

Q. Discuss the federal structure of 1973 constitution of Pakistan after 18th amendment. Why criticism on 18th amendment started recently? (CSS 2022)

1. Introduction

Eighteenth Amendment in the Constitution of Pakistan, 1973 is also called a "mini constitution" as it amended the governance structure of the Pakistan to very large extent. It is greatly significant because of change of Presidential system of governance to the parliamentary system of governance. It strengthened the autonomy of provinces and their financial and executive powers. The amendment institutionalized legislature judiciary, election commission of Pakistan and formation of caretaker government. For the first time opposition was involved in government. Despite all these reforms, the amendment received a lot of criticism as well. The lack of federal authority being one of the major concerns. It created a fiscal space and affected the economy of country. It rushed to divert powers from center to province

failed to provide mechanisms for implementation. Policy fragmentation and lack of standardization of health and post education system also received criticisms. 18th amendment resulted in province - province increased tensions and have promoted separatism instead of nationalism.

2. Background

The Constitution of Pakistan 1973 had introduced a system of governance that was ^{federal and} parliamentary in nature. Powers were divided between centre and provinces. However, over the course of time, during military dictatorship rule over the country, the system was changed to presidential style through 8th amendment (1985) and 17th amendment (2003). The 18th amendment revived the true spirit of parliamentary system as was desired by the 1973 constitution and created a boundary between civil and ~~not~~ military powers to ensure a stable democratic form of government.

3. Changes in the federal structure

3.1- Strengthened Parliamentary System

The 18th amendment strengthened Parliamentary system. Presidential power to withdraw National Assembly was withdrawn. Power of appointment of Governors was transferred from President to Prime Minister. Power of appointment of services chiefs was transferred from President to Prime Minister. The Prime Minister was made the head of the government and exercised real executive powers while the president was made ceremonial.

The powers of executives and legislatures were fused as PM and cabinet is drawn from legislature. Thus, a strong parliamentary system was revived.

3.2. Strengthened Provincial Autonomy

Provinces were greatly empowered through 18th amendment. The power of a governor to dissolve a provincial assembly was withdrawn.

The "concurrent list" was abolished and mostly subjects were given to the provinces.

including the important aspects / subjects of education, health, disaster management etc.

A bar was declared on reduction in provincial share of NFC award. Joint and equal ownership of gas, minerals and oils was given to provinces alongwith the center.

Sales taxes on services were also granted to provinces. ^{So} More financial share and subjects were given to provinces to increase their autonomies and independence, and were even allowed to take international loans.

3.3- Empowerment of local Governments

The concept of local governments, introduced by military rule, was re-inforced. Formation of local governments was made mandatory by the 18th amendment. The powers were delegated to lowest levels of governance.

3.4 - Restrictions on Cabinet Sizes

The previous practices of a huge cabinet and was discouraged and sizes of federal and

Provincial cabinets were restricted. The practice of ministers without portfolios and still getting benefits was discouraged. Maximum size of cabinet was restricted to 11pc of number of members of Parliament.

3.5- Involvement of Opposition in Important Matters

For the first time, opposition was involved in decision making. Equal representation of opposition was ensured in important matters of appointment of judges and in appointment of Election Commission of Pakistan.

3.6- Institutionalization of Appointments

Before 18th amendment, President of Pakistan had significant discretionary powers in the appointment of judges, election commission of Pakistan and caretaker governments. The amendment institutionalized these appointments of these through formation of Judicial commission, parliamentary committee etc.

3.7 Empowered Council of Common Interests CCCI

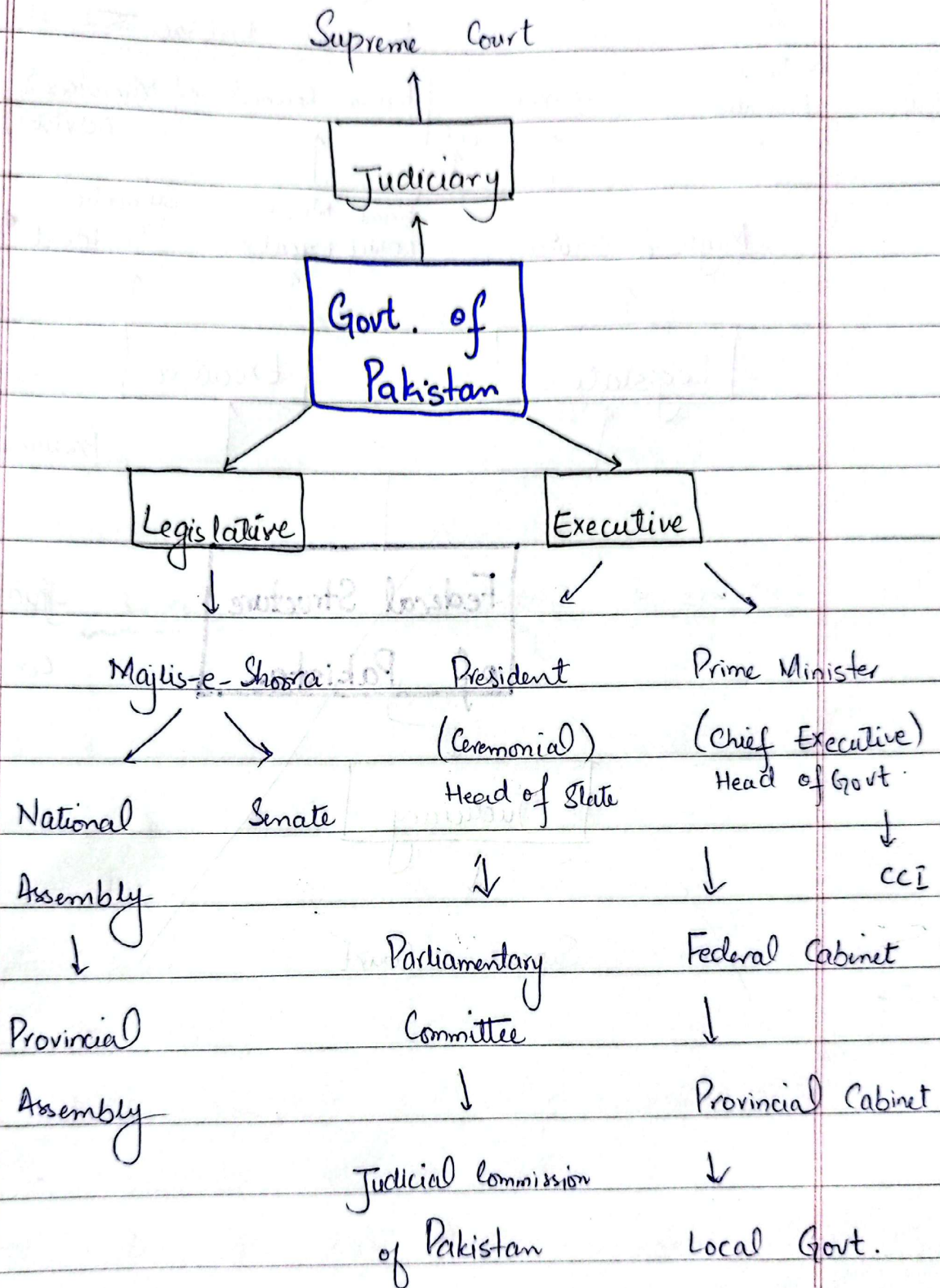
Council of Common Interests (CCI) has been empowered to better solve the Province-Province conflicts within the countries boundary. It now has equal representation from federal and provincial governments and its decisions are mandatory.

3.8- Civil and Military Powers Gap

The 18th amendment in The constitution, created a gap between civil and military powers. Pakistan's governance has been faced with several military rules and dictatorships in the country. To avoid such circumstances in future, suspension or holding in Abeyance of the constitution has been declared as high Treason. Bar has been declared on courts to validate these extra constitutional affairs adventures. This way stability of democratic government has been ensured by creating a gap between two powers.

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4. Criticism on 18th Amendment

4.1 Fiscal Imbalance

Due to the 18th amendment, a fiscal space has been created at the center. Reduction of Centre's share in NFC award with bar on reduction of provincial share has reduced funds available with federal cabinet. The funds are further reduced due to joint and equal ownership of provinces in gas, oil and mineral resources. The federal state has to pay off loans and interests on the loans, defence, subsidies created a severe fiscal imbalance. Federal Govt is financially strapped and runs large deficits, while provinces are often accused of having surplus funds. In 2013 federal govt had to pay 12tn rupees loan that skyrocketed to over the years, with currently 75 trillion rupees as of 2025.

4.2 Lack of Federal Authority Over Provinces

Another main criticism on 18th amendment is that it reduced federal authority and power over provinces. A number of subjects that were previously jointly controlled were given to provinces after abolition of concurrent list, even including health and education. The federal government has been left with minimal authorities and limited subjects.

4.3- Incapability of Provinces to Handle Many Subjects

Another criticism on 18th amendment is that it was not well formalized. Without much thought process the system was changed from presidential to Parliamentary and powers from shifted from center to province without devising any mechanisms to execute the new subjects. Many subjects that could have been well managed by the center were also transferred to provincial govt. Provinces were not capable enough of handling those subjects, that caused problems soon after the amendment. The subject of disaster management was given to the provinces, but as Pakistan faced deadliest floods in 2010, the provincial governments found themselves unable to handle the havoc. Through National Disaster Management Act (NDMA) 2010, provinces sought help from the center and gave the subject back to Majlis-e-Shoora. Similarly, 'drug regulation' subject was also transferred back to federal govt.

4.4- Policy Fragmentation and Lack of Standardization

Another criticism, on the federal structure of 18th amendment is that it caused policy fragmentation and lack of

standardization in key areas. Federal Government dismantled institutions related to devolved subjects, creating a policy vacuum with no central body to regularize and guide. Now every province has its own curriculum, and its own health policies and environment protection strategies. As a result, the quality of health and education differs a lot within the country. This may also ~~create~~ ^{promote} possible "separatism" in future where provinces have the prerogative to decide the curriculum and how the minds of young kids are directed in schools.

4.5 - Threat to National Identity / Integration

The center is the prime of union of provinces. With a weakened center, the bond between provinces has also weakened. Sectarian and Separatism movements have speed up their anti-state agendas, for example, Baloch liberation movements. Instead of being united as a nation, every province now stands as an independent (to some extent) body, with a vast range of authorities. In a country like Pakistan with diverse cultures and groups, it is very critical to maintain unity and integrity of the country. However, weakening of center has increased tensions between provinces on water and other resource sharing.

4.6 - Lack of Implementation

Although the 18th amendment was based on strong grounds and tried to revive democratic government, however, it failed to provide mechanisms for proper implementation.

Devolution of powers to local governments was never done in true spirit. 18th amendment stated that it is the responsibility of the state to provide education to all citizens but the provincial ~~gover~~ governments failed to do so.

From 1981 to 1998, there was a 17% increase in literacy rate of Pakistan. From 1998 to 2010, it further increased by 14.1%. But unfortunately, from 2010 and 2017 it only increased by 1%.

Though Punjab and KPK improved their health services, but Sindh and Balochistan lagged way behind to provide the people access to basic health facilities.

4.7 Accountability of Provinces

With the autonomy of provinces, came lack of accountability of provinces. The centre does not have any power over the provinces, therefore, the provincial governments are not answerable to the state for their failures and incapacities.

4.8 Misuse of Power by Prime Minister

Contrary to presidential system, where powers were shared between executive and legislative, in parliamentary system, Prime Minister exercises all powers as head of executive &

legislature. This leads to the possibility of misuse of power. It gives complete control of the Pakistan into hands of one leading party. The Prime Minister can control institutions like ~~the~~ National Accountability Bureau, police and even judiciary

5- Critical Analysis

The Eighteenth amendment was a big transformational step for Pakistan. It brought back the spirit of a democratic step government. It also tried to lower the resentments of the provinces by empowering them financially and through more subjects. It promoted good governance by strengthening local governments. But an important aspect was ignored. Such a big shift in the structure required thorough working on how to transfer powers in what timeline, how to handle matters during the transition period, what would be the operating procedures of provinces for the new subjects they acquired, what would be their infrastructure, chain of command and human resource management system etc. These were all the important steps that required time and proper management. The Eighteenth amendment was carried out in rush by an urgent consensus of Government and political parties to reverse ~~dictatorial~~ dictatorial reforms. The clauses were not discussed and deliberated much. Resulting in decisions without working procedures, and phased plans that created ~~in~~ "capacity gaps". Constitutional links were not developed

for working of and power devolution to local governments. Therefore, the amendment resulted in poor implementation and lack of mechanisms for governance.

Another important aspect that was left ignored was the fact that Pakistan has diverse cultures, beliefs, languages and differences of poverty, population and development among its provinces. The under developed demanded more attention and privileges, that didnot necessarily meant that the center should be deprived of all powers. For stability and unity of the country, the autonomy of the provinces and a strong binding mechanism through center needed balance. The political urgency and interests resulted in promoting separatism instead of nationalism. The center is made ceremonial, with ~~all~~ ^{most of the} powers and important institutions, like health and education, given to provinces.

6. Conclusion

The 18th amendment was a major milestone in the constitutional history of Pakistan with that on one end gained strong support and on the other hand got a lot of criticism. It is appreciated for promoting democracy, good governance, attention to human rights, strengthening constitutional base, & institutionalization of judiciary, election commission and

appointment of caretaker govt. and for increasing autonomy of provinces. On contrary, it is criticized for weakening of center, ^{increasing} ~~creating~~ province-province tensions, promoting separatism and individuality, and for lacking implementation. It created fiscal space and resulted in increased loans on Federal Government.

The new system lacks standardization and uniform policies among provinces. Parliamentary system has been selected as the most suitable choice for Pakistan. The constitution does not need a drastic shift; instead with proper mechanisms and implementation, and balance between central binding and provincial autonomy, the governance system can be very effective. ~~The need of this~~ ~~water is that~~ ~~problem~~. It only needs commitment and loyalty.