THE WILL OF THE PEOPLE

A constitution, and in particular a federal constitution, embodies the basis on which the people decide to live together. No one can dictate to the people the terms on which they are to live together. History is replete with instances of abortive attempts to impose constitutions, the latest relevant one being Ayub's 1962 constitution. If a lesson is to be learnt from this tragic and expensive failure, it is the obvious one that an attempt to limit or impose upon, the people's will in the matter of constitution-making, as indeed in any matter which vitally affects the people, is both futile and destructive of the foundation of society.

The people can no longer be denied their fundamental rights, the most fundamental of which is the right to frame the constitution. The President in his very first address to the nation acknowledged, and has since consistently, re-iterated, that his first task was to arrange for the transfer of power as expeditiously as possible to the elected representatives of the people. Since a body of elected representatives was not in existence to whom power could be transferred, there was the obvious necessity of bringing it into being. Once that body comes into existence, one finds no justification for stipulating further conditions for the transfer of power to those to whom it legitimately belongs, i.e., to the people.

The initial justification for the promulgation of a legal Framework Order was to provide the basis for constituting a body of elected representatives, which could be justly said to represent the people. This was ensured by providing for election by adult franchise on the basis of population. No better basis could be conceived of. It is difficult however to justify the inclusion in the Framework of limitations upon the constitution-making powers of this elected body. Who is the best judge of what is the best constitution for the country? Surely, there can be no better judge than the elected representatives of the people.

Democracy is premised on an act of faith. It is the faith in the inherent patriotism and good sense of the people and thus of their elected representatives. If a feeling persists, that there are some in society who know better than the people themselves what is good for them, the democratic processes cannot even begin to function. It is this basic distrust of the people which has gnawed at the vitals of our society since we have been handed over from one self-appointed saviour to another, from Ghulam Mohammed to Iskander Mirza, from Iskander Mirza to Ayub Khan. There is little controversy today about the fact that what the country needed most was to be saved from such "saviours". President Yahya's disavowal of this role and his promise to return power, which had been usurped by "saviour" after "saviour" to the people had created a real sense of expectation in the entire country.

There is, therefore, a terrible sense of dismay at the fact that certain provisions have crept in the Legal Framework Order, which reflect a distrust, at least an apprehension about the patriotism and good sense of the people. It is, perhaps, difficult to rid ourselves of that distrust of the people, which has been dinned into us over the years, when anyone who happened to be in the opposition or who held views different from those of the government in power, were all too readily branded as "traitors" and "enemies of the state". Today this same attitude is reflected in the attempt to brand all those who disagree with certain political preconceptions as being opposed to Islamic ideology or as being "secessionists". To propagate the view that Islam is in danger in a country, some 90% of whose citizens are Muslims, or to charge that East Pakistanis, who constitute the majority of the population are susceptible to secessionist tendencies is an insult to the people of Pakistan. To give credence to this libel against our nation and its people is to humiliate ourselves before the people of the world. It is for this reason that we regret that provisions such as section 25 or 27 were included in the Legal Framework Order, which is sought to be justified as a safety-device to be resorted to in the event of the elected representatives voting for a constitution which undermines the ideology or integrity of Pakistan. Indeed those who defend such provisions do so on the basis that those are legitimate checks on the possibility of the elected representatives of East Pakistan voting for too much autonomy. No checks upon the powers of the people's representatives can be legitimate. Such arguments are a regrettable throwback on the discredited notion that the people of East Pakistan in particular need to be saved from the indiscretion of their own elected representatives. If indeed we accept the premise that the elected representatives of the people are to take over power then no good can come from doubting their patriotism or good sense. Either we have faith in the people and their elected representatives or we do not. Either we accord supremacy to the people's will or we do not. We cannot affirm faith in the people and in the supremacy of the people's will, and yet include provisions which in effect make the will of the President supreme. This rules contrary to the President's own declared commitment to democracy. Indeed these provisions are seen as possible instruments for frustrating the will of the people as expressed by their elected representatives. In East Pakistan, there is the additional apprehension of these provisions blocking a constitution which provides for the measure of autonomy which the elected representatives will agree upon.



If the will of the people is so obstructed, an awakened people cannot tolerate the frustration of its democratic aspirations.

Why should these provisions be allowed to create doubts and misgiving, when we should be marching forward with confidence in our people and hope in our future? These undemocratic provisions should without further ado be struck out from the Legal Framework Order so as to re-affirm unqualified faith in the patriotism and wisdom of the people and their elected representatives. There is no justification for doubting these, or for seeking to save the people from their own elected representatives. Let it not be forgotten that it was the people who by an exercise of their unqualified freedom of choice created Pakistan. It is the people alone who can preserve, sustain and strengthen Pakistan.

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Editor
Hameeda Hossain
Executive Editor
Rehman Sobhan

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