**Constitution via amendments**

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Celebrating the golden jubilee of the 1973 constitution of Pakistan we have briefly looked at the 25 amendments passed so far. So, what are some of the key lessons and takeaways from the series of columns?

For students of history, law, and political science, perhaps it is useful to keep in mind that there were at least four amendments that we should not call amendments, as they never went through the required procedure of approval from both the National Assembly and the Senate. The Ninth Amendment under the Junejo government in 1985 aimed to impose Shariah as the supreme law of the land. The Senate passed it, but the amendment got stuck in a committee of the National Assembly which never voted for it.

Some opposition members in 1989 – under the first Benazir government – introduced the 11th Amendment in the Senate, proposing to restore the seats of women to 20; the PPP government assured it would present the bill later, which it never did. The 15th Amendment in 1998 during the second Nawaz Sharif government once again proposed to impose Shariah as the supreme law of the land; the National Assembly passed it but the Senate never did. Finally in 2019, the 26th Amendment to increase the number of seats for erstwhile Fata in the national and Khyber Pakhtunkhwa Assemblies – the only attempted amendment during the PTI government – received the nod of approval from the lower house but mysteriously it never reached the Senate.

So out of 26, only 22 amendments actually deserve an amendment status. Of the 22, the first seven amendments introduced changes in the constitution in just three years – from 1974 to 1977 – under the Z A Bhutto government. On an average, after every six months, the Bhutto government was introducing a new amendment, most of them seeking to strengthen the government itself rather than grant more rights to the people of Pakistan. Bhutto’s contribution was immense in the development and approval of the constitution, but sadly he himself started mutilating it.

The two military dictators illegally and unconstitutionally kept the constitution in abeyance for a total of 11 years – from 1977 to 1985 by General Ziaul Haq, and from 1999 to 2002 by General Musharraf. Gen Zia imposed a martial law and kept it in force for eight years whereas Gen Musharraf did not formally declare it. Rather than appointing himself chief martial law administrator, Gen Musharraf opted for a more corporate designation of chief executive. While keeping the constitution in suspension, both generals imposed ‘legal frameworks’ and provisional ‘constitutional orders’ that concentrated all powers in their hands.

Both forced the judiciary to toe their lines and unconstitutionally removed judges who did not take oaths of allegiance to these military regimes. The Eighth and 17th amendments that the two military dictators imposed on this nation drew heavily from the ‘legal frameworks’ and ‘constitutional orders’ which were neither legal nor constitutional. In the first 25 years of its life, the country was under presidential or semi-presidential rule for nearly 20 years – from 1977 to 1997 till the abolition of the Eight Amendment by the second Nawaz Sharif government.

Benazir Bhutto could not introduce any amendment due to the consistent uncertainty that the opposition and the establishment created for her during her two stints in power spanning just five years. Her major contribution was in the shape of a Charter of Democracy that she developed and which she encouraged Nawaz Sharif to sign in 2006. Thanks to this charter, the country attempted to have a more balanced system of checks and balances that took a concrete shape through the 18th Amendment in 2010.

Asif Ali Zardari emerged as the most constitution-friendly leader who facilitated the best overhaul of the constitution by devolving over a dozen ministries to the provinces and dozens of items and departments. He became the only head of state in the country’s history to alter the constitution by voluntarily transferring his powers to the office of prime minister. Out of the total 22 passed amendments in constitutional history, the PML-N has the distinction of passing the highest number of amendments – from the 12th to the 16th in the 1990s, and then from the 21st to the 25th in their third government from 2013 to 2018.

In all, the PML-N introduced 10 amendments out of which the 15th never got through to impose the Shariah in the country in 1998. Out of the nine amendments the PML-N passed, three facilitated the creation of speedy courts: the 12th in 1991, the 21st in 2015 and 23rd in 2017. Nawaz Sharif’s 13th and 14th amendments consolidated his own authority by transferring nearly all powers from the president to the office of the prime minister and deprived the assembly members of their right to vote against the party leader.

Perhaps the best amendment the PML-N passed was the 22nd that allowed the government to appoint retired bureaucrats and technocrats as chief election commissioners and members of the ECP, of course in addition to retired judges who had sole entitlement to the ECP previously. While military regimes imposed two amendments: the Eight and 17th, the judiciary imposed the 19th Amendment. The best and most significant amendment to date remains the 18th Amendment and credit for it goes to Asif Ali Zardari and his PPP, of course with the other political parties that contributed to its development and approval.

May we conclude by saying that the 1973 constitution has served its purpose in 50 years? The answer to this question is neither easy nor simple. In the 50 years of the constitution, the country had to spend 31 years under an imposed presidential or a semi-presidential rule – from 1977 to 1997 and then from 1999 to 2010. There have been attempts to derail the constitution and many of them were successful in mutilating the document. The constitution kept gasping for breath for over three decades out of five – mainly due to anti-constitutional and anti-democratic moves.

It managed to bounce back in better shape thanks to the democratic aspirations of the people of Pakistan and their representatives in the parliament. The PPP deserves the credit for first introducing the constitution in 1973 and then improving it in 2010; no other party can claim this distinction.

What is the future of this document? In fact, the future of this country, democracy, the economy, this federation, and the general well-being of this nation depends on the constitution and on adherence to it. Yes, it does have defects and lacunae; it is not a perfect document, but there is room for improvement.

That improvement will come about if all non-political and political forces realize the significance of the constitution for the greater good of this country; not sacrificing it for their own immediate and petty interests. Does the constitution need more amendments? Yes, it does. It needs to eliminate all discriminatory articles and clauses to treat all citizens equally in the eyes of the law, and with equity to ensure fair distribution of opportunities and resources. One point we must keep in mind is that the constitution and democracy need support from the judiciary and military.

They must acknowledge civilian and parliamentary supremacy as the constitution stipulates. Civilian leaders must shun populism and personality cults. Judicial activism, cult mentality, and militarism have hampered constitutionalism in Pakistan; if they continue to do so the constitution, democracy, economy, education, and nearly all areas of governance will keep suffering.

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