

2018 - Question 6

Discuss the nature of centre-province relations under the 1973 Constitution.

Introduction;

Pakistan is a federal state and not a unitary one. Power is shared between centre and provinces. In order to ensure smooth running of the state affairs, it is important that there is co-ordination and co-operation between the centre and the provinces. Power should be distributed fairly between both. Resources should be allocated and timely ~~other~~ provision of funds should be ensured. The 1973 Constitution of Pakistan allows cordial relationship between centre and the provinces.

1) Legislative Relations;

There are laws made in every state according to which it is governed. The articles given in the 1973 Constitution give clear rulings about the jurisdiction of both federal and provincial laws. **Article 141** tells us about the territorial jurisdiction of each law. Federal law prevails in the whole country, whereas provincial laws are applicable within the territorial boundaries of the respective province. **Article 142** divides subjects under federation and provinces by **Federal Legislative List**, all the subjects in this list are dealt with by the centre. All residuary power is given to provinces. There are some subjects as well which include criminal law, procedure and evidence.

(a) In case of conflict;

In case of conflict between the federal and provincial law, federal law will prevail as per **Article 143** of the Constitution of Pakistan. Provinces will surrender their subjects to centre in ~~case~~ such a scenario. This is in **Article 144** of the Constitution.

2) Administrative Relations.

Article 146-7 establishes that centre and provinces can transfer their institutional powers to each other as per the circumstances, in case they mutually decide that transferring institutions to one another will result in better governance. There should be lawful co-operation between the centre and the provinces, according to **Article 148**. Provinces should comply to federal orders issued in public interest as per **Article 149**. **Article 150** bars provinces from banning intra-provincial trade. It is not permissible to take any such steps that create issues between the provinces. No such legislation is allowed. Land can be acquired by the provinces on direction of federal government under **Article 152 - Land Acquisition Act 1984**. This allows smooth running of the administrative affairs of the state.

3) Financial Relations.

The power of taxation has been given to federal government in the **Article 160** of the Constitution of Pakistan (1973). The revenue collected by the federal government will be distributed among the provinces according to the National Financial Commission (NFC) Award. Currently 7th NFC Award is being used in which 57.5% of the revenue goes to the provinces. 11th NFC Award is under discussion. As per **Article 161**, F.E.D will be given to provinces a gas, hydro projects and other ~~other~~ major natural resources found in the province. Net Hydro Profit will also be given to provinces according to **Article 161**.

Provinces can acquire international loans with collateral guarantee given by federal government. (**Article 167**). There will be joint and equal ownership of oil and gas reserves by centre and provinces. (**Article 172**) This allows more autonomy to provinces, empowering them to use their resources more independently without any unnecessary federal intervention.

4) Political Relations:

There is a fair electoral process created to fortify state both the centre and provinces. **Article 41** describes the process of Presidential Elections in which both the federal legislature and provincial legislature is involved in the election procedure. State Elections are done under **Article 59** of the Constitution in which provincial assemblies are the voters. Each provincial assembly elects their senators which in turn represent their province in the Parliament.

The governors of the provinces are appointed by the centre (**Article 101**) as governor, represent federal government in the respective provincial assembly. The territorial boundaries of the provinces can be changed by ~~the~~ passing resolution in the provincial assembly as per **Article 239**.

5) Conc. Institutions:

There are some conc. institutions made to facilitate centre and provinces in their affairs. Their jurisdiction is whole country, all laws, regulations and rules created by these institutions are mandatory to follow by each and every state institution rather it be federal or provincial. These include;

(i) Council of Conc. ^{Interests} Ideology (CCI)

Resolution of disputes and policy formulation of shared subjects.

(ii) Council of Islamic Ideology (CII)

Advises the government on whether laws conform to Shariah.

(iii) National Economic Council (NEC)

Decides on the economic and fiscal policies of the state.

(iv) National Financial Commission (NFC)

Distributes revenue between centre and provinces.

(v) Supreme Court of Pakistan (SC):

Highest Court for conflict resolution, appeals etc.

(vi) Federal Shariat Court

Examines laws to ensure they comply with Islamic injunctions.

(vii) Auditor General of Pakistan (AGP)

Audits government accounts to ensure transparency, accountability in public life.

(viii) Electoral Commission of Pakistan (ECP)

Conducts elections in the country at all levels: Federal, Provincial, Local.

(ix) All Pakistan Service (PAS & PSP)

Civil Service of Pakistan including Pakistan Administrative Service and Police Service of Pakistan.

6) Emergency Provisions:

There are three types of emergencies that are discussed in the Constitution:

(i) War, or External Aggression etc. (Article 232)

Resolution will be passed in Provincial Assembly. President will be the proclaiming authority. There will be no specific duration of this emergency as it may or may not be stopped during a specific time period. Senate and National Assembly will be the confirming authority. All legislative and executive powers of the provinces will be transferred to the centre. Fundamental Human Rights will be suspended to maintain law and order in the country. The term of National Assembly will be extended by one year.

(ii) Failure of Constitutional Machinery: Proving.

This has been discussed in Article 234. President will be the proclaiming authority. Six months will be the

duration of this emergency. Parliament will be the coining authority. All the legislative and executive powers will be transferred to the federal government.

(iii) Financial Emergency (Article 235):

In case of a financial emergency, President will be the ~~from~~ proclaiming authority. Emergency will be declared for six months. Parliament will be the coining authority. All the financial responsibility of the province will be transferred to the federal government. ~~There~~ There can be a deduction in the salary of provincial employees until the emergency stays declared.

Conclusion:

There has been an effort to create harmony between the centre and the provinces through laws. It is very important for the federal and provincial governments to co-ordinate with each other to resolve the conflicts that arise over time. Federal structure can only sustain through mutual co-operation between the two. Equitable distribution allows better governance in a federal state, which should be our main goal.

Year 2022 - Question 3:

Discuss the federal structure of the 1973 Constitution after the 18th Amendment. Why criticism of the 18th amendment started recently?

Introduction:

Amendments are done to the existing articles of the Constitution in order to make room for new legislations that become necessary due to new challenges and needs of the public and state institutions. There have been a total of 26 Amendments passed till date by the Parliament. Among these 26, 18th Amendment is the most significant as it changed the relative

ship between the centre and the provinces, allowing greater provincial autonomy. It was passed on 19th April 2010 and 102 articles were amended out of the total 280 Articles of the 1973 Constitution of Pakistan.

(i) Important Provisions of the 18th Amendment:

There have been 102 articles amended, however there are 25 most important provisions that are often discussed where 18th Amendment is under debate. These provisions are as follows:

- (a) The name of North West Frontier Province (NWFP) was changed to Khyber Pakhtoon Khwa (**KPK**) to respect ethnic identity of the Pashtuns. Similarly, Sindh was changed to **Sindh**.
- (b) In order to prevent any Martial Law to be implemented in the future, Suspension of Constitution was considered to be **High Treason** and would be punishable by law.
- (c) Right to fair trial, information and free education was added to the list of Fundamental Human Rights provided in the Constitution. Education would be free and compulsory for children aged five to sixteen, it will be state's responsibility.
- (d) There will be ban on holding intra-party elections.
- (e) Providing legislative and judicial cover on extra-constitutional activities was banned.
- (f) The President can no longer dissolve the National Assembly of Pakistan.
- (g) The Governor who represents centre in provinces can no longer dissolve the Provincial Assemblies.

(h) Ordinances cannot be issued more than once. The duration of Federal Ordinance will be 240 days and that of Provincial Ordinance will be 180 days. (p)

(i) There is no restriction on more than two consecutive terms of the Prime Minister. (1)

(j) The formula used to calculate Cabinet size of the Federal government is as follows; (2)

$$\left[\left(\frac{\text{No. of members in National Assembly}}{\text{No. of members in Senate}} \right) \times 11\% \right] = \text{Cabinet size}$$
$$[336 + 100] \times 11\% = 47$$

(k) Governors of the provinces will be appointed by the Prime Minister. (v)

(l) The formula used to calculate Cabinet size of the Provincial government is as follows; (v)

$$\left(\frac{\text{No. of members in Provincial Assembly}}{\text{No. of members in Provincial Assembly}} \right) \times 11\% = \text{Cabinet size}$$

(m) The system of local government is mandatory under law. (x)

(n) Quarant lists were abolished. (p)

(o) Re-constitution or implementation of Bill of Common Interest (C.I) (a)

(p) The share of provinces under 7th NFC Award will be 57.5% and this share cannot be reduced through any procedure. (i)

(q) Provinces can acquire international loans by collateral guarantee given by centre. (11)

(r) There will be joint and equal ownership of oil and gas reserves by centre and provinces. (1)

(s) Islamabad High Court will be established. (7)

(t) Parliamentary Committee and Judicial Committee will be established. There will be 8 members in total, 4 from the government and 4 from the opposition. Institutionalization of Judicial appointments shall be done. (7)

(u) Institutionalization of Election Commission of Pakistan (ECP) appointments shall be done. There will be total 12 members, 4 should be from the existing government and 4 should be from opposition. (1)

(v) Institutionalization of caretaker government appointments should be done. (2)

(w) Service Chief shall be appointed by Prime Minister. (1)

(x) Resolution from Provincial Assembly shall be passed to approve legislation of provinces. (1)

(y) Sales tax service shall be given to provinces under FFL. (16)

(2) Criticism on 18th Amendment; (11)

(i) Federal Authority Over Provinces; (0)

The Council has been getting abolished and the need of resolution from provinces to approve legislation of provinces has reduced federal authority over provinces. The centre has to be stronger than the units to ensure maintenance of (9)

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public order in the state. Provinces give more autonomy than the centre itself creates chaos and problems in overall running of the state institutions.

(ii) Fiscal Space for Federal Taxation:

Sales tax & service tax are given to provinces under FFL, joint & equal ownership of oil & gas revenue, 57.5% share of provinces under 7th NFC Award, all these leave little fiscal space for federal taxation. Furthermore, the share of provinces cannot be reduced which acts as a hurdle to improve fiscal management. Taxes are collected by the centre but the revenues are distributed between provinces by a large percentage. This leaves little room for federal projects.

(iii) Intra-party Elections:

Even an intra-party election is problematic in its own as it increases party politics. Members of the party use manipulative techniques to get selected as ~~party~~ party representatives. Nepotism, favouritism and monopoly within party increases. It is never fair and similar party members are selected every year.

(iv) Executive Term of Prime Minister:

As there is no legal restriction on the more than two executive terms of Prime Minister, it allows no room for new leadership to emerge. Monopoly of a specific political party and its members is established which is difficult to counter. Equitable distribution of authority is missing.

(v) Implementation Part Missing:

Although local government has been made mandatory, right to fair trial, information and education has been given, Cabinet size of federal government and provincial government has been decided upon, which is commendable in its own.

There has been no timeline ~~give~~ for the implementation part of these amendments which leaves the actual problems unattended. Legislation is no doubt a very important part of the solution, however it cannot exist in isolation, there needs to be execution as well. (ii)

(vi) Division of Subjects Between Centre and Province;

There have been some subjects which have been transferred to provinces which are better administered under federal government. For example, disaster management could not be done under provinces so it was given back to the federal government by **NDMA Act 2010**. Similarly, drug regulation was not functional under provinces as fake drugs could not be controlled and many people died. Eventually this subject was given back to centre. ^(Amendment 2015) In order to create uniformity of operations, subjects should be transferred to provinces or vice versa. (iii)

Conclusion;

While critics have found multiple flaws in the 18th Amendment, some of the amendments are actually impressive due to their rational nature. There is room for improvement in every field. The execution of these amendments will be beneficial for state, this should be the primary focus of the state institutions. In case there is conflict among the centre and provinces, it can be resolved easily through mutual consent and discussions on platforms like Council of Common Interests (CCI), NEC, NFC etc. (vi)