Sanitizing the constitution

Dr. Sania Nishtar

The 18th Amendment Bill is being widely hailed for the repeal of some of the distortions introduced in the Constitution under military rule and for returning the parliamentary form of democracy closer to its truer shade in Pakistan. A multi-partisan consultative process has enabled a consensus over a set of provisions amongst political actors, who came to the negotiating table with diverse ideologies and motivations. However, significant as it may be, the amendment is not a panacea for the country's ailing governance. Follow-up actions are critical for transformation of the style of governance. I have flagged six points in this regard.

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Governance

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First, with the 18th Amendment, the pendulum of power will move from the presidency to the prime minister, as it should be in a parliamentary system of government. However, institutional checks on the prime minister's powers need to be ensured. As "fusion of powers" is characteristic of parliamentary systems—in the sense that the executive, which consists of the prime minister and the cabinet, are drawn from the legislature—the need for institutional checks and balances becomes all the more important.

We must also recall the generic weaknesses of the parliamentary form of government. The parliamentary system runs best in a two party-system. However, when no party commands an absolute majority and when coalitions are formed—as is presently the case in Pakistan—governments are seen fire-fighting most of the time. Lack of the needed far-sighted and consistent stance on many policies is, therefore, not just a limitation of capacity within Pakistan's system and short-sighted motivations of its policymakers, but also a limitation of its parliamentary system—a weakness the pendulum swing cannot address.

There are many dire imperatives for ensuring consistency in policy direction in Pakistan, particularly from a national security standpoint—a point I attempted to highlight in these columns on April 3. Now that the Sword of Damocles no longer hangs over parliament, it should turn its attention to these substantive issues and the constraints implicit in party antagonisms and tenuous coalitions. It is imperative to create space for a working relationship within the current political and democratic dispensation that can work in the interest of the state and its people.

Secondly, the government appears to accord high priority to provincial autonomy on its agenda. After pronouncing the Balochistan package, carving Gilgit-Baltistan as a separate province and negotiating the National Finance Commission Award, the 18th Amendment Bill has abolished the Concurrent List and has revitalised the Council of Common Interests.

The government uses the jargon "participatory federalism" for its policy stance in this area. There is no denying that provincial autonomy can be the foundation of a strong federation and the government's policy is, in principle, the correct stance. However, attention should be paid to reservations being mooted with regard to the implications of this for governance at the provincial level, in view of their limited capacity, at least in two of the provinces.

The cost of making drastic changes in the functioning of the state without appropriate analysis and evidence has already been evidenced in the devolution debacle. Drastic changes in federal-provincial relationships can be exploited by entities that are not bona fide with an adverse fallout on the functioning of provincial administrations, at a time when terror, ethnic strife and ideological differences have been whipped up to unprecedented levels. In some provinces, the risk related to blurring of the difference between autonomy and mutiny cannot be ignored anymore. The impact of waning federal oversight on collusive behaviours in the provinces also merits careful analysis. The government must, therefore, develop a phased, incremental and prudent approach towards provincial autonomy.

Additionally, abolition of the Concurrent List *in toto* will limit opportunities for legislation of a normative nature—particularly norms which relate to the fundamental ethos of the federation. Similarly, domestic legislation as a follow-up to international commitments need not be a provincial prerogative, where capacity constraints can cause delays and duplications would be inevitable. The Charter of Child Rights Bill, which is currently in the pipeline, illustrates both the cases. Overdue for ten-years, the domestic legislation as a follow-up to the United Nations Convention on the Rights of the Child is both normative in nature and in compliance with an international norm; it can be federally enacted and have the same meaning for each of the provinces.

Thirdly, the 18th Amendment Bill attempts to address some of the processes that have the potential to make governance "participatory" and "efficient." The former is evident in the stipulated procedures for appointment of superior court judges and the chief election commissioner and the latter in the provisions, which limit the size of the cabinet and the number of advisors. Whilst these changes are welcome, there are many other things that need to be initialized as a follow-up to improve governance. The civil service reform agenda awaits implementation. The accountability law, the pulse of good governance, is on the backburner; the competition commission law is on hold; the National Anti-corruption Strategy has remained shelved; opportunities to use e-governance to promote transparency in governance remain untapped; conflict of interest within policymaking ranks continues to be pervasive and administrative norms within the bureaucracy have been unchanged.

Fourthly, the bill introduces free and compulsory education up to the age of 16 years. This is a significant step towards recognising the right of a child to education. But this has implications for resource allocations and institutional frameworks. The government currently does not have the structures to enable that. With education predominantly in the hands of the private sector, a quantum shift is needed on the policy stance towards "purchasing services" from the private sector. This has implications, in turn, for the regulatory capacity of the government with resource requirements being a corollary. However, health has not been regarded as a right.

In the fifth place, it is unfortunate that the move of renaming NWFP is inadvertently sowing the seeds of discord in the province with calls for the creation of another province echoing loud even before the bill is debated.

Finally, in relation to high treason, the expanded definitions will hopefully block ad hoc adventurism in the future. I wish there could also be constitutional mechanisms to label those that sacrifice vital interests of the state on the altars of personal interests as committing high treason as well.

The bill is indeed an achievement in terms of having sanitised the Constitution; but as far as governance is concerned, there is a long way to go.

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