

SUBJECTIVE PART

QUESTION No # 01

Discuss the federal structure of 1973 constitution of Pakistan after 18th Amendment.

Why criticism on 18th Amendment started recently?

INTRODUCTION:

Pakistan, being a multi-ethnic and multi-linguistic country experienced various forms of federalism that shaped its governance structure. In the historical context, unfortunately, the federal structure in Pakistan did not strengthen because of the legacy of British imperialism, delay in constitution, the continuous toppling of governments by martial laws and political anarchy in the country. Federalism in Pakistan before the 1973 constitution reflected a dynamic interplay between centralization and decentralization influencing the

country's Political landscape and Governance framework. Moreover, the constitution of 1973 of Pakistan underwent significant changes by the dictators in order to enhance their powers in contrast to the spirit of federalism through amendment 8th and 17th. However, these changes in 1973 constitution lead to the landmark 18th amendment. According to its chief Architect Raza Rabbani:

"The most significant restructuring process since Independence"

This amendment aimed to devolve power to provinces, enhance the provincial autonomy and rebalance the relationship between federal and provincial governments. However, in recent times, criticism of 18th Amendment has surfaced, sparking debates and discussion on its implications for Pakistan's federal system.

OVERVIEW OF 18th AMENDMENT:

The constitution of 1973 envisioned the

creation of federal republic. However, the federalist spirit of constitution was not implemented because of the meddling of non-democratic forces in its supervision. The 8th amendment by General Zia-ul-Haq, and 17th amendment by General Pervez Musharraf centralized power and shifted structure from parliamentary to a quasi-presidential system. It deprived provinces of their legitimate constitutional rights.

Besides, the political and structural chaos between the center and province; a landmark '18 amendment' surfaced / was passed on 8 April, 2010. It was passed by 292/342 members of the National assembly. It introduced changes to 102 out of 280 articles of the constitution, bringing changes to essentially 36% of the constitution. This amendment was surfaced to rebalance the relationship between federal and provincial governments.

CHANGES IN THE FEDERAL STRUCTURE OF 1973 CONSTITUTION AFTER 18TH AMENDM- -ENT :

The 18th Amendment to the constitution of Pakistan brought about significant changes in the federal structure of the country, aiming to enhance provincial autonomy and devolve more power to the provinces. The key changes includes:

► Powers of President:

Various articles in the 18th Amendment reduced the powers of President to strengthen the federation. Article 48 gives power to Prime Minister, not President, to submit any matter of national importance to a joint sitting of Majlis-e-shoora (Parliament) as a referendum in the form of a question that is capable of being answered 'Yes' or 'No'. This amendment also struck down the infamous Article 58(2)(B) of the constitution that allowed the president to dissolve the national assembly. The amendment has

reduced the President's influence over the legislative process of parliament. Under the new law, if the President returns a bill with or without amendment, the parliament would consider the bill in a joint sitting and upon its approval, it would deem to have approved by the president even if he does not ratify the bill within 10 days. These changes reduced the president to a ceremonial figurehead according to the spirit of Parliamentary federalism.

► Promotes Democracy by ensuring Provincial Autonomy:

• Legislative Assembly:

The amendment abolished the concurrent list of the legislative subject. Only the federal legislature list enumerated the powers of the federal government. All the residuary powers were vested with the provinces.

Provincial assemblies could legislate

on vast subjects such as criminal law, contracts, Transfer of Property marriages, and labor, Health, Education and Local Government also devolved to Provinces.

"The 18th Amendment has strengthened the foundations of democracy in Pakistan by devolving power to the grass roots level."

~ Shah Mehmood Qureshi

.. Ethnolinguistic Issues of Provinces:

The Bill changed the name of North - West Frontier Province to Khyber Pakhtunkhwa. It also changed the spellings of Baluchistan to Balochistan. These changes signifies that state was willing to settle the ethnolinguistic issue of Provinces in the country through constitutional reforms.

.. Financial Autonomy:

The amendment making the provinces self-sufficient by providing them

financial autonomy. The 18th amendment strengthened the position of National Finance Commission (NFC), which under article 160 of the constitution is responsible for distributing resources among the center and provinces.

“The 18th amendment is a victory for federalism and democracy in Pakistan, ensuring a fair distribution of resources and power among the provinces.”

~ Bilawal Bhutto Zardari

According to clause 3(A), the share of the provinces in each Award of National Finance Commission shall not be less than the share given to provinces in the previous Award. It also increased the provinces' share in the federal divisible pool from 47.5 to 57.5%.

Distribution for NFC Award:

Share (%)	Federal	Provincial	Population	Poverty and Backwardness	Revenue generation and collection	Inverse population on Density
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	42.5	57.5	82	10.3	5	2.7
Punjab (1)	5	51.4				
Sindh (1)		24.55				
KP (1)		14.62				
Bal (1)		9.09				

• Joint and Equal Ownership of natural resources:

The amendment inserted a new clause 172 that limited the ownership of the federal governments to lands, minerals and other things of value. Consequently, enhancing the provinces' control over these resources. In this way, greater financial autonomy was provided to the provinces.

► Fundamental Democratic Rights.

The amendment created several fundamental rights by inserting new articles in the constitution, such as; Article 10A, provide the right to a fair trial; Article 19A which made access to information a right of the citizens, and Article 25A which made

free education up to the age of 16 a fundamental right as well.

• Creation of Boundaries in Civil-Military Relations.

Article 6 of the constitution was amended to enhance the sphere of the definition of 'high treason' to deter any future abrogation of the constitution. Accordingly, keeping the constitution in abeyance or attempting to do so shall be regarded as 'high treason'. And such an Act would not be validated by any court, whether High Court or Supreme Court. Moreover, the 14th amendment was repealed, eliminating the Legal Framework Order from the constitution. Thus, a limit was placed on the powers of the president and the process of judicial appointments was also altered, returning Pakistan to a parliamentary system of government.

MANIFESTATION OF RELENT CONTROVERLIES AND CRITICISM ON 18th AMENDMENT.

⇒ Uniform National Curriculum (UNC),

The federal government proposed a UNC to ensure the quality and standardization of education across the country and to promote national cohesion and integration. However, some provinces and stakeholders opposed the UNC, arguing that it violated the provincial autonomy and diversity of 18th Amendment and it imposed a centralized and ideological curriculum.

⇒ Health Sector:

The 18th Amendment transferred the responsibility of health services and policies to the provinces, giving them more autonomy and flexibility to address their health needs and priorities. However, the provinces faced many challenges in managing the health sector, such as lack of capacity, coordination, regulation and resources.

⇒ Infrastructure Projects and Dams:

The 18th Amendments gave the provinces more authority and share in the development and management of infrastructure projects, such as dams, roads and railways, i.e. Kala Bagh controversy. However, the provinces faced many barriers in executing the infrastructure projects, such as the lack of consensus, cooperation, the trust among the federal and provincial government and the political parties.

⇒ Electoral Reforms:

The 18th amendment aimed to strengthen the parliamentary democracy and the rule of law in Pakistan by restoring the 1973 constitution and reducing the presidential powers. However, the 18th Amendment didn't address the need for electoral reforms to ensure free, fair and transparent elections in

the country. The federal and provincial government and the political parties have different views and interests on the electoral ~~refo~~ system, the election commission, the use of technology and the electoral laws.

CONCLUSION:

In conclusion, the 18th amendment to the constitution of Pakistan marked a significant milestone in reshaping the country's federal structure. By devolving more powers to the provinces, strengthening provincial autonomy, rebalancing power between the federal and provincial governments. The amendment sought to address historical imbalances and empower provinces to cater to local needs effectively. recent criticism has emerged raising about its implications and impact on government.

Balancing provincial autonomy with national cohesion, will be essential to ensure effective governance, equitable development and sustainable federal-provincial relations in country.