



## **Recommendations of the Human Rights Commission of Pakistan (HRCP) on Constitutional Reform**

These recommendations were forwarded to parliamentary committee on constitutional reform headed by Mr. Raza Rabbani.

1. While welcoming the consultations on Constitutional Reforms, the Human Rights Commission of Pakistan (HRCP) has expressed the view that this process is by nature lengthy and complex. The HRCP believes it is desirable that as a first step Seventeenth Amendment must be repealed and the priority be accorded to give legal shape to the Charter of Democracy as these measures enjoy the near consensus of political parties.
2. On the issue of Constitutional reforms the HRCP has engaged civil society in extensive consultations. The last meeting was held on 29 July 2009 with Ms Asma Jehangir in chair. Earlier, consultations were made in February 1991 under the chairmanship of late Justice Dorab Patel.
3. This report is presented in five Sections. HRCP believes that the process of democratization can only be sustained if the basic rights of citizens are respected and democratic institutions are strengthened. The first section makes suggestions regarding the Chapter on Fundamental Rights in order to enhance its effectiveness. The second section contains suggestions on the repeal of the Seventeenth Amendment. The third section addresses the Constitutional issues arising out of the "Charter of Democracy." The fourth section deals with Provincial Autonomy and in the last section are suggestions which are crucial to address in order to rationalize the system of governance in the country with particular emphasis on FATA, PATA and the Northern Areas.

### Section One **Fundamental Rights**

5. **Article 8 of the Constitution needs to be further strengthened with the addition of a specific clause saying in substance that all the provisions of the Constitution shall also be interpreted so as to accord with the Fundamental Rights.**

An exception is made in Article 8(3) in respect of conformity to fundamental rights of laws relating to the armed forces and the police and of laws in the First Schedule. HRCP suggests that: **The Proviso should be repealed so that actions of the Armed Forces and the police also conform to Fundamental Rights.** However, for the purpose of maintaining strict discipline amongst the Armed Forces and the police, the Proviso should read as under:

**Any law relating to the terms and conditions as well as disciplinary action of the Armed Forces, or of the police or of such other forces as are charged with maintenance of public order, for the purpose of ensuring the proper discharge of their duties or the maintenance of discipline among them.**

**Laws in the First schedule should also be tested on the touchstone of Fundamental Rights. Therefore the Proviso be deleted.**

6. Pakistan is a signatory and has ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR). As such **a new Article 28A needs to be added to recognize the right to food, education, health, clean environment and shelter subject to the availability of resources.**

This will set priorities in the resource management of the State.

7. **The fundamental right against exile needs to be recognized in the Constitution.**

This is a right in other Constitutions including in the Constitution of Nepal.

8. **In Article 9 a line needs to be added after full stop: "No law shall be made which provides for capital punishment."**
9. **In Article 10 the word "integrity" appearing in sub-clause (4) needs to be deleted** as the term is vague and can be interpreted widely impinging upon freedom of expression.

Its deletion will in no way undermine the restrictions placed in this Article.

10. **The Proviso in Article 10 sub-clause 7 which was introduced by the Third Amendment to the Constitution needs to be repealed.** By repealing it no person acting against the integrity, security and defence of Pakistan can be kept under preventive detention for longer than 12 months except for an "enemy."

#### 11. **Slavery and forced labour**

- (i) Article 11(3) needs to be brought in conformity with the Convention on the Rights of the Child, which has been ratified by Pakistan. It should say: **"every child below the age of eighteen has a right to be protected from economic exploitation and from performing any work that is likely to be hazardous or interferes with the child's education, or is harmful to the child's health or physical, spiritual, moral or social development."**
- (ii) **The prohibition against slavery, forced labour, etc in Article 11 should include a specific bar on all forms of sexual exploitation and prostitution of women.**

#### 12. **Prohibition of torture:**

Article 14(2) deals with torture but prohibition to torture is not sufficiently strong. **It should read: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment under any circumstances. In particular, no one shall be subjected without his free consent to medical or scientific experimentation or be forced as a donor of their body parts."**

13. **The following should be added to Article 15: "Every citizen shall have the right to leave and enter the country provided that an exit from the country may be subject to any reasonable restrictions imposed by law in public interest."**
14. Article 17 has been amended through the First, Fourth and Seventeenth Amendments. The wording of this Article does not conform to the principles of basic human rights. There are three concerns to this Article. Firstly, the word "animosity" can be interpreted widely enough to restrict freedom of expression and thereby association. Secondly, while political parties must bear a special responsibility in promoting and protecting rights of individuals and communities yet they cannot be unreasonably restricted from expressing their objective differences with any community or individual. Political parties are entitled to follow their ideology as long as it does not impinge upon basic human rights of others. Therefore the restrictions have to be narrow. Lastly, no group including political parties has a right to incite violence or to advocate hostility based on religion, race/ethnicity and gender.

**HRCF, therefore, is recommending replacing the proviso at the end of the Article 17 with the following wording:**

**"no political party shall incite violence or promote sectarian, ethnic, regional or gender hostility or be titled or constituted as a militant group or sect."**

## 15. Freedom of Expression

Article 19 is an important right. It deals with freedom of opinion which is absolute although its manifestation may carry certain restrictions. These restrictions have to be precise and extremely narrow. Therefore, words like "in the interest of the "glory" of Islam may be avoided so that they are not subject to be exploited by religious zealots. Similarly, "Integrity" of Pakistan is a vague concept. Restricting expression against "friendly relations with foreign states" as enshrined in Article 19 is a negation of freedom of expression. In the current situation it is not only freedom of the press that has to be guaranteed but it must also include freedom of media, freedom of information, expression and opinion. **HRCP recommends the following formulation:**

- (i) **Everyone shall have the right to hold opinions without interference**
- (ii) **Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.**
- (iii) **The state is obliged to give access to public information to its citizens except where reasonable restrictions in public interest are imposed by law.**
- (iv) **The exercise of the rights provided for Article 19 carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:**
  - a) **For respect of the rights or reputations of others;**
  - b) **For the protection of national security or public order, or of public health or morals.****Provided that propaganda for war shall be prohibited by law. Provided also that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.**

## 16. Religious minorities

Article 18 needs to be strengthened and religious minorities be further protected through this Article.

- (i) **HRCP suggests that: After "subject to law, public order" the words need to be added "and fundamental rights and freedom of others are not violated."**
- (ii) **Article 18 (a) needs to be amended to read: "everyone shall have the right to freedom of thought, conscience and religion as well as the right to profess, practice and propagate his religion;"**
- (iii) **In Article 18 (b) the following needs to be added, "including places of burial subject to reasonable restrictions provided by law in order to preserve environmental and public interests".**

17. **Prohibition of discrimination under Article 22(3) (b) on the basis "only of race, religion, caste or place of birth" for admission to an educational institution aided from public revenues should include 'sex' and the word 'only' be deleted.**

**It must, however, be clearly provided that in the light of Article 25(3), this Article will not be applicable to institutions especially set up for women and girls.**

18. **From the bar against discrimination between citizens on the basis of 'sex alone' in Article 25, the word 'alone' should be omitted.**
19. **Article 25(3) needs to be amended to remove the word 'protection' in the context of women and replaced with words which connote that special affirmative provisions be made to enhance women's status and rights towards the promotion of gender equality.**
20. **In Article 26, the HRCP recommends:**

- (i) **Access to religious places on the basis of race, sex, caste or residence or place of birth should not be restricted.**
  - (ii) **From Article 26(1), which prohibits "discrimination in access to public places on the ground only of..," the word 'only' should be omitted.**
  - (iii) **Article 26(2)(I) needs to be amended to remove the word 'protection' in the context of women and replaced with words which connote that special affirmative provisions be made to enhance women's status and rights toward the promotion of gender equality.**
- 21. In the safeguard against discrimination in services in Article 27 'on the ground only of...' the word 'only' needs to be deleted. And in the proviso that some services can be reserved for either sex when they entail duties that cannot be 'adequately performed by members of the other sex' the modifying adverb 'adequately' should be left out.**

## **22. Untouchability**

The Committee may also consider banning untouchability. It exists in Pakistan but not acknowledged. Over a period of time, HRCP has received several reports where so-called low-caste people are housed separately with the blessing of authorities and are denied access to basic amenities on the premise of being untouchable. **HRCP suggests that at the end of Article 11 the following be added:**

**“Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law”.**

- 23. In Article 28, delete “subject to Article 251” as it is irrelevant.**

**Section Two**  
**The Seventeenth Amendment**

24. The bulk of the changes made through the 17<sup>th</sup> Amendment were self serving but some elements were introduced to accommodate some long standing demands of political and other civil society activists, possibility, to lend some credibility to this controversial Amendment. This mixture, of self serving and genuine changes, often confuses public reaction against arbitrary interventions by usurpers and poses a challenge while repealing the amendments made by dictators. **HRCP suggests that the self serving additions be repealed but amendments that are generally acceptable to most political parties in the Parliament be retained. In view of that HRCP suggests the 17<sup>th</sup> Amendment be repealed except the following Articles:**
25. **Article 51 be retained**, which increased the membership to the Parliament and re-introduced reserved seats for women and minorities. In this amendment the voting age was reduced from 21 to 18 years which was provided for in the original 1973 Constitution and it should be retained.
26. **HRCP suggests the Parliament needs to consider rationalizing membership of FATA to the National Assembly as well as Senate.**

Presently, the population of FATA is less than half of Balochistan's yet both regions have nearly equal number of seats in the National Assembly. FATA with only 2.4% of the total population has 12 seats in the National Assembly, which is grossly over-representation. In comparison, Balochistan with a population of nearly 5 percent of the total population has only 14 general seats. It is more disproportionate in the Senate. This disproportionate representation was introduced by Gen Zia-ul-Haq to use the FATA members to his advantage.

27. The methodology of elections of reserved seats for women and minorities deprive independent candidates from contesting these elections.

**For the election on reserved seats, HRCP recommends the adoption of either one of several suggestions made in the Report of the Commission of Inquiry for Women 1997. The recommendations are attached with this paper as an annexure.**

28. **Article 140A for the establishment of local governments should be retained.**
29. **The committee needs to retain the amendment made to Article 224**, which adds the word "general" simply to rationalize the present system of elections for reserved seats.

Section Three  
**The Charter of Democracy**

To give legal shape to the Charter of Democracy, HRCP recommends the following:

30. **Article 177(2)(b): To qualify for appointment as a Judge of the Supreme Court, a lawyer should have 20 years' experience (instead of 15) as an advocate of the High Court.**
31. **Appointment of the Chief Justice of Pakistan shall be made either of the senior most Judge of the Supreme Court or from amongst the sitting Judges of the Supreme Court by the President on the advice of the Prime Minister and the Leader of the Opposition. If consensus is not reached within 45 days the senior most Judge of the Supreme Court shall be appointed as a Chief Justice of Pakistan.**
32. **Appointment of Judges of the Supreme Court**

Article 177 lays down the appointment of Judges of the Supreme Court. It may be amended to read, **"The President shall appoint a Judge of the Supreme Court on the advice of the Prime Minister. The Chief Justice shall present the Prime Minister a list of three (3) candidates after consulting two senior most Judges of the Supreme Court. The Prime Minister shall select one candidate after consultation with the Leader of the Opposition.**

HRCP believes that the appointment of Judges in the superior court be made after wide and meaningful consultations with all stake holders including members of the Bar but the specific nature of consultation should not be given Constitutional protection as this could depend on the circumstances in each case. For example, a leader of the bar may himself or herself be aspiring to be elevated to the bench, in which case any consultation with a potential candidate would be a conflict of interest. HRCP is also opposed to subjecting candidates for superior judiciary to the open scrutiny in the Parliament. Rather, it recommends a scrutiny of candidates for the Judiciary through a standing committee because political history has shown that often the Parliaments in Pakistan are polarized and can ridicule candidates appearing before it thus undermining the dignity of future Judges.

33. **Sub-clause (a) of Article 180 should be deleted. This Article needs to be amended to ensure that if the office of the Chief Justice is vacant, a successor is appointed expeditiously but not later than 60 days.**
34. **Article 181 may be deleted as the tradition of "acting Judges" must end. The only exception be made in the case of Acting Chief Justice, while the appointment is confirmed.**
35. **Article 182 may be amended as follows: when it is necessary to increase temporarily the number of Judges of the Supreme Court, the President shall, on requisition in writing of the Chief Justice of Pakistan, appoint the senior-most Chief Justice of the High Courts to attend the sitting of the Supreme Court as an ad-hoc Judge for a period no more than one year, and while so attending an ad-hoc Judge shall have the same power and jurisdiction as a Judge of the Supreme Court.**
36. **Article 185(9). The value of the subject matter of dispute in appeal before the Supreme Court be raised from Rs.50000 to 15,00,000.**
37. **Article 193, sub-clause 2, the minimum age for appointment to the High Court be reduced to 40 years to bring it in conformity with the original plan of the 1973 Constitution.  
In sub-clause (2)(a) the word 'ten' be substituted with 'fifteen'.  
Sub-clause (2)(b), "a member of civil service prescribed by law for the purposes of this paragraph" be deleted.  
In sub-clause (2)(c) the word 'ten' be substituted with 'fifteen'.**

38. **Article 193 to be read as under:**

**“A Judge of a High Court shall be appointed by the President on the advice of the Prime Minister.”**

**a) The Chief Minister of a Province shall select a Judge to the High Court from amongst three (3) names presented to him/her for each vacancy by the Chief Justice of Pakistan after consultation with the Chief Justice of the High Court concerned, two senior most Judges of the concerned High Court. The Chief Minister shall communicate the approved list to the Governor of the Province, who shall forward it to the Prime Minister and the President. Senior most Judge of each High Court shall be appointed as Chief Justice of that High Court.**

39. **Article 195. Age of retirement of High Court Judges needs to be raised from 62 to 65 years. It is suggested that retirement age of judge of the Supreme and high Courts should be the same – 65 years.**
40. **Sub-clause (a) of Article 196 needs to be deleted, and sub-clause (b) amended to provide for the appointment of the senior-most Judge of the High Court to act as Chief Justice in the absence of the regular incumbent.**
41. **Article 197 needs to be amended to entitle an Additional Judge of a High Court to confirmation after one year unless the Chief Justice of Pakistan and the Chief Justice of the High Court both object to that confirmation.**
42. **In Article 200(1), the explanation following that proviso, and sub-clauses (2) and (4) needs to be deleted.** This would take away the authority of the President or a Chief Justice to transfer a Judge of the High Court without his/her consent.

#### **43. Federal Shariat Court (FSC):**

**Chapter 3A needs to be removed from the Constitution in its entirety.** In the Judges’ Case the Supreme Court has itself frowned upon the Federal Shariat Court (FSC), calling it a “dumping ground”. The FSC was a creation of Ziaul Haq to keep the High Courts in check and to divide the Judiciary. Contradictory judgments by the FSC and other superior courts also create confusion. In addition, the establishment of the FSC negates the principle of independence of Judiciary. Ulema, rather than qualified legal professionals are amongst the Judges of the FSC. The tenure of these Judges is also not permanent.

44. **Article 204. Sub-clauses (92)(b), (c), and (d) may be deleted and replaced with a new clause (b): “makes any comment or statement which is likely to affect a fair determination of a matter pending before a court. Provided that truth shall be a valid defence in any such proceedings”.** This amendment rationalizes the law on contempt of court.
45. **Article 207(2) needs to be amended to bar any person who has held office as a Judge of the Supreme Court or a High Court from holding any office of profit in the service of Pakistan except to work on honorarium basis for the Law Commission.** Offers of of judicial or quasi-judicial offices can also be a temptation for a retiring Judge.

**A serving Judge should not hold any office in the Election Commission, Law Commission or the Council of Islamic Ideology (CII).** Judges are to distance themselves from law making, other than through interpretation. They are required to sit on disputes that may challenge the very law recommended by institutions in which the presiding Judge may have been involved.

#### **46. Supreme Judicial Council:**

**Article 209(2) may be amended to provide that the Supreme Judicial Council shall consist or (a) The Chief Justice of Pakistan; (b) The senior-most Judge, after the Chief Justice, of**

the Supreme Court; (c) The senior-most Chief Justice of the High Courts; (d) the Chairman of the Senate; and (e) the Leader of the Opposition in the Senate. In case any of the Judges so designated are themselves accused of misconduct the senior most Judge next to the accused Judge shall be nominated to the Council.

In sub-clause (5)(b); the words “as a Judge” may be added after the word “misconduct”.

#### 47. Election Commission:

**HRCP recommends:**

- (i) An independent autonomous, and permanent Election Commission of Pakistan be constituted at the Center and four such Election Commissions be set up in the Provinces
- (ii) The Federal Election Commission shall be charged with the duty of (a) preparing electoral rolls to the elections of the National Assembly and the Provincial Assemblies and revising such rolls annually in a joint meeting with the concerned Provincial Election Commission (b) organizing and conducting the election of the Senate or to fill casual vacancies in a House, and (c) making recommendations of the candidates to be appointed to the Provincial Election Commissions.
- (iii) The President shall appoint a Federal Chief Election Commissioner on the advice of the Prime Minister who shall select a candidate from amongst a list of candidates proposed by a joint Parliamentary Committee set up for that purpose.
- (iv) The qualification of a member of the Federal Election Commission shall be (a) that he has not been a member of any political party for the last five years and is not known as an activist of any one political party and (b) that he has spent 15 years of active service as a technocrat or civil servant or as a Judge.
- (v) The Federal Election Commission shall comprise of a Chief Election Commissioner and four other members who shall be appointed by the President on the advice of Prime Minister in consultation with the Leader of the Opposition and the Joint Parliamentary Committee set up for the purpose.
- (vi) Each Provincial Election Commissioner shall comprise of three members including the Provincial Chief Election Commissioner. The qualification of a member of the Provincial Election Commission shall be (a) that he has not been a member of any one political party in last five years and is not known as an activist of one political party (ii) that he has spent 10 years of active service as a technocrat or civil servant or a Judge.
- (vii) The Provincial Chief Election Commissioner shall be appointed by the Governor on the advice of the Chief Minister of the Province who shall consult the Leader of the Opposition of the Provincial Assembly and the Federal Chief Election Commissioner. All other members shall also be appointed by the Governor of the province on the advice of the Chief Minister after consultation with the Provincial Chief Election Commissioners and the Leader of the Opposition of that province.
- (viii) The retiring age of Federal Chief Election Commissioners, Provincial Chief Election Commissioners and members of the Federal Election Commission as well as the Provincial Election Commissions shall be 65.

#### 48. Constitutional Court:

HRCP supports the concept of establishing a federal Constitutional Court proposed by the Charter of Democracy and recommends the following:

- (i) The Constitutional Court shall comprise of a President of the Court and eight (8) Judges.
- (ii) The Judges of the Constitutional Court shall serve for a non-renewable term of 12 years on a rotation basis with four Judges retiring after six years in the first instance.
- (iii) Every matter heard by the Constitutional Court shall be presided by the full court.

**(iv) The Constitutional Court shall have jurisdiction upon**

**All matters enumerated in Article 186 which gives advisory jurisdiction to the Supreme Court which shall be transferred to the Constitutional Court.**

**Original jurisdiction given in Article 184 regarding disputes between two or any more governments. Therefore, Article 184 sub-clause (1) and (2) may be transferred from the Supreme Court to the Constitutional Court.**

**Shall act as an appellate court on the interpretation of the Constitution. All Constitutional matters under this jurisdiction shall be heard by the Constitutional Court after the Supreme Court certifies that the matter involves important questions of Constitutional interpretation or if the either Constitutional Court itself or on the application of a party accepts jurisdiction on the same premise.**

**The Constitutional Court shall pronounce declaratory judgments only.**

**(e) The appointment of the President of the Constitutional Court and as well as other Judges of the Court shall be made by the President of Pakistan on the advice of the Prime Minister. The Prime Minister shall present the list of candidates provided by the four Chief Ministers of the Provinces in consultation with the Leaders of the Opposition in the Provinces to the Chairman of the Senate and the Leader of the Opposition in the Senate who shall short-list the names in the list to three names per vacancy which shall be presented to the Prime Minister. The Prime Minister shall then make the final selection from the list he receives from the Chairman and Leader of the Opposition in the Senate.**

## Section Four **Provincial Autonomy**

49. The issue of provincial autonomy is a delicate matter. Therefore, **HRCP suggests that the process of transfer of power from the Centre to the Provinces start on a strong footing but it should be staggered so that there are no serious cracks in governance. As a first step HRCP suggests the following:**
50. **Article 59(a) the Senate should be directly elected. (b) The total membership of the Senate should not be less than one half of the total strength of the National Assembly.**
51. **Money Bills should be discussed in both houses of the Parliament and passed in a joint session of the Parliament.**
52. **In the legislative lists in the Fourth-Schedule:**

- (i) **The concurrent List be abolished.**
- (ii) **The Federal Legislative List part-II be merged with part-I to form a single Federal Legislative List.**
- (iii) **The following amendments be made:**

### **53. Federal List: Part-I:**

- (i) **Item 1: the worlds “including civil armed forces” needs to be deleted.**
- (ii) **There should be no distinction between Cantonments and non-cantonment areas in respect of local self-government.**
- (iii) **Migration and settlement (item 5) should be with consent of the Provinces concerned.**
- (iv) **Provinces should have the power to install and operate telephones, wireless, broadcasting, telecasting and other similar forms of communication.**
- (v) **While delimiting ports, the province concerned should be consulted.**
- (vi) **Item 28 needs to be reworded as “The State Bank of Pakistan and the banks established under federal authority”.**
- (vii) **Item 31. Federation should establish only corporations specified in the federal list.**
- (viii) **Item 33 (state lotteries) needs to be deleted.**
- (ix) **Item 45 and 46 needs to be deleted.**
- (x) **Item 47. Tax on agricultural incomes need to be included.**
- (xi) **Item 49. Sales tax on goods consumed needs to be excluded.**

### **54. Federal List: Part-II**

- xii) **Item 2. A new Article needs to be added to the Constitution to the effect that “there shall be a permanent Standing Commission consisting of equal number of representatives from the Centre and the Chief Ministers of Provinces or their nominees for oil, gas, water and power; which shall deal with all aspects of production, pricing and distribution of oil, gas, water and power between the Provinces”.**
- xiii) **Item 3. The text may be replaced with “Development of industries where development under federal control is decided upon by the Council of Common Interest”.**
- xiv) **Item 43 of the existing concurrent list relating to “legal, medical and other profession” needs to be transferred to Federal list.**
- xv) **A new item “Coordination of education policies” may be added to the Federal list.**

55. **Article 160. The provision relating to ‘Divisible Pool’ be amended to include: “Duties of Customs, Income Tax (including tax on corporations) excise duties, sales**

- tax (other than on consumption), profits from public enterprises and public utilities (other than those specifically dealt with under Article 161, all domestic and foreign loans and grants, the Divisible Pool shall include the Federal Government as a recipient”.**
- 56. Article 161 (1). To `duty of excise’ may be added `development surcharge’ and to `natural gas’ may be added `oil’**
- 57. Article 24, clauses 2, 3, and 4, provisions restricting the powers of courts need to be deleted.**
- 59. The Constitution should stipulate that “at least 75 per cent total employment and 50 per cent employment in managerial cadres should go to permanent residents in the province in which federal, or federally funded, corporations, institutions or organisations are located.**
- 60. The details of the defence expenditure should be placed before the Parliament.**

**Section Five**  
**Governance and PATA, FATA**

**61.** HRCP believes that democracy cannot take root unless political parties practice democratic rules within their own party structures. There is no doubt that South Asia has a legacy of dynastical politics but it does not compare with the powers that the party bosses exercise in Pakistan.

The code of conduct for political parties cannot be part of the Constitution but these are critical issues for establishing democracy and politicians must debate the system of political parties in the Parliament and make appropriate legislation or draw up a code of conduct in this regard.

**HRCP recommends the following:**

**62. PATA**

**All designated areas as PATA need to be brought in mainstream and the jurisdiction of courts as well as laws be extended to them.**

**63. FATA**

(i). The contradiction of representation of FATA members in the Parliament is apparent as FATA Parliamentarians can legislate on laws enforced in the rest of the country but cannot do so for the very region they belong to. **It is crucial that FATA be brought into the mainstream and the Frontier Crimes Regulations (FCR) be amended** so that those provisions of the legislation like collective punishment could be brought in conformity with fundamental rights.

(ii) **The jurisdiction of the superior courts should be extended to FATA immediately so that people can enjoy equal rights as citizens of this country.**

(iii) **The Parliament may enact a law to extend the Political Parties Act to FATA giving people access to mainstream politics.**

(iv) **In consultation with the people of FATA the Parliament should either amalgamate FATA into the NWFP or give it an independent status as a Province and its representation to the Federal Parliament be made proportionate to its population.**

**In the interim, the Political Agent's system should be abolished and a system of governance within FATA needs to be set up which works in coordination with the NWFP government.**

**64. Northern Areas**

The present system of governance in the Northern Areas through the Northern Areas Legislative Council has failed to satisfy the aspirations of the local population. **HRCP impresses upon the Parliament that there is an urgent need to hold extensive consultations with the people of Northern Areas so that a representative system of governance could be established there which has a voice in the Parliament in Islamabad keeping in mind the implications of international law.**

**65. Article 2-A should be deleted.**

**66. Article 41(2). The condition of a candidate being a Muslim may be dropped.**

**67. Article 62 and 63 should be amended so that all subjective criteria of qualification and disqualification of a member of a Parliament may be repealed.** For example, Article 62 (d), (e) and (f), are oppressive as well as irrelevant. A member of the parliament according to these Articles has to be sagacious, righteous, non-profligate, honest and ameen. Similarly, Article 63 (g) prohibits a member of a Parliament propagating any opinion or acting in any manner prejudicial to the ideology of Pakistan or the sovereignty, integrity or security of Pakistan or morality or the maintenance of the public order or the integrity or independence of the judiciary of Pakistan, or which defames or brings into ridicule the judiciary or the armed forces of Pakistan. The above-mentioned criteria smacks of hypocrisy and makes a mockery of the Constitution.

**Council of Islamic Ideology (CII)**

**68.** Chapter IX of the Constitution deals with the Council of Islamic Ideology. **It should be renamed as Council of Islamic Guidance and restrict its task for making policy recommendations on the practice of Islam for enlightenment.**

**69. Article 227(1). The Explanation should be delete**

**70. Article 46(c) should be amended the take away the privilege of the President to submit to the Cabinet any matter for reconsideration.**

- 71. Article 48. The proviso empowering the President to require the Cabinet to reconsider the advice tendered to him by the Cabinet, the Prime Minister or the appropriate Minister should be deleted.**
- 72. Article 48(2) should be amended to provide that the President should act only on the advice of the Prime Minister.**
- 73. Appointments of service chiefs, the attorney-general, the Auditor-General, the Chairman of the Public Service Commission and the senior members of the Judiciary should be made on the advice of the Prime Minister in the manner described in Section 3 of this document. In the appointment of a provincial Governor, too, the President's discretion should be omitted and the Chief Minister of the province concerned should be consulted by the Prime Minister before advising the President.**
- 74. There should be some curb in the Constitution on the Prime Minister's freedom over the size of his cabinet. The cabinet should have a senior minister, duly designated, to act on the Prime Minister's behalf in his absence.**
- 75. Except for an emergency, like war, the power to issue Ordinances should be ended. In case a law is required in an unusual hurry, the Senate may be empowered to debate and pass a bill, subject to the same limitations as applicable to Ordinances at present.**
- 76. The legislature should limit the executive's discretion to frame rules under laws passed by the legislature and it should lay down guidelines in this regard.**
- 77. Article 71: No increase in taxation should be permissible except by an act of Parliament.**
- 78. The joint electorate system should be fully restored, though special seats for the minorities need to be retained.**
- 79. The Senate should be directly elected.**
- 80. Article 245, Clause 3 should be deleted.** This will make members of the Armed Forces accountable for human rights violations
- 81. Article 54(2) may be amended to rationalize the hours of the sittings of the Parliament and of the time spent by members in Standing Committees. Their working hours should be substantially increased**
- 82. In Article 109, the minimum number of days that each Provincial Assembly sits should also be substantially increased.**
- 83. In Article 59, the minimum number of working days for the Senate may also be substantially increased.**

**Appendix**  
**Excerpts from the recommendations on election method on reserved seats from the**  
**Commission of Inquiry For Women 1997**

The first possible system is one in which one-third of the existing constituencies for the national and provincial elections be declared double-candidate constituencies. Thus, these constituencies would have one representative from the reserved seat. Both men and women would have a double vote. These special constituencies would then be rotated after each election, so that the entire country gets covered after three terms, and from the fourth the rotation starts anew. One advantage of this system is that women have a normal-sized constituency to deal with. Another is that there is more room left for mainstreaming for women through the general seats. Since two-thirds of the constituencies would not have any reservation for women's seats, political parties may feel more obliged give tickets to women for general seats in these constituencies, particularly if they have already performed effectively in their constituency on a reserved seat. However, till their turn comes around, this system may leave the other two-third constituencies with a feeling of being un-represented in terms of the special seats. It also gives one-third of the constituencies greater weightage for that term with dual representation, which could be perceived as disturbing the balance of power in the assemblies.

Another method is to divide the whole country into new enlarged constituencies for women's reserved seats, each constituency comprising three normal sized constituencies. In this system, the entire electorate would have a double vote. The major advantage of the system is that it is the most straightforward and uncomplicated of the systems. Its principal drawback is the unwieldy size of the constituency, making the female candidate more dependent on her party counterpart on the general seat. However, in a larger constituency, the candidate is not necessarily expected to maintain constant contact with constituents.

A third mode is to have even larger constituencies for women's reserved seats, comprising six or nine normal constituencies each, but make them into multi-member ones. Under this system, voters from each larger constituency would elect two or three women to the reserved seats allocated to them, while also voting for their candidate to the general seat from their respective women coming in one merit and creating more opportunities for smaller parties and independents. Often a voter is caught on the horns of a dilemma in having to choose between merit and the dictate of party loyalty. In multi-member voting he will need sacrifice neither. The system's disadvantages are those of a larger constituency, a more complex system of division into larger constituencies and a more complicated system of voting, which may not be easy for a largely illiterate population.

One major advantage of all the three systems discussed above is that they would entail less financial expenditure by the women. Women in political parties have often expressed the view that very few women own or control sufficient resources to contest elections and that their respective political parties should contribute towards their campaigns. They also feel that it is difficult for women to single-handedly run an election campaign, which requires money, extensive traveling and a lot of public interaction. In these systems, the women will not be contesting against male candidates who usually have the advantage of more financial resources, ability to travel freely and experience in dealing with the public; and their financial outlay will also be significantly less since they can, when general elections are being held, share resources with their party's general candidates from same constituencies.