

Keep the lid on it.



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The political aspect aside, creating new provinces is a constitutional exercise and one needs to look at it carefully. But more than that, before we come round to discussing amending the constitution to delineate new boundaries, there is need to review the constitution itself.

Voices have recently been raised about creating a southern province from within the existing boundaries of Punjab. The issue has got some media hype but the debate has been partisan rather than intellectual and informative. What exactly is at stake here?

Changing internal boundaries is nothing new. Several countries in the world, notably India, have done this exercise. However, while such an exercise has an overt political dimension and, quite often, political ramifications, it is also a Constitutional exercise, involve as it does the Constitution and requires, if political consensus can be had, amending it.

This article purports to look at the issue from a Constitutional perspective.

What changes in the Constitution should we think or debate about? The issue also has to be seen in terms of what kind of anomalies have crept into the constitution. There are already controversies regarding such amendments as article 270AAA which gives perpetual legal cushion to all amendments and laws made before and during former General Pervez Musharraf's emergency rule.

Then there is the issue of devolving more power to the provinces. This falls under the category of Centre-Provinces power-sharing, another sticky issue.

Finally, after the issue of provincial autonomy has been resolved, we would need to come to amending the constitution, if necessary, for creating new federating units.

The debate, as it has been conducted on tv channels and in the newspapers has not only confused the various aspects of the constitutional exercise but also muddied that which was agreed in the Charter of Democracy.

Here's what I propose on the basis of what I have hinted above.

It would be practical, and systematic, to put the proposed amendments into three different baskets: amendments relating to inter-provincial harmony and provincial autonomy should be placed in the first basket; amendments attributed to dictators and which have distorted the inherent structure of the Constitution should be placed in the second basket; amendments for a new province(s) should be placed in a third basket.

There is a possibility that the third basket may actually remain empty because the Pakistan People's Party has stated that it does not support a demand for a new province. On the other hand, the President of Pakistan has held a marathon session with his confidants on possible amendments to the Constitution.

Let's separate these issues and handle them independently of each other. It will be counter-productive if these three separate issues are clubbed together as part of the discourse of any political party.

The first basket amendments that relate to 'provincial autonomy' can be deliberated rightly through the Committee headed by Senator Raza Rabbani. This Committee has already called for comments from civil society and the public at large. This is indeed a constructive move.

Senator Rabbani's Committee can also draw from the work done by the Inter-Provincial Ministry that Senator Rabbani himself headed. In my view the work in this basket is perhaps the most serious and will have long-term implications for the federation as a whole. This basket contains issues like the deletion or reduction of items from the Concurrent list, activating the Council of Common Interest and National Economic Council through proper rules with a predictable agenda and creating their independent Secretariats. It also includes items such as the creation of websites to allow Pakistanis from all the provinces to put forward their grievances.

In the second basket should be placed proposed amendments attributed to previous dictators. This shall of course include the infamous 17th amendment and its fate. This is in any case the agreed demand in the Council of Common Interest. Also, this basket should address those amendments that were part of constitutional engineering and

were done for political purposes. I would refer here again to such articles as 270 AAA.

Along with this, we can include in this basket the issue of the validity of Justice Abdul Hameed Dogar holding the Supreme Court despite the last stay order passed by the Bench that was deposed through the November 3, 2007 order. It must be mentioned that till today Justice Dogar is not in the line of chief justices, which indicates that the matter is still open to determination. This basket will also include the associated issues of judges appointed under the PCO, the fate of the Islamabad High Court, etc.

There are two approaches to handle issues in this second basket. Parliament can either adopt amendments through procedures provided in the Constitution or the Supreme Court may be asked to make a judicial determination of the legality of these provisions and see if it can find a way to shave them off from the text of the Constitution. The third approach is to seek advice from the Supreme Court in its advisory jurisdiction on selective aspects.

This basket will stir a lot of controversy. There will be a need for political consensus within and among political parties; they will need to agree on which approach to go for and also on the timing to adopt it. The politically charged nature of amendments in this basket shall not be easy to come by. That is exactly why they should be treated in a separate basket. However, the political aside, what I seek to argue is the imperative to set such issues aside in order to streamline the constitution.

Action in the first provincial autonomy basket must be guided on by political parties. This is necessary for the federation and also to satisfy dissatisfied voices that talk of independence.

The third basket should contain the issue of separate province. Let there be a lid on this basket for a while, if possible.

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