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A MILESTONE IN PAKISTAN'S PARLIAMENTARY DEVELOPMENT

The unanimous passage of the 18th Constitutional Amendment Bill by Parliament has moved Pakistan away from a presidential form of government susceptible to military coups, says the Speaker of the National Assembly. It is now a true parliamentary democracy as envisioned by its founders in 1947 and by its two former Prime Ministers in the historic 2006 Charter of Democracy.

Dr Fehmida Mirza, MNA, in Islamabad.

Dr Mirza, a medical doctor, has been a Pakistan Peoples Party Member of the National Assembly of Pakistan since 1997. She was elected as Pakistan's first woman Speaker in March 2008, becoming the first woman Speaker in the Muslim world. She had been a Member of several National Assembly standing committees.



Dr Fehmida Mirza, MNA.

A parliamentary democratic vision

The constitution of a country is reflection of a nation's hopes and aspirations as it serves as a fundamental social contract between the people and the state. The founding fathers of Pakistan under the leadership of the Quaid-e-Azam [Great Leader] Muhammad Ali Jinnah had envisaged the country newly established on 14 August 1947 to be a parliamentary federal democracy so as to ensure the emancipation of its people in a pluralistic society. Subsequent



military interventions and dictatorial regimes (1958, 1962 and 1969), bent upon shifting to a centralized presidential model that permitted their illegitimate "unity of command", did not allow the spirit of pluralism to be translated in a parliamentary constitution.

The 1973 constitution was a breakthrough in Pakistan's checkered parliamentary history when a consensus of all political parties in Parliament under the leadership of the then Prime Minister Zulfikar Ali Bhutto revived the nation's dream of parliamentary democracy.

Unfortunately, the country had to undergo the ordeal of two more military regimes under Gen. Zia Ul Haq (1974-1988) and Gen. Pervez Musharraf (1999-2008). They again introduced numerous structural aberrations in the 1973 constitution and changed its parliamentary nature to a one-man system in which the President became the chief executive and enjoyed unparalleled powers of making and amending laws through ordinances as well as

making key appointments such as the Chief Justice and the services chiefs. Both Gen. Zia and Gen. Musharraf, like most military rulers, had tunnel vision: to enhance authoritative control over all state organs – Parliament, the executive and the judiciary – in one office: the President. Unfortunately, they changed our constitution from federal parliamentary to quasi-presidential and alarmingly the judiciary of the time also appeased them. This not only weakened our democratic institutions but also deprived the provinces of their legitimate constitutional rights.

Charter of democracy

Statesmen author a country's constitution in the spirit of history, culture, political experience and character of the populace. In this context, the political leadership of Pakistan's biggest political parties the Pakistan Peoples Party (PPP) and the Pakistan Muslim League (Nawaz) (PML-N), Mohtarma Shaheed Benazir Bhutto and Mian Muhammad Nawaz Sharif, who were in exile during Gen.



The Parliamentary Committee on Constitutional Reforms with Madam Speaker Mirza (front row) and committee Chairperson Sen. Mian Raza Rabbani (front row in white).

Musharraf's regime, met in London in 2006 to draw a road map to revive the parliamentary constitution. They reiterated that the constitution is a living and organic document and it must be amended according to the political and economic context of the time.

The meeting identified 10 key constitutional amendments, among other steps, to restore parliamentary democracy and both leaders signed the historic Charter of Democracy on 14 May 2006. The Charter of Democracy called for the following amendments:

i. The 1973 constitution as on 12 October 1999 before the military coup shall be restored with the provisions of joint electorates, minorities and women-reserved seats on closed party lists in the Parliament, the lowering of the voting age, the increase in seats in Parliament and the Legal Framework Order, 2000, and the 17th

constitutional amendment shall be repealed accordingly.
ii. The appointment of Governors, three military chiefs and the Joint Chiefs of the forces shall be made by the chief executive who is the Prime Minister, as per the 1973 constitution.
iii. The recommendations for appointment of judges to the superior judiciary shall be formulated through a commission, which shall forward names for confirmation to a joint parliamentary committee for confirmation of the nomination through a transparent public hearing process.
iv. A Federal Constitutional Court will be set up to resolve constitutional issues, giving equal representation to each of the federating units.
v. The concurrent list in the constitution will be abolished. A new National Finance Commission would be announced to seek equitable

resource distribution to all federating units through an award.
vi. Reserved seats for women in the national and provincial Assemblies will be allocated to the parties on the basis of the number of votes polled in the general elections by each party.
vii. The strength of the Senate of Pakistan shall be increased to give representation to minorities.
viii. The Federally Administered Tribal Areas (FATA) shall be included in the NWFP province in consultation with them.
ix. The Northern Areas shall be developed by giving it a special status and further empowering the Northern Areas Legislative Council to provide people of Northern Areas access to justice and human rights; and
x. Elections to local bodies will be held on a party basis through provincial election commissions in the respective

provinces and constitutional protection will be given to local bodies to make them autonomous and answerable to their respective Assemblies as well as to the people through regular courts of law.

Manifestos, a national tragedy and a triumph for parliamentary democracy

The Charter was acknowledged as the basic document that helped formulate a joint vision of Pakistan's popular leadership. As a result, most political parties – led by the PPP, the PML-N and all nationalist parties in the provinces – included the 10 amendments proposed in the Charter of Democracy in their election manifestos for general elections scheduled for January 2008.

Former Prime Minister Benazir Bhutto arrived in Pakistan in October 2007 and launched a hectic election campaign for the PPP aimed at restoring parliamentary democracy. She also



Former Prime Ministers: Mrs Benazir Bhutto and Mr Mian Nawaz Sharif.

convinced the other opposition parties, including the PML-N, not to allow an easy run for Gen. Musharraf by boycotting the elections.

However, as the popular political leadership of the country was about to vote out the pro-Musharraf parties, Pakistan was struck by the unbearable tragedy of the sad demise of Benazir Bhutto, who was martyred in a terrorist attack after delivering her last address in Rawalpindi on 27 December 2007.

The Co-Chairperson of the PPP, Mr Asif Ali Zardari, took up her vision and continued the mission to secure true parliamentary democracy in Pakistan. He met with the heads of all political parties and, in pursuit of national reconciliation, on 18 February 2008 won a landslide victory for the PPP, for all anti-Musharraf political parties and for the Charter of Democracy. This paved the way for the restoration of a parliamentary constitution by the newly elected Parliament.

Pluralistic consensus-building in Parliament
Mr Asif Ali Zardari became

President and played a decisive role in reviving the authority of Parliament as envisaged in the Charter of Democracy. In his first address to the joint sitting of Parliament in September 2008, he clearly reiterated his commitment to continue the consensus for constitutional reform and to revive the parliamentary system as envisaged in the Charter of Democracy. President Zardari at the outset of his first address said:

"As head of state I wish to make it clear that the President and the government must and always seek guidance from the Parliament in carrying out our duties. We are committed to upholding the supremacy of the constitution, the supremacy of the Parliament and the rule of law. The cardinal principle of governance is respect of the mandate of the people as manifested in the 18 February election."

In his second address at the completion of the first parliamentary year on 28 March

2009, he requested me as Speaker of the National Assembly to formally convene a representative constitutional committee of Parliament. The President said:

"Supremacy of the Parliament has been a dream of our leader, Shaheed Mohtarma Benazir Bhutto. The Charter of Democracy flows from her belief in the supremacy of the Parliament. About six months ago standing here, I had called upon the Parliament to form an all-parties committee to revisit the 17th amendment and Article 58 2(b). I am conscious of the fact that six months is not a long time. I urge you, Madam Speaker, to constitute a committee of all political parties to propose amendments in the constitution in the light of Charter of Democracy. The amendments should be finalized without any further delay.... Shaheed Mohtarma Benazir Bhutto had a dream and vision. It was the vision of reconciliation. Reconciliation is the only way forward. We must not remain hostage to the bitterness of the past. We need to bring together the federating units in a spirit of mutual accommodation."

Constituting the Parliamentary Committee on Constitutional Reforms

A motion to constitute a parliamentary committee to undertake what would become the 18th amendment to the constitution was introduced and adopted on 10 April 2009 in the National Assembly and in the Senate on 29 April. Accordingly, I as Speaker constituted the committee.

On 23 June, I formulated a 26-Member Parliamentary Committee on Constitutional Reforms after consultations with all parliamentary Leaders. The committee represented all 14 parliamentary parties including the ruling coalition Members from the PPP, Awami National Party (ANP) and Muttahida Qaumi Movement

(MQM), as well as Members from the opposition parties led by the PML-N the Pakistan Muslim League-Quaid-i-Azam (PML-Q), Pakistan Muslim League-Functional (PML-F), Jamiat Ulema e Islam JUI F, PPP (Sherpao), Jamaat e Islami (JI), Jamhuri Watan Party (JWP), Pakhtunkhwa Mili Awami Party (PkMAP), National Party (NP), Balochistan National Party-Awami (BNP-A), National Peoples Party (NPP) and one Member from the Federally Administered Tribal Area (FATA).

On 29 June, the committee under the leadership of Sen. Mian Raza Rabbani framed its rules in addition to its Terms of Reference for examining the various provisions of the constitution. It set the following criteria as cardinal principles to draft the historic amendment:

- Transparency in the system,
- Minimizing individual discretion,
- Strengthening Parliament and provincial Assemblies,
- Provincial autonomy,
- Independence of the judiciary,
- Further strengthening of fundamental rights,
- The question of merit,
- Good governance and
- Strengthening of institutions.

Subsequently, the committee asked its Members to submit proposed amendments and also took up certain private Member's Bills pertaining to the constitution which had been introduced in the Senate. The total number of such amendments was 91. The committee also invited suggestions for amendments from the public through the media and received no less than 982 proposals for amendments.

The committee left no stone unturned to build a consensus on critical issues such as: the balance of authority among the President, Prime Minister and the state institutions; political autonomy; renaming North West Frontier Province (NWFP) to become Khyber Pakhtunkhwa, and the



judicial commission for making appointments to the judiciary. The committee held 77 meetings, each lasting on average five hours. It took over nine months to develop a consensus draft Bill. Although different parties added separate notes to outline their individual positions, they finally signed the report recommending what would become the 18th constitutional amendment on 31 March 2010.

The amendment was passed unanimously by both Houses of the Parliament. It brought around 100 changes to Pakistan's constitution.

Parliamentary democracy

The amendment transfers greater authority to Parliament and the Prime Minister by:

- i. Removing presidential powers to circumvent the normal legislative process and limiting the amount of time the President may consider Bills passed by Parliament before approving them (Article 75);
- ii. Removing Article 58-2(b) instituted by President Musharraf, which granted the power to unilaterally dismiss Parliament under vague emergency provisions;
- iii. Reducing the requirement for the Prime Minister to consult with the President to a duty to keep him/her "informed" of policy matters (Article 46);
- iv. Expanding the scope of fundamental human rights and affirming the right to fair trial and due process, the right to information and the right to education, and
- v. Providing consultations with the outgoing Prime Minister and Opposition Leader on presidential appointments of caretaker governments to manage the transition to a new government when Parliament is dismissed (Article 224).

Provincial autonomy

Tensions between the federal

government and the provinces over the distribution of authority and revenues date back to Pakistan's inception and have prompted some of its most traumatic upheavals, most prominently the sad 1971 disintegration of East Pakistan.

Many of the country's leading political parties have long demanded increased autonomy for the provinces. The 18th amendment takes decisive steps toward resolving some of these tensions through the devolution of authority and a strengthened role for the Council on Common Interests, a joint federal-provincial forum, as follows:

1. Elimination of the "Concurrent List" – This list identified subjects in the constitution where both federal and provincial governments could legislate but federal law prevails. The amendment abolished it and devolved to the provinces authority governing marriage, contracts, firearms possession, labour, educational curriculums, environmental pollution, bankruptcy and 40 other diverse areas. Each provincial Assembly becomes responsible for drafting its own laws on these issues. This is hailed as a hallmark achievement to strengthen national cohesion among the federating units. The provinces must now secure effective regulatory authority in these areas by 30 June 2011.
2. Council of Common Interests (CCI) – The CCI becomes a powerful constitutional body comprised of representatives of the centre and provincial governments to decide key matters. The National Economic Council (NEC) was reformed to review the overall economic condition of the country and advise the federal and provincial governments on formulating plans.
3. National Finance Commission agreements – The agreements set the distribution of national revenues between the central

government and the provinces. The amendment stipulates that the centre cannot reduce the provinces' share beyond that given in the previous agreement (Article 160). This could not be achieved by any government in the last two decades.

4. Identity NWFP – The amendment gives an identity to the former NWFP in renaming the province as Khyber Pakhtunkhwa.

Authority of the Prime Minister

The amendment limits presidential powers following years of a dictatorial presidency under Gen. (Retd.) Musharraf's military regime in a number of ways. The Prime Minister was re-established as the Chief Executive of the country through following:

1. The President must consult with the Prime Minister, whose recommendations are binding, on all choices for provincial Governors (Article 101) and military service chiefs (Articles 243 and 260).
2. The Prime Minister and Ministers become the federal government as the position of chief executive of the nation moves from the President to the Prime Minister (Articles 90 and 99).
3. Limits on Prime Ministers serving more than two terms are removed (Article 91). This measure potentially paves the way for Opposition Leader Nawaz Sharif's return to that office, though he has yet to contest a seat for the National Assembly, instead opting to lead his party from outside Parliament; and
4. Power is transferred to the Prime Minister who is now able to submit matters direct to Parliament for a yes or no vote (Article 48).

Judiciary composition and appointments

The judicial appointment procedures were one of the most contentious parts of the amendment. Unlike military regimes of the past, the President or the executive now have no

direct role in judicial appointments after the 18th amendment.

This has been achieved by prescribing a two-tier system where first an independent Judicial Commission comprising judges and a member of the Bar Councils will propose nominees and then a special parliamentary committee comprised of government and the opposition Members will confirm them.

A leap towards true parliamentary democracy

The 18th Constitutional Amendment Act 2010 is a journey towards democratic empowerment. When President Asif Ali Zardari signed it into law on 19 April 2010, all sections of Pakistani society including political parties, the media, civil society and the people termed it as a triumph of democracy and fundamental rights. It was seen as the revival of federal parliamentary democracy as envisioned by the father of the nation, Quaid-e-Azam Muhammad Ali Jinnah. The President earlier on Pakistan Day, 23 March, conferred the highest civil award, Nishan e Imtiaz, on the Members of the parliamentary committee led by Sen. Raza Rabbani.

It is just the beginning of the constitutional review process and the foundation of the future direction for a strengthened federal system. The consensus reached is an incredible development. Public representatives in Pakistan demonstrated unparalleled wisdom and some extraordinary flexibility for consensus-building throughout this process.

The passage of 18th Constitutional Amendment Bill 2010 reflects the cherished dream of all political leaders, intellectuals, workers and activists to establish a plural welfare federation in Pakistan. We are indeed proud to be a humble part of this achievement which will strengthen Pakistan on the democratic map of the world.