

Views on the constitutional review — by Peter Jacob

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Ever since the passage of the Eighth Amendment in 1985, the constitution ceased to enjoy the status of a consensus document. Besides the legal experts, everyone who had the opportunity to read the constitution of Pakistan, or followed the discussions, agreed that this national document was in need of an overhauling. The government set up a committee in June 2009, composed of 27 cross-party parliamentarians, to review the constitution. The primary agenda before the Parliamentary Constitutional Reforms Committee (PCRC) was to remove undemocratic provisions, distortions and contradictions in the constitution to suit universal human rights and parliamentary democracy.

However, the statements reported in the media were largely about governance matters, i.e. sharing of powers between institutions and offices. Each political party in the reforms committee has been pressing for issues close to its heart. The ANP took a stand about naming NWFP as Pakhtunkhwa, the PML-N for removing 58(2)(b) and reintroducing a third term for the prime minister's office. The others have focused on provincial autonomy. Senator Dr Abdul Malik, the representative of the National Party, said that over a hundred communications received by the reforms committee from different civil society organisations are to be compiled and shall be made public. This would be a good step, but did the committee adopt a course to accommodate those recommendations? However, there are points to be considered in procedure as well as substance of the review process.

Since a procedure for hearing the public opinion on issues of national importance had not been adopted in this exercise, the committee must show a greater regard for these voluntary interventions. The government should allow a debate in the media and parliament over the recommendations made by the organisations before recommending the amendment draft to parliament. Even one tenth of the time that was given to the committee devoted for this purpose would make the process more credible.

The review process cannot remain aloof from the crises Pakistan is passing through. It has to foresee and incorporate a framework for social, legal and economic reforms. The committee must look at successful examples of constitution-making worldwide, besides learning from the failures. The part that seems to be missing as yet is, in fact, of immense importance for common Pakistanis. It concerns human rights. Will the constitutional review enhance the scope of setting standards and enforcement of human rights?

Historically, the phenomenon of human rights evolved together with democracy and internationalism. Human rights, defined as standards of fundamental freedoms and safeguards, have non-discrimination as their core value, while democracy is a system that underlines people's participation in governing the state. Human rights and democracy are interdependent in a modern state system. You cannot have one without the other.

The issues of vital importance to the common person cannot be addressed without looking at the principles or the conceptual framework and implementation mechanism to deal with non-discrimination among the citizens. Many nations signatory to the UN human rights treaties (especially the Convention on Elimination of All forms of Discrimination Against Women) have legislated to define 'discrimination'; even their constitutions have this definition. It is widely recognised that to rid society of undesirable practices they must be defined and clearly identified. Countries like Venezuela, South Africa and Canada have made changes in their constitutions. Therefore political systems that defined and outlawed discrimination had an edge in democratic development over a normative banning of discrimination.

Article 21 of the Venezuelan Constitution states, "All persons are equal before the law and, consequently, no discrimination based on race, sex, creed or social standing shall be permitted, nor, in general, any discrimination with the intent or 'effect' of nullifying or impairing upon the recognition, enjoyment or exercise on equal terms, of the rights and liberties of every individual." What this means in practice is that public policies must be re-examined for their discriminatory effects.

The PCRC has a huge moral obligation to the cause of non-discrimination because the committee has no representation of women and religious minorities, two groups that are affected by discrimination commonly. As the constitution guarantees non-discrimination in Articles 18, 20, 25, 34 and 37, the constitution review committee will do this nation a service by taking a step in this direction. Besides incorporating a definition of discrimination, a proviso should be included annulling such laws and banning practices that are discriminatory on whatsoever grounds.

The PCRC did not 'touch upon' the 'Islamic provisions' while making recommendations for the constitutional amendment. This could be a reaction to earlier questions raised by parties like MQM, ANP and Baloch nationalists represented in the committee regarding the country's name and identity. Matters like Article 2, A and B, that make Islam the state religion are nonetheless contradictory to democratic principles.

The term 'Islamic provisions' was first coined when the Constitution of 1956 was being discussed. The subsequent two constitutions enhanced their scope further. But should we be asking ourselves why our constitutions could not survive and why we still need to amend our existing constitution the 18th time, in a short span of time since its promulgation? The religio-political groups and the beneficiaries of dictatorship have used the premise of Islamic provisions to manipulate the formulation of law and policy exercises. The PCRC can help the nation steer out of extremism, religious and sectarian intolerance by finding a way to discourage abuse of religion. It will require cleansing the constitution of biases and preferences on the basis of religion.

The discrimination solemnised through Article 41 and 93 (3rd schedule) that bar non-Muslim Pakistanis from holding the office of president and prime minister is a blot on the democratic credentials of the constitution as well as the polity. The PCRC still has time to study the religious and other biases in the constitution. All constitutional provisions making any preference among the citizens on the basis of sex, colour, creed, etc, should be done away with. That alone will lead us to become a forward looking and tolerant society. This exercise will become meaningful for the nation and worthy to be remembered only if the amendment proposed is in consonance with universal human rights. The government and opposition parties will have to demonstrate acumen, wisdom and political will to introduce a paradigm shift through this constitutional review.

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