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Q: Discuss the Federal Structure of Pakistan's 1973 constitution after 18th Amendment. Why criticism on it started recently?

Introduction:

The 18th Amendment to the constitution of Pakistan in April 2010 was monumental development in the country's constitutional history. The Amendment significantly consolidated the federal structure of Pakistan.

It abolished the concurrent list, strengthened the council of common interests (CCI), increased the provinces' share in NFC Award, and overall, made the provinces to a great extent financially autonomous. Therefore, the 18th constitutional revision was a landmark development in Pakistan's federal and constitutional history.

Federal Structure Before the Amendment:

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a- Strong centre and weak Provinces:

Before the Amendment, the centre was significantly stronger. There was a concurrent legislative list which included 47 subjects. Both the centre and the federating units could legislate on the concurrent subjects. However, the centre had an overriding authority and could cancel the legislations of the provinces in case of conflicts.

b- The Centre's Control over Resources:

The centre had a unilateral control over resources such as water, gas, oil, and other minerals. The provinces had no role in their management. Neither did they have any shares in the revenue generated by these resources.

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Structure of Federation After the Amendment:

The 18th Amendment strengthened the federation by granting autonomy to the provinces as envisaged in the original 1973 Constitution:

1- Abolition of the Concurrent List:

The concurrent list included 47 important subjects such as licencing of arms, marriage and divorce laws, education, labor laws and environmental laws. The 18th constitutional revision abolished this legislative list and devolved the subjects to provinces.

2- Strengthening of CCI:

Before the Amendment, the CCI was largely an ineffective body under the cabinet division. Now it has been moved under the ministry of

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Provincial coordination. The permanent Secretariat of the Council has been established and the Prime Minister himself now chairs the Council. Moreover, it is required to meet after every 90 days. The Council's purpose is resolving federal-provincial and inter-provincial disputes.

3- Financial Autonomy Granted to Provinces:

a- Share in NFC Award:

The share of provinces has been increased 10% from 47.5 to 57.5%. Moreover the share of a province will not be less than its share in the previous year.

b- Revenue of Gas and oil:

The revenue collected from the oil and gas, including royalty and

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excise duty, will be allocated to the province from where gas and oil is extracted.

C- Joint Ownership of Natural Resources:

Natural resources are jointly owned by the federal and provincial governments.

d- The Authority to Raise Loan:

Provinces have been mandated to raise domestic or foreign loan on the security of provincial consolidated funds. However, it will be done within the limits specified by the National Economic Council.

E- Consultation Before a Hydro Power Project:

The federal government may construct a hydro-power plant in a province only after

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consulting the concerned provincial government.

4- Constitutionalization of Local Governments:

Before the amendment, there was no provision in the 1973 constitution regarding local governments. Now Article 140A has been inserted in the constitution, making the establishment of local governments a constitutional requirement.

Criticism of the 18th Amendment:

1- The increased Share in NFC Award:

Critics contend that the provincial governments' share in NFC Award should be revisited. This is because it puts fiscal pressure on the federal government. The centre has to service debts, spend on defense,

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and allocate to infrastructure development. Moreover, the NFC funds have made provinces reliant on the centre. They are not willing to widen their tax bases and generate revenue on their own. The taxes collected by provinces only make about 1% of the country's GDP.

2- construction of Dams:

The requirement to consult on projects with provincial governments have delayed vital projects, such as the Diamer Basha dam, and Kalabagh dam. Projects important for national security should be solely under federal government's authority.

3- Education Fostering inequalities:

Education should be federal responsibility. After

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the Amendment, it is the provinces' responsibility. This fosters inequality as some provinces which are underdeveloped lack the capacity to provide high quality education. As a result, students from these provinces are unable to compete on national and international levels.

Conclusion:

The 18th Amendment enacted in Pakistan's constitution is a landmark development. It strengthened the federalation by granting greater autonomy to the provinces. It abolished the concurrent list, and granted financial autonomy to the federating units. However, some of its provisions should be revised to make provinces self-reliant and foster equality and security.