

# Democracy in Pakistan: The Chasm

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With the passing of the 18th constitutional amendment in April 2010, democratic Pakistan's journey for political stability came within leaping distance of its destination, just as the chasm that needed to be crossed became deeper. The probability of success became greater as did the cost of failure. The process leading up to the passage of the amendment revealed as yet hidden sources of resilience within a polity that is reviled at home by an entrenched state apparatus and dismissed abroad as weak and ineffectual.

On 19 April Pakistan President Asif Ali Zardari put his signature to one of the widest-ranging sets of political and institutional changes witnessed by the fledgling democracy since the start of its constitutional journey. The 18th amendment not only cleansed the constitution of numerous distortions introduced by military dictators to provide legal cover for their constitutional violations, it also addressed a host of other political questions which having festered unchecked on the body politic for decades had acquired life-threatening proportions. The most prominent among these were the restoration of the executive power of the elected prime minister and the sovereignty of parliament, guaranteeing the rights and autonomy of provinces, and changing the archaic name of the North-West Frontier Province (NWFP).

The 18th amendment was a remarkable achievement for a number of reasons. It required the sitting president signing away his own *de jure* powers over the prime minister and parliament. The amendment had to be passed at a time when the ruling party did not even enjoy a simple majority in the national assembly, let alone the requisite two-thirds majority in both houses of parliament. The parliamentary arithmetic meant the need for cooperation between parties on two sides of a virtual civil war in the north of the country, and the bringing on board of Baloch nationalist parties who empathise with the insurgency in country's southwest. All of this had to be done against the backdrop of a revanchist drive on the part of the military establishment to recover ground lost to the polity, the emergence of the judiciary as a rival power centre, and an ongoing economic and energy crisis that has sapped away political support from the government.

When a 27-member parliamentary committee was formed in June 2009 under the

chairmanship of senator Raza Rabbani of the ruling Pakistan Peoples Party (PPP), there was widespread speculation that this was merely a sop to indefinitely postpone any process of reform. So much so, that the leader of the opposition in the national assembly, Chaudhry Nisar Ali Khan of the Pakistan Muslim League-Nawaz (PML-N), dismissed the exercise as futile and refused to join the committee reducing its strength to 26, even though his party was robustly represented. President Zardari had been criticised for dragging his feet over constitutional changes which would undermine his own authority. The committee included all parties with any representation in the national assembly (lower house) or senate (upper house). It agreed on rules of business which required either a consensus or at least a two-thirds majority on each decision. Besides parties represented in parliament members of the public were also invited to send their own recommendations for constitutional changes. When it began its deliberations plodding through the constitution and all of the proposals for amendment, line by line, many feared that its work would take years to complete.

In the event agreement was reached on 91 separate amendments in meetings spread over 10 months, and involving nearly 400 hours of consultation. Committee members mostly abided by the agreed rules of engagement and did not air differences in public, and progress was marked by occasional press statements announcing that agreement had been reached on one set of issues and the committee's deliberations had moved on to the next set. While Pakistani public spaces resounded throughout this period with the cacophony of civil strife, terrorism, scandal, institutional clashes, political anger and economic disaffection, the committee laboured quietly until consensus had been reached among representatives of virtually every significant shade of opinion.

There was quick and vociferous opposition to specific aspects of the constitutional amendment from many quarters. Non-Pakhtuns of the NWFP were up in arms that their province now had the name Khyber Pakhtunkhwa which suggested primacy

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of the majority ethnic Pakhtuns. Retired federal bureaucrats, presumably in touch with the sentiments of their serving counterparts were unhappy with the drastic reduction in the sphere of central government actions in relation to the provinces. Some ethnic nationalist parties protested, nevertheless, that the reforms nearly did not go far enough. And most ominously, the superior judges and their lawyer supporters let it be known that they continued to believe in their right to oversee the constitution. A petition challenging the amendment, or parts of it, was admitted for hearing before the Supreme Court. The fact that all parties represented in parliament signed up to the amendment before it was tabled, and virtually every single clause was voted through unopposed in both the national assembly and senate, meant that bureaucratic, judicial, praetorian or local ethnic-political opposition to the amendment will set itself against virtually the entire polity.

### Legitimacy of Consensus

In order to understand how this remarkable consensus was achieved between politicians and parties that are more accustomed to exchanging insults or even gunfire, it is important to see the 18th amendment as a package. Parties held varied perspectives, of course, on what they considered the most important changes, but were willing to barter their parliamentary arithmetic and concede ground on what were regarded as critical issues to others. The cost of being seen to be breaking consensus was considered high enough for parties to endeavour to appear to be cooperative. The committee allowed parties to record “notes of reiteration” if they felt their positions were not accommodated but were nevertheless willing for consensus to emerge on the overall package.

Two sets of historical precedence – original and proximate – were important in effecting the appeal to compromise. It was frequently recalled that the 1973 constitution itself was agreed virtually unanimously by all parties present in the then national assembly despite otherwise acrimonious political relations between them. Zulfikar Ali Bhutto was credited with steering through an agreed constitution and then immediately dismissing an opposition-ruled provincial government, leading to an armed

uprising. The fact that virtually all of the political forebears of the present parties had signed up the original constitution gave added weight to the quest for an achievable consensus. The second event was the agreement between the two largest anti-Musharraf parties in 2006 labelled the Charter of Democracy (CoD), which laid the basis for subsequent political engagement. Not only the spirit but the actual text of the CoD signed by the late Benazir Bhutto and Mian Nawaz Sharif while both leaders were in exile provided the bulk of the content of the 18th amendment.

The constitutional changes included in the 18th amendment can be classified under three headings: (a) expanding constitutional rights, (b) cleansing, restoring and safeguarding the constitution, and (c) provincial concerns. The first category was not likely to be controversial as it included expanding the rights to information, association, and education.

There had been prior agreement among some of the main parties – namely, the PPP and the PML-N – on broad principles in the second category but many potential roadblocks in practice. The constitution inherited by the present parliament was contaminated by a series of earlier amendments that military regimes had imposed in order to legitimise their own power. Both Generals Zia and Musharraf had chosen to appoint themselves president and then amassed executive powers within the presidency, including the power to dismiss governments and dissolve elected national and provincial legislatures. The 18th amendment restored the sovereignty of elected legislatures and the executive authority of the prime minister and chief ministers. Some of the archaic additions to the constitution included extra protection for orders and laws passed by military dictators, and these too were withdrawn.

Besides cleansing and restoration the 18th amendment included further safeguards – none of them insurmountable, of course – against future military takeovers. With an eye on history, the parties to the CoD had already agreed that judicial validation of constitutional subversion could no longer be regarded as legitimate. Moreover, judicial appointments were taken away from the executive and placed under

the authority of independent judicial and parliamentary committees.

The clipping of presidential powers was a key demand of the opposition parties in general, and the PML-N in particular, who saw the present incumbent’s powers as a great disadvantage. The PML-N was also interested in removing the bar imposed by Musharraf on prime ministerial terms of office – a clause which had been included to specifically bar the late Benazir Bhutto and Mian Nawaz Sharif from holding office. It was feared that the PPP leadership which had agreed to such changes while in opposition, may renege on its promises in order to retain powers that non-elected presidents had awarded themselves. Zardari’s willingness, some say eagerness, to press ahead with these reforms cleared the path for constructive engagement by both sides despite a major trust deficit.

### Provinces Get Centre Stage

It was the final set changes, namely, addressing concerns of the provinces, which were arguably the most difficult and also the most significant concrete changes brought about in the 18th amendment. The renaming of the NWFP addressed a key demand of ethnic Pakhtuns that had received wide support among other minority ethnic groups but not in Punjab. The name change to Khyber Pakhtunkhwa after last-minute hitches was symbolic, but its political repercussions are likely to be far-reaching. Opposition to this change came not only from the minority non-Pakhtuns of NWFP but also from the two main Muslim League factions with strong bases of support in Punjab. Their unease is based on the idea that a name change which will endorse the ethnic identity of the territory would weaken the grip of the central state on a region already known for its restiveness. In fact, the visceral fear of Pakhtun nationalism had been partly responsible for a series of disastrous policy choices of the central state elite – such as support for Afghan Islamic militants – over the decades.

Other changes with respect to provincial concerns were no less dramatic. The constitution sets out the respective areas of responsibility of federal and provincial levels of government. The original 1973 constitution included two lists of subjects

– federal and concurrent. Any subject lying outside these two lists was considered to be the domain of provincial legislatures and governments. The federal list included those matters over which the provinces did not have direct jurisdiction, and the concurrent list included shared areas of responsibility. In actual practice the concurrent list was a vehicle for the federal government to assume primary or significant control over a very wide range of sectors. An old demand of provincial politicians, particularly those from the three smaller provinces, for the abolition of the concurrent list was finally accepted in the 18th amendment. Not only that, but an inter-governmental body known as the Council of Common Interest (CCI) was strengthened and mandated to deal with many of the economic subjects in the federal list.

There were radical changes too, to resource distribution between federal and provincial governments. The National Finance Commission (NFC), which is mandated with negotiating and agreeing the division of tax revenues (between federal and provincial governments, and then across provinces), was tilted to the advantage of the provinces. There is now a constitutional guarantee to the effect that the overall share of the provinces in any NFC award cannot be lower than the existing award. This means that provincial shares in tax revenues can only increase and never decrease over time. While fiscal economists might find this constitutional guarantee unreasonably constraining, it nevertheless marks a fundamental shift of direction.

There were concessions to Balochistan, Khyber Pakhtunkhwa and Sindh, the three smaller provinces with simmering anti-central state sentiment and also major energy resources in the country. While hydroelectric production is a federal subject, the new amendment made it mandatory for the federal government to consult the provincial government where a project was to be located, and for the matter to be referred to the CCI in case of differences between the two levels of government. Most significantly, oil and gas resources, which since 1949 have belonged exclusively to the federal government, were recognised as being the joint and equal property of federal and provincial governments. In this regard the 18th amendment has met

half-way to the demands of Baloch and Sindh nationalists, and is likely to play a crucial role in any serious negotiated settlement to the Baloch insurgency.

### More Than a Piece of Paper

The written constitution has never been a guarantee of individual rights or institutional stability in Pakistan. It would be naive to assume that the 18th amendment can act as a foil to future interruptions of the democratic process. After all, the consensus 1973 constitution was treated with utter contempt by a line of autocrats including, arguably, its authors. In fact, the reaction of the superior judiciary suggests that the amendment itself might become cause for political intervention on the part of non-elected state organs.

The true significance of the 18th amendment lies in its politics and not in its wording. The fact that political parties from the across the spectrum could find a way of agreeing to a common minimum package of changes means that the Pakistani polity yet contains the resources required to face major challenges. It is this ability of parties to transact political business, adhere to agreed rules, and hold out for the appearance of consensus, which ought to remind future adventurers that political interruption always ends badly in Pakistan. Perhaps this negotiating ability taps into primeval norms of arbitration and transaction in “tribal” communities – the absence of women from the committee did not go unnoticed – if it does not represent acts of leadership.

In substantive terms those aspects of the 18th amendment which address long-standing concerns of the provinces, and particularly the smaller ones, will have the most significant potential impact on Pakistan’s fitful journey to political stability. While provincial concerns relate, in principle, to all four provinces, including the largest and more powerful one, in fact the Punjab elite’s domination of central government institutions makes it a less enthusiastic proponent of provincial causes. Punjab provincial governments have faced less interference, in any case, during military and civilian regimes alike.

Khyber Pakhtunkhwa is not just a name. Pakhtuns desperately needed a wholehearted recognition of their ethnic

identity by all shades of political opinion in the country, if they were to continue facing militants who rely on pan-Islamic solidarity. Pakistani Pakhtuns now have a notional upper hand in terms of ethnic-territorial recognition over their Afghan cousins who must contend with delicate balancing acts with non-Pakhtuns in that country.

But it is not just about the Pakhtuns. Acceptance of the new name tilts Pakistan’s origin myth in the favour of those who argue that the country arose as a voluntary association of communities, in place of the “homeland for Indian Muslims” millstone. This tilt has the possibility of all ethnic groups – even the recalcitrant Baloch – of signing up to some form of a state-building project within the Pakistani framework. Moreover, if other concessions to the smaller provinces and ethnic minorities – such as guarantees on the NFC, abolition of the concurrent list, and shared ownership of petroleum resources – are followed up in letter and in spirit there will be a slow but irrevocable change in the balance of power within state and polity away from the military and bureaucratic elite. This will bode well not only for democracy in Pakistan, but also for stability in the wider region.

Conversely, non-implementation of these negotiated settlements will give rise to far more serious challenges to the authority of the central state than ever before. Those who lent their voices to rules-based negotiated settlements will have little choice but to draw the conclusion that existing institutional frameworks are inherently incapable of responding to their concerns. More than lack of progress on specific details, any future interruption of the political process in the shape of a military or judicial coup now will signal far greater danger of segmentation than ever before.

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