



## EDITORIAL

### Strengths and pitfalls

By Asma Jahangir

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**The much-awaited constitutional reforms may have sailed through the National Assembly and Senate but there are trials ahead. Senator Raza Rabbani deserves praise as do the other members of the committee that worked on the reforms. The proposed amendments are not perfect but they do lay the foundation for a clearer direction in the future.**

However, the amendments may face obstructions — not for their weaknesses but for their strengths. They touch upon three basic parameters: the strengthening of democratic institutions, the recognition of provincial rights and the extension of two new fundamental rights — the right to information and primary education.

In places the reforms are illogical and confused about the basic concept of rights. The committee reinserted the word 'freely' in guaranteeing freedom of religion to minorities in the Objectives Resolution, but contradicts this spirit of promoting tolerance elsewhere. By reverting to the original 1973 Constitution, the 18th Amendment makes it mandatory for the prime minister to be a Muslim. However, the chief ministers may be non-Muslims.

In reality, Pakistan's disempowered religious minorities can never even dream of reaching such pinnacles of power, but for the constitution to brazenly discriminate against them is indefensible. Non-Muslims may contest elections to the National Assembly and command a majority of votes, but cannot be elected as prime minister. Consequently, only Muslims will be able to be parliamentary leaders. Our political leadership must make up its mind: either it commits itself to non-discriminatory policies on minorities or confesses to bigotry.

Fata as usual has a generous quota of seats in parliament but reserved seats for women in Fata do not exist. Is one to conclude that women do not live or indeed suffer in Fata? Are they not as vulnerable as women elsewhere to warrant special representation?

The committee has retained Articles 62 and 63 of the constitution that provide for the qualification and disqualification of parliamentarians. They have made a few — sly — changes, but to no avail. Members of and candidates to parliament are assumed as "sagacious, righteous, non-profligate, honest and amen," unless a court declares them to be otherwise. In other words, each member of parliament will be presumed virtuous unless proven otherwise as a consequence of human foibles. The committee has removed the disqualification clause for those convicted under criminal charges or for giving false evidence.

Political parties have been feudalised and given a free hand to propagate any form of hate. Defection laws are oppressive and make parliamentarians prisoners of the decisions of party bosses. The latter pick 70 women and minority members who do not have to go through any form of evaluation except being acceptable to them. Intra-party elections are now optional. Restrictions on political parties to keep them from promoting sectarian, ethnic or regional hatred have been removed. Henceforth, lashkars and sectarian groups can legitimately propagate hate and contest elections.

Nevertheless, despite some shortcomings, the committee has initiated a number of positive reforms, the most vital being the powers given to the federating units to raise domestic or international loans and give guarantees on the security of the provincial consolidated fund under the supervision of the National Economic Council (NEC). In addition, minerals, oil and natural gas found in a province or the territorial waters adjacent to it will now vest jointly and equally in that province and the federal government. Implementing this would be a huge challenge as it strikes at the heart of institutions that feed on the largess of the federal government. The actual threat to the 18th Amendment from the establishment emanates from these changes rather than the renaming of the NWFP or the method of appointment of judges to the superior courts.

The Council of Common Interest (CCI) and the NEC have been strengthened and their reports are to be presented to both houses of parliament. The resolution of disputes between a province and the federal government would first be attempted at the level of the CCI rather than by invoking Article 184 granting declaratory jurisdiction to the Supreme Court. The Election Commission has been made a permanent body and provincial election commissioners will not be sitting judges. No person whose child or spouse is contesting elections will be appointed to a caretaker cabinet. The power to impose emergency rule has been given to legislatures rather than appointed governors. According to the amendment a president will have no power to order a referendum. This power has been given to parliament that alone could authorise a referendum after referral by the prime minister. Some curbs have also been placed on the promulgation of arbitrary ordinances.

Appointment of judges to the superior courts will by and large lie with serving or former judges and a representative of lawyers. A commission headed by the chief justice will forward the nominated name to a parliamentary committee. The latter may only disapprove the suggestion by a vote of three-fourth.

In the absence of a governor, a sitting judge will no longer be able to preside as acting governor. Retired judges who take up another government post will not be entitled to their pension or remunerations accruing from their new post. The attorney general and advocate generals will not be able to maintain their private practices while in office. In the past, three judges of the Federal Sharia Court were individuals "well versed in Islamic law". This qualification has been altered by appointing persons with 15 years of experience in Islamic law, research or instruction.

To come back to the shortcomings, it must again be stressed that fundamental rights remain weak. Even torture is not fully prohibited. The right to freedom of expression, movement and religion remain limited. The method of nomination to reserved seats is most unsatisfactory as it limits the opportunity to form a constituency. The promise of a constitutional court by the Charter of Democracy has been glossed over and the provisions of holding a chief justice accountable through the Supreme Judicial Council have not been clarified. The status of Fata and Pata remains untouched.

Let us hope that streamlining the constitution remains a process rather than a one-time exercise. Pakistan's democratic system can only go forward if its structural defects in governance are addressed first. As a first step, a legal framework is crucial for sound governance but greater skills and a higher level of integrity are needed to sustain any form of democratic transition.

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