

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

Answer 1- Introduction

Pakistan was envisioned liberal democratic federation in Pakistan Resolution 1940. However, this aspiration of Pakistani public was fulfilled with promulgation of the constitution of 1973. The martial laws of 1977 and 1999 and subsequent amendments greatly obliterated the federal structure of the country by making the centre stronger and provinces weaker. To meet the aspirations of people, eighteenth (18th) amendment was passed to restore the 1973 constitution in its true democratic, federal and parliamentary spirit. Besides many other changes, 18th amendment greatly changed the federal structure of Pakistan. Recently, it is also in focus of criticism for weakening the political, administrative and financial control of the centre. The transformation of federal structure after the 18th

amendment and the critique on the 18th amendment are discussed as under in following lines.

2-Federal Structure of Pakistan after the 18th Amendment

The 18th amendment changed the federal structure of Pakistan such that it empowered the federating units - provinces - in political, administrative and financial domains up to greater extent.

i- Administrative Empowerment of Provinces

18th amendment abolished the concurrent list devolving seventeen (17) ministries and 47 subjects to the provinces. Thus, it empowered provinces in multiple fields like health, education, environment, law and order and revenue collection, etc.

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ii- Political Empowerment of Provinces

18th amendment ensured political

empowerment of the provinces. The dissolution of provincial assemblies was made conditional to the unanimous resolution of parliament. Similarly, the Council of Common Interests (CCI) was empowered politically, administratively and financially. All the inter-provincial issues were to be decided by CCI unanimously. Similarly, local governments in every province are mandatory as per Article 140(A). Therefore, 18th amendment grants greater political empowerment to the provinces and public as well.

iii- Financial Empowerment of Provinces

On one hand, 18th amendment granted powers to the provinces to collect various taxes themselves while on other hand, it increased the share of the provinces to 57.5% and decreased the share of the centre to 42.5% of the federal divisible pool. Moreover, it also stipulated that

the share of the provinces cannot be reduced granted through National Finance Commission (NFC) Award in the next award. Thus, it ensured the non-varying legitimate financial share of the provinces.

iv - Miscellaneous changes altering federal structure through the 18th amendment

18th amendment curtailed various powers of the President empowering the Prime Minister at the centre while it also curtailed the powers of Governor at provinces and thus, empowered the Chief Minister. Similarly, the sole of the President was made advisory in the appointment of various key posts. Moreover, for financial and political devolution to the lowest tier, provincial finance commission and local governments were made mandatory.

3- Criticism on 18th Amendment

As criticism is deemed as the soul in democracy; therefore, 18th amendment is also criticized by certain quarters on following grounds.

i- Declined Control of the Centre over Provinces

One of the major criticism made on the 18th amendment is the declined control of the centre over provinces by the excessive empowerment of the provinces changing federation into a loose confederation. The centre has lost its control over provinces in following ways:

a- Loosening of Administrative Control

According to many critics, the centre has lost the administrative control over the provinces in many key domains; in which the centre can perform in better way than provinces and also the centre's intervention is generally required. For example, in education sector only the centre can devise uniform and single curriculum and policy. However, the centre has lost its mandate in

many important sectors like education after the 18th amendment.

b- Loosening Financial Control

Critics also claim that centre has also lost financial control over the provinces after the 18th amendment. As the centre has the only Federal Board of Revenue (FBR) to collect revenue while provinces have many agencies for collection of taxes in different domains but still provinces get major share of the Federal Divisible Pool (FDP). Thus provinces enjoy the financial freedom and perks but did not collaborate with the centre in bearing defense expenditure, managing finances for disaster management and repayment of debt services.

c- Loosening Political Control over Provinces

Another reason put forward by the critics of 18th amendment is the declined political control of the centre over provinces.

In some instances, the centre is left with no option to resolve political

deadlock due to resolution put forwarded by the the provincial assemblies. Similarly, the decisions are made unanimously in council of common interests (CCI) and therefore, the provincial chief ministers can block any decision taken by the centre. Therefore, 18th amendment is criticized for loosening political control of the centre over provinces

ii- Administrative Burden on the Provinces

Provinces especially Baluchistan and Khyber Pakhtun lack capacity to administer the subjects transferred to them after the 18th amendment. Therefore, neither centre is left with mandate to intervene in certain sectors nor provinces have the required capacity to govern better in those sectors. Similarly, the transfer of the staff of the devolved subjects have also added further financial burden on the provinces.

iii- Provinces desire extended autonomy but do not realize their responsibility

Provinces have got wider autonomy

and still seek further powers. However, they rarely focus in enhancing their capacity to gain more financial independence by gathering own finances and perform better by improving governance themselves. Therefore, if the centre has not been broadening its tax network and enhance tax to GDP ratio, the provinces are also neither focusing to broaden the net of taxes falling within their domain nor they are widening their sources of local income. Thus, provinces have more focus on seeking autonomy than easing and sharing the falling responsibilities.

iv. Criticism on Miscellaneous Issues arised after the 18th Amendment

Another major criticism made on the 18th amendment is the complex operating method of the Council of Common Interests (CCI). It is envisioned on the constitution to call the meeting of CCI after every 90 days but rarely the meeting is held or decision is made due to complex mechanism. A leading lawyer

S.M. Zafar (Late) called CCI as the government within government due to its extraordinary financial and administrative autonomy.

Similarly, as per Article 140(A), local government is mandatory but neither election is held in time nor the elected ones are granted their due financial and administrative authority which erodes the original spirit of the 18th amendment to devolve power to the lowest tiers.

Due to provincial incapacity, 22 million children are out of school which undermines the constitutional obligation of free education to every citizen envisioned in the Article 25(A).

Last but not the least lifting ban on the election of Prime Minister, doing away with condition of intraparty election through 18th amendment are considered detrimental to democracy by curbing the way of emergency of new leadership and promoting dynastic politics.

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4- Conclusion

18th amendment largely altered the federal structure of 1973 constitution of Pakistan through a number of constitutional changes. However, it is being criticized by many circles for over-empowerment of the provinces and eroding the control of the centre over the provinces. Thus, dialogue and debate can better address the raised criticism but both the centre and provinces need to enhance and improve their governance structure to realize the desired aims envisioned in the 18th amendment.