

Why MMA supported the 17th amendment

By Prof Ghafoor Ahmad

Pak. Bel
Down
15.2.04

BEFORE holding elections to national and provincial assemblies on October 10, 2002, General Pervez Musharraf introduced 29 amendments in the Constitution of Pakistan on August 21 and October 29, 2002. He was of the view that the declaration of emergency on October 14, 1999, vide Provisional Constitutional Order No.1 (1999) and the Supreme Court decision of May 12, 2002, authorized him to make these amendments. Elections to the assemblies were held after these amendments (Oct. 10, 2002). Later, members of these assemblies elected the Senate.

The LFO (Legal Framework Order) of August 21, 2002, through which far-reaching changes were made in the constitution, has long been a bone of contention between the government and the opposition. Both the MMA and the ARD are of the view that the LFO did not form part of the Constitution, that the Chief Executive was not authorized to introduce these amendments, and that the only valid basic law was the Constitution that existed before October 12, 1999, when the military took over for the fourth time.

The same was the stand taken by the bar associations of the Supreme Court and the High Courts and the lawyers communi-

S.M. Zafar of the ruling party and Maulana Fazlur Rahman, Mr Liaquat Baloch and Hafiz Hussain Ahmed of the MMA. In the light of this agreement the National Assembly, followed by the Senate, approved the 17th amendment bill with a two-thirds majority. While the MMA supported the amendment, the ARD strongly criticized the agreement, and alleged that the MMA had deceived the nation. Some ARD leaders called it a "mullah-military" alliance that had paved the way for dictatorial rule. Senior members of the lawyers' community also expressed their reservations about it.

In principle, the ARD was not wrong. The fact, however, is that because of the deadlock, the parliament was paralyzed. This was being criticized, with some political leaders saying that the LFO was not the problem of the masses, and people wished something

amendments were approved in the LFO:

(i) Gen Musharraf as president and Chief of Army Staff.

Article 43(i) of the 1973 Constitution does not permit the President to hold any other office of profit. The LFO (August 21, 2002) brought an amendment in Article 41 that rendered article 43(i) ineffective and permitted Gen Musharraf to hold constitutionally the two posts for five years. The general insisted he would not give a date for giving up the post of army chief, because that was not in the interest of the country. The agreement between the government and the MMA, however, added a sub-clause to article 41.

Accordingly, article 63 will come into force on Dec 31, 2004, when the president will no more be able to hold the post of army chief. Thus, Gen Musharraf gave a certain date for shedding the uniform. While the opposition's

protest, within and outside parliament failed to work, this agreement made this possible.

(ii) The President's power to dissolve the assembly: Article 58 of the Constitution authorizes the prime minister to propose to the president to dissolve the assembly. Having received this advice, the president would order a dissolution, or else the assembly will stand dissolved after 48 hours. The late President Ziaul Haq added sub-clause (2)(b) to article 58, authorizing the president to dissolve the assembly in his discretion. Using this power, Gen Ziaul Haq ousted Prime Minister Muhammad Khan Junejo and his cabinet in May 1987 and declared the

The opposition in Pakistan has always shown flexibility to pull the country out of crises. In December 1971, after the fall of Dhaka, General Yahya Khan handed over power to Zulfikar Ali Bhutto without any mandate. The opposition was of the view that after the country broke up, the assembly that came into being after the 1970 elections existed no more, and, therefore, fresh