REVISITING THE 18TH AMENDMENT IN THE 1973 CONSTITUTION OF PAKISTAN: DEBATE OVER CENTRE-PROVINCE POWERS

Ghulam Mustafa Gaho
Assistant Professor. Department of Political Science, University of Sindh, Jamshoro
gmgaho@gmail.com

Ahmad Hussain Shah Bukhari
Lecturer, Department of Political Science, University of Sindh, Jamshoro
ahussain.bukhari@usindh.edu.pk

Syed Anwar-ul-Mustafa Shah
Assistant Professor. Department of Political Science, University of Sindh, Jamshoro
amustafa.shah@usindh.edu.pk

ABSTRACT
This research article deals with the remarkable description of passing of 18th Amendment in the 1973 Constitution of The Islamic Republic of Pakistan in 2010, a move which was much awaited considered being the actual constitutional dream of the founder of the Nation Muhammad Ali Jinnah, the study talk about the different 102 constitutional articles amended in the process. Positive aspects of the 18th Constitutional Amendment have been given in detail followed by the opponent arguments given by those who are critical of this amendment. The research also delivers with the detailed debate on provincial autonomy followed by the apprehensions regarding the weak central government. The two opposite views are supported with solid arguments, whether the amendment brought greater role to the parliament and the Prime Minister or it was just to acquire unaccountable political power at the provincial level. In the end the conclusion sums up the debate.

Key words: Constitution, Amendment, Legislation, Local Bodies, Judiciary, Provincial Autonomy, Senate

INTRODUCTION
The original constitution of 1973 was parliamentary in nature with full executive powers resting with the prime minister in center and with chief minister in the federating units. After the debacle of the East Pakistan, it was ensured in the constitution that ample powers were to be given to the provinces so that the different geographical units, speaking different languages and having different socio-political history can be harmonized. To convert the idea into actions, a bicameral legislative body was introduced with the federal system having fewer powers and more powers to the federating units.

However, the repressive eleven years of dictator Zia-ul-Hague changed the constitution of 1973 from upside down and brought amendments in it which made the constitution more centralized with concurrent list of legislation giving more powers to the Capital and a lesser amount of powers to the provinces. This created a sense of insecurity within the provinces and the debated in the power corridor started. The successive governments from 1988 to 2008 continued experiencing the difference, low and high, but these 20 years made different political parties more mature and finally, in the year of 2010, an historic amendment was made in the constitution bring back the original spirit of the constitution. Though various amendments to the constitution have been made but we discuss those very important amendments which changed the structure of the federation of Pakistan.

THE EIGHTH AMENDMENT
The Eighth Amendment passed in the 1985 is an important but significant document integrated in the constitution as this revision altered the very nature and spirit of the 1973 constitution. The purpose of
this amendment was to acquiring the more powers from federating units and clearly undoing the parliamentary form of government, enshrined in the Supreme law of the Islamic Republic Pakistan. This amendment in first instance changed the very nature and spirit of the Constitution of Islamic Republic Pakistan by minimizing the executive powers of the prime minister and giving more powers to the president.

On the face of it, Eighth Amendment in the fundamental law of The Islamic Republic Pakistan was to balance the powers of president and prime minister of Pakistan but authorities of the president clearly surpassed to those of prime minister the earlier one could dismiss the whole government without any clear charge-sheet.

This modification in the Constitution of the 1973 of Pakistan basically changed the status of Premier of Pakistan to ‘minister to the president’ of Pakistan as the prime minister could not do anything own his/her own if the permission or consent of the president is not required prior. Any kind of disagreement could result in the termination of the legislative assembly and the president would be in charge directly (Hamid, 2010).

The Eighth Amendment in the Constitution changed and revoked 19 clauses of the supreme law of the land. This alteration made the Premier a subordinate to the Head of the State that is the President. The president was approved the authority to recommend the prime minister, regional governors, adjudicators of the high courts and Supreme Court, it also included the chief of the armed forces. Having given the authority the premier had to inform the President regarding the legislative decisions and administrative affairs of the office and related cabinet. The president was lawful to ask the premier to seek a vote of assurance, disseminate ordinances and take other executive measures. The President was given powers to hold a public referendum on important matters and issues relating to the state. The members of the legislative assembly at the center were also increased from 200 to 207 (Khan, 2016).

This resulted in a very bad shape when after the death of dictator Zia in 1988 and return of the democracy in Pakistan; three consecutive and another fourth elected governments were dissolved by the Head of the State. Resultantly, another dictator, General Musharraf, came into power in October, 1999 to cease the powers of the democratic government. This resulted in the persecution of the political parties and through political engineering he brought in ‘fake political leaders’, by undermining the true political parties. From 1999 to 2008, almost an episode played by the dictator Zia was repeated by general Musharraf (Shaikh: 2008).

As it is discussed and debated earlier, in the 8th amendment of the Constitution snatched almost all major decision-making powers from the prime minister of Pakistan and rested them with the ‘indirectly elected’ president, later the 17th amendment in the Constitution of 1973 reversed lot of those articles in the Constitution and through this amendment, more powers were given to the prime minister. This amendment also made the head of the Government of Pakistan more powerful in sense that the president of Pakistan could not terminate the national assembly in one goes and the provincial assemblies could not be terminated by the particular governors of the provinces. However, the concurrent list still existed, thus, the central government had more powers of legislation and the units or federating units had little to legislate.

The 18th amendment in the Constitution restored again the original spirit of the Constitution of Islamic Republic Pakistan. Following are the major changes made to the constitution and the 18th amendment was stuffed with;

i. This amendment in the Constitution restored the federal and lawmaking nature of the constitution in origin.

ii. All the amendments and changes done by or incorporated by the dictators/rules of General Zia-ul-Haque and General Musharraf have been removed with one go and with the aim to discourage the future dictators.

iii. Through the 18th amendment, Provincial autonomy was restored by doing away the concurrent list. However, with few exceptions, residuary authorities were given to the units. The provinces now could work freely with their own resources.
iv. The scope and description of the Board of Common Interests, Reformation of National Economic Council, National Finance Commission and other such institutions were made more powerful and harmonized by given equal representation to the provinces or federating units. These constitutional bodies are empowered to give more confidence and say to the provinces.

v. Article 6 of this amendment can be the more powerful in sense that it barred the Supreme Court of Pakistan to not validate any kind of unconstitutional acts of persons or institutions. This article also changed the meaning of the crime of ‘high treason’. This object’s domino effects can be more significant because it has been the practice of all dictators that once they acquire power through the bullet then they normally go in Supreme Court and get it justified just to assert the unlawful legitimacy (Ahmad, S. J. 2011).

vi. Through this amendment the Parliament under the Constitution is supreme and in future no president can dissolve assemblies. Besides, the powers of the president to hold referendum on any constitutional matter is reversed and given it back to the parliament of Pakistan (Daily times, 20 April 2010).

vii. This amendment changed the eligibility criteria of the members of lower house and provincial legislatures. Through this amendment the Article 62 and 63 have been removed but some code of conduct is introduced to check the sagacity of the aspiring candidates.

viii. The number of cabinet members and ministers or minister of state has been described clearly and no government can exceed it above 11% of the total number of the members of the national assembly or parliament.

ix. This amendment also changed and codifies the status of local bodies’ governments in all over Pakistan. Changes made in the Article 140-A describe that now on ward it would be the responsibility of the administration of Election Commission of Pakistan to conduct and supervise the regular elections of local bodies and ensure that no one can influence them to take results of his/her choices.

x. One of the major changes in the judicial arena which resulted in the aftermath of this 18th amendment was the creation of a newly established High Court in Islamabad. This was described that the judges of Islamabad High Court would be appointed from all federating units of Pakistan and capital territories.

xi. Election Commission of Pakistan has been made more powerful by consolidating it with increasing the term from 3 to 5 years. The Election Commissioner now would be nominated by both government and opposition.

xii. The Caretaker government is decided by both ruling government and the opposition collectively. A clear process of forming the caretaker government is prescribed through this amendment so any kind of anomaly be discourage. It is decided through this amendment that no family member of the caretaking government be eligible for elections.

xiii. In the 18th amendment concurrent list was abolished and the provinces were given exclusive authority over the subjects for legislation. This is very important in the sense that all the provinces are dominated by different language speaking people and cultural advocates so it was necessary to give more powers to the provinces to minimize the sense of ‘exclusiveness’.

**FEDERAL STRUCTURE AFTER 18TH AMENDMENT: NATURE AND PROBLEM**

The 18th amendment in the Constitution has resulted in many positive and far reaching effects in the future of parliamentary history of Pakistan. However, it entails lot of challenges before it.

Following are the optimistic results of the 18th Amendment in the Constitution;

i. One of the important issues with the democracy in Pakistan has been the center-province relations. The history of constitution making in Pakistan has been very much focused on the debate to whether the major powers be with center or provinces/federating unit? After the amendment in the article 142, it has been established that the provinces now are more powerful and can legislate on different subjects (Rabani, 2010).
ii. Though the appointment of Governor of different provinces is still under the purview of the center but now it has been made clear that an individual appointed by the center as governor must be enlisted as voter of the respective province and likewise the permanent resident of that province. Earlier, center might appoint any individual as governor no matter to which province it belonged. That formed a sense of inferiority within the provinces and assumed it the legacy of the British colonization where the colonial powers used to send governors from Britain to rule the South Asian nations.

iii. Given the water scarcity situation in Pakistan, it was necessary devise a clear plan and roadmap to solve the issues related to water among the provinces. Through this amendment in the Constitution it has been made compulsory for the federal government to consult the federating units before starting new hydro-power project or making any change in the division of water within or among the federating units.

iv. The Council of Common Interest and its purview has been made more powerful to make sure the peaceful resolution of disputes or differences among the provinces. This would create more amicable environment among the different federating units and will discourage the future disputes.

v. By revising the Article 160 in the Constitution, the Commission of the finance at the national level (NFC) is barred from decreasing the shares of the respective provinces and now it is bound to not take unitary decisions regarding the financial share of any province.

vi. Federating units are made more confident by barring the center from dissolution of provincial assemblies without their clear consent given in the share of written resolution of the assembly. In Pakistan the political governments has been more fluid because if one party is in center the other one is in power at provincial level. So, political differences among political parties could result in dissolution of provincial assemblies by the center. This amendment in the Constitution has discouraged that practice by giving more political space to the opposition party if that is in power at any provincial level.

vii. The reversal and abolition of the Article 58(2) (b) in the Constitution of Islamic Republic of Pakistan makes it more democratic in its true meaning and stops the president of Pakistan from ending the democratic elected government. This will prove to be better for the political governments to complete their assigned legal tenure to implement the political promises made during the general elections in the shape of ‘manifestos’.

viii. The constitutional increase in the working days of the upper house and provincial legislatures from 70 to that of 100 days will surely enhance the capacity of both constitutional bodies to work more on legislation thus, benefiting the nation with doing necessary legislation on important issues. Earlier, the very short working period of 70 days’ work could hamper the result of both houses.

ix. This constitutional amendment has made the Election Commission of Pakistan more autonomous body by empowering it to conduct the national, provincial and local bodies’ elections. This would surely increase the credibility and fairness of elections. Through this amendment in the Constitution the future of local bodies has been ensured and, definitely, that would benefit more to the common people with regularized and continuous process of local bodies’ elections.

x. Through this amendment in the Constitution the Parliament’s constitutional strength has been increased by the fact that the laws limited in the 6th and 7th schedule now might be modified without prior consent of the president of Pakistan. The independence of parliament or legislature would surely benefit the common citizens as the parliament is the sole custodian of the rights related to daily life of the people of Pakistan.

xi. To ensure the rights of the religious minority in Pakistan, the reserved seats in the senate for Non-Muslims are given by increasing the number of seats from 100 to 104 under the Article 59. This would surely decorate the democratic face of Pakistan around the world and will help Pakistan to meet the international commitments made on the rights of the minorities.
xii. Independence of the Judiciary is said to be main pillar of representative form of government. Through this amendment in the Constitution, it was ensured that no government can interfere within the constitutional powers of the Judiciary.

As mentioned in details in the above, the passing of the 18th amendment is said to be the watershed moment in the political history of Pakistan but same time it has brought following challenges for the future governments to deal with;

i. Though the changes in the composition of the law brought under the 18th amendment are highly applauded but the real test is when the provinces start to work on increased legislative powers acquired in the result

ii. The passage of the amendment was first stroked by the constitutional petitions against the 18th amendment in the Supreme Court and the major blow came when government agreed to bring in 19th amendment which related to the powers of appointment of the judges. This created an instance that the judiciary could undo many changes brought in the amendment of the constitution.

iii. The abolition of coexisting list by the 18th amendment has created a debate where different well-known economists argue that subjects related to basic needs of the citizens should be given back to center because central government can better implement the basic necessities. But some authors are of the opinion that the central government still has powers to legislate or override any legislation by province with the powers given it under the article 143 of the constitution of 1973 (Almeida, 2010).

iv. Decentralization of powers under the 18th amendment can be the good example of provincial self-government but the critics of it argue that increasing the responsibility without providing monetary resources to the provincial governments would be not enough. This will create only more burdens on already under pressure development budget of provinces. There should be a clear balance of sheet between center and provinces regarding economic resources.

v. This alteration in the Constitution of 1973 has also created a clear divide between the pro and opponent of strong center. Both the sides have their respective arguments. However, this divide can hamper the national unity and can create more rift between different ethnic groups in the country. It is important to discourage such situation to emerge because given the hostile environment at three of our borders, it is necessary to unite the nation.

vi. Those who support the so called ‘establishment’ are advocating that the real financial problem is because of the provincial self-rule given to the federating units under the 18th amendment in the Constitution. This can be more fatal to the future of democracy if the arm forces undermine the democratic process through some military interventions.

vii. It is evident that, though the political parties advocate a lot the provincial autonomy, but have performed very poor when it comes to the strengthening the local bodies governance system in different provinces. These political parties are not willing to transfer the powers enshrined in the 18th amendment of the Constitution to the local bodies system.

viii. The skeptics of 18th Amendment in the fundamental law of the country argue that this would weaken the center by paving the way for ‘confederation’ and given the past history of Pakistan and debacle of east Pakistan, it could be more fatal for very existence of Pakistan if some provinces or people in future demand more powers and limit the central government’s purview.

ix. Those who criticize the 18th Amendment, base their argument on the fact that now the central government would be left with meager fiscal budget and resources but federal government, same time, is responsible for meeting the defence expenditure and debt servicing. Resultantly, how it would be possible for federal government to meet such big expenditures

x. The other argument rests on the fact that given the security challenges the state of Pakistan face, it would be rather difficult for the central government to create consensus on any important political question/national issue. Besides, the provinces would be looking to the center in any wake of national disaster or natural calamity.
Over the year Pakistan has tried different things with many local government frameworks. During the 1960s we explored different avenues regarding Basic Democracies and 'One Unit', yet overlooked the uneasiness and estrangement among our Bengali residents. In 1971 we took care of this disregard and henceforth in 1973 we thought of a comprehensive constitution that obliged the desires of all fragments of our community. Since the provincial units at the time were ill-equipped, the 1973 constitution kept a con-current list of obligations that should have been moved to the regions in ten years' time, unfortunately it did not happen until the 18th amendment was passed. (Aziz: 2018)

Ten years proceeded to be 37 years, lastly with the passage of the eighteenth amendment in 2010 the con-current list was abrogated and Pakistan turned into a genuinely Federal state. All things being equal, there are still ashes of dissatisfaction inside the provinces e.g. it is much debated that NFC award shares 57.5 to the provinces but not much has been done by the federation to help provinces and local government generates more ventures of revenue and prepare a monetary policy in raising public funds.(Faiz: 2015)

A happy delight was the addition of 4 Seats for Non-Muslims in the Senate of Pakistan, 01 each for the province and takes the total tally to 104.

CONCLUSION
The historical, geographical and numerous social and monetary elements constituted the choice of a federal structure unavoidable for Pakistan. The federation which was set up in 1947 during the time of Mr. Jinnah met with the least amount of necessities of the federation. However, the policies of federal structure confirmed that the essence of federalism became for all balanced drives compromised. The center had always enjoyed a dominating positions equated to the units. The established fact was that the dominant authorities in the centralized structure were not prepared to recognize the actual position of the provinces in the federation. This state of affairs compelled the provinces to go for more powers for the in the shape of provincial autonomy within the constitutional framework for its safety.

After the debacle of the East Pakistan, the government of Pakistan People’s Party run by Shaheed Zulfiqar Ali Bhutto had given a first unanimous parliamentary constitution in 1973. Unfortunately, the dictator Zia done away with provincial autonomy and changed the spirit and shape of that constitution.

The 18th Amendment thus, restored the constitution of 1973 in origin by giving due autonomy to the provinces which was overdue to the federal government and to bring in true democracy, it was inevitable to decentralized the powers of the center to make it genuine federation. . Law experts also believe that the 18th amendment was also passed to give multiple terms to the Prime Minister as in the case of Nawaz Sharif who would be serving his third term if elected and the removal of confusing concurrent list to end the debate where the Federal law always prevailed over the units.

Looking at the political history, regional and ethnic diversity the federation with the autonomy to the provinces remains the best feasible choice for addressing political, monetary and administrative problems. Democratic process must continue as it is very essential to discourage the elements that repeatedly derailed the democracy and deprived the people of this state of Pakistan from their due share and political participation in the decision making. We believe that we can make our state, Pakistan, self-sufficient, stable and strong if we decentralize powers to the provinces and from it to the local level. Eighteenth amendment is the first step in this direction. It needs to be properly implemented as it is in the interest of the people of and the Federation of Pakistan.

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