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**The working of the constitution**

The constitution of Pakistan will turn fifty in about two years. It is time to assess its working during all these years. It has been put in abeyance on three occasions; and several changes have been grafted upon it through amendments by martial law regimes, parliament and through judicial interpretation. It has been violated in many other forms, but it has survived.

Ideally, steps should be taken to celebrate this important occasion at the state level. Political parties and leaders, who rule the multitude, under its command, also owe a moral duty to celebrate the event. Seminars and debates should be organized to review its working. Keeping in view the past and the attitude of the people towards the constitution, most likely nothing of the sort will happen. This cynicism originates for the reason that the constitution of Pakistan essentially remains a legal document.

A constitution is in fact a political document-a political scripture that deserves religious reverence from the people. It has failed to earn that great respect and gratitude. A pontifical reverence is found amongst people in developed democracies towards constitutions; it is a part of daily conversations and intellectual discourse. Except the ornamental and lavish gloss put on it by the courts of law, the constitution is usually not a part of the normal intellectual discourse in Pakistan. Constitutional content is conspicuously found lacking in political discussions and debates which are mainly focused on an unsatiated desire for power and attacks upon political opponents that then estranges the general public from democracy and the constitution. It is axiomatic that no constitution is perfect. All constitutions evolve with time.

Some fundamental questions require answers while assessing the working of the constitution. The first and foremost question is: has the constitution achieved its aspirations, ethos and declared objectives as promised in the preamble and in the body that formulates those objectives which inter alia include, exercise of power as a sacred trust and through the chosen representatives, the independence of the judiciary as a mean to enforce fundamental rights, itself follow and compel other branches to adhere to the constitution?

How has parliament, entrusted with the task of constitution (by amendments) and law-making and empowered to hold the executive branch of the government responsible for their actions, protected, defended and upheld the constitution? How has the judicial branch by interpretation changed the constitution? How have two prominent features (federal polity & parliamentary form of government) transformed over the years? What have the people done to discharge their obligation under Article 5 (2) viz demonstrating their loyalty to the constitution whenever it was put in abeyance or violated? And, finally, has the constitution been able to change the lot of the people for whom it was adopted and enacted in whose name this polity exists?

It is useful to occasionally reiterate, particularly for the newer generation, some of the events leading to the adaptation of the constitution, preceding its formative years, which unlike the Philadelphia Convention of 1787 wherein the US Constitution was framed, were not very pleasant. The abrogation of the constitution of 1962 in 1969, the dissolution of the West Pakistan Order, the promulgation of a Legal Framework Order that paved the way for holding the first general elections of 1970 since independence, in the absence of a constitution, reluctance by the establishment to hand over power to the Awami League, separation of East Pakistan (Bangladesh) after a painful, bloody and humiliating civil war, framing of an interim constitution by a truncated assembly, the historic decision by the Supreme Court in Asma Jillani’s case (April 1972), the Hamoodur Rehman Commission Report, 1972 and finally the framing of the present constitution in three months (February-April 1973), are some of those great events that preceded the current constitution.

It may be recalled that during those testing times, there were leaders around no less prominent than Ambedkar, Jefferson, Washington and Adam, who despite having disagreements and disappointments and under the grip of grief after a national tragedy, were still able to give a constitution that remains the bedrock of the state of Pakistan and binding force. It is a singular achievement for which its creators deserve major credit. Some of them were highly eloquent, as reflected in the debate on the constitution spanning over several thousand pages. All were sincere to the hilt.

The constitution of Pakistan embodies the cardinal principles of a civil government evolved in Western countries, predominantly in Great Britain. Political ideas formed during the last few centuries in Europe provided the necessary thought for free and constitutional governments. The nature of the state was seen as essentially legal and coercive limitations on authority were placed to provide safeguards against tyranny by the state.

Further provisions included elections on democratic principles; enlargement of franchise; distribution of authority among different branches of the government. Other forms of checks on the power were the inclusion of a chapter on fundamental rights and the power of judicial review given to the judicial branch. The constitution of Pakistan contains all these principles.

In addition to the above principles of government based on Western democratic norms that are now universal norms so to speak, the constitution contains Islamic provisions in view of Pakistan’s peculiar history having its origins in the Pakistan Movement and the Two-Nation Theory. The preamble, that is primarily based upon the Objectives Resolution, is an amalgam of two different sets of polity and principles of government. Moreover, due to a few substantial provisions contained in the constitution (Articles 2 A, 62(1) (f), 203 A to 203 J and Articles 227 to 231) there has been an additional strain upon its working and upon the judiciary while reconciling various provisions of the constitution.

The working of a constitution involves several internal and external factors some of which have been raised above in the form of questions. In subsequent pieces, I will try to answer these questions.

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