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DURING the past 50 years, the 1973 Constitution of Pakistan has been amended 23 times — an amendment every two years on average. This is no surprise as the constitution of any country is a dynamic document and amendments are made in response to evolving requirements. India, which became independent at the same time as Pakistan, amended its constitution 105 times since the document was framed in 1950. However, the US made just 27 amendments in 203 years of its constitutional history.

Pakistan’s Constitution has evolved in several significant ways during the past 50 years. Parliament addressed the most sensitive issue of provincial autonomy through the 18th Amendment in 2010.

It was the same issue which had led to the dismemberment of Pakistan in 1971 and had been a source of bitterness in the remaining four provinces ever since. The Concurrent Legislative List was abolished through the 18th Amendment and a number of federal ministries were devolved to the provinces.

The Council of Common Interests and the National Economic Council were further strengthened as a result. One of the most significant parts of the amendment was that, by inserting a new clause 3-A under Article 160, the share of the provinces in each National Finance Commission award was made irreducible compared to the previous award.

A system of caretaker governments was not provided in the original Constitution. The 18th Amendment introduced caretaker governments during the election by adding Clause 1-A in Article 224 of the Constitution. The system was further refined through the 20th Amendment in 2012.

Other amendments were made to the Constitution to reform the electoral process in a significant way. The 18th Amendment, through Article 213, did away with the discretionary powers of the president to appoint the chief election commissioner and commission members and provided for the appointments after consultation between the prime minister and the leader of the opposition and through a parliamentary committee.

The Indian parliament had been struggling for decades to pass a similar amendment to their constitution but has not succeeded so far. These provisions were further refined through the 19th and 20th Amendments.

Half a century after it was passed, the 1973 Constitution continues to evolve.

The provisions relating to the defection of legislators have undergone several modifications since the original Constitution was passed in 1973. Although the original Constitution did not include a defection clause as such, a temporary provision for 10 years or the holding of the second general election, whichever occurred later, was included in Article 96 that the vote of an MNA, as a candidate or nominee of a political party, cast in support of a no-confidence resolution, would be disregarded if the majority of the members of that political party cast their vote against such a resolution.

A new Article 63-A was added to the Constitution through the 14th Amendment in 1997 during prime minister Nawaz Sharif’s time which contained sweeping provisions to bind legislators to the dictates of their parliamentary party head.

A violation of the party direction would result in disqualification on the basis of defection. The 17th, and later the 18th, Amendment balanced the provisions which constituted defection and disqualifications by restricting the compulsion to follow the party line to voting on the election of the prime minister or chief minister, constitutional amendments, vote of confidence or no-confidence in or against the PM or CM, or a money bill.

A significant feature of the amended 63-A was that although defecting members would be disqualified, there was nothing in the Constitution which suggested that their votes would be disregarded.

Ironically, a majority judgement of a five-member Supreme Court bench declared in May 2022 that the votes of the defecting members would be disregarded, going back to the temporary provision included in the original 1973 Constitution, with the ominous difference that this time, disregarding the vote of defecting members was not temporary. One of the dissenting judges characterised the judgement as “rewriting of the Constitution”.

Through several amendments, the total number of members in the National Assembly, Senate and provincial assemblies and representation of women and religious minorities were also increased. The Senate was authorised by amending Article 73, to discuss the money bills and send recommendations to the National Assembly.

The addition of provisos to Articles 92 and 130 made through the 18th Amendment capped the number of ministers and ministers of state in the federal cabinet at 11 per cent of the total strength of parliament. This provision reduced the average number of cabinet members after the amendment came into effect.

While recounting the significant ways in which the Constitution evolved in the past, one can’t help pointing out the critical need for some other amendments.

There are many constitutional, electoral and local government experts who strongly believe that more details about the third tier of government — the local governments — should be provided in the Constitution.

India realised the need to add two specific chapters to its constitution; one on the grass-roots local governments (panchayats) and the other regarding municipal committees, about 42 years after the document was framed because their state governments were just not serious about forming and sustaining local governments. The time has come for us to do the same with due respect to provincial autonomy.

The power of the executive to promulgate ordinances under Articles 89 and 128 of the Constitution needs to go as any legislation without legislatures is simply a blot on democracy.

The powers of the government to make modifications in the budget and authorise expenditure from the Federal Consolidated Fund without recourse to the legislature under Article 84 of the Constitution is simply unacceptable in a democracy and should change.

Lastly, parliament was coerced in 2010 to water down its role in the appointment of judges and it had to post-haste pass the 19th Amendment. Parliament should amend Article 175-A to assert its rightful role in scrutinising the appointment of judges to the superior courts.

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