

Disfigurement of Constitution

BY JUSTICE (RETIRED) SAJJAD ALI SHAH

17th amendment which has been passed by two-thirds majority of the parliament with the active support of MMA (Mutahidda Majlis Amal) has outwardly ended the controversy but has inwardly kept the confusing issue alight because of the manner in which it was done.

No satisfactory explanation is available except that it was done by the two-thirds majority, which is a constitutional requirement. It is a matter of public knowledge how elections were held and how the "King's Party" was brought into existence and what part was played by NAB in conversion of members in favour of the government. Those who won elections remained quiet and those who lost complained of rigging. Bank defaulters and those who were in custody of NAB were washed clean, contested and won elections and were seen jubilant to be on the side of the government.

In the pre-election there was a divide among the people, some were in favour of American support against terrorism after invasion of Afghanistan and others supported anti-American spirit espoused by religious parties joined together as MMA. That is how MMA won hands down a large number of seats in NWFP and Balochistan on the border of Afghanistan and also many seats in the National Assembly and Senate, invoking sympathy vote against attack on Afghanistan by USA and allies.

The normal procedure is that political parties fight elections on basis of manifestoes and after winning elections take steps to act upon manifestoes and policies of the party and if any one sees differently, then he has to resign from the seat and also that political party and contest election afresh as independent or as a member of another political party. There is a law on the subject called "Political Parties Act", which prohibits crossing of the floor in the Assemblies in order to win over the elected members to join other parties.

Operation of this law was suspended to this extent and winning over the elected members was done without any let or hindrance to strengthen the government party,



were made by the Chief Executive and did not need to be approved by two thirds majority of the parliament. Burden was shifted to the opposition to move private member bill to amend any provision inserted in the Constitution by the Chief Executive. Controversy arose whether newly elected members would take oath under 1973 Constitution as it stood on 12th October 1999 or in the Constitution including Legal Framework Order 2002 and PCO.

Mr Illahi Bakhsh Soomro was Presiding Officer of newly elected National Assembly and assured the members that they were taking oath on the 1973 Constitution as it stood on 12th October 1999. Later on it transpired that Ministry of Law had published 1973 Constitution with PCO and LFO included therein which was final, which meant there was no need for approval by two-thirds majority of the Parliament.

This was done deliberately to gain time as other issues relating to international affairs were catching up having direct bearing on government in Pakistan. The American Government found General Musharraf a staunch supporter and wanted him to continue as de-facto head of government. They also wanted that there should be some semblance of democratic order so elections were held and Constitution restored but with the General as a powerful President and Chief of Army Staff with complete grip on affairs of the country.

The latest development in the chain of events is the appearance of Dr Abdul Qadeer Khan on the electronic media apologising to the nation for selling out important data regarding nuclear technology to other countries and President granting him pardon is extremely perplexing. One wonders what is going to happen in the future but one thing is certain that USA and its allies plan future shape of the world.

Western bloc thinks General Musharraf is the best ally and they count on him and want him to continue in power in Pakistan. So far as internal difficulties are concerned the situation is far from satisfactory. What is happening in Waziristan

which was bound to secure two-thirds majority in the parliament to pass 17th Amendment to the Constitution. Floor crossing and use of NAB are strong-arm tactics, which do not pay in the long run and corrupts the whole electoral and democratic system from the roots. If the democratic system fails, the entire infrastructure of the government crumbles down providing opportunity to military intervention and we go back to square one.

I would like to re-emphasise the importance of 1973 Constitution. That it was made after we lost East Pakistan. In the remaining half Pakistan there were four provinces and the elected members of these provinces agreed upon a formula and the 1973 Constitution was passed with consensus of all the political parties represented in the National Assembly with the exception of a few members who did not sign and blamed West Pakistan for the separation of East Pakistan.

In the Constitution sufficient measures were provided to keep alive the perception of Federation and autonomy of provinces. Election of local bodies was provincial subject and Provincial laws were passed for it. For the first time Constitution of 1973 provided specifically in article 5 that it is the basic duty of every citizen to be loyal to the state and it is obligation of every citizen to obey the Constitution and law. Article 6 of the Constitution provides that dismissal of the constitution and its subversion is offence of treason, punishable with death.

The same punishment is to be meted out to those, who conspire, abet or advise the violators of the constitution. It is the duty of the courts and particularly the apex court to interpret the constitution, strictly so that its purpose and purport is not defeated and trampers of the constitution are punished. If the court justifies and validates the violation of the Constitution on the ground of law of necessity, then articles 5 and 6 become meaningless and they should be deleted by existing two-thirds majority of the parliament.

The appalling fact is that the government was advised to understand that since Supreme Court had empowered Chief Executive to amend the Constitution, so there was no legal hurdle in the way and he went on amending the Constitution as he desired. Legal Framework Order 2002 was issued by the Chief Executive under the authority of the judgment of the Supreme Court, provides for holding elections and first sessions of National Assembly, Senate and Provincial Assemblies, fixing the increased number of seats in the assemblies and covering other allied matters.

Impression was given by the government that whatever amendments

is not a good omen. Presidential elections are going to be held in USA and the present American government would attract more votes if Osama bin Laden is caught dead or alive. In Pakistan also security problem is on the top. Smaller provinces are not happy and opposition parties are making demands that provinces should be given more autonomy, equal number of seats in the National Assembly and equal representation in the Armed Forces. These are issues intricate in nature, which need to be solved.

Coming back to 17th Amendment it is apparent that the amendments made by the Chief Executive stood included in the Constitution and MMA had given some concessions by making cosmetic changes in the articles included in the Constitution and in return MMA is happy that the President shall continue to wear uniform till the end of 2004.

The very fact that goes against the grain of the Constitution, which does not permit the members of the Armed Forces to meddle into politics as provided in their oath of office as provided at the end of the Third Schedule of the Constitution Quaid-i-Azam also wanted the Armed Forces to be non political. 17th Amendment as it stands now has changed the basic structure of the Constitution and now President has more powers than the Prime Minister and the Federation has adopted an overbearing attitude, that's why provinces are making demands for more autonomy and suggesting that only three subjects be allowed to be retained by the Center.

Recently it has appeared that USA and its allies are openly objecting to the inclusion of Islamic provisions in the draft constitutions of Afghanistan and Iraq and there is hue and cry about changes being made by the Federal Government in the syllabi of the schools excluding some Ayats of the Quran and diluting Islamic teachings. These developments have put MMA in a litmus-test and people want to know what side it will go. It is because of support of MMA that 17th Amendment is passed and now it is to be seen, which way the MMA will go.

After occupation in Afghanistan and Iraq, America wants that constitutions to be framed for these countries should not contain Islamic provisions to keep away Islam from state affairs. In Iraq proposals have been made to allow veto by three provinces out of total of 17 provinces, in fact Kurds are in majority in three provinces. The main object is that Muslim countries can be tolerated minus Islamic provisions in their constitutions which ought to be secular in nature. In such background our Constitution is also in doldrums and it is possible that attempt would be made to re-write the constitution on secular lines as desired by the sole superpower USA.