

PA: 2022-Q: 3: Discuss the Federal structure of the constitution of 1973 after the 18th Amendment. Why criticism on the 18th amendment started recently?

Introduction

For any state in the contemporary world, its constitution, a "social construct", guarantees fundamental freedoms and basic rights of its citizens, including choosing or change the government in order to construct a good society. For which Pakistan made multiple constitutions, however, the basic fault lines in those constitutions were never corrected.

No wonder, Pakistan has been described as a laboratory for constitutional experiments. The 18th Amendment ushered in major changes in Federal structure of the constitution of 1973; including taking away of the right of President of Pakistan to dissolve the parliament. Even though well intended, but 18th Amendment has created a governance gap between

Federal and provinces. Thus, 18th Amendment change the federal structure of the constitution 1973 for which it has some criticisms, when translated into law.

Brief Account on 18th Amendment:

The 18th Amendment has been the most radical step in turning the country into a federation. It may well have contributed to the country's remaining on the path of democracy. 18th Amendment adopted by parliament in 2010, it includes 102 important articles and has made 1973 constitution more democratic.

Ahmad Iqbal, former president of the Supreme Court Bar Association of Pakistan said, "we fully supported 18th Amendment...."

Federal Structure of 1973 Constitution after 18th Amendment:

a) Strengthened parliamentary system of Pakistan

Through 18th Amendment,

The role of the prime minister was enhanced by revoking Article 58(2)B and handing over authority back to him. Article 89 ensured that ordinance cannot be issued in absence of Senate or National Assembly. Therefore, strengthening and improving the parliamentary system.

b) Administrative Relations between centre and provinces

18th Amendment, revised Article 144 of the constitution, granted more autonomy to provinces. Article 160(A) set bar on reduction in provincial share in NFC award. Further, Article 172(3) ensured joint ownership of assets among centre and provinces and Article 156 improves the National Economic Commission which takes care of economic policies. Thus, dividing the administrative powers among centre and provinces.

c) Enhanced The Role of the Council of common interests

The Council of common interest CCI

was insignificant over the past years. A new clause was added as 157(3) which stated that CCI will resolve the disorders and conflicts of power-sharing between federation, and provinces. The 18th Amendment improved the status of CCI by making these significant changes.

d) Independence of Judiciary

A judicial commission will recommend the appointment procedure of superior judges under Article 175(A). It was done to make sure that court may never give legal cover other institutions in court related laws.

e) Removal of Discretionary Powers

Article 232 was amended as such that if president wishes to proclaim emergency in a province then it must approve by provincial assembly or he will get have to get approval by both houses. Further, Article 243, declared armed forces worked under authority of centre thus difficult to impose emergency.

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f) Ensured Women Empowerment

18th Amendment introduced 5% ticket for participation in election and Article 34, ensured women's participation in every field. Thus, ensuring women empowerment in country.

g) Dealing with Treason

The alteration of Article 6 declare that holding constitution in abeyance is tantamount to high treason.

Recent Criticism on 18th Amendment:

a) Criticism on Article 160 clause 3A

18th Amendment claim that the transfer of a large part of fiscal resources to the provinces limits the financial spare for the federal government which is responsible for defence expenditure and debt servicing that constitute biggest chunk of the budget.

b) Criticism on Article 142

18th Amendment has reduced the control of the centre on the provinces consequently making the centre weak.

c) Criticism on Article 17(A)

The critics argue that intra party elections to choose the head or party president promote hereditary politics. Hence, there is a need for their elimination.

d) Criticism on Article 140(A)

The devolution of power and resources from provincial governments to local governments remains unfulfilled.

e) Criticism on removing Article 58(2)(b)

18th Amendment by removing Article 58(2)(b) and reforming electoral institutions for instance, it tried to limit the political manipulation of Pakistan most powerful state institution - the armed forces.

f) Criticism on Article 25A

Criticism on Article 25(A) provide constitutional guarantee for free and compulsory education to all girls and boys upto age 16, is that in Pakistan 22.8 million ~~students~~ children are out of school, a report by UNICEF.

g) Criticism on Deletion of Concurrent Legislative list

The abolishment of Concurrent list and handing over almost 47 subjects to provinces is not considered wise because provinces are incapable of dealing with increased responsibility. As they fails in recovery of floods in 2022.

Conclusion

Conclusively, 18th Amendment has restored the federal and parliamentary spirit of 1973 constitution. It divided the power share among federal and provinces making country more democratic. Although, There is a growing view in the establishment that the amendment has weakened the state and has been a major reason for the financial problem as provinces^{are} incapable of facing current crisis. Hence, 18th amendment made significant changes but when translated into law it has significant fault as well.