

***Comment***

## **The 18th Constitutional Amendment: A Paradigm Shift**

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After the introduction of the 18<sup>th</sup> Amendment in the constitution, it is being asked to what extent the Amendment has addressed the issue of diversity in the country and has provided representation to these diversities in state institutions. I think the foremost thing, to mention in this respect, is the colonial mindset of our establishment. In the past, they extenuated further the same mindset hence we found ourselves in a state of denial regarding our cultural diversities. We tried either to minimize and suppress our cultural diversities or push them under the carpet fearing if they came to the fore and flourished, they, perhaps, would pose threat to the federation. But, I think the history of the world, particularly that of the third world countries, teaches us a lesson that more you promote and bring the cultural diversities to the fore and allow them to flourish within the structure of the state they induce greater synthesis in the national culture. Pakistani culture becomes rich with the amalgamation of regional cultural diversities. If we cast a glance on our own history, Shaheed Zulfikar Ali Bhutto's government provided an opportunity to the regional cultures to develop. Sindhi, Pashto, Balochi and Punjabi folk tunes and dances, earlier limited to their respective areas, came to the national scene and became the part and parcel of the national cultural milieu. This is the only way a Pakistani culture would emerge with the passage of time. We should not be fearful of diversity rather we should use it to strengthen cohesion and solidarity of the federation.

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So far as the 18<sup>th</sup> constitutional amendment is concerned, it is an endeavor to strengthen, empower, and expand the jurisdiction of the constitutional institutions of the country. The Council of Common Interests (CCI) was already present as a constitutional institution but with a limited role in conflict resolution among provinces and between the federation. Now, any of the provinces can take up the issues particularly issues regarding water distribution which can also be brought to the institution. We have expanded its role. Constitution of the CCI in 1973 was a great leap forward and foresight of those who framed the 1973 constitution but, you would be surprised to hear that since 1973 to perhaps up till 2008, only 11 meetings of CCI were held. Now we have made it mandatory to have a meeting of CCI within 90 days. Besides that, the dispute resolution and the joint management of resources among provinces and the federation have also been made a part of it. Earlier, the natural resource like oil, gas and other minerals were the properties of the federation solely but now, in the light of the article 172 of the constitution, 50 per cent of these resources would be owned by the provinces and 50 per cent would be owned by the federation. Now, the joint management of these and other such resources is the responsibility of the CCI. The CCI now onwards is also the policy making institution for those ministries and departments which fall in the Federal Legislative List (Part 2) i.e. shared provincial and federal responsibilities.

Here, I would like to address the fears being expressed by some quarters about possibility of conflict or tensions emerging between the CCI and the Federal Cabinet. I think it is not possible. If we strictly follow the constitution, no such thing would happen as the constitution clearly defines the jurisdiction and role of both the CCI and the Federal Cabinet. The Principles of Policy clearly mentions that quota for backward areas, already specified in the constitution should be implemented strictly to bring the remote areas at par with the developed ones. Eighteenth Amendment tries to meet the multitudinous diversity of the country. However, the constitution is a growing organ and future parliaments would advance it beyond the 18<sup>th</sup> Amendment. Moreover, it has happened for the first time in the history of the country that minorities have been given representation in the Senate of Pakistan. One seat from each province has been reserved for minorities in the Senate and in March 2012 Senate Elections the minorities' member would be elected.

As has been mentioned the fundamental problem is the particular mindset of Pakistani establishment. Unfortunately, that mindset has been prevailing since 1947 and its first manifestation was the dissolution of the first legislative assembly. The establishment wants to restrict all the

powers of policy making to a particular group or segment. It is actually an elitist concept of rule of law which is rooted in an old maxim 'The burden of Whiteman to Rule'. Besides that, there has been an illusion that those who speak of their political and provincial rights actually want to weaken the federation. So much so that they were labeled as the foreign agents and were blamed for conspiring to disintegrate the country. In view of the emerging internal and external situation, if we fail to recognize constitutionally the rights of the people of Pakistan and do not develop a constitutional system wherein provinces feel that they are part of the federation and citizens feel that they have some stakes in Pakistan, it would be very difficult to keep the federation as a cohesive body. In fact, provincial autonomy and the Council of Common Interests were present in the 1973 constitution but it was held in abeyance deliberately and was not implemented. Some articles of the constitution were circumvented and interpreted in a way to strengthen the centrist forces and to fortify Islamabad. This led to intensify the tension among provinces and between the federation and the provinces. Such a situation emerged in Musharraf's dictatorial era and was prevailing when the incumbent parliament came into existence when all the powers had been centralized. Musharraf's devolution is much talked about but his devaluation plan, if analyzed and understood in depth both in historical perspective and with reference to its effects, actually gave birth to the centralism and strengthened the centralization. Musharraf's devolution plan ignored provinces and strengthened the districts by funding them directly. The districts started looking towards Islamabad, the center. The middle cadre of the provincial governments and provinces was eliminated and made redundant to give impetus to centralization that led to increased inter-provincial friction and resentment between provinces and the federation.

### **Inter-provincial disharmony**

There may be flaws in the 18<sup>th</sup> Amendment but, if it is not implemented fully at this point of time, it would send a very dangerous message. I see the 18<sup>th</sup> Amendment from different perspective and I think it has political aspect also. Baloch nationalist parties were not only on board in the process of 18<sup>th</sup> and 19<sup>th</sup> amendments and their implementation but were also the signatories of the amendments and they voted for it. I want to pay tribute to the Baloch nationalist parties and leaders for they not only accepted the political fallout but also put their lives at stake for being part and signatories of the amendments. However, they delivered a very significant message that rights can be achieved by adopting the path of political parleys, within the orbit of the constitution, confines of

federation and advancing the political struggle on these lines. In juxtaposition, it is a strong message for those who have resorted to politics of guns for their political rights. If the 18<sup>th</sup> Amendment is not implemented now we would provide an opportunity and justification to those involved in the armed struggle to say that they adopted the path of political dialogue and constitution and became the part of constitutional process and its implementation, they voted for it but when time came to reap the fruits by implementing the entire process in practical sense, Islamabad once again washed its hand of. In such a situation they would say that they have no other choice but to pick the weapons for their rights. God forbid! If any such situation develops it would be very dangerous for Islamabad and for the federation. Through your program, I would like to invite and suggest all those who have adopted the path of armed struggle that viewing this complete process of constitutional amendment and its implementation they should follow it. I invite them to come at table for talks. Nevertheless, the 18<sup>th</sup> Amendment is not the final testament but only a beginning of the provincial autonomy.

### **Certain misconceptions**

The questions are being raised that if the curriculum is handed down to the provinces it would divide one nation into four. Moreover the capacity of the provinces to shoulder the responsibility of new ministries and departments in terms of finance, administration and manpower, is also being questioned. I see this situation as just a part of negative propaganda unleashed by the centrist forces. It is my personal perception developed during past two years that at the early stage many people particularly the centrist forces were not expecting that the 18<sup>th</sup> Amendment would even actually take place. Disappointing views were being expressed that so many parties would not reach a consensus on the solutions of tricky issues and the committee would stuck up on issues like quantum of the autonomy to provinces and renaming of Khyber-Pakhtunkhwa etc. But the committee and the parliament proved that the political leaders and politicians understood the current political situation and had the cognition of the critical time. They understood very well that if the 18<sup>th</sup> Amendment failed in terms of legislation then we could undergo a movement similar to what we are witnessing in the Arab countries. All the germs for such a movement were present here in Pakistan. I think the 18<sup>th</sup> Amendment has built a huge dam against such a movement in Pakistan.

After the 18<sup>th</sup> Amendment was passed by the parliament the centrist forces believed it would not be implemented that is why opposition of the 18<sup>th</sup> Amendment started in the middle of the second

phase. In my view, it was because of two reasons; first, some centrist forces realized that the amendment is going to be implemented anyhow hence they started creating hurdles like hype on the issue of education and devolution of Higher Education Commission and by raising the issue of capacity of the provinces to handle it.

So far as curriculum and syllabus are concerned, it has been explicitly mentioned in the concurrent list. We invited public suggestions through newspapers but no one objected to it. Matter was discussed in the committee's meetings and conscious decision was made that it should be handed down to the provinces. Later both the houses of the parliament discussed it but none made it the point of discussion. Later on the issue was raised that it would disperse the federation.

I fail to understand why we think that only Islamabad has the certificate of being patriot; aren't provinces patriots or they are less patriotic than the centralist? I am not ready to buy this argument. If any province wants to teach its regional history besides the national history by making it a part of curricula what is wrong with it. If the students of Punjab are taught about the role of Ranjit Singh or Bhagat Singh, what is wrong with it? Very frankly, I want to say that we have distorted our history; we have tried to adapt our history into a particular paradigm to make the country a security state. Therefore, I do not think that shifting the curriculum to the provinces would pose any threats to the federation. Then, mechanisms to put the things in right place are already there. A committee consisting of Chairmen of the boards meets every three months, if there is any gross diversion or severe violation with respect to disturbing the national curricula they can take cognizance. Interprovincial Coordination Committee is also in place and is in touch with the provincial ministers to develop a mechanism to meet after every three or four months to discuss different issues. Above all the CCI is in place, if any province has any complaint against the other or federation has reservations regarding curricula the matter can be brought there for resolution. Checks and balances are well in place.

So for as the issue of capacity of provinces is concerned, federating units have the required capacity as most of the ministries which have been transferred to provinces already had line departments in the provinces. Secondly, these ministries and departments were being run by the federation for the last 63 years. What kind of international benchmarks the federation has achieved that we argue that the federation has capacity but provinces lack that capacity. Granted that some lack of expertise might be there but when they would shoulder the responsibility they definitely would deliver. I do not think there are any tangible arguments that devolution should be stopped. Most of the centrist forces

confuse the devolution, provincial autonomy and independence. These are different concepts, but remember in co-operative federations all these matters are provincial subjects.

### **Trivializing the constitution**

In response to the question about the name of our country being ‘Islamic Republic of Pakistan’; and we teaching only ‘Islam’ and leaving the ‘Republic’ and fundamental rights, I think it is very fundamental thing and this very question was raised in the meetings of the Committee. There are attempts to trivialize the importance of the constitution. The same mindset is behind it as General Zia had said that the constitution was nothing but a few pages and he could tear them off whenever he liked. Continuity of that mindset is still there and is trivializing the constitution by isolating it from the people. In fact, it’s the constitution that knits all the federating units of Sindh, Punjab, Khyber Pakhtunkhwa, Balochistan, Gilgit-Baltistan and Tribal Areas, all the beads of the same chaplet, the federation of Pakistan. Governing the country, running the affairs of the government, proceedings of the parliament, provincial assemblies, and how to legislate, functions of judiciary all is defined in the constitution. The constitution also defines the rights of the citizens and provides protection to individuals against any excesses committed by the state. The constitution defines economic and linguistic rights of every citizen and provides protection against discrimination of every sort either in the name of gender, religion, region or ethnicity. Constitution protects equal religious rights for minorities and also it is the constitution that protects all these constitutional provisions. If the Constitution is put aside the country would be like an emperor without clothes. If anyone wants to trivialize the constitution it means he / she does not want to respect the law and abide it.

### **Setting the balance**

What should be done to highlight its importance, I think media has to play a very significant role. Media have to inform the people and educate them about the significance of the constitution and benefits of respecting and abiding the constitution. Secondly, the ruling class has to implement and enforce the rule of law on itself. If the ruling class would not impose the rule of law on it and would expect that its enforcement should take place down the line, it is not possible. If constitutional provisions are not implementable on me then they are not implementable on anyone else and no one would respect them. Thirdly, we will have to say goodbye to the culture of flouting the law. We think if we flout the law, we have some status. We need to understand that no matter how big or powerful

positions we are occupying we are subservient to the law of the land. Earlier, there was a subject of civics in the syllabus which has now perhaps been removed from the curricula. It taught us the duties, rights and responsibilities of a citizen. I think the subject should be revived in the syllabus and expanded even further to teach fundamental principles of the constitution and how constitution interacts in individual's life in schools and universities.

### **Future of Federation of Pakistan**

I am very much optimistic about this. I think the people of Pakistan have shown resilience on every occasion. I do not want to dig deep in the history but limit myself to the processes of 18<sup>th</sup> and 19<sup>th</sup> amendments and their implementation. In prevailing situation, emerging from the political polarization, confrontation, and tension among the political parties, terrorism and extremism, and because of external pressures interacting with Pakistan in the form of drone attacks and threats to the sovereignty of Pakistan, we have been successful in incorporating such a huge structural change in federal and provincial structures and have negated the foreign propaganda that Pakistan, God forbid, is a failed state. I am hopeful that if the 18<sup>th</sup> Amendment is implemented in real sense and with the help of people of Pakistan terrorism and extremism are checked and brought under control, Pakistan will emerge as the best federation. We have all the elements and ingredients. The only thing we need is that the nation has to make these changes work for their betterment.