Ensures that all laws are compatible with Islam.
- **Non-Muslim Rights:** Protects the rights of non-Muslims, allowing them to practice their religion freely.

## **5. The Structure of Government:**

- **Federal Level:** Consisting of the President, Prime Minister, National

Assembly, and Senate.

- Provincial Governments: Each province is governed by a Chief Minister and has its own legislative assembly.

## **6. Amendment Procedure:**

- The Constitution can be amended via a two-thirds majority in both the National Assembly and the Senate.

## **7. Notable Amendments:**

- 8th Amendment (1985): Introduced Article 58-2(b), granting the President powers to dissolve the National Assembly.
- 18th Amendment (2010): Devolved powers to provinces and repealed the President's power to dissolve the National Assembly.

## **8. Judicial Review:**

- The Judiciary ensures that laws and policies adhere to the Constitution and has the authority to invalidate any that contravene it.

## **9. Federal and Provincial Relations:**

- Through the Council of Common Interests (CCI) and the National Economic Council (NEC), the Constitution seeks to balance resource allocation and resolve disputes among the provinces and between provinces and the federal government.

# **An Introduction to Federalism**

## **Overview**

Federalism is a system of government in which power is divided between a central (federal) authority and constituent political units (such as states or provinces). This division allows for a distribution of authority and responsibility, aiming to ensure governance is accessible and accountable.

## **1. Key Characteristics of Federalism**

- Dual Sovereignty: Distinct powers are allocated to both the central and regional governments.
- Constitutional Division: The constitution distinctly outlines the powers and responsibilities of different levels of government.
- Territorial Units: A federation comprises territorial units, each possessing its own government.
- Supremacy of the Constitution: The constitution is the supreme law, guiding the operation of all levels of government.

## 2. Types of Federalism

### A. Dual Federalism (Layer Cake)

- Distinct separation of powers and functions between the federal and state governments.
- Each level of government operates independently within its jurisdiction. Example: Early United States (19th Century), where state governments and the federal government had distinct and separate domain.

### B Cooperative Federalism (Marble Cake)

- Shared responsibilities and collaboration between different levels of government.
- Policies and programs often involve joint efforts. Example: The Clean Air Act of 1970 provides a prime example of cooperative federalism by establishing national standards for air pollution administered by the EPA. The states are then given the authority to set their limits and standards if they meet the federal standards.

### C. Fiscal Federalism

- Concerned with the allocation of resources among different levels of government.
- Involves transfer of funds from central to regional governments. The funds transfer from the central government to the sub-national government can be conditional or unconditional.

### D. Symmetric vs. Asymmetric Federalism

- Symmetric: All sub-national units have equal powers and status.
- Asymmetric: Different regions have different powers and autonomy levels. India represents asymmetric federalism, as Jammu & Kashmir (prior to 2019) enjoyed distinct autonomy compared to other states under Article 370 of the Indian Constitution. FATA in Pakistan before 2018 is also an example of asymmetrical federalism.

## 3. Advantages of Federalism

- Local Autonomy: Empowers local governments to address the specific needs of their communities.
- Power Distribution: Prevents absolute power concentration and promotes diversified governance.
- Policy Innovation: Facilitates experimentation with policies at regional levels.
- Conflict Management: Allows for accommodation of diverse cultures, ethnicities, and ideologies.

## 4. Challenges in Federal Systems

- Resource Disparities: Can cause economic imbalances among different regions.
- Policy Discrepancies: Varying policies among regions can lead to inconsistencies and conflicts.
- Political Divisions: May foster regionalism and hinder national cohesion.
- Administrative Complications: Dual governance can sometimes result in bureaucratic hurdles.

### 5. Federalism Around the World

- Examples of countries with federal systems include the United States, Canada, India, Germany, Australia and Pakistan.
- Each country's federal model is tailored to its unique socio-political context.

## Understanding the 18th Amendment to Pakistan's Constitution

### Introduction

The 18th Amendment, passed in 2010, is regarded as one of the most comprehensive amendments in the history of Pakistan, touching upon various aspects of governance, parliamentary functioning, and provincial autonomy. The Act includes 102 amendments which have amended, substituted, added, or deleted various constitutional provisions.

### 1. Historical Context

- Decentralization: Aimed to enhance provincial autonomy and resolve longstanding grievances related to resource distribution and administrative powers.
- Restoration: Addressed to rectify distortions in the constitution introduced during military regimes.

### 2. Key Features of the 18th Amendment

#### A. Provincial Autonomy

- Divisible Pool: An enhanced share of revenue for provinces from the federal divisible pool.
- Abolishment of the Concurrent List: Reduced the legislative subjects where both federal and provincial legislatures could legislate, enhancing provincial legislative authority.



## **B. Parliamentary and Political Strengthening**

- **Removal of Presidential Powers:** Diminished the president's power to unilaterally dissolve the parliament and dismiss the prime minister.
- **Prime Minister's Powers:** Solidified the position of the prime minister as the chief executive.

## **C. Structural and Institutional Reforms**

- **Judiciary Appointment:** Modified the process of judicial appointments through the Judicial Commission and Parliamentary Committee.
- **Establishment of NFC:** The National Finance Commission was tasked with ensuring equitable resource distribution among provinces.

## **D. Social and Cultural Implications**

- **Name Change:** NWFP (North-West Frontier Province) was renamed Khyber Pakhtunkhwa.

## **E. Control over Natural Resources**

**Ownership Rights:** Provinces were granted more decisive control and ownership over their oil and gas reserves.

**Revenue Distribution:** The amendment aimed to ensure a more equitable distribution of revenue from natural resources among the provinces.

**Royalties and Taxes:** A system was introduced where provinces would receive a more significant share of royalties and taxes from resources extracted from their territories.

## **3. Implications and Impact**

- **Political Stability:** Restricted the intervention of non-parliamentary forces in the political setup.
- **Governance Shift:** Provinces obtained more administrative and fiscal autonomy, altering the governance paradigm.
- **Socio-Cultural Cohesion:** Addressed certain ethno-linguistic and regional issues, fostering national integration.

## **4. Criticism and Challenges**

- **Implementation Issues:** Several provisions have faced hurdles in effective implementation.
- **Resource Management:** Resource utilization and governance challenges have arisen at the provincial level.
- **Political Consensus:** Certain aspects, like renaming provinces or establishing new ones, have remained points of contention.

Insight into the 7th National Finance Commission (NFC) Award in Paki-

## 1. Introduction

The National Finance Commission (NFC) Award is a constitutional arrangement in Pakistan aimed at distributing financial resources among the federal government and the provinces to address the country's socio-economic needs.

### 2. Background: Understanding the NFC

1. Constitutional Mandate: According to Art. 160 of the 1973 Constitution of Pakistan, an NFC must be constituted every five years.

2. Key Stakeholders: Includes the Federal Finance Minister (Chairperson) and Provincial Finance Ministers.

3. Primary Objective: To allocate resources among the Centre and provinces and among the provinces themselves.

### 3. Significance of the 7th NFC Award

1. Year of Commencement: 2010

2. Unanimous Agreement: Reached with a consensus among all the provinces and the federal government.

3. Revolutionary Adjustments: Introduction of a new formula for resource distribution, catering to backwardness, revenue generation, and population.

### 4. Distribution Formula in NFC Awards

No.	Year	Federation: Provinces Distribution	Distribution within Provinces			
			Punjab	Sindh	FWFP (KP)	Balochistan
1st	1974	20:80	60.25	22.5	13.39	3.86
2nd	1979	20:80	57.97	23.34	13.39	5.3
3rd	1985					
4th	1990	20:80	57.87	23.29	13.54	5.3
5th	1996	62.5:37.5	57.88	23.38	13.54	5.3
6th	2000					
	2006*	55:45	57.36	23.71	13.82	5.11
7th	2009	44.56**	51.74	24.55	14.62	9.09

\*By presidential Order

\*\*for the first year, 57.5% for the remaining years.

## 5. Resource Distribution Formula in 7th NFC Award (Horizontal)

Indicators	Share of Provinces in Term of Indicators				
	Weight	Punjab	Sindh	NWFP (KP)	Balochistan
Population Share	82	57.36	23.71	13.82	5.11
Poverty/backwardness	10.3	23.16	23.41	27.82	25.61
Revenue generation/collection	5	44	50	5	1
Inverse population density	2.7	4.34	7.21	6.54	81.92
Total Share	100	51.74	24.55	14.62	9.09

## 6. Notable Features and Implications

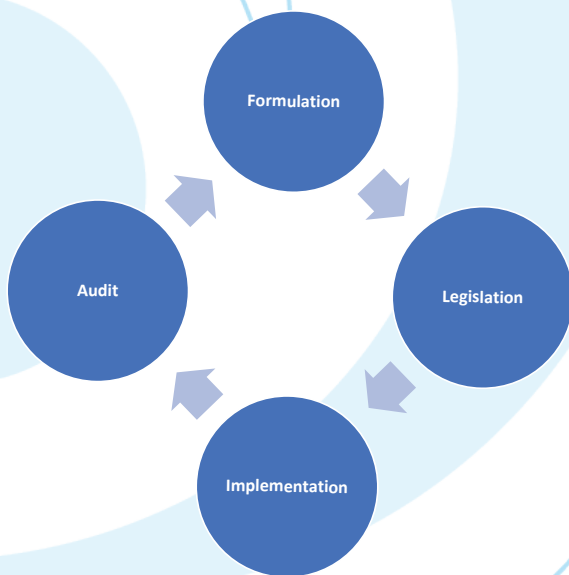
1. Greater Provincial Autonomy: Enhancing provinces' control over financial resources.
2. Social Sector Development: More funds for education, health, and social welfare.
3. Addressing Vertical Imbalance: Aimed at reducing the disparity in resource distribution between federal and provincial levels.
4. Addressing Horizontal Imbalance: Aimed at reducing the disparity in resource distribution among provinces.

## 7. Demands of Khyber Pakhtunkhwa Province:

- I) The population increased by 5 million after 2018 (Merged Area), but share has not been increased.
- II) Poverty increased, but the formula has not been revised.
- III) KP has demanded 213 billion more due to the increase in population and poverty.
- IV) FATA's merger into KP increased KP's share in the NFC award from 14.62% to 19.62%. The new NFC award should be based on the updated formula.
- V) Under the 25th amendment, the federal government had pledged to provide Rs100 billion annually for the rapid development of the tribal districts after their merger into K-P, However, the commitment has yet to be fulfilled.
- VI) All provinces should fulfill their commitment to allocate 3% of their NFC share for NMDs development.

## Handout 7: Budget Cycle

### Four Stages in Budget Cycle



<b>S #</b>	<b>Activities</b>	<b>Concerned Department</b>	<b>Timeline (Last date)</b>
1.	Mid-Year Review Report	Finance Division	January-February 2023
2.	Issuance of Budget Call Circular	Finance Division	January 2023
3.	Medium Term KPIs and Targets F.Y 2023-26	PAOs	2 <sup>nd</sup> Week of March, 2023
4.	Medium Term Performance Budget by Output F.Y 2023-24	PAO/Finance Divisions	Along with NIS
5.	Submission of Gender Responsive Budgeting	PAO	2 <sup>nd</sup> Week of June, 2023
6.	Submission of Green Budgeting	Finance Division	2 <sup>nd</sup> Week of June, 2023
7.	Revised Estimates (2022-23) and Budget Estimates(2023-24) of Revenue and Public Account Receipts	PAOs	2 <sup>nd</sup> Week of March, 2023
8.	Budget Proposals for new Non-Tax measures for inclusion in Finance Bill 2023-24	PAOs	-do-
9.	Detail of Assets and Investment and Human Resources	PAOs	2 <sup>nd</sup> Week of March, 2023
10.	Submission of Revised (2022-23) Current & Development Expenditure Budget Estimates	PAOs	2 <sup>nd</sup> Week of March, 2023
11.	Submission Proposed (2023-26) Current & Development Expenditure Budget Estimates	PAOs	2 <sup>nd</sup> Week of March, 2023
12.	Recommendations from Expenditure Wing on Revised and Proposed Budget Estimates	Expenditure Wing	3 <sup>rd</sup> week of March, 2023
13.	Preparation of Medium-Term National Macro Economic and Fiscal Frameworks	EA/Budget Wings	3 <sup>rd</sup> Week of March, 2023
14.	Budget Review Committee's meetings	Finance Division	22-31 March 2023
15.	Budget Strategy Paper (BSP) 2023-26	Finance Division	2 <sup>nd</sup> Week of April, 2023
16.	Approval of budget strategy paper (BSP) by the Cabinet	Finance Division	-do-
17.	Issuance of Indicative Budget Ceilings (IBCs) for current and development budget (one line)	Finance Division	3 <sup>rd</sup> week of April, 2023
18.	Issuance of All Principal Accounting Officers (PAOs) Wise IBCs for Development	Planning Division	4 <sup>th</sup> Week of April, 2023
19.	Submission of Budget Order (BO) and one New Item Statement (NIS) -BO/NIS for Current Budget	PAOs	3 <sup>rd</sup> Week of April to 1 <sup>st</sup> Week of May, 2023

20.	Annual Planning Coordination Committee (APCC) Meetings	Planning Division	4th Week of April 2023
21.	National Economic Council (NEC) Meetings	Planning Division	1st Week of May
22.	Submission of BO/NIS by Ministries / Divisions for Development Budget	PAOs	2nd Week of May, 2023
23.	Completion of all Budget Documents, Schedules and Summaries for the Cabinet etc.	Finance Division	End of May, 2023
24.	Presentation of Budget to the Cabinet and the Parliament	Finance Division	1st Week of June, 2023
25.	Submission of Quarter-Wise Expenditure Estimates Current and Development Budget	PAO	2nd Week of June, 2023
26.	Issuance of Budget Release Strategy	Finance Division	Last Week of June, 2023
27.	Circulation of Exchange Rates	Finance Division	Last week of April, 2023
28.	Submission of Estimates	PAOs	1st week of May, 2023
29.	Budget Review Meeting	Finance Division	2nd week of May, 2023
30.	Finalization and Compilation of Budget	Finance Division	3rd week of May, 2023



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