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Implementing Expectations

By Ahmer Bilal Soofi

THE recent constitutional package, if it goes through, will truly be a milestone in the constitutional history of Pakistan, and in this regard all the committee members, particularly its chairman, deserve full credit for developing a consensus among all political parties on the matter.

The package carries out a constitutional cleansing of the amendments made by previous dictators and substantially implements the Charter of Democracy. With the passage of the 18th Amendment, the constitution shall stand restored closely to its original structure.

The 18th Amendment package, when adopted, will make the provinces responsible for various affairs of the people. These pertain to items in the Concurrent Legislative List which once deleted will not only restrain the federal government permanently from exercising its legislative powers but also restrict its executive exercise of authority. This means that the provincial government will from then onwards become responsible for addressing and resolving problems of the common man regarding the items that stand devolved on it.

This raises several technical and operational questions. Will the provinces immediately be in a position to act and take on this responsibility both at the executive and legislative level? This truly will be the real challenge for the provincial government and the provincial political forces.

Remember, even before the 18th Amendment package, the provinces were 'concurrently' exercising the right of legislation as well. However, they have never asserted or exercised that right meaningfully so far.

The deletion of the concurrent list does not empower them anymore than what they already had before the deletion of the list and the 18th Amendment package only blocks the federal government from legislating further. Therefore, the provincial governments will immediately need to get into action because from the point of view of the man on the street the deletion of the concurrent list will be no less than a miracle that will be giving 'new powers to the province' which he expects would transform his life with day-to-day issues being sorted out. The provincial governments will, thus, need to compete with the expectations of the common man.

This requires the provincial government and the federal government to sit down together and plan the downsizing of the federal government. Due to the deletion of the concurrent list, various controlling ministries such as those of health, labour, tourism, environment, etc will need to be downsized. The respective ministries in the provinces will need to take over the reins with immediate effect.

Some statutes that are linked to items of the concurrent list also contain regulatory and licensing framework such as the Arms Act and licensing for drugs and medicines. With the deletion of the list the right of grant of licensing shall devolve on the provinces. The provincial governments should be ready to perform these technical and operational licensing functions.

If the federal ministries are not downsized, then the deletion of the concurrent list will be of no use to the provinces and the effects shall not trickle down to the common man.

The idea of deleting the list is to hand over the governance of about 47 items completely to the provincial government — to the exclusion of the federal government's interference. If despite the deletion the federal ministries continue to exercise control then this entire exercise shall be defeated in spirit.

These points demand that apart from the political consensus that the committee has managed to evolve, an extensive exercise with reference to the operational aspects be commissioned or carried out by experts on provincial affairs and civil servants working for the federal government who could give their recommendations for downsizing to the political leadership at the earliest. The present committee should not be disbanded, but continue to function so that the operational aspects of the deletion of the list are also properly supervised. If there is a delay in implementing and clearing these operational snags, then the entire exercise can backfire because people will say that despite the pledges of the politicians, the promise of autonomy has not been fulfilled.

No doubt we welcome the 18th Amendment. But it is equally important that the political leadership identifies within the existing constitution several pro-province provisions which have not been implemented faithfully. If the committee asserts itself to implement these, the feeling of deprivation in the provinces shall be substantially reduced.

For example, Articles 28, 150, 151, 157, 158, 161, 162, 165, 251 still need proper implementation. Likewise, there are provisions in the constitution that provide for the appointment of arbitrators for issues between the provinces and the federal government. Nominating a panel of retired judges as available arbitrators will further reassure the provinces.

It is a positive development that the 18th Amendment package has further strengthened the Council of Common Interest (CCI). However, it would be extremely useful if it is considered that rules be notified for the functioning of the CCI and National Economic Council. That way the constitution will provide a legal conveyer belt to the provinces to bring to the federal

government in a systematic manner their complaints and grudges not only through government channels but also possibly through private channels.

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