

## PAKISTAN'S 18TH AMENDMENT: AN ANALYSIS OF PROVINCIAL AUTONOMY AND GOVERNANCE REFORMS

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### Abstract

*The 18<sup>th</sup> constitutional amendment did away with the Concurrent Legislative List which gave many legislative authorities to provincial assemblies to deal with regional problems. Structural development was done through processes as the Council of Common Interests (CCI) and National Economic Council (NEC) that encouraged federalism provincial input. While analyzing financial areas reforms under the NFC have made the proper distributions of revenues for provinces to exploit natural resources. The Amendment was also intended as a response to past wrongdoings to ensure that power sharing formula together with fiscal decentralization and devolution would ensure equity and good governance at the sub- national level. For a long time, it represented political growth, with the changes being made being relayed on the figures in the leadership whose ability to network across party affiliations was seen as one indicated their capability to work for the progress of the country. The change of province names and the increase of Senate representation for minority gave another meaning to the Hispanic and regional consciousness. Nonetheless, the Amendment brought new meaning to federalism, provision of central control together with decentralized power to the regions. It was supposed to settle the inter-provincial animosities, increase the efficiency of governmental institutions and help lift the living standard of the deprived groups. Being a landmark for Pakistan's constitution it speaks of principles of fairness in governance, balanced regional growth and strong democratic framework.*

### Keywords

18<sup>th</sup> Amendment, Cooperative Federalism, Council of Common Interests, National Finance Commission, legislative decentralization, Constitutional reforms.

### Introduction:

The Constitution of Pakistan itself was promulgated in 1973 and has been amended after being implemented. Since the occasion of Eighteenth Amendment there has been a genuine effort to rectify many of the problems. Some are happy that the government now has another success on its side and this one has been passed through passage by acclimation.

The letter was signed by Mian Raza Rabbani of the Parliamentary Constitutional Reform Committee. It is also known as the best plan after the 1973 constitution since like the original constitution of 1973 this one also passed through the Parliament in a manner, having been voted in with a majority.

This is the first time in Pakistan's constitutional history that the President has been removed from office and returned all those power to the Prime Minister willingly given to him (Hussain & Kokab, 2012). The early politicians are assumed to be united, mature and tolerant of the views of others. During the adoption of the amendment, the media, which had not caused controversy in the past when the amendment was discussed in the Parliament, was also praised. Addition it has been noted that new politicians for the first time politics has humbleness, compactness and paid magnificent regard to the viewpoint of other politicians. When passing the Amendment it was also praised for not making much noise during parliamentary consideration of it for passage (Malik, 2010) The potential advantages were on the same side. Services, the supporters of the amendment claimed, could be decentralised, and thus the concerns that were removed. They also used localising spirit for the amendment could help to establish more fair governmental management since ethnic minorities and other vulnerable members of a country living in the remote areas are usually neglected by the authority in the central

government. Expectations persisted to increase as the amendment was being searched to be implemented at a faster pace that is rare within the policy domain of Pakistan to the people, and remove concerns. The amendment's localising spirit could also promote more equitable governance by better accommodating ethnic minorities and other marginalised residents often overlooked or ignored by the central government. Expectations continued to rise as the amendment was rapidly implemented a rapidity that is unusual within Pakistan's policy realm (Kugelman, 2012)

#### **Drafting the 18th Amendment:**

A 'Constitution Reform Committee' was formed under the leadership of the then Senator Mian Raza Rabbani. It was tasked with reviewing the entire Constitution clause by clause and article by article, so that all amendments made by the military dictators which violated the basic constitutional contents, could be eliminated and the Constitution be brought back to its original form. The committee deliberated over for about nine months and presented its final report to the National Assembly which approved the 18th Amendment to the Constitution on 7 April, 2010 (Abbas, 2023). A 27-party parliamentary committee on constitutional reform was formed with an aim to erase out the influence of autocratic setup from the text of a Constitution and to bring the state back on the healthy, stabilized, and consensus-based legal platforms. The Committee focused the following reforms which would enhance the political institutions officer to the general public, reduce the discretionary powers, enhance parliament and provincial assemblies powers, increase the provinces autonomy, enhance the independent judiciary, the bill of right and governance. It referred to its own constituent members, it went in search of ideas and recommendations for a constitutional reform and even see Private Member's Bill on constitutional amendments introduced by Pakistan Senate. Intention of this process was to afford its members an opportunity to have an open, free and frank discussion of constitutional issues and to arrive at decisions not influenced by party prejudice. It was a milestone achievement in the Pakistan, not only for the sweeping non-party constitutional reforms but also for the congeniality which this operation had received across the political line to make Pakistan as federal, parliamentary system of government (Ahmed, 2020)

#### **Transfer of Powers to Provincial Governments:**

Provincial Autonomy was a major demand of the leading political parties of Pakistan right from independence and despite getting the 18th amendment much serious steps have been taken in this regard. It completely eliminate the concurrent list from the constitution, out of 47 subjects passed 40 to the provinces and transferred There should be 20 to 25 roles in each state. For the first time since 1973 constitution there is federalism in Pakistan but in letters and spirit fully (Islam, 2019) To keep provincial power, independence and control clause 70 142 143 144 149 157 160 161 167 172 232 233 and 234 of the constitution have been changed. These clauses vested wide powers with the provinces for entering into the affairs of power generation through water, natural gas and to frame and pass the NFC award and for legislation in matters which came under their respective domains (Shah, 2012) The political experience of Pakistan from the British colonialism showed the struggle of federal and provincial government and inter provincial rivalry over the power, resources and revenue, which engaged some of the most devastating crises of the country including the separation of East Pakistan in 1971. Subsequently under the 18th amendment the existing arbitrary body the Council of Common Interest (CCI), with members to be nominated by for the first time since restructured along with provided more power toward address like ailments. Hence, belongings cabinet division meeting, permanent secretariat was provided to the Council of Common Interest at Islamabad and was registered that CCI has to sit at least once in three months (Cookman, 2010) The national economic council (NEC) has been changed to an advisory role at the reform. It has been assigned the responsibility to assess the over all of economy of the country and to guide the federal and provincial governments to plan (PIPS, 2015)

Also, the North West Frontier Province now known as (NWFP) has been renamed to Khyber Pakhtunkhwa as demanded by the Awami National party (ANP) a party of Pashtun ethnic nationalism which they regard as their ethnic identities. To some extent the change in the spellings of the two provinces has been done for the better where Balochistan is the correct spelling of Baluchistan and Sindh of Sind. The 18th amendment safeguards the feelings of less privileged provinces and other

small groups which comprises of the minority community also got benefited from the change it made in the Senate of Pakistan. In the upper house (senate), the four extra seats were reserved for minority (non-Muslims) with one seat in each province (Cookman M. , 2010)

**Provincial Legislative Authority:**

One of its major roles it to make laws for the running of the country for the good and well being of the people. Separation of powers between federal and state governments level is what legislative autonomy refers to. The Eighteenth Amendment abolished Conciliation Commission thiab Fourth Schedule Parallel Legislative List of the Constitution and boosted provincial independence.

**Key changes under the Eighteenth Amendment include:**

**Omission of Concurrent Legislative List:**

The 47 entries of the Concurrent List were abolished, transferring these legislative subjects to the exclusive domain of provincial assemblies. These excluded subjects of legislation was made through removing 47 Concurrent List, which shifted the control of these legislative subjects purely in the hands of the provincial assemblies.

**Division of Legislative Powers:**

Federal and provincial legislatures gained clear, exclusive authority over specific subject matters, as outlined in Article 142. The Federal Legislative List is divided into two parts, with Parliament having exclusive authority over the listed matters and related subjects.

**Shared Subjects:** Three areas (criminal laws, criminal procedure, and evidence) remain under the joint jurisdiction of both Parliament and provincial assemblies.

**Council of Common Interests (CCI):** This body facilitates participatory governance between the Federation and the provinces.

**Supremacy of Federal Laws:** Federal laws passed before the Eighteenth Amendment remain applicable, even on subjects now in the provincial domain.

**Joint Federal-Provincial Subjects:** Critical resources like oil and gas are now considered shared subjects under Article 172(3), ensuring equal federal-provincial participation.

The Eighteenth Amendment redefined legislative autonomy by transferring numerous powers to the provinces, while ensuring collaboration and some overlap through mechanisms like the CCI and shared resource management

**Autonomous Administrative Control:**

**Empowerment of Provincial Governments**

The Eighteenth Amendment has strengthened provincial autonomy in administrative terms by introducing mechanisms for resolving conflicts between the Federation and the provinces and promoting cooperative federalism. Article 147 allows provincial governments to delegate functions to the federal government. Provinces now play an active role in central decision-making processes.

**Role of the Council of Common Interests (CCI):**

Articles 153 to154 enhance this function like the CCI, which solved disputes between states or between states and the federation. The CCI formulates and regulates policies on subjects in Part-II of the Federal Legislative List, including water, power, and other critical areas. The CCI's decisions are binding unless modified by Parliament.

**Participatory Federalism:**

The CCI fosters cooperative federalism by promoting joint policymaking and conflict resolution between federal and provincial governments. It ensures policy alignment between the Federation and provinces to avoid conflicts in vertical power-sharing.

**National Economic Council (NEC):**

The NEC's membership and responsibilities have been clarified, emphasizing its role in reviewing the country's economic conditions and formulating financial, commercial, and economic policies. It ensures balanced development, regional equity, and adherence to the Principles of Policy.

**Hydroelectric Power Plant Consultation:**

The federal government must consult provincial governments before constructing hydroelectric power plants in a province. Disputes regarding electricity between federal and provincial governments are resolved through the CCI.

**Coordinated Policy-Making:**

The issues included in Part 2 of the federal legislative list require joint policy and management by the federal and state governments, reflecting these principle of collaborative governance. Proposed legislation must align with provincial autonomy and federalism as per Article 142 of the Constitution. The Eighteenth Amendment embeds participatory and cooperative federalism in governance, balancing federal and provincial powers, and ensuring provinces have a stronger voice in administrative and policy matters

**Provincial Control over Finances:**

The financial autonomy in Pakistan, focusing on the relationship between the federal government and provinces, particularly in the context of revenue distribution, resource ownership, and financial governance.

**National Finance Commission (NFC):**

The NFC is a constitutional body tasked with advising the President on financial matters and ensuring equitable distribution of revenue between the federation and provinces Article 160 guarantees that a province's share in any NFC award will not be reduced compared to previous awards. Implementation of the NFC award is monitored by both federal and provincial finance ministries, with reports submitted to Parliament and Provincial Assemblies biannually. Aimed at increasing financial devolution, addressing historical inequities, and empowering provinces by transferring greater financial revenues. Ensures provinces benefit from their natural resources (e.g., oil, gas, minerals) located within their territories or adjacent waters.

**Resource Sharing:**

Net proceeds from federal excise duties and royalties on oil and natural gas are paid to the province where the resources are located. Discoveries of natural resources are owned jointly and equally by the federal and respective provincial governments.

**Provincial Borrowing:**

Governed by Article 167, provinces can borrow on the security of their Consolidated Fund but need federal consent, particularly for external loans or if outstanding loans exist.

**Property Ownership:**

Public property (natural resources owned collectively by the people through government entities). Ownerless property (vested in the government, such as escheated lands or minerals). After the Eighteenth Amendment, resources in the continental shelf or beyond territorial waters are federally owned, while onshore resources are jointly shared.

**Fiscal Autonomy:**

The provincial share in the Federal Divisible Pool exceeds 50%, and provinces now control General Sales Tax (GST) on services, strengthening their financial independence. This framework aims to balance federal oversight with provincial autonomy, ensuring fair resource distribution and addressing long-standing provincial demands for equitable financial and resource management (Qayum, 2021)

**Conclusion:**

In 2010, Pakistan passed the Eighteenth Amendment which has significant achievement inside the legislative and the government. It also introduced a new form of decentralization aimed at enhancing province's autonomy responding to the previously neglected calls for federal-provincial balance. This caused the do away with the Concurrent Legislative List that had entailed many legislative powers and shared them between the provinces and the center, thus enabling the provincial assemblies meet Local Needs more efficiently. These shifts in legislative and administrative roles have institutionalised cooperative federalism into the governance system enhancing central control but not eradicating regional autonomy. Devolution of power was not restricted to legislative area, but was also exercised in the administration and the fiscal domain. The Council of Common Interests and the NEC were reorganized for the purpose of enhancing participatory federalism in the country, so that provinces can have greater contribution in the decision making process. Concerning the fiscal domain, NFC reforms were made that could enhance the provincial share in the revenues especially in relation to resources available in specific provinces. Because of such mechanisms as resource sharing and an equitable fiscas distribution framework were implemented, there was a reduced discontent amongst the

provinces. For strengthening governance, the Amendment represented political maturity as solutions oriented reforms were reached across party lines of political leadership in Pakistan. In its literal and philosophically meanings, the Eighteenth Amendment was made with an aim of resolving inter-provincial competitions, enhanced administration at the lower tiers, and encouragement of subordinate and underprivileged sectors. In conclusion, being a step in the Pakistan's constitutional reform the Eighteenth Amendment is marked by considerable significance. It gives the signal of fairness, increased representation and a fairer balance of power between the central government and the sub juniors. Its prospect in Pakistan is transformative despite the problems in implementation; it provides for unity; empowers the regions and provides for a better and more effective working democracy.

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