

CSS (2022) Q#3.

Discuss the Federal Structure of 1973 constitution of Pakistan after 18<sup>th</sup> amendment. Why criticism on 18<sup>th</sup> amendment has started recently?

Introduction.

The federal structure of the constitution comprised of Legislature, Executive, and Judiciary. After the 18<sup>th</sup> amendment, several changes were brought in the constitution to make it more democratic and parliamentary in its nature. These Amendments promote more transparency and aspects of democracy.

Changes made in the constitution after 18<sup>th</sup> amendment.

1- Change of the name of NWFP to Khyber Pakhtunkhwa.

The people living in NWFP always demanded a name that reflects their language and culture just like the provincial names of Punjab, Sindh, and Balochistan reflect theirs. The name that Pashtoon community wanted was "Pakhtunkhwa", the name "Khyber" was added because of the people living there and speaking "hindku" as their language. Hence the name "Khyber Pakhtunkhwa".

2- Change of the spellings of Sindh and Balochistan.

The spellings of the provinces Sindh and Balochistan was changed after 18<sup>th</sup> amendment which was previously written as Sind and Baluchistan.

3- Abrogating or Suspending Constitution was considered as high treason.

Whoever will try to abrogate or suspend the

Constitution of the Pakistan will be punished under the "High treason act". The punishment of high treason is death penalty or life imprisonment.

4- Supreme Court or High Court can't validate the high treason act.

Supreme court of Pakistan validated the Martial law imposed by General Mirza, Zia-ul-Haq and Pervez Musharraf. stating them as. However, only the Martial law imposed by Yahya Khan under the Asma Jilani Case was considered unconstitutional, and the 18<sup>th</sup> amendment's provision stated that Supreme Court or High Court cannot validate the high treason acts. written in clause no 1.

5- Subject to Fair trial.

Whoever is subjected to criminal case either due to the violation or criminal offense or obligation will be given the right of fair trial.

6- Free education.

The educational responsibility of children from age 5-16 is given to the state. Under this provision, it is states responsibility to provide free & compulsory education to children under age 5-16 years.

7- Access to information.

All the information of the government

institutions ~~will be~~ ~~are~~ subjected to public and <sup>private</sup> those institutions that are funded by public will provide their data publically to the people of Pakistan.

8- Removal of the 2 two terms of Prime-minister.

In 18<sup>th</sup> amendment, it was stated that "person can become prime minister of Pakistan more than two times."

9. Abolition of concurrent list.

In the initial constitution, a concurrent list was formed where <sup>certain</sup> departments have given to both Federal and Provinces. In 18<sup>th</sup> amendment, concurrent list was abrogated and amongst 47 departments, 44 were given to provinces and 3 were assigned to federal.

10. Seats of cabinet.

Cabinet seats will not exceed from 11% of the total seats of Parliament.

11- Revival of Council of Common Interest.

The main purpose to ~~develop~~ form Council of Common Interests was to ensure harmony and friendliness among provinces and federal by providing them a platform. CCI was revived in 18<sup>th</sup> amendment with 8 members, including Prime ministers, 4 chief ministers and 3 other

members from the parliament.

12- Authority to select governors and chief officers were given back to Prime Minister.

Prime minister is responsible to select governor and chief officers.

13- Word "freely" was added to practice religion before for non-muslims.

Word freely was added in the provisions before the practice religion.

14- Sales tax will be collected by provinces.

Provinces will collect sales tax.

15- Restriction to change provincial percentage of NFC awards.

According to the 18<sup>th</sup> amendment, the provinces will be given 57.5% of the NFC award and it can't be reduced.

16- Seats of non-muslims were added in senate.

Four seats, ~~one~~ <sup>one</sup> from each province was added to the senate.

17- Development of local governments.

Local governments will be formed in different localities to ensure the delivery of rights and have more check and balance.

18- Development of Islamabad High Court.

Before the 18<sup>th</sup> amendment, federal capital had no high court. Islamabad high court was formed

~~18th~~ after the 18<sup>th</sup> amendment.

## ~~19~~ 19 - Institutionalization of Judiciary.

After 18<sup>th</sup> amendment, Institutionalization of Judiciary was done. Supreme court judges will be appointed by 2 senior judge, one retired judge, attorney general and law minister. Similarly, the high court judge will be appointed by Chief Justice of High Court, Senior most judge, provincial attorney and provincial law minister.

## 20 - Institutionalization of Care-taker Government.

Care-taker government will be selected by the approval of all the parties of the National Assembly including the opposition.

## 21 - Institutionalization of Election Commission of Pakistan.

Election Commission of Pakistan was also institutionalized under the provisions of 18<sup>th</sup> amendment.

## Criticism on 18<sup>th</sup> amendment.

Although 18<sup>th</sup> amendment promoted the principles of democracy. However, it is subjected to some criticism as well which are discussed below.

### 01 - Center left with low budget.

Under the 7<sup>th</sup> NFC awards, <sup>from</sup> the total budget

amount that the centre has, its 57.5% is  
granted to the provinces, leaving centre with  
low amount. For instance, in the year 2022,  
the centre had 4.3 bn revenues, amongst which  
2.5 bn were given to the Sindh only <sup>in the form of royalties</sup> because  
70% of the gas that country obtain is from  
the Guduk region.

## 2- Non-cooperativeness of Provinces.

After the 18<sup>th</sup> amendment, provinces were  
empowered more and after that provinces  
do not cooperate with centre on many  
factors such as CPEC etc.

## 3- Some matters could be handled better if they'll remain to centre.

~~Some~~ Certain departments can be handled better  
if given responsibility to the centre.

For instance, in the year 2012, many deaths  
were caused in Punjab Institute of cardiology  
where a substantive medicine was given  
to the patients that was approved by  
Sindh department. After this incident,  
drug regulation was transferred to the  
centre.

## 4- Allocating departments to provinces will lack a standard values.

As each province, will have their own

policy, which will lead to different standards across the Pakistan. Hence, lacking one single standard.

5- Increasing terms of Prime-Minister will decrease the chances of emergence of new leadership.

After the two terms, it will provide the opposition to come and increase the chances of new leadership but increasing the term to unlimited time decrease the chances of new leadership and increase the chances of dictatorial leadership.

6- No enforcement criteria of 18<sup>th</sup> amendments.

There are no criteria for enforcing the provisions of 18<sup>th</sup> amendments. Hence, many provisions are restricted to the constitution book only. For instance, in Pakistan, local governments are still not formed or not strong enough to fulfill their duties.

7- Institutionalization of Judiciary, ECP and caretaker governments lack the specific concerns.

After 18<sup>th</sup> amendment, for a long time ECP had not hired 2 of the 4 members of its committee. Similarly critics says that caretaker government is subjected to ~~biased~~ biasness <sup>compromising</sup> ~~ignoring~~ its real essence and spirit.