

Question: Discuss the federal structure of 1973 Constitution of Pakistan after the 18th Amendment. Why has it been subjected to criticism?

• INTRODUCTION

Federalism in Pakistan has been regarded as the best form of government. The sharing of power between federal and provincial governments results in a harmonious connection between the two. Unfortunately, due to various factors the federal structure in Pakistan could not strengthen. In this regard, the 18th Amendment has proved to be a binding force in restoring the federal character of the constitution. It significantly altered the federal structure by addressing the long standing demands of provincial autonomy and a more decentralized system of governance. Moreover, it created the necessary boundaries in civil-military relations, limited Presidential powers and restored the role of Parliament and Prime Minister. However, it has also faced criticism which generally revolves around concerns related to governance, financial management, national unity and much more.

• FEDERALISM BEFORE THE AMENDMENT

Federalism is a form of government where national affairs are managed by the centre while the provincial governments administer the matters of local interests. The federal structure of Pakistan had the following characteristics before the 18th Amendment:

(a) CENTRALIZED POWER

Pakistan adopted the Indian Act of 1935 as its constitution with minimal changes. Since the British created a system where majority powers lay with the centre, consequently the 1973 constitution initially established a strong central

government with significant authority over provincial matters.

(b) LIMITED PROVINCIAL AUTONOMY

Provinces had limited control over their resources and policy decisions. Key subjects for example natural resources were controlled by the centre leading to tensions between centre and provinces.

CHANGES AFTER THE 18TH AMENDMENT

Pakistan has a Parliamentary form of government. However, the 8th and 17th Amendments in the 1973 constitution of government lost its essence and tilted the balance of power in favour of the President. However, the 18th Amendment tried to restore the original spirit of the federal form of constitution. Following are the major changes brought by this Amendment:

(a) Abolition of Concurrent Legislative Lists

The 18th Amendment abolished the concurrent legislative list transferring many subjects to the exclusive domain of provinces. This shift gave provinces greater control over areas such as health, education, agriculture and local government.

(b) Creation of boundaries between Civil-Military relations

Article 6 of the constitution was amended declaring that keeping the constitution in abeyance or attempting to do so will be regarded as high treason. Moreover, 17th Amendment was revoked placing a limit on powers of the President.

(c) Strengthening Provincial Autonomy

Provinces gained more power over their natural resources including oil, gas and minerals. Provinces were given the authority to levy and collect taxes on services, enhancing their fiscal autonomy.

(d) Fiscal Decentralization

The National Finance Commission (NFC) Award- Article 160-

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Also add the reference of the respective amended article numbers

was restructured to ensure a more equitable distribution of resources between the federal government and the provinces. Provinces now receive a greater share of the divisible pool of taxes.

(e) Limits on Presidential Powers:

Article 58-2(b), which provided President with the power to dissolve the Parliament was removed. Article 107 limits the power of the President to bypass the normal legislative procedure by decreasing the time to consider the bills passed by the parliament to 10 days as compared to 30 days previously.

(f) Increased Responsibilities of Prime Minister and Parliament

Article 91 removed the limit on Prime Minister serving not more than 2 terms. Article 101 requires the President to appoint governors of provinces on the advice of the Prime Minister. Article 243, binds the President to appoint military chiefs on the advice of Prime Minister.

CRITICISM ON 18TH AMENDMENT

The 18th Amendment to the 1973 constitution of Pakistan while widely regarded as a significant step towards decentralization and provincial autonomy, has also faced criticism from various perspectives. Below mentioned are a few primary areas of criticism:

(a) Fiscal Imbalance:

Critics of the 18th Amendment assert that transferring a large part of fiscal resources to the provinces limits the federal government's financial space for defence expenditure and debt servicing. Moreover, some critics argue that provincial governments may not have the expertise to manage these resources effectively.

Use the arguments relevant to the qs statement

Add more arguments

References??

(b) Dilution of unity:

18th Amendment was assumed to be beneficial in strengthening the federation of the country. However, no real unity developed between the provinces and the federal government. Critics argue that the 18th Amendment has the potential to fragment the country by weakening the authority of the central government. Hence, leading to a more weak federation.

(c) No real check on Military Powers:

The 18th Amendment has not yet been successful in resolving the political problems of the country. The government continues to hold limited powers on budgets and policies of the military.

(d) Inconsistencies in Policy Implementation:

The devolution of powers has led to inconsistencies in policy implementation across different provinces. For example, education and health standards now vary significantly from one province to another, leading to unequal development and service delivery.

(e) Resource Distribution Disputes:

The amendment's provision for increased provincial control over natural resources has sparked disputes between the centre and the provinces, as well as among provinces themselves, particularly over the distribution of oil, gas and other resources.

CRITICAL ANALYSIS

The 18th Amendment to the 1973 constitution of Pakistan, while a landmark in decentralizing power, presents a complex array of challenges. The transfer of key

A 20 marks answer should have around 15 arguments/subheadings and be on 7-9 pages

responsibilities to the provinces was intended to empower local governments. However, this change has exposed significant governance issues, as many provinces lack the capacity to manage their expanded responsibilities. The resulting disparities in policy implementation, particularly in education, health and environment regulation, have led to inconsistencies across the country. Moreover, the increased autonomy of the resource-rich provinces has raised concerns about equitable resource distribution. While the 18th Amendment aimed to strengthen federalism, it has also highlighted the challenges of maintaining unity among provinces and centre, and effective governance in a highly decentralized system.

CONCLUSION

The 18th Amendment has been a milestone in the evolution of the federal structure of Pakistan, marking a decisive shift towards decentralization. It restored the Parliamentary charter of Pakistan. While it addressed many of the problems related to centralized power, it has also posed new challenges in governance and coordination. Nevertheless, the need of the time is to implement the Amendment in its true spirit to strengthen the federal character of the country.

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