



The Eighteenth Amendment and NFC Award under the Shadow of Participatory Federalism and In Pakistan

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ABSTRACT

This article is both analytical and descriptive. It sketches the evolution of federalism in Pakistan to demonstrate the trouble authoritarianism and Unitarianism can inflict on federal stability of a country. For the purpose of this article, both primary and secondary sources are used. The primary sources comprised of the Constitutions of Pakistan, the text of Eighteenth Amendment, major ordinances, reports and legal frameworks related to parliamentary work and official compilation of the CCI meetings. Origins and Evolution provides a brief overview of the conceptual origin and evolution of federalism. It theorizes the development of federalism especially after the importance it acquired with the publishing of The Federalist Papers. This article divides the approach of federalism into legal-constitutional vs socio-cultural dichotomy. The article covers, newer forms of political and constitutional arrangements in Pakistan like 18th amendment and National Finance commission award within the federal ecosystem like consociational federalism are discussed establishing the dynamism of the concept as a political tool.



Introduction

Eighteenth Amendment and National Finance Commission Award (NFC Award)

The Eighteenth Amendment introduced a governance framework that strengthened provincial administrative and financial authority while limiting the Centre's ability to exercise unilateral powers, particularly in dissolving national and provincial assemblies.

The controversial concurrent list was abolished transferring subjects like criminal law, contracts, transfer of property, labor welfare, marriage, health, education etc. exclusively to provinces. The Constitution underwent some serious introspection as evident from the fact that the level of

changes in the Amendment was up to 36 per cent of the 1973 constitution. The 18th amendment had redefined all the structural outlines of the state. This amendment redefined the decentralization to undemocratically controlled centralized federation (Zahir Shah, 2017). It can be assumed that the political connection between federal government and federating units has been completely changed.

The Eighteenth Amendment not only envisaged strengthening the dormant Council of Common Interests (CCI), economic and social development forum, economic planning, and an effective dispute resolution platform to further enhance of participatory federalism. It also gave more teeth to the CCI in various aspects. The parliamentary oversight was secured by means of periodic presentations of the Council reports to both the houses of the national legislature. At the same time quarterly meetings were made mandatory to avoid pendency and delays in resolving conflicts. Three cabinet-ranked federal ministers were made members and the provision of building a permanent secretariat was prioritized. The CCI was greatly strengthened as an institution.

The approval of the amendment has given an economic supplement to the 7th NFC Award was approved in 2009. It was one of the most important moves and major milestone toward strengthening participatory and fiscal federating tendencies in Pakistan.

It was helpful to upward the provincial share in divisible pole. The said constitutional change rose the percentage of the provinces from 47% to 56% for financial years 2010-11 and further increased 57.5% up to 2015.

The provincial ratio of distribution of resources has been changed through this award, such as, Balochistan (9.09 percent), Khyber Pakhtunkwa (erstwhile NWFP) (14.62 percent), Sindh (24.55 percent) and Punjab (51.74 percent). This arrangement has doubled the share of most economically exploited and deprived province. (Mustafa, 2011, p. 4). More significantly, the earlier practice of using only population as the basis for resource distribution— which mainly favored the highly populated Punjab—was revised in the 7th NFC Award. Revenue generation (5%), inverse population density (2.7%), and poverty (10.3%), were the new factors that has been added (Singh and Veena Kukreja, 2014, p. 88). These issues were addressing a long standing demand of the provinces. The resources were distributed in Pakistan solely according to the population invariably befitting the most populous provinces. This initiative was welcome departure to the development most favorably for provincial autonomy (Jalal, 1992, p. 220).

While the 7th NFC Award rearranged the resource distribution pattern by apportioning to weaker provinces their long pending dues, the insertion of Article 160 (3a) through the Eighteenth Amendment ensured that the share of the provinces in each NFC Award could not be reduced than the share of the previous NFC, a provision that is being increasingly seen as a thorn in the flesh by the centralizing forces in Pakistan. This chapter discusses the provisions of the Eighteenth Amendment in detail. No less attention has been given to the narrative being set up by the proponents of a unitary arrangement that the Eighteenth Amendment and the 7th NFC are too much autonomy at one go. The persistent claim by the current Pakistan Tehreek-e-Insaf (PTI) government under Imran Khan that the Eighteenth Amendment places an excessive economic burden on the federation is a clear example of this criticism. The opposition political parties claimed that this amendment nurturing provincial autonomy and should give up the increased share of their revenues. This stance not only reflects the reluctance of centralizing actors to share authority, but also generates concern among provincial leaders, with the Pakistan People's Party (PPP) particularly cautioning against any attempt to dilute the Amendment. The provinces are particularly cautious of the proposed demand of 7 per cent upfront cut in the new formula of NFC Award on the pretext that it has reduced the federal government 's share. According the opposition

political parties such arrangement was as unfounded accusation to hide their own political and administrative weakness which leading to the financial problem in the country.

Some observers in Pakistan have attributed this attitude to the inability of the federal government to carry out structural reforms to manage their rising debts and instead blaming the macroeconomic problems solely on the 7th NFC Award (Sabir, 2018, p. 38). The provincial anxieties are self-explanatory in the wake of carefully crafted criticism of the 7th NFC. The continuation of the 7th NFC Award in an ad-hoc manner even after over 10 years of its approval due to lack of consensus between the federation and the provinces speaks volumes of the delaying tactics of the federal government to frustrate the provinces into compromise. This is also indicative of a possible attempt by the Centre and the Armed Forces to recalibrate in their favour the increased amount accorded to the provinces constitutionally under the 7th NFC. The Centre also views the devolution of natural resource management to the provinces under the Eighteenth Amendment as diminishing its exclusive control over provincial assets.

The attempts by the Centre to restore their hegemony on the provincial resources like gas, minerals etc. through the Council of Common Interest are, too, being vehemently opposed by the regional leaders. Such resistance to change, to which some light has been shed by the opposition political parties, demonstrates that the prevalence of —competing compulsion of being a federation on one hand and to be governed under a Unitary system on the other. This political arrangement has also up warded the reluctance of the provinces to decentralize power further to the local governments as envisaged in the Eighteenth Amendment. Post amendment period has affected socio-economic outcomes and basic service deliveries as demonstrated by the absence of any betterment in social outcomes. The underlying threat of Punjabi domination in Pakistan continues to pose challenges in the form of implementation roadblocks and manipulations given that Punjabis still dominate the bureaucracy. (Adeney, 2012, p. 552). Mohammed Waseem argues that even after the Eighteenth Amendment Punjab's upper hand by no means withered as the recruitment to the two most powerful state institutions in Pakistan – the Army and civil services – is still dominated by Punjabis (Waseem, 2015, p. 40). In the backdrop of such challenges, this chapter looks to analyze how far the Pakistani state could make use of the opportunity presented by the Eighteenth Amendment in course correcting several decades of authoritarianism that did not allow federalism to thrive. It has been examined the Eighteenth Amendment has been able to address the underlying structural problems institutionally by looking into the role of Council of Common Interest and 7th National Finance Commission Award in bringing about the desired change. The serious questions have also raised, at the same time, a serious concern - whether the hope generated by the Eighteenth Amendment is short-lived? Whether the original essence of the Eighteenth Amendment is withering away?

Eighteenth Amendment: Towards Participatory Federalism

If the strong central authority pays mere lip service to the fulfill the aspiration of its inhabitants which leads to the impossibility of the social justice. Ruler should emphasize on the importance of participatory decision-making through adoption of genuine federal practices (Emmanuel O. Ojo, 2009, p. 384). After decades of autocratic and martial rule, Pakistan's parliament unanimously passed the Eighteenth Amendment by 292 votes in favour and none in opposition. —The Committee on Constitutional Reforms played an important role by conducting 385 hours of deliberations and studying 982 proposals on the issue of provincial autonomy.‖ *The Amendment made the 1973 Constitution more democratic, and the 26-member committee formed by the PPP government in 2009 to propose constitutional reforms stands as evidence of this effort.*

Mainstream political parties such as Pakistan People's Party (5) the Pakistan Muslim League (N) (3) and the PML-Q (3) provide 11 members respectively (Hamid, 2010, p. 09), the remaining

included 2 from Jamiat Ulema-e-Islam Fazlur Rehman (JUI-F), the ANP, the MQM and 1 each from Jamhoori Watan Party (JWP), the Pakhtoonkhwa Milli Awami Party (PKMAP), the Jam'at-e-Islami Pakistan, the National People's Party (NPP), the Balochistan National Party (BNP), the National Party (NP) and the Pakistan Peoples Party-Sherpao (PPP-S) (Maqsoodul Hasan Nuri, 2014, p. 30). The Eighteenth Amendment touched in different ways as many as 102 important Articles that mostly pertained to provincial autonomy. The smooth passage of the Amendment in the lower and the upper houses of the parliament on 10th and 15th April 2010 respectively was the result of hard work by all political parties. The Amendment got the president's assent on 19th April 2010 and was promulgated. One of the prominent takeaways of the Amendment was to declare the clauses of subverting/ abrogating /suspending/ conspiring or holding in abeyance the constitution as high treason in clause 6(1) of Part-I (Introductory). Although a delayed response for a country which suffered for 63 years under the thumb of four military regimes, an authoritarian bureaucracy and one highly centralized civilian government, the Amendment was unprecedented in Pakistan's history as it resolved to set aside the instruments made by the dictators (Rabbani, 2016, p. 141). The Emergency provisions under Article 232, 233 and 234 after the Eighteenth Amendment curtailed the power of the President to impose an emergency unilaterally when faced with internal disruption. The key second and third paragraphs added to Article 232, clause 1 require the President to secure a resolution from the concerned provincial assembly before imposing an emergency. If the President acts independently, the decision must be presented to both Houses of Parliament for approval within ten days. These changes significantly strengthen the Senate's role in emergency declarations and introduce additional checks on federal authority. These emendations were intended to stand tall in the defence of the federation by constraining the president to take unilateral decisions by making certain approvals compulsory before imposing the emergency. It was simply meant to forestall the misuse of power for the fulfillment of partisan political agendas as had been done on numerous occasions in the past in Pakistan. The Eighteenth Amendment also placed significant checks on the President's powers to hold, if desirable, a referendum, at his discretion. Here also the role of the parliament was enhanced by making it incumbent to refer the matter to a joint sitting of the parliament as per Article 48 (6). The term 'President' itself was replaced with 'Federal Government' in Article 99 to dispel doubts in the text that personality-driven governance is not the order of the day. The strengthening of the Pakistani Senate by increasing its membership from 100 to 104 also underpins the support to make the parliament supreme and give more voice to the states (Ahmed, 2014, p. 11). It was primary vocation and effort to restore parliamentarianism envisaged in the 1973 constitution. Its major purpose was the promotion of participatory federalism. This amendment provided new strength of freedom of association and expression or strengthened existing ones. For Shahid Javed Burki also, the Eighteenth Amendment was aimed at restoring the supremacy of the parliament through the cabinet headed by the prime minister and empower the provinces with autonomy. The Eighteenth Amendment in some ways was a major signal that Pakistan could evolve into a robust federal country as against the federalism of the past that had become a residual of central patronage. Calling it the mother of all Amendments, Babar Ayaz said that allowing more autonomy was the most important gain of the Eighteenth Amendment, as it was done to the satisfaction of the regional leaders who saw it as the textual fulfillment of the promises of the 1940 Lahore Resolution and by all standards strengthened the federation. This historical link of regions with provincial autonomy is the reason why the passage of the Eighteenth Amendment is still hailed by many experts as —a watershed in the constitutional history of Pakistan. The level of decentralization in a federation is gauged by the devolution of responsibilities to the lower tiers of the government. The abolition of the most —glaring obstacle to provincial autonomy — the Concurrent list — through the Eighteenth Amendment is a case in point. Not only did it fulfill the long standing demand of the provinces, the subsequent transfer of as many as 40 out of 47 subjects of the list to the provinces inspired confidence. This was in addition to the residual powers that

remained with the constituent units. About 17 central ministries that previously handled the transferred subjects were also devolved in a phased manner. These included the ministries as crucial as health, education and environment. Contemporarily, it is the exclusive control of these ministries by the provinces that the federal government wants to get reviewed. Other ministries were Zakat & Ushr, Special Initiatives, Youth Affairs, Population Welfare and Local Government (first phase), Tourism, Special Education, Livestock, and Culture (second phase) and Women Development, Sports, Labour, Minority Affairs, and Food (third phase). The Eighteenth Amendment also provides a framework for the provinces to exercise their powers on enhanced list of subjects. This was highly favorable to the provinces as these subjects would otherwise be legislated upon by the Centre. The Constitution of Pakistan now has only one list the Federal Legislative List subjects of which are solely controlled by the federal government. The remaining all subjects are now legislated upon by the provinces insulated by federal intervention through Article 142(c) which restricts the Centre to legislate on subjects not enumerated in the federal list. This was also a welcome departure for the provinces as the decision of the central government prevailed on these subjects before this change. Another significant adjustment that the Eighteenth Amendment made is regarding the appointment of governors in the provinces. Although the President remains the authority for the appointment of the Governors, the compulsory provision for the enlistment of the candidate in the provincial voting list lessens significantly the risk of designating federal agents as constitutional heads of the provinces. The reduction in powers of provincial governors, in fact, mirrors the pruning of powers of the president at the national level. Moreover, in order to loosen the hold of the Army, the Amendment to Article 6 of the Constitution prevents the possibility of explicit military takeovers by prohibiting the judicial validation through doctrine of necessity. At the same time, Article 270 nullifies all previous approval of such unconstitutional actions. The enormity of the exercise that was carried out for the passage of the Eighteenth Amendment is evident from the foregoing scan of some of the remarkable changes that constitutionally transformed the relationship between the federation and the federating unit. Let us now turn to the most significant institution that is at the very helm of the relationship between the Centre and the provinces.

Council of Common Interests (CCI)

Before the Eighteenth Amendment was adopted, the Council of Common Interests (CCI) established under Article 153 of the 1973 Constitution functioned as the primary body for resolving disputes between the Centre and the provinces, as well as conflicts among the provinces themselves. In order to vent the grievances of the provinces, the ICC was meant to be an important body. If the council's decision could not have satisfied both governments (provincial and federal). Later on it can be taken into the joint session of the parliament for binding decision. it was experience, the CCI remained largely unutilized since its creation (Hamid Khan, 2001, p. 495). The CCI lacked implementation till the passage of 18th amendmen (Khan, 2015 , p. 146)t. It was Vigorous in theory, nut the fact that it met only eleven times during thirty-seven years of its adaptation to till 2010.

The architect of the 1973 Constitution, Zulfikar Ali Bhutto, was executed by Gen. Zia-ul-Haq on charges of a murder conspiracy. Gen. Zia imposed the martial law and his Eighth Amendment put the CCI in abeyance. The brief civilian interludes of Nawaz Sharif and Benazir Bhutto were so short-lived and full of challenges that their governments hardly paid any heed to the performance of the CCI. Gen. Musharraf followed the footsteps of his military predecessor in keeping the CCI, at best, a dormant body. The Eighteenth Amendment envisaged reviving the CCI and establishing it as an effective dispute resolution body with participatory federalism at the helm. It encouraged robust economic planning vis-à-vis distribution of resources by taking the most important stakeholder on board – the provinces. The Eighteenth Amendment envisioned the CCI as a

facilitator of development across regions in Pakistan. The CCI was redesigned to act as an institution that could act as the political and economic cushion to prevent ethnic conflicts that in the past resulted in widespread bloodshed in the country. Ahmad Mahmood Zahid observes that the Eighteenth Amendment did bring a renewed vigor into the workings of the Council as since 2010 the CCI has regularly met and has frequently deliberated on issues of contention between the federation and the federating units thus fulfilling its constitutional obligations (Zahid, 2013, p. 36). The revitalization of the defunct Council of Common Interests (CCI) has also met some successes, at least in terms of its meetings. After the Eighteenth Amendment in April 2010 the CCI managed to convene a meeting 13 times within the initial three-and-a-half years discussing 76 agenda items which rose to 105 by 2015 wherein several issues of federal-provincial importance were undertaken (Anonymous, 2015, p. 4). It indicates that all central political parties Pakistan People's Party from 2008 to 2013 and Pakistan Muslim League (N) (2013-2018) ultimately acknowledge the importance of shared responsibilities to maintain the cordiality of the Centre-province relationship for national stability. Some accounts even consider the evolving culture of pre-meeting informal get-togethers of the federal and provincial representatives as a positive signal.

The regularity of meetings after the Eighteenth Amendment indicates the acknowledgment of the usefulness of the CCI as an intergovernmental forum for harmonious coordination on important matters. However, an analysis of the performance of the CCI betokens an uninspiring trend and one can sense that the constitutional body has not been able to perform as per the mandate given to it, primarily due to the attempts of the federal government to impress upon the provinces their line of thought. The actions of the federal government to exploit the Article 153(2) of the Constitution that empowers the Prime Minister to nominate three federal ministers to the CCI has emerged as one of the major bone of contentions. The provincial leaders allege that inclusion of three federal ministers in the CCI gives the federal government an upper hand when it comes to voting. When Prime Minister Shahid Khaqan Abbasi (PML-N) reconstituted the CCI in August 2017, the number of members representing Punjab was increased from two to four, was the first instance of provinces accusing the federation of misusing the Prime Minister's veto in altering the composition of the CCI. This was challenged by the smaller provinces of Balochistan and Khyber Pakhtunkhwa who lost one member each. In addition to this, the decision to notify the new CCI through the Prime Minister angered the provinces, except Punjab, as the constitution mandates the President to do so. The sensitivity in the issue of Prime Minister's veto in picking three federal ministers lies in the fact that the decisions of the CCI are taken through majority vote as per clause 4 of the Article 154 making the composition of the body extremely significant. One of the primary functions of the CCI is to amicably resolve the contentious issues between the federation and the federating units and between the provinces. However, the performance of the CCI in this respect has been a disappointment. The reports in the Pakistani media suggest that the majority of key issues that are brought to the forum remain unsolved and federating units often use the CCI meetings as a way to fish out their anger with no effective outcome. The minutes and agenda items of the last four years state a clear picture of government's stubborn attitude in loosening its grip on affairs that involve provinces even after eight years since devolution. One of the examples of this is the Centre's reluctance to accept the enactment of Higher Education Commissions by the provinces after education was devolved in the Eighteenth Amendment. In addition to this, several issues related to exploration of oil and gas reserves, tax, and regularization of women health workers, respecting the autonomous status of independent bodies etc. remain unresolved as—the federal government drags its feet and avoids them. Some other disputable issues that the CCI failed to achieve consensus upon include perpetual delay in enacting laws to enable the provinces to take foreign loan, deliberate procrastination on issues of Workers Welfare Fund (WWF), Old-Age Benefits Institution, environment protection, agriculture etc. The CCI has been used continuously by the federal government to assert their perspective. This attitude was repeated by the Centre in

the CCI's last meeting on 23rd December 2019 when provinces were asked to let go of 'first right to use' of their natural resources. This will be discussed in detail in the following section. The federal government has also been dawdling on the issue of a permanent secretariat for the CCI to ensure the institutional echo of the body. Pakistani observers claim that in the absence of any proper secretariat of the CCI it is difficult to find any well documented institutional memory of the organization. By all standards, the effective functioning of the CCI has far-reaching implications for the Pakistani federation, which is why its revival in the Eighteenth Amendment was seen as one of the most necessary changes (Kakar, 2017, p. 175). But, at the same time, to extract the positives out of such a change requires political will, particularly from the federal government, and coordination at all the levels of the government. For the time being, the policy that has been adopted by the federal government with respect to the working of the CCI is one of denial resulting in repeated whining by the provinces over the Centre's improper attitude in connection with critical inter-provincial matters despite an —enshrined participatory federalism in the country's constitution.

Fiscal Federalism in Pakistan: 7th National Finance Commission

Fiscal federalism denotes an economic framework that explains the relationship between different levels of government. According to Encyclopedia Britannica, the term was originally coined by German-born American economist Richard Musgrave in 1959. Fiscal federalism demonstrates a mechanism for the distribution of national consolidated funds and resources among federal, state and local governments from top to bottom. Another feature of fiscal federalism is the division of revenue-raising powers among various governments. It is the vertical and horizontal distribution of funds to ensure economic sovereignty of the federating units. As fiscal federalism involves financial management at all levels of the government, it is often used as a yardstick to understand the relationship between the federation and the federating units in countries. In the case of Pakistan, the resources transfer has been a constant source of stress between the federal and the regional governments. All four provinces – East Pakistan (before the bifurcation), Sindh, Balochistan and North-West Frontier Province (NWFP) – never received fair share of federal money impeding the growth of the provinces and leading to an atmosphere of contestation. From the economic point of view, economic maltreatment of East Pakistan before 1971 through discriminatory allocation of budgets, development expenditure and foreign assistance resulted in deep inequalities between the East and the West wings. In respect of erstwhile NWFP and Balochistan, the burden of centrally sponsored 'War on Terrorism' and exploitation of gas reserves by Punjabi-dominated centre penetrated deep into the social and economic pockets of the two provinces. Punjab-Sindh face-off over distribution of water and the construction of Kalabagh Dam, which the latter claim would adversely affect their economic activities also deteriorated the relationship between Pakistan's second most prosperous province and the federal government. Within Punjab, a deep divide between powerful North/Upper and marginalized South/Seraiki Punjab is another issue that has caused friction. The distribution of resources in Pakistan is decided by the National Finance Commission (NFC), a constitutional body, constituted by the President, to recommend the modalities of financial resources sharing between the federation and the provinces (Zahid, 2015, p. 13). It comprises of the Federal Minister of Finance as Chair, four Provincial Ministers of Finance, and one non-statutory member from each province. Mohammed Waseem points out that the NFC awards promulgated under military regimes of Gen. Ayub (1961 and 1964), Gen. Zia (1979 and 1985) and Gen. Musharraf (2000 and 2006) failed to develop agreements between provinces⁵⁰ because of political incoherence unlike the 7th NFC which was unequivocally passed. Of the total seven commissions constituted after the 1973 constitution, only four (1974, 1991, 1996 and 2009) looked more closely into the distribution of resources among the federating units (Bengali, 2015). It has been historically seen that the imbalances in fiscal

distribution especially when one particular region is benefited the most from both vertical and horizontal distributions results in deep ethnic cleavages in diverse societies such as Pakistan. This was precisely the reason why the writers of the Eighteenth Amendment chose to transfer large amounts of economic authority to the provinces by increasing the allotment of funds and devolving economic power to exercise it. The historic 7th NFC Award in 2009 enhanced the share of revenues of the provinces to exercise their economic authority in a better way. While the CCI was reinvigorated by the Eighteenth Amendment for effective management of disputes between the federation and the federating units through healthy political bargaining, the 7th NFC awarded in 2009 was a step in the direction of economic empowerment of the provinces. *The 7th NFC marked a significant milestone in Pakistan's fiscal federalism by raising the provincial share of the divisible pool from 47 percent to 56 percent in 2010–11, and further to 57.5 percent by 2015. The Award also restructured resource distribution to favor historically marginalized provinces, reducing Punjab's share while nearly doubling Balochistan's allocation. Notably, the previous reliance solely on population for revenue apportionment was expanded to include poverty (10.3%), revenue generation (5%), and inverse population density (2.7%), alongside population (82%).* Hafiz Pasha estimated that in 2010, the increase in federal transfers added nearly Rs 300 billion to the provincial budgets, approximately Rs 178 billion more than would have been available under Gen. Musharraf's 2006 formula. which had put the provincial share at 45%t with 1% increase per annum up to five years. This becomes important from the economic point of view of the provinces as such intergovernmental revenue transfers, which are the lifeline of the provincial governments in Pakistan, account for 89 percent of provincial revenues (Pasha, 2015, p. 122). The Eighteenth Amendment through Article 161(1)(a) also mandated to pay the net tax proceeds and royalty collected of natural gas well-head (in case of Balochistan) and net profits earned by the federal government from the voluminous generation of power at a hydro-electric station (in case of Khyber Pakhtunkwa) to the province where the facility is situated and not form part of the Federal Consolidated Fund while at the same time Article 172 (2) enhanced the economic and financial position of the provinces by vesting jointly and equally in the province and federal government the control over mineral, natural gas within of every province and territorial waters adjacent to it. As a direct consequence of this, revenue receipts of these two small provinces, Khyber Pakhtunkwa and Balochistan, significantly increased. This is because the new revenue sharing formula builds in a significant component of fiscal equalization apart from accruing of arrears of profits from hydroelectricity and gas development surcharge.

After the Eighteenth Amendment, the provinces also have the right to raise domestic or foreign loans with the approval of the National Economic Council, an issue which has long lingered in the meetings of the CCI without any tangible outcome. To ensure the longevity of the new resource distribution formula even beyond the fixed five-year term of the NFC, the framers of the Eighteenth Amendment inserted clauses 3a and 3b in Article 160 of the constitution which mandates that the share of the provinces in any subsequent NFC Award shall not be less than the share given in the previous Award (7th Award) and makes it incumbent on the federal finance minister and the provincial finance ministers to monitor the implementation of the Award biannually and lay in equal time their reports before both the houses of the parliament and the provincial assemblies.

The envisioned fiscal federalism aimed to provide provinces with economic empowerment while ensuring shared ownership of resources. Nevertheless, political and economic federalism in Pakistan have faced significant institutional and conceptual challenges.

The manner in which the Nineteenth Amendment concerning the independence of the judiciary was passed bears testimony to the anxious reaction of the centralizing forces in Pakistan towards the quantum of power that was given back to the parliament. Although the Eighteenth Amendment

was passed with political consensus, immediately after its notification questions began to rise regarding the enhanced power given to the parliament in the appointment of the judges of the High Courts and the Supreme Court. The controversy was subsided with the passage of the Nineteenth Amendment in response to these concerns expressed by all 17 judges of the Supreme Court in the hearings on Article 175 (a) providing for judicial commissions and a parliamentary committee for the appointment of superior court judges.

Raza Rumi, warning against what he described as a weakening of the spirit of Article 175(a) ratified by parliamentary consensus, cautioned that the uncertain status of the new Articles could trigger partisan criticism and, as some argue, place a figurative 'Damocles' sword' over the parliament. More broadly, this could call into question the legitimacy of the entire 18th Amendment as a thoroughly debated and enacted constitutional reform, thereby undermining the core principles of political transformation and the decentralization of power from the federation to the provinces (Rumi, 2016, pp. 212-13).

In this backdrop, the next section will discuss some of the instances that are seen by the provincialists as attempts at dilution of the provisions of the Eighteenth Amendment, as rightly foreseen by Rumi in the foregoing lines.

Devolution of Power to Local Governments

While the passage of the Eighteenth Amendment which devolved power in some sectors to provinces is hailed as one of the most remarkable achievements in the federal history of Pakistan, there is an emerging parallel concern amongst scholars over further devolution of power from provinces to the local governments, which is one of the key imperatives of an evolving federal structure. Building upon the Hamiltonian paradox, Zubair Shahid argues that while limited central interference augurs well for sub-national empowerment and federalism, it is the further devolution of power to local governments that results in effective decentralization and so should be the case as far as the Eighteenth Amendment is concerned. He points out that post-Eighteenth Amendment constitutional framework has put the provinces at the center of the policy formulation and implementation. However, obstructing the devolution of power to the local levels would render sub-national empowerment incomplete. He hoped for administrative decentralization from the provinces to local governments at par with centre to the provincial levels. At the same, Shahid cautions that the success of the Eighteenth Amendment must be measured in terms of its implementation and any premature trumpet beating for its devolutionary characteristics would be equivalent to living in disillusionment. Such a process, at best, would be an incomplete one requiring more fundamental reforms to ensure greater public responsiveness and efficiency which can be brought about by invigorating the culture of robust local government in Pakistan. Syed Mohammad Ali has more articulately demonstrated that even though democratic transitions of power has been a reality in Pakistan since 2008 and all elected governments agree to devolution of power, the provincial dispensations have been sluggish in forming local governments, forcing the Supreme Court to intervene in 2015. The provinces have been even more measured in bequeathing decision-making power and resources to the local governments, who struggle —to secure adequate political, fiscal and administrative power needed to fulfill their functions (Ali, 2018, p. 5). It is, therefore, ironic that the political leaders who approved the Eighteenth Amendment and agreed to enjoy the exclusivity over all provincial matters for a better brand of federalism to emerge, are now not willing to fulfill their part of the bargain by sharing powers and resources with the lower tiers of the government (Sethi, 2015, p. 23). Expectedly, the province of Balochistan which values, by far, autonomy the most due to years to marginalization meted out to its people was the first and the only one to form the local government immediately after the passage of the Eighteenth Amendment (within a month after the Act was passed) as per the mandates of the local

government laws. The Eighteenth Amendment actually provides for the creation of local governments by the provinces to bring government closer to the people and improve basic service delivery (Buzdar, 2007, p. 2). The Eighteenth Amendment provided the regional governments with legislative, institutional, policy and planning spaces to create a system of context specific governance at the grassroots level. Still, the rest three of the provinces - Khyber Pakhtunkwa, Sindh and Punjab, it is pertinent to note, were forced into action to hold local elections by the Supreme Court in 2015. This was Pakistan's first ever local elections since 1947 on party basis. If that wasn't enough procrastination, the Supreme Court of Pakistan had to reprimand the provincial governments again, this time, to transfer the authority to the elected local governments. In the wake of the notification of Punjab Local Government Act as late as 2019, a Pakistani observer noted that the local government system was much more robust [in Pakistan] under the military despots, although for reasons other than strengthening federalism. The author referred to the Basic Democracies of Gen. Ayub Khan and Local Government systems enacted during the tenures of Gen. Zia-ul-Haq and Gen. Pervez Musharraf not necessarily to empower the people at the grassroots but control them directly to stay in power. Local governments were considerably active during their tenures, nonetheless. Even now, there are provincial variances in implementing devolution, especially in terms of giving administrative and financial powers and adequate transfer of resources. Ali has very eloquently summed up the reason behind the reluctance to establish empowered local governments as envisaged under Article 140(a) of the constitution as follows: *...Provincial governments continue to hesitate in transferring more authority to lower tiers. Senior politicians often favor their established top-down, patronage-based networks rather than engaging with an additional municipal layer. They also perceive the empowerment of local governance as a potential threat, as it may give rise to new political leaders who could challenge the leadership and organizational structures of existing parties.* It may, therefore, be argued that even as the revitalization of local governance remains of paramount importance in Pakistan as envisaged by the Eighteenth Amendment which divided powers between federal and provincial tiers to create a balance,

The 'trickle-down effect' of this vertical devolution has not been fairly passed on to lower tiers by provincial elites. This concentration of power at the provincial level runs counter to the objectives of the Eighteenth Amendment. As Mohammed Waseem notes, despite lofty promises of local governments serving as nurseries of democracy, bringing governance closer to citizens, fostering direct participation, and ensuring grassroots accountability, local bodies have largely remained instruments of control for both civil and military administrations. (Waseem M. , 2015, p. 11).

After years of regional subjugation and monopolization of power by one ethnic group – Punjabis, the Eighteenth Amendment was unanimously passed by all political parties, including the religious ones in 2010. The passage of such federally enriching piece of legislation came about as a direct consequence of increasing fissiparous tendencies of oppressed ethnic identities pushed to the margins of the Pakistani federation. In response to this, the Eighteenth Amendment, therefore, emerged as the most expansive decentralization exercise that fostered an environment conducive for federalism pushing the possibilities of participatory federalism' and inclusive federalism'. Perhaps, the greatest merit of this round of reform was the underlying political consensus and its constitutional embeddedness. This Amendment also embodied broader political participation in Pakistan unlike previous political systems (Uzma Khan, 2016, p. 70). However, a decade into the promulgation of the Eighteenth Amendment, the stranglehold of the federal bureaucracy and the lack of political will have caused some serious implementation issues raising concerns that this golden opportunity to bring about meaningful decentralization in Pakistan may be lost. Raza Rumi has broadly pointed out four challenges that include truncation of the devolution process through manipulation to suit stronger political leaders, diminishing of regulatory capacity of the provinces,

resistance towards institutional strengthening of the lower tiers of governance and improper devolution of power to local governments. He also suggested that a civil service reform is long overdue in Pakistan to achieve accountable and people-oriented governance – the larger goal of the Eighteenth Amendment. Pakistan's domestic politics have been continuously influenced by the asymmetry between Punjab and other provinces. Ethnic political consciousness among the Mohajirs, Sindhis, and, earlier, the Bengalis was rooted in part in a reaction to the domination of the Punjabi 'other'. The present Pakistan Army is hardly more representative than the old one, and a few districts of the Punjab and the Khyber Pakhtunkwa are still as dominant in terms of recruitment. The state is still not ethnically neutral and the dominant linguistic group is still the Punjabis which make it difficult for any incumbent to overcome the centralist trend. Pakistan's politics has been dichotomized after the passage of the Eighteenth Amendment to a large extent where centralist tendencies remain skeptical of the hurried devolution while federalist tendencies remain unprepared to actualize the home-driven process of devolution with technical ingenuity. For Eighteenth Amendment to bring stability to Pakistan, a prudent leadership and an unselfish bureaucracy is imperative, but Pakistan seems to be absent both of them because of elites' inability to rise above personal interests. The most glaring mistake of any new arrangement in Pakistan is the disinclination of the political forces and the civil bureaucracy, dominated by the unaccountable Inter Services Intelligence (ISI) and Military Intelligence (MI), to let go of their hold from power, which certainly is not a good sign for the future. With the political forces in Pakistan unequipped to play the mantle of democratic unifiers,

Federalism in Pakistan is likely to remain fragile until there is a fundamental reassessment by the military and bureaucratic leadership. Those in power, having witnessed the country's division in 1971, should recognize that ethnic tensions still hold the potential for significant violence and political instability. While the Eighteenth Amendment created an opportunity for federal innovation, its success will largely depend on how policymakers and implementers capitalize on these provisions. As emphasized, for the federation to function smoothly, the principles of federalism must be upheld not only in law but also in practice. To date, the signs of effective federalization remain limited, evidenced by repeated attempts by the federal government to undermine the Amendment's provisions, prompting Raza Rabbani, the chief architect of the Eighteenth Amendment, to caution that any rollback of provincial autonomy could have 'serious consequences. It is ominous to note that the people of Pakistan have not been empowered as envisaged in the Eighteenth Amendment and will continue to remain at peril if the grand constitutional exercise is not implemented in letter and spirit.

Conclusion

As has been shown by the experience of several other federal systems, mere decentralization of power to lower tier governments is not enough to achieve desired results. The inadequate execution tends to render the formal provisions redundant and ultimately it all comes down to how different parts of the government machinery played their roles. While there is no denying the fact that the Eighteenth Amendment was a major step in the direction of strengthening participatory federalism in Pakistan, its success remains ever moored to how the new system shaped up. From the point of view of devolution, the Eighteenth Amendment struck the right chord, but the drafters were very well aware of the challenges the implementation of the provisions of the Amendment entailed. No doubt that the Eighteenth Amendment signified a new era in Pakistan's troubled federalism as it ushered-in new governance arrangements with a leaner centre, but *As Raza Rumi notes, the implementation process has been marked by political disputes between the Centre and the provinces, along with pushback from influential groups that benefit from a centralized Pakistan.* The first signs of implementation roadblocks emerged as early as 2011 when Ishaq Dar, a PML-N Senate member, and the Vice-Chairman of the Implementation Commission resigned

citing —differences over the devolution of the Higher Education Commission and transfer of files of the federal employees in the Commission to the provinces as one of the main reasons behind his decision. His resignation letter also indicated that decisions taken by the Implementation Commission were not based on consensus. The formation of a review committee by the newly elected PML-N government in 2013 to review the 18th Amendment also didn't go down too well with the regional leaders who feared readjustment of the Amendment in favour of the Punjabi-dominated National Assembly. This showed the contested nature of the devolution process, encumbered at every step by the federal government even as smaller provinces push the agenda of decentralization with all their might. The Eighteenth Amendment was passed with a renewed promise for provincial autonomy. By some accounts, it was an act of redemption after weaker provinces were subjected to years of political, economic and cultural subjugation. However, the original intent of the Eighteenth Amendment is fading away into chaos and confusion. The centralizing forces are trying to bounce back with all their might and the provincialisms are trying to hold the fort to save Pakistan from descending into yet another spell of over-centralization. The real worry for the proponents of federalism in Pakistan is the increasing encroachment of the federal government, of late, into the clearly delineated domains of the provinces through manipulative interpretations and political coercion.

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