

Sara Maryam

DATE:

19th Jan

DAY:

PAK Affairs Test 2

Q1. INTRODUCTION

The constitutional amendments passed in Pakistan has changed the course of Pakistan's political history in a significant way. Different political leaders passed amendments to serve their own interests, which were then reversed by other leaders. These amendments changed the country's legal and political framework. It led to a musical chairs of governments where governments were dissolved by the president, and no one government could complete its tenure. 18th amendment is the most significant of all amendments as it completely altered the dynamics of centre-province relations. It gave more autonomy to the provinces, both legislative and financial, thereby creating a strong federation. The legal framework was changed by the establishment of military courts in 21st amendment, and by 18th amendment's addition of Article 6 to the 1973 constitution.

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MAJOR CONSTITUTIONAL AMENDMENTS AND THEIR SIGNIFICANCE IN POLITICAL HISTORY

The major constitutional amendments of Pakistan are as follows,

1. 2nd Amendment: Ahmedis declared as Non-Muslims

2nd Amendment to the Constitution of Pakistan declared Ahmedis as non-Muslims by giving a definition of Muslims.

This amendment made Ahmedis as ~~non~~ minority in Pakistan, which led to outrage from the community. The status of Ahmedis in Pakistan had been a bone-of-contention since Pakistan's inception. This amendment settled the dispute.

2. 8th Amendment: From Parliamentary to Semi-Presidential System

The 8th amendment was passed by Zia ul Haq. This amendment

made **Objective Resolution** a substantive part of the Constitution.

This amendment also changed the political system from parliamentary to a semi-presidential system. The President now had the power to dissolve the National Assembly.

3. 13th Amendment : Reversal of 8th Amendment

13th Amendment reversed the 8th amendment, restoring the parliamentary system and the President could no longer dissolve the parliament. This amendment was significant as it halted the musical chairs of governments.

4. 17th Amendment: Reversal of 13th Amendment

17th amendment given by President Musharraf restored the Presidential system.

5. 18th Amendment : Centre-Province Relations

Fundamental Right

Article 25 (A)

Article 19



Clipped Power of President



18th Amendment



Judicial Changes

- Treason Article 6



- Emergency powers (232)

- Appointment of Governor (101)

Provincial Autonomy

- Legislative autonomy
- Financial autonomy Article 70 (4)

18th amendment's significant contribution was establishing a strong federal structure by giving the province more autonomy. The provinces can now legislate on subjects that are regulated by the **Council of Common Interests**, and they have the residuary powers.

6. 21st Amendment: Military Courts Established

In the wake of Peshawar APS Attack military courts were

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established for the trial of terrorists.

7. 25th Amendment: KP-FATA Merger

25th Amendment merged the Federally Administered Tribal Areas with Khyber Pakhtunkhwa. This amendment is significant as it brought development in the areas.

THE WAYS AMENDMENTS

SHAPED THE LEGAL AND

POLITICAL FRAMEWORK

These amendments shaped the country's legal and political framework in the following ways:

1. Discontinuation of Political Policies

As the governments kept changing when the governor or the President dissolved the National Assembly and the Prime Minister, political policies could not continue.

8th Amendment 17th Amendment

- President had the power to dissolve National Assembly unilaterally.

Presidential Powers

Dissolved National Assembly

Hindering Political Development

Since no government could not complete its tenure and term, the political development of country was affected.

2. Increasing Role of Non-Representative Institutions

The political musical chairs created political vacuum which allowed the non-representative institutions to take reins of the government. This created civil-military imbalance in

the country. 18th amendment put an end to this by introducing Article 8 in the constitution, according to which, anyone abrogating the constitution can be tried for treason.

Political
Musical Chairs



Political Vacuum



Non-Representative Institutions
Increasing Role



Civil-Military Imbalance



18th Amendment
Article 6 - Treason

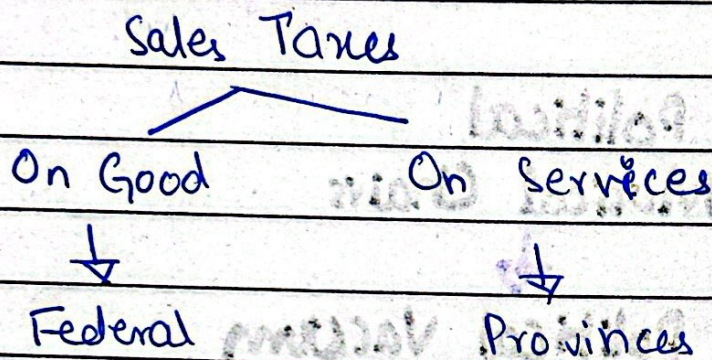
3. Creating a Strong Federation

18th amendment created a strong federation through the following measures,

- i. Imposition of Emergency (Article 23) can only be done with provincial approval.

ii. Council of Common Interests must meet ^{every} ~~with~~ 90 days.

iii. Financial Autonomy

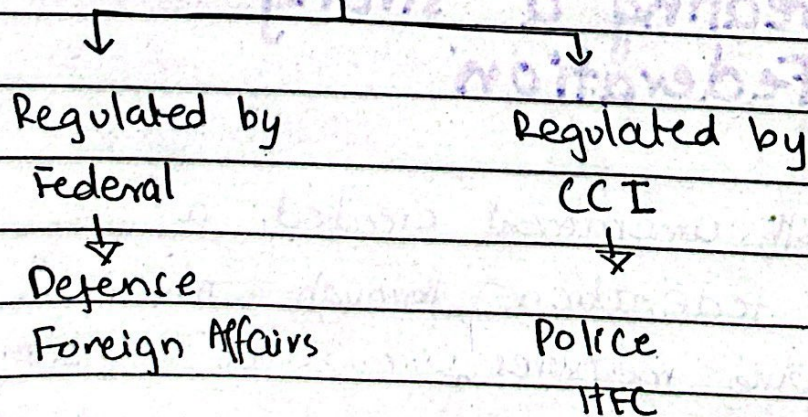


Provinces can now collect sales tax on services.

iv. Legislative Autonomy (Article 70(4))

Concurrent list was abolished and residuary powers were given to provinces.

Subjects



Residuary: Health, Education

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CONCLUSION

The constitutional amendments passed have both hindered the political development and fixed previous errors. They have shaped the country's legal and political framework by reducing the powers of the president, balancing the relations between centre and provinces, and forming legal frameworks that hold leaders accountable for violating the constitution.

Q2. INTRODUCTION

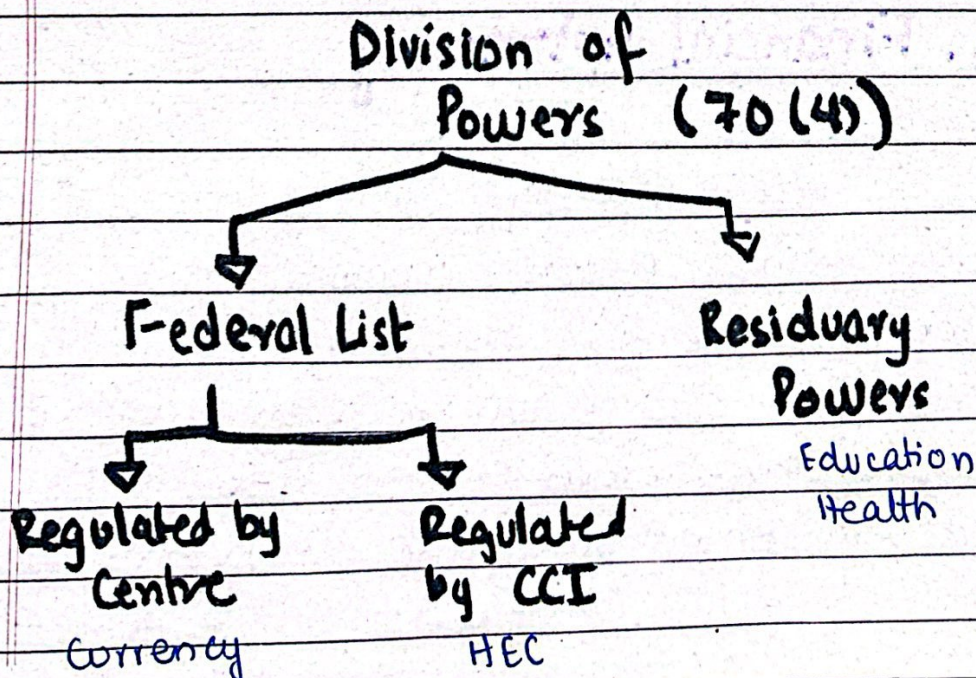
Spirit of Federalism enshrined in the 1973 Constitution ensures that units and periphery areas are not marginalized. ~~They~~ Federalism ensures that units have considerable autonomy and the power is not accumulated in the centre. According to spirit of federalism, units should have representation in the centre, they should have some financial autonomy, and legislative autonomy. The measures required for the smooth functioning of relations between the centre and the province include provincial approval for policies and decisions directly impacting the province, the inclusion of provinces in developmental projects, functioning and empowering the local governments, and creation of new provinces to address grievances. Pakistan learn from the federalist model of US and can introduce bicameralism in provinces, and separate provincial constitutions. These measures can ensure smooth functioning of relations and national integration.

THE SPIRIT OF FEDERALISM AS ENSHRINED IN THE 1973 CONSTITUTION

1973 constitution provides for a strong federal structure, which includes,

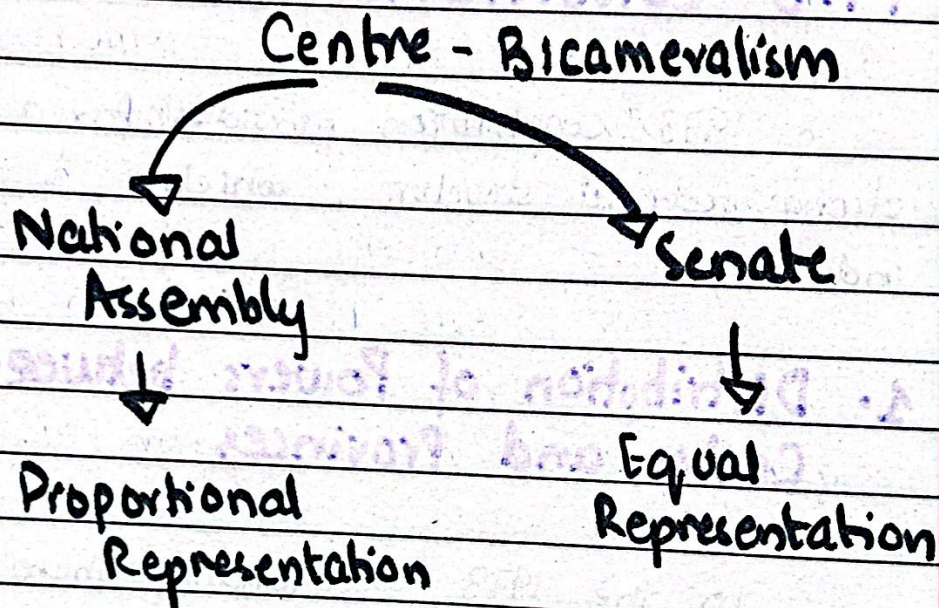
1. Distribution of Powers between Centre and Provinces

In the 1973 Constitution, there were two legislative lists: Federal list and Concurrent List. The concurrent list was abolished in the 18th amendment and the residuary powers were vested in the provinces.



This division of powers gives provinces autonomy to legislate.

2. Representation in Centre

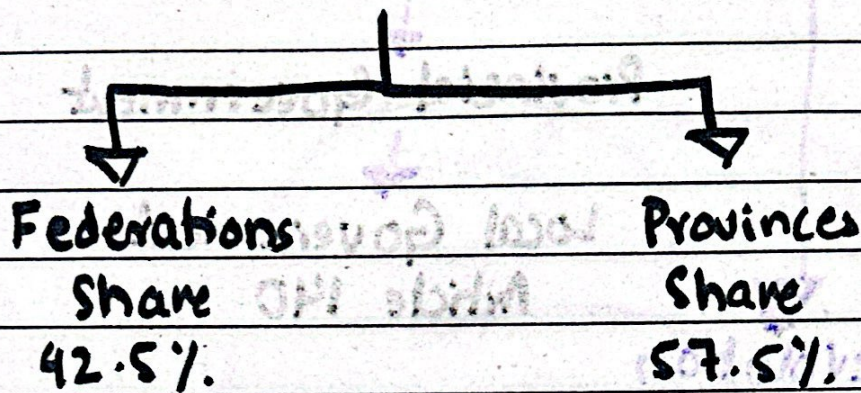


This form of representation gives provinces equal representation in the Senate, despite their small population, such as Balochistan.

3. Financial Autonomy

According to the spirit of federalism, provinces should have financial autonomy. This includes distribution of revenue in such a manner that provinces can get adequate amount for their expenditure.

NFC Award



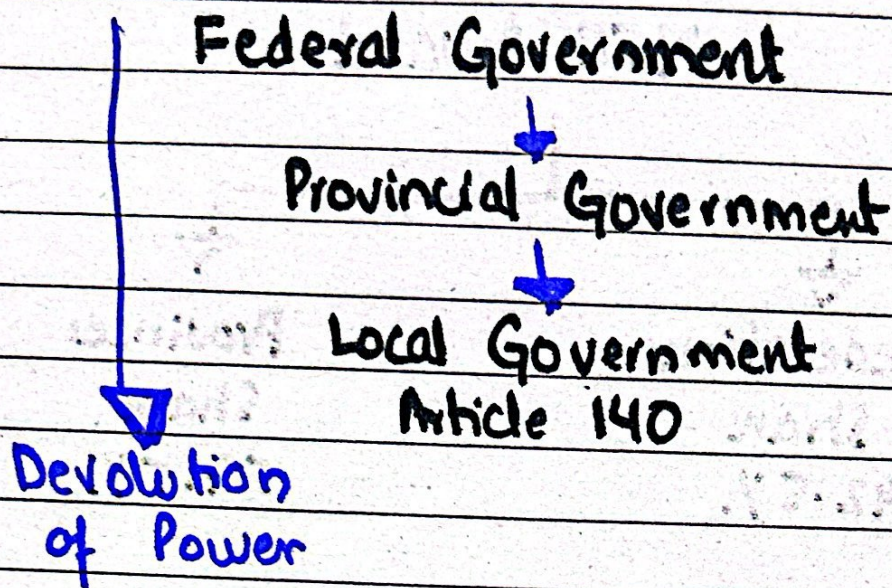
This is the vertical distribution of revenue, which is then further divided among provinces, following the criteria:

1. Population - 82%
2. Poverty - 10%
3. Revenue - 5%
4. Inverse population density 2.5%

This criteria ensures that even ~~popo~~ provinces with less population have financial autonomy and adequate share of revenue.

4. Local Governments

According to the spirit of federalism, a federation should have well-functioning and empowered local governments.



Power must be devolved from
to federal government to local government.

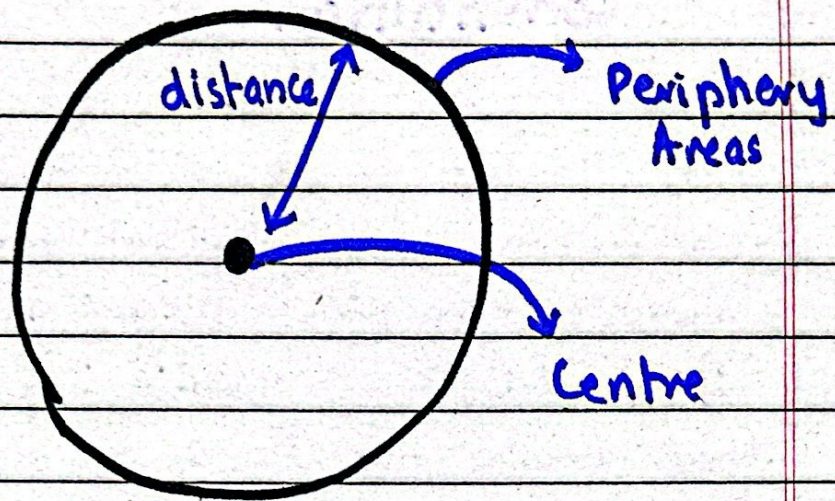
MEASURES REQUIRED FOR SMOOTH FUNCTIONING OF CENTRE-PROVINCE RELATIONS

The following measures are required,

1. Provincial Approval for Emergency

India is considered to be unitary
in practice because it does not require
provincial approval for proclamation
of Emergency. A strong federation
requires provincial approval.

2. Creation of New Provinces



The distance between the Centre and periphery area is increasing. This means that the periphery areas are underdeveloped, marginalized and do not have representation in the provincial assembly. To fulfill this gap, creation of new provinces is required.

3. Empowering Local Governments

For smooth functioning between centre and province, local governments should be empowered. They must be given financial autonomy, a share in the revenue and powers to implement policies.

9. US Model : Bicameralism in Provinces and Separate Constitution

In the US there is a strong federation and smooth functioning of Centre and province relations. US states have a bicameral legislature that allows for equal representation in provincial senate and the states have a separate constitution. Pakistan can adopt similar measures for smooth functioning.

CONCLUSION

Federal structure is the most well-suited structure for Pakistan as it allows provinces representation and autonomy, ensuring service delivery. However, Centre-province relations can deteriorate at times leading to a strong Centre. To ensure that they function smoothly is important for the spirit of federalism.