

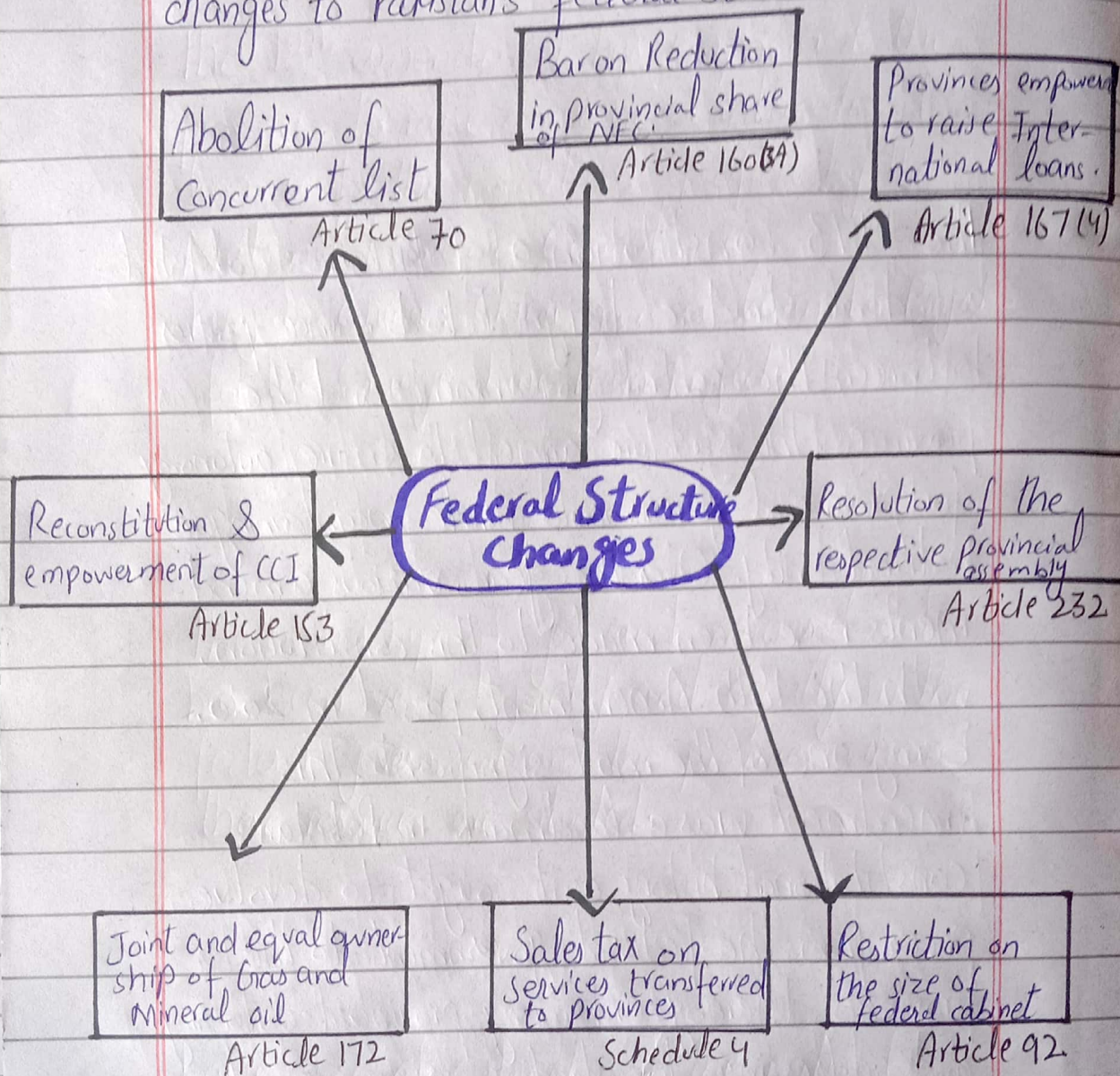
Discuss the Federal Structure 1973 Constitutions of Pakistan after 18th Amendment. Why criticism on 18th Amendment started recently?

1. Introduction:-

The 1973 constitution of Pakistan established a federal structure designed to balance power between the central government and the provinces. This structure aimed to ensure autonomy for provincial governments while maintaining national unity. Over the years, various amendments have been made to this constitution, with the 18th Amendment, passed in 2010, being one of the most significant. This amendment was a landmark in Pakistan's constitutional history, as it sought to devolve power from the federal government to the provinces, thereby enhancing provincial autonomy and addressing longstanding grievances about centralized governance.

2. Federal Structure After 18th Amendment:

The 18th Amendment brought profound changes to Pakistan's federal structure.



i) Abolition of Concurrent List (Article 70) :-

The concurrent list appended to the Schedule-IV of the constitution contained 47 subjects on which both parliament and Provincial assemblies could legislate. However, the federal law held precedence over provincial laws made in connection with the concurrent list as provided under article 143 of the Constitution.

This List was, however, abolished while 44 of the 47 subjects devolved to provinces whereas three of its subjects, i.e. boilers, electricity, and legal, medical and other professions were transferred to federal legislative list.

ii) Bar on reduction in provincial share of NFC Award (Article 160(3A)) :-

The cumulative provincial share in NFC Award (elder divisible pool) cannot be reduced from previous Award. Out of the amount under divisible pool taxes (after deduction of 1% of KP), **561** was assigned to the provinces and **441** to the federation for year 2010-11 and **5751** to the provinces and **4251** to the center for subsequent years. This implies

that after 2010-11, share of the federation is 42.5% and that of provinces is 57.5%.

iii) **Provinces Empowered to raise International Loan (Article 167(4)):-**

The 18th amendment has empowered the provinces to raise domestic or international loans under the conditions specified by the National Economic Council. **For example:** Punjab - China: China gave a loan to Punjab for the Orange Line Train Project.

iv) **Joint and equal ownership of Gas and Mineral oil (Article 172(3)):-**

The ownership of gas and mineral oil has been vested jointly and equally in the federal government and the provinces where these resources are situated.

v) **Restriction on the size of Cabinet (Article 92):-**

Large size of cabinet put the national excheques under undue burden. Pakistan has witnessed large size of cabinets in political government. The 18th amendment

has, however, attempted to prevent this practice by restricting the size of cabinet to 11% of the total strength of Parliament in following manner.

- "Provided further that the total strength of the Cabinet, including Ministers of State, shall not exceed eleven percent of the total membership of Majlis-e-Shoora (Parliament)"

$$\begin{aligned} & (\text{No of MNAs} + \text{No of Senators}) \times 11\% \\ &= (336 + 100) \times 0.11 \\ &= (436) \times 0.11 \\ &= 47.9 \\ &= 48 \text{ when rounded off.} \end{aligned}$$

This implies that size of cabinet cannot increase from 48 members.

vii) **Reconstitution and Empowerment of CCI (Article 153):-**

The council of common interest established under Article 153 of the constitution provides a forum to the federal government and provinces where they can discuss and resolve disputes in order to maintain a spirit of

political harmony. Under 18th amendment the council has been reconstituted with following composition.

- The Prime Minister who shall be the Chairman of the Council;
- The Chief Ministers of the Provinces;
- Three members from the Federal Government to be nominated by the Prime Minister from time to time.

vii) Sales Tax on Services Granted to Provinces:-

Previously under the domain of the Center, "Sales Tax on Services" was transferred to the provinces by amending "Federal Legislative List" contained in schedule 4 of the Constitution.

viii) Resolution of the respective provincial assembly made mandatory for proclamation of emergency on account of Internal Disturbance in a Province (Article 232):-

It was declared that before imposing emergency in a province, a resolution from the provincial assembly of that province would be required.

3- Criticism On 18th Amendment:-

i) Low Fiscal Space with the federation (160(3A), 172) :-

The biggest criticism on 18th amendment emanates from its financial repercussions. The critics maintain that it has put the federation under financial constraints because the bulk financial resources have been transferred to the provinces. **Former Prime Minister Imran Khan said:** "After the 18th Amendment, the federation has become bankrupt."

- The major implication of 18th amendment include restriction on reduction of provincial share of NFC Award, giving equal share to the provinces in ownership of gas and Mineral oil and transfer of "Sales Tax" on Services to the provinces."

ii) **Complaints of Non-cooperative attitude of provinces towards the federation (Art 70, 160(3A), 232):-**

The amendment in Article 70, 160(3A), 232 have increased political and financial autonomy of the provinces. The Federation complains that after getting powers under 18th amendment, the provinces are reluctant in extending required cooperation towards the center. The federation needs cooperation of the provinces for these functions which provinces are allegedly not extending. The Prime Minister of Pakistan lamented that non-provision of data by the provinces on time lead to wheat crises in Pakistan.

iii) **No mechanism for enforcement of the provisions of 18th amendment:-**

Many of the provisions of 18th amendment remain unimplemented. **For example:** local governments have yet to be established on a strong footing. Article 25-A provides right of education but more than **25 million** children of school going age are out of school. The Council of Common Interest is required to meet once in every quarter but its meetings

don't take place for years. So, number of the provisions of 18th amendment which sound promising remain restricted to the book only. No mechanism had been devised for practical implementation of such provisions.

iv) **Potential Risk of Contradictory Standards on different Subjects:-**

After 18th Amendment the subjects such education, food safety inspection of agriculture, air and water pollution, consumer product, highway safety and health have been devolved to the provinces making the provinces free to devise their own standards on these subjects. Ideally ^{these} (Contradictions in) standards should be uniform across the federation which has, however, become difficult after 18th Amendment.

v) **Subjects which can be better managed at federal level have been devolved to provinces:-**

Another criticism at 18th amendment is about devolution of certain subjects to the provinces which could have been better managed federal level. Two years after passage of 18th amendment,

in year 2012 many patients died due to use of substandard medicine. It transpired later that the medicine was approved by the Health Department of Sindh because Drug Regulation was a provincial subject after 18th Amendment. On realization that drug regulation could be managed better at federal level, the provincial assemblies surrendered this subject to the Federation under Article 144 of the Constitution, following which "Drug Regulatory Authority of Pakistan" was established at federal level. Likewise disaster management, food and environment is also held by the critics to be a wrong decision as these subjects could be better managed at federal level.

4. Conclusion:-

The 18th Amendment to Pakistan's 1973 Constitution significantly reshaped the federal structure by empowering provincial governments and enhancing their autonomy. While it addressed many historical grievances related to centralized governance, it has also sparked recent criticism. These critiques highlight challenges in admi-

administrative capacity, disparities in service delivery, and fiscal management. The ongoing debate underscores the need for continuous evaluation and adjustment to ensure that the balance between provincial autonomy and national unity effectively serves the interests of all citizens.
