

# Assignment ① Pak Affairs

## ③ Question ON Constitution

**Q No** Discuss the federal structure of 1973 Constitution after the 18<sup>th</sup> amendment. Why has criticism started on it recently?

### Ans Introduction:

The 18<sup>th</sup> amendment in the Constitution of Pakistan proved to be a masterpiece in restoring the federal character of the constitution.

⇒ According to Chief Architect Raza Rabbani, the 18<sup>th</sup> Amendment is "the most significant restructuring process since independence."

⇒ The amendment created the necessary boundaries in civil-military relations,

transformed the center-  
province relations, limited  
the presidential powers, and  
restored the role of parliament  
and the Prime Minister.

⇒ Moreover, it devolved various  
powers to provinces to  
enhance their autonomy,  
thus, strengthening the federal  
structure of the 1973  
constitution.

⇒ In recent times multiple  
criticisms have arisen against  
the Amendment, such as  
lack of devolution of  
powers to local governments,  
no real check on  
military powers, lack of  
uniformity in education

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and health standards, and limited fiscal space for the Federal Government.

⇒ Federalism is a form of government adopted to organize and govern the relationship between federating units and the centre.

It is advice to harmonize the feelings of autonomy in the federating units without affecting the unity of the state.

⇒ However for a federation to be successful, there must be complete equality among the component units.

→ In the absence of this factor, a successful

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federation can never be obtained.

2. Federal Structure of 1973 Constitution After the 18th Amendment:

① Creation of Boundaries in Civil-Military Relations:

Article 6 of the constitution was amended to enhance the scope of definition of "high treason" to deter any future abrogation of the constitution.

Accordingly, keeping the constitution in abeyance or attempting to do so shall be regarded as "high treason". And such an act would not be validated by any court, whether high

### Court or supreme court:

➔ Moreover, the 17th amendment was repealed, eliminating the legal framework Order from the constitution. Thus a limit was placed on the powers of president, and the process of judicial appointments was also altered, returning Pakistan to a parliamentary system of government.

### ② Transformation of Centre-Province Relations:

The concurrent list, which enumerates the matters concerning which both parliament and a state legislature may make laws, was abolished in the

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18<sup>th</sup> Amendment, transferring all the subjects to the provincial legislature. This also enhanced the administrative autonomy of the provinces.

For example, the provinces will govern laws regarding contracts, labour, educational curriculum, trade unions, management of infectious diseases and other areas.

Moreover, According to Article 160, the provinces' share in national finance Commission Award cannot be reduced beyond the one given in the previous year. Therefore, the power of regional increased compare to that of federal government.

### ③ Limits On Presidential Powers:

Various articles in the 18<sup>th</sup> amendment reduced the powers of the President to strengthen the federation. First article 48 gives power to Prime Minister, not President, to submit any matter of national importance to a joint sitting of Majlis-e-Shoora (Parliament) as a referendum in the form of a question that is capable of being answered by either "Yes" or "No". Second, the controversial Article 58-2(b), which provided president with the power to dissolve the parliament, has been removed.

Third, Article 75 limits the powers of the president to bypass the normal legislative procedure by decreasing the time to consider the bills passed by parliament to 10 days as compared to 30 days previously.

⇒ Fourth according to article 224, when the parliament is dismissed president has to consult the outgoing prime minister and opposition leaders on presidential appointments of the caretaker government.

④ Enhanced Role of Parliament and the Prime Minister:

⇒ 18th Amendment also greatly enhanced the

authority of the parliament and the Prime Minister.

⇒ Articles 90 and 99 of the constitution now established the Prime Minister and his ministers as the executive government. The federal government - compared to the position of the President before. Similarly, article 91 removes the limit on the Prime Minister serving more than two terms. And article 101 requires the President to appoint the provinces' governor on the Prime Minister's advice. Moreover, article 243 makes it binding on the President to consult the

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Prime Minister regarding the appointments of military service chiefs:

(5) Increase in the share of Provinces regarding the National Resources:

→ Another significant contribution of the 18<sup>th</sup> Amendment was recognizing provinces as rightful beneficiaries of their natural resources in association with the Federal Government. An amendment in Article 172 limited the Federal Government's authority over the lands, mineral and other things of value within the continental shelf of Pakistan, which was given to province to explore,

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develop and exploit. A new clause was added to Article 181 so that the net proceeds of the federal excise duty on oil charges went entirely to the provinces rather than forming part of the Federal Consolidated Fund. In addition, subject to the supervision of the National Economic Council, provinces are now allowed to raise loans and provide guarantees under Article 167.

Criticism of 18th Amendment

Following are the criticism on the 18th Amendment.

① Lack of Devolution of Powers To The Local Governments.

⇒ Even though the 1973 constitution and 18th Amendment require the devolution of power from provincial governments to local governments, the task has remained unfulfilled. For instance, local governments could not respond to the devastating floods that swept Karachi, increasing chances of governance crisis. Similarly the 18th Amendment did not clarify the administrative and financial authority delegated to local governments. Therefore the 18th Amendment has not succeeded in practically developing power to the grass root level.

## ② No Real Check On Military Powers:

The 18<sup>th</sup> Amendment has not resolved the political problems of the country. Still, the civilian government continues to hold limited powers of real oversight on the budgets or policies of the military, which retains a firm grasp on Pakistan's foreign and security policy and a large political and economic presence domestically.

## ③ No actual Devolution of Powers To The Provinces occurred:

The devolution of authorities to the provinces did not happen in the

true sense. The functions previously performed by the Federal ministries were developed. However, only one-third of the functions were given to provinces rest of the functions were allocated to the new federal ministries created in 2011. According to sage publications, out of 301 functions, 207 were developed to the new ministries, and only 94 were given to the provinces, making it only one-third of the functions. For example being a residual matter, agriculture fell in the domain of provinces. Nevertheless, the Ministry of food and agriculture worked

at the federal level.

④ Lack of Uniformity in Education and Health Standards;

Our recent criticism against the Amendment is that giving education and health to the provinces has made it impossible to implement uniform curriculum and standards of education and health in the country.

For instance, the implementation of the Single National curriculum introduced by the Federal government of Sindh in August 2021 was rejected by Provincial government of Sindh.

⑤ Limited Financial Space For The Federal Government;

⇒ The federal government's financial space responsible for defence expenditure and debt servicing, constituting the biggest portion of budget.

⑥ Lack of Strengthening of Unity: No

real unit developed between the provinces and the federal government. Hence it can be said that despite various positive impacts of the 18th Amendment, multiple shortcomings still exist in its provisions and implementation.

Conclusion:

From the above discussion, it is clear that the 18th Amendment

was a milestone in the constitutional history of Pakistan. It strengthened the various institutions. It reduces

- ⇒ the powers of provincial governments and enhancing the powers of senate.
- ⇒ However, the Amendment has remained the target of continuous criticism, sometimes because of the lack of proper implementation and at other times, due to failure in solving the real political issues of Pakistan.

Thus amending the 18th Amendment can be an option if the need arises: being open and welcoming to new developments is the need of hour.