



## **View Point**

### **Constitutional Reforms: Will it Herald A New Era of Parliamentary Democracy in Pakistan?**

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Even after sixty years of independence, Pakistan continues to struggle to establish a stable and strong multi-party democracy based on equality and rule of law. Democratic institutions have failed primarily due to repeated military interventions and no civilian government has been allowed to complete its tenure.. In fact elected governments were subjected to policy embargoes in key domains of state policy by the military. However, Nawaz Sharif's second term (1996 to 1999) in office was the only exception. Frequent military takeovers and long periods of political turmoil have affected every aspect of Pakistani society making it a perennially dysfunctional country. The violence in recent years and the radicalisation of a section of society has generated a perception that Pakistan, if not of a failed state, is fast turning into a failing one.

In the backdrop of 60 years of poor-governance and military domination, Pakistan managed to achieve a major breakthrough by re-writing its constitution that had been tampered by General Zia-ul Haq and General Pervez Musharraf during their respective regimes. Mainstream Pakistani media highlighted the constitutional reform as a major event unparallel in the political history of Pakistan. The 18th Amendment Bill 2010 was passed unanimously by Pakistan's Parliament (National Assembly and Senate) to restore the 1973 Constitution to its original shape. There was political consensus, unanimity among all the stake-holders of Pakistan politics and the constitutional reforms were hailed as historic. Even politicians with diverse interest had gathered at the President House to watch President Asif Ali Zardari sign it into law.

The media termed the passage of the 18th Amendment as an achievement for Pakistan which has been struggling to establish a democratic culture. The political maturity and vision demonstrated by political leaders, cutting across party lines, was lauded by one and all. This was also possible due to the support of provincial and regional political outfits.

In essence, the sweeping constitutional reforms have curtailed the President's power to dissolve the National Assembly and dismiss an elected-Prime Minister and his council of ministers. The reform have also renamed NWFP as "Khyber-Pakhtunkhwa", a long standing demand of the people of NWFP.

### **Major Changes**

The amendment, which has already become law after getting the assent of President addresses four broad areas that have affected the functioning of parliamentary democracy in Pakistan. First there is a consensus among members of both the houses of Parliament to strengthen legislative wing of governance by the transfer of key presidential powers to parliament. In the past parliamentary democracy had suffered at the hands of autocratic and authoritarian rulers. The 1973 Constitution was distorted and manipulated by the military rulers to facilitate and prolong their rule and to suppress any form of popular and political movements against their regime. The supremacy of the Pakistani parliament was surrendered to the presidency and the elected governments had difficult time to manage authoritarian military rulers. President had been empowered under Article 58 (2 b) to dissolve the National Assembly and dismiss elected governments under the 8<sup>th</sup> Amendment first inserted during General Zia-ul Haq's regime. Although this was deleted from the constitution but reappeared in the 17<sup>th</sup> Amendment during General Musharraf's rule.

In the past any disagreement on policy and governance matters between President and the Prime Minister had resulted in dissolution of the National Assembly and dismissal of the elected Prime Ministers several times. In fact civilian Presidents like Ghulam Ishaq Khan and Farooq Ahmed Leghari had not hesitated to exercise this provision of the constitution to dismiss elected governments between 1990 and 1996. Further, the powers to appoint Service Chiefs have been

delegated to the Prime Minister which was the prerogative of the President earlier. However, the President will remain the Supreme Commander of the armed forces.

Second, the 18<sup>th</sup> Amendment Bill has approved the long-standing demand for greater provincial autonomy. It offers greater autonomy to provinces to generate revenue through proper utilisation of natural resources. This will allow provinces to exploit natural resources, establish power generation units, and earn royalty on natural resources which would help mitigate the long-held grievances of provinces such as Balochistan. The 18<sup>th</sup> Amendment has also abolished the Concurrent List from the constitution.

Third, the constitution amendment has brought in far-reaching changes in the procedure for the appointment of Judges to superior courts. Under the provision, Judges would now be nominated by a Judicial Commission headed by the Chief Justice of Pakistan. The final approval for appointments would be given by a parliamentary committee of the Members of the Senate and the National Assembly. This would help maintain the independence of the judiciary and insulate it from political and military interference in its functioning.

Fourth, among other changes, the amendment has deleted former military dictator Zia-ul Haq's name from the existing constitution thereby depriving him of the honour of being a former president. The Amendment has also abolished the clause that barred the election of a Prime Minister for more than two terms.

### **Future Challenges**

Although the Committee on Constitutional Reforms (CCR) chaired by Senator Raza Rabbani deliberated, debated and drafted the amendments, but it overlooked many important issues including the status of FATA, which is not fully integrated into the Pakistan political system and is governed by the Frontier Crimes Regulations (FCR), codified by the British in 1901. The FCR prohibits political parties to operate in FATA and places the region under the direct authority of the President. There has been a demand for changing the colonial-era status of FATA, which is believed to be a source fomenting alienation among the people. Although constitution reform has deleted the name of General Zia-ul Haq from the constitution, it has not changed the Islamic

clauses inserted in the constitution by him to fulfill the hidden agenda of deriving legitimacy from the religious elements in the drive to Islamize the Pakistani society and polity, particularly in the aftermath of the execution of Zulfikar Ali Bhutto.

These sweeping constitutional reforms will help to consolidate the democratic culture and herald a new era in parliamentary democracy in Pakistan. However, this will be possible only if all parties exhibit determination and political maturity shown by them similar to that in drafting and supporting the changes in the constitution.

Despite these reforms, military leadership still remains a potent threat to democracy in Pakistan. The dominance of military in every facets of governance needs to be monitored. Besides, a democratic culture should be developed among all the political outfits to strengthen democracy at the grass root level.

It is to be seen whether the repeal of the Concurrent List will enhance provincial autonomy and help in national integration. Although the far-reaching constitutional reform will augur well for the parliamentary democracy, the leadership needs to remain united to defeat the designs of the twin-forces of militancy and fundamentalism that are inimical to society. There is a strong belief that South Asia in general will gain from a democratic Pakistan.

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