

# ISA S Brief

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## Restoring Parliamentary Democracy in Pakistan

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### Abstract

This paper comments on the recent Constitution (18<sup>th</sup> Amendment) Bill passed by the National Assembly in Pakistan. Apart from the many important amendments in the bill aimed at restoring Parliamentary democracy in Pakistan, it also marks the first time that a President has voluntarily relinquished his special powers. The process of pushing the bill through also shows that the political parties in Pakistan are able to work together in a democratic manner to bring about real and positive change.

### Introduction

On 8 April 2010, the National Assembly of Pakistan passed the Constitution (18<sup>th</sup> Amendment) Bill by a two-thirds majority with 292 lawmakers out of a 342-member National Assembly voting in favour of the bill. The bill is an attempt to restore Pakistan to the parliamentary system of government envisioned in the 1973 Constitution. It is seen as one of the most comprehensive constitutional reform exercises aimed at reversing the damage done to Pakistan's Constitution by former military dictators, General Zia ul Haq and Pervez Musharraf, who tampered with the Constitution to legitimise their rules.

The main feature of this bill is the relocation of executive power from the President to the Prime Minister. Significantly, the bill repeals Article 58 2(b), which had allowed the President extraordinary powers to dissolve the National Assembly as well as appoint the three Service Chiefs and Provincial Governors. The bill also proposes, amongst other things, the repeal of the Legal Framework Order of 2002 and the controversial 17<sup>th</sup> Amendment of 2003, which legitimised former President Pervez Musharraf's decrees; the

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renaming of the North West Frontier Province (NWFP) as Khyber Pakhtunkhwa; the granting of greater provincial autonomy to the four provinces; and greater transparency in the appointment of judges to the higher courts. These are in line with the general thrust of the 1973 Constitution in which provincial autonomy and the independence of the judiciary were key issues.

The bill aims to strengthen the independence of the judiciary through Article 175 by proposing a more transparent process for judicial appointments. For example, there will be a judicial commission headed by the Chief Justice, which will nominate potential judges to the Supreme Court, High Court and the Federal Shariat Court, and a Parliamentary Committee made up of Senate and National Assembly members, which will make the final approval.

Inequitable distribution of economic benefits and lack of fair power-sharing have been longstanding issues between the Punjabi dominated centre and the smaller provinces of Sindh and Baluchistan. The 18<sup>th</sup> amendment promises devolution of greater political and economic powers to the provinces. The commitment to greater provincial autonomy is found in several amendments, the thrust of some of which is to ensure equitable distribution of resources. In fact, one of the responsibilities of the newly constituted National Economic Council, as envisaged in Article 156 of the Constitution, will be to ensure 'regional equity' and 'balanced development' of all federating units. In addition, the net proceeds of the federal duty of excise on natural gas and oil will be redeployed from the Federal Consolidated Fund to the province itself where the well-head of oil and/or natural gas is situated. The bill also proposes the abolition of the concurrent list, which will result in greater power for the provincial authorities. If the bill is adopted, it will be harder for the Federal Government to exploit provinces by appropriating their natural resources through excise duties and unfair distribution. These reforms, if implemented in true letter and spirit, could go a long way in allaying the apprehensions of the smaller ethnic groups and creating a stronger federation.

### **The Importance of the Bill**

The bill is important for a number of reasons, the most significant of which is the triumph of democracy and civilian rule. Historically, Pakistan has had real challenges with its constitutional process. From the making of its first constitution, with a gestation period of nine years, to the repeated abrogation and amendments by military dictatorships, the sanctity of the constitution itself has been undermined. The 8<sup>th</sup> Amendment, passed in 1985 by General Zia ul Haq, brought a fundamental change, where the President was vested with special powers at the expense of the parliamentary system. This created a situation where the National Assembly could be dissolved at the discretion of the President, as was done on three separate occasions in the 1990s.<sup>2</sup>

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<sup>2</sup> The governments of Prime Ministers Benazir Bhutto and Nawaz Sharif were dismissed by President Ghulam Ishaq Khan in 1990 and 1993 respectively; while President Farooq Leghari used his special powers against Prime Minister Benazir Bhutto in 1996.

The bill is also important because in a climate marked by factionalism and political infighting on a host of issues, various political parties have come together on this issue; without this consensus the bill could not have been tabled in Parliament. Although there were some differences, for example with the renaming of NWFP and the constitution of the judicial commission, the parties were able to work through their differences in a democratic manner in the larger interests of the country.<sup>3</sup> All the political parties supported the bill despite their reservations on some issues which were recorded as ‘Notes of Reiteration’ in the document.

### **Implications for Pakistan**

The passage of the bill may also be a boon to President Zardari and the Pakistan’s Peoples Party (PPP). According to the PEW Global Survey of August 2009, President Zardari’s ratings had fallen from 64 per cent in 2008 to 32 per cent in 2009. In repealing Article 58 2(b), President Zardari becomes the first Pakistani President to willingly surrender his special powers to Parliament. Some may argue that Zardari has done this only due to pressure from the opposition, mainly the Pakistan Muslim League (Nawaz) [PML(N)], and not for any reason of principle. Even if that were the case, it is nonetheless a positive development as one can read this as an instance of democracy at work in Pakistan – no one can dispute that the process led to an outcome that was desired by the people of Pakistan, and one which is positive for the future of the state.

Apart from the potential effect on the President and the PPP, the bill may also create a favourable atmosphere for inter- and intra-party politics. The fact that a consensus was gained is a significant achievement and a salutary reminder that “politics is the art of the possible.” The repeal of Article 58 2(b) removes an unnecessary and highly distracting irritant between the PPP and the PML(N), which can hopefully move beyond that conflict and engage more meaningfully on other matters of government. Interestingly, even the PML(N) benefits from the bill, as the removal of the limit of two terms for Prime Ministership allows Nawaz Sharif to re-enter the fray and contest for the top job. Not surprisingly, Chaudhry Nisar Ali, member of the PML(N) and opposition leader in the National Assembly, hailed the passing of the bill as a “win-win situation” for all parties.<sup>4</sup>

The repeal of Article 58 2(b) also restores the proper balance of power between the President and the Prime Minister. There have been reports of growing differences between President Zardari and Prime Minister Gilani, which was contributing to tensions

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<sup>3</sup> On renaming NWFP as Khyber Pakhtunkhwa, for example, the Pakistan Muslim League [PML-Quaid (PML(Q))] suggested the name ‘Sarhad’ to reflect the sensitivities of the Hindko speaking people in Hazara division, whilst the Pakistan People’s Party (Sherpao) recommended ‘Pakhtunkhwa’ to reflect the historical and cultural identity of the province. Similarly, on the issue of the appointment of judges, the PML(N) pressed for the inclusion of a retired Chief Justice/Judge of the Supreme Court as the seventh member of the judicial commission. The provision was finally included in the Bill.

<sup>4</sup> ‘18<sup>th</sup> Amendment Approved by Majority Vote’, *Dawn* (9 April 2010), [<http://www.dawn.com/wps/wcm/connect/dawn-content-library/dawn/news/pakistan/03-18th-amendment-approved-with-majority-vote-ss-04>]. Accessed on 9 April 2010.]

within the PPP. The bill promises a better atmosphere for the functioning of the government. Celebrating the passage of the bill, Prime Minister Gilani, in a speech to the Parliament on 8 April 2010, admitted as much when he said that, ‘The impossible has been made possible by the house today...We have been saying we will go to the Westminster-style parliamentary system...Today we removed the anomalies. We are giving you a parliamentary form of government with balance of power between president and prime minister.’<sup>5</sup>

In terms of civil-military relations, some have argued that Article 58 2(b) potentially allows the Army to manipulate the President by forcing him to use his power to dissolve the National Assembly. It bears noting, however, that none of Pakistan’s military dictators – be it General Ayub Khan, General Zia ul Haq or General Pervez Musharraf – used this mechanism to overthrow the civilian governments. Article 58 2(b) was in fact used by civilian presidents as mentioned earlier. Nonetheless, the potential abuse of Article 58 2(b) was always present and its demise can only strengthen the position of democratically elected governments against possible future coups.

The 18<sup>th</sup> Amendment is no doubt an achievement and cause for celebration. It provides a new opportunity for Pakistan to move ahead as a democratic nation. To do this successfully, some of the forces that enabled this bill to be passed need to be harnessed and made the mainstay of a new era of Pakistani politics. There needs to be a new culture of party consensus and the avoidance of petty politics. The mechanisms in the bill to ensure the independence of the judiciary and to facilitate the devolution of power to the provinces must also be pursued effectively to keep Pakistan’s fledgling democracy on track.

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<sup>5</sup> Ibid.