

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

Introduction!

The constitution of 1973 is considered one of the most important milestones achieved in the ^{constitutional} history of Pakistan. It ~~was~~ ^{is} not only a consensual constitution but also has remained intact and effective over the course of time—with several amendments made over time to keep it relevant and contextualized. Within the 1973 constitution, 18th amendment remains the most highlighted part. Celebrated for its key provisions such as parliamentary form of government, restrained presidential powers, devolution of power to the provinces and from provinces to the local governments, enhanced share of provinces in the National Finance Commission Award, and increased autonomy of provinces, it also faces criticism over certain aspects. For example, it does not provide clarity over areas such as "Service-tax", reduces the fiscal capacities of the center, provincial comparison ~~leads to~~ ^{leads to} enhanced provincial riots, and makes standardization difficult. However, 18th amendment remains ~~the~~ one

of the most significant constitutional achievements by Pakistan. Currently, proposals are underway in the parliament to update key provisions of the 18th amendment such as NFC Award's distribution.

Federal Structure of 1973 Constitution Under 18th Amendment: Key Provisions:

18th amendment ~~lead~~ led to the devolution of power from the center to the provinces — and to local governments ultimately — under certain provisions. These provisions are as follows:

1. Abolition of Concurrent List:

Concurrent list describing the common areas or overlapping areas among the centre and the population was abolished under 18th amendment. Rather, a Federal List was put forward describing the center's domains while the rest of the areas rested with the provinces. This ensured that provinces could spend their budget according to the problems they face or areas they needed to work on the most.

2. Definition of Treason:

18th amendment provided a clear definition of treason; whereby abrogating

the constitution or holding it in abeyance were also declared as treason. This was done under the Article 6 of the Constitution.

3. Restrained Presidential Powers:

18th Amendment also increased

the presidential powers. This was done to ensure the intactness of the democratic rule. Under these provisions, the president could not unilaterally dissolve the parliament.

Similarly, appointment of judges of Supreme Court, & Commissioners etc. required more input from the Prime Minister. President could appoint them but only on the advice of the President. It is after this provision that we have seen the continuity of the civil rule as of now.

4. Fiscal Federalism:

18th Amendment also increased the provinces' share in NFC award in a "formulaic" manner. This involved division of the federal tax pool not only on the basis of population (82%) but also on the basis of other factors such as poverty/backwardness (10%), inverse population density (2.7%),^{and} revenue generation and collection (5%). This was deemed as an equitable rather than equal approach and provided low developed countries such as Balochistan

^{an} enhanced access to the resources. Similarly, Khyber Pakhtunkhwa gets additional funds to combat terrorism in addition to its 14.1% share.

5. Strengthening of Institutions:

18th amendment also provided provisions for strengthening of institutions such as Council of Common Interests to ensure smooth and enhanced cooperation between the center and the provinces.

6. Devolution of Power:

18th amendment's most cherished and significant provision is the devolution of power. Under this provision, the concurrent list was abolished and 47 areas which were previously under the domain of the center were now given ~~to~~ under the jurisdiction of the provinces. This included education, health, marriage along with the others. Similarly, under Article 140A, it was made mandatory that political, executive, and judicial powers would be devolved to the locally elected governments. This would ensure provision of resources and reforms at grassroot level.

Despite all these provisions, 18th Amendment receives criticism at multiple fronts which are as follows.

1. Vagueness:

Despite the abolition of concurrent list, 18th Amendment does not provide clarity on the contested areas; such as "Service tax" remains a contested/ conflicted domain between the center and provinces.

2. Lower Federal Fiscal Capacity:

18th amendment also faces criticism for reducing the fiscal capacities of the center. As Pakistan Business Forum (2023) states,

"The Center is left with nothing after provinces take out their shares".

This affects areas such as foreign affairs, defense, and foreign debts and their repayment.

3. Obstaining Standardization:

Devolution of power to provinces takes away the power from the center to a great extent. This makes standardization — to ensure uniform and equal access of resources — difficult. For example, implementing single national curriculum remains difficult as education is a provincial domain and it would require their consensus to do so.

Similarly, emerging informal threats such as climate change require a standardized central policy, provision for which is not provided in the amendment.

4. Inter-Provincial Competition:

With each province having its autonomy each province may find itself competing and comparing with the other. This may exacerbate the interprovincial discrimination and sectarianism. For example, the perception of Punjab being the dominant province and Balochistan being the weakest and least developed may further interprovincial tensions.

5. Lack of Provincial Resources:

Despite the devolution, provinces lack resources such as technocrats and human resources to make the most of the provisions of the amendment. This reduces the effectiveness of the later.

6. Federal Attitude:

The center, even after the devolution of certain areas to the provinces, act as the dominant over areas such as education. This was demonstrated in the case of a university in Sindh. The Such instances and attitudes lead to the deterioration of center-province relations.

7. Provincial Inefficiency:

While the Article 140A obliges the provinces to devolve power to local governments, provinces have failed to do so. This comes as a major criticism on 18th Amendment as with enhanced provincial autonomy, provinces may fall to a stronger hold of certain political parties.

8. ~~Good~~ Recent Developments:

18th Amendment is recently receiving a lot of backlash from the KPK government while the central government has put forward a few proposals to update the amendment.

Conclusion:

With all of its shortcomings and criticisms, 18th amendment remains undeniably significant in the constitutional history of Pakistan. It has not only ~~was~~ provided a framework to address the grievances of the provinces, but also acts as a guide to empower the grassroots, ensure democracy's superiority, and provides a more equitable share to provinces in the NFC Award. However, it needs to be updated to adapt to the emerging challenges — both formal and informal.