

The 18th Amendment and the Shift towards Provincial Autonomy: A Critical Analysis

Uroosa Ishfaq^{*} Kashif Ashfaq[†] Muneeba Shahid[‡]

Abstract

Abstract *This paper critically examines the 18th constitutional amendment of Pakistan, which is a revolutionary legal change and helped to see a huge adjustment of a federal form of government to provincial autonomy. The 18th Amendment provided for the abolition of the Concurrent Legislative List, the devolution of significant ministries, and reinforcement of intergovernmental institutions like the Council of Common Interests and the National Finance Commission. Although the amendment revitalized the federal spirit of the 1973 Constitution and gave the provinces the strength in legislative and fiscal areas, its early practice revealed the shortcomings in institutions and capacities. The paper concludes that sustainable federalism in Pakistan entails an enhanced level of intergovernmental coordination, institutional changes, and political commitment to handle the asymmetries between provinces.*

Key Words:

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Amendment,
Provincial
Autonomy,
Federalism,
Decentralization
, Opportunities,
Challenges.

Introduction

The issue of provincial autonomy has always been here in the development of the federal system of Pakistan. Considering the ethnic, linguistic, and geographic diversities in the country, the allocation of political, administrative, and fiscal resources between the federal and provincial governments bears critical consequences on the national unity, political stability, and balanced development. Since the formation of Pakistan, the relationship between the center and the

^{*} MPhil Scholar, Department of Political Science, Abdul Wali Khan University, Mardan, KP, Pakistan. Email: uroosa.ishfaq@gmail.com

[†] Post-Graduate Scholar, Department of Journalism and Mass Communication, Abdul Wali Khan University, Mardan, KP, Pakistan.

[‡] Post-Graduate Scholar, Department of Politics and IR, International Islamic University, Islamabad, Pakistan.

provincial governments has always been marked by conflicts, a pairing that brings a sense of unequal power and unequal distribution of resources. The request of increasing provincial autonomy has been historically associated with demands of decentralization, self-determination, and equal treatment across the federation, especially by the smaller and less-developed provinces like Balochistan or Sindh (Waseem, 2010).

The federal form that was assumed after independence was a very centralized version of the British colonial style, even though Pakistan was a highly diverse socio-political entity. This centralization has been further aggravated by numerous successive military governments and the distortion of constitutions, and has undermined the federal system, envisaged in the constitutions of 1956 and 1962. Though the Constitution of 1973 declared Pakistan a federal parliamentary republic, with the view of enhancing provincial autonomy, its scope was narrow since legislative powers were overlapping, the concentration of powers in the centre was too high, and the Concurrent Legislative List existed. This structure allowed the national government to pass laws on issues of national and provincial interests, usually at the cost of provincial autonomy (Mumtaz, 2016).

With the change of power that took place after the rule of General Pervez Musharraf and the restoration of democracy to the country in 2008, there was a great opportunity to implement structural changes. The 18th Constitutional Amendment came into effect in April 2010 due to the unusual agreement among large political parties. One of the major breakthroughs in the history of Pakistan in terms of its federal system, this Amendment was intended to revive the initial essence of the Constitution of 1973 and repair the skew that was there in this system due to the earlier regimes of authoritarianism (Mirza, 2010).

The 18th Amendment either repealed or altered more than 100 constitutional clauses, which made the provinces rather broad and powerful in Legislative, administrative, and fiscal realms. The removal of the Concurrent legislative List was one of its primary provisions that empowered provinces to adopt full power over 47 matters, including important ones that made a real impact on health, education, environment, and labor (ICG, 2010). Moreover, federal institutions, including the Council of Common Interests (CCI), were strengthened to allow intergovernmental deliberation and dispute resolution. The Amendment also enhanced fiscal federalism by making sure that the provinces have a fair share in national revenues, the National Finance Commission (NFC) Award, and giving the provinces more control over the natural resources (Khan, 2012).

The 18th Amendment can be viewed as a milestone in the enhancement of federalism in Pakistan. It is regarded as one of the milestones in facilitating democratic rule, propagating policy ownership at the ground level, and solving the political marginalization grievances amongst the provinces. Nevertheless, implementation issues are also a problem. Most provincial governments do not

have the institutional capacity to make the most of their newly acquired powers. Federal-provincial coordination is still uneven, and decentralization still has political opposition with consequences on developments in many areas (ICG, 2010). However, the Amendment is a massive realignment in the federal structure of Pakistan; it aimed at institutionalizing the independence of the provinces and restoring the equilibrium of powers formulated in the Constitution (Waseem, 2010).

Historical Context

As Pakistan was formed in 1947, political history has been characterized by frequent centralization, especially at the cost of provincial autonomy. This was supported first by the use of the Government of India Act, 1935, which acted as an interim constitution, granting the central government absolute and key powers (Waseem, 2010). This tendency found its reflection and strengthening in the 1956 and 1962 constitutions, whereby the federal executive was directly granted immense power over the legislation, financial, and administrative affairs. The presence of the provinces was further reduced with provisions such as the suspicious one-unit scheme that combined all the provinces in West Pakistan into one administrative unit and further aggrieved the smaller provinces. (Khan et al., 2016).

The military rule resulted in the strengthening of centralization. General-dominated regimes, Ayub Khan, Zia-ul-Haq, and Pervez Musharraf, tended to suspend or amend the constitution on a regular basis, and it was not their concern to devolve powers to provinces. The superiority of the federally appointed civil servants, constant removal of the provincial governments, central powers controlling centre streams of sources of income, revenue collection, and crucial areas of policies further complemented the top-bottom system of governance (Khan et al., 2016). Even the 1973 constitution that envisaged national parliamentary rule and provinces as autonomous units never stayed on the ground. The fact that there was the existence of the Concurrent Legislative List enabled the federation to claim dominance over a wide range of policy areas, and in practice, the significant actions and decisions largely remained in Islamabad (Waseem, 2010).

Such constitutional and institutional inclinations created tensions between the centre and provinces, which had existed before 2010. Smaller provinces such as Balochistan, Sindh, and Khyber Pakhtunkhwa continuously complained that they were underrepresented in the national assemblies and were not getting a fair share of resources, as well as assurances that their legislative powers were not being taken away. These grievances were not purely hypothetical and sometimes resulted in popular protest and political agitation, and even, in the case of East Pakistan, led to secession in 1971 (Khan et al., 2016). The Council of Common Interests and the National Finance Commission, which were to mediate between the provinces and

the federal government and efficiently provide fair methods of cooperation, could not be effective and credible and were usually marginalized during longer-lasting military governments (Khan, 2012).

This relational deficit is still ongoing and largely antagonistic, and this crippled the establishment of a stable federal culture in Pakistan. At the beginning of the 21st century, the need to implement significant reforms became even louder, partly because the idea of real autonomy, fair development, and inter-provincial trust emerged as the guarantees of sustainable governance in a diverse nation. The 2010 18th Amendment was the direct result of the long frustration to resolve the issues of the over-concentration of power in the centre and provincial dissatisfaction where the attempt was made to restructure the constitutional order in Pakistan on the basis of provincial empowerment and finally to rejuvenate the vision of federalism that had been envisaged at the time of independence (Shah, 2012).

Key Features of the 18th Amendment

The 18th Amendment, which was enacted in April 2010, overturned the federal structure of Pakistan completely, granting extensive legislative, fiscal, and bureaucratic powers to the provinces. According to a reaction to decades of a centralized political system and province-level discontents, the amendment is designed to reawaken the spirit of the federalism of the 1973 Constitution and re-equilibrate the center-province relationship.

Abolition of the Concurrent Legislative List

One of the characteristics of the 18th Amendment is the abolition of the Concurrent Legislative List in its entirety. In the old regime, 47 priority policy areas under federal jurisdiction and provincial jurisdiction were shared, including education, health, labor, environment, and criminal law issues, and the matters that are of priority could be frequently grabbed by the federal government at the cost of provincial powers. The amendment allows the provisional government to enjoy sole legislative and executive powers over these topics, which devolved 17 federal ministries into three organized ministries. This is the first time that provincial legislatures were given direct policy-making powers over large territories, which had an impact on everyday governance. That way, every province is given freedom to develop and execute programs depending on the needs and situations within that province, making the provincial governments within a federation believable and relevant. (Adeney, 2012)

Strengthened Role of Council of Common Interests (CCI) and National Economic Council (NEC)

The 18th Amendment entrenched and activated the coordination mechanisms between the federal and provinces, including the Council of Common Interests (CCI) and the National Economic Council (NEC). The CCI, which was initially

set up in the 1973 constitution, was granted increased roles and constitutional protection, including its explicit norms, which required the CCI to meet twice a year and report to the parliament annually (Khan, 2012). To review and coordinate such bright areas of policy, the CCI was enlarged to include policies on such subjects as electricity, mineral resources, and inter-provincial Affairs, as included in Part II of the Federal Legislative List. The amendment also clearly defined the membership and mandate of the NEC, and this allowed both the federal and provincial governments to have representation and joint ownership in the economic planning of the nation, social planning, and equal resource distribution. Focusing such vital operations into institutions where stewardship is shared, the 18th Amendment contributed to the idea of cooperative federalism, institutionalized dispute resolution, and collaborative decisions (Shah, 2012).

Greater Fiscal Autonomy for Provinces

Another pillar of the 18th Amendment is fiscal autonomy, which revolutionized the aspects of resources and revenue of the provinces of Pakistan. The reformed terms of the constitution made it impossible to decrease the dividing share of taxes between the provinces in the tax divisible pool, which is allocated through the National Finance Commission (NFC) Award, into percentages that have been agreed on before. The 7th NFC Award, immediately preceding the amendment, raised the provincial share to 57.5 percent of the divisible pool, which is a giant step compared to arrangements made before. They gave provinces the legislative powers to tax on land that is not an immovable property and the right to collect inheritance tax and tax on services; they also granted rights to provinces to collect royalty and excise duty on oil and gas, as well as other natural resources found within their territories. The change allowed the provinces to finance and control the devolved areas, utilizing the local revenues in place of largely depending on the federal transfers. Notably, the provinces were granted the authority to issue both local and foreign loans- within the limits prescribed by NFC, thus further strengthening their ability as well as their money-generating capacity (Ali et al., 2016).

Enhanced Administrative Powers and Local Governance

The 18th Amendment brought radical changes in the field of administrative powers and local government. The provinces have not only been vested with the right to frame sectoral policies but also to engage in direct money arrangements and structure local government to suit provincial demands. The article 140A is inserted, requiring every province to establish an effective system of local government, thus decentralization was institutionalized at the grassroots. The provinces took the executive charge of portfolios earlier centralized, like health, education, agriculture, social welfare, and law and order, assuming the charge of departments and institutions of these portfolios. It is a structure that is meant to facilitate

responsive and participatory governance and coordinate the provincial and local capabilities in service delivery and development. The expanded administrative autonomy is therefore supposed to be a reinforcement of the provinces not only as legislative institutions but as all-around agents of development and governance (Adeney, 2012).

Other Structural and Political Reforms

In addition to the legislative and fiscal devolution, the 18th Amendment also entails other decisive reforms: the curtailment of the discretionary powers of the President, the parliamentary supremacy, and the strengthening of judicial independence (Khan, 2012). It is also an amendment that rebranded the name of the North-West Frontier Province to Khyber Pakhtunkhwa in accordance with ethnic and linguistic needs that dated back a long time. In addition, the institutional checks, including compulsory review of constitutional and judicial appointments that had to be reviewed in parliament, demonstrate the attempt of the amendment to stimulate transparency and inclusiveness.

Overall, the 18th Amendment is a multidimensional and ambitious remodeling of the federal system in Pakistan, an attempt to preserve and promote provincial autonomy not only at the level of legislation and the fiscal dimension but also in the administrative one. It demonstrates a huge shift to decentralization, cooperative federalism, and responsive governing processes, and also brought out new issues of capacity and organization that would identify the rest of the decade in federal-provincial relations (Ali et al., 2016).

Immediate Impacts

Greater Provincial Control in Legislation, Finance, and Administration

The 18th Amendment resulted in the radical reorganization of the federal structure of Pakistan, which entailed the massive expansion of the powers of provincial legislatures, monetary allocation, and government. With the removal of the Concurrent Legislative List, all 47 policy fields of the latter, namely education, health, environment, and local government, are given exclusive power to the provinces (Adeney, 2012). This systemic change implied that the provincial assemblies are now free to design and introduce local legislation without the interference of the center. A huge boost is also achieved in increasing provincial share in the National Finance Commission (NFC) Award, which increased to about 59 percent of the divisible pool as compared to 43 percent in the past, thus enabling provincial direct control and allocation of resources (Ahmed, 2011). The executive functions are strengthened, and the provinces get to take control of the major ministries and take direct charge of the service provision, as well as administrative issues.

Improved Provincial Access to Resources and Sectoral Capacity Constraints

New duties of the provinces implied better access to fiscal and natural resources, such as oil, gas, and minerals. This gave a basis to the provinces as they could embark on their projects of development and respond better to local needs. Nevertheless, this transition revealed giant gaps in capacities, especially in areas such as health and education. The institutional and human capital needed to undertake proper planning and implementation of devolved functions were lacking in most provincial governments, resulting in difficulties in service delivery, regulatory oversights, and the use of resources. An example is higher education, where quality and coordination were frustrated by policy fragmentation and limits on funds in Canada as a reflection of the general problem of administrative capability across the provinces (Waseem, 2010).

Moves toward Balanced Regional Development and Addressing Ethnic Disparities

The provincial autonomy is also intended to redress the 50-year-old regional imbalance and ethnic resentments with the distribution of powers that gave provinces, particularly those that had been marginalized, like Balochistan and Khyber Pakhtunkhwa, more say in selecting development projects and distributing resources. Better ability to prioritize investment in local infrastructure, education, and health enhanced the chances of more inclusive and even regional developments. The initial post-amendment performance revealed mixed results in that, as much as extra resources promoted growth in some areas, not all the provinces were prepared at the same level, and in-provincial disparities were not eliminated (Adeney, 2012). However, the 10-year period that came after the 18th Amendment reflected a major shift in the center-province relationships, which placed Pakistan much closer to the actualization of cooperative federalism and regional empowerment (Waseem, 2010).

Opportunities and Challenges

The 18th Amendment resulted in a revolution in the Pakistani governing system with an upsurge in decentralization, responsiveness, and inclusiveness of federalism. Among its greatest opportunities is the possibility of better governance, especially in better service delivery in some of the important sectors, including education, health, and general welfare. Through this devolution, the amendment provides opportunities for local governments to implement context-sensitive solutions and to devise development policies that would suit their specific socio-economic conditions (Waseem, 2012). Differentiated education and health policies, in their turn, first appeared in provinces such as Punjab and Khyber Pakhtunkhwa, and local administrators and communities contributed to their development. It also made it possible to allocate and manage resources more

efficiently since provinces obtained control over budgetary priorities, which might lead to spending restraint and innovative approaches to governmental issues.

Regarding the delivery of the service, decentralization produced the possibility of faster realization of the even closer initiatives to the populations concerned. The more decentralized Provincial Disaster Management Authorities (PDMAs) have shown to be considerably responsive in localized disasters, unlike the earlier centralized regime (ICG, 2012). Equally, provincial agriculture departments started working out development programs suited to local soil, crop, and irrigation conditions, which increased productivity in certain areas. Additionally, the devolution enhanced democratic tenets by building up provincial assemblies and indulging grassroots representation, particularly by means of elected local government systems (Adeney, 2012).

But the path towards effective decentralization has not been devoid of challenges. On the political front, although the amendment brought about new powers of balance, it also brought about turbulence between federal and provincial governments. Provincial governments expressed concern about the unwillingness of the center to surrender fully its control, especially in the areas of regulation, such as higher education and energy, where the federal control persisted even though constitutional devolution was adopted. Possession of shared resources such as water and electricity also became a point of conflict since there is no regularly established system of equity in distribution, hence inter-provincial conflicts were frequent (Waseem, 2012).

There are great administrative capacity problems in provinces. The rapidness of the devolution process indicates that a number of provincial bureaucracies are not in the best position to handle new devolved functions. Poor technical competency, manpower deficiencies, and poor institutional structures hampered the effective implementation of policies. Additionally, there are huge differences in the capacity of the institutions compared across provinces, with Punjab being the highly developed province and other less-developed regions such as Balochistan, which led to increased inequality in governance instead of alleviating it (Ali, 2015).

On the grounds of finance, although the share in the National Finance Commission (NFC) award had gone up, provinces remained in the doldrums regarding revenue generation autonomy. Weak tax collection authority, federal dependence, and inconsistency in fiscal decentralization provide a degree of uncertainty in budget development and maintenance of services (ICG, 2012). Also, the lag in making timely NFC reviews constrained the adaptive fiscal policymaking that suits the changing domestic and economic demands (Ali et al., 2016).

Although conflict-solving interventions between the federal and provincial governments existed theoretically, these do not suffice practically. The Council of

Common Interests (CCI), which exists to resolve such disputes, is accused of not having regular sessions and having less power to make a decision. Because of this, systemic tensions persisted to lessen the spirit of cooperative federalism as seen in the amendment (Adeney, 2012). To sum up, the 18th Amendment got a number of outstanding opportunities to enhance the doctrine of governance, local empowerment, yet they are still reserved until filling the gaps of administration capacity, political elucidation, and structural impediments. To achieve the full potential of a federal Pakistan, institutional frameworks must be strengthened, the abilities of the provinces must be reinforced, and institutions that resolve conflicts, such as the CCI, should be empowered.

Critical Analysis

The 18th Amendment is generally recognized as a historic milestone in the constitutional development of Pakistan, being a bold venture into the field of decentralization and reinforcement of cooperative federalism. The amendment aimed to end the chronic imbalances that had always been the core aspect of the relations between the center and provinces in the political field of Pakistan by granting the latter great legislative, fiscal, and administrative functions (Khan, 2012). This devolution was even more profound in that it entrenched provincial authority on a constitutional basis and brought back the federalism spirit upon which the 1973 Constitution framers had projected the idea of federalism (Adeney, 2012). Historians argue that the 18th Amendment did not simply give the provinces unparalleled freedom, but it also created a form of government in which the local interests and desires could actually be seen in regional policies and development plans (Ali, 2015).

Nonetheless, the adoption of the new federal architecture revealed major weaknesses, particularly when it comes to provincial preparedness as well as intergovernmental relations. As much as the process of transferring the legislation was quick, most of the provinces did not cope well with the ability to handle their expanded mandate in very important sectors like health, education, and environment. Lack of technical skills, institutional experience, mobilization of resources, and levels of bureaucracy were poorly developed in some of the provinces, and this has led to unequal performance and service delivery in post-devolution. All these capacity limitations were felt mainly in the social segments where educational results and basic healthcare inequality were alive and, in some cases, aggravated further by the lack of guidance or transitional aid on the part of the federal government (Adeney, 2012).

Moreover, the restructuring of duties elaborated an intricate administrative and financial environment. Although provinces acquired more freedom in financial and legislative space, there was little in place on coordination mechanisms between the center and the provinces. It constitutionally reinforced the Council of Common Interests (CCI) with the aim of providing an effective dispute resolution body with

the mandate of smoothing conflicting interests overlapping one another. However, political and bureaucratic policies caused the CCI to be ineffective in facilitating effective dispute mediation in some instances. The division of resources, as well as sharing the natural revenues, remained a source of controversy, as was the clause on interpreting the constitutional requirements on various subjects like energy, environment, and higher education (Ali, 2015).

In spite of these challenges, the 18th Amendment has contributed to a critical shift in the politics of Pakistan, including the development of a newfound agreement between provincial and federal stakeholders on the fact that devolution is valuable. Such an agreement was surprising, bearing in mind the tradition of centralized, top-down policy making and frequent military interventions witnessed by Pakistan. The logic of empowering the provinces and giving them more agency was widely accepted along federation lines, although there was still an argument on the practical means of doing so. The call to build provincial capacity and establish long-term patterns of federal-provincial collaboration so that the reform would bring lasting rewards was reinforced by civil society organizations, by academics, and by policy advocates. Meanwhile, the efficiency of the decentralized system is debated, as critics indicated the unproductive aspects, the increased regional divides, and the mixed success of the sub-national government in the years that followed the amendment (ICG, 2010). To recapitulate, the 18th Amendment is a deep-rooted step towards decentralization and cooperative federalism in Pakistan. Nonetheless, its full potential could not be achieved due to considerable institutional and political obstacles, especially in the areas of disproportional capability of provincial governments and extensive coordination efforts between the federal and provincial governments. In the past, the task of devolution of powers achieved both practical success as well as presented and continued to present issues concerning the greater effectiveness and future of the federal setup in the country (Ali, 2015).

Conclusion

The 18th Amendment can be considered a landmark in the constitutional development of Pakistan, as it is a historic shift from a centralized government system to the concept of provincial autonomy. The Amendment has radically changed the legislative, administrative, and fiscal balance between the federal and provincial governments, redistributing power over 47 areas of major subjects, including health, education, and environmental management, by repealing or amending more than one hundred constitutional provisions. This shift of power has been a bid to redress the historical wrongs of smaller provinces, which have long been sidelined in resource distribution and decision-making processes, and to achieve a fairer and more egalitarian federal system. The key to the success of the Amendment is that it has strengthened intergovernmental institutions like the Council of Common Interests (CCI), which is currently playing a very crucial role

in encouraging dialogue as well as solving disputes between the center and the provinces. On the same note, reforms to the National Finance Commission (NFC) Award formulation have led to a more equitable apportionment of national revenues, and clauses on fiscal federalism and natural resource management have placed provinces in unparalleled control of their respective economic future. The collective changes have revived the spirit of the 1973 Constitution as they have rebalanced the relationship between the center and provinces, as well as enhancing unity in diversity. Nonetheless, new challenges have also arisen with the implementation of the Amendment. The differences in provincial capacity, as well as in power-sharing and ambiguities, along with periodic federal-provincial tensions, show that decentralization necessitates strong institutional arrangements and long-term political will. Going ahead, the experience that Pakistan had with the 18th Amendment highlights the twofold challenges and the prospect of federal restructuring. Finally, its long-term performance will rely on further activity to enhance cooperative federalism, stable administrative capacity at every stage, and ideation of the key concepts of inclusiveness and balanced growth, which serve as the core changes of the reform.

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