

# Charter of Democracy and Beyond

The Way Forward for Institutional Reforms

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## Preface

Since the 1970s, Pakistan's politics had basically been defined by a polar struggle between a political block centered around the Pakistan's People Party (PPP) established by Zulfikar Ali Bhutto, and a block of anti-PPP forces, generally led by the Pakistan Muslim League (PML) under the leadership of Nawaz Sharif. While the organizational forms of this confrontation varied as did the cohesion of both camps, it still remained the key line of conflict in Pakistani politics. At the same time, the armed forces (especially the Army) always remained a key political actor, sometimes in the background, sometimes very much at the forefront. This polarized system of political confrontation, with the army looking over the shoulders of politicians, strongly impeded the development and stability of democracy in Pakistan. Two opposing poles of politics accusing each other to be enemies and even "traitors" of Pakistan made cooperation between the parties extremely difficult. Jointly serving the country to solve its many problems became nearly impossible. Democracy, though, requires not just fair elections and peaceful change of governments, but also a functioning mix of control and critique of the government by the opposition, and forms of mutual respect and cooperation. The polarization of politics undercut democratic rule by making such a balance impossible. It should have been no surprise therefore that for well into the 21st century no government could peacefully complete its tenure, but all were overthrown either by a coup, or by the abuse of the constitution by civilian Presidents, or the courts.

Only in 2006 the political polarization between PPP and anti-PPP forces started to soften and for some time disappeared – until a new polarization (this time between the rising PTI and the PML/PPP) established itself. The high point and symbol of this change towards a constructive cooperation between the former antagonists, the PML and PPP, was the "Charter of Democracy", signed in 2006, by both parties. The background to this was a common struggle against the military rule of General Musharaf, which demonstrated the need and usefulness to work together. A result was the return to democracy in 2008. Since then, the elected Parliaments of 2008 (PPP-led) and 2013 (led by the PML-N) have been able to finish their constitutional terms, and it looks quite likely that the PTI-led Government (elected in 2018) will also be able to complete its term. This would be unprecedented in Pakistani history. It can

very well be argued that the “Charter of Democracy” of 2006 has played an important role in this achievement.

Sadly though, political polarization still has made it back to politics in Pakistan, this time putting the current PTI Government and the opposition at loggerheads. The current confrontation has led, among other things, to regrettable rhetorical excesses, and even to physical confrontation in the National Assembly, where throwing books at each other became a part of the last budget debates. This is quite regrettable, and might pose new dangers for democratic rule in Pakistan. Mutual respect of the parties for each other and cooperation for the good of the country have mostly disappeared.

The “Charter of Democracy” of 15 years ago can still remind us that reconciliation of and cooperation between competing parties are possible, and that they can be beneficial for all, and for Pakistan. Currently, several observers and politicians have suggested to develop and agree on a new Charter of Democracy, to liberate the country from the political stalemate. While good arguments have been brought forward to either oppose or support such a view, the discussion can be highly fruitful. It brings to the attention of the public that respect and cooperation are politically important, and that democracies have to discuss the rules of political competition, to make it serve and not harm the country.

The study at hand, “The Charter of Democracy and Beyond - The Way Forward for Institutional Reforms” is a highly useful contribution to this discussion. Nazeer Mahar, Tarik Malik, and Usama Bakhtiar have put this report together for The Research Initiative (TRI), to analyze the strengths and weaknesses, the degree of implementation of the original Charter, and to come up with suggestions to reach a consensus on a new one.

We sincerely hope it will contribute to a fruitful policy debate, to further strengthen Pakistani democracy.

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## Acronyms

ANP	Awami National Party
ARD	Alliance for Restoration of Democracy
BNP	Balochistan National Party
CCI	Council of Common Interests
CJCSC	Chairman Joint Chiefs of Staff Committee
CJP	Chief Justice of Pakistan
CoD	Charter of Democracy
CSO	Civil Society Organization
ECP	Election Commission of Pakistan
EU	European Union
FATA	Federally Administered Tribal Areas
FATF	Financial Action Task Force
FM	Frequency Modulation
FY	Financial Year
GB	Gilgit-Baltistan
GDP	Gross Domestic Product
ISI	Inter-Services Intelligence
Jl	Jamaat-e-Islami
JCSC	Joint Chiefs of Staff Committee
JWP	Jamhoori Watan Party
KI	Key Informant

KP	Khyber Pakhtunkhwa
LFO	Legal Framework Order
LoC	Line of Control
ML & Cs	Military Lands & Cantonments
NAB	National Accountability Bureau
NEC	National Economic Council
NFC	National Finance Commission
NRO	National Reconciliation Ordinance
NSC	National Security Committee
NWFP	North West Frontier Province
PAC	Public Accounts Committee
PAT	Pakistan Awami Tehreek
PCCR	Parliamentary Committee on Constitutional Reforms
PCER	Parliamentary Committee on Electoral Reforms
PCO	Provisional Constitutional Order
PDF	Pakistan Democratic Front
PDM	Pakistan Democratic Movement
PKR	Pakistani Rupee
PM	Prime Minister
PMAP	Pakhtunkhwa Milli Awami Party
PML	Pakistan Muslim League
PML-N	Pakistan Muslim League-Nawaz
PML-Q	Pakistan Muslim League - Quaid
PPP	Pakistan Peoples Party
PTI	Pakistan Tehreek-e-Insaf
SCP	Supreme Court of Pakistan

# 1. Introduction

Pakistan's existing constitutional framework was agreed upon in the early 1970s in the form of 1973 Constitution. This constitutional scheme, finalized through a political consensus, was changed beyond recognition by the last two military governments of generals Zia-ul-Haq and Pervez Musharraf. After the 1977 military takeover, General Zia-ul-Haq (1977-88) altered the parliamentary structure of the 1973 constitution through a series of constitutional amendments. Later in the 1990s, three successive elected governments were prematurely dismissed, in part due to the discretionary powers of the president enshrined in the amended Constitution. This necessitated constitutional reforms for democratic sustainability and political stability in the country.

But before these reforms could be enacted, General Pervez Musharraf (1999-2008) imposed the fourth martial law in October, 1999. Removing another elected government in the process, he introduced a host of amendments to the Constitution, specifically aimed at further diluting the powers of the prime minister's office, and keeping the leadership of two leading political parties - Pakistan Peoples party (PPP) and Pakistan Muslim League-Nawaz (PML-N) - out of the politics.

Pushed, in part, by the desire to restore the balance of power among various state institutions, and to reclaim the lost space for the mainstream political parties, the leaders of the PPP and PML-N, both in exile and with little chance of any political role in the military-dominated democracy, agreed on a Charter of Democracy (CoD) on May 14, 2006.<sup>1</sup>

This marked a historic first for Pakistan's political landscape. Together these political parties represented the two pillars of what most political analysts have described as a two party system – which was the reality of national politics since the early 1990s<sup>2</sup>. Even today, the PML-N and PPP remain the second and third-largest parties in the National Assembly, respectively. For

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1. Daily Dawn. *Text of Charter of Democracy*. (2006) <https://www.dawn.com/news/192460/text-of-the-charter-of-democracy> (accessed Sep, 2020)

2. Ali, Salman et al. *The Novel Changes in Pakistan's Party Politics: Analysis of Causes and Impacts*. (2020)

these two parties to jointly develop and agree on a declaration of political reforms was a demonstration of bipartisan cooperation that would be rare in any setting. In Pakistan's polarized climate it was completely unprecedented at the time. In fact, even today, the Charter of Democracy stands as a peerless example of parties from different ends of a varied political spectrum reaching across the aisle to find common ground on issues of national importance.

The Charter of Democracy essentially sought to strengthen democracy and restore the constitutional character of state in Pakistan, as it stood prior to the amendments undertaken by the military governments. The agreement also proposed a range of constitutional and legal reforms to resolve long-standing structural problems pertaining to provincial autonomy, local government, judicial independence, public sector accountability, electoral reform, as well as the relationship between the civilian government and the military. Mainstream political consensus on these divisive issues was an improbable achievement. This is why the Charter of Democracy continues to be relevant today.

## **1.1. Rationale for New Generation Reform Agenda**

Pakistan in 2021 is significantly different from 15 years ago when the CoD was signed. From 2008 onwards Pakistan has witnessed a democratic continuity with two democratically elected governments completing their complete five-year tenure and achieving a peaceful transfer of power from one elected government to the next.

Pakistan's political landscape has also changed from a two-party to a multi-party system with the emergence of Pakistan Tahreek-e-Insaf (PTI) as an important political actor in the 2013 and 2018 elections. It is for the first time since 1990s that a party other than the PML-N or PPP has been able to form a government at the federal level in August 2018. The PPP and PML-N have a combine share of 37% whereas PTI alone has 32% of the popular vote.

The political bonhomie that the two traditional political parties had been able to cultivate between 2008 and 2018 has already reverted to the polarized politics of the 1990s. The PTI makes no secret of its disavowal of the Charter of Democracy. This lack of broad-based support among the political players poses a new hurdle in the way of fully implementing the Charter of Democracy.

Fifteen years after the Charter of Democracy was signed, the role of the civilian government vis-à-vis the armed forces are still not in alignment with the institutional architecture framed in the Constitution. Since the disqualification of the former Prime Minister Nawaz Sharif in July 2017 in the Panama Papers Case, there has been friction between opposition political parties and media on the one hand and the government, and other state institutions particularly the judiciary and military on the other.

International observers such as the European Union (EU) Mission raised certain serious questions over the integrity of the 2018 general elections. Discord over the results of these elections has formed the basis for the prevailing tension between the government and the opposition. The judiciary and the military have been pulled into this debate at various points.

Besides new political actors, even those with limited or no representation in the parliament; have laid their hands on a new form of disruptive political expression that has repeatedly forced the governments' hands to do their bidding. 2012 onward Pakistan's politics has repeatedly been held hostage by sit-ins on at least six different occasions.

This significantly changed political landscape demands for a fresher approach to resolving political differences as well as achieving consensus around legislative and administrative reform agenda.

Realizing the same, the PPP and PML-N leadership have called for renewing the Charter of Democracy.<sup>3</sup> The 11-party opposition alliance Pakistan Democratic Movement (PDM) also endorsed the call and going a step further, had constituted a committee to draft the new charter. Nevertheless, since then the PPP and PML-N have gone into opposite camps; the fate of PDM has also fluctuated over time, creating serious doubts over its ability to stay intact and offer constructive opposition.

Be that as it may,, any steps to renew, revisit or revive the Charter of Democracy must begin with a detailed stocktaking of its successes and failures in implementing agreed measures, while at the same time realigning the Charter of Democracy with the altered political reality that is significantly different from 2006. This study has attempted to do just that by assessing the process, assumptions, content and post-signing implementation mechanism of the Charter of Democracy. It has also tried to explore the causes of the

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3. <https://www.dawn.com/news/1607518>; <https://www.24newshtd.tv/20-Sep-2020/bilawal-calls-for-new-charter-of-democracy> Sep 2020 ( accessed Feb 20, 2021)

failure/s, as well as highlight the successes, and gaps and challenges in the implementation of the Charter of Democracy. It is hoped that this study will help political parties – the true custodians of the Charter – review its aims and ambitions and reclaim the unified vision of national reforms that it represents.

## **1.2. Research Questions**

Keeping in view the rationale for an analysis of the Charter of Democracy and need for a new reform agenda, this study will explore the following questions.

- 1) What are the broad achievements and challenges of the Charter of Democracy?
- 2) Is Charter of Democracy currently relevant as an institutional reform document to inform legal and policy framework of the country?
- 3) Did Charter of Democracy achieve civil-military balance as it was one of the main thematic areas of CoD?
- 4) Going forward, what are the key lessons to inform new generation institutional reform agenda?

## **1.3. Research Methodology**

Based on the review of secondary literature and key informant interviews of the senior political and intellectual leadership, the study outlines the political and institutional background, highlighting factors that led to the signing of the CoD. It assesses progress on implementation of the Charter of Democracy as well as the process followed to build consensus around the constitutional, legal and policy reforms undertaken from 2008 to 2018. The study also discusses major political and strategic developments since the Charter of Democracy was first signed, and which will shape its future. The interviews have significantly informed the findings, conclusions and recommendations of this study.

## **1.4. Structure of the Study**

Chapter one explains the relevance of the Charter of Democracy and the scope and purpose of this Study. Chapter two recounts the historical political events that eventually led to the leading political parties agreeing on a minimum common agenda of legislative and institutional reforms. Chapter three analyzes the contents of the Charter of Democracy, its thematic focus and the process of implementation. Chapter four throws light on the political and strategic developments that took place after the signing of the Charter of Democracy i.e. between 2006 and 2021. Chapter five details the dynamics of post-2018 oppositional politics. Chapter six lists conclusions whereas chapter seven suggests a way forward for political parties as they look to chart the future course for the next generation of constitutional and institutional reforms.





## 2. Contextualizing the Charter of Democracy

### A State without a Constitution

Pakistan's is facing democracy problem since its inception. In its 74-year existence it has had three constitutions, four military coups, 11 general elections; and it experimented with both parliamentary and presidential forms of government.<sup>4</sup> The first Constituent Assembly of Pakistan passed the Objectives Resolution on March 12, 1949. On the same day, the Assembly formed a basic Principles Committee to draft a constitution taking the Objectives Resolution as its foundation.<sup>5</sup> The first draft of the constitution was ready in 1954 when the then Governor General Ghulam Muhammad dismissed the assembly which delayed the fundamental task of giving the state a constitution by another two years.<sup>6</sup> The first constitution was passed by the 2<sup>nd</sup> Constituent Assembly in March, 1956.<sup>7</sup> It was abrogated as General Ayub Khan imposed the first martial law in October 1958. General Ayub Khan presided over the development of a second constitution in 1962 which too was abrogated by his successor Gen Yahya Khan as he took over the power from the former in 1969. The parliament led by the PPP gave the country the third constitution in 1973 which continues to form the essential structure of the current Constitution. Unlike the first two, this constitution was the result of a broad-based consensus among all the political stakeholders representing the federating units.

While the country had its first set of rules in the shape of a consensus 1973 Constitution, it was disregarded by the "extra-parliamentarian forces."<sup>8</sup> In the absence of an agreement on constitutional roles and responsibilities of the state institutions, democracy remained fragile.

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4. Mufti, Mariam et al. *Pakistan's Political Parties, Surviving between Dictatorship and Democracy* (2020).p.15

5. <http://www.na.gov.pk/en/content.php?id=75> (accessed Jan 31, 2021)

6. Ibid

7. Ibid

8. Waseem, Muhammad: Political Parties in "Establishmentarian Democracy, "Pakistan's Political Parties, Surviving between Dictatorship and Democracy (2020), edited by Mariam Mufti et al p.317

## **Democratic Interregnum between the Martial Laws**

In 1958 when General Ayub Khan imposed the first martial law, Pakistan had already seen seven Prime Ministers in 11 years of civilian rule. Bowing to a popular movement in 1969 General Ayub Khan abdicated in favor of General Yahya Khan who held general elections in 1970. Controversy over the election results eventually led to war and the secession of East Pakistan which declared independence as Bangladesh. Zulfikar Ali Bhutto, the founding head of the PPP came to power and by 1973, the first Constitution developed by a democratically elected parliament was promulgated. Only five years later, a military coup led by General Zia-ul-Haq forced Bhutto out of power. Under pressure from the sustained political movement General Zia held elections in 1985, albeit on a non-party basis. In 1988, the government was dismissed and the parliament dissolved.

During the 1990s, four successive elected governments were prematurely dismissed by Presidential decree, under powers enshrined under Article 58 (2) b of the Constitution, on charges of corruption, nepotism and maladministration. In 1999, Chief of Army Staff General Musharraf deposed the elected Prime Minister Nawaz Sharif and reinstated military rule, in a move that was later endorsed by the Supreme Court.

Benazir Bhutto, the head of the PPP had already opted for self-exile in the late 1990s to avoid facing the witch-hunt. Nawaz Sharif was exiled to Saudi Arabia in December 2000 after being in jail for over a year after the military takeover. Both leaders were barred from participating in domestic politics. A new constitutional amendment introduced a 2-term limit for the office of the Prime Minister which essentially barred both Benazir Bhutto and Nawaz Sharif from any meaningful role in electoral politics. To reenter politics and regain political relevance, the leadership of both political parties needed to agree on a common minimum agenda of reforms.

## **Alliance for Restoration of Democracy (ARD) and Charter of Democracy**

In December 2000, the PPP and the Pakistan Muslim League-Nawaz – joined by various smaller parties – formed ARD to struggle for Pakistan's return to civilian rule. Its founding resolution demanded that *"free, fair and impartial elections be immediately held through [a] financially autonomous and independent Election Commission without interference of the establishment,*

*under a caretaker government of national consensus to restore democracy and transfer power to the elected representatives of the people without conditions and strings.*"<sup>9</sup> The resolution also stated that any amendments to the 1973 constitution undertaken without respect to constitutional procedures or adopted under "*pressure from the powers that be*" would be unacceptable.<sup>10</sup> The ARD further resolved to "*coordinate, mobilise, organise and struggle together through peaceful means for the restoration of democracy at the earliest.*"<sup>11</sup> This resolution became the antecedent to the Charter of Democracy. Five years later,<sup>12</sup> building on the ARD consensus, the PPP and PML-N signed on to the Charter of Democracy.

The signing of Charter of Democracy is therefore a watershed moment in the political history of Pakistan as the leaders of the two major national political parties recognized that for all their differences, it was important to put up a unified front to the forces opposed to genuinely elected leadership of the country. Recalling how the agreement came about, one of the 4 committee members,<sup>13</sup> who drafted the Charter of Democracy describing this realization in the following terms: "*After many years of highly charged and polarized politics and the military coup of 1999, leaders of the PPP and PML-N decided that they have a responsibility towards the country and its people. While they compete in electoral politics, they must strengthen democratic collaboration. They decided to agree on a code of conduct so that their rivalry does not weaken the democratic process.*"

According to the senior politician representing the PML-N, the significance of the Charter of Democracy lies in the fact that two mainstream parties decided to purge the Constitution of amendments introduced by military dictators and built consensus on one of the biggest unresolved political challenges facing Pakistan, i.e. limited provincial autonomy. "*The CoD paved the way for the 18<sup>th</sup> Amendment. Without the CoD, it wouldn't have been possible,*"<sup>14</sup> he said.

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9. <https://www.refworld.org/docid/3df4be8e2c.html> (accessed Oct 30, 2020)

10. Ibid

11. Ibid

12. May 14, 2006

13. The committee comprised Ahsan Iqbal and Ishaq Dar representing the PML-N and Raza Rabbani and Safdar Abbasi representing the PPP.

14. A Key Informant interviewed by TRI in February 2021



### 3. An Implementation Analysis of Charter of Democracy

Soon after the 2008 elections, the PPP and PML-N leaders gathered at the PC Bhurban Resort and in a joint declaration announced a unified course of action to implement the CoD.<sup>15</sup> The 18<sup>th</sup>, 20<sup>th</sup> and 25<sup>th</sup> Constitutional Amendments, 7<sup>th</sup> National Finance Commission (NFC) award and Election Act, 2017 reflect various provisions agreed under CoD. As for the Constitutional amendments, a Parliamentary Committee on Constitutional Reforms (PCCR) was formed in 2009 with members from both the houses of the parliament. The PCCR's primary objective was to restore the 1973 Constitution. In this regard, the committee decided to invite suggestions on amendments from the public at large. "The work of PCCR was spread over 77 meetings in 10 months resulting in the 18<sup>th</sup> Constitutional Amendment which effectively altered the governance structure of Pakistan and gave more autonomy to the provinces."<sup>16</sup> The committee had representation from all the political parties. The committee's rules of business stated that all amendments shall be approved with a consensus or a two-thirds majority.

#### 3.1. Implementation Process

The success of governance reform depends not only on their content, but also on the process adopted in their development and rollout. The 'how' is as – if not more important – than the 'what'. In the context of the Charter of Democracy, the implementation process began with the 18<sup>th</sup> Amendment. PCCR proceedings were kept confidential<sup>17</sup> and details were only shared with the broader public at the discretion of the members and the Chair. When it came to debating the proposed amendments, the National Assembly debated the bill only for two days whereas in the Senate it took twice as

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15. Perlez Jane. *Musharraf foes strike a power sharing deal in Pakistan*. (2008). <https://www.nytimes.com/2008/03/09/world/asia/09iht-pakistan.4.10849401.html> (Accessed Jan 31, 2021)

16. The Research Initiative. *Decade of Democracy in Pakistan*. (2019) p.60

17. Mehboob, Ahmed Bilal: *The reason why debate on 18th Amendment refuses to die?*(2020) <https://www.arabnews.pk/node/1709751> (accessed Feb 4, 2021)

many days. Conversely, parliamentary debate on the 1973 Constitution had gone on for nine weeks.<sup>18</sup>

*“Cutting short the process of public and parliamentary debate after the committee laid its report before parliament”*<sup>19</sup> was criticized by politicians and independent experts. Debate in the parliament on the Amendment became all the more important for the fact that there were some eighteen notes of reiteration or dissent, written by 15 out of 26 members of the committee, which were appended with the PCCR Report.<sup>20</sup>

## 3.2 Implementation of Charter of Democracy

In the preamble to the Charter of Democracy, the two leaders posed a contrast between their democratic credentials as the *“elected leaders of Pakistan”* with the government leadership holding office at the time. The authors of the Charter of Democracy emphasized the lack of constitutional legitimacy and performance deficits of the government, presenting an alternative vision of Pakistan based on rule of law, respect for democratic norms and human rights, independence of the judiciary, media and civil service and a peace-driven foreign policy.<sup>21</sup> To achieve this vision, the Charter of Democracy commits to a number of reforms. Progress against these commitments is assessed below.

### 3.2.1 Constitutional Amendments

Most of the commitments made in this section were addressed with the passage of the 18th Amendment. Of a total of 10 commitments under this section, six are completely achieved, three partially achieved whereas one remains unimplemented. In the words of a KI representing the PML-N, the biggest success of the CoD was the 18<sup>th</sup> amendment which, in turn, resulted in solving the issue of provincial autonomy, and restoring the federal parliamentary structure of the constitution. The progress on provisions in the abovementioned section is discussed below.

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18. Ibid

19. Mehboob, Ahmed Bilal. Eight years on, (2018). <https://www.dawn.com/news/1401912> (accessed Jan 31, 2021)

20. Mehboob, Ahmed Bilal. The reason why debate on 18th Amendment refuses to die. (2020). <https://www.arabnews.pk/node/1709751> Jul 2020 (accessed Jan 31, 2021)

21. Ibid

## Federal Constitutional Court

The Federal Constitutional Court, to be constituted for a six-year period, was to resolve constitutional issues among the federating units.<sup>22</sup> There has been no progress on implementation of Federal Constitutional Court.

## Judicial Appointments

In the pre 18<sup>th</sup> Amendment era, CJP and the chief justices of respective high courts were responsible for recommending a panel of judges to the president for appointments in the superior courts.<sup>23</sup> The 18<sup>th</sup> Amendment gave the parliament a role in the appointment of superior court judges. However, the constitutional amendment was challenged in the Supreme Court on the ground that the *"new appointment process was an infringement upon the independence of judiciary."*<sup>24</sup> Under a constitutional compromise, the parliament, through the 19<sup>th</sup> Amendment, expanded the role of the judicial commission chaired by the chief justice in the appointments for judicial positions. These selections must, however, pass through a parliamentary committee. And in case of rejection of a nominee by parliamentary committee, the reasons behind the rejection are subject to review by the judicial commission.<sup>25</sup>

In sum, the gains made in the 18<sup>th</sup> Amendment to ensure parliamentary oversight over appointments in the superior judiciary have been nullified by the 19<sup>th</sup> Amendment

## National Accountability Regime

Furthermore, there was an explicit agreement in the Charter of Democracy to abolish all special courts - including accountability courts - and try all cases in the regular courts, which has remained unmet. Both the signatories to the Charter of Democracy have heavily suffered at the hands of accountability courts created under the National Accountability Ordinance promulgated in 1999, which established the National Accountability Bureau, a high-powered, independent anticorruption body.

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22. CoD text

23. Ijaz Saroop. *Judicial Appointments in Pakistan: Coming Full Circle*. <https://sahsol.lums.edu.pk/law-journal/judicial-appointments-pakistan-coming-full-circle> (accessed Jan 27, 2021)

24. Ibid

25. Nelson, Mathew J. *Countries at the Crossroads 2011: Pakistan*. Freedom House p.9

Despite international obligations in this regard, as well as numerous controversies surrounding the legitimacy of the institution and the political neutrality of its actions, there is no agreement on a new anti-graft law as the mainstream parties – PPP and PML-N – failed to develop consensus.

It is important to remember that in Pakistan, the history of anticorruption legislation and policymaking is closely linked to the development of democratic institutions. The Public and Representative Office Disqualification Act was passed in 1949 allowing the Government to disqualify individuals from holding public office for up to 15 years if they were found guilty of “misconduct”. In 1959, the Elective Bodies (Disqualification) Order was passed which, again allowed an estimated 6,000 elected representatives to be prosecuted and disqualified for loosely defined “misconduct”. There is broad consensus among historians and political commentators<sup>26</sup> that the law was aimed at neutralizing political opposition rather than penalizing corrupt practices.

Four successive governments were dismissed during the 1990s over charges of malfeasance and it was a Supreme Court decision in a privatization case involving the Pakistan Steel Mills that led to the removal of the CJP, followed by a national protest movement by the legal fraternity which eventually resulted in the ouster of General Musharraf in 2008. It is therefore unsurprising that contemporary politicians have drawn parallels between EBDO/PRODA and the National Accountability Law (NAB) law.<sup>27</sup>

The Supreme Court of Pakistan (SCP) in an 87-page judgment on bail plea of the PML-N leaders of July 20, 2020 noted: “*The [ ]case is a classic example of trampling fundamental rights, unlawful deprivation of freedom, and liberty and the complete disregard for human dignity as guaranteed by the Constitution. NAB’s conduct throughout this case is a clear manifestation of their utter disregard for law, fair play, equity and propriety.*”<sup>28</sup> The European Commission in its 2020 report wrote: “*very few cases of the ruling party ministers and politicians have been pursued since the 2018 elections, which is considered to be a reflection of NAB’s partiality.*”<sup>29</sup> The NAB law is in

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26. Views expressed by Key Informants interviewed by TRI in February 2021

27. Daily Dawn. *Bilawal equates NAB law to Ebdo and Proda*. (2019). <https://www.dawn.com/news/1507521>. (accessed Mar 12, 2021)

28. [https://www.supremecourt.gov.pk/downloads\\_judgements/c.p.\\_2243\\_l\\_2019.pdf](https://www.supremecourt.gov.pk/downloads_judgements/c.p._2243_l_2019.pdf) (accessed Dec 15, 2020)

29. <https://ec.europa.eu/transparency/regdoc/rep/10102/2020/EN/SWD-2020-22-F1-EN-MAIN-PART-1.PDF> (accessed Feb 15, 2020)



contravention of the constitutional provisions of the *“right to fair trial and due process, right to dignity, freedom of movement, privacy, and freedom to do trade and business. It violates the constitutional safeguards against arrest and detention, and against retrospective punishment.”*<sup>30</sup> It keeps suspects in custody for up to 90 days without a right to bail. Human Rights Watch said: *“Pakistan’s parliament should amend or repeal the NAB ordinance to ensure that the principles of fair trial, due process, and transparency are not compromised on the pretext of accountability.”*

Most of the Key Informants<sup>31</sup> for this study were of the view that the struggle for the supremacy of the Constitution would remain incomplete until this law was aligned with constitutional norms and principles. Political parties need to reach a consensus in this regard.

## Eligibility for Public Office

The 18<sup>th</sup> Amendment did not remove or amend the eligibility and disqualification requirements introduced by a military government in 1985 for the elected office holders under Articles 62 and 63 of the Constitution. The qualification and disqualification criteria for an elected member of the parliament were changed when General Zia-ul Haq issued the Revival of Constitution of 1973 Order changing 67 clauses and sections of 280 articles of the constitution.<sup>32</sup>

This empowered the superior court judges to act as moral arbiters of the electoral and legislative process.<sup>33</sup> In the Panama Papers case former prime minister Nawaz Sharif was disqualified under Article 62 for failing to declare his receivable income. Many other parliamentarians were disqualified from holding office for failing to fulfill the criteria of being *Sadiq* (truthful) and *Amin* (trustworthy). Ironically Sharif’s party had opposed the PPP move to purge the Constitution of these Articles.

30. Zia Farah. *Nothing wrong with the law?* TheNews on Sunday (2021). <https://www.thenews.com.pk/tns/detail/771184-nothing-wrong-with-the-law>. (accessed Feb 15, 2021)

31. Interviews held with Key Informants in February 2021

32. <https://www.dawn.com/news/1200292> Aug 2015 ( accessed Jan 26, 2021)

33. International Crisis Group. *Parliament’s Role in Pakistan’s Democratic Transition*. (2013) available at <https://www.refworld.org/pdfid/523a9fba4.pdf> ( accessed Jan 26, 2021)

## Provincial Autonomy

Concurrent Legislative List (CLL), according to the 1973 Constitution, covered as many as 47 subjects where both the federal and provincial governments could legislate for two reasons: one, uniformity in legislation across the federating units and two, to offer federal support for lack of requisite competencies at the provincial level. However, instead of mentoring the administratively weak provincial governments, the federal tier used the CLL to expand its reach and size.<sup>34</sup> Hence the abolition of the Concurrent Legislative List<sup>35</sup> was a longstanding demand of the smaller provinces which was met through the 18<sup>th</sup> Amendment. As a result, some 17 ministries and departments<sup>36</sup> including education, health, women development, tourism, and environment were devolved to the provinces. To support the additional responsibilities of the provinces that came with the abolition of Concurrent List, the 7<sup>th</sup> NFC was awarded in 2010 – the same year as the passage of the 18<sup>th</sup> Constitutional Amendment – to increase the share of provinces in the federal divisible pool from 49% to over 57.5%. In addition, fiscal distribution was previously based solely on population which benefited the larger provinces to the detriment of Balochistan and KP. This formula was expanded to include factors such as poverty and backwardness to minimize socioeconomic disparity.<sup>37</sup>

These measures helped the provinces spend more on development and the delivery of public services.<sup>38</sup> The revision of the population-centric distribution formula has, in particular, benefited the Balochistan province in large measure. However, horizontal fiscal equalization needs stronger measures. According to a Senator representing a political party from the Balochistan province said that to address the provincial parity issue, the Senate should also have the powers to move financial bills: *“The Senate is the house of the federation, therefore it should have powers equivalent to the National Assembly.”*<sup>39</sup>

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34. Are you current with the concurrent list? (2010). Dawn. <https://www.dawn.com/news/856451/are-you-current-with-the-concurrent-list> (accessed July 7, 2021)

35. Daily Dawn. *Are you current with the concurrent list?* (2010). <https://www.dawn.com/news/856451/are-you-current-with-the-concurrent-list>. (accessed Jan 26, 2021)

36. <https://archive.pakistanoday.com.pk/2011/06/30/abolition-of-concurrent-list-ensures-provincial-autonomy-sharmila/> Jun 2011 (accessed Jan 26, 2021)

37. <http://www.finance.gkp.pk/attachments/2da9abc0b38511e9b3c853d7f6bb97a7/download>

38. Daily Dawn. *NFC award.* (2020) <https://www.dawn.com/news/1556975>. (accessed Jan 26, 2021)

39. Views expressed by a Key Informant in an interview with TRI held in Feb 2021

The 10<sup>th</sup> NFC Award Commission has been constituted. However, it remains to be seen if it will be able to build consensus on resource distribution among the federating units. The PTI government has issued public statements which indicate an intent to revisit the 18<sup>th</sup> Amendment as well as the resource distribution structure agreed in the 7<sup>th</sup> NFC Award, albeit ruling out any major rollback of the reforms.<sup>40</sup> The 18<sup>th</sup> Amendment that ensured that the financial award for the provinces could only be revised upward, which the 7<sup>th</sup> NFC Award had fixed at 57.5% of the Federal Divisible Pool. In the current environment of fiscal scarcity made worse by the onset of COVID-19, it may be difficult for the federating units to arrive at an agreement.

### **Mainstreaming of the Federally Administered Tribal Areas (FATA)**

The merger of FATA with Khyber Pakhtunkhwa was one of the major commitments made in the CoD. This commitment was fulfilled towards the fag end of the PML-N's government in 2018. The move has brought about a reconfiguration in the representation to the provincial and national assemblies and Senate.<sup>41</sup>

The formal system of government i.e. the enactment, enforcement and adjudication of law in the Tribal Areas, has been different from the rest of the polity since at least as far back as 1901. Human rights safeguards enshrined in national and provincial laws and the Constitution were not, therefore, available to residents. Law enforcement was conducted by the Frontier Corps (a paramilitary force), levies and khassadars (police and tribal militia). Civil police had no jurisdiction. Courts were similarly absent and *jirgas* appointed by Political Agents (chief administrator at the Agency level) and maliks (tribal elders co-opted by the government) heard and decided cases. Judicial and executive powers were concentrated in the office of the Political Agent. Superior courts had no jurisdiction over FATA.

Bringing the region back into the national mainstream will therefore require a massive investment in financial resources, to build infrastructure, establish structures for formal justice, law enforcement, civil administration, etc. In sum, the entire wherewithal of the modern state will need to be constructed from the ground up.

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40. Ayub, Imran. *18th amendment needs to be 'reviewed'*: PM. (2020). <https://www.dawn.com/news/1564273>. (accessed Jan 25, 2021)

41. Wasim, Amir. *President signs KP-Fata merger bill into law*. (2018). <https://www.dawn.com/news/1411156>. (accessed Jan 26, 2021)

Complete integration of the erstwhile Fata into KP will be a long-term process. According to independent analysts, the 9th NFC Award failed to take into account the fiscal implications of the FATA merger. The severe historical disparity between erstwhile FATA regions and the national mainstream requires exceptional fiscal equalization measures. In the absence of greater resource transfer from the federal government, Government of Khyber Pakhtunkhwa (KP), with a limited own-source revenue base, could not be expected to fund the massive challenge of development and socioeconomic uplift required by the region.

The Accelerated Implementation Program launched to fast-track development was also constrained by resource gaps. During 2019-20, the federal government released Rs. 23 billion of the Rs. 48 billion that was originally committed for the year. The provincial government likewise could only release Rs. 0.1 billion against an allocated amount of Rs. 11 billion. This does not augur well for the goals of the Tribal Decade Strategy 2020-2030. Continued under-investment in public infrastructure in the NMDs will not only add to the overall infrastructure investment gap of the province, but may also fuel instability in the region with spillover effects in settled districts.<sup>42</sup>

## **Empowerment of Gilgit-Baltistan**

The CoD committed that the: *“Northern Areas shall be developed by giving them a special status and further empowering the Northern Areas Legislative Council to provide people of Northern Areas access to justice and human rights.”*<sup>43</sup>

In 2009, the Gilgit-Baltistan Empowerment and Self-Governance Order, was promulgated by the PPP government, giving the region a distinct identity by changing its nomenclature. The move also sparked a debate among the locals about their political rights. To respond to the developing situation, the PML-N-led government in Gilgit- Baltistan (GB) constituted a Committee in 2015 to review the constitutional status of the region and recommend constitutional and administrative reforms. The Committee recommended granting the GB a provisional provincial status until the final settlement of the Kashmir dispute, with representation in the parliament through Constitutional Amendments in Articles 51 and 59, as well as representation in all constitutional bodies,

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42. Views expressed by Key Informants during interviews with TRI ( Feb 2021)

43. CoD text

including the National Finance Commission (NFC), National Economic Council (NEC), Indus River System Authority (IRSA) and others. Contrary to these recommendations, the government maintained the status quo.<sup>44</sup> In December 2020, the PTI government set up a new committee that is tasked with making fresh recommendations for the region.<sup>45</sup> There remains much room for the government to do more at a faster pace, for the region.

### 3.2.2. Code of Conduct

This section of the Charter of Democracy has a total of 16 commitments, out of which 10 stand completely or partially unachieved either because they were never seriously pursued by any government or because implementation challenges paralyzed progress.

### Open Ballot for the Senate

Article 226 of the Constitution states: “*All elections under the Constitution, other than those of the Prime Minister and the Chief Minister, shall be by secret ballot.*” While the two signatories to the Charter of Democracy agreed to legislate for show-of-hand voting in the Senate elections in order to “prevent corruption and floor-crossing” no amendment was proposed while either of them were in government. In the run-up to March, 2021 Senate elections, the PTI government proposed to do away with the secret balloting but the opposition parties did not agree. In August 2019, in a no-confidence move against Senate Chairman Sadiq Sanjrani, 14 opposition members of the upper house of the parliament had voted against the party line and yet could not be identified due to the secret balloting; here again the PTI was the beneficiary.

In December, 2020, a reference was moved by the President to the Supreme Court seeking advice on whether Senate elections were elections under the Constitution or elections under the law.<sup>46</sup> In case of the former, only a constitutional amendment could change balloting procedure, while in case the Supreme Court favored the latter opinion, then the reform could

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44. The Research Initiative. *Decade of Democracy in Pakistan*, (2019)

45. Daily Dawn. Committee set up on provincial status for GB. (2020). <https://www.dawn.com/news/1598654>. (accessed Jan 26, 2021)

46. President Alvi seeks SC opinion on show of hands for Senate polls. (2020). Dawn. <https://www.dawn.com/news/1597390> (accessed July 7, 2021)

be introduced through an amendment in the Elections Act. Before the Supreme Court announced its formal opinion, the government promulgated an Ordinance which amends the Elections Act 2017 to introduce open and identifiable balloting. However, this amendment would only come into force *“Provided that in case the Supreme Court of Pakistan gives an opinion in Reference No. 1 of 2021 filed under Article 186 of the Constitution, that elections for the members of Senate do not fall within the purview of Article 226 of the Constitution...”*. The proviso made the effect of the Ordinance conditional on the advice of the Supreme Court. The Supreme Court’s opinion was announced on the 1<sup>st</sup> of March, 2021 and stated that the Senate elections are held under the Constitution.

## **Truth and Reconciliation Commission**

It was agreed in the Charter of Democracy to establish a Truth and Reconciliation Commission to probe the causes of incidents such as the Kargil crisis and affix responsibility besides finding the causes behind removal of various elected governments since 1996. No progress has been made toward establishing such a Commission. Any proceedings in this regard would not reflect positively on the roles played by certain individuals and groups on both sides of the civil-military divide. It is obvious that no government has the appetite for the unavoidable controversy such a move would generate. However, many of the KIs feel that the establishment of such a commission is the only surefire check against extra-constitutional steps by military leaders.<sup>47</sup>

## **Relations with Neighboring Countries**

The Charter of Democracy committed to pursue *“peaceful relations with India and Afghanistan without prejudice to outstanding disputes”* and to *“settle the Kashmir dispute in accordance with the UN Resolutions and the aspirations of the people of Jammu and Kashmir.”*<sup>48</sup> The last positive development in Indo-Pak relations was seen in December of 2015 when the Indian Prime Minister visited then Pakistani prime minister Nawaz Sharif’s residence in Lahore and there was some hope that relations between the two countries could be normalized. But barely a week later, there was a terror incident in Pathankot in India that which was linked to Pakistan, by Indian

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47. Views expressed by Key Informants during interviews with TRI in Feb, 2021

48. CoD text

authorities.<sup>49</sup> Later in February 2019, some 40 Indian paramilitary troops were killed in Pulwama in a suicide attack that India again alleged to have originated from Pakistan. Pakistan denied involvement in both incidents.

On the 26<sup>th</sup> of February, India carried out air-strikes in Balakot, Pakistan, through the scale of any damage was disputed by both sides.<sup>50</sup> Pakistan retaliated a day later in Indian Jammu & Kashmir. This level of hostility between the two nations had not been seen since 1971.

In August 2019, the Modi government abolished Article 370 of the Constitution, revoking the special status of Kashmir and regularizing it as part of the Union.<sup>51</sup> The Indian government also imposed a curfew and communications blackout in the region to preempt any protest against this decision by the local population. The Kashmir issue remains unresolved with no real hope of a solution in the near future. There are early signs of a thaw in relations with a ceasefire announced by both countries along the Line of Control (LoC) following talks between military officials on both sides.

Similarly, on the eastern front, relations with Afghanistan have blown hot and cold over the last fifteen years complicated by a number of factors, including turbulence in Indo-Pak affairs. In 2015, Pakistan brought the Afghan government and the Taliban to the table for a first round of peace talks. Pakistan also helped broker the landmark peace deal between the Taliban and the US which guarantees troop withdrawal by mid-2021. Earlier this year, the two countries have announced the development of border sustenance markets. Pakistan has been building a fence along its porous border with Afghanistan to prevent cross-border attacks by militants, which has been a major irritant for bilateral relations. The future of these relations depends on the ability of both countries to contain security threats, observe peace deals without any outbreak of hostilities, and successfully pivot to economic cooperation and trade.

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49. Joshi, Shashank. *Pathankot attack: India-Pakistan peace talks derailed?* (2016). <https://www.bbc.com/news/world-asia-india-35240272>. (accessed Feb 4, 2021)

50. BBC. *Viewpoint: Balakot air strikes raise stakes in India-Pakistan stand-off.* (2019). <https://www.bbc.com/news/world-asia-india-47370608>. (accessed Feb 4, 2021)

51. BBC. *Article 370: What happened with Kashmir and why it matters?* (2019). <https://www.bbc.com/news/world-asia-india-49234708>. (accessed Feb 4, 2021)

## Declaration of assets by the Military and the Judiciary

Under the Charter of Democracy, it was agreed that all the military and judicial officers should be required to file annual assets and income declarations, as parliamentarians do, to make them accountable to the public. However, this proposal has never been seriously taken up by any government.

## Rights for Women and Religious Minorities

The Charter of Democracy pledged to curb “lavish spendings in civil and military establishments”<sup>52</sup> and instead improve common citizen’s access to quality social services like education, health, job generation, curbing price hike, and giving women and minority communities equal opportunities. A major step toward the inclusion of religious minorities was the allocation of four seats for the minority communities in the upper house of the parliament, as part of the 18<sup>th</sup> Constitutional Amendment. However, the Amendment also introduced a discriminatory provision that bars a non-Muslim from holding the office of the prime minister. The Elections Act 2017 included a number of measures to make electoral participation more inclusive:

- Political parties must award at least 5% of party tickets to women
- Election results of any polling station or constituency with less than 10% women voter turnout can be suspended
- Early issuance for CNIC to non-Muslims, women and transgender persons

## National Democracy Commission

The Charter of Democracy envisioned the formation of a commission to “promote and develop a democratic culture in the country and provide assistance to political parties for capacity building on the basis of their seats in parliament in a transparent manner.”<sup>53</sup> No such commission was formed. One political analyst in Karachi opined that there was no mention of intra-party democracy in the Charter of Democracy.<sup>54</sup> According to him, major political parties have dynastic leadership; no meaningful intra-party elections

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52. CoD text

53. Excerpt from CoD

54. Views expressed by a Key Informant during an interview with TRI in Feb 2021



are held by any political party at any level. Another KI said that political parties' links with their constituency have shrunk. *"Moreover, political parties no longer have any culture of internal dialogue. Their leadership has limited tolerance for dissent."*<sup>55</sup> It is argued that the stronger grassroots connections that a political party has, the greater chance it will have to claim its due share in the policy making sphere vis-a-vis the state institutions.

## Respect for Electoral Mandate

In the Charter of Democracy, the parties agreed to *"respect the electoral mandate of representative governments"* and refrain from undermining *"each other through extra-constitutional ways"* and *"not join a military regime or any military-sponsored government."* Neither, they agreed, any *"party shall solicit the support of the military to come into power or to dislodge a democratic government."*<sup>56</sup>

Both the PML-N and PPP governments completed their respective five- year terms between 2008 and 2018. This continuity alone indicates that the PPP and PML-N have refrained from political tactics that led to the 'revolving door' governments of the 1990s. Both parties faced nationally hyped protest movements during their last respective tenures that threatened a premature departure of government. Mutual political support prevented this from happening.<sup>57</sup>

## Chairing the Public Accounts Committee (PAC)

In Pakistan, till 2008, the chairmanship of the PAC went to the ruling party. Under the CoD, it was agreed that the chairpersons of the PAC in the national and provincial assemblies will be the respective leaders of the opposition. Hence, the leaders of opposition were appointed as PAC chairs for the 13<sup>th</sup> and 14<sup>th</sup> PACs. The PTI after assuming power in 2018 only reluctantly agreed to accept this tradition and the PML-N leader became the PAC chair. In Punjab, against the established tradition, the ruling party continues to hold the PAC chair.<sup>58</sup>

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55. Ibid

56. CoD text

57. Grare, Frederic: *The Challenges of Civilian Control Over Intelligence Agencies in Pakistan*, (2015) <https://carnegieendowment.org/2015/12/18/challenges-of-civilian-control-over-intelligence-agencies-in-pakistan-pub-62278> (accessed Feb 5, 2021)

58. <https://www.pap.gov.pk/committees/detail/en/20/199> (accessed Feb 5, 2021)

## Media Freedom and Access to Information

The role of media is important in any democracy and it was recognized as such in the CoD but while media has proliferated in Pakistan during the last two decades, it is under immense financial and regulatory pressure that has compromised its credibility as well as the ability to do objective reporting. This has been pointed out by a number of independent watchdogs, including the EU Election Observers Mission, with reference to the coverage of the 2018 elections. Secondly, there are right to information laws in all the four provinces and the federal capital theoretically assuring a minimum level of access to information for ordinary citizens.<sup>59</sup> However implementation of these laws is not optimal. These laws are under further threat of being diluted as in October 2020, some senators belonging to the PTI moved the Right of Access to Information (Amendment) Act 2017 that seeks to omit all the parliamentary debates and related information from the Right to Information (RTI) ambit.<sup>60</sup> This move, if allowed to go ahead, shall nullify the very spirit of the RTI laws.

## Terrorism and Militancy

The CoD commits to strongly condemn and vigorously confront terrorism and militancy.<sup>61</sup> Much progress has been made on this count and today's Pakistan is a lot safer than in the previous decade. As compared to 4,000 terrorist incidents in 2013, there were only 319 terrorist incidents across the country in 2020.<sup>62</sup> However, the threat remains. Kinetic gains against militant groups need to be followed by non-kinetic measures against extremism. This is where the progress has been less than ideal. Significant progress has been made in the National Action Plan agreed among all major political parties<sup>63</sup>.

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59. Right of Access to Information Act 2017 (Federal); Khyber Pakhtunkhwa Right to Information Act 2013; The Punjab Transparency and RTI Act 2013; Sindh Transparency & RTI Bill 2016; Balochistan Freedom of Information Act 2005

60. The News. *Curbing access*. (2021). <https://www.thenews.com.pk/print/790991-curbing-access>. (accessed Feb 17, 2021)

61. CoD text

62. Afzal, Madhia. *Terrorism in Pakistan has declined, but the underlying roots of extremism remain*. (2021). <https://www.brookings.edu/blog/order-from-chaos/2021/01/15/terrorism-in-pakistan-has-declined-but-the-underlying-roots-of-extremism-remain/>. (accessed Feb 17, 2021)

63. Embassy of Pakistan in Washington D.C. *A factsheet of Pakistan's CT efforts*. (2017). <http://embassyofpakistanusa.org/wp-content/uploads/2018/01/Factsheet-on-Pakistan%E2%80%99s-CT-Effort.pdf>

There is an emerging threat of terrorist elements which are reported to be regrouping in the newly merged districts in the KP. In one of the many violent incidents, four female aid workers were killed in North Waziristan on Feb 22, 2021.<sup>64</sup>

## Two-term Limit for Chief Executive

As envisaged in the Charter of Democracy, the ban on holding the office of Prime Minister for more than 2 tenures has been lifted through 18<sup>th</sup> Constitutional Amendment. As a result, the PML-N chief assumed the office of the prime minister for the third term after its party's victory in the 2013 elections.

### 3.2.3. Free and Fair Elections

Of the five Articles relating to this section of the Charter of Democracy, the political parties have failed to come through only on one count i.e. holding of local government elections within three months of the holding of general elections. Three are completely achieved whereas one is partially implemented.

## Local Government Elections

The 18<sup>th</sup> Amendment to the Constitution of Pakistan made provisions for substantial devolution of power to the local governments. Article 140-A of the Constitution states: *"Each Province shall, by law, establish a local government system and devolve political, administrative and financial responsibility and authority to the elected representatives of the local governments."*<sup>65</sup> Interpreting the said Article a legal expert noted the use of three critical phrases.<sup>66</sup> He wrote the use of the term 'devolve' instead of 'delegate' means *"an irreversible transfer of rights"* therefore in his view *"postponing local government elections ... is no longer a legally tenable option."* The second important term is 'local governments' instead of 'local bodies' which, in his view, *"suggests a legislative intent to elevate the status*

64. AFP. *Gunmen kill four female aid workers in North Waziristan*. (2021). <https://www.dawn.com/news/1608782>. (accessed Feb 24, 2021)

65. Constitution of Islamic Republic of Pakistan

66. Gilani Umer: *Rollback of LGs*. (2019). <https://www.dawn.com/news/1517714>. (accessed Dec 5, 2020)

of local governments.” And the third important phrase in the Article is “shall establish” which, according to the expert, makes devolution a constitutional obligation.

Nonetheless after the promulgation of the 18<sup>th</sup> Amendment in April 2010, “there were no local government elections for almost four years. Balochistan conducted the first phase in December, 2013 but the final phase was only completed on 28 January 2015. In the other three provinces, lack of political will delayed local government elections for even longer. After a series of judicial proceedings, Khyber Pakhtunkhwa eventually held LG elections on 30 May, 2015, and Punjab and Sindh on 20 September, 2015 on the orders of the Supreme Court of Pakistan.”<sup>67</sup>

After the 2018 elections too, none of the provincial governments made any serious effort to hold the local bodies’ elections, even when the Election Commission of Pakistan (ECP) had issued repeated warnings.<sup>68</sup> In May, 2019, the PTI government in Punjab dissolved all local governments through a new legislation. The other three provincial and the ICT LGs have completed their respective terms.

The standard time of 120 days, mentioned in all the provincial local government laws, has lapsed and yet there is no significant development towards holding of the LG elections.<sup>69</sup> Besides, by refusing to endow the LGs with “significant decision making power and sufficient resources”<sup>70</sup> the federal and provincial governments are impeding the process of deepening of democratic structures and institutions that could cultivate future democratic leaders.<sup>71</sup>

An Islamabad based political analyst said the political parties need to create a consensus on the local governments and give them constitutional protection

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67. Kakar Asmat: *Local Government and Pakistan’s reluctant political elite*. (2017). <https://blogs.lse.ac.uk/southasia/2017/03/16/local-governments-and-pakistans-reluctant-political-elite/>. (accessed Oct 5, 2020)

68. Ali, Mansoor. *PTI govt under fire for not conducting LG polls in provinces*. (2020). <https://nation.com.pk/27-Nov-2020/pti-govt-under-fire-for-not-conducting-lg-polls-in-provinces>. (accessed Feb 4, 2021)

69. Khan Iftikhar A: *Local govt polls not possible in Sindh, PPP tells ECP*. (2020). <https://www.dawn.com/news/1578452>. (accessed Feb 5, 2021)

70. Ali, Syed Muhammad: *Devolution of Power in Pakistan, 2018* <https://www.jstor.org/stable/pdf/resrep17667.pdf?refreqid=excelsior%3Abd8dfbd8ba59c064d25aa8fec39ea006> (accessed Feb 5, 2021) p.2

71. Ibid

that includes the financial award. *“That in itself will address a lot of issues that the Charter of Democracy aimed to address.”*<sup>72</sup> According to her, the political parties implemented the devolution of power but only till the provincial level. There is a need to further strengthen the local government system which cannot be left to the discretion of the provincial assemblies. According to one KI in Karachi, *“the local governments should also have the authority to mobilize resources by devolving the authority to levy additional taxes. When there is a military government, it provides resources directly to the local governments and bypasses the provincial governments. But when there is democratic government, it does not want to have a local government system. Such things should be further deliberated in the Charter of Democracy.”*<sup>73</sup>

## **Level Playing field for all Political Parties**

Although both the parties pledged to provide level playing field to all the political parties, during the two elections that were held post-18<sup>th</sup> Amendment, the political parties had complaints and observers pointed out discrimination meted out to certain political parties. In the 2013 elections, it was the fear of terrorists that systematically kept the center-left political parties – PPP, Awami National Party (ANP) and MQM – on the hit-list of the terrorists and hence out of the many political contests. The PTI staged a 120 sit-in in front of the parliament in protest over alleged rigging in the 2013 elections and a judicial commission was established to probe the matter. In the 2018 elections, there were wide-spread claims of pre-poll rigging<sup>74</sup> that favored the PTI over the other political parties, specifically the PMLN in Punjab and MQM in Karachi.

## **An Empowered ECP**

Through the 18th and 20th amendments, the ECP had been made a powerful and independent institution. The work of an all-party Parliamentary Committee on Electoral Reforms (PCER) in June 2014 culminated in the passage of the Elections Act 2017, unifying the separate electoral laws in Pakistan with significant changes in electoral rules. Enhancing the role of tribunals, the Act empowered the ECP with financial autonomy and invested it with quasi-

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72. Interview with a Key Informant held in February 2021

73. Ibid

74. BBC. *Viewpoint: Pakistan's dirtiest election in years.* (2018). <https://www.bbc.com/news/world-asia-44923565>. (accessed Jan 05, 2021)

judicial powers comparable to a high court. A KI representing the Jamaat-e-Islami (JI) said the key to solving all the problems facing democracy in the country was a transparent election. It is something that all the political parties should agree upon, he said.<sup>75</sup> Despite an autonomous and empowered ECP, further electoral reforms are required to improve transparency, credibility and legitimacy of electoral races at various levels.

### 3.2.4 Civil-military Relations

Of the five Articles under this section of the Charter of Democracy, there is little visible action on two, which are: 1) *“All indemnities and savings introduced by military regimes in the constitution shall be reviewed”*<sup>76</sup>; and 2) *“Rules of business of the federal and provincial governments shall be reviewed to bring them in conformity with parliamentary form of government.”*<sup>77</sup> On the other three counts there is partial progress.

### Parliament’s Scrutiny of Defence Budget

One of the CoD components under the civil-military relations is the commitment to place the defence budget before the parliament for debate and approval. For the first time in Pakistan’s parliamentary history, in 2008 the defence budget was *“placed before the parliament.”*<sup>78</sup> This was a marked improvement from the usual practice of receiving and approving one-line defence budgets. Yet since then there is never any meaningful discussion on a major chunk of the defence budget. A senator from Balochistan said it is easier said than done to have meaningful debate on the defence budget in the parliament.<sup>79</sup>

### Military Land and Cantonments

The Charter of Democracy had noted that *“Military land allotment and cantonment jurisdictions will come under the purview of the defence ministry.”*

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75. Interview with a Key Informant held in Feb 2021

76. CoD text

77. Ibid

78. Daily Dawn. Parliament debates defence budget. (2008). <https://www.dawn.com/news/956132>. (accessed Jan 25, 2021)

79. Interview with a Key Informant held in Feb 2021

*A commission shall be set up to review, scrutinise, and examine the legitimacy of all such land allotment rules, regulations, and policies, along with all cases of state land allotment including those of military urban and agricultural land allotments since 12th October, 1999 to hold those accountable who have indulged in malpractices, profiteering, and favouritism.*<sup>80</sup> There has been no progress as far as the establishment of the commission is concerned.

## **Civilian Control over Intelligence Affairs**

The Charter of Democracy resolved to make the military and other security agencies accountable to the elected government, disbanding the political wings of all intelligence agencies, cutting *“waste and bloat in the armed forces and security agencies in the interest of the defence and security of the country”*<sup>81</sup> and managing all senior postings in these agencies with the approval of the government through respective ministries. There have been sporadic attempts at resolving this issue but with little success. The PPP government first made an effort to place the Inter-Services Intelligence (ISI) under the Ministry of Interior but *“the retraction came in less than 24 hours following reports of extreme tension between various sections of the government and establishment and as a result of intense back-channel efforts.”*<sup>82</sup> Similar efforts were made during the PML-N government but to no avail. In November 2020, the PTI government approved the formation of an intelligence coordination committee that when instituted will include representatives from all of the intelligence agencies of Pakistan. It will be headed by the director-general of the ISI.<sup>83</sup>

In the past such attempts at improving coordination were scuttled due to differences over the leadership which has been settled in this new setup. While this new coordination mechanism among over a dozen military and civilian agencies may bring improvement in intelligence operations there is little to suggest that it will ensure civilian control over agencies.

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80. CoD text

81. CoD text

82. Raza, Syed Irfan. *Govt forced to withdraw ISI decision*. (2008). <https://www.dawn.com/news/313820/govt-forced-to-withdraw-isi-decision>. (accessed Feb 4, 2021)

83. The News. *Formation of intelligence coordination committee okayed by PM Imran Khan, sources say*. (2020). <https://www.thenews.com.pk/latest/748642-intelligence-coordination-committees-formation-approved-by-pm-imran-khan-sources-say>. (accessed Jan 25, 2021)

### 3.3 Implementation Gap

The Charter of Democracy does not have any implementation mechanism. It laid out explicit, track-able items that the signatories could have measured progress against. However, lack of a monitoring mechanism and a dedicated secretariat partially impeded the progress on the Charter of Democracy. As for future, there is no clear timeframe for building a consensus on outstanding CoD proposals. The senator representing Pakhtunkhwa Milli Awami Party (PMAP) agreed that the PDM's executive committee may be made into a permanent body that should devise a progress tracking mechanism around the Charter of Democracy as well as any other agreements reached on the forum.<sup>84</sup>

Also, the ownership of the Charter of Democracy essentially remained limited to the PPP and PML-N. Even the political parties such as the ANP and the Jamhoori Watan Party (JWP) that were part of the ARD were excluded from the consultation for implementation of the Charter of Democracy. Similarly, other nationalist parties and religious political parties, who has representation in the legislature including PTI were kept out of the loop.

Lack of broad-based support among the political parties is now a major hurdle in the way of fully implementing the Charter of Democracy. The PPP that was the champion of the Charter of Democracy has been largely restricted to Sindh in terms of electoral representation. The 2018 election was the first time that neither the PML (nor its variants) nor the PPP won the governing mandate since the first general elections in 1970. The PTI emerged strong enough to form a government without either the PPP or PML-N as a coalition partner. The PTI, as of now, does not feel compelled to align itself with the political parties to consolidate the civilian space in democracy. The reconfigured political space, with the PTI having about one-third of the electoral support, leaves the fate of the CoD or any such agreement uncertain.

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84. Interview with a Key Informant held in Feb 2021



## 4. Aftermath of the Charter of Democracy

### Political and Strategic Developments during 2006-2021

Between 2006 and 2021, significant social and political changes occurred. These developments are important to consider while evaluating the performance of the political parties against the Charter of Democracy. These developments may also determine if and when the political leadership agrees to renew its commitments along the lines of the CoD.

### Lawyers' Movement and Transition to Democracy

The military regime was challenged by lawyers' movement (2007-2009) aimed at restoration of Chief Justice Iftikhar Chaudhry. Political parties and civil society groups joined the movement making it a country-wide, national movement. The movement ultimately succeeded not only in restoration of the Chief Justice but also substantially weakening the military-led dispensation.

Elections were held in 2008 elections with PPP emerging as the leading political party that led to a democratic transition by signaling an end to the military rule. Unlike the past practice of crying foul every time a party lost the elections, the PML-N not only accepted the results in the spirit of commitments made under the CoD but also joined the PPP-led coalition government.<sup>85</sup>

### Legislative Leap: The 18<sup>th</sup> Constitutional Amendment

The cooperation between the CoD signatories peaked in the passage of the 18<sup>th</sup> Amendment that impacted about one-third of the Constitution

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85. Shafqat, Sahar: Opposition Parties and Regime Uncertainty in Pakistan, *Pakistan's Political Parties: Surviving between Dictatorship and Democracy*. Edited by Mariam Mufti et al (2020) p.241

focusing especially on purging it of changes made under the military rules.<sup>86</sup> The PPP government in 2009, coming through on its commitment made in the CoD, formed a bicameral, multi-party, Parliamentary Committee on Constitutional Reforms (PCCR). As many as 17 parliamentary parties had representation on the committee that was chaired by Senator Raza Rabbani of the PPP. Besides the parliamentary input, about 1, 000 proposals were received from civil society that took about nine months to examine.<sup>87</sup> No amendment could be finalized unless there was a consensus or at least two-thirds of the political parties' representatives in the committee approved of it. The amendment restored the 1973 constitution to its pre October 12, 1999 state by repealing the Legal Framework Order (LFO) 2002 and 17<sup>th</sup> Amendment introduced by Gen Musharraf except for certain provisions, such as reserved seats for women and minorities in the National Assembly and age-limit for voters. To put an effective end to the imposition of martial laws, the amendment broadened the definition of treason and noted that no such act could be validated by any court. The diarchal nature of the power sharing between the offices of president and prime minister was ended by restoring the parliamentary character of the constitution.

Article 58(2) b which empowered the president to dissolve the parliament was also abolished. As a consequence of this amendment, the federal government lost the right to impose emergency in any province as was done by the first PPP government in Khyber Pakhtunkhwa (then North West Frontier Province) and Balochistan, and PML-N's second government in Sindh, and PPP's fourth government in Punjab.<sup>88</sup> Greater electoral reforms, more transparent and elaborate procedure for judicial appointments, greater provincial autonomy are some of the other salient features of this most comprehensive legislative endeavor since the promulgation of the 1973 constitution.

Given the fiscal challenges of the federal Government, the debate between the centrists and federalists has been raging over the role the amendment has played. The centrists contend that "*the amendment has weakened the state and has been a major reason for the country's financial problems.*"<sup>89</sup>

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86. Mehboob, Ahmed Bilal. *The reason why debate on 18th amendment refuses to die.* (2020). <https://www.arabnews.pk/node/1709751>. ( accessed Jan 28, 2021)

87. Cheema Umar. *Anatomy of 18th amendment and answers to its critics.* (2018) <https://www.thenews.com.pk/print/298458-anatomy-of-18th-amend-and-answers-to-its-critics>. (accessed Jan 28, 2021)

88. Ibid

89. Hussain Zahid: *Debating 18th amendment.* (2019). <https://www.dawn.com/news/1462145> (accessed Jan 28, 2021)

They also believe that *“transfer of fiscal resources to the provinces limits the financial space for the federal government which is responsible for defence expenditure and debt servicing.”*<sup>90</sup> Some have raised the issue of capacity at the provincial level to deal with the devolved subjects as well as the lack of debate on the floor of the parliament on the amendment.

## Civil Rights Watchdog

Civil society organizations have registered a significant growth over the past three decades. The natural calamities of 2005 and 2010 had further expanded their funding and presence in the country. In 2002, the Asian Development Bank estimated about 45,000 active Civil Society Organisations (CSOs) in Pakistan, employing some 250,000 people.<sup>91</sup> *“The Musharraf administration actively sought the assistance of feminist NGOs like the Aurat Foundation and Shirkat Gah to develop more progressive laws, including the 2006 Protection of Women Act, which protected victims of rape from the possibility of a conviction for adultery.”*<sup>92</sup>

Under President Zardari, NGOs continued to advocate for simpler registration procedures and less government oversight.<sup>93</sup> International donor community invested a substantial amount of funding in deepening democracy and institutional strengthening in Pakistan. Civil society organizations played a vital role in the success of the Lawyers’ Movement, fight against media curbs during General Musharraf’s Emergency as well as in the pro woman and pro rights legislation. Lately, the Financial Action Task Force (FATF) related measures have seen *“Pakistan’s government applying a more rigorous regulatory framework and oversight to the sector”* which has restricted the work of many organizations.<sup>94</sup> However they remain an important player in expanding the democratic space and consolidation of democracy in the country.

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90. Ibid

91. Briefing Paper 101: *Civil Society and Social Development in Pakistan*, Democracy Reporting International. (2020) [https://democracy-reporting.org/dri\\_publications/briefing-paper-101-civil-society-and-social-development-in-pakistan/](https://democracy-reporting.org/dri_publications/briefing-paper-101-civil-society-and-social-development-in-pakistan/) ( accessed Jan 28, 2021)

92. Nelson, J Mathew. Countries at the Crossroads, 2011: Pakistan p.4

93. Ibid

94. Briefing Paper 101: *Civil Society and Social Development in Pakistan*, Democracy Reporting International. (2020) [https://democracy-reporting.org/dri\\_publications/briefing-paper-101-civil-society-and-social-development-in-pakistan/](https://democracy-reporting.org/dri_publications/briefing-paper-101-civil-society-and-social-development-in-pakistan/) ( accessed Jan 28, 2021)

## Aware Citizenry

Post-2006 Pakistan's media landscape experienced a massive growth as it went from a single state-owned television channel, a radio channel and an odd private FM (Frequency Modulation) radio to more than two dozen news TV channels running transmissions in Urdu and other national languages. While the electronic media rode the high wave in the decade of 2000s, the advent of 3/4G technologies saw a major shift in the media consumption patterns. The medium also suffered a crisis of credibility due to arbitrary as well as voluntary censorship that brought down quality of programming. It is an open secret that the media content is overwhelmingly dictated by state institutions,<sup>95</sup> and media self-censors most controversial content.

Censorship and layoffs of journalists have triggered growth of online TV channels. These ventures are gaining traction with viewers both for their bold content and easy access via cellular devices which attract three-fourths (76%) of the total web traffic. There are over 37 million – and growing – social media users most of whom access the internet via the cell phone.

Advertisers too are increasingly moving towards the online platforms. In the fiscal year 2017-18, although out of over PKR 81 billion worth of media market, 46% went to electronic media; this was 2% less than the previous year resulting in a net loss of PKR4 billion for TV media. During the same period, the volume of digital marketing increased by PKR2.5 billion.<sup>96</sup>

This gradual yet certain variation in media consumption suggests that the media's future is digital and it is only a matter of time before the electronic media collapses under its own weight. Digital media, although fraught with pitfalls in the absence of the institution of gatekeeping, is the future favored destination of a news consumer.

Over 80% of Pakistanis have cellular connections. Between June 2019 and February 2020 alone, the number of cellular subscribers rose from 161 million to 168.9 million registering a growth of 5.9 %.<sup>97</sup> People are increasingly reliant on mobile technologies for their everyday transactions. In 2019 there

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95. McCartney, Matthew et al. *New Perspectives in Pakistan's Political Economy: State, Class and Social Change*. (2019). p. 248-251

96. Freedom Network. *Media market: money and control*. <https://pakistan.mom-rsf.org/en/findings/market/> (accessed Dec 25, 2020)

97. Pakistan Telecommunication Authority <https://www.pta.gov.pk/en/telecom-indicators> (accessed Dec 21, 2020)

were over 1,309 million annual mobile banking transactions (3.6 million per day) with an annual volume of over PKR 4.5 trillion.<sup>98</sup> Broadband connections stand at 87million.<sup>99</sup>

Political parties, during the 2018 elections, made use of online platforms such as facebook and twitter to amplify their campaign messages. Digital technologies also have proved an equalizer as when certain political parties' coverage was censored by the mainstream media, they still managed to reach out to the electorate through social media.

Easy and instant access to information have changed the way citizens respond to political developments. Now in the presence of an aware citizenry, the political parties can continue with their confrontational politics at their own peril.

### **Disruptive Political Expression (2013-2021)**

In the previous decade Pakistan's politics was held hostage by sit-ins on various occasions. In January 2013, Dr Tahirul Qadri of Pakistan Awami Tehreek staged a sit-in in the capital demanding for dissolution of the parliament, formation of an interim government that has input from the judiciary and the military. Dr Qadri was forced to sign a face-saving deal as the PML-N and other political parties stood by the government. Likewise, after a simple-majority win in the 2013 elections the PML-N government faced an unprecedented challenge in the shape of a 126-day long sit-in by PTI and Pakistan Awami Tehreek (PAT) against the alleged rigging in the elections. Afterwards, the religio-political party, Takreek-e-Labbaik Pakistan (TLP) twice blocked the entrance to Islamabad and forced the governments of the PML-N and PTI to sign agreements with them. JUI-F went down the same path against the PTI government in December 2019. While the PML-N, PPP and most of the other political parties stood by each other during these testing times, new political actors have laid their hands on a new form of disruptive political expression which when put to use would be a nightmare for any government.

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98. Ibid

99. Ibid

## Civil-military Imbalance

The two elected governments in the last decade had their fair share of differences with the military which almost brought down the governments. These civil-military rifts were and remain symptomatic of a deep problem. The possibility of such episodes happening again looms as a constant threat to democratic stability. The political parties need to strategize as how best to navigate this tricky relationship.

For example, the memogate in 2011 is instructive in this regard. The PPP government was shaken to the core as in the aftermath of the Osama bin Laden's killing in the Abbottabad Operation, Pakistan's ambassador to the US Hussain Haqqani was "*alleged to have written a memo to [...] the top US military officer at the time, asking for his assistance in installing a "new security team" in Islamabad that would be friendly to Washington.*"<sup>100</sup>

The first major open display of civil-military rift during the PML-N government surfaced with a news story<sup>101</sup> published in daily Dawn in October of 2016. The said story talked about "*extra-ordinary verbal confrontation*" between the then Punjab chief minister and chief of Inter-Services Intelligence over differences in counter-terrorism approach.<sup>102</sup> Matters came to a head when the enquiry commission set up to determine who leaked the information reported in the aforementioned media report was "*rejected*" in a tweet by the military spokesperson. The same tweet was later withdrawn and the matter was considered as resolved which was anything but a resolution.

## Assertive Judiciary ( From 2007 onwards)

The success of the Lawyers' Movement in 2009 changed the way the judiciary operated in the country. Even earlier, Justice Iftikhar Chaudhry since his elevation as the CJP in 2005 had started making liberal use of the public interest litigation tool and intervened in "*a range of new political, social and economic activities.*"<sup>103</sup>

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100. Associated Press. *Memogate scandal reveals civil-military splits*. (2011). <https://www.dawn.com/news/674146/memogate-scandal-reveals-civil-military-splits> ( accessed Mar 14, 2021)

101. Almeida, Cyril. *Exclusive: Act against militants or face international isolation, civilians tell military*. ( 2016). <https://www.dawn.com/news/1288350>, (accessed Jan 28, 2021)

102. Pathankot incident and Mumbai terror attack

103. Kureshi, Yasser: *Judicial Politics in a Hybrid Democracy, Pakistan's Political Parties: Surviving between Dictatorship and Democracy* edited by Mariam Mufti et al. (2020) p.286

In Pakistan, the judiciary has increasingly taken up the role of an arbiter on matters of purely political nature and inter-institutional disputes as it has the power to interpret the institutional framework. *"Between 2008 and 2017, the judiciary intervened in all areas of political life, reversing decisions that fell within the regulatory frameworks of other state institutions."*<sup>104</sup> Judiciary, also share[s] the military's disdain for the political parties and Parliament and has thus sought to regulate the political parties, in turn undermining elected governments."<sup>105</sup> In a *"judicially regulated democracy,"* the apex court ousted two elected prime ministers for *"not fulfilling vague standards of morality and sagacity as stated under Articles 62 and 63."*<sup>106</sup> While PM Gilani was sent home over a conviction, in Nawaz's case it was a crime that was not yet committed. In July 2017, the apex court disqualified prime minister Nawaz Sharif, leaving him no right to appeal.<sup>107</sup> Numerous other elected representatives were barred from politics.<sup>108</sup>

An analysis of 15-years from 2006 to 2021 reveals that the significant institutional and contextual changes have taken place during this period. A year after signing of the Charter of Democracy in March 2007 started the lawyers' movement, which paved the way for restoration of democracy and an end to the military-led dispensation in 2008. The PPP-led government established as a result of 2008 elections undertook substantive constitutional reforms as envisaged under the Charter of Democracy. The 18<sup>th</sup> Constitutional Amendment and 7<sup>th</sup> National Finance Commission Award (NFC) ensured greater legislative and fiscal devolution of the power to the provinces, the parliament were made more relevant in the state system and Election Commission of Pakistan (ECP) was empowered. Judiciary too acquired greater role in the wake of the lawyers' movement. It became very assertive on a range of issues and at times perceived as interventionist in the legislative and executive domains.

If we look at the demand side of the equation of institutional reforms, the mushrooming of private TV channels in 2000s and emergence of 3G/4G technologies changed media production and consumption patterns in

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104. Ibid p.289

105. Ibid p.276

106. Ibid p.289

107. Mangat, Rafique. *No PM could complete term in 70-year Pak history.* ( 2017). <https://www.thenews.com.pk/print/222614-No-PM-could-complete-term-in-70-year-Pak-history> (accessed Jan 28, 2021)

108. Ibid p. 292

Pakistan. It resulted in a far more digitally empowered and aware citizenry, which became very assertive and demanding for their political rights and quality of service delivery. It partly explains the rise of new political forces like PTI particularly in more urbanized provinces and regions.



## 5. Dynamics of Post-2018 Oppositional Politics

The PTI put itself on the political map after remaining under the radar for a decade and a half. In the 2013 elections it ended up securing the second highest popular vote after the PML-N. In the 2018 elections, registering an 88% increase in its vote share, the party put an end to 30 years of two-party dominance (PPP and PML-N/JI) in the electoral arena.<sup>109</sup> In the 2018 elections, PTI emerged as a single largest party by winning 115 National Assembly seats however it fell short of a simple majority by 12 seats. Given that the party had to vacate as many as six seats where its candidates had won more than one seats, the party had to seek alliance with around half a dozen other smaller political parties to form a government.<sup>110</sup> On the other hand PMLN and PPP had secured 64 and 43 seats respectively.

There were some initial signs of the opposition parties joining ranks. Soon after the elections, senior leaders of four parliamentary parties - PMLN, PPP, JUIF and ANP - agreed on formulating a joint parliamentary strategy to counter PTI's government.<sup>111</sup> Therefore analysts had anticipated a formidable opposition to the incoming PTI government; however, the PTI government had a smooth sailing for the first two years due to the divergent positions of the opposition political parties.

The PPP abstained from voting for the opposition's joint candidate for leader of the house election, Shehbaz Sharif.<sup>112</sup> After having unanimously voted for PPP's Khursheed Shah for the office of National Assembly speaker in a losing cause, barely weeks later the joint opposition alliance could not agree on a consensus candidate for the presidential election.<sup>113</sup> Another major display of disunity among the opposition ranks came when a no-trust move against

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109. ECP data

110. Wasim, Amir. *Imran still striving to get required numbers to form govt.* (2018). <https://www.dawn.com/news/1423603> (accessed March 23, 2021)

111. Hussain, Javed. *Opposition parties mull joint strategy to tackle PTI in parliament.* (2018) <https://www.dawn.com/news/1423853>. (accessed March 23, 2021)

112. <https://www.dawn.com/news/1426772>

113. Chaudhry, Fahad. *PTI's Dr Arif Alvi elected 13th president of Pakistan.* (2018) <https://www.dawn.com/news/1430542> (accessed March 23, 2021)

Senate Chairman Sadiq Sanjrani in August 2019 failed as 14 members of the opposition parties either voted against their own resolution or allegedly wasted their votes.<sup>114</sup>

Since assuming power, the party has minced no words in rejecting the CoD.<sup>115</sup> During the first two years, the PTI government continued with lopsided accountability drive that entirely focused on the opposition political parties and led to intense polarization between government and opposition. This changed political landscape has seen a reversion to the politics of confrontation of the 1990s, resulting in a political impasse. This has stagnated the economic growth. The country's Gross Domestic Product (GDP) growth fell negative for the first time in seven decades.<sup>116</sup> Legislative business has hit a snag hence, since 2018, the government has been forced to promulgate over 50 ordinances.<sup>117</sup> It took the government six months to form parliamentary committees.<sup>118</sup>

## 5.1. Formation of Pakistan Democratic Movement (PDM)

JUIF took the toughest stance on rigging and was even loath to taking oath in the assemblies. With significant street power at its command, it unilaterally launched rallies culminating into weeks-long sit-in Islamabad in November of 2019. Around the same time, the government was compelled to allow the jailed PMLN leader Nawaz Sharif to go abroad for medical treatment. The JUIF rallies were the first major challenge to the PTI government which passed without much damage.

After two years of stalled governance and rising inflation, the opposition sensed the opportunity to come together on one platform. They formed an alliance – Pakistan Democratic Movement - on September 20, 2020 in a

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114. Khan, Iftikhar A. *14 defectors save Sanjrani in anticlimactic Senate vote* ( 2019) <https://www.dawn.com/news/1497597> (accessed March 23, 2021)

115. Khan, Tabinda M: From a Movement to a catch-All Party, *Pakistan's Political Parties: Surviving between Dictatorship and Democracy* edited by Mariam Mufti et al. (2020) p.82

116. Zaidi, S Akbar. *A forgettable year for Pakistan's economy.* ( 2021). <https://www.eastasiaforum.org/2021/01/01/a-forgettable-year-for-pakistans-economy/> ( accessed Mar 13, 2021)

117. Geo News. *The Ordinance route: Since 2018 over 55% laws have been ordinances.* ( 2021). <https://www.geo.tv/latest/334151-the-ordinance-route-since-2018-over-55-laws-have-been-ordinances> Feb 2021 (accessed Mar 13, 2021)

118. Mehboob, Ahmed Bilal. *The Assembly's first year.* (2019). <https://www.dawn.com/news/1499262> ( accessed March 23, 2021)

multi-party conference called by the PPP. In its first declaration it chalked out a 26-point agenda that had some immediate and long term targets as well as certain policy positions with regard to the role of state institutions in politics.<sup>119</sup> Two months later, the alliance narrowed down its demands to 12 points focusing supremacy of parliament and its federal Islamic constitutional structure, limiting military and security agencies role in politics, electoral reforms, provincial autonomy, local governments, independence of judiciary, freedom of expression, elimination of extremism and inflation.<sup>120</sup>

The movement is 8-month old and it has already started to come apart. The success for the alliance in early March as they defeated the ruling party's candidate and then finance minister Hafeez Sheikh proved short-lived as soon after the opposition alliance could not win the election for leader of the house in Senate despite its numerical strength. That said, six months is too short a time for any movement to succeed. It is equally too early to completely write off an alliance. For perspective, the previous two such movements – MRD and ARD – took seven to eight years to ultimately achieve their objective.

For starters, the PDM had a left-foot start by chalking out an exhaustive agenda of 26 points. In an effort to rope-in broad-based support they inevitably spread thin. The objectives outlined by the PDM are unquestionably a long haul; they already are part of the unfinished agenda of the CoD. Achieving them shall not be possible without a consistent effort and bi-partisan support.

## 5.2. Causes of Split in the PDM

**Failure of strategy and politics of the optics:** The unravelling of the alliance is reflective of failure of its strategy or lack thereof. There was no prioritization of targets. There were disagreements on execution of its prematurely publicized plans. Moreover the proceedings of the alliance's meeting were leaked to media. And not the least the leadership was given to knee-jerk reactions and issued hasty statements to the media. Although there is still a certain degree of agreement on broader goals i.e., a stable

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119. *Opposition parties form alliance to oust govt.* (2020) <https://www.dawn.com/news/1580803> (accessed May2, 2021)

120. Hussain, Javed. *PDM announces 12-point 'Charter of Pakistan', rejects GB election outcome.* (2020). <https://www.dawn.com/news/1590896> (accessed March 23, 2021)

democracy, supremacy of parliament and fair elections yet the parties disagree over the strategy due to their divergent incentives.

**PPP's stakes in the system:** Unlike other political parties PPP has more stakes in the system. The PPP has a government in Sindh and is a majority party in Senate. The current system if toppled, there is no guarantee that the PPP shall have the same degree of representation if not more. For it to have more, it needs to work the system, woo electables in Punjab, and forge a possible alliance with ANP in KP. The PPP would prefer to leverage its existing parliamentary arithmetic and use the next two years to better its electoral performance and restore at least a semblance of its past status of a federal political party.

**Realignment for 2023 elections:** The recent split in PDM is indicative of expected reconfiguration of political landscape in near future as well as electoral recalibration for 2023 polls. Political posturing apart, against the stated aim of dislodging the PTI government, no political party, part of the PDM, except for the JUIF is keen on pursuing this objective. The parties in fact have set their sights on 2023 elections. Hence it is natural for the parties to realign their affiliations. Courting political opponents any longer shall hurt their electoral prospects.

The PPP ended up fifth in Khyber Pakhtunkhwa (KP) province in the 2018 elections. The KP by-elections tell a further depressing story both for the PPP and the ANP. Their combined vote is more likely to get them a better share in KP. The PPP and ANP have already started to watch for their electoral interests in the next general polls by distancing themselves with the JUIF.

Likewise, PMLN is on course to forge an alliance JUIF in Punjab and KP and in Sindh to partly offset the impact of religious vote that in certain cases in 2018 elections cost the party heavily. There is no gainsaying that JUIF caters to an entirely different set of voters than the Bareilvi vote that hurt the PMLN in 2018 polls. The two parties had an alliance, albeit on a smaller scale, in the 2018 elections. This in part explains their sticking together on the PDM platform.

Furthermore PMLN's interests are served better if it waits out the remainder of the PTI term. The PTI had a razor-thin lead (2%) over the PMLN in Punjab in 2018 elections. The by-election results in Wazirabad and Daska indicate that the PMLN may outdo the incumbent PTI in Punjab, should there be elections tomorrow. However it arguably stands to gain more if the PTI, given the latter's lacklustre performance, was allowed to go further down in the eyes

of its electorate so that the 'change fever' is completely done and dusted. As for the JUI-F and other smaller parties they have nothing to lose in the event of the collapse of the existing set-up. Hence, they advocate for the ultimate step of en masse resignation.

### **5.3. Future of Opposition Politics and 2<sup>nd</sup> Generation Charter of Democracy**

With two major political parties – PPP and ANP – breaking ranks with the PDM there are various speculations with regard to the future of the alliance and the direction the opposition politics in Pakistan may take.

When interests of the openly warring PMLN and PPP align again the possibility of issue-based collaboration among defunct PDM parties (within and without the parliament) cannot be ruled out. Although as of now it seems that the PPP needs to wrest back some space in Punjab to claim its stakes in the federal pie; similarly standing too close to JUIF was not such a bright prospect for the ANP as they must have contemplated the 2023 polls.

In the event of an in-house change – as projected by a political pundit<sup>121</sup> - there are a couple of probable scenarios: a) PPP partakes of pie in Punjab as well as in the Centre; b) it tries to better its electoral prospects in Punjab; c) it shores up its whittled down support base in KP together with the ANP; d) whereas PMLN and JUIF continue on confrontational path as before and do everything in their power to discredit the PTI government.

Meanwhile, the PTI government faces daunting task of stabilizing the nose-diving economy, improving economic growth and dealing with increasing inflation and the ever-worsening situation in the wake of third and fourth waves of Covid-19. The ruling party has also started to show first signs of defections among its ranks which potentially opens up the electoral space for other political parties. The by-elections in recent months in Daska, Nowshera and Karachi have seen a significant drop in PTI's popularity and in the latter two cases the PTI lost the seats it had won in the 2018 elections. In NA-249, Karachi West it unexpectedly ended up fifth.<sup>122</sup>

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121. Sethi, Najam. *In-house end game*. (2021). <https://www.thefridaytimes.com/in-house-end-game/> (accessed March 23, 2021)

122. Ali, Imtiaz. *PPP emerges victorious in NA-249 Karachi by-poll*. (2021). <https://www.dawn.com/news/1621019/ppp-emerges-victorious-in-na-249-karachi-by-poll> (accessed March 23, 2021)

Issues such as meddling of military in the civilian sphere, judicial interference into executive domain, poor service delivery, dysfunctional and ineffective LGs, human rights abuses and freedom of expression, lopsided accountability remain and offer an opportunity for the opposition parties to rally the public anger into a strong movement that forces the government hand to deliver for the public good. A practical way for the opposition out of the current stalemate is to further narrow down the list of its demands and create a minimum common agenda that is followed up by a political strategy to create critical mass among the stakeholders to see the reforms through. Besides, as the PPP's line of thinking has proved that there is much that can be achieved by using the parliamentary forums.

## 6. CoD Successes and Challenges

A number of insights may be drawn from this balance of success and failure. These would inform not only the rationale and scope of a new Charter of Democracy but also the way in which it should ideally be developed and implemented.

### 1. Two-thirds of CoD Articles Implemented

The Charter of Democracy captured the core problems eating away at national political stability and charted an ambitious yet feasible agenda to set them right. Fifteen years later it is encouraging to look at the overall achievements vis-à-vis the CoD provisions. It may not be enough to look at the implementation status of the Charter of Democracy on a quantitative scale only. However, if we try to assess the implementation of the articles of the charter, out of the 36 Articles around two-thirds have been addressed to a greater degree.

In terms of substantive achievements of the Charter of Democracy, restoring the powers of legislature against the executive and the president; substantial devolution of powers to the province tier of government and an empowered Election Commission of Pakistan are significant achievements. The areas that could not be achieved include an elected and empowered local government system; an independent accountability mechanism and greater civilian control of the security sector.

On the legislative front, in particular, there is a massive success in the form of 18<sup>th</sup>, 20<sup>th</sup> and 25<sup>th</sup> Amendments, 7<sup>th</sup> NFC Award and Election Act, 2017. The amendments largely purged the constitution of tinkering by the undemocratic interventions, restored the parliamentary form of governance, integrated erstwhile FATA, empowered the ECP and above all, enhanced the provincial autonomy. Signatories to the Charter of Democracy have refrained from backing any extra-constitutional measures to destabilize elected governments, despite clear opportunities to do so. This allowed two consecutive elected governments to complete their full constitutional terms of five years each and peacefully transfer the power to the next political party. This was a marked departure from the 1990s.

## 2. CoD Implementation Deficit

However, there were also some marked Challenges where the Charter of Democracy did not live up to its letter or spirit. One key gap here is the lack of devolution from provincial to local governments that arguably created four new 'Islamabads' and either sustained or worsened the levels of intra-provincial socioeconomic disparity. Punjab is a case in point. From Financial Year (FY) 2013-18, roughly half of the Punjab Government's development funds were spent in Lahore.<sup>123</sup> A second major shortcoming is the lack of progress in the national accountability regime. Public sector corruption – both as an economic reality and a political narrative – has continued to destabilize political development and political process today, as it has done for decades.

## 3. Reform Process was not Inclusive and Open

The process of CoD agreement and implementation has not been very inclusive of all political and civil society stakeholders. This practice continued even during the implementation process. For example the 18<sup>th</sup> Constitutional Amendment opted for a legislative process which was largely opaque and inaccessible for stakeholders outside the parliament. Reforms as wide-ranging in scope and far-reaching in impact affected all interest groups, including the bureaucracy, military, media, civil society, judiciary and the broader legal fraternity, and private industry. It would have been more appropriate to engage representatives from these groups in these reforms.

## 4. Absence of a Comprehensive Implementation Strategy

Provincial governments lacked resource-readiness in terms of infrastructure, technical capacity, manpower and fiscal resources. The Implementation Commission in its report presented to the National Assembly on 29<sup>th</sup> April, 2011 contemplated only the deletion or transfer of functions and institutions from ministries/divisions devolved by the 18<sup>th</sup> Amendment, which in many cases was counter-intuitive and apparently illogical. For instance, Malam Jabba Resort (Ltd.) was transferred from the Tourism Division to the Inter Provincial Coordination Division. Veterinary drugs and vaccines were transferred from

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123. Khawar, Hassan. *The untold story of Punjab*. (2019) <https://tribune.com.pk/story/1903675/untold-story-punjab>. (accessed Mar 12, 2021)



the Live Stock and Dairy Development Division to the Commerce Division. International exchange for students and teachers was transferred from the Education Division to the Inter Provincial Coordination Division. The report did not explain the rationale for this random disposal of functions and institutions. Neither did it dwell on the detailed procedure for the massive transfer of associated funds, assets, and manpower.

Overall, the federal and provincial governments appeared unprepared to manage the transition or its aftermath. The elaborate web of Cabinet Committees and Implementation Committees/Cells at the Provincial Level and the Implementation Commission and Secretariat at the Federal level was evidence of “mobilizing a process, as opposed to achieving substantial progress.”<sup>124</sup> There was no roadmap for the transition, central database of assets, human resources, funds and projects, no forum for sharing knowledge and information, and no policy documents for the post-Amendment structure of government.

## 5. Management of Political Economy Risks

Given the exclusive development process, it is unsurprising that even where reforms were achieved, their implementation encountered stiff resistance from multiple quarters. But beyond that, the implementation process demonstrated an exceptional lack of strategy for anticipating and managing the political implications of the reforms. As early as 2011, experts had warned of resistance from “*the army and the centralist bureaucracy against the perceived dilution of state authority*”<sup>125</sup>. The constitutional reform team did not reach out to the expected reform ‘losers’ to offset or compensate for their interest losses and arrive at a negotiated, mutually owned political settlement. The lack of policy preparedness and sound implementation planning provided ample space for such interest groups to delay and derail the reform at every opportunity.

## 6. Fiscally Aware Reform

No doubt, the agreement on 7<sup>th</sup> NFC award in 2009 prior of passage of 18<sup>th</sup> Amendment was a huge achievement for leading political parties.

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124. Moriani, Farrukh. *The Eighteenth Amendment in the Constitution of the Islamic Republic of Pakistan Implications, Opportunities and Challenges*. (2010)

125. Wasim, Muhammad. *Pakistan: A Majority Constraining Federalism*. India Quarterly. (2011)

However, it was not sufficient enough to accommodate the post-devolution requirements of the provinces.

In financial terms, the total provincial liability for devolved ministries, divisions, and projects amounted to PKR363 billion. The budgeted revenue gain for provinces in 2010-11 was PKR222 billion which amounted to only PKR45 billion with expected shortfalls in revenue collection and bloated government wage bill. It became clear very early on that the 58% increase in total resource transfer to provinces by the 7<sup>th</sup> NFC Award would not accommodate devolved provincial responsibilities. The gap would need to be filled by better revenue mobilization by provinces, which would need to reverse a 30-year trend of chronic provincial deficits financed by increasing federal shares, delayed projects, and unfilled positions.<sup>126</sup>

This vertical fiscal imbalance persists till the present day and is only expected to worsen in the future. At the same time, federal government agencies – both civilian and military – have not made the necessary rationalization in budgetary needs that was warranted by the 18<sup>th</sup> Amendment. Over the last 10 years, the federal government's budget heads for 'running of civilian government' and 'defence affairs and services' have grown at 16% and 13% respectively.<sup>127</sup>

It now remains to be seen if the federation and the provinces are able to build a consensus on equitable resource distribution among the federating units. Smaller provinces, particularly Balochistan, wants a greater role for the Senate in the fiscal policy making process. The federal government has a tough task ahead as it negotiates the next NFC award.

## 7. Economically Relevant Reform

A glaring omission from the Charter of Democracy has been economic reform and commitments focusing on fiscal discipline and pro-poor decision-making. Central governments in Pakistan have invariably overspent, shoring up resources through International Financial Institutions (IFI) loans and international bonds while avoiding politically costly reforms such as rightsizing workforces, privatizing loss-making State Owned Enterprises

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126. Beaconhouse National University, Institute of Public Policy. *State of the Economy, Devolution in Pakistan*. (2011) (accessed Mar 12, 2021)

127. Khawar, Hassan. *Our defence budget — facts and fiction*. (2019). <https://tribune.com.pk/story/1918185/defence-budget-facts-fiction>. (accessed Mar 12, 2021)

(SOEs), improving public investment efficiency in their development spending or expanding the tax base. Ultimately, these policies result in growth slowdowns, rising unemployment, higher inflation and declining investment that disproportionately impacts the poor. This has given rise to a demand by politicians, economists and independent commentators for a 'Charter of Economy' to be signed among political parties to promote sound, citizen-centered economic policies with a longer-term outlook than electoral cycles.<sup>128</sup> Economic instability precipitates political instability. Fiscal scarcity weakens elected governments and erodes their ability to govern. Any charter devoted to the strengthening of democratic institutions and norms must include consensus on long-overdue reforms to address structural economic problems.

## **8. Strengthening Executive Oversight to Ensure Implementation of Laws**

Pakistan's parliamentary system lags behind in adopting post-legislative scrutiny, a practice institutionalized in the developed democracies. To cater to this significant aspect of monitoring and evaluating as to whether the laws it has passed have achieved their intended outcomes, there is only one Senate Standing Committee on Delegated Legislation.<sup>129</sup> The PTI government had tabled a bill in the National Assembly in this regard in January 2020 but there is little progress on it.<sup>130</sup> As a result, implementation of the laws remains one big challenge.

## **9. Civil-military Balance: Least Achieved Thematic Area**

It is obvious that civil-military imbalance was the key reform area of this Charter of Democracy. And fixing this imbalance was of paramount importance to the signatory political parties. Hence, of the 36 Articles of the Charter of Democracy, 15 concern the civil-military balance of power. Not surprisingly, it remained the most difficult commitments to achieve. Civil military relations

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128. See for instance: <https://www.dawn.com/news/1490306> ; <https://www.dawn.com/news/1606715> ; <https://nation.com.pk/19-Dec-2020/a-national-charter-of-economy> (accessed Mar 12, 2021)

129. Daily Dawn. '*Post-legislative scrutiny is nicety of advanced democracy*'. (2018) <https://www.dawn.com/news/1419538> (accessed Feb 17, 2021)

130. Daily Business Recorder. *Post-legislative scrutiny: Government agrees to defer bill on Opposition's request*. (2020). <https://www.brecorder.com/news/561831/>. (accessed Feb 17, 2021)

have been historically characterized by a secrecy and mistrust and have now degenerated to open hostility.

Of the 15 Articles relating to the military, only one Article relating to the appointments of three services chiefs has been implemented. There is only partial success in making the Defence Committee of Cabinet effective. The joint services command structure could not be strengthened because its leadership remains solely with the army; it was rather supposed to be circulating among the three services on a rotational basis as envisaged under CoD.

On the remaining 12 Articles relating to, most notably, the defence budget, the establishment of a truth and reconciliation commission, accountability of armed personnel, civilian control over intelligence agencies, policies concerning resolution of Kashmir and relationship with neighboring countries, there is little progress.

A majority view among the KIs<sup>131</sup>, representing political analysts as well as politicians, was that the military that has a long history of exercising control over the foreign and fiscal policy and internal security shall always be reluctant to cede space. It is even more unlikely to happen as the political culture remains deeply divisive and the parliament manipulated.

## 10. Inter-Institutional Dialogue

The discussion of Grand National Dialogue or Inter-institutional Dialogue has gained traction with the media as well as civil society. Many believe this course of action to be a viable option of resolving the inter-institutional friction. This includes individuals within the top ranks of the leading political parties as well. However, skeptics ask important questions: If the state institution read and interpreted the 1973 Constitution that clearly sets out roles and responsibilities for every organ of the state, what is the guarantee that they will abide by the new agreement as a result of the Grand National dialogue? And in case they do not, what shall be the next course of action? Certain individuals also believe that these grand gestures are not easy to seamlessly execute. In their view, it will *“need constant work and constant tinkering.”* One Key Informant said that the Truth and Reconciliation Commission

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131. Views expressed by Key Informants during interviews with TRI in Feb 2021

which was mentioned in the CoD is a viable option to take stock of the past mistakes, and set the way forward.<sup>132</sup>

In the final analysis, the decision whether to hold such a dialogue at all, and decide on the probable list of participants to that dialogue should lie with the political parties who are the ultimate custodian of such initiatives.

## **11. Relevance of Original CoD: Need for Broad-based Political Consensus**

With significant reconfiguration of the social, institutional and political realities, the 15-year old Charter of Democracy has lost its currency mainly due to the lack of broader political support.

Lack of broad-based support among the political parties is now a major hurdle in the way of fully implementing the Charter of Democracy. The PPP that was the champion of the Charter of Democracy has been largely restricted to Sindh in terms of electoral representation. As a result of the 2018 elections for the first do not time either the PML (or its variants) nor did the PPP win the mandate to lead the federal government since the first general elections held in 1970. The PTI emerged strong enough to form a government without either the PPP or PML-N as a coalition partner. The PTI, as of now, does not feel compelled to align itself with the political parties to consolidate the civilian space in democracy.

The rise of PTI has also led to a return to the extremely polarized political environment that characterized the 1990s.<sup>133</sup> On the other hand, the PTI's criticism of all policies adopted by previous governments – including the Charter of Democracy and its implementation – is an integral element of its political identity, intended to differentiate and distance itself from PML-N and PPP. Bridging this gulf will be difficult. The reconfigured political landscape requires an imaginative, well-thought-out approach for moving forward for a new version of the reform agenda. PTI leadership must come to terms with the fact that to actually deliver on the ambitious reform agenda that won them popular support, broad-based bipartisanship rooted in the parliament is the only way forward.

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132. Interview with a Key Informant held in Feb 2021

133. A Key Informant in Lahore (Feb 2021)



## 7. The Way Forward

### 1. Work Towards a 2<sup>nd</sup> Generation Charter of Democracy

Keeping in view the new social and political realities, there is a need for a new social contract based on wider consensus of political parties, social groups and institutions. The existing Charter of Democracy should serve as a point of departure to debate and come up with the next version. The new Charter of Democracy should have an elaborate, institutionally-anchored reform agenda that is aimed at gradual but sustainable institutional transformation.

As of now, the agreement has the buy-in of the political parties that have 37% of the popular vote and 40% of the seats in the National Assembly. The leadership of the PPP and PML-N has highlighted the need for a new CoD that is agreed by all the political parties. The PDM also echoed the same sentiment. The movement's Lahore Declaration emphasizes that it supports the unimplemented points of the CoD.<sup>134</sup> The opposition alliance had<sup>135</sup> formed a committee to update the CoD in the light of new challenges.<sup>136</sup> While an agreement among the opposition parties on a new Charter of Democracy may be achievable, whether the PTI shall agree to any such a charter is uncertain. Given the party's mandate of 32% votes in the 2018 elections, this uncertainty does not bode well for the future of consensus institutional reform agenda in the country.

### 2. Strengthen the Culture of Bipartisan Politics for Consensus Building

Bipartisan agreements are part of democratic culture. Pakistani democracy is no stranger to this phenomenon either. There are instances from the recent past where pieces of legislation such as the 25<sup>th</sup> Amendment (merger of FATA with KP) was passed after bipartisan support. The political class can build on this edifice. The ruling party needs it more than ever before to

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134. Views of a Key Informant representing a political party (February 2021)

135. Views expressed by Key Informants during interviews with TRI in Feb 2021

136. Ibid

create consensus around a minimum common agenda. As it has been voicing concerns over the 18<sup>th</sup> Amendment, it would know that no amendment was possible without bartering favors with the opposition. It should form a multi-party committee having representation from all the provinces to table consensus constitutional amendments in a set time-frame.

### **3. Institutionalize Informal Parliamentary Mechanisms for Collaboration on Legislation**

There are successful examples in Pakistani parliament and provincial assemblies where multi-party caucuses and parliamentary task forces have carried out significant legislative work. The political parties should establish multi-political party caucuses and task forces for collaboration and subsequent implementation of legislation.

### **4. Strengthen Committees for Post-legislative Scrutiny**

There is only one Senate Standing Committee on Delegated Legislation. There is a need to make this committee more effective and replicate this mechanism so that it proactively monitors and evaluates the subordinate legislation. The government should pursue the post-legislative scrutiny bill that it submitted in the National Assembly in January, 2020 to ensure robust downstream implementation.

### **5. Make Legislation More Inclusive and Transparent**

Furthermore, the parliamentary committees should widen the opportunities for citizens to give input through public hearings in order to get all viewpoints on issues under their remit, including those that are potentially contentious. This will help strengthen the link between the parliament and the people. Such meetings should be widely advertised to ensure participation of relevant stakeholders.

### **6. Prioritize Consensus Building for Outstanding Constitutional Reform Agenda**

A majority of the KIs representing various political parties were in favor of initiating a debate on: Articles 62 and 63, the accountability law and other



laws dealing with the parallel courts, open-balloting in the Senate elections, and right to information and journalists' protection laws.<sup>137</sup>

## **7. Take a More Realistic Approach to Repairing Civil-Military Imbalance**

For any reform agenda concerning limiting the military's role in politics to succeed, there is a need for an across-the-board consensus. Only a unified political front where no party is looking to safeguard its self-interest at the cost of others, can strengthen their bargaining position vis-a-vis the military.

## **8. Do More to Democratize the Political Parties**

Well-organized political parties with a democratic culture and a programmatic approach to development always have a better chance at negotiating due space in policy making. Hence, the political parties shall be well advised to establish the National Democracy Commission, as proposed in the CoD that promotes democratic culture and builds capacity of the political parties.

## **9. Ensure the Empowered ECP is Able to Use its Powers**

While the Election Commission of Pakistan has been amply empowered, it could not use those powers optimally during the 2018 elections. The political parties and civil society should ensure that the ECP so that it plays a more assertive role in holding free and fair elections.

## **10. Rely on Inter-provincial Coordination Mechanisms to Enhance Cooperation Among the Federating Units**

The federal government should take the lead on making more effective use of the forums such as Council of Common Interests (CCI), NFC, National Economic Council (NEC) and others for better coordination among the provinces on matters of mutual interest. In the interest of federal integrity, the federal government shall need to plug its expenses and increase its tax to GDP ratio rather than asking the provinces to accept a voluntary cut in their

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137. Views expressed by Key Informants during interviews with TRI in Feb 2021

fiscal share. As for ensuring constitutional rights for the GB and complete integration of the erstwhile Fata, not only more resource allocation is needed but also there should be a mechanism to consult the local people in any policy formulation process and resource allocation.

## **11. Devolve Administrative and Fiscal Powers to the Local Governments**

Any meaningful change in the lives of the people shall only be possible when governance is closer to their doorstep. All the political parties that have provincial governments must move to meet the constitutional requirement of holding the LG elections. They should subsequently devise mechanisms to devolve administrative and fiscal powers.

## **12. Ensure Effective Monitoring and Tracking of Institutional Reform Agenda**

For broad-based ownership, ideally, the ruling party should take the lead in initiating the process of forming a multi-party committee to draft the Charter of Democracy. The committee should have a dedicated secretariat with sufficient financial resources and ample staff to keep track of the whole process, including: a) drafting of the Charter of Democracy, b) seeking public input, and agreement of the committee, and c) tracking the implementation of the charter. The secretariat should institute mechanisms to seek public input on the proposed legislative agenda as well as feedback on the legislation that is already enacted. The new charter, if and when agreed, should have a sunset clause after which it should be revised.

# Annexes

## Annex-I

### Charter of Democracy<sup>138</sup> Balance Sheet

S#	Article	Progress		
		Completed	Partially Completed	No Action
<b>A</b>	<b>CONSTITUTIONAL AMENDMENTS</b>			
1	The 1973 Constitution as on 12th October 1999 before the military coup shall be restored with the provisions of joint electorates, minorities, and women reserved seats on closed party list in the Parliament, the lowering of the voting age, and the increase in seats in parliament and the Legal Framework Order, 2000 and the Seventeenth Constitutional Amendment shall be repealed accordingly.	✓		
2	The appointment of the governors, three services chiefs and the CJSC shall be made by the chief executive who is the prime minister, as per the 1973 Constitution.	✓		
3	(a) The recommendations for appointment of judges to superior judiciary shall be formulated through a commission, which shall comprise of the following: i. The chairman shall be a chief justice, who has never previously taken oath under the PCO. <sup>139</sup>			

138. See complete text of CoD at <https://www.dawn.com/news/192460/text-of-the-charter-of-democracy> ( accessed Jan 31, 2021)

139. Provisional Constitutional Order

	<p>ii. The members of the commission shall be the chief justices of the provincial high courts who have not taken oath under the PCO, failing which the senior most judge of that high court who has not taken oath shall be the member</p> <p>iii. Vice-Chairmen of Pakistan and Vice-Chairmen of Provincial Bar Association with respect to the appointment of judges to their concerned province</p> <p>iv. President of Supreme Court Bar Association</p> <p>v. Presidents of High Court Bar Associations of Karachi, Lahore, Peshawar, and Quetta with respect to the appointment of judges to their concerned province</p> <p>vi. Federal Minister for Law and Justice</p> <p>vii. Attorney General of Pakistan</p> <p>(a-i) The commission shall forward a panel of three names for each vacancy to the prime minister, who shall forward one name for confirmation to joint parliamentary committee for confirmation of the nomination through a transparent public hearing process.</p> <p>(a-ii) The joint parliamentary committee shall comprise of 50 per cent members from the treasury benches and the remaining 50 per cent from opposition parties based on their strength in the parliament nominated by respective parliamentary leaders.</p>		✓	
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	<p>(b) No judge shall take oath under any Provisional Constitutional Order or any other oath that is contradictory to the exact language of the original oath prescribed in the Constitution of 1973.</p> <p>(c) Administrative mechanism will be instituted for the prevention of misconduct, implementation of code of ethics, and removal of judges on such charges brought to its attention by any citizen through the proposed commission for appointment of Judges.</p> <p>d) All special courts including anti-terrorism and accountability courts shall be abolished and such cases be tried in ordinary courts. Further to create a set of rules and procedures (whereby, the arbitrary powers of the chief justices over the assignment of cases to various judges and the transfer of judges to various benches such powers shall be exercised by the Chief Justice and two senior most judges sitting together.</p>			
4	<p>A Federal Constitutional Court will be set up to resolve constitutional issues, giving equal representation to each of the federating units, whose members may be judges or persons qualified to be judges of the Supreme Court, constituted for a six-year period. The Supreme and High Courts will hear regular civil and criminal cases. The appointment of judges shall be made in the same manner as for judges of higher judiciary.</p>			✓
5	<p>The Concurrent List in the Constitution will be abolished. A new NFC award will be announced.</p>	✓		

6	The reserved seats for women in the national and provincial assemblies will be allocated to the parties on the basis of the number of votes polled in the general elections by each party.	✓		
7	The strength of the Senate of Pakistan shall be increased to give representation to minorities in the Senate.	✓		
8	FATA shall be included in the NWFP province in consultation with them.	✓		
9	Northern Areas shall be developed by giving it a special status and further empowering the Northern Areas Legislative Council to provide people of Northern Areas access to justice and human rights.		✓	
10	Local bodies' election will be held on party basis through provincial election commissions in respective provinces and constitutional protection will be given to the local bodies to make them autonomous and answerable to their respective assemblies as well as to the people through regular courts of law.			
<b>B CODE OF CONDUCT</b>				
11	National Security Council will be abolished. Defence Cabinet Committee will be headed by prime minister and will have a permanent secretariat. The prime minister may appoint a federal security adviser to process intelligence reports for the prime minister. The efficacy of the higher defence and security structure, created two decades ago, will be reviewed. The Joint Services Command	✓		

	structure will be strengthened and made more effective and headed in rotation among the three services by law.			
12	The ban on a 'prime minister not being eligible for a third term of office' will be abolished.	✓		
13	<p>(a) Truth and Reconciliation Commission be established to acknowledge victims of torture, imprisonment, state-sponsored persecution, targeted legislation, and politically motivated accountability. The commission will also examine and report its findings on military coups and civil removals of governments from 1996.</p> <p>(b) A commission shall also examine and identify the causes of and fix responsibility and make recommendations in the light thereof for incidences such as Kargil.</p> <p>(c) Accountability of NAB and other Ehtesab operators to identify and hold accountable abuse of office by NAB operators through purgery and perversion of justice and violation of human rights since its establishment.</p> <p>(d) To replace politically motivated NAB with an independent accountability commission, whose chairman shall be nominated by the prime minister in consultation with the leader of opposition and confirmed by a joint parliamentary committee with 50 per cent members from treasury benches and remaining 50 per cent from opposition parties in same manner as appointment of judges through transparent public hearing.</p>			✓



	The confirmed nominee shall meet the standard of political impartiality, judicial propriety, moderate views expressed through his judgements and would have not dealt.			
14	The press and electronic media will be allowed its independence. Access to information will become law after parliamentary debate and public scrutiny.		✓	
15	The chairmen of public accounts committee in the national and provincial assemblies will be appointed by the leaders of opposition in the concerned assemblies.	✓		
16	An effective Nuclear Command and Control system under the Defence Cabinet Committee will be put in place to avoid any possibility of leakage or proliferation.	✓		
17	Peaceful relations with India and Afghanistan will be pursued without prejudice to outstanding disputes.		✓	
18	Kashmir dispute should be settled in accordance with the UN Resolutions and the aspirations of the people of Jammu and Kashmir.			✓
19	Governance will be improved to help the common citizen, by giving access to quality social services like education, health, job generation, curbing price hike, combating illegal redundancies, and curbing lavish spendings in civil and military establishments as ostentious causes great resentment amongst the teeming millions. We pledge to promote and practice simplicity, at all levels.		✓	

20	Women, minorities, and the under privileged will be provided equal opportunities in all walks of life.		✓	
21	We will respect the electoral mandate of representative governments that accepts the due role of the opposition and declare neither shall undermine each other through extra constitutional ways.	✓		
22	We shall not join a military regime or any military sponsored government. No party shall solicit the support of military to come into power or to dislodge a democratic government.	✓		
23	To prevent corruption and floor crossing all votes for the Senate and indirect seats will be by open identifiable ballot. Those violating the party discipline in the poll shall stand disqualified by a letter from the parliamentary party leader to the concerned Speaker or the Chairman Senate with a copy to the Election Commission for notification purposes within 14 days of receipt of letter failing which it will be deemed to have been notified on the expiry of that period.			✓
24	All military and judicial officers will be required to file annual assets and income declarations like Parliamentarians to make them accountable to the public.			✓
25	National Democracy Commission shall be established to promote and develop a democratic culture in the country and provide assistance to political parties for capacity building on the basis of their seats in parliament in a transparent manner.			✓

26	Terrorism and militancy are by-products of military dictatorship, negation of democracy, are strongly condemned, and will be vigorously confronted.		✓	
<b>C FREE AND FAIR ELECTIONS</b>				
27	There shall be an independent, autonomous, and impartial election commission. The prime minister shall in consultation with leader of opposition forward up to three names for each position of chief election commissioner, members of election commission, and secretary to joint parliamentary committee, constituted on the same pattern as for appointment of judges in superior judiciary, through transparent public hearing process. In case of no consensus, both prime minister and leader of opposition shall forward separate lists to the joint parliamentary committee for consideration. Provincial election commissioner shall be appointed on the same pattern by committees of respective provincial assemblies.	✓		
28	All contesting political parties will be ensured a level playing field in the elections by the release of all political prisoners and the unconditional return of all political exiles. Elections shall be open to all political parties and political personalities. The graduation requirement of eligibility which has led to corruption and fake degrees will be repealed.		✓	
29	Local bodies elections will be held within three months of the holding of general elections.			✓

30	The concerned election authority shall suspend and appoint neutral administrators for all local bodies from the date of formation of a caretaker government for holding of general elections till the elections are held.	✓		
31	There shall be a neutral caretaker government to hold free, fair, and transparent elections. The members of the said government and their immediate relatives shall not contest elections.	✓		
<b>D CIVIL - MILITARY RELATIONS</b>				
32	The ISI, MI and other security agencies shall be accountable to the elected government through Prime Minister Sectt, Ministry of Defence, and Cabinet Division respectively. Their budgets will be approved by DCC after recommendations are prepared by the respective ministry. The political wings of all intelligence agencies will be disbanded. A committee will be formed to cut waste and bloat in the armed forces and security agencies in the interest of the defence and security of the country. All senior postings in these agencies shall be made with the approval of the government through respective ministry.		✓	
33	All indemnities and savings introduced by military regimes in the constitution shall be reviewed.			✓
34	Defence budget shall be placed before the parliament for debate and approval.		✓	

35	Military land allotment and cantonment jurisdictions will come under the purview of defence ministry. A commission shall be set up to review, scrutinize, and examine the legitimacy of all such land allotment rules, regulations, and policies, along with all cases of state land allotment including those of military urban and agricultural land allotments since 12th October, 1999 to hold those accountable who have indulged in malpractices, profiteering, and favoritism.		✓	
36	Rules of business of the federal and provincial governments shall be reviewed to bring them in conformity with parliamentary form of government.			✓

## Annex-II

### List of Representatives of Political Parties, Media and Political Analysts Interviewed

S#	Name	Designation/Outlet/Other information
1	Abdul Qadir Patel	MNA PPP
2	Ahsan Iqbal	MNA and PML-N Secretary General/Member CoD Draft Committee
3	Anis Haroon	Member of National Human Rights Commission
4	Arifa Noor	Journalist/Anchorperson, Dawn TV
5	Aurangzeb Burki	PPP Central Executive Committee Member
6	Dr Jahanzeb Jamaldini	Senator BNP- Mengal
7	Dr Samia Raheel Qazi	Former MNA, JI
8	Ejaz Chaudhry	PTI Punjab President
9	Hafiz Hamdullah	Senator JUI-F supreme council member
10	Javed Qazi	Karachi-based Writer and Lawyer
11	Karamat Ali	Executive Director, PILER
12	Liaqat Baloch	Vice President, JI
13	Majid Nizami	Election Cell Head, Geo TV
14	Muhammad Adil	Editor, Daily Dunya
15	Muhammad Usman Khan Kakar	Senator PMAP
16	Nusrat Sehar Abbasi	MPA Sindh Assembly, GDA.
17	Saadia Suhail	MPA Punjab Assembly, PTI
18	Sardar Hussain Babak	MPA Balochistan Assembly, ANP
19	Shaista Pervaiz Malik	MNA PML-N
20	Sohail Warraich	Senior Journalist/Political analyst



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