

18th Amendment & Provincial Autonomy: Challenges for Political Parties

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Abstract

Eighteenth Constitutional Amendment was passed on 20th April 2010 due to the tireless work of Rabbani led Constitutional Amendment Committee comprised of almost all major and minor parties. It was thought to be a milestone in the constitutional history of Pakistan and was applauded across the country that democracy might be strengthened and power might be devolved to the lower tiers and now people would be able to solve their problems at the doorstep. But after the lapse of more than eight years, problems still arise and the federating units are doubtful of the role of the federal government. The current study is an analysis and critical evaluation of the role of political parties who played a major role in the formulation of the 18th amendment and a way to provincial autonomy but failed to implement it in true letter and spirit. Challenges to these parties have also been given a space in this paper.

Keywords: Raza Rabbani, Constitutional Amendment Committee, 18th Amendment, Pakistan, democracy.

Introduction

From the scratch, Pakistan suffered from debile lawmaking process. It took her nine years to frame a constitution for her on account of the ground that such a delicate issue be handled with equal delicacy and subtlety. Before this, she adopted the India Act of 1935 as an interim constitution (Shahid, 2015). Many upheavals came in this way during the 70 plus years. Jinnah in his fourteen points said that 'the form of future constitution should be federal with residuary powers vested in the provinces' (Foundation, 2012). In the Pakistan resolution passed in 1940, it was decided that the federating units would be autonomous.

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Balochistan joined Pakistan on the condition that subjects of customs, defence, and foreign affairs would rest with the federal government whereas the rest would be controlled by the federating units (Mustikhan, 2015). Balochistan and KPK were promised that the concurrent list would be completely abolished by 10 years but that could not materialize and subjects of law and order, natural resources and security issues are still in federal government control (Mustikhan, 2015). Three constitutions were introduced, some (1956 and 1973) by the Democrats while one (1962) by General Ayub Khan. None of them except that of 1973 were according to the disposition of the nation. Many amendments were introduced to the 1973 constitution dealing with different subjects (Rizvi, 2010). During Zulfiqar Ali Bhutto regime it was agreed upon to dispose of the concurrent list altogether from the constitution by ten years after its implementation and to pave the way for provincial autonomy but it could not become a reality. The main contenders pledged to solve this issue once and for all. Nawaz Sharif PMLN strived to take back the powers from the president which it had snatched under the 58 (2) (b) and was triumphant to an extent but General Pervez Musharraf managed to acquire them back under the 17th amendment. Under the elections of 2008, Pakistan People's Party came to power and uncluttered the way for a historic amendment to restore the parliamentary form of government. It was April 20, 2010, when parliament passed an 18th constitutional amendment to fulfil the pledge to reinstate the 1973 constitution to its original form. The PPP government under the Prime Minister Yousaf Raza Gilani formed a Constitutional Amendment Committee comprised of a total of 26 members out of which PPP had 5 members, PMLN and PMLQ had three each; MQM, ANP, and JUI-F had two each; and one each by BNP, JI, NP, PPP-S, the National People's Party, PKMAP, and Jamhori Watan Party (Nuri, Hanif, & Khan, 2014). They endeavoured to pass it unanimously from the lower house and upper house on 10th and 15th April 2010 respectively (Razia, Ali, & Azhar, 2012). President Asif Zardari signed it on 19th April and with that, it became the law. It was thought to be a great success of the civilian government and for the democracy in Pakistan. Its chief architect Raza Rabbani regarded it 'the most significant restructuring process since independence (Cugelman, 2012). The committee had to keep in mind the 17th Constitutional amendment, Charter of democracy which was agreed upon by the leaders of both, PPP and PMLN, and provincial autonomy, a voice that was heard from the very birth of Pakistan, while making proposals to the constitution. Civil society was also contacted for this purpose. It was a comprehensive document intended to reconstitute the federal and parliamentary look of the 1973 constitution; to incise the changes brought forth by the autocrats; NWFP was named as Khyber Pakhtun Khwa; national resources were to be distributed equally between the federating units with provinces to

receive the subjects under the concurrent list; CCI and NEC were re-addressed; High treason under article-6 was redefined, fundamental rights were enhanced; including a child having an age of 5 to 16 years would be provided with free education; seats for the Senate were increased to 104 and its powers were enhanced to see money bills for 14 days and the PM and the cabinet would be accountable to the Senate also, along with the national Assembly; president of Pakistan would be a nominal head now as he was deprived of the powers he enjoyed under 58 (2) (b); articles 62 and 63 were re-examined and some ridiculous things were added to the constitution; proscription to become the Prime Minister and Chief Minister for the third time was lifted; the number of ministers would not exceed 11% after this amendment; local bodies elections would now be held by the election commission; Election commission was strengthened by increasing the term of office of the CEC from 3 to 5 years and he/she would be appointed by the PM and opposition leader by consensus, Islamabad High Court was formed; a way out was given to appoint the caretaker government and minorities were allowed to practice their religion freely.

The way the whole process was carried out due to a consensus between the government and the opposition was appreciated across the country and optimism arose among the masses that they would enjoy freedom and that their condition would have to change now. Similarly, civil-military relations which ever remained strained would have an about turn now, and no more military coup would happen. Powers of the president were reduced and now he would be a nominal figurehead who would not be able to dissolve the national assembly (Nishtar, 2009). The president would appoint the services chiefs, the governors, Chairman of the Federal Public Service Commission by seeking advice from the prime minister. The divisible pool of taxes i.e. income tax, wealth tax, tax on goods, capital value tax, and different types of duties collected by the federal government would be distributed among the provinces according to the specified procedure. Similarly, taxes on services would be collected by the provinces which were the provincial subject.

Elections under local government system were held after some hesitation from the political parties on the instigation of Supreme Court but real powers are still with the members of assemblies who are not ready to hand over it to the concerned authorities after the 18th amendment. If we look at the Federalism flourished across the world like, India, the United States or Canada, we would find them decentralized the political and administrative system by bringing a viable local government system. Pakistan conducted LG elections after more than fifteen years. During these years citizens of this country were kept away from the decision making process.

This paper is intended to focus on the role of political parties towards provincial autonomy in the aftermath of the 18th Amendment, that to what extent they are triumphant in dealing with this problem. Challenges to political parties will also be discussed. Moreover, the impacts of the 18th amendment and its weaknesses will be given a slight touch.

Impacts of the 18th Amendment

During Zulfiqar Ali Bhutto regime it was decided to dispose of the concurrent list altogether from the constitution by ten years of the post-promulgation period but it could not happen. In the 18th amendment, the main contenders pledged to solve this issue once and for all. It was a step towards the provincial autonomy whereby the sense of deprivation would be reduced among the people of small provinces particularly Balochistan. For this purpose article 142 was amended which resulted in transferring the subjects of the concurrent list to the provinces (PILDAT, 2010). Now the provinces can undergo laws relating to criminal law, criminal procedure and evidence. Similarly, the governor would be appointed from the same province where his vote would be registered. NWFP was renamed as Khyber Pukhton Khwa. In case the federal government builds hydro-power projects it would have to take the concerned provincial government in confidence. Still, if the problem persists it would be referred to the Council of Common Interest which would seek its appropriate solution. National Finance Commission would allocate more share to the provinces than they received in the previous year. Similarly, the equal share was allocated to the provinces from their sources. An emergency would not be imposed in a province without the prior consent of that assembly.

Prior to the 18th amendment president and governors could dissolve the national and provincial assemblies without taking advice from the prime minister by using article 58 (2) (b) and 112 (2) (b). It was their discretion to do so if he finds that government is going astray and that the appeal to the electorate is necessary. Similarly under article 190A right of access to information was given to the citizens that were taken as a good gesture towards transparency and strengthening democracy. Under the said amendment the working days of Senate and Provincial Assemblies were raised from 90 to 110 and 70 to 100 respectively (Foundation, 2012). Amending the constitution to strengthen Election Commission under article 140A was a good omen for the electorate which they took as a guarantee for free, fair and transparent elections. In the same way, CCI was further strengthened by bringing some drastic changes to the constitution. Subjects under the Concurrent List were transferred to Federal List which had deep impacts on the smooth running of the government and making of policies. Political Parties were strengthened by amending article 126, which provides that elections would be conducted

through secret ballot except that of the prime minister and chief ministers. It would prevent floor crossing and members would not be able to change loyalties.

Parliament was strengthened by transferring the powers of the president to refer an important issue for a referendum to prime minister under article 48 (Razia, Ali, & Azhar, 2012). Seats in the Upper House were raised to 104 from 100 by allotting one seat each from every province for the minorities. With this, the sense of deprivation among the minorities was ameliorated to an extent. Laws under 6th and 7th schedule were put under the scrutiny of parliament. Senate would keep a money bill for 14 days instead of seven to take the opinion of most members of Senate. Discretion of president came to an end by amending article 91 where now the parliament would elect one of its members as the prime minister of the country. Moreover, prime minister and other ministers would be responsible to the whole parliament. Similarly, the prime minister would appoint four members of CCI and chairman of FPSC instead by the president.

Judiciary was made more independent by giving them powers to appoint judges to the superior courts. Now the Judicial Commission for the appointment of judges would have six judges as members out of a total of nine. The president would have to appoint the senior most judges as the Chief Justice of Supreme Court. Similarly the discretionary powers of the CJ to appoint judges to Supreme Court were done away with; instead, the whole Judiciary as an institution would do so now.

Under article 25A every child would be given free education up to the age of 16 years. This would prove to be a boost in the literacy rate. The eighteenth amendment has deep implications on the higher education. It is the responsibility of the federating units to give autonomy to the universities on the lines of Cambridge and Oxford and let them manage them themselves. In the same way, the strength of the cabinet ministers would not exceed 11% of the total parliament. The share of the four provinces in all federal services would be secured. All these would prove to be a turning point in the standard of lives of the masses if implemented in true letter and spirit.

Challenges to Political Parties

Punjab has always managed to enact laws most suitable to them because they ever enjoyed a majority in the lower house (more than the combined total of all the three provinces). Parliamentary committees have to play a positive role in settling issues especially relating to smaller provinces. They also have to be an active link between parliament, the executive branch and the masses of Pakistan. It is a matter of great concern that six years have been elapsed since

the 18th amendment was incorporated in the constitution but its implementation is still in limbo. Though LG elections took place a year ago real powers rest somewhere else. As a result, people are not empowered in the real sense. Senate could not initiate a money bill which was promised in the 18th amendment. Similarly, a permanent secretariat of the Council of Common Interest has not been formed.

Articles 141-147 deal with the relations of the federal government with the provinces. If these were implemented in real sense relations of Khyber Pakhtunkhwa and Sindh would be better with the central government. Similarly, of the 18 subjects which are under a joint control, census, public debt and natural resources should be settled through the Council of Common Interest on a priority basis. Balochistan and Khyber Pakhtunkhwa criticize the federal government that they are not provided with what was mentioned in article 158 of the constitution. Accordingly, each province has the right to utilize its resources and meet its requirement of oil and gas but in Pakistan, everything is going contrary to it. Similarly, the federal government has kept the revenue generating ministries with it and deprived the provinces, so the latter is suffering from severe problems of short of the balance of payment. Though the government has devolved ministry of power to the provinces but revenue collection still rests with the federal government and in this way, the amendment has taken out the legislative and executive powers of the provinces. The mining sector is with the federal government which is against the wishes of the provinces. EOBI rests with the federal government which is a revenue-generating entity.

Multi-order governance may lead to further problems instead of solving them. In Pakistan, it may not work well because problems arose in multi-ethnic and multi-lingual countries. For this model to work well a country needs far-sighted leadership and honest bureaucracy, Pakistan lacks both of them. Political leadership does not see above their personal interest and bureaucracy has their own implications.

Council of Common Interest was created in the first constitution of Pakistan i.e. 1956, chaired by the PM or by a minister on behalf of the former and had equal representation from all provinces and the federal government. Prior to the 18th amendment, it was kept dormant because the federal government was in no mode to involve itself in provincial interests. The eighteenth amendment was a bold step towards its revival and now it would be chaired by the PM with four Chief Ministers and three members of the federal government. It had a secretariat that would meet once in a quarter. It had to deal with a number of subjects in Federal Legislative List part II like, railways, oil and gas, electricity, major forts, national planning, economic coordination, management of public

debt, census, education and research etc. The government of KPK and Sindh has strong reservations regarding national debt, National Finance Commission award, electricity and economic coordination. CCI has to play an active role to satisfy their grievances.

National Economic Council was a constitutional body and remained active to see the national economic policies. It was usually chaired by the PM with one member from each province. After the passage of the 18th amendment balance of power is diverted towards the provinces. It has two representatives one being the CM from each province and four ministers would represent the federal government. The council would meet once every six months. We have seen that the PML-N government is not cooperating with each other on financial, commercial and economic policies. KPK and Sindh have been ignored by the PML-N government. Now that CPEC is in progress responsibility rests on the federal government to settle the controversial issues and make China Pakistan Economic Corridor viable. Finance Minister Ishaq Dar and minister of planning and development Ahsan Iqbal should had listened to their grievances. The government should adopt an equitable approach towards monetary problems. But alas! NEC is found to be unable to submit its annual reports to both the houses to which it is responsible.

Fundamental Rights was an important part of the 1973 constitution to which was added three more such rights like, a right to fair trial, which provides that every citizen of Pakistan shall avail of this provision. It suffered from a severe blow when a parallel system to the judiciary was brought into force in the form of military courts. Rights of citizens are not safe now because a military officer will decide the life of an individual involved in heinous crimes. Military officers know nothing about the justice system. Right to education under 25A is not being fulfilled (Mujahid, 2012). Pirzada, one of the architects of the 1973 constitution declares 18th amendment against the spirit of the 1973 constitution. He regarded it in derogation of fundamental rights. He further said that provincial autonomy has been compromised (Zulfiqar, 2010).

Some new clauses were added to article 6. Now a person will be tried for high treason if he/she is found to have subverted, suspended, put to abeyance or abrogated the constitution or a person who has aided or co-acted such a person in doing the above acts. But the government is lagging behind in the case of Pervez Musharraf who has committed crimes against the state and should be tried according to the state laws. Musharraf's second coup d'état on November 3, 2007, was regarded unconstitutional by the Supreme Court.

An intra-party election is a necessary tool to gauge the popularity and far-sightedness of a central party leadership and to organize and manage the party

affairs on a regular basis. But article 17 was amended and intra-party elections are not a necessity now. It was said that the Political Parties Act 1962 has already such provision. Similarly, under article 63-A powers of the central leadership have been enhanced.

A formula was envisaged for the distribution of finances among the provinces through 7th NFC award but afterwards, provinces were not dealt that way (Tareen, Implementation of 18th Amendment is must for viability of Pakistan, 2015). The government should legislate to declare Baluchi, Pashto, Punjabi and Sindhi as national languages. The dominance of Punjab in all fields must be equalized with other provinces. Intra-Party elections are considered to be an important part of any democratic system and for that article 17 was amended which required from the political parties to hold intra-party elections but no concise procedure was given. The centralized leadership of political parties is a great hindrance to political parties to play a positive role. Bureaucracy, whether civil or military have always acted to centralize powers. These did not let it devolve to the lower tiers. Judiciary and the media must play a responsible role and should not dictate the elected government.

Implementation of the 18th amendment

The Eighteenth Amendment was regarded to be a milestone in the constitutional history of Pakistan only second to 1973 constitution. As many as 102 out of 280 articles were either amended or were altogether deleted. Some articles were added, inserted or substituted to the constitution. Thus it amended 36% of the constitution, which was a rare development in the constitutional history of Pakistan. The later, government of Pakistan made an implementation commission on 4 May 2010 to implement its provisions in true letter and spirit. Though powers were transferred to the lower tiers under this amendment, problems still arose. It must be ensured that federal and provincial governments were functioning in their domain with ease. Now that the concerned ministries and their subjects have been shifted to the provincial governments, both of the governments should work in cooperation to ensure its proper implementation.

In a country like Pakistan, a combination of a top-down and bottom-up approach also called synthesis approach seems to be most feasible. We have seen that a top-down approach is a viable approach when aims and objectives are evident and policies are devised in a comprehensive way. But in Pakistan where there is mistrust among the federating units and corruption is rampant at the Central level (Bashir Chand, 2011), it seems a little blurred. Moreover, if objectives are not clear bottom-up approach will be helpful. So a

combination of the two approaches would go a long way in implementing policies at the central level.

Perfect implementation could be carried out when a single implementing agency without interfering from any other side execute a policy. In Pakistan, though, conditions have been changed after the passage of the 18th amendment but real issues are still dominating. That is why people in smaller provinces are feeling a sense of deprivation. Pakistan from the very beginning could not adopt a viable way for formulation and implementation of public policies. It is the executive branch of government that was held responsible to develop a policy with the help of federal and provincial governments. Central bureaucracy resisted giving powers to the lower tiers (Correspondent, 2015). Legal and political impediments resist its proper implementation. We see inter-provincial and federal-provincial disputes, which could not go the business of the state in a real face.

Article 25A says education must be provided to every child aged 5-16 years, but 25 million children are out of school (Sethi, 2015). Provinces should work hard to narrow this gap as much as possible. Similarly, higher education be devolved to the provinces who should ensure autonomy to the universities.

Provinces should devolve powers to the locals to complete this process. KPK government has allocated funds and has taken a lead in this regard but the rest of the provinces are lagging behind and are not ready to empower the local government (Department, 2017). All this is going against the spirit of the 18th amendment. Senate Functional Committee on Devolution has shown concerns on not implementing the 18th amendment and asked for an autonomous ministry for this purpose (Butt, 2016).

Council of Common Interest could not play an active role in settling the outstanding issues between the federating units. It has not been able to meet at regular intervals as is given in the constitution and the PM who is the chair of this council should play a proactive role to satisfy the demands of KPK and Sindh, who are said to be the most ignored provinces. Sindh and KPK have reservations over not convening CCI meeting for the last ten months. EOBI and Workers Welfare Fund issues should be resolved through CCI.

The NFC award must be announced soon and provinces should be given appropriate funds so that they may allocate it for education and health uplift projects. Sindh Chief Minister Murad Ali Shah has reservations on some issues like gas, energy and NFC award. He said the government had not extended NFC award though it had completed five years (Ahmed, 2016).

Human Rights are an important part of our constitution. After amending the constitution three more such rights were included to that list but its implementation is still to be seen. Political parties inside the government as well as outside should endeavour to fulfil their promises. Musharraf trial should be taken to its logical ends.

National Economic Council should play its role to settle issues between the centre and the provinces. PM and Chief Ministers of all the four provinces should come forward and through consensus pave the way for proper implementation of the economic policies. CPEC is a network of projects and NEC should play an active part to eliminate the differences between the centre and the smaller provinces.

Conclusion

Eighteenth Constitutional Amendment was a wise step towards a strong federation where the three tiers of the government would function in their respective domain. It provided a golden opportunity to convert Pakistan into a genuine federation with the more strengthened parliamentary system and with more check and balances by the government. Though it provided a way out to ameliorate the condition of the poor masses but its implementation in the proper sense is still to be seen. Parliament of Pakistan which is comprised of almost all major parties and the respective provincial assembly should be made the real repository of power if we want to transfer powers to the lower tiers and give provincial autonomy to the federating units. Similarly, political reforms must be introduced in political parties, parliament and its related institutions for that a clear and comprehensive homework must be carried out.

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