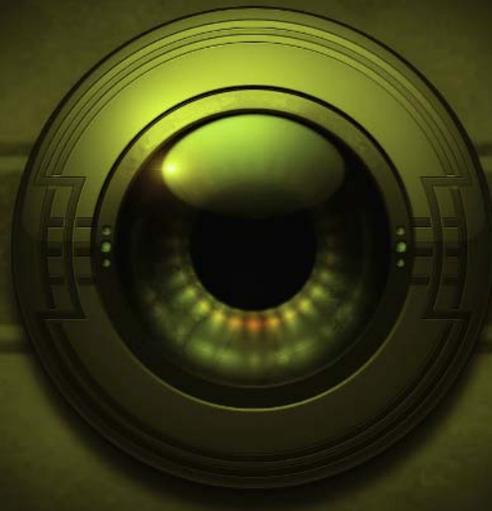


**FROM THE  
LIBERAL SPECTACLE:  
PAKISTAN AFTER  
THE 18<sup>th</sup> AMENDMENT**



**FREEDOM GATE**

P a k i s t a n

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# Foreword

Olaf Kellerhoff

In 2010, the Islamic Republic of Pakistan has made a tremendous commitment with the 18<sup>th</sup> Amendment to her constitution. Pakistan shifted from a presidential towards a parliamentary democracy. Pakistan turned from the centralistic set-up of former military rules to a strengthened federalism. Pakistan drove many nails into the framework of democracy: compulsory education, right to information, high treason for leaving the democratic path...

This process will continue. Yet, many issues remain unsolved and are on-going. For example, with the abolishment of the concurrent list we are currently in a transitional phase where even politicians or lawyers of the Supreme Court can not specify responsibilities between the provincial and federal level. Many incidents delay this transformation. Above all, the devastating floods in July and August this year caused the concentration on saving lives and recovery. More than 20 million people have been affected.

Different developments, manifold moves and countless incidents overshadow this process of steadily betterment: We can see a strengthened civil society, a free media taking more and more self-responsibility and a dynamic market which

struggles to break open its chains. But sometimes the country takes two steps back before it advances again. *Panta rhei...*

Thus, with this publication we wanted to take a snapshot. The Pakistani Alumni of the International Academy of Leadership (IAF) in Gummersbach (Germany), connected to each other in the network Freedomgate Pakistan (FGP) created hereby a little field marker for future orientation. This avant-garde of a liberal democracy in Pakistan put together their efforts in this booklet. Many thanks shall be expressed for taking out some time to contribute. They paused for a second to take a look at their country before the next incident occurs, another development changes the actual frame, or a further move sets back the situation.

It is an individual look. It does not claim completeness nor is it balanced. It does neither represent the overall opinion of the network nor the stance of the Friedrich-Naumann-Stiftung für die Freiheit (FNF) which supported its publication – for good reasons: Richness lies in diversity. Liberals are thinking humans and each human is an individual with his or her own way of looking at Pakistan, or as Oscar Wilde puts it: “A man who doesn’t think for himself does not think at all.” Furthermore, in postmodern times we can claim to hold the truth in our hands, less alone to have it printed. It is just a shot, or better many pictures or facets of a quickly moving country in a rapidly changing world. May the next shot show a better picture!

Olaf Kellerhoff  
Resident Representative FNF

Islamabad  
September 2010

# Post 18<sup>th</sup> Amendment Pakistan.

Irfan Ahmed Urfi

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*The novel depicts the plight of the French peasantry demoralized by the French aristocracy in the years leading up to the revolution, the corresponding brutality demonstrated by the revolutionaries toward the former aristocrats in the early years of the revolution, and many unflattering social parallels with life in London during the same time period.*

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*It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity, it was the season of light, it was the season of darkness, it was the spring of hope, it was the winter of despair; we had everything before us, we had nothing before us, we were all going direct to heaven, we were all going direct the other way...*

Charles Dickens (1812–1870) a great novelist wrote these lines in the beginning of his classical work “*A Tale of Two Cities*” in 1859. The story is set in London and Paris before and during the French Revolution. It is the most printed original English book and among the most famous works of world fiction.

The novel depicts the plight of the French peasantry demoralized by the French aristocracy in the years leading up to the revolution, the corresponding brutality demonstrated by the revolutionaries toward the former aristocrats in the early years of the revolution, and many unflattering social parallels with life in London during the same time period.

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*It is the epoch of belief, it is the epoch of incredulity, it is the season of light, it is the season of darkness, it is the spring of hope for the next generation of the feudal, it is the winter of despair for an ordinary citizen of Pakistan, we have everything before us (politicians), we have nothing before us (voters) , we are all going direct to heaven, we are all going direct the other way...*

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The life being portrayed by the novelist as revealed in the first few lines quoted above is not strange for us, in the current century. We have been witnessing 63 years of alive and dead democracy in Pakistan.

Charles Dickens saw the world from his own perspective in the 1850s, but classics always have their universality beyond periods.

If we go through the lines once again, they can be easily applied on the current political scenario of Pakistan. It seems Charles Dickens has written these lines for the politicians and masses of today's Islamic Republic of Pakistan.

*It is the best of times for parliamentarians and it is the worst of times for their voters. Similarly it is the age of wisdom for those who know the art of make belief as the leaders of masses and it is the age of foolishness for those who believe that there is someone who represents them in the corridors of power.*

It is the epoch of belief, it is the epoch of incredulity, it is the season of light, it is the season of darkness, it is the spring of hope for the next generation of the feudal, it is the winter of despair for an ordinary citizen of Pakistan, we have everything before us (politicians), we have nothing before us (voters) , we are all going direct to heaven, we are all going direct the other way...

American 35<sup>th</sup> US president (1961–63), John Fitzgerald Kennedy (1917–1963) once said:

*"It is an unfortunate fact that we can secure peace only by preparing for war."*

Similarly, it has been the fortune of democracy in Pakistan that it has been protected by dictators since marshal law was first imposed on Pakistanis in the 1950s. This over protected baby of democracy grew up under the patronized shadows of uniform and at the gun point of army men. Eventually and appar-

ently it is in front of us as a mature, independent entity in the current scenario of politics.

The historical event of signing the draft text of the “18<sup>th</sup> Amendment” to the constitution of Pakistan is yet to be analyzed and understood to know the actuality of beneficiaries whether they are masses and voters at grass root level, or the political elite of a country who is being ruled by feudalism since inception.

No doubt, democracy is an ongoing process that never ends. Societies can never be groomed politically unless individuals go through a certain level of socio-cultural learning experience of change and revolution.

In order to become sensible and mature opinion makers, a certain level of political education of voters as well as of politicians is required at the institutional level.

Once a political scientist said: “You get fifteen democrats in one room, and you get twenty options”.

Even with controversial issues, at least a culture of dialogue is evolved gradually in a democratic environment where decision makers learn to live with those with whom they never agreed, even at an ideological level.

The committee which worked on this draft for almost a year includes representatives from all the political groups belonging to both houses of parliament in Pakistan.

The committee had to work on 95 amendments affecting 70 Articles of the existing constitution.

The proceedings of developing the said draft in consultation with all political parties who have their existence in, parliament wouldn't have progressed if there wasn't a culture of respecting varying opinions.

This is an indicator of the progressive mindset of politicians from a socio-political perspective. For the first time in the history of Pakistan, it was

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encouraging news for those who want to see a pure democratic environment at a professional level in all public and private institutes of the country.

Democracy is not only an instrument of decision making at a national and international level, rather this is an individual outlook and a thinking process at a local level. Similarly, feudalism is not an opportunity of oppressing the oppressed, rather can also be interpreted as psychology of the dominating mindset.

While discussing the bill in parliament, the politicians instead focusing on the issue at a serious level tried their best to take the credit of the proposed amendments in a superficial way. Whereas, this was very much clear to all concerned that without a positive participation of all parties these amendments would not have been successfully presented before the parliamentarians in a certain time frame.

This was also observed that the ruling members did not even bother to discuss the amendments in detail during the sessions in a pluralistic way, rather analytical approach was avoided and deep down technicalities of each point were overlooked by the exciting politicians.

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This kind of intellectual dishonesty is a recognized social norm in our society and unfortunately very much respected as a political tact by our politicians since 1947.

Resultantly, the prestigious exercise of making amendments in the constitution turned up into a superficial change in the so called democratic process that has nothing to do with the citizens of the country at grass root level.

John Fitzgerald Kennedy once said “mothers all want their sons to grow up to be President, but they don't want them to become politicians in the process”.

This proves we seriously need a political vision to see a progressive post 18<sup>th</sup> amendment Pakistan.

Oscar Wilde (1854–1900) an Irish poet, novelist, dramatist and critique said: “We are limited not by our abilities, but by our vision”.

Vision is actually an art of seeing what is invisible to others. Vision without action is a dream and action without vision is always a failure. Unfortunately our leaders have defined the word “vision” as political success to be in the corridors of power. The political success in its true spirit is always the success of the people and not the politicians only.

As per the draft, the 18<sup>th</sup> Amendment will undo the impacts of the 8<sup>th</sup> Amendment (enacted by General Zia ul-Haq) which had altered over 90 Articles of which 26 were from the Constitution. The famed article 58(2) (b), which had first been inserted into the Constitution by General Zia ul-Haq and allows the President to dissolve the Parliament, and which was re-enacted by General Pervez Musharraf, has also been removed from the Constitution in the draft. The draft proposed removal of many past amendments added by military rulers, including the 17<sup>th</sup> Amendment.

While approving the above points, the parliamentarians of the ruling party somewhat shunned those specific points which were in fact paramount and required a great deal of consideration. It appeared the parliamentarians were more inclined towards praising the Prime Minister and Chairman of the committee as opposed to focusing on the detailed and in depth conclusions and affects.

No doubt, some of the proposed amendments were quite progressive and open to the benefits of citizens. It has been recommended that in education, for each child up to the age of 16 years, be made compulsory. Similarly, inexpensive and expeditious justice should be ensured to the people as also the right of access to information without any hurdle.

Besides, freedom of association, decentralization of power and equitable share of provinces in federation were the proposals which could easily put the nation on a liberal path. In any case, empowerment of citizens in decision making with

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rule of law in a pure and liberal democratic environment can lead the Pakistan towards a destination dreamed by Muhammad Ali Jinnah, as revealed by him during his speech of 11<sup>th</sup> August before legislative council.

Still there are lots of things to be discussed and analyzed before a final bill can be agreed.

The inner party democracy issue in a liberal perspective needs to be considered at a serious level. This is to make sure, would the 18<sup>th</sup> amendment solve the problems of the ordinary citizen or this will benefit ruling elite for a while. The challenges being faced by the common people like energy crisis, inflation, natural disasters and weak governance, corruption and security threats are yet to be dealt with by a common Pakistani on her/his own.

A great leader's courage to fulfill his vision comes from passion, not position. We have to move further to great leaders from good leaders. A good leader inspires people to have confidence in the leader; a great leader inspires people to have confidence in themselves.

The 18<sup>th</sup> Amendment episode in any case initiated a move towards a more democratic and liberal political environment as a precedent. One day the requirement of being a Muslim in appointment/selection of President of Pakistan will also be proposed for an amendment by the Parliamentary Committee on Constitutional Reforms.

A great and liberal democracy has to be progressive. People often say that, in a democracy, decisions are made by a majority of the people. Of course, that is not true in a non liberal democracy where decisions are made by a majority of those who make themselves heard and who vote- a very different thing.

Mahatma Gandhi said

*The true democrat is he who with purely nonviolent means defends his liberty and, therefore, his country's and ultimately that of the whole of mankind.*

# From Presidential to Parliamentary Democracy

Fauzia Shaheen

I have seen several ups and downs in the Federal Parliamentary Democracy of approximately the whole of South Asia. In order to understand the strength of the state's non-federal parliamentary system of Bangladesh, I put together a dialogue with Prime Minister Sheikh Haseena Wajid. I even had a conversation with one of the major supporters of the federal parliamentary system, the (late) Benazir Bhutto. I have examined the ups and downs of the presidential and parliamentary system of Sri Lanka, after meeting the Foreign minister, Fernando along with other important personalities. I have seen the federal parliamentary structure of Srimao Bundara Naikay, along with the harsh presidential system of Jay Vardahany. I witnessed the auspiciousness of the provinces in the federal system and thereafter, as a result of the collaboration of Western and Northern provinces of Sri Lanka, the death of over than 0.2 million and the homelessness of about 1.5 million people.

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I desire Pakistan's federal parliamentary system to be stronger; therefore, it was also a wish of mine to understand the new consecrations of the Federal parliamentary system, after the succession of the 18<sup>th</sup> amendment.

The 18<sup>th</sup> amendment was approved with reciprocal consensus of Pakistan's National Assembly and Senate, with the help of which a federal system was introduced in Pakistan. With the support of the 18<sup>th</sup> amendment not only the appointment and practices of judges and advocates were made crystal clear and observable, but their positions were likewise recognized by the Parliament. According to this crystal clear selection process, a judicial commission was introduced and the Chief Justice was made its chairman. In this commission, two senior judges of the Supreme Court, the Law Minister, the Attorney General, and the Bar Council including those retired judges, who were nominated by the Chief Justice, were given representation.

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*The sycophants of dictatorship, the record carried who fought for the chair of General Pervez Musharraf can be questioned by even a common citizen as to whether they had the mandate to include those unlimited suspensions, cruel behaviour, unwanted practices, and floggings in the 8<sup>th</sup> and 17<sup>th</sup> amendment in Musharraf's and General Zia ul-Haq's era, and whether those assemblies were constitutional assemblies or not.*

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In the constitutional amendment process, the Council's responsibilities were increased and through organizational generosity, techniques for successful federal system were made clear.

I hold my own point of view as well. The people and organizations that have swallowed the 8<sup>th</sup> and 17<sup>th</sup> amendment silently (as this amendment was formed under the mutual agreement of all the political parties) are actually distressed after the succession of 18<sup>th</sup> amendment. People, who supported and certified those dictators who changed the constitution and those who took oaths in concern with PCO, over and over again, are not in support of the 18<sup>th</sup> amendment and are enquiring whether National Assembly had the authority of Constitutional Assembly to pass 18<sup>th</sup> amendment of constitution.

The sycophants of dictatorship, the record carried who fought for the chair of General Pervez Musharraf can be questioned by even a common citizen as to whether they had the mandate to include those unlimited suspensions, cruel behaviour, unwanted practices, and floggings in the 8<sup>th</sup> and 17<sup>th</sup> amendment in Musharraf's and General Zia ul-Haq's era, and whether those assemblies were constitutional assemblies or not.

I consider the whole of the 1973 constitution as a blessing. 18<sup>th</sup> amendment is passed by our Parliament and now it is an important part of our constitution. People who denied the parliament's decisions should not forget that it would be against Article 6, which states that if somebody suspends, cancels or creates difficulties in the constitution, whether he is a common man or the president of the country, he is going against the constitution and is a traitor. This act is against the constitution for army generals; therefore it is also implemented to other organizations as well. It is a challenge for Chaudry Aitzaz Ahsan, Ali Ahmed Kurd, Justice Tariq Mahmood, Rasheed A. Rizvi, Mahmood-ul-Hassan, Ather Minallah and those judges who started this movement, to restore the judges. These advocates should have an open and clear point of view against the lovers of dictatorship. If they fail to do so, they will have to encounter the judgment of our public and history. There mustn't be any doubt in the fact that it is the people's mutual desire that should be superior to any organization and they may express their need through the Parliament.

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This is very important for the success of the 18<sup>th</sup> amendment that Pakistan should follow the experiences of other democratic countries like India, Canada, South Africa and Spain.

This is really very important that a lot of fundamental changes have been agreed on as to shifting power from the President to the Prime Minister and perhaps in an increase of emphasis of the role of the provinces. Therefore, the 18<sup>th</sup> amendment itself is a huge achievement. However, there is always more to be done. It seems particularly important that there is now also a constitutional right to access information. Access to information may be one of the most fundamental rights in a democratic state. So there are many important things in the Amendment and is a remarkable achievement - done relatively painlessly.

An international constitutional expert from South Africa Christina Murray said, "people who draft a constitution, get pretty involved in the matter and probably have a sense that they have achieved more than they really have, because the

constitution (or an amendment) is only a start”. South Africans learnt this with their constitution. Even when everyone was ready to embrace the change it represented, we found it very difficult to implement the constitution. It turned out to be incredibly difficult to turn the whole undemocratic system around and to start treating people differently, establishing different institutions and so on. Getting the constitution sorted out is only about five percent of the work. Actually, making it work is much more difficult.

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*That's hard and it certainly needs strong civil engagement. People must start understanding what the constitution intends to do and insist that government, politicians, and institutions actually make it work. At the moment many jobs that are being done by the federal government have to move to provincial governments. Any country would confront a serious administrative challenge here.*

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Achieving targets of 18<sup>th</sup> amendments is quite hard as there are many technical issues including the issues that are intangible and relate to the way people think. Let's deal with the intangible issues first. People often talk about the role of politicians. We need political leadership but also political energy. Behind change we need people who champion it; Pakistan needs a willingness to make it work; we need people who really think about what it means on a day to day basis. One needs to have real energy and engagement behind it. That's hard and it certainly needs strong civil engagement. People must start understanding what the constitution intends to do and insist that government, politicians, and institutions actually make it work. At the moment many jobs that are being done by the federal government have to move to provincial governments. Any country would confront a serious administrative challenge here.

Giving some suggestions for the successful implementation of amendment Christina Murray said, “first of all, citizens need to understand that the amendment really diffuse power and should give more democratic power to people at lower levels because provinces now have much more responsibilities”. The people need to expect more from their provincial governments. But, at the same time, people need to be realistic and patient because it is not going to happen instantaneously. South Africans thought that once they voted and had a democratic government there would be a change. 15 years later, we are all still having to be very patient. Things have gotten better but it is slow. So citizens need to make demands and make sure that the amendment is actually implemented but they should also understand that it's difficult to change the government.

Secondly, as I understand that provincial governments need to think about their new roles while have had relatively routine jobs up to now. But in the future they are going to take up responsibility of developing programs and policy being creative. So provinces have an opportunity to administer the specific needs of their people. To do that, it requires thought, energy, concern, and engagement of people.

Thirdly, the federal government is facing a very difficult task of giving up power. This amendment requires shedding of some of the functions it has fulfilled until now, but more than that, it is required to do this in a way that ensures the whole country comes together and everyone benefits from the amendment. It is mandatory that the federal government must develop a program for transferring the power to provinces in such a way that no province is overwhelmed by all its new functions. They must be given the capacity to fulfill the new functions. The Implementation Commission will presumably give the federal government and the provinces an opportunity to discuss what capacity the provinces have and what they need. The provincial governments need to be particularly attentive to what they really can do now and what they need more capacity for. Some of them will be able to do a lot. Others will have to be patient, and develop capacity before they assume their new powers. There is tension here. On one hand the amendment must be made to work: the provinces have to start engaging with their new responsibilities. On the other hand, provinces shouldn't take on the new responsibilities so fast that they are overwhelmed and actually fail. You need some really astute, wise political judgment about what is sensible for each province to take on and what they should be more cautious about taking on with immediate effect.

Implementation of 18<sup>th</sup> amendment is a huge challenge for Pakistan. An implementation committee has been formed by the Federal Government but it is very unfortunate that Pakistan has come across the biggest natural disaster and all efforts of the government have been diverted to rehabilitation work. To make Pakistan a successful federation and not to destroy the one year of hard work of the constitutions amend-

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ment committee – the government needs to be focused on the implementation's goals.

Marc Limieux, a senior program manager of the Forum of Federations, a Canada-based organization, said during an interview that now “Pakistan has many challenges in terms of abolishing a concurrent list, creating more units and devolutions of powers from center to provinces”. Commenting on the 18<sup>th</sup> amendment he said “it is not only to determine how many units they have but also the level of democracy, the level of maturity of the political parties and alternating power between each other. Maybe forming coalition with each other, do not suffer military coups for example something that the Pakistani

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have suffered regardless of having four units or not, the geography, I mean the flow of exports from the main country to the neighboring region is an element of making a federation a success as well”.

He further elaborated about successful federations stating that many elements make a federation successful. “The behaviour of leaders is a key too. Leadership is a rare quality. It takes decades if not centuries to make a federation very successful and federation evolved a change in nature. Some begin as quite decentralized and move to centralization. Some move in the opposite direction; start with centralization and become decentralized”.

Talking about the challenges he stated, “There are numerous challenges which Pakistan is going to face and one of the biggest challenges is that the provinces have to abolish the concurrent list.” Limieux further inquired: “Do the provinces have the means to manage these new responsibilities? Do they have the means to balance these added responsibilities? Is there any capacity to manage and collect revenue to provide assistance to the population ready?” He asked, “It will take time and not only this but it will also take commitment from the federal government which would lose these powers or transfer these powers. Will the federal government assist these provinces and train their bureaucrats?”

Giving the examples of different successful federation of the globe he added “there should probably be an interim period during which training programs will take place. If we look at the experience of South Africa, there was an implementation period. Government of Pakistan is already looking at this implementation process; do the provinces have public schools for public administration? Are they up to power? Are they equal to each other from Lahore to Quetta and from Quetta to Karachi? Do they have the same training schools? Do they provide the same pay? What is the incentive for bureaucrats to stay? What are the comparisons to the federal bureaucrats? So these are serious questions of capacity and these things take decades. That is certainly going to be a problem in some remote areas of the provinces which are out there, given war and terrorism on one border and mental conflict on the other side of the border. These are extremely big challenges. How to convince people to pay taxes? It’s not in the culture of some people. It’s not in the culture of some people to pay their hydro bill.

There are many challenges like fiscal decentralization, inter-governmental relations between a province and the centre; between two provinces, the experience in taxation models, in budgeting etc.

If we want to see Pakistan as a strong federation for future prosperity then we need a lot of trained bureaucrats, skilled people and educationalists who have strong backgrounds to build responsible citizens for paying taxes. It takes a generation. If people expect services from the government it’s should not be free.

The deadline of the implementation of the 18<sup>th</sup> amendment was fixed for June 30, 2011. The head of the implementation committee, Senator Raza Rabbani conducted meetings with the Chief Ministers of all four provinces several times. Prime Minister Syed Yousuf Raza Gillani had said that government will meet the date of the implementation of the 18<sup>th</sup> amendment. It is true that

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*So these are serious questions of capacity and these things take decades. That is certainly going to be a problem in some remote areas of the provinces which are out there, given war and terrorism on one border and mental conflict on the other side of the border. These are extremely big challenges. How to convince people to pay taxes? It’s not in the culture of some people. It’s not in the culture of some people to pay their hydro bill.*

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some important authorities are unhappy with 18<sup>th</sup> amendment because of which the amendment is being dragged on the floor of the judiciary.

It is high time Pakistan's civil society; democratic forces, political parties and NGOs raised a voice and made a sturdy demand for the implementation of 18<sup>th</sup> amendment.

# The 18 Amendment.....

## Causes and Effects

Beena Qayyum  
Khan

There has been much debate about the 18 amendment even before the bill was passed unanimously by the National Assembly in April 2010. Initially, it was thought that the 18 amendment would never come to pass, with the clauses, curtailing the powers of the President to next to nothing and opposition pressurizing the ruling Government to pass it, and after much anticipation and much to the surprise of many, it was passed unanimously.

That was a historic day, because it marked the era of a new beginning, the elected President, willing giving his powers to the Prime Minister, in the case of Pakistan, really a day to remember. The media's frenzy and analysis was overwhelming for all to see. Pakistan had entered an era of a democratic rule where the Parliament was finally supreme.

It seemed like one of the happy ending movies one watches on television and feel so good about it. The Judges had been reinstated, so now in Pakistan, Rule of Law had been restored. The provinces were given autonomy; the never ending issue of National Finance Commission was also surprisingly amicably resolved. Pakistan had taken a first step towards becoming a Federation,

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*Now, with the provinces getting their much deserved autonomy, people of Pakistan breathed a sigh of relief that the provinces would get their due share and much of the problems would be solved.*

*Control of the Tehrik-e Taliban Pakistan (TTP) was also a major achievement, and people rejoiced in the fact that now Pakistan would be rid of terrorism.*

something that we as liberals had been hoping for and actually lived to see it happen in our lifetime.

However, just like any interesting story, there is a twist to this happy story, and it started immediately amongst the journalists' circles of speculations, that this is a farce and Prime Minister Yusuf Raza Gillani is a puppet of the President and he would not exercise any powers without the consent of the President. Since free media is also a pre-requisite to a democratic setup, it was good not to be too hail and hearty about the issue but also to raise questions regarding pertaining issues.

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Now, with the provinces getting their much deserved autonomy, people of Pakistan breathed a sigh of relief that the provinces would get their due share and much of the problems would be solved. Control of the Tehrik-e Taliban Pakistan (TTP) was also a major achievement, and people rejoiced in the fact that now Pakistan would be rid of terrorism. But did that actually happen? We all know the surge of terrorists and suicide bombing occurring almost every week, so are we really safe?

With decentralization and dissolution of the Nazim system, things seemed to be a bit unstable because the provinces had to set up a whole new infrastructure which requires not only capable human resource but also a lot of money. And now, came a big blow to all the concerned parties that the money would be allotted to the provinces in the fiscal year 2011–2012, however, one of the proposals in this regard was put before economic managers, and that was to transfer projects worth PKR 68 billion to the provinces. And things were going in that direction.

For Sindh, especially, this was excellent news, because with provincial autonomy and an agreement on National Finance Commission (NFC), it was very clear that Sindh would benefit immensely from this setup. And Karachi being the financial hub of Pakistan would benefit from this, too.

The coalition government in Karachi between Awami National Party (ANP) and Muttahida Qaumi Movement (MQM) was also going fine, or so it seemed but the as they say 'still waters run deep' so was the case with these coalition

partners, it was an alliance which was unnatural and things were simmering between them.

But before all that, Pakistan was hit by the worst floods in history and as it swept Khyber-Pakhtoonkhwa and then Punjab, Balochistan and Sindh, it became the worst disaster much worse than the 2005 earthquake, the Tsunami and the Haiti quake combined, wiping off infrastructures as it went leaving millions homeless and countless dead.

This is where the flaws of the Government were brought to fore, with complete mismanagement, even though all the provinces were given a heads up warning of the impending disaster, the provinces made no effort to plan ahead, and we saw a complete collapse of the disaster management. The provinces were left helpless and call for international aid was appealed. Had the provinces been more organized instead of mudslinging others over the issue of fake degrees and what not, the majority of the damage could have been avoided.

Coming back to Karachi, with the assassination of Raza Haider, Karachi became a war zone, and target killings which was happening on and off, became more and more rampant, in the first nine months of 2010, the death toll due to target killings has reached 1000 and it is feared that the numbers could be higher than the official figures, and to this day it is going on. With target killings come the protests and strike calls, and businesses and transport just comes to a standstill, and Karachi being not only the port city but also the financial Hub of Pakistan, loses billions in a day, which affects the whole country.

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The government seems helpless in curtailing this violence and there have been talks of bringing in the army. This is exactly what the 18<sup>th</sup> Amendment does not allow, the army getting involved, but with the failure of the government at the federal and provincial level, the people are looking toward the very option that a democratically elected government should not do.

With multiple problems being faced in Pakistan, the 18 amendment should have been a breath of fresh air, but with complete mismanagement an amendment which could take the country forward, has not helped. I still do not blame this bill firstly because it will take about a year for it to be implemented and also for a true democracy to prevail this is the step in the right direction.

My only concern is that with incidents like Sialkot<sup>1</sup>, target killings in Karachi, and terrorism would the foreign investors want to invest? And at such a crucial time, we not only need the money but also an image makeover.

A bill cannot be anything more than a piece of paper, even if it is part of the legislation, if it is not implemented properly and the government needs to take this matter seriously and come to a common understanding and strive to rebuild Pakistan.

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<sup>1</sup> On 15<sup>th</sup> of August 2010 a mob murdered two brothers in the streets of Sialkot in the presence of police forces.

# Education And Hopes From 18<sup>th</sup> Amendment

Asma Kiran Pervez

❗❗ Our country is not making progress in the fields of science, technology, management, policy making etc...our country men are not able to decide which way to go when they come across elections, leadership selection, legal rights etc". These are some of the most common discussions and the solution is always said to be the education.

The term education itself has vast and various interpretations. It is time to see what does this word mean in our society, how we understand it, how it is treated by us and what is the need of hour as far as its definition, usefulness and practical illustration of this phenomenon is concerned. The concept of education is to be seen in the peculiar social, economic and political context of the country in order to identify the problem areas and the tangible realities leading towards probable solution. Can education bring change or not is a question debatable; but it is settled phenomena that the process of change is facilitated and accelerated by the tool of education because education raises awareness oneself of his rights and duties and this awareness strengthens the process of change in the society.

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After the birth of Pakistan, like many things it was also lacking Constitution. So, initially it acquired an interim Constitution in the form of the Government of India Act 1935 and the Indian Independence Act of 1947. The formal one includes number of aspects regarding education in the Seventh Schedule (Legislative Lists) which only explain that the institutes controlled or financed by the federation and federal agencies for the purpose of research, professional or technical training and special studies were under the legislative domain of the Federation, while education at various levels including universities, agriculture education and research in particular were the responsibility of the respective provincial governments.

Then about after a year and a half the constituent assembly of Pakistan adopted The Objectives Resolution in March 1949. It was adopted to formulate the objectives and principles on which the new constitution was to be based. The Objectives Resolution guaranteed fundamental rights such as:

Equality of status, of opportunity and before law, social, economic and political justice and freedom of thought, expression, belief, faith, worship and association, subject to law and public morality.

Here no mention was made about the subject of education. Education was not recognized as a fundamental right for the citizens of newly established state.

Subsequently, Pakistan framed its first Constitution in 1956. Education found a mention in article 29(d), according to which the state shall endeavour to provide basic necessities of life, such as food, clothing, housing education and medical relief for all such citizens who are permanently or temporarily unable to earn lively hood and thus does not enjoin upon the state to provide such facilities to the entire population.

In the 5<sup>th</sup> Schedule, Article 106 of the 1956 Constitution, the subject of education fails to find a mention in the Federal List, or even in the Concurrent List. Education is mentioned at Entry No. 20 and 23 of the provincial List. These lists merely lay down that education, including universities, technical education and professional training will be in the legislative domain of the provinces, and

the coordination and determination of standards in institutions for higher education or research and scientific and technical institutions shall be the responsibility of the provincial government. In short the Constitution of 1956 did not spell out any mandatory responsibility of the state.

Then Constitution of 1962 brought a hope and while enumerating Fundamental Rights in Chapter I, Article 12(3) states that:

No citizen shall be denied admission to any educational institution receiving aid from public revenues on the ground only of race, religion, caste, or place of birth.

In chapter 2, laying down the Principles of Policy, it has been mentioned that: Illiteracy should be eliminated, and free and compulsory primary education should be provided for all, as soon as is practicable.

But unfortunately the Constitution failed to mention a deadline by which the government is expected to achieve this goal, and merely mentions in general terms a desirable objective. The result was that education never got the priority that it deserved, and resources were never adequately apportioned for meeting these goals.

Finally, the Constitution of 1973 was framed in the light of some of the experience gained and lessons learnt from the traumatic breakup of the county. It was realized that apart from contributing towards achieving material progress, the educational system also plays a great role in national integration and social cohesion. It was perceived that if the potential of the educational system to bind the nation together is not harnessed, or if it is allowed to be taken control of by parochial or disruptive elements, then the result can be disastrous.

Consequently, in Chapter 2, laying down the Principles of the policy, in Article-37 it has been mentioned that the state shall:

- a) Promote, with special care, the educational and economic interests of backward classes or areas;
- b) Remove illiteracy and provide free and compulsory secondary education within the minimum possible period;
- c) Make technical and professional education generally available and higher education equally accessible to all on the basis of merit.

The constitution of 1973 has also provided some articles which have an indirect bearing on education. Article 20(b) declares that;

Every religious denomination and every sect thereof shall have the right to established, maintain and manage its religious institutions.

Similarly Article 22(1) guarantees that:

No person attending any educational institution shall be required to receive religious instruction or take any part in any religious-ceremony, or attend religious worship, if such instruction, ceremony or worship relates to a religion other than his own.

Article 12(3) of the constitution of 1962 has also been repeated in the constitution of 1973 as Article 22(2b).

*The Constitution of 1962 mentioned that free and compulsory education should be provided to all, while the 1973 Constitution goes one step ahead by laying down that free and compulsory secondary education would be provided to all. However, once again the law maker failed to mention any deadline by which this target could be achieved.*

1973 Constitution has not yet been achieved.

Thus, it is for the first time in the Constitution of 1962 and 1973 that a mention has been made in an elaborate fashion of the importance of education and the imperative of making the nation literate. The Constitution of 1962 mentioned that free and compulsory education should be provided to all, while the 1973 Constitution goes one step ahead by laying down that free and compulsory secondary education would be provided to all. However, once again the law maker failed to mention any deadline by which this target could be achieved. The result is quiet evident that even after passing 37 years the goal mentioned in the

But no Constitution in the history of Pakistan has recognized the importance of education as a fundamental right for its citizens. The provisions of free and compulsory primary or secondary education has been made in the Constitution of 1962 and 1973 under the Principal of Policy (Chapter II ), and not under Fundamental Rights (chapter I ). Whereas the former one is not justiciable and later one is justiciable, i.e. enforceable through law.

The importance of the universalization of education for the success of democracy has been adequately stressed when legislators have ultimately recognized the importance of education, hence the insertion of new Article 25(A) in the Constitution which states:

25A: Right to Education: The State shall provide free and compulsory education to all children of the age of five to sixteen years in such manner as may be determined by law.

The concept of free education comes of utmost importance when the financial condition of ordinary man in our society is taken into consideration and when difficult living conditions are taken notice of particularly in the light of increasing population in a country where the youth is most in number when compared to others countries of the world. The poor economic conditions enhance the need of compulsory education as the government has to push the people to get their children admitted to schools without bearing any extra burden.

The state has finally realized its responsibility and by recognition of the right of free and compulsory education has, at least, laid some foundations on the basis of which, the whole building of the educational environment can be constructed. Insertion of this article in the constitution has made it a fundamental right, in contrast to all constitutional development in past, which cannot be denied to any citizen and if denied, he can get it enforced through courts of law and the state would have to ensure that this right is given to every citizen without payment of any cost by him and under all circumstances.

Now the duty of the provinces starts; and in order to respond to this amendment they would have to work hard with full commitment at the legislative level for formulating effective laws and comprehensive rules to cater the situation and to ensure free and compulsory education to its citizens, the fruits of the amendment.

The Constitutional Amendment Act 2010, does not have any saving clause, hence the existing laws made by the Federal Government about the subjects contained in Concurrent List have not been protected but there is provision which speaks, of an implementation commission to be formed by the Government to complete the process of devolution of process of the matters mentioned in concurrent list to the provinces and this process is to be complet-

ed before 30<sup>th</sup> of June 2011. An inference can be drawn from the formation of this commission that the existing laws would hold field till 30<sup>th</sup> June 2011.

The world is passing through the phase of transformation from the Era of Industry to the Era of Knowledge; and only those nations would survive who would meet the needs of the Era and transform their educational system to the knowledge based educational environment and for this purpose, we will have to work vigorously and continuously to coup the needs of the hour.

Irrespective of the procedures and modes of implementation contained in the laws to be made, the real need of the hour is the political will of the Government to implement this Amendment in its true spirit. We have every reason to be optimistic that if the Government has made a constitutional amendment why would it not implement it? But in order to make it a priority for the Government, we will have to play our role and to be vigilant and pursue the Government at different levels and a close co-operation. A working relationship is also needed to achieve actual objectives behind this legislation.

The insertion of this new article in the constitution is a window of hope and an emerging opportunity for all of us to build in the sector of education; but it also requires our commitment for the cause and no one should remain behind in doing the best possible, at every cost, under all circumstances, at all levels, with the feeling of contributing towards our society to make it a better and safe place for our future generations to live in. If we succeed in getting this piece of law implemented in its true sense, then surely we will bring a real change in the future of Pakistan. And we don't have time to fail.

## Child Rights in Pakistan in the post 18<sup>th</sup> Constitutional Amendment era

Arshad Mahmood

**T**ehmina (12) a child domestic worker was cruelly tortured by her employers resulting in the fracture of her backbone as a consequence she has lost here ability to walk. Following close is the severe torture meted out to ten-year-old Nadeem by his employers. The statistics are saddening, five child domestic workers have died in past eights months only in Punjab province. To add another shameful act of brutality is the public lynching of the two brothers in Sialkot in the presence and with alleged complicity of the police officials.

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This situation demands immediate attention and action of the Parliament and the Government to legislate for child protection, ban child domestic labour and put in place a comprehensive National Child Protection Policy. Unfortunately however, the progress on the proposed National Child Protection Policy, the Criminal Laws Amendment Bill 2009, the National Commission on the Rights of Children Bill 2009, the Prohibition of Corporal Punishment Bill 2009, the Charter of Child Rights Bill 2009 and the Child Marriages Restraint Amendment Bill 2009 came to halt following the 18<sup>th</sup> Constitutional Amendment in April this year. In May 2010 the National Commission on the Rights of Children

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*This article will try to clarify the situation and indicate some constitutional provisions and Pakistan's international obligations to make a case for legislation on child protection at the federal level. Article 25(1) of the Constitution enshrines the foundational concept of legal equality of citizens and holds that "all citizens are equal before law and are entitled to equal protection of law".*

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Bill 2009 was sent back to the Ministry of Social Welfare and Special Education by the Law and Justice Division on the sole ground that the Parliament cannot legislate on the subject of children after the 18<sup>th</sup> Constitutional Amendment, as a result the future of various bills and policies concerning children has become uncertain.

The Concurrent List has been deleted in the 18<sup>th</sup> Constitutional Amendment which has created confusion within the relevant ministries, departments and among other stakeholders on the legislative competency of the federal legislature and existence of coordination mechanism at the national level on the subject of children.

This article will try to clarify the situation and indicate some constitutional provisions and Pakistan's international obligations to make a case for legislation on child protection at the federal level. Article 25(1) of the Constitution enshrines the foundational concept of legal equality of citizens and holds that "all citizens are equal before law and are entitled to equal protection of law".

Article 25 (3) of the Constitution recognizes special right of protection for children due to their vulnerability and states "Nothing in this Article shall prevent the State from making special provision for the protection of women and children". Further, Article 37(e) stipulates in relevant part that the State shall "make provision for securing just and humane conditions of work, ensuring that children and women are not employed in vocations unsuited to their age or sex..." Furthermore, according to amended Article 142(b) of the Constitution, the Federal Legislature has the power to make laws with respect to criminal law, criminal procedure and evidence thus, making it clear that the Federal Legislature has the competence to adopt the long awaited Child Protection (Criminal Law Amendment) Bill 2009.

On the authority of Articles 25(1), 25(3), 37(e) and 142(b) it can be argued that notwithstanding promulgation of the 18<sup>th</sup> Constitutional Amendment and the consequent legislative devolution to provincial assemblies with regard to child welfare matters, the federal legislature cannot be prevented from making special provisions for children and from enacting legislation relating to rights of

the child. This also draws attention to the fact that the federal legislature and the federal government ministries cannot absolve themselves of their constitutional responsibility towards children on the pretext of 18th Constitutional Amendment.

In addition to the constitutional obligations of the State towards children there are also international obligations of the State being party to international declarations, conventions and covenants. Pakistan has ratified a number of UN and ILO conventions, i.e. the UN Convention on the Rights of the Child (UNCRC), the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the UN Convention against Torture, the ILO Convention No. 182 on the Worst Forms of Child Labour and No. 138 on Minimum Age for Employment to name a few. Article 4 of the UNCRC that Pakistan ratified on November 12, 1990, made it obligatory on the State Parties to take all appropriate legislative, administrative and other measures for the implementation of the rights enshrined in the Convention.

The Committee on the Rights of the Child in its General Comment (GC) No. 5 'General Measures of the Implementation of the Convention on the Rights of the Child, 2003' says that "when a State ratifies the Convention on the Rights of the Child, it takes on obligations under international law to implement it". In Para 40 of the GC 5 it has been stated that "the Committee has found it necessary to emphasize to many States that decentralization of power, through devolution and delegation of government, does not in any way reduce the direct responsibility of the State Party's Government to fulfill its obligations to all children within its jurisdiction, regardless of the State structure". GC 5 clearly spells out that the federal government is still responsible to fulfill its obligation irrespective of the devolution and structure. The Committee on the Rights of the Child in its Concluding Observations of 2003 as well as of 2009 has stressed on the need to legislate for the protection of child rights.

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Furthermore, it is obligatory for Pakistan to maintain minimum standards for child rights. These should be defined in accordance with international standards by the federal government. There are Indian, US and many other examples where powers have been devolved to the states/provinces but minimum standards have been developed at the federal level. The state or provincial governments are obliged to fully abide by these minimum standards. For instance, minimum age for entrance into labor is fixed by the federal government which equally applies to all workers in all parts of the country, provinces can have higher minimum ages but they cannot go below the federal minimum standard. In the absence of these minimum standards it is likely that the rights provided to children across the provinces will vary and will consequently trigger a debate with regard to the guarantee of equality under Article 25 of the Constitution.

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Pursuant to Item No. 3 in Part I of the Federal List, “external affairs; the implementation of treaties and agreements...” is within the legislative realm of the federal legislature. Further, a new Item No. 32 has been introduced under the 18<sup>th</sup> Constitutional Amendment in Part I of the Federal List mentioning words International treaties, conventions and agreements etc. This also enables the federal legislature to enact laws on subject matters covered by international treaties, conventions and agreements. However, there is need to create clarity about this among the stakeholders (federal ministries and provincial governments) as presently even the Law and Justice Division is raising objection to legislation i.e. the National Commission on the Rights of Children Bill 2009, which is in line with our international obligations being Party to the UNCRC, based on the assumption that the federal legislature cannot legislate on the subject.

Some positive provisions have been added to Fundamental Rights including Article 10-A and Article 25-A that will definitely have positive impact on the state of child rights in Pakistan. Under Article 10-A, where every person shall be entitled to a fair trial and due process, is a step towards strengthening the guarantee for every person in Pakistan to be dealt with in accordance with the law. Under Article 25-A, education has been made fundamental right of every child of the age of five to sixteen years. If implemented properly, these provi-

sions of the Constitution can go a long way in ensuring children the right to a fair trial and free and compulsory primary education. However, the question is how these fundamental rights will be trickled down to every child? This will require political will and commitment and huge financial resources.

Some fundamental rights which we believed would be taken care of but were ignored in the 18<sup>th</sup> Constitutional Amendment included Frontier Crimes Regulation (FCR) and amendments in Article 247 (Administration of Tribal Areas) of the Constitution. FCR has been declared a draconian and black law by Amnesty International, Human Rights Watch, Human Rights Commission of Pakistan, The Society of the Protection of the Rights of the Child (SPARC) and many national and international bodies and commissions and the Superior Courts of Pakistan because it carries many unreasonable provisions such as section 21 which provides for the collective responsibility. SPARC came across a number of cases where innocent children and women were found detained under the collective responsibility clause of the FCR. Article 1 of the Constitution of Pakistan declares Tribal Areas to be a part of Pakistan but its inhabitants are not treated like other citizens of Pakistan due to the limitations imposed by Article 247 of the Constitution of Pakistan which restricts operation of Pakistani laws in these areas and debars Courts to exercise jurisdiction here.

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*As a result, the status of child rights in FATA in light of our Constitutional and international obligations will remain a question mark in the days to come and particularly when, hypothetically speaking, federal legislature has no powers to legislate on children.*

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Surprisingly however, the 18<sup>th</sup> Constitutional Amendment is silent on the issue of bringing any reforms in the Federally Administered Tribal Areas (FATA). As a result, the status of child rights in FATA in light of our Constitutional and international obligations will remain a question mark in the days to come and particularly when, hypothetically speaking, federal legislature has no powers to legislate on children. How will the government ensure protection and promotion of rights of children of FATA in accordance with the UNCRC? How will the government implement recommendations of the Committee on the Rights of the Child with reference to children belonging to FATA? One simple answer to these many questions is to abolish the black law, make amendments to Article 247 of the Constitution and bring FATA into mainstream.

The growing incidence of violence against children reminds us time and again of the importance of legislation and mechanisms for the protection of the rights of the child and the need is on war footing. Children need help and support for a decent life but are instead victims of the worst forms of cruelty and barbarism as seen in the above cases and witnessed in the case of the two brothers. Can the State and the civil society protect children? Is it all about resources or poverty of will that has resulted in growing incidents of this nature? The Implementation Commission for 18<sup>th</sup> Constitutional Amendment should play its role; clarify the unnecessary confusion created by various ministries with reference to competence of the federal legislature to legislate about child rights in light of State's constitutional and international obligations. This will also lead to the immediate adoption of a number of children related laws that are in the pipeline for years now.

# Youth in Pakistan: The Way Forward

Asiya Arif Khan

Pakistan is enriched with a young population between the ages of 15 and 24 years. Youth comprises 27 percent of total population; however, the socio-economic indicators are not very promising with a literacy rate estimated to be 53 percent while in young females it is lower at 42 percent. Economic conditions force many Pakistani youth to take up employment in their childhood thus surrendering their right to education and becoming a part of illiterate workforce. This is especially prevalent in rural areas where young ones take up agriculture sector, whereas in urban areas, manufacturing sector widely employs them. On the other hand, owing to the non-uniform education in public and private sector; youth may not comply with international standards. On the other hand, the graduated lot from acclaimed institutes end up joining workforce abroad; thus giving rise to brain drain.

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A young population is and should be an asset for the country. Youth possesses potential and zeal of thrusting forward provided the right guidance and opportunities are given to them where they may prosper and flourish. Such a large segment of population can only be made resourceful through needs strong policies with implementa-

tion plan in place; else resource will be wasted. Uneducated and unskilled youth remain out of mainstream economics as well as politics.

Compared to other South Asian countries; there exists a separate Ministry of Youth Affairs (MOYA) to deal with youth between the ages 15–29. The realisation of need of a separate ministry has received optimistic response; however it has a long way to go in terms of commitments and implementation.

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*Interestingly no youth representative has yet made it to any influential position in youth ministry alone. On the other hand, initiative of Youth Parliament by private sector is appreciable but representation of youth from all strata of society remains to be a challenge.*

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The Youth Policy has some positivity in shape of internships, entrepreneurship and micro credit. Policy does not clearly define rite-de-passage of introducing youth to political processes. In presence of feudal and a few political families in power, this remains to be a far cry. Interestingly no youth representative has yet made it to any influential position in youth ministry alone. On the other hand, initiative of Youth Parliament by private sector is appreciable but representation of youth from all strata of society remains to be a challenge.

In spite of non-promising scenario youth has come forward in identifying issues and suggesting solutions. 42 percent of youth follow politics. This may not be considered a majority but they still represent a significant proportion. 37 percent of young people blame politicians for the country's political problems, while a mere 25 percent hold external forces responsible; 19 percent hold dictatorship responsible for political disorder. Encouraging aspect is sensitisation on the socio-political situation rather than holding 'others' responsible for internal problems. Youth is gaining momentum in voicing of its rights through protests, rallies combined with discourse through print and electronic media.

2010 saw the introduction and induction of 18<sup>th</sup> Constitution Amendment, thus abolishing changes in Amendment by dictatorial regimes. The Constitution makes education free and compulsory for all children of the age of five to 16 years. This calls for bridging gaps in education system, so that youngsters can have informed choices.

'Freedom of Association' has been laid down in the constitution. Earlier in 1984 and 1992, youth's access to politics was barred through a ban on student

unions. In 2008, the ban was lifted and was widely applauded. Long years of ban have led to seclusion of youth from mainstream politics. Now need of the hour is to provide youth with platforms to prevent being hijacked by vested groups giving rise to violence only. Youth of today is well abreast of national as well as international political scenario; ideologies and theories to adhere to-liberalism being a prime one.

Like some other South Asian States, a party with liberal manifesto doesn't exist here, however reflection of liberal ideology can be found. For instance economic liberalism and good governance is a part of the manifesto of the ruling coalition's major party with a wide support of youth; literate and illiterate both. Liberal youth can promote discourse on liberalism while keeping society's framework in view. Promoting liberalism through education and dialogue is tedious but achievable in the end. This is imminent because existing institutions may require modification, old system may need overhaul.

Although small in numbers, young population adhere to principles of liberalism. They strive and call upon government and stakeholders for democracy, freedom with a sense of responsibility, women and youth empowerment, accountability and transparency. Youth organisations have monitored state policy on education and informed the policy makers about positive and negative aspects of their policies. This will be beneficial in increasing acceptability of liberal principles among ruling as well as common public especially youth.

Active involvement of youth can change the socio-political scenario. Care should be taken and stress should be laid upon need to refrain from agitation, vis-a-vis promotion of principles of liberalism. Way forward for youth is to remove cobwebs of despair and get involved in the political processes and decision making. This is achievable through a vibrant, well informed, progressive, tolerant, democratic and liberal youth.

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# Right to Information: Pre and Post 18<sup>th</sup> Amendment Situation in Pakistan

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## **Background:**

In 1947, Pakistan inherited from the British a system of governance, which was not responsive or accountable to the people of the country. In the bureaucratic structure, the officers were only responsible to their seniors; and not to the people of the area or country. It suited the colonial interests, as the British had little responsibility towards the people of the Indo-Pak Subcontinent. After 1947, this system needed to be changed in line with the requirements of an independent nation but it was not done; so it remains a work in progress.

One important feature or characteristic of the colonial administration was official secrecy, which meant that information should be shared with the 'subjects' on 'need to know' basis. This obviously implied that government did not belong to the people and, therefore, they had no inherent right to information. As a result, the information regime that came about treated all official information as excluded from public access unless declared by the authorities otherwise. In an independent country, this regime should have changed and it should have been

declared that all official information would be open to public access unless declared otherwise by the authorities in the larger public interest.

Had the democratic process been allowed to work, this change would have probably taken place. But, unfortunately, the civil and military bureaucrats, who got into power, had little interest or vision to bring about such a change. Their rule also blocked the possibilities of civil society input whereby such ideas could have been suggested and promoted. They were more interested in promoting personal or organizational interests, as opposed to embarking upon a well-considered program of reforming laws, institutions and practices to make them consistent with the needs and aspirations of an independent nation. Many of these bureaucrats thus showed the slavish mentality and some would even openly say that systems that we have inherited are the best ones and we should keep them without much change.

No wonder that even today, Official Secrets Act 1923 remains a valid law without much change. Many other laws include provisions about keeping the information excluded from the people. The rules, procedures, standing orders and by-laws of the government and various departments include sections aimed at protecting the so called official secrecy. The terms like secrecy have not been specifically defined so, in effect, nearly all official information is treated as excluded from public access. Official attitudes and practices are rooted within this legally sanctioned secrecy regime. Almost every day, in one department or the other, show cause notices are served to officers by their superiors for 'leaking' or 'disclosing' the so-called official information. There exists an official environment in which disclosure of information, which may very well be in the larger public interest, could be a ground for suspension or dismissal from service. So officers feel insecure, and would usually not disclose information of any kind to remain on the safe side.

In this environment of official secrecy, there exists a wide gulf between the people and the government. People do not trust the government or government institutions; and often presume inefficiency, incompetence, malafide or corruption on the part of the government – sometime completely wrongly and unfairly. Rumors and speculations abound in the absence of access to the facts or correct information. Even media has to rely on rumors, press releases, partial disclosures, informally shared information or on dubious 'sources'; as access to information or records through formal means remains minimal. In this situation, it is easier for authorities to sweep under the carpet the inefficien-

cies and malpractices. And people find it difficult to engage with authorities in an informed manner to help improve the situation or access their rights and entitlements in a smooth manner. In the absence of access to information, people cannot expect transparency; nor can they hold the government accountable.

**Struggle for Right to Information in Pakistan:**

Until recently, peoples' right to information has not been a major concern of civil society or political parties in Pakistan. Following independence, most of the attention remained focused on freedom of media in the context of peoples' right to freedom of speech and expression; and it was implicitly assumed that freedom of media would guarantee peoples' right to information. It is evident from the fact that the framers of 1973 Constitution did not include right to information amongst the fundamental rights. However, freedom of speech and expression was guaranteed under Article 19, which reads as follows:

“Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, or incitement to an offence.”

The omission of right to information from Article 19 was significant and it could not be unintended. Since Article 19 of the Universal Declaration of Human Rights 1948 covered right to information, like the International Covenant on Civil and Political Rights 1966, it is likely that the political parties and constitutional experts deliberately decided for certain reasons not to recognize it as a fundamental right in the original 1973 Constitution. While there is a little clarity about the possible justification that the framers might have in their minds, it is obvious that there did not exist any civil society demand for explicitly recognizing it as a right, in addition to freedom of speech and expression. As a result, the right to information would usually be seen as a part or consequence of free and independent media, instead of recognizing it as a separate right, which could be realized through media as well as through other means and methods.

In 2008, a staff member of Centre for Peace and Development Initiatives (CPDI) submitted an application to the Ministry of Law seeking information about fee paid to lawyers engaged by the Ministry to represent the Federation in the Supreme Court during Oct. 1, 2002 to March 20, 2008. The Ministry refused to provide the requested information and stated:

“... if the required information was provided to the requester then it [will] create unnecessary problems, embarrassing situation, and open a Pandora box, further it would be direct interference in the internal working of this Division...”.

Later, the Ombudsman decided in favour of the applicant and directed the Ministry to provide the requested information within 30 days. However, the Ministry filed a representation to the President against the decision of the Ombudsman. The matter is still pending with the President.

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*Further, in view of military interventions, the Constitution was repeatedly suspended or abrogated in Pakistan, which made it difficult to even realize the fundamental rights recognized in the Constitution. So, for most of the time, the civil society struggle was mostly about the restoration of the Constitution and the democratic process; instead of focusing on expanding the scope of freedoms and rights recognized in the Constitution.*

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Further, in view of military interventions, the Constitution was repeatedly suspended or abrogated in Pakistan, which made it difficult to even realize the fundamental rights recognized in the Constitution. So, for most of the time, the civil society struggle was mostly about the restoration of the Constitution and the democratic process; instead of focusing on expanding the scope of freedoms and rights recognized in the Constitution. However, whenever the Constitution was restored, the state institutions would start asserting within the democratic framework. It was witnessed, for example, in 1990s when the Supreme Court restored the Nawaz Sharif government, which had been dismissed by the then President on various charges. In the judgment relating to this case, the Supreme

Court also underlined the need of access to information by observing that:

“...the Government is the major source of information, which in a democratic setup, it is duty bound to disseminate for public awareness, to enable them to adjudge the conduct of those who are in office and the wisdom and follies of their policies.” (PLD 1993 SC 746)

In the same judgment, the Supreme Court further observed that: "...right of the citizenry to receive information can be spelt out even from the 'freedom of expression' guaranteed by Article 19 of the Constitution, of course subject to inhibitions specified therein".

In the meanwhile, the civil society efforts for right to information had geared up in the face of growing complaints about corruption as well as the demands for transparency in governance around the world. Responding to these efforts, in 1997, the interim government led by Malik Miraj Khalid promulgated a Freedom of Information Ordinance, which lapsed after 120 days, as the following government of Mian Nawaz Sharif decided not to get it enacted as a law. Later, General Pervez Musharraf promulgated another Ordinance, namely the Freedom of Information Ordinance in 2002, which was later given protection under the 17<sup>th</sup> Constitutional Amendment and now exists as a valid law in the country.

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Musharraf had promulgated Freedom of Information Ordinance 2002 with the stated objective of promoting transparency and accountability. However, the Ordinance was too flawed to serve the cause of transparency, which showed that the dictator was only interested in prolonging his rule without having any genuine commitment for reducing incidence of corruption or empowering people. The same Ordinance was later copied by the governments of Sindh and Balochistan in respect of their provincial departments.

However, whenever raised before them, the higher courts emphasized the importance of right to information. In a judgment in 2008, the Sindh High Court observed that:

"... access to information is sine qua non of constitutional democracy. The public has a right to know everything that is done by the public functionaries. The responsibility of public functionaries to disclose their acts works both against corruption and oppression. [...] Therefore, as a rule information should be disclosed and only as an exception privilege should be claimed on justifiable grounds..." [PLD 2008 Karachi 68]

### **Freedom of Information Ordinance 2002:**

If General Musharraf was really serious about transparency and accountability, he could have enacted a good Freedom of Information Law. But he did not. The Freedom of Information Ordinance promulgated by him had, among others, the following serious flaws:

- It was not made applicable to the provincial governments. Nor were the provincial governments asked to enact their own freedom of information laws.
- It declared only a few records as open to public access.
- It excluded a long list of records from public access like noting on the file, minutes of the meetings, intermediary information and third party information. Furthermore, instead of stating that records whose disclosure could undermine the defence of the country, it declared all records of the Ministry of Defence and related organizations as excluded from public access.
- It provides a weak implementation mechanism, as it offers no penalties against officers, who may deny or delay access to information without valid justification.
- It includes limited provisions for proactive disclosure.
- It does not adequately explain the terms like 'information' and 'record'.
- Under this law, authorities have the discretion to declare even additional records as excluded from public access.

But it is not easy for the common people to approach higher courts, as the procedure is cumbersome to invoke their original jurisdiction. Usually, laws should provide a framework for access to rights and entitlements. As the Freedom of Information Ordinance 2002 was highly flawed, it did not give people the confidence that it could benefit them. Therefore, it was rarely used, which was in itself an indictment against the Ordinance. A better law enacted by the Parliament could have served its purpose well as, for example, the experience of the Indian Right to Information Act 2005 has shown.

In April 2010, however, the democratically elected government of Pakistan Peoples' Party (PPP), with the support of other political parties, passed the 18<sup>th</sup> Amendment in the Constitution, which sought to, among others, repeal the distortions that had been introduced by the military dictators. Under this

Amendment, right to information was now recognized as a fundamental right by inserting Article 19-A in the Constitution, which reads as follows:

“Right to Information. Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law.”

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*As the Freedom of Information Ordinance 2002 was highly flawed, it did not give people the confidence that it could benefit them. Therefore, it was rarely used, which was in itself an indictment against the Ordinance.*

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Hence, the right that had been omitted from the original Constitution has finally been recognized. This is a major development to the credit of democratic process; and it is likely to go a long way in terms of promoting transparency and accountability in governance.

#### **Post 18<sup>th</sup> Amendment: What should happen?**

Article 19-A of the Constitution has a huge potential in terms of bringing about a major change in the way government departments function or relate to the people. However, it is not likely to happen automatically. Civil society organizations and pro-reform constituencies within the government will have to capitalize on this Constitutional development to promote the cause of peoples' right to information, transparency and public accountability. Their efforts may take many directions. One possibility is that a large number of existing laws, rules, procedures and by-laws are challenged in the higher courts for bring inconsistent with Article 19-A of the Constitution. If such a situation arises, many of the provisions in existing laws and rules etc. may be declared as void and of no legal consequence by the courts. Ideally, one would expect that the Parliament and the government to perform this responsibility by reviewing at

One major impediment in the way of peoples' right to information is the language barrier. Most of the official records are produced and maintained in the English language, while around 90 percent people cannot read or understand the English language. As a result, even when they can access official documents, it is difficult for them to efficiently benefit from them. Therefore, it is utmost important that the government converts to the Urdu language for official functioning or, at least, ensures that all important documents are prepared and maintained in Urdu as well.

least the important pieces of legislation to make them consistent with Article 19-A. However, given their past track record and constraints, it is unlikely to happen. So, to bring about such a change, civil society will have to play more active role in terms of approaching higher courts.

More specifically, many of the provisions of the existing Freedom of Information Ordinance 2002 as well as of similar laws in Sindh and Balochistan are clearly in contradiction of Article 19-A. It is because under Article 19-A, only 'reasonable restrictions' can be imposed on the citizens' right to information. However, exemptions provided in the Ordinance are not likely to pass the test of reasonableness, if challenged in the higher courts.

Keeping in view the Article 19-A of the Constitution, Centre for Peace and Development Initiatives (CPDI) has already been demanding a range of reforms. It has specifically recommended the Federal and provincial governments to enact new right to information laws, which must follow the following guidelines:

In line with Article 19-A of the Constitution, the Federal and provincial governments must take timely and effective steps to change the culture of official secrecy that it had inherited from the colonial administration. Such steps should include revisions of official rules and procedures, issuance of guidelines for proactive disclosure, training for officers in transparency and right to information and implementation of a clear policy across the board aimed at maximum transparency and disclosure.

1. Scope of information or records: The terms such as information or records must be broadly defined to cover all types of records and information with no exception whatsoever.
2. Meaning of access to information: It should be defined in a manner that people can have access to information and records through various efficient and practical methods, while especially keeping in view the convenience of applicants.
3. Maximum disclosure: The law must include provisions for maximum access to information and records.

4. **Applicability:** The law on right to information must be applicable on all the departments, organizations, corporations, institutions or autonomous bodies created, managed, controlled or financed, fully or even partially, by the provincial government. It should also apply to the private bodies, which receive subsidy, grants or funds, in any name or form, from the provincial government as well as on private bodies which have ever received government support in terms of a piece of land or substantial grant or any other substantial manner.
  5. **Minimal exemptions:** The law must provide only one negative list of precisely and clearly defined exemptions; while all the remaining information and records should be declared as open to public access. The exemptions must be reasonable and minimal; and must be based on recognized principles leaving little room for ambiguity and arbitrary or discretionary decisions. Exceptions to access to information may be provided if it would be likely to cause harm to:
    - a. International relations;
    - b. Defence of Pakistan;
    - c. Legitimate commercial interests of public bodies or related private bodies;
    - d. Ongoing investigations;
    - e. Privacy of an identifiable individual including a deceased one.
  6. **Proactive disclosure:** The law must provide an exhaustive list of specific categories of information and records, which should be proactively disclosed by public bodies through publications, notice boards, websites and other appropriate media.
  7. **Overriding Effect:** The law must be drafted in a manner to ensure that no existing or other law relating to secrecy, confidentiality or restrictions on access to information will restrict the operation of right to information Act.
- Minimal exemptions: The law must provide only one negative list of precisely and clearly defined exemptions; while all the remaining information and records should be declared as open to public access. The exemptions must be reasonable and minimal; and must be based on recognized principles leaving little room for ambiguity and arbitrary or discretionary decisions.*

8. Severability: The Bill must ensure that a document or record containing certain exempt information would be made accessible after deleting or removing the parts having the exempt information. Hence, the document or record would not be completely exempt just because a certain part of it contains exempt information.
9. Public Interest Override: In specific circumstances, where a convincing case can be made that benefits of disclosure of certain exempt information would outweigh the protected interests, even the exempt information would be made accessible in the larger public interest.
10. Easy and efficient process: The law must provide easy, cost effective and efficient process for access to information and records, while keeping in view the level of illiteracy and poor economic conditions of large sections of society.
11. Implementation system: It must be efficient and effective; and it must provide reasonable and explicit penalties against officers, who unlawfully deny or delay access to information or who resort to destruction of records.
12. Complaint system: The law must provide for establishment of a well staffed dedicated forum or a commission for adjudicating complaints, creating public awareness about right to information, guiding public bodies for improving their access to information or record management systems and preparing and submitting an annual report to the relevant elected Assembly. The decision of such a Forum or Commission must be final. This Forum or Commission should have the autonomy, independence and resources to deal with complaints in a speedy and fair manner.
13. Protection of whistle-blowers: The law must include effective provisions for the protection of whistle-blowers, who disclose information about wrong-doing in the larger public interest.

# The 18<sup>th</sup> Amendment and the Article 19-A of the Constitution

Gulmina Bilal  
Ahmed

After a series of regime changes, Pakistan underwent the rule of Zulfikar Ali Bhutto, who probably was the first democratically elected Prime Minister. The first and foremost job handed over to the parliament was the enactment of a constitution that can define the lines on which future decisions within the country would be based. Thus the constitution was given a final shape, which declared Pakistan as the Islamic Republic of Pakistan with Islam as its state religion and a federal form of government, with provinces having autonomy to make independent decisions.

However, a series of changes were made in the original clauses by different governments, particularly by General Zia-ul-Haq and General Pervez Musharraf, who changed it to suit their needs. Yet, the present government realizing a serious responsibility took the charge of restoring the constitution to its original form and that's why the 18<sup>th</sup> amendment was enacted, so that the required changes can be made. A 27-member parliamentary committee was formed on June 23, 2009 to review the 1973 Constitution and to annul the 17<sup>th</sup> Amendment. So that a balance of power can be created between the president and the prime minister, with removal of the controversial clause 58(2)b from the Constitution.

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The parliamentary committee reviewed all the 278 articles of the Constitution and proposed changes in about 100 of them. It was for the first time a consensus was drawn on redefining the borders of provincial autonomy by abrogate all items from the Concurrent List and handing them over to the provinces.

Following is a list of few changes that were proposed in the constitution;

- First of all, the name of General Zia ul-Haq as a part of the Constitution was removed forever.
- North West Frontier Province (NWFP) province has been renamed to Khyber-Pakhtoonkwa.
- Musharraf's 17<sup>th</sup> Amendment and the Legal Framework Order are also abolished.
- The ban on a third time Prime Minister's and Chief Minister's has been removed. If a ruler will hold constitution in abeyance then this is tantamount to high treason.
- The Council of Common Interests has been reconstituted with the PM as its chairman, with a condition that it must meet at least once in 90 days.
- A judicial commission will be set up. It will recommend the appointment procedure of superior judges. A parliamentary commission will finalize the names of judges. Also the appointment of chief election commissioner will be done by the consensus between the treasury and the opposition.
- Islamabad High Court and the benches of the Peshawar High Court in Mingora and the Baluchistan High court in Turbat have been proposed.
- After the elimination of the concurrent list, the provinces will now have joint control regarding their natural resources with the federal government.

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It is evident that the 18<sup>th</sup> Amendment should now be implemented in real sense, only then the common man would come to know its real use. By reviewing the above listed changes, we see that they are in benefit of every province and every political party and on the larger scale for the democracy to pertain on sustainable basis. For instance, the changes made by Zia ul-Haq were

the tyrannical in nature and were mostly politically motivated to indict members of different political parties. The Hudood Ordinance was also one of the black laws that were particularly lethal for the women folk and the country has seen one of the worst uses of this law. A number of other changes were made in the name of religion that were more damaging than any other change, because the growing militancy in our tribal belt and other parts of the country is all attributed to the time of Zia ul-Haq.

The biggest benefit of democracy for the people is that they can hold their representatives responsible for their actions; so the balance of power between the elected and the electors is maintained that also ensures development on sustainable basis. All the important institutions and pillars of the state must have a consensus in all matters so that a clash is avoided and good governance is ensured. An opposition is also very important and keeps a check on the government's policies and decisions. The 18<sup>th</sup> amendment will bring about a number of positive changes including Article 19 dealing with the Right to Information.

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Access to information is pertinent for democracy; ARTICLE 19, the global campaign for free expression, describes the right to information as "the oxygen to democracy". All the information held by government bodies can be accessed by the public, whenever required. More than 75 countries in the world have laws in their constitutions that grant their citizens access to information, which bounds public bodies to disclose important information to citizens, on their request.

Access/Right to Information laws provide an opportunity to people to participate in the decision making process and also serve as a reminder to the government that they are bound to serve people. Every citizen of the country can send a written request to access any form of information held by public bodies. Accountability is an important aspect of democracy; citizens of a country have all the right to hold their leaders accountable for their actions, resulting in fair play and good governance.

Pakistan has been a victim of dictatorial rules, mostly by the chiefs of the Armed Forces. During these times, people were denied a number of rights, including the access to information. All these dictators ruled the people without their consent and thus a vicious culture of feudalism changed the whole scenario of governance in the country. A ray of hope was seen during the rule of Pervez Musharraf, when the Freedom of Information (FOI) Ordinance 2002 was promulgated. It allowed access to information to people but with a limited scope. It had a number of weaknesses and allowed the public bodies to publish only a certain type of information.

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*As the present government introduced the 18<sup>th</sup> amendment, it also included an article (19-A) on the Right to Information, which states that "every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law".*

*Inclusion of this article has opened the gates to a new form of governance that depends on public opinion and allows them access to their basic rights, including the right to information*

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As the present government introduced the 18<sup>th</sup> amendment, it also included an article (19-A) on the Right to Information, which states that "every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law". Inclusion of this article has opened the gates to a new form of governance that depends on public opinion and allows them access to their basic rights, including the right to information.

According to a report by ARTICLE 19, the Universal Declaration of Human Rights (UDHR) serves as a steppingstone to the international human rights, binding on all states as a matter of customary international law. Article 19 of UDHR defines the right to information as follows:

Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any

media and regardless of frontiers.

Previous governments in Pakistan have been denying the Right to Information to the public, which resulted in an estranged relationship between government and public. Dictatorships are never based on public opinion or support and thus alienate the public and deny all the basic rights entitled to them by the law. Good governance is perhaps the most important principle that a democratical-

ly elected government should be based on and to practically implement this principle a government must always rely on public opinion and support; all these measures ensure accountability of leaders by the public and thus corruption is avoided.

Corruption is one of the most prevalent menaces in Pakistan, affecting the functions of public bodies and resulting in the development of mistrust between the public and the government. Right to Information helps in fighting corruption, i.e. by holding a government responsible for its actions. Different civil society organizations (CSO) have already played their role in highlighting the importance of Right to Information; these CSOs have also exposed a number of wrongdoings by the governments and have greatly helped in limiting the problem.

A number of international organizations have worked for the Right of Information and have influenced governments to include this as an important part of their constitutions. The inclusion of article 19-A in the 18<sup>th</sup> amendment will help the public in accessing their right to information and will create a suitable environment for democracy to prevail and will help the government in winning the hearts and minds of its people. Implementation of the 18<sup>th</sup> amendment depends a lot on the commitment and will of the leaders and the civil servants; once this amendment is implemented in its letter and spirit, hopefully the whole scenario of governance in this country would change.

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The inclusion of article 19-A in the 18<sup>th</sup> amendment will help the public in accessing their right to information and will create a suitable environment for democracy to prevail and will help the government in winning the hearts and minds of its people.

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Right to Information can also be viewed as a birthright of a human being. Nature created man with a curiousness, which helps him follow the nature and increase his level of awareness. This curiousness is helpful to the man in all different aspects. Similarly, the Right to Information is pertinent for a democracy to sustain on a longer term. It gives the power to the people to elect their own leaders and help them govern and enact policies and laws that are beneficial for the people and the country.

Analysis of the present government and the changes undertaken in its rule will help us in developing an understanding of the model of democracy followed in our country. Democracy is still a newborn child and requires nourishment that can help him develop into a stronger being, which will be beneficial for the country's future.

# Cultural Political Economy of Pakistan – Progressive or Retrogressive

Zia Banday

It appears imperative that we need to do a bit of explanation about the concept of 'Cultural Political Economy' before proceeding with the peculiarities of Pakistan and its cultural environment. Cultural Political Economy is a recent strain in the studies of Political Economy, whereby academics are striving to explore linkages between culture, politics and economics. Obviously, we cannot term these efforts as a totally new phenomenon; endeavours to integrate different aspects of social sciences have also been made in the past. For us, Cultural Political Economy becomes a valid field to undertake a holistic view of the societal complexities in arranging its power relations and allocation of resources.

Pakistan is not a small country. With a population of over 170 million, it is accounted as sixth populous country in the comity of 193 sovereign states. It ranks 141<sup>st</sup> on account of Human Development Index among 183 countries, not a remarkable achievement. As any other nation state, Pakistan is also a land of diversity and paradoxes. At one end, we boast ourselves as the only Muslim nuclear power, but our engineering base is such that we cannot wholly manufacture textile machinery, despite the fact that we are the fourth

largest cotton producing country in the world. We have the largest number of Islamic madrassas<sup>2</sup> operating through out the country, but we also topped the list of nations, who typed the word 'Sex' most on the search web sites. Western media may credit Pakistan as the Jihadi<sup>3</sup> epicentre of the world, but our energetic youngsters have also perfected the art of eve teasing<sup>4</sup> on any public interaction. Pakistan appears to be barren of entertainment activities taken for granted in most of the civilized countries. Question arises that whether all these happenings are part of our cultural milieu or they are consequences of double standards practiced by our ruling clique for strategic gains.

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Before exploring replies for these queries, we may travel back to take a look at the genesis of Pakistan. After all, the country was established as a separate homeland for Muslims of un-divided India, where they can safeguard their interests against a Hindu majority and live their lives according to their own principles. Pakistan seems to be based on the idea of Muslim Nationalism, who is striving to implement the governance based upon Islamic rules. Now the catch is that in the heat of the moment, Muslim League leadership ignored the aspect of cultural diversity among Muslims of India. They equated Urdu culture of the Northern India with the entire Muslim population, hence laying the base of perpetual provincial strife in Pakistan. Cultural hegemony coupled with political deprivation and economic exploitation soon resulted in the dismemberment of the largest Muslim state in only 24<sup>th</sup> year of its existence. And tragedy of the event is that many-fold of Muslims were killed by Muslims in the 1971 civil war than killed at the time of partition in 1947 by non-Muslims. And the issues of cultural identity along with resource control have still not settled in the remaining Pakistan.

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<sup>2</sup> madrassa: Arabic for „the place where it is taught“, meaning a high school of Islamic teaching.

<sup>3</sup> jihad: Arabic effort, struggle, commitment [of the soul to follow the religious path to God]. Nowadays, it is mainly referred to the so-called 'smaller jihad' the armed struggle against those believed to be hostile to Islam.

<sup>4</sup> Eve teasing: Subcontinental English for sexual harassment in the street.

We may reiterate here that human societies always remain in the state of flex. Various internal and external factors influence changes in the prevailing status quo, which could be incremental as well as revolutionary. Pakistan went through same process since its founding. I am really amused with assertions of my liberal friends that Pakistan is established as a secular state, for which they quote August 11, 1947 speech of Quaid-e Azam<sup>5</sup>. We are really in serious trouble if we are dependent on single speech or person to derive legitimacy of secularism in Pakistan. Mr. Jinnah was a pragmatic politician; his shifting stances were part of a successful strategy to snatch victory. Case in point is his acceptance of Cabinet Plan in 1946. Let us ask the sharia<sup>6</sup> proponents in Pakistan that how would Mr. Jinnah impose sharia in areas with over 40% non-Muslim population? Likewise, we may ask our enlightened circle that how is it possible to sustain secularism in a country made in the name of religion, with over 90% Muslim population?

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The idea behind Pakistan provides fertile platform for religious right to dictate ideological agenda for the population and gain political legitimacy. Enlightened sections today cannot just close their eyes and live in 1947; they have kept on losing ground to religious right. Religious right is the mainstream and secular thinking is on the fringe, which will never be given open space on the so called free media for initiating any critical debate. However, religious right faces one problem, they cannot win popular vote in a country marked with moderate outlook on religion. For this problem, they have found a solution in the alliance with permanent ruling party of Pakistan, i.e. Military. This Military-Mullah nexus was initiated in 1970 at the time of first general elections in Pakistan, when the term of Pakistan ideology was coined by military regime. Tentacles of this alliance deepened in eighties during Afghan Jihad and subsequently reached its pinnacle in the shape of Jihad International. This alliance appears to have

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<sup>5</sup> Muhammad Ali Jinnah (1876–1948), founder father of Pakistan and often referred to as Quaid-e Azam (Arabic/Persian: the great leader).

<sup>6</sup> Shari'a: Arabic 'the clear path', or even 'the way of the camel to the water hole'; stands for the Islamic law.

much deeper roots, which serves the long term purposes of both the partners. Cost has to be bear by general population in terms of more intolerance, greater rent seeking and cultural violence.

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*However, this cultural openness was untenable in absence of transition through popular vote, which has an inherent tendency of ultimate gravitation towards moderation. With ruling Muslim League scared of electoral politics, as it was decimated in first free elections in East Pakistan in 50s, it find refuge in the bogey of 'Islam is in danger' to demonize and marginalize its political opponents.*

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Please mind this that Pakistan cannot be termed as an intolerant country at the time of its founding. It was culturally and socially much open society. In those early decades, girls used to ride bicycles on Mall Road, Lahore. Booze was allowed, with bars and cabarets doing roaring business. However, this cultural openness was untenable in absence of transition through popular vote, which has an inherent tendency of ultimate gravitation towards moderation. With ruling Muslim League scared of electoral politics, as it was decimated in first free elections in East Pakistan in 50s, it find refuge in the bogey of 'Islam is in danger' to demonize and marginalize its political opponents. This orientation creates space for authoritarian mindset and hence the foundation was laid for the ascendancy of religious right in the country.

Political economy of ruling clique of establishment in Pakistan has evolved in such a manner, where it can't afford encroachments of popular politicians. It is a rent seeking economy, whose main line of defence remains opaqueness and diversion tactics. Religious right provides them that critical support, whereby they can always put popular politicians under pressure and dictate policy agenda as per their requirements. Zulfikar Ali Bhutto, the so called populist leader, tried to play to the religious gallery, but he was simply outmanoeuvred by the conservative nexus of religious right and military. Thereafter, all civilian regimes were kept on the tenterhooks, which deprived them of any capacity building to take on the challenge of this nexus and represent the real aspirations of the electorate.

Now, a question can also be raised about the monolith nature of religious right. Sectarianism has always existed among Muslims of India as in other parts of the world. However, inter-sect conflicts never took a shape of high scale violence. Situation changed with start of Afghan Jihad in late seventies, when almost total weaponry and combat training was channelled through a peculiar

thought school of Muslims. Here, comes the law of unintended consequences. Military agenda may not be flaring up of sectarian emotions, but to utilize the band of Islamic militants to curb strategic threat to the country. However, battle hardened sectarian militants soon expanded their agenda from jihad against infidels to marginalizing opposite sects. In this manner, Pakistan entered into never ending sectarian warfare. Moderate voices among Pakistani Muslims were silenced under threat or simply terminated. Pakistanis are fed on one particular version of Islam with superfluous debates that never challenge the ideas of gun wielding Islamic extremists. The fact that in Islamic history, more Muslims are killed by Muslims than by non-Muslims and Muslims rulers have always suppressed deviant and violent movements to ensure stability and social harmony, has been suppressed by the current proponents of political Islam. It means that the strain of aggressive political Islam doesn't represent the whole Muslim populace of the country, but due to its fire power it has the strength of dictating cultural agenda for vast areas of the country.

If we look at today's Pakistan, on surface, it appears a normal country with electronic media exploring sensational themes. Experimentation is allowed till it doesn't hurt the interests of permanent status quo. We have significant female participation in work force. However, one should not be deceived with the appearance. Underlying male chauvinism prevails, with women enjoying little real freedom, even in major urban centers. Cultural suffocation exists, with cultural traditions of dance and music under threat from religious marauders. However, question arises that whether this existing cultural political economy is serving the interests of its permanent benefactors well in this changing globalized world. Here comes the catch, this long military-mullah alliance is under severe strains, as it is unable to generate a growth of innovative business in an increasingly knowledge based economy. With low skill base and little global exposure, competitiveness of local industry is suffering. High risk security situation has brought the inflow of capital and technology transfer to a trickle, that doesn't bode well for future employment generation and economic activities. With growth in real sectors under pressure, rent seeking structure of existing political economy seems untenable till it shift gears. It is already witnessing the growing gap between Pakistan and comparable

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economies. However, the prevalent mindset in Military appears to still mire in strategic games, whose cost will be exorbitant for the country. Flexibility in approach is required in exploring new paths and new alliances for sustenance.

Future of Pakistan depends upon the durability of democratic dispensation. It is a time consuming process that requires patience, whose supply is being shortened by vested interests. We need to take a lesson from Turkey, though ruling party of AKP<sup>7</sup> cannot be termed as ideal democrat party. However, it took 19 years for a political dispensation marginalized by Turkish establishment to gain power, just due to continuous elections. We should keep our hope with the continuity of the democratic process. It will not only induce moderation in our cultural outlook, which has already moved in one direction under duress, but will also aggregate diverse interests of existing status quo and deprived sections in an amicable manner.

I have no doubt in my mind that existing cultural political economy on a whole is retrogressive in nature. It is centred on supporting a rent seeking dispensation, which is unsustainable in long run. Transition will take place, which will be a painful process and may not be a linear journey. Retrogressive cycle will eventually give way to progressive forces. It is the wheel of the history and no one can turn it back. Liberals have to brace for a long fight on the idea front, after all it will be the cultural legitimacy that will determine the duration and outcome of this phase of the struggle.

<sup>7</sup> Adalet ve Kalkınma Partisi (AKP), strongest party in Turkish Parliament with religious nexus, founded in 2001.

# 18<sup>th</sup> Amendment: The Baloch perspective

Sanaullah Baloch  
*Senator*

Founded on June 23, 2009, the 27-member Parliamentary Committee on Constitutional Reforms (PCCR) was tasked to revisit the 1973 constitution in order to (a) ensure devolution of power from centre to provinces (provincial Autonomy), (b) to introduce new laws promised under Charter of Democracy by the Pakistan Peoples' Party (PPP) and Pakistan Muslim League – Nawaz PML-N, and (c) to repeal the 17<sup>th</sup> Amendment to ensure balance of power between President and Prime Minister.

Although the PCCR has done justice with the 17<sup>th</sup> Amendment repeal – except few clauses related to women's seats, joint electorate and voters' age – many important articles were either not touched deliberately or properly defined related to the Charter of Democracy (CoD) and the provincial autonomy.

The CoD, signed by both Benazir Bhutto and Nawaz Sharif in May 2006, had promised to establish a truth and reconciliation commission, an independent accountability commission, a national democratic commission, a federal con-

stitutional court and civilian oversight and review of military and cantonment lands, and inclusion of the Federally Administered Tribal Areas (FATA) into Khyber-Pakhtoonkhwa.

But the PCCR met with utter failure as it didn't adhere to commitments made by late Benazir Bhutto and her party in 2006.

In Article 243, consultation between Prime Minister and President over strategic issues and appointments is not explained precisely. Article 62 regarding the eligibility of a citizen to become a member of parliament is not touched and it is a clear threat for minorities and other progressive and secular citizens of Pakistan.

In Article 156, the composition of the National Economic Council remains questionable as it will have eight members from each province, including chief ministers and four others, who will be nominated by the Prime Minister.

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The major issue which is a prime cause of violent conflict between Baloch and Islamabad, 'the right to control natural resources and ownership' has been attributed to the centre instead of the provinces. The issue of recognition of Sindhi, Pashto, Balochi and Punjabi as national languages has been neglected.

Since Balochistan and Sindh are under threat of demographic imbalance due to planned migration from other regions, the Article 23, which deals with the right to vote, remained untouched while issues pertaining to the Concurrent List remained vague.

The major issue which is a prime cause of violent conflict between Baloch and Islamabad, 'the right to control natural resources and ownership' has been attributed to the centre instead of the provinces. The issue of recognition of Sindhi, Pashto, Balochi and Punjabi as national languages has been neglected.

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The grievances of the people of Balochistan would have been addressed properly when the province was given full control over its natural resources and security sector, i.e. control over security forces such as para-military forces including Frontier Corps (FC), Coast Guard and sizable representation in the navy.

The 18<sup>th</sup> amendment envisages illusive provincial autonomy with little constitutional guarantees, i.e. establishment of a constitutional court and equal representation of all federating units (provinces) in apex judiciary.

Since Pakistan is a bicameral parliamentary system, the demand of marginalized provinces regarding strengthening and power sharing of the Senate has been ignored. The National Assembly will have the sole powers to control all decisions of the federation.

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Regrettably, all rewriting and restructuring of more than 100 articles in the constitution mostly related to the power-sharing formula between powerful lobbies sitting in Islamabad.

By renaming the North West Frontier Province (NWFP), justice has rightly been done with the people of that province. This has been a longstanding demand of the people of the Khyber-Pakhtoonkhwa that the name of their province should reflect their identity.

Hence, under the new amendment the President of Pakistan would now be deprived of the power to dissolve the parliament by arrogantly exercising his powers under article 58 (2) - b.

Another area of progress is the pledge in the 18<sup>th</sup> Amendment to get rid of the Concurrent List.

Post 18<sup>th</sup> Amendment Balochistan: Since the passage of 18<sup>th</sup> amendment, people in Balochistan haven't felt any breeze, instead of witnessing gradual change for good, the political and human rights situation has worsened in the region.

The major Baloch parties boycotted the February 18<sup>th</sup> 2009 polls, and are unrepresented in the current parliament. Though few Baloch Senators are among the signatories of the amendment, however, the leading political parties, armed groups and politicians regarded the move as a mega deception. The Balochistan National Party (BNP) of Sardar Akhtar Mengal has categorically rejected the constitutional package by saying that the government 'April-fooled'

the Baloch with the constitutional package. According to Mengal, a former Chief Minister of the province, his party was not a part of the constitutional committee and the abolition of Concurrent List is utterly irrelevant in the current situation when Balochistan is engulfed in a war-like situation.

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Many of radical Baloch groups have not even considered the package worth commenting on which translates into the stark rejection by Baloch nationalists representing a large segment of the annoyed Baloch youth.

The Baloch intelligentsia also has raised same concerns, writing and raising their voice in different local news papers commented that this (18<sup>th</sup> amendment) is a mega deception. The subject like security, natural and marine resources and self-determination of the people of Balochistan haven't been addressed in the amendment and there are no guarantees that the much talked promises will be honestly implemented.

I have little optimism that these amendments will have major impact to change Islamabad's overall approach and policies towards political institutions and provinces and particularly towards colonized region i.e. Balochistan. There are number of politicians and analyst, very confidently, claiming that abolition of concurrent list and transfer of powers including fifty percent share in natural resources will have a major impact on provinces ability to administer their duties more comfortably.

In fact Balochistan have been fighting an uphill battle for last five decades to get its due rights and share of natural gas and its revenues. The people of the province not only have been unsuccessful but punished to death by the rulers for their just and demand which is constitutionally guaranteed.

Inequalities and discrimination is not only visible in socio-economic policies but grave human rights violations are persistent after the passage of so-called 18<sup>th</sup> Amendment and restoration of judiciary.

Disregard for the Constitutional Guarantees: It is one thing to make or restructure a constitution. It is quite another to breathe life into it, making it a living,

vibrant document which affects, and hopefully improves, the reality of people's life, which they use in their daily existence, which governs and controls the exercise of state power, and which promotes the values and aspirations expressed in it.

It's evident that Islamabad had never been faithful with regard to respecting and implementing the constitutional guarantees. The constitution Article 158 guarantees the "Priority of requirements of natural gas", which unambiguously states that "the Province in which a well-head of natural gas is situated shall have precedence over other parts of Pakistan in meeting the requirements from the well-head, subject to the commitments and obligations as on the commencing day".

In spite of clear laws and constitutional undertaking, people have been deprived and denied any legal rights in powerless provinces. Enforced disappearances have become routine practice, targeted killings are on rise, torture is widely accepted instrument of rule and fundamental rights are utterly denied.

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The Chapter II of the 1973 constitution – the Fundamental Rights and Principles of Policy – which consist of 20 articles of the constitution and guarantees that "no person shall be deprived of life or liberty save in accordance with law" (Article 9, Security of person), article 10 safeguards as to arrest and detention, article 14 inviolability of dignity of man, etc.

The Constitution Article 6 – the high treason – which unambiguously states that, (a) any person who abrogates or attempts or conspires to abrogate, subverts or attempts or conspires to subvert the Constitution by use of force or show of force or by other unconstitutional means shall be guilty of high treason, (b) any person aiding or abetting the acts mentioned in clause (1) shall likewise be guilty of high treason. (C) [Majlis-e Shoora (Parliament)] shall by law provide for the punishment of persons found guilty of high treason. But unfortunately two military dictators straightforwardly conspired, abrogated and subverted the constitution both by use of force and show of force ruled this country for highest period.

It has yet to be seen how the federal and provincial governments interpret the 18<sup>th</sup> Amendment for the restive province of Balochistan.

Despite the 18<sup>th</sup> amendment a people-centered constitution will remain a dream deferred.

Why a people-centered Constitution: The made-in-crisis 1973 constitution turned into an albatross for the "Pak-Istan", unable to "pak" (wipe) out oppression, poverty, illiteracy, underdevelopment, disease and tyranny – the remnants of colonial age. Notably, the 1973 constitution promotes a trite form of 'ethnic federalism', which ensure rule by the dominant ethnic group.

In parts of the country, this severely abridged citizenship rights, created a new fault line in Pakistan's politics and laid the seedbed for ethnic and regional unrest and violent conflicts.

Sadly, Pakistan's civil-military elite cashed on this ethnic ideology to buttress what Frantz Fanon theorized as "ethnic aristocracy" – a trend by the ruling political class to marshal their ethnic kith and kin to win and retain state power to the exclusion of the rest.

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*This brought social inequalities, human rights abuses, extra judicial killings, arbitrary detentions, disappearances, assassinations, misuse of state power to terrorize citizens, mega-scams and impunity to a whole new level.*

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A raft of amendments to the constitution systematically removed all existing checks and balances between the arms of government, subordinated Parliament and Judiciary to the whims of the military and executive.

This brought social inequalities, human rights abuses, extra judicial killings, arbitrary detentions, disappearances, assassinations, misuse of state power to terrorize citizens, mega-scams and impunity to a whole new level.

Older constitutions were instruments of rule: by one community, class or region. The constitution recognized the dominance of that group and provided the legal basis for its rule, but did not create that rule, which was founded on its dominance in social and economic spheres. In these circumstances, the constitution was effective as an instrument of governance.

Older constitutions, including Pakistan's current constitution dealt mainly with the system of government, establishing principal state institutions, distributing functions and powers among them, and providing some basic rules for relationships among them. They did not explicitly aim to change society.

Today's constitutions seek to solve social and political problems: of accountability, corruption, environment, poverty, equitable distribution of property and other resources, recognition of new and multiple forms of identity, and the democratization of the party-political organizations and processes.

In multi-ethnic societies, constitutions have also to deal with relations among ethnic, linguistic and religious communities and between them and the state. The fluid political situation, which allows a highly participatory process of constitution making, results in a curious phenomenon: the imposition of the constitution by relatively weak and unorganized groups on the ruling class. But the absence of a dominant group committed to the constitution makes its implementation problematic.

Technical questions of implementation: The 18<sup>th</sup> amendment does not set out any details that how the old order will give way to the new, and how that new order will be made a reality.

I am not intending to explore the scheme for the alteration to, and the implementation of, the post 18<sup>th</sup> amendment constitution, however critical. Even more critical are the social and political processes, the interplay of economic, social and ideological interests, which influence, and often determine, the impact of constitutions.

A major obstacle to the implementation of 18<sup>th</sup> amendment is that the state in a country like Pakistan is the primary source of power and wealth in society. Corruption is the principal vehicle for accumulation. The amendments do not provide any safeguard of public resources from plunder, the ruling class including dominant institutions would achieve its objectives is by systematic violation of the constitution, benefiting from impunities that our legal system has bestowed on them.

Since the state is so dominant locally – the lasting legacy of colonialism – the question is whether those who are committed to reform of the state will be able to impose the discipline of the constitution on the ruling class, the principal and direct beneficiaries of the state.

For though politicians and bureaucrats (civil-military) seem to fight each other but they are bonded by common interests as a class and will collectively resist genuine reforms. The resilience of social traditions, ideologies, and institutions is a major obstacle to progressive social reform and change.

The viability and success of a constitution presupposes constitutionalism, a belief in the value of restrictions on power, and the practice of the rule of law, with the emphasis on rules and their enforcement. Paradoxically, countries like Pakistan which try to use the constitution for social transformation lack the traditions from which these ideologies spring. This situation is aggravated by a lack of knowledge of the role and content of the constitution among those who would benefit from respect and enforcement of the constitution.

The legality question: Basically, the committee had transgressed its authority by taking upon itself to reform the entire constitution which was not its mandate. On the other hand, the Parliamentary Committee on Constitutional Reforms (PCCR) made terms of reference on its own which otherwise should have been done from the National Assembly Speaker's Secretariat.

Legally there is no bar on parliament to introduce amendments and propose laws and alterations in the constitution. But traditionally and ethically no Parliament in the world has the legal ability to rewrite a constitution or introduce a people-centered social contract without people's mandate. It is the legal responsibility of the constituent assembly or constitutional convention, elected in particular with clear mandate by the people of regions (federating units), to rewrite or craft a new social contract.

Regrettably the very supreme exercise and mandate of the Constituent Assembly, to invent a new social contract or design a consensus constitution was reduced to rearranging the constitution by a parliamentary committee.

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## 18<sup>th</sup> Amendment: more beneficial for Khyber Pakhtoonkhwa

Shamim Shahid

Since its inception in 1947, Pakistan is always in constitutional crises, which on one hand paved the ways for undemocratic and military circles of derailing the democratic process and on the other it posed bad impacts on its socio-economic sectors. Compare to its contemporary i.e. India, Pakistan for most of the time was governed by military and non political figures whereas the state organs remain depend on military rulers and their favorites. Even the judiciary always remains helpless before the undemocratic and non political dignities.

First ever attempt for a social contract was made in 1956 when Pakistan's Legislative had adopted the constitution. But within months, the Speaker of the National Assembly was removed and the constitution was suspended with imposition of Martial Law in October 1958. A second attempt was made by late Prime Minister Zulfikar Ali Bhutto in 1973. Bhutto succeeded in giving the first ever "consensus constitution" to the nation. But unfortunately, late Bhutto had made unhappy his political contemporaries with seven amendments in his own in a period of around three years. Later the process was derailed and the constitution once again went for suspension when an other military dictator, Zia ul Haq, had

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imposed Martial Law on July 5, 1977. Most recently an other military dictator General Pervez Musharaf had not only suspended the constitution with toppling of another democratically elected government but just for his “own wish” he had made choice amendments in the constitution through his own-hand picked so-called democratic government in the shape of 17<sup>th</sup> amendment.

However, credit goes to no other that President Asif Ali Zardari who after assuming the office on September 6, 2008 last has made a mind for curtailing his own power and making amendments in the constitution. For such a purpose, a Parliamentary Committee with Senator Raza Rabbani as its chief was established. The committee after hectic debates and thorough efforts succeeded in wide range amendments in the constitution. Whatever may be views of the critics but like of 1973 constitution, the 18<sup>th</sup> amendment was made through consensus, which seems faith and belief of the political forces in democracy and supremacy of the parliament.

The 18<sup>th</sup> amendment enacts more than 100 changes, both large and small to Pakistan’s constitution. The text of the amendment as introduced in parliament can be read here, and this annotated copy of the 1973 constitution identifies provisions introduced by President Pervez Musharraf, making it a useful companion piece for analyzing the scope of the new amendment’s changes.

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Transferring the power to submit matters directly to parliament for a yes or no vote to the prime minister (Article 48).

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Removing the infamous Article 58-2(b) instituted by Musharraf, which granted the power to unilaterally dismiss parliament under vague emergency provisions.

Consulting with the outgoing prime minister and opposition leader on presidential appointments of caretaker governments to manage the transition to a new government when parliament is dismissed (Article 224) [link](#)

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Through the 18<sup>th</sup> amendment, President Zardari has reaffirmed his faith in democracy with transferring his powers to the parliament and prime minister through the following changes:

- Establishes the prime minister and his ministers as the federal government and transfers the position of chief executive of the nation from the president to the prime minister (Articles 90 and 99).
- Reduces the requirement for the prime minister to consult with the president to a duty to keep him “informed” of policy matters (Article 46).
- Requires that the president consult with the prime minister—whose recommendations are binding—on all choices for provincial governors (Article 101) and military service chiefs (Articles 243 and 260).

Similarly through this amendment, the parliament went for the removal of limits on prime ministers serving more than two terms (Article 91). This measure potentially paves the way for opposition leader Nawaz Sharif’s return to that office, though he has yet to contest a seat for the national assembly, instead of opting to lead his party from outside parliament. Like of Mian Nawaz Sharif, Shaheed Benazir Bhutto had also served as Prime Minister for two terms. Earlier military dictator Musharaf had made an attempt to block her of com-

ing into power first through a self-made PCO. Such a PCO later manipulated in the Constitution through 17<sup>th</sup> amendment.

### **Balancing Center-Provinces powers**

Tensions between the central government and the provinces over the distribution of authority and revenues date back to Pakistan's inception and have prompted some of its most traumatic upheavals, most prominently the 1971 secession of Bangladesh. Even today situation is worst then of 1971 when unrest and tension is hitting its peak in Baluchistan and Khyber-Pakhtoonkhwa (KP). Many of the country's leading political parties have long demanded increased autonomy for the provinces. Keeping in view the gravity of the situation, the politicians agreed for addressing grievances of the smaller provinces. The 18<sup>th</sup> Amendment takes important steps toward resolving some of these tensions through devolution of authority and a strengthened role for the Council on Common Interests, a joint federal-provincial forum.

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But unfortunately, the concurrent list becomes permanent part of the constitution due to imposition of an other Martial Law in 1977. Through such a list, the provinces were deprived of its due rights and interests in the federal receipts, foreign grants and aids.

Soon after Dhaka debacle, politicians have made an attempt to create a balance powers of the federal and provincial governments – but with intervention of no other than civil and military bureaucrats. Such a move was blocked through a Concurrent List. At that time, it was agreed that such a list will be removed after a period of ten years. But unfortunately, the concurrent list becomes permanent part of the constitution due to imposition of an other Martial Law in 1977. Through such a list, the provinces were deprived of its due rights and interests in the federal receipts, foreign grants and aids.

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But the 18<sup>th</sup> amendment eliminates the “Concurrent List,” an enumeration of areas where both federal and provincial governments may legislate but federal law prevails. Laws governing marriage, contracts, firearms possession, labor, educational curriculums, environmental pollution, bankruptcy, and 40 other diverse areas will now devolve to the provinces with the list eliminated, and each provincial assembly will be responsible for drafting its own laws on the issues.

No doubt to mention that in mid 90s former President Sardar Farooq Ahmad Khan Leghari had made an attempt of balancing distribution of receipts between the federal government and provinces. But Pervez Musharaf after coming into power had further reduced the share of the provinces. Interestingly, he when came into power had justified his immoral, unethical and illegal act of toppling an elected government through what he call, disharmony amongst the provinces, sense of deprivation amongst people of smaller provinces and other's. Through the latest Constitutional amendment, the provinces would receive lion's share not only in receipts but also command of several departments and institutions.

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The Reformers have touted this measure as a necessary shift for a more federal system, but there are some concerns about the ability of provincial governments to assume effective regulatory authority in these areas, which they are now bound to do by June 30, 2011. After 18<sup>th</sup> amendment, Khyber-Pakhtoonkhwa would get control of 22 more departments. In this connection, the provincial governments are making attempts for getting control and command of all important departments of socio-economic sectors.

Another important but under-reported change now specifies that future National Finance Commission agreements – which set the distribution of national revenues between the central government and the provinces – cannot reduce the provinces' share beyond that given in the previous agreement (Article 160). This is a move that may prompt intensified conflict between the central government and provinces in future rounds of revenue distribution negotiations.

#### **Giving identity to a province**

The 18<sup>th</sup> amendment contains a substantive restructuring of the Pakistani government system, but it is the seemingly innocuous renaming of the country's Northwest Frontier Province, or NWFP [into Khyber-Pakhtoonkhwa]. At the time of partition, the federating units i.e. provinces demarcated through its previous names. There was no any objection over the names of five federating

units because it reflecting identity of the majority population. But the nationalist circles have asked for renaming of the NWFP as after partition almost of the federating units turned into border or frontiers of the country. Similarly neither the NWFP was reflecting the identity of majority of its populace nor

*The Awami National Party (ANP), a nationalist party and governing coalition partner with its base of support in the NWFP's Pashtun community, has long pushed for the renaming in order to bring it on par with the other provinces of Sindh, Balochistan, and Punjab—all of whom draw their names from their dominant ethnic groups. Earlier the ANP was isolated in the demand but they succeeded in mustering support of certain religious and democratic circles in favour of the demand*

the geo-cultural identity of its soil. At early stages, they demanded renaming of the province as Pakhtoonistan but it become controversial and felt an attempt of separation. The Awami National Party (ANP), a nationalist party and governing coalition partner with its base of support in the NWFP's Pashtun community, has long pushed for the renaming in order to bring it on par with the other provinces of Sindh, Balochistan, and Punjab—all of whom draw their names from their dominant ethnic groups. Earlier the ANP was isolated in the demand but they succeeded in mustering support of certain religious and democratic circles in favour of the demand. Representatives of almost political forces have supported renaming of NWFP as Pakhtoonkhwa but both the parties, Pakistan Muslim League – Nawaz (PML-N) and Pakistan Muslim League – Qaid (PML-Q), which possess electoral footholds in the area, oppose the change. The PML-N finally

agreed to the compromise name “Khyber-Pakhtunkhwa” at the end of March, but the PML-Q sharply opposed the prospective name change, seeing an opportunity to press its rivals. Leaders from both PML parties have since then endorsed protesters’ demands for a separate Hazara province entirely.

The nationalists have, however, materialized their long standing dreams of renaming the province as Khyber-Pakhtoonkhwa through the 18<sup>th</sup> amendment in the national constitution, but it has produced some of the most heated political rhetoric thus far and rioting in some parts of the province that has killed up to ten persons. Certain circles from Hazara Division, especially affiliated to different factions of Muslim League came out on roads. Whereas the already beleaguered stalwarts of Pervez Musharraf-made PML-QA have exploited the situation with challenging their rivals from PML-N of facing them on the soil

of Hazara. The challenge lead to worst kind of violence and at least ten precious lives caused during protest against renaming of the province.

Certain critics have justified the protest against renaming on the grounds of cultural and lingual distinction of its people from rest of the majority Pashtun province but in fact there is no any difference. The communities and tribes like Tareen, Mashwani and Yousafzai in Haripur, Jadoon and Tanoli in Abbottabad and Yousafzai and Swatis in Mansehra are Pushtoons by race. Majority of these people are multi-lingual spoken. While majority people from Batagram are Pushtoons. Along with demand for converting Hazara into a separate province, representatives of Pushtoons from Batagram entered into an alliance with their counterparts from Shangla and Kohistan and they demanding Abaseen Division. However, the situation seems now normal whereas the KP government has suggested the protesters to continue political and peaceful struggle in favour of their demands.

Besides getting identity through 18<sup>th</sup> amendment, the Khyber Pakhtoonkhwa also seem to be in a position to have independence in exploitation of its own potentials. In particular, the KP is now in a position to go for construction of small and medium size dams on Swat River, Kunhaar in Chitral and Panjkora in Dir. But due to constraint resources, KP is still looking towards the federal government, private entrepreneurs and even to foreign investors. Similarly the KP authorities, particularly the nationalists, are happy with getting access to federal government run institutions and organizations. They are also hopeful for trade links with the foreign countries after the 18<sup>th</sup> amendment.

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The increased power accorded to provincial governments under the 18<sup>th</sup> amendment is a potential incentive for parties to support the creation of more provinces. But it is unclear how much support these proposals will garner outside the current cycle of local identity politics – particularly given the military establishment’s longstanding opposition to strong provincialism within the country.

### **Unresolved Questions remain**

No one can neglect the fact that the so-called independent Federally Administered Tribal Areas (FATA) are depending on Khyber-Pakhtoonkhwa. FATA's status as a border area largely outside of direct government control (KP districts) is not addressed, and the colonial-era Frontier Crimes Regulation remains the governing law for that area. Unless addressing grievances of the tribesmen and deciding status of so-called tribal region return of peace and normalcy in Khyber-Pakhtoonkhwa is nothing else a dream. Due to such confusion, now lawlessness is on rise throughout the region whereas the foreigner's dins on the soil of tribal region become a threat to the very future of the country.

The 18<sup>th</sup> amendment does not fix all of Pakistan's political problems. For one thing, the civilian government continues to hold limited powers of real oversight on the budgets or policies of the military, which retains a firm grasp on the country's foreign and security policy and a large political and economic presence domestically. And though the amendment mandates the establishment of local governments in all four provinces, it provides little clarity on which administrative or financial authorities will be delegated to them or how they should be constituted. Further, while some measures are assumed to increase the provinces' ability to retain control of their revenue, most taxes will continue to be redistributed through the federal centre.

The amendment does deliver on promises by the main democratic parties in Pakistan to shift to a more democratic and federal system, and in this respect it represents a major accomplishment for a still young civilian government. But few Pakistanis are likely to cheer its passage for long if the parties do not use the new setup to more aggressively respond to the country's deep economic and security challenges. The short lifespan of past constitutional setups and civilian governments cautions against easy predictions of the amendment's long-term impact.

With President Zardari's signing, the Pakistani public and outside observers will now have to wait and see how the country's powerful interest groups – including the military, judiciary, and the drafting parties themselves – respond to and reinterpret the new rules of the game.

# Punjab in the Light of the Eighteenth Amendment

Omer Aftab

The much awaited 18<sup>th</sup> amendment to the constitution of Pakistan was unanimously passed by all present 292 members of the national assembly out of 342 members. It was signed by President Asif Ali Zardari on April 9<sup>th</sup>, 2010. Astonishingly, he seems to have signed away most of his presidential powers and given the provinces and the Prime Minister, greater authority. It goes beyond undoing Pervez Musharaf's alterations, and attempts to bring about a positive and functional change for democracy in Pakistan. Some notable changes include renaming Baluchistan to Balochistan, Northwest Frontier Province (NWFP) to Khyber Pakhtoonkhwa (KP<sup>s</sup>) and Sindh to Sind. This 133 page bill, with its 102 clauses, is perceived to have various effects at the federal as well as provincial level. Even now, after its acceptance, there are issues that make certain bodies uneasy.

Apart from vital alterations impacting the entire nation as a whole, the eighteenth Amendment, has key effects on the provinces as well. These changes include transfer of subjects to the federal list, creation of more subjects in the federal

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<sup>s</sup> Sometimes also KPK. A unified abbreviation has not come up as of now, Sept. 2010.

list, added responsibilities of the provinces, distribution of revenues and transfer of shares. The 18<sup>th</sup> Amendment adds the following to the federal list: “boilers” (nuclear energy plants), planning of scientific and technological research, international agreements and major ports, electricity, federal regulatory authorities, public debt, census, legal and medical professions etc., interprovincial matters and coordination and higher education standards etc.

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The enhanced responsibilities of the provinces include: civil procedure; marriage, divorce, minors and adoption; wills and succession; arbitration; contracts; trusts; transfer of property; explosives, arms and ammunition; opium; drugs and medication; infections and contagious diseases; mental illness; environmental planning; population planning and social welfare; trade unions and labor exchanges; labor safety; unemployment insurance; shipping and navigating on inland waterways; vehicles; newspapers, books and printing presses; evacuee property; historical monuments; curriculum; Islamic education; zakat<sup>9</sup>; tourism; auqaf<sup>10</sup>; production, exhibition and censorship of films etc

Amongst all these changes, certain have given rise to dissent, debate and speculation. The boilers and electricity will impact the various provinces in different ways. On the one hand there are Punjab and Sind, each with its supply of power and power outages... On the other we have less developed areas such as Balochistan and Khyber-Pakhtoonkhwa. Moving the policy regarding these subjects to the Council of Common Interest (CCI) will utilize power for the overall betterment of the nation, instead of individual provinces. This may mean diverting power from some, to provide to another.

Another issue is arms and ammunition; the monitoring, policies and supply of these to relevant bodies are now provincial responsibilities. Each province has a different situation with regard to geography and surrounding nations. A few may be more at risk than others. Also, since the resources are distributed

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<sup>9</sup> Religious donations in Islam.

<sup>10</sup> auqaf: Plural of waqf Arabic for religious foundation.

according to population, provinces with lower population may not be able to provide enough ammunition in certain situations. Apart from this, it is an added expense that the provinces must bear from their own pockets.

Allowing the provinces to monitor their own environment may be wise as different steps can greatly effect the environment and man, steps that may not come into notice at the federal level – for instance the deforestation occurring in the northern areas and its impact on the flood of August 2010.

Health is now a provincial matter. This makes it harder for the relevant bodies to monitor health and diseases at a national level, robbing them of vital statistics and information concerning outbreaks, possible breakthroughs etc.

Emergency can now only be imposed with consent of a province. This, although seems unworkable, may facilitate the health of the province without interruptions. Lastly, although the provinces have been given greater power, they have a greater responsibility. Similarly, education is now made compulsory. Although this may be an added burden on the provinces, who must struggle to achieve this neigh-impossible feat, its effects would prove to be beneficial for the literacy rates and overall economic prosperity of that province.

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Population planning is now also a responsibility of the provinces. This may prove beneficial for all as some provinces are under populated, while others are quite concentrated. Each province understands the psyche of its people better and can therefore take the appropriate measures. Similarly, the ability of a province to govern its own foreign debt and zakat may allow it greater freedom and resources to implement their added responsibilities. Similarly, General Sales Tax (GST) on services is a provincial matter. Although most provinces are satisfied with this, some – such as the Muttahida Qaumi Movement (MQM) in Sind – desire sales tax on goods to be part of the provincial responsibilities as well.

Although the 18<sup>th</sup> amendment provides great benefit for suppliers of natural gas and oil, it does take some of the responsibility. Mineral oil, natural gas and

territorial water will be jointly held at the provincial as well as federal levels. A major benefit regarding water is that the 18<sup>th</sup> amendment requires the government to “expeditiously provide infrastructure for the utilization of water in the provinces, where it does not exist”. This will alleviate the water shortage in deprived provinces, and may even encourage agriculture at a local level. However, it may divert water from agriculture-intensive areas such as Punjab whose small farms are already deprived of canal water.

As mentioned before, power, is now vested with the federal government. Even

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*Even now, Punjab experiences power-outs that make its industries and economy suffer. Nevertheless, regions beyond Punjab... and even some regions not metropolitan, suffer greater power outages. If power is diverted to these regions in favor of fairness, it will hurt the industries working in Punjab especially the metropolitan areas.*

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now, Punjab experiences power-outs that make its industries and economy suffer. Nevertheless, regions beyond Punjab... and even some regions not metropolitan, suffer greater power outages. If power is diverted to these regions in favor of fairness, it will hurt the industries working in Punjab especially the metropolitan areas. The current distribution of power is on the basis of importance and need. Distributing it to others, can although improve standard of living, may hurt the overall economy. Punjab may experience worse power outs if power is diverted to other provinces.

Additionally, any plans of new dams etc. may be denied by the federal government. Yet, on the upside, plans delayed due to lack of agreement between the provinces, may come into being, as it is now a federal decision. How this authority is used, remains to be seen.

As arms, weapons, medicines (health) are now to be monitored by the provincial governments; Punjab must now add these consumptions to its budget. Other added responsibilities include family planning. With the biggest population of Pakistan, Punjab now has a serious responsibility... as the population of Pakistan doubles every 24 years... and it is already low on resources. It must pay special attention to its booming population with immediate effect.

Also, a province can acquire foreign debt, with approval from National Economic Council. Zakat is now to be monitored and allocated by the provinces as well. Punjab can therefore use its much needed zakat to facilitate and assist the needy to get back on their feet. It is also expected that the Federal

and Provincial Governments will create a mechanism to enforce fiscal discipline at the respective levels. The Federal Government may also aid the Provincial Governments in the case of unforeseen circumstances and time of need, through grants from the federal share. A point to note is the proposed flood tax on imports, which may encourage local production.

Export duties on cotton will now be levied and controlled by the federal government. In an attempt to gain more capital, the Federal Government may tax it too much, hurting the cotton industry based in Punjab as it will now do what it believes to be best for the country, as opposed to Punjab. However, again, how this is used remains to be seen. Also, excise duty on natural gas has been increased. While it benefits Balochistan (coupled with two more amendments), it may hurt the lower middle class of Punjab further thrusting them into an increasing poverty. Appropriate taxes must also be levied to bring the ratio of agricultural tax to GDP up to 15%. A large chunk of the Punjabi economy rests on agriculture. This includes facilitations by governmental and non-governmental organizations for the poor. Higher taxes could hinder the business of these impoverished farmers who employ share farming... again further widening the poverty gap.

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Provinces must now provide free compulsory education. This will further tax Punjab's resources which spread over its food, water and power scarcity for all those people. On the other hand, it will also increase literacy and therefore in the long run, prosperity of Punjab. Also, Punjab now gets tax share of 51.74%, biggest by far of all the provinces – in proportion to its population (among other things). Interestingly, the auditor general now audits the provincial accounts as well. Therefore, Punjab must ensure efficient allocation of resources and eliminate corruption. How Punjab effectively utilizes its resources to fulfill all its added responsibilities is what counts. Yet, the rift between the Pakistan Peoples' Party (PPP) Punjab Governor and the Pakistan Muslim League – Nawaz (PML-N) Provincial Government may pose difficulties in the implementation of policies to fulfill all of its new-found responsibilities.

Although the acceptance of this bill is an important achievement where Pakistan and its provinces are concerned, its real impact on Punjab will only manifest itself when it undertakes to fulfill all these obligations to the best of its ability. Apart from the audits by the auditor general, the National Finance Commission (NFC) will hold quarterly meetings to monitor the implementation of this award. In view of this, the authorities of Punjab must struggle to disprove skeptics who doubt the Government will execute such changes.

# How Liberalism Can Help in Improving Indo-Pak Relations

Anees Jilani

In his last book before his death, J.N Dixit, a former Indian Foreign Secretary and High Commissioner to Pakistan recalled the occasion when he and his wife went to a Pakistani friend's residence on Eid day in 1990 in Islamabad. Some other relatives of this Pakistani friend were also present. A six-year-old girl from that family wandered in and asked who the unfamiliar uncle and aunty were. When told that they were from India, this little child skipped around them chanting "Hindu Kutta" (Hindu dog), of course, to the deep embarrassment of Dixit's hosts. This is not an exceptional incident. The majority of Pakistanis are beset with this mentality. Jamaat-e Islami, for instance, manifested the same attitude by washing the spot visited by Atal Bihari Vajpayee at Minar-e Pakistan in 1999.

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Many in India also have a similar contempt towards the Muslims, and it has even taken a violent form, as seen during the 2002 Gujarat massacre. There are groups who regard Muslims as "children of Babur", the founder of the Mughal dynasty in the 16<sup>th</sup> century; and call upon Muslims to go to their homeland: Pakistan. But this group is in a minority, and most important of all, Muslims for the Indian Hindus are not an alien creature as Hindus are for the Pakistani

*The ill-will is unfortunate considering that the two communities lived together for centuries, and were used to each others' cultures and customs, even if they failed to fully mingle and did not solemnize inter-religious marriages.*

*Discrimination by one community against the other existed but it was mostly subtle, and it seldom resulted in riots or violence.*

Muslims; additionally, Muslims constitute a sizeable minority in India.

The ill-will is unfortunate considering that the two communities lived together for centuries, and were used to each others' cultures and customs, even if they failed to fully mingle and did not solemnize inter-religious marriages. Discrimination by one community against the other existed but it was mostly subtle, and it seldom resulted in riots or violence. The latter mainly started during the British colonial days.

#### **Partition of India**

These differences formed the basis of the two nation theory which was voted for by the majority of the Muslims entitled to vote during the 1946 elections in British India. There was no adult franchise at that time, and only a small number of persons belonging to landed aristocracy, and others cleared by the colonial rulers, were allowed to vote. There is little doubt, however, that most of the Muslims wanted the creation of Pakistan. However, few if any, seemed to have thought the idea through into the future, including such matters as relations between the newly created state and India, and the great upheaval it would bring upon the people.

When Partition took place a year later, few on either side wanted to leave their ancestral homelands where they had been living for generations. Many gave keys of their houses and shops to their friends belonging to the opposite community in the hope that they would return once the communal frenzy was over. However, the carnage was so sudden and intense that the majority had no time to take refuge; their only option was to move towards their new homelands where the community to which they belonged was in majority.

In the united Punjab, which was one of the most fertile and affluent regions of British India, the Muslims were in majority (55% percent); Hindus constituted 30% percent of the State's population, and the remaining mainly consisted of the Sikhs. When the Radcliffe Award was announced, one of the greatest massacres in world's history followed. Trains full of Muslims, and caravans, fleeing westward were held up and slaughtered by Hindu and Sikh mobs. Hindus and Sikhs fleeing to the East suffered the same fate. The armed forces sent to main-

tain order proved totally inadequate and, at times, all too ready to join the partisan carnage.

By the time, the Punjab chaos had run its course, over 14 million had changed sides; more than seven million Muslims were forced to migrate from India to Pakistan, and an almost equal number crossed the borders in the opposite direction. This was the biggest single flow of forced migrants in the twentieth century.

Just to take one example, Lahore's total population prior to independence was 1.2 million which included approximately 500,000 Hindus and 100,000 Sikhs. When the dust finally settled over Partition, Lahore had a Hindu and Sikh population of only 1000. In all the areas constituting West Pakistan, just to give another example, Hindus and Sikhs accounted for 18.4% percent of the population. By the time the 1951 Census was carried out, the proportion had declined to 1.6% percent. Even the most conservative estimates calculate that 250,000 people had been slaughtered. The true figure may well be over half a million.

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Not a single person was ever prosecuted for this unprecedented massacre. It need not have been as tumultuous as it turned out to be but the rulers on both sides failed to anticipate it and take preventive actions. Once it began, they failed to take remedial steps.

This massacre alone was sufficient to set a very bad foundation for future relations between the two countries. To make matters worst, the two countries that were a few days previously part of the same country, started to fight over the division of mundane assets, and eventually over Kashmir and the State of Hyderabad and Junagadh. The Kashmir dispute is as burning an issue today as it was in 1947.

#### **Post Partition Relations**

Mercifully, the two countries did not fight a war for 17 years, after a limited proxy war in 1948, and have been at peace since the Bangladesh War of 1971,

that resulted in the breakup of East Pakistan from the rest of the country. The absence of war, however, did not bring peace, and the tensions have continued. It took the Zulfikar Ali Bhutto-led Pakistan People's Party government a couple of years to settle issues resulting from the 1971 war, including the return of occupied lands and return of more than 90,000 POWs held by India. The

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*But clandestinely, it also supported the Sikh revolt for the creation of Khalistan in Indian Punjab. This movement eventually led to Operation Blue Star, with an onslaught on the Golden Temple in Amritsar by the Indian troops, and the consequent assassination of Indian premier Indira Gandhi by her own Sikh body guards.*

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Bhutto government was overthrown by a military led regime which apparently devoted all its energies in fighting the Soviet occupation of Afghanistan and thus had its hands full. But clandestinely, it also supported the Sikh revolt for the creation of Khalistan in Indian Punjab. This movement eventually led to Operation Blue Star, with an onslaught on the Golden Temple in Amritsar by the Indian troops, and the consequent assassination of Indian premier Indira Gandhi by her own Sikh body guards.

It was also during this time that the Indian troops chose to occupy the Siachen Glacier in 1984 which is resulting in sporadic clashes there, and which has been called the highest battle-ground of the world. The absurdity of the Siachen dispute is obvious to almost all but nobody is willing to budge, and thus billions are spent by both sides to simply maintain troops at that height.

Following the death of General Zia ul-Haq's in a mysterious air crash in August 1988, civilian rule was restored. The political parties led by Benazir Bhutto and Nawaz Sharif, took turns ruling the country over the next 11 years. The civilian rulers tried their best to improve relations with India which included steps such as Benazir – Rajiv talks in Islamabad in 1988 on the side-lines of the SAARC Summit. Prime Minister Vajpayee's historic bus trip to Lahore came in 1999, a few months after the two countries conducted nuclear tests in May 1998.

### **Kargil Shook the Relations**

Peace, however, proved elusive. While PM Vajpayee and PM Nawaz Sharif were trying to overcome animosity spanning over decades, militants and sections of the Pakistan Army were occupying the mountain heights in the Kargil sector in the Indian part of Kashmir.

By the time India discovered the infiltration, the Pakistani supported forces were fully entrenched. The turbulence at the LOC (Line of Control) is nothing new to the people living on both sides of the border, and perhaps to the people of India and Pakistan. However, this infiltration was on an unprecedented scale, and perhaps an attempt by Pakistan to occupy a strategic position to cut across the main national highway 1A linking Srinagar with Leh and Zaskar in the Ladakh region.

The occupation took place during winter when life virtually comes to a standstill in that area with temperatures hovering around minus twenty degrees celcius. The exchange of artillery fire ensued from May to July which was the worst in peace-time.

The Vajpayee Government attributed its strong reaction to the huge number of infiltrators but it was also probably linked to the prevailing political scene in India. Vajpayee's Bharatiya Janata Party was not strongly placed for the elections that were scheduled to take place the same year, and what could have been a better way to improve its standing than to show to the Indian electorate that the Sangh Parivar's tough approach towards the Pakistan supported fighters paid off; that they have been crushed and what if in the process, a few Pakistani posts are either destroyed or overtaken.

Whoever planned the Kargil intervention can be blamed for lack of foresight. India had much more to gain out of it than Pakistan. Indians were freeing their territory which, according to their version, was being illegally occupied by Islamic militants and regular Pakistani troops. But what exactly was Pakistan doing there? If it was liberating Kashmir, then what stopped it from opting for a total war?

Pakistan's realization that it could not go for an all-out war, both militarily and economically, eventually forced it to agree to respect the sanctity of the LoC and withdraw its forces from Kargil after President Bill Clinton's intervention, exactly what the Indians had wanted.

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If the aim was to bleed the Indians a little in the midst of their political crisis, Pakistan clearly miscalculated. In the process it did the greatest disservice to the secular forces in India by guaranteeing that the Bharatiya Janata Party (BJP), which first came to power in February 1998, emerged victorious in the 1999 elections. The Pakistan Government made the mistake of treating the BJP led Coalition in the same fashion as a Congress Government.

Pakistani planners could not have been more wrong. The Congressional leaders negotiated creation of Pakistan, had been dealing with the Pakistani leaders since independence as they had been in power most of the time and were thus reconciled to a great extent to Pakistan. BJP, led by the volunteer organization

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*BJP, led by the volunteer organization Rashtriya Swayamsevak Sangh (RSS) and part of the Hindu nationalist movement Sangh Parivar, is different. It has a specific ideology and a definite hardline policy towards Pakistan. What to talk of Pakistan, it even takes a hardline on Indian Muslims.*

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Rashtriya Swayamsevak Sangh (RSS) and part of the Hindu nationalist movement Sangh Parivar, is different. It has a specific ideology and a definite hardline policy towards Pakistan. What to talk of Pakistan, it even takes a hardline on Indian Muslims. Shiv Sena's Bal Thackeray wants the Muslims to go to Pakistan if they cannot reconcile to a Hindu dominated India. In such an environment, taking over of the strategic peaks in the Kargil sector could not have come at a more opportune time for the BJP ruling coterie.

Ignoring the failure of the Indian intelligence agencies to notice the infiltration, BJP deliberately generated an unprecedented war hysteria in the country which united the whole of India. The Indian nation considered itself to be at war and no opposition could oppose the Kargil strategy of the Government; instead, all the major political parties had no option but to support the action and perform the perfunctory function of visiting hospitals, collecting funds and blood for the affected and shaking hands with the troops at the frontline.

BJP was thus in the driver's seat, getting all the world's attention and emerged from the crisis as a hero.

### **Diplomatic Isolation**

Coupled with this excellent electoral strategy of creating a war hysteria, the Indian Government succeeded in diplomatically isolating Pakistan by showing it as the aggressor. It would be relevant in this context to quote former Indian

Foreign Secretary, V.K. Grover, who wrote in one of the magazine in June 1999:

Another war between India and Pakistan is no answer, nor desirable. We won our wars and lost the peace. In 1948, Nehru took the Kashmir issue to the UN and in 1972 Indira Gandhi failed to resolve the Kashmir issue. We need to take a leaf out of the US book. The former Soviet Union disintegrated without any military action. The US engaged the Soviet Union in a crippling arms race which led to its economic collapse. The thrust on human rights, freedom and open society did the rest. If we were to increase our defense budgets considerably, Pakistan will find it impossible to match the expenditure. Disaffection amongst the people of Pakistan will increase. There is already considerable unrest amongst the other ethnic minorities: Baluchis, Sindhis, Pathans, etc. We should provide every opportunity for Pakistan to self destruct. It is about time Pakistan got a dose of its own medicine.

This is exactly the strategy the Indian rulers appeared to be working on. Pakistan was trapped into conducting a nuclear test to match the Pokhran tests, and during the Kargil operation, was pushed into a war footing for an unprecedented length of time. Apart from squeezing the economy, it was a test of how much pressure the Pakistani society can sustain.

India eventually succeeded in getting all its mountain heights cleared but at a great cost. Pakistan also suffered a huge number of casualties, but the greatest loss was the acknowledgement by the world community of Pakistan being an aggressor.

#### **Musharraf's India Visit**

Till date, Nawaz Sharif, the Prime Minister at the time, claims he was never consulted by the military, led by General Pervez Musharraf, about the Kargil infiltration. The Vajpayee regime initially blamed the Nawaz Sharif's civilian government

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for betraying its trust as it came so soon after the Indian Premier's historic visit to Lahore, and later ridiculed the helplessness of the Pakistani civilian rulers in controlling its armed forces, and its intelligence agencies, particularly the ISI (Inter Services Intelligence).

The Kargil misadventure was a big setback for Indo-Pak relations, and even for democracy within Pakistan. It created so much ill-will and misunderstanding between the Chief of Army Staff and the Pakistani Premier that eventually the former overthrew the civilian setup in October 1999; and it has taken the country almost a decade to regain a democratic government.

General Musharraf was the architect of Kargil and India thus distrusted him. As if this was not enough, an Indian Airlines Airbus IC 814 was hijacked on the Christmas Eve in 1999 on a flight from Kathmandu to New Delhi. Pakistan

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was a silent spectator to the hijacking, but the militants released by the Indians in return for the hijackers releasing the plane, with the passengers, ended up in Pakistan; the hijackers remain untraceable till today.

The Vajpayee Government domestically came under criticism for mismanaging the crisis but the world community ended up condemning not only the hijackers but the cause they represented.

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Pakistan found itself diplomatically isolated partly as a consequence of its nuclear tests, Kargil misadventure, and its alleged implicit involvement in the plane hijacking, all the more so due to Musharraf's October 1999 military take-over. It should thus go to General Musharraf's credit that he managed to get out of this isolation by getting an invitation from the Indian prime minister to visit India in July 2001.

The Agra Summit did not, however, help in the improvement of relations as the two sides got bogged down over Kashmir. It nevertheless resulted in thawing of relations, and the leaders, managed to at least meet and assess each other. Some in India claim that the Vajpayee government extended the invitation to Musharraf probably to divert domestic Indian opinion from issues like the

Tehelka scandal and the rout of BJP in some of the State Assembly elections. It was a major summit. Yet, surprisingly, it had no agenda and took place without any preparations by either side.

### **9/11 Ended Pakistan's Diplomatic Isolation**

The Agra Summit was thus a failure. But it was soon followed by 9/11, and that changed everything. Pakistan suddenly became the center of world's attention, and the era of its diplomatic isolation came to an end. The Pakistani military ruler, till then a pariah, suddenly became a darling of the West. And all of this continued despite a brazen attack on the Indian Parliament in December 2001 by Islamic militants that resulted in few casualties but shook India and was exploited to the hilt by New Delhi. Indian troops were massed at the Indo-Pak border and along the 780 kilometer long LoC. The impasse that this caused in the relations between the two countries continued for more than a year but mercifully, the situation did not spin out of control.

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*And all of this continued despite a brazen attack on the Indian Parliament in December 2001 by Islamic militants that resulted in few casualties but shook India and was exploited to the hilt by New Delhi. Indian troops were massed at the Indo-Pak border and along the 780 kilometer long LoC. The impasse that this caused in the relations between the two countries continued for more than a year but mercifully, the situation did not spin out of control.*

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Evidently under pressure due to the prevailing international environment following 9/11, President Musharraf declared his own war on terrorism in January 2002, banning several Pakistan-based militant groups that were operating actively within India, including the Lashkar-e Toiba (LeT) and the Jaish-e Mohammed (JeM) that were blamed by India for the Parliament attack. However, the LeT's parent body Jamaat ud-Dawa (JuD) remains operational to date. Militant camps and offices were also selectively raided nationwide.

Hafiz Mohammed Saeed, the leader of Lashkar-e Toiba was detained under house arrest in January 2002 but he was released within a few weeks as the government had not made a case against him. He was arrested again on May 15, 2002, but released five months later on a court order. In the aftermath of the July 2006 train bombings in Mumbai, Hafiz Saeed was again detained, but released a few days later on Lahore High Court orders.

Despite these moves by Pakistan, the tension between the two states remained high, and the military remained on high alert and kept facing each other at the border. The West continued to remain worried about the stand-off. Many dreaded a nuclear skirmish, and several Western countries led by the United States strived to lessen tension.

### **Pakistan Declares Unilateral Ceasefire**

Ironically, the presence of nuclear weapons proved to be a blessing in disguise as they helped in avoiding a war, even a limited one on the pattern of the Kargil. Eventually, under sustained American pressure, Musharraf's handpicked Prime Minister Mir Zafarullah Khan Jamali declared a unilateral ceasefire on the LoC on November 24, 2003, on the day of Eid ul-Fitr. India immediately reciprocated, although it expressed its desire to extend it up to Siachen. The borders since then have remained largely peaceful which is a major achievement.

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The move for a ceasefire proved to be good for both the sides. PM Jamali was about to face a major nationwide opposition movement against the LFO (Legal Framework Order), which covered constitutional amendments carried out unilaterally by President Musharraf. Foreign policy initiatives in such situations always come in handy to divert public and media's attention from the domestic issues.

Indians had clumsily snapped air-links with Pakistan and over-flights in a knee-jerk reaction to the attack on the Parliament. It desperately needed restoration of the over-flights to maintain a close link with Kabul and to maintain contact with its first overseas military base in Tajikistan. The ceasefire gave them an opportunity to revoke the ban early January 2004. Soon thereafter, PM Vajpayee visited Pakistan for the second time as India's Premier in January 2004 to attend the twelfth SAARC Summit, and decided during his talks with President Musharraf to initiate a composite dialogue on all disputes, including Kashmir. The air link between the countries had been restored a few days earlier; and now the Samjhota Express train service resumed operation after two years. A honeymoon of sorts started, and the process of composite dialogue ensued.

In the course of the next four years, led by the Foreign Secretaries on both sides, India and Pakistan held several rounds of talks covering issues ranging from Siachen to Sir Creek to release of prisoners to resolution of the Kashmir dispute. However, the issues – all of which have irritated relations – remained unresolved, and the maximum that the negotiators could achieve was initiation of several bus services, including one that started from May 7, 2004 between Amritsar and Lahore and another between Amritsar and Nankana Sahib.

In January 2005, it was decided to start the Muzaffarabad-Srinagar bus service which commenced from April 7 accompanied by intense security. In June, it was given a boost despite opposition of the separatists when moderate leaders from Indian Kashmir traveled to Pakistan by this bus.

President Musharraf also tried his hand at cricket diplomacy by visiting India in April 2005 for a three-day visit, including witnessing a match in New Delhi with the Indian PM Manmohan Singh and the Indian Congress leader Sonia Gandhi.

The talks however failed to make enough progress. Pakistani Foreign Minister Khurshid Kasuri himself acknowledged this fact, and called for the need to tackle issues ‘with greater seriousness’.

India has always held Pakistan responsible for the militancy movement in its part of Kashmir. It had been its long-standing demand to erect a fence on the LoC to stop infiltration of militants from the Pakistan’s side; Pakistan had opposed such a fence on the ground that it did not recognize the LoC as an international border, and such erection would give it a legal and permanent status. However, during this period of bonhomie, Pakistan even agreed to permit India to fence the whole of the LoC to fulfill its long drawn wish. It is a different matter that militancy continues in Indian Kashmir, although on a much reduced scale.

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During this four year period of the so-called composite dialogue (2004 to 2008), Pakistan led by President Musharraf publicly made several proposals for the resolution of the Kashmir dispute, each of which represented a marked deviation from its historic insistence for the implementation of the United

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Nations Security Council resolutions. The two sides came close to recognizing the LoC as a de-facto border during this period. President Musharraf wanted India to agree on the demilitarization of Jammu and Kashmir and grant of at least partial autonomy. The claim has also been made, although never officially, that aside from the public composite dialogue, the two countries were holding behind the scenes parleys on the Kashmir dispute, and had come close to a solution before the whole process stalled in late 2008.

In October 2005, an earthquake resulted in devastating large parts of Pakistani Kashmir, including massive casualties in the capital city Muzaffarabad; more than 75,000 people are said to have died. India responded positively to this tragedy, and allowed Pakistan to fly rescue helicopters to remote regions of Pakistani part of Kashmir through the no-fly zone adjoining the Line of Control. Pakistan also expressed its readiness to open the Line of Control to allow people from Indian Kashmir to join relief efforts in Pakistani Kashmir which was subsequently done on a limited scale.

The two countries however did not miss even this tragedy to score points. India offered Pakistan joint helicopter flights for relief in the quake-affected areas as Pakistan was in dire need of helicopters but the latter outrightly rejected it on grounds of security. As always, it was the ordinary people who suffered.

#### **Mumbai Attacks Reverses the Peace Process**

During his last trip as head of state to India in 2005, President Musharraf had called the peace process with India 'fairly irreversible' but he was partly proved wrong only three years later.

The impasse that was experienced after the attack on the Parliament in 2001 was repeated when terrorists from Pakistan attacked several prominent targets in Mumbai in November 2008. The composite dialogue process was suspended unilaterally by India which remains the case until date. However, the Indian Government did not react in as harsh a manner as its predecessor BJP-led Coalition. There were no threatening troop movements. Envoys were not recalled, and over-flights continue as before.

However, India is refusing to resume talks until Pakistan either hands over the terrorists involved in the Mumbai attacks or at least punishes them. Despite this, the Indian leaders, including Premier Manmohan Singh have been meeting both the Pakistani President and Prime Minister at various forums, and pleasantries continue to be exchanged.

### **The Deadlock is Distressing**

The current continuing deadlock is unfortunate. Illiterate masses may think emotionally but it is really frustrating when educated people seriously start accepting and preferring violence as a means to settle disputes. This is hardly the manner to gain acceptance in the international community as an economic power. Presently, both India and Pakistan are facing economic difficulties due to the world recession, more so Pakistan, and they can only hope to get out of it if they act responsibly.

Continuation of tension is only resulting in millions of dollars being wasted daily. The civilians on both sides of Kashmir are paying for the continuing strife. It is true that in addition to this strife, the Indian Kashmir has the additional problem of massive human rights violations. But who would dare to invest either in Pakistani Kashmir or the Indian-occupied Kashmir in such an environment? What to talk of private or international investors, not even the Governments bother to invest. There is an urgent need for a breakthrough.

### **Mature States**

During the Kargil war, and then during the stand-off following the attack on the Parliament, some commentators dreaded a nuclear clash between the two states. They underestimated the capability of both Pakistani and Indian policy-makers. The two countries have been in possession of nuclear weapons since the late eighties; their mutual nuclear deterrence has worked well, despite a Pakistan-backed militant movement in Indian Kashmir since 1989. Both states exchange fire but avoid cross border operations, Kargil being the sole exception during this period. The occasional raids infiltration and capturing of posts is more to gain psychological and military ascendancy through domination of the other's territory by observation and fire than attempting to resolve the problem permanently by a military conquest. However, the fact that India and Pakistan may not ever use their nuclear weapons is hardly a comfort.

Relations between the two countries, regardless of bus trips, declarations and hugs in front of cameras, remain tense and show no sign of improving. Both governments view international affairs as a zero sum game meaning either a country could be India's friend or Pakistan's.

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#### **The American Factor**

However, one can rightly ask the Pakistani establishment as to what has changed during the past few years that the State is now willing to compromise on Kashmir, something that was simply out of question a decade ago.

Pakistan buttressed the militancy in Indian Kashmir since 1989, although officially the support was limited to political and diplomatic one. More than 70,000 people have died in the fighting there during the last 20 years. And now Pakistan is backing out. Isn't this a betrayal of the first order?

The Indians can also be asked the same question as to what prompted them to suddenly rediscover Pakistan. The armed forces have been facing each other at the border for more than six decades.

The bottom line is simple and unfortunate. Nothing has changed. India and Pakistan continue to have the same mind set towards each other. But what is presently happening is that the United States is taking a more active interest in South Asia than in the past for strategic reasons and is restraining the Pakistani establishment. The Indians are being advised by Washington to respond positively to Pakistani overtures and make it easy for the establishment to change course. So the governments are not operating independently but choosing a course charted by the Americans.

#### **The Kashmir Dispute**

Pakistan attributes its hostility towards India on the basis of the Kashmir dispute; it officially denies any prejudices towards India on the basis of religion. What kind of relations would exist between the two countries if Kashmir in its

totality is handed over to Pakistan can be a subject of an interesting academic discussion, but this is not going to happen any time soon.

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Pakistan says that any dialogue with India should cover Kashmir. But this position does not take into account what the Indians are going to negotiate about. The people and the Government of Pakistan are obviously clear about the objective: they desire that the Indian forces should vacate Indian occupied Kashmir and a plebiscite under foreign auspices based on the United Nations Security Council resolutions should be arranged and both the people should be given the right to choose between India and Pakistan.

But why would Indians agree to this, particularly after the drastic change in the whole scenario following 9/11? It would also not be possible for any Indian Government to survive after such a capitulation on the negotiating table and any political party in power would be unlikely to be ever voted back to power after such an arrangement; in other words, such a negotiating posture for any Indian politician is almost out of question.

Pakistan also remains open to possibilities of mediation. However, what it forgets in this respect is the possibility that the mediator if agreed to may hold the case against it; or may blame it for sponsoring cross-border terrorism; or may declare LoC as the permanent border or even decide to give the people of Kashmir the third option namely independence. The last option would again be a nightmare for Pakistan. An independent Kashmir 50 miles from the capital Islamabad is the last thing on the mind of Pakistanis.

And what would Pakistan do if the next demand of any Kashmiri nationalist or an Indian negotiator could be that the Northern Areas should be considered part of Kashmir?

It would thus be in Pakistan's interest to thoroughly review its Kashmir policy. It was partly forced to do this following 9/11 but that was more a reaction to the world circumstances and the international opinion (read American) regarding the Islamic freedom fighters (militants or terrorists as called by the Indians).

The moral, diplomatic and political support to the Kashmir cause is not selling anywhere in the world. A British PM recently called the freedom fighters terrorists much to our Foreign Office's annoyance and the US Congressmen are constantly posing embarrassing questions to the pro-Pakistan State Department officials in Washington.

Both countries are diehard supporters of the US-led Coalition against terrorism and any peace overtures between the two countries would give the Americans some respite. The last thing that the Coalition wants is tension between two of its key allies particularly following the recent setbacks and growing resistance both in Afghanistan and Iraq.

Easing of tensions between the two countries will be a welcoming development. However, the proof of the pudding is in the eating. Isn't it about time that the two sides also announce practical steps rather than simply making proposals and continuously give an impression of throwing the ball in each other's courts and trying to score points?

#### **Civilian Control over the Military**

The question is whether there is any hope of a breakthrough of achieving peace between these two neighboring countries.

Since the insurgency in Punjab in the eighties, and subsequently since the start of the current insurgency in Kashmir in 1989, which Pakistan regards as a freedom movement, India has been blaming Pakistan for sponsoring terrorism on its soil.

And it has now reached the conclusion after decades of negotiations with Pakistan that the civilians and the military do not speak with the same voice. Resultantly, it claims that negotiations with Pakistan are a waste of time, until and unless the civilian government in Pakistan assumes control of its military and its intelligence agencies, particularly the ISI (Inter Services Intelligence).

A recent incident accentuated this opinion. Days before the Indian Premier and his Pakistani counterpart Yusuf Raza Gilani met in Egypt in July 2009, the head of the ISI, according to the Indians, suggested to the Indian military, air force and naval attaches attached to the Indian High Commission in Islamabad that their government should deal not just with Pakistan's civilian government but also directly with its Army and intelligence agency.

A section of the Indian media says that the ISI during the meeting came clean in stating that the ISI and the Pakistan Army were involved in framing Pakistan's India policy, along with the Foreign Office; and that there should thus be a three-way mechanism of negotiations.

Pakistan denied that any such suggestion ever came from the ISI. It is not important if it was done or not as these could be 'off the cuff remarks' or may be a result of misinterpretation. What is more important is the Indian perception that the Pakistani intelligence establishment is a state within a state, and is a law unto itself.

In this regard, the Indians also cite Pakistani PM Gilani's agreement with his Indian counterpart on the telephone that the ISI chief could come to India in the immediate aftermath of the Mumbai's terrorist attacks but his quick backtracking. Since then, no formal proposal for interaction between the ISI and an Indian intelligence agency has been made.

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This is a serious dilemma and can only be resolved by giving firm assurances to the Indians that Pakistan is not involved in supporting any kind of terrorist activities in their country. This may not be achievable without the intervention of a third party who can give assurances to both the sides in this respect.

### **Changing the Historic Baggage**

The rhetoric on the media regarding the atrocities committed in Indian Kashmir has diminished. This may have something to do with the introduction of more than 50 TV channels in Pakistan during the past decade but partly can be attributable to a deliberate State policy. One can only wish that this level of restraint could continue, although it is quite shallow, as became evident during and after the Mumbai terrorist attacks. Almost the whole media on both sides showed signs of war hysteria and fanned public sentiment against the other instead of trying to achieve normalcy. This showed that the people have still a lot to learn when it comes to achieving peace.

Almost everybody who matters in both the nations pay lip service to their desire to see improvement of relations between India and Pakistan. Few however have any concrete ideas in this regard. People to people contacts will never

be able to achieve anything concrete unless the inherent biases are problems between the two nations are resolved.

### **Pakistan's Dilemma**

But the first step before doing anything is an acknowledgement on the part of both the governments that their stances in the past were on the wrong footing and that something has to change.

Every Pakistani faces the dilemma that if India and Pakistan are really “bhai-bhai”<sup>11</sup> then what was the need to partition India. The justification becomes all the more difficult because there are now more Muslims in India than in Pakistan and they have survived. One hardly hears of Hindu Muslim riots as one used to until a couple of years ago, although the carnage in Gujarat and Bombay, and the demolition of the Babri Masjid are hard to ignore and forget. However, the irony of the BJP and Shiv Sena governments losing elections nationally and in Maharashtra is not lost on anyone, nor that many Indian Muslims are now holding important positions in India. After all, it is difficult to ignore that the secular Republic of India has twice been headed by a Muslim, the government is led by a Sikh, and the ruling party is led by a Roman Catholic; all this is happening in a Hindu dominated state. Pakistan faces a real dilemma here and no one is really to be blamed for it. The solution to this is not to stereotype the image of the Indian Hindus and accuse the whole community of more than a billion people possessing the same negative feelings or attitudes towards the Muslims.

Pakistan was created as a separate homeland for the Muslims but it does not mean that it should constantly degrade Hindus in its media and its school curriculum. Many a times, biases may not go but the least that can be done is to at least be aware of these biases, prejudices, stereotyping, ethnocentrism and sectarianism.

In Northern Ireland, where there is conflict between Catholics and the Protestants, there is a saying that biases and prejudices come from mother's milk. Family members often unknowingly feed misinformation to children and the stereotype imagery thus start at an early age. This stereotyping of course applies in reverse also: while one views the other community with contempt,

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<sup>11</sup> bhai: Urdu/Hindi - brother

the same person regards one's own group as the most virtuous and sitting on a high pedestal.

Eradicating partisan perceptions takes decades but it does not mean that we should stop negotiating till we find these angels without biases. It is sufficient at these dialogues if one is aware and alert to these prejudices and assume that partisan perceptions exist on both sides; and seek to understand, and to show understanding, before seeking to be understood. It does not hurt that these kind of perceptions are discussed openly and explicitly at an early stage; and attempt is made to solve problems through negotiations rather than simply go through futile rounds of adversarial type of negotiations.

Opinion-makers expressing their joy over the fact that Pakistan's flag had been flown on the streets of New Delhi by a few disgruntled elements hardly help. If uneducated persons on the streets expressed such sentiments, it may be understandable but not if even columnists and strategic cum defense analysts start feeling the same way.

Hardliners exist in every country but the task to aspire for peace can become a daunting one when a sizeable chunk of population is conditioned to think that all Hindus are lalas<sup>12</sup>; that all hate the Muslims; that it is not feasible for the Muslims to coexist with them; and that they cannot be trusted.

All Pakistanis are told from their childhood both officially and otherwise that Pakistan was betrayed at the time of partition both by the British and the Indian Pundits; and Kashmir which was morally and legally due to Pakistan was unjustly usurped by India. This interpretation is reinforced by the United Nations resolutions that called for withdrawal of troops from both parts of Kashmir and then holding of a plebiscite to ascertain the wishes of the Kashmiris.

### **Secular Values**

While negotiating with another religious community, it is important to remember that all religions regard themselves as the most righteous and following the correct path; otherwise, they would not have been in that group. And ironically, the more you put down the other group, the more you develop your own self-esteem. In such an environment, it is normal for misinformation to be reinforced and greater distance and fear is caused by manipulation of this informa-

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<sup>12</sup> lala: Urdu/Hindi - miser

tion. It is thus important to develop respect and tolerance for the other community, and it is acutely needed among the negotiators.

We can learn it from some of the Mughal rulers. They ruled a vast country like India but most of them did not try to convert the Hindus to Islam despite many of them being pious Muslims. Hindus were their advisors; and the royalty took active part in the religious celebrations of the other communities.

If communal riots do not take place in Pakistan, it is because the Hindu community is almost non-existent in Pakistan, except for two districts in the Tharparkar region of Sindh. Notwithstanding the communal riots in India, at least there is no beating the fact that anti-Muslim sentiments cannot be officially sanctified under the country's Constitution and the laws. It is a secular country. It is another matter that Pakistan officially and unofficially keeps challenging India's secular credentials.

India may not be a perfect example when it comes to secularism but one must appreciate that secular legal norms are gradually making a difference. For instance, it may come as a surprise to some that it is considered bad manners in India to ask someone about his or her religion, just like it is asking about someone's salary in the West.

Secularism helps in giving everybody a stake in the system; and is the only way to govern a diverse country. Making a theological state results in turning the religious minorities into second class citizens and is a violation of their human rights. It also leads to the controversy as to which sectarian doctrine is to be enforced in such a theological republic.

It goes without saying that a secular Pakistan would make it much easier for the negotiations to take place between India and Pakistan. Apart from helping the Pakistani side to be shedding some of the historic baggage, the two sides would be sharing a major value that would make the Hindus in India more comfortable in extending concessions to a secular Pakistan. This is in addition to the benefits such a change-over may bring about within the state itself.

## Authors

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## W h a t i s

### FreedomGate Pakistan?

FreedomGate Pakistan (FGP) is a network of alumni of liberal International Academy for Leadership (IAF) in Germany that strives to provide the liberals an access to the liberal positions on multiple issues creating platforms to discuss and deliberate and find like minded friends.

The first step for attracting the liberal friends has been creating a virtual space, a website: [www.freedomgatepakistan.org](http://www.freedomgatepakistan.org) which literally means to be a gateway towards greater freedoms.

Serving as an umbrella website for links to different sites of liberal organizations, FreedomGate Pakistan aims to provide information on liberal initiatives in the country as well as provide a platform for liberals to come together and discuss liberal concerns. It is a virtual home to all those who believe in individual freedom, social responsibility, rule of law, pluralism, equality before the law, independent judiciary, democracy, secularism and free market economy.

Perhaps the essence of the thought behind FreedomGate Pakistan is best expressed in Butler Schaffer statement:

*"A society will remain as free or as enslaved as the conscious dispositions of individuals determine it shall be. Just as the roots of oppression are found in passivity, the foundations of our liberty reside in highly energized and focused minds that insist upon their independence."*

FreedomGate Pakistan is the home of such people.