

## Constitutional amendments

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Thursday, 17 Jun, 2010  
The Dawn

The democratic credentials of a government are judged not only by its ability to function within the constitutional framework but also, and more importantly, by the importance it attaches to public interest legislation as against initiatives aimed at strengthening the state apparatus, especially its coercive powers. The criterion is applicable to constitutional amendments too.

A national constitution is essentially an instrument for the fulfillment of the polity's basic assumptions, which are often described as the social contract among the people for establishing or defining their state. The need for amendments to a constitution arises when its provisions are found to be too weak or too ambiguous to implement the social contract. A constitution also needs to be amended to keep abreast of the changes in a people's vision or their search for higher forms of political organisation or to purge the basic law of the undesirable features that it may have acquired through accidents of history, such as fits of authoritarianism.

All constitutional amendments are tested or ought to be tested for legitimacy, that is, they should be constitutionally valid. A more important test requires constitutional amendments to promote the interest of the people. Indeed the various regimes' claims to governance in the interest of the people can be judged in terms of the direction of their amendments to the constitution — whether these amendments advanced the cause of democracy and public good or whether they merely increased the state's coercive powers.

During the first nine years of its existence Pakistan used the Government of India Act of 1935 as its constitution. The very first post-independence amendment to it was not a happy one as it revived the governor-general's power to dismiss a provincial government, a provision that had been deleted at independence.

The constituent assembly of Pakistan adopted more than 30 amendments in the Act of 1935 during 1948-55. Many of these amendments were of a technical nature — renaming the divided provinces, increasing seats in provincial assemblies, addressing matters resulting from the creation of One Unit, etc. However, it also adopted the principle of adult franchise, conferred writ jurisdiction on the high courts, made significant changes in governance and limited the life of presidential ordinances.

Looking back at the work of the constituent assembly one is struck by the sense of responsibility displayed by its members. The constitution was certainly amended to make the state stronger and richer but it was also amended to further the cause of democracy, a parliamentary form of government and basic rights.

Unfortunately, the record of the legislature during 1947-55 was not matched by the National Assembly created under the 1956 constitution or by the one formed under the so-called constitution of 1962.

The first PPP government (1971-77) earned great credit for drawing up the 1973 constitution on the basis of an all-parties accord but it also invited strong censure for its serious deviations from it. Between May 1974 and May 1977 it adopted seven constitutional amendments, making additions to or changes in more than 50 articles.

Some of the changes adversely affected the fundamental rights guaranteed in Articles 8, 10, 17 and 19. Besides, the Second Amendment (September 1974), designed to declare Ahmadis non-Muslims, was a major step towards turning the democratic state into a theocracy. Most of the other amendments were aimed at making the state apparatus stronger or at controlling matters relating to the appointment, tenure and retirement of judges of the superior courts. The only amendment that strengthened the democratic character of the constitution was the creation of seats in the legislatures for non-Muslims.

Gen Ziaul Haq (1977–88) made so many changes in the basic law that it became in effect a Zia-made constitution. He concentrated on three points — turning Pakistan into a theocracy, recasting the head of the state into the role of the pre-independence viceroy (by investing the president with powers to control both the executive and the legislature) and manipulating the judiciary. In doing so he destroyed the basic assumptions underlying the 1973 constitution.

In the pursuit of his theocratic goal, Gen Zia inserted Article 2-A which turned an arbitrarily amended Objectives Resolution, that had been put in all constitutions as a non-enforceable preamble, into a substantive part of the basic law. The change was contrary to the constitution-makers' intent. (Nothing prevented them from making the Objectives Resolution a substantive part of the constitution if they had wanted to do so.)

The second major step taken by Gen Zia in order to make Pakistan a religious polity of his own version was the addition of Chapter 3A (Articles 203A to 203J) to the constitution and the provision for the Shariat courts. This change also was in violation of the Quaid-i-Azam's policy announcements and the principle Allama Iqbal had enunciated in one of his Madras lectures (Reconstruction of Religious Thought). Another step in this area was the reintroduction of separate electorates.

Gen Zia also rechristened the parliament Majlis-i-Shura, added belief-related qualifications/disqualifications for elected legislators, and arrogated to himself the privilege to define a Muslim in the constitution. Further, Gen Zia changed the form of government from parliamentary to presidential. In addition, he invented the theory of sacking superior court judges through abuse of a flawed PCO and made a grievous attack on the independence of the judiciary by keeping the writ jurisdiction suspended for many years. The accumulated result of the Zia amendments was reversal of the state's direction as defined by the Quaid-i-Azam, a sharp deviation from the democratic norms and the rise of sectarianism and obscurantism.

The most remarkable feature of these amendments is that most of them fell in the category of the executive authority's power-grabbing games and none of them advanced the cause of democracy or public welfare.

The constitution was again violated when the coup d'état of Oct 12, 1999 was carried out and Gen Musharraf began his reign by holding the constitution in abeyance and making the judges swear loyalty to his illegitimate regime instead of the constitution. Subsequently he amended, vide the Legal Framework Order of 2002, more than 30 articles of the constitution. Most of the changes were aimed at strengthening his personal rule or the state apparatus.

Only a couple of these amendments advanced the cause of democracy or public good and these included the increase in women's seats in the legislatures and making the creation of local government institutions mandatory. Sadly enough he was able to bamboozle the National Assembly into ratifying many of his amendments vide the 17th Amendment. However Gen

Musharraf drew condemnation as one of the most notorious violators of the country's basic law by sacking the superior courts judges because they were not likely to approve of his re-election as president in violation of the constitution.

Viewed against this background the latest package of constitutional amendments is the most significant step ever towards reclaiming the original vision of Pakistan since it promotes federalism, grants greater autonomy to the units, strengthens the parliamentary system and purges the basic law of quite a few additions made by dictators.

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