

Q) Discuss the Federal structure of 1973 Constitution of Pakistan after 18th Amendment. Why criticism on 18th Amendment started recently?

1) Introduction:

The checkered history of Pakistan, since its inception, is marred with persistent political tussle, abrogation and abeyance of constitution and several military interventions. The constitution of 1973 was the third and final constitution of the country which is perpetuating hitherto. The constitution declares Pakistan as a federal unit. The subsequent military interventions, by Zia-ul-Haq and Pervez Musharraf, undermined the constitution and rendered it weak. Hence there was a dire need of an amendment that could reignite the spirit of constitution and fortify the political institutions.

2) The 18th Amendment:

On April 8, 2010, the 18th Amendment of the constitution of Pakistan was passed by the National Assembly of Pakistan. The amendment, amongst other

significant changes, removed the power of president to dissolve assembly, changing Pakistan from a semi-Presidential to a parliamentary republic. The aim of this amendment was to expunge any infringements added by Zia or Musharraf and to strengthen the political structure of the country.

3) Changes to the constitution after the 18th Amendment

3.1) 17th Amendment Discarded:

The 17th Amendment, which was introduced by Pervez Musharraf to consolidate his own power, was repealed. This was an important step towards strengthening the political institutions as the infringements were removed which endowed strong powers to the dictators.

3.2) The name of N.W.F.P was changed:

Another significant development, through 18th Amendment, was that the name of North West Frontier province was changed

to Khyber Pakhtunkhwa. This holds significance as it was aligned with the wishes of people belonging from that province and instilled a feeling of unity in the people.

3.3) Devolution of Power:

This holds key importance. The previous concurrent lists were scrapped and almost all the subjects of the list, except for few, were handed over to provinces. This, in turn, granted autonomy to the provinces and paved the way for reduced hostilities towards center and national integration.

3.4) Changes to Article 6:

The legislative body paid heed to how the military dictators undermined the constitution and revamped the article to foil such contingencies in the future. The article was added another clause that would hold the perpetrator for treason if the constitution was held in abeyance. This change was introduced considering how the erstwhile dictator Musharraf came

into power, by not abrogating the constitution, since it involved dire ramifications but by suspending it.

3.5) Right to Free Education :

The amendment made serious progress in elevating the fundamental rights of the people. Article 25A was introduced, wherein the state was obliged to provide every citizen of Pakistan, under the age of 16, with free education.

3.6) Restraining the Power of President:

The President in Pakistan long enjoyed unbridled power to dissolve the national assembly under Article 58-2(b).

Example:

President Ghulam Ishaq, dissolved Benazir's government under Article 58-2(b) on charges of corruption, after just 20 months in power.

Under 18th amendment, this power was

withdrawn from the President.

3.7) Establishment of Islamabad High Court.

The inception of Islamabad ~~high~~ high court was another significant outcome of 18th Amendment. Previously, the capital of the country contained no high court, which hampered the judicial process and a speedy trial for the citizens.

4) Criticism on 18th Amendment.

4.1) Excessive Powers handed over to Provinces.

The sceptics criticise the 18th amendment for handing over a large portion of powers to the province. Albeit, this devolution of powers is extolled by many, for it grants provinces with autonomy and is a step towards national integration. But, on the contrary, a weak center will face difficulties in persuading the provinces in following certain policies.

4.2) Local government do not get resources:

Although the resources are transferred to provinces from center, they are not provided to the local governments. This is a violation of Article 140 A, which binds the provincial government to transfer resources to local governments.

Example:

Karachi was engulfed with severe floods in 2021, due to excessive rainfall. The local government, bereft of resources, could little to assist the city in that turbulent time and requested military to intervene.

4.3) Retrospective clauses:

The 18th amendment is also severely criticised for some clauses that are deemed retrospective and undemocratic, such as the clause that bars minorities to hold office of the President. This is not only disdainful towards minorities, who are an essential part of the community, but also goes against the fundamental

principles laid down by the founding father Jinnah, who in his first address to the constituent assembly of Pakistan said:

"You may belong to any religion or caste or creed - that has nothing to do with the business of the state"

4.4) Dearth of Fiscal Resources for the Center:

Since the center sends a large chunk of Fiscal resources to the provinces, it is left with only a modicum of these. With such limited resources, the center is unable to spend on defense or debt servicing, which can lead to the enfeeblement of the state.

5) Conclusion:

Despite its few drawbacks that the critics might underscore, the 18th amendment has played a vital role in bolstering the political pillars of the country

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and thwarting any attempts to sabotage the democracy of the country. It is an established axiom that democracy is an evolutionary process that evolves with the passage of time. The situation in Pakistan is akin and as democracy evolves, the counterproductive clauses of 18th Amendment will be rectified.

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