



## Pros and Cons of 18th Amendment: A study of Center-Province relations 2010-2022

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### Abstract

*The 18th Constitutional Amendment, enacted in Pakistan in 2010, marked a significant shift in the country's governance structure by devolving powers to the provinces. This article critically examines the pros and cons of this transformative amendment, focusing specifically on its impact on the center-province relationship. On the positive side, the amendment sought to enhance provincial autonomy, granting provinces greater control over their resources and decision-making processes. This led to increased fiscal decentralization and empowered local governments. However, challenges emerged in the implementation phase, revealing potential drawbacks. The amendment's critics argue that it has strained the financial capacity of provinces, leading to disparities and raising concerns about national unity. Additionally, questions have been raised about the impact on federal institutions, as the devolution of powers may have weakened their ability to address national issues effectively. This article provides a comprehensive analysis of the 18th Constitutional Amendment's implications for the center-province relationship, shedding light on the nuanced dynamics that have unfolded since its enactment.*

**Key words:** Devolution, Provincial Autonomy, Challenges in implementation

### Introduction

Constitution is a legal provision, which provides the bonding between state and its inhabitants. The same constitution is also called a social contract, which provides the modes of living, collaborating and integrating. Constitution is the product of modern democratic and political system and allowed the citizens to perform their routine acts under certain conditions (Diaz-Cayeros, 2004).

The amendment in the constitution is the most significant clause because it provides the dynamic nature of the constitution, which can be modified and changed over the period of time according to needs. The human society continues to change where by different aspects of society evolves which also requires the changings in the existing legislative bodies and provisions. The amendments in the constitution allows making the society and constitution parallel. This is the reason that most of countries continue to amend their constitutions in accordance to certain circumstances (Levinson, 1995).

Likewise, the constitution of Pakistan has also gone through different amendments dealing with different socio-political spheres. The eighteenth amendment of the constitution is perhaps the most prominent as it is under discussion since its initiation (Adeney, 2007). The political system of Pakistan remained under the great influence of military dictators who molded the constitution according their benefits and gained maximum possible benefits through these amendments. Twice the military dictators i.e., Zia-ul-Haq and Pervaiz Musharraf to enjoy maximum powers through constitutional amendments amended the current constitution. In order to decrease the extreme powers of the unelected people, the democratic political parties decided to amend the constitutions and passed the 18<sup>th</sup> amendment in April 2010.

The 18<sup>th</sup> amendment provided the hope of democratic and political supremacy in Pakistan because prior to this amendment, President had powers to dissolve the assemblies, which was the constitutional right of Parliament and elected political body. This power was used by Zia-ul-Haq and later political puppets during nineties. This amendment provided the historic democratic move that restored the parliamentary character and diminished the extreme presidential powers. By the same way, this amendment also redefined the parliament-judiciary association and provided the way of devolution of powers from central government to provincial governments by abolishing the Concurrent Legislative List in the constitution (Kalid, 2013).

The 18<sup>th</sup> amendment remained in discussion because the powers and responsibilities have been decentralized under this provision but actually, there are issues related the implantation. The implementation of eighteenth amendment is a serious challenge to the federal bureaucracy because it decreased their role and they hesitate to transfer the powers to provinces.

### **Research Question**

What are major pros and cons of eighteenth Amendment to the Constitution of Pakistan?

### **Research Objectives**

- To trace out the constitutional history of Pakistan
- To explain the eighteenth amendment to the constitution of Pakistan
- To point out the major pros and cons of eighteenth amendment to the constitution of Pakistan

### **Historical Background**

Pakistan has a long constitutional development history, which has gone through different changes throughout the history. After the partition of subcontinent, Pakistan adopted the Indian Act of 1935 with minor changes as a constitutional provision of the country. Later on, constitutional committee was established to work for the constitutional development and Objective Resolution of 1949 was opted as the preamble of the future constitution. The Objective Resolution worked as the preamble of constitutions 1956, 1962 and 1973 and later became the part of constitution during Zia era (Rehman, 2010). Zulfikar Ali Bhutto promulgated the present constitution of Pakistan in 1973, which also has gone through different amendments, and the eighteenth amendment is the most prominent one as it decentralized powers and responsibilities from central to provincial governments.

The eighteenth amendment primarily focused on the division of powers between president and prime minister. Since the promulgation of the constitution, the unelected actors enjoyed the extreme powers while undermining the democratic process in the country. Through constitutional amendments i.e., 8<sup>th</sup> and 17<sup>th</sup>, Zia and Musharraf enjoyed their tenures with full charm. Both of them got assistance from constitutional changes to legalize their undemocratic steps because under these provisions they could dissolve the running government (Hussain, 1993). The political system of Pakistan was hijacked through these powers during 1988-2008 and in between the parliamentary revival became the victim of presidential powers when Benazir and Nawaz Sharif governments were also removed through the presidential powers. It was need to restore the democratic and parliamentary process in the country so for the same sake, the eighteenth amendment was undertaken which not only decreased the presidential powers but also

decentralized the political and administrative powers from central to provincial governments (Ashraf, 2016).

The major events led to 18<sup>th</sup> amendment were related with autocratic policies of Pervaiz Musharraf. This was the reason that two main political parties of that time i.e., PPP and PML (N) agreed to sign charter of democracy. They agreed to cooperate with each other in order to restore democracy in the country because in the past too they had been victim of presidential powers. Hence, soon after the removal of Pervaiz Musharraf, in 2010 eighteenth amendment was passed which aimed at providing the parliamentary and democratic ways in Pakistan (Khan, 2001).

The 18th amendment has brought almost 100 changes in 1973's constitution, it has affected 83 Articles which are: 1, 6, 10, 17, 19, 25, 27, 29, 38, 41, 46, 48, 51, 58, 62, 63, 70, 71, 73, 75, 89, 90, 91, 92, 99, 100, 101, 104, 105, 112, 116, 122, 129, 130, 131, 132, 139, 140, 142, 143, 144, 147, 149, 153, 154, 155, 156, 157, 160, 167, 168, 170, 171, 172, 175, 177, 193, 194, 198, 199, 200, 203, 209, 213, 215, 216, 218, 219, 221, 224, 226, 228, 232, 233, 234, 242, 243, 246, 260, 267, 268, 269 and 270, as far as provincial autonomy is concerned, Articles 70, 142, 143, 144, 149, 157, 160, 161, 167, 172, 232, 233 and 234 are either fully or partially altered. It has abolished the concurrent list, thus empowering the provinces to legislate exclusively on the subjects not provided in federal list.

#### **Pros of 18<sup>th</sup> Amendment**

The eighteenth amendment is sought to amend the constitution so that new ways of parliamentary democracy may be opened. Third world countries are far behind the developed countries in the terms of democracy and political affairs. This amendment not only aims at restoring the parliamentary powers but also included many other areas i.e., renaming of NWFP, appointment of judges, and strengthening the certain constitutional offices. Eighteenth amendment mainly involved the following major areas restoration of parliamentary supremacy, appointment of judges, strengthening the state institutions and federation-provinces relations (Jamy et al, 2012). Following are some key advantages of eighteenth amendment.

#### ***Strengthening Parliament***

First, the prominent advantage of eighteenth amendment is to restore the parliamentary powers because prior to this amendment, there were extreme powers enjoyed by the president. Through seventeenth amendment, several key functions had been transferred to the president same like that of Zia era. However, after the enactment of eighteenth amendment, there presidential powers were removed and declared Legal Framework Order 2002 illegal. Likewise, the presidential extreme powers to dissolve the national assembly under 58(2) b were also amended because in such provisions it is not easy to run an elected assembly according to the democratic provisions. Now national assembly can only be dissolved on the advice of Prime Minister (Rana, 2020).

#### ***Empowering State Institutions***

Secondly, the eighteenth amendment strengthened the state institutions in accordance to the constitutional and legal provisions. This amendment granted the fixed tenure of 4 years for the post of auditor-general, which was previously determined by the parliament through as act. Under this amendment, it is also if the most senior officer will be appointed as Auditor General of Pakistan. On the other hand, the term of Chief Election Commissioner is also enhanced from 3 to 5 years. In the previous era, the president could appoint the Chief Election Commissioner of the country but under this amendment, there is established transparent procedure of appointment (Ivanyna & Shah, 2011).

### ***Appointment of Judges***

Another key feature of the 18<sup>th</sup> amendment was to deal with the procedure of the appointment of the judges of Supreme and High courts. The amendment inserted a new Article (175A) in the constitution under which judicial commission of Pakistan was created whose main duty is to appoint the judges of Supreme Court, High Courts and Federal Shariat Court. The Judicial Commission comprise the Chief Justice of Pakistan, six other members including two senior judges of supreme court, a former chief justice or a former judge of supreme court nominated by chief justice with consultation of two judges, federal minister of law and justice, the attorney general of Pakistan and senior advocated nominated by Pakistan Bar Council (Rana, 2020).

### ***Provincial Share in National Resources***

NFC was an important institution created by constitution of Pakistan 1973, which was responsible to provide the available resources among the federal and provincial governments. Its aim was to foster socio-economic development both at federal and provincial levels. According to NFC, the provinces would gain resources according to proportion of their population. Later, the eighteenth amendment further strengthened the provincial autonomy because most of the previous federal responsibilities were devolved to provinces level so that they could manage their resources according to needs in proper way. This amendment also provided that the provinces share would not be less as it was provided under the previous award. Hence, it was another advantage of eighteenth amendment that it fostered the provincial autonomy and provided the equitable resources (Hamid, 2010).

### ***Fostering Democracy***

The eighteenth amendment fostered the ways if democracy practices in Pakistan. Decentralization of the fiscal and administrative responsibilities is directly linked with the democratic provisions because under this process, each sphere of the society is directly involved in the politico-administrative responsibilities i.e., central, provincial and local governments. The provinces are provided the powers, which they would further devolve at the local level aiming at striving for the development. Ultimately, the democracy is given the space under this amendment and central monopoly come to an end or minimized (Institute of Public Policy, 2011).

### ***Civil Rights***

Before the eighteenth amendment, certain restrictions were imposed on the politicians in certain areas. They were not allowed to run the same political activities, which aired the wave of racial hatred, sectarianism, hostility, regional ethnicity and enmity. This led to socio-political inequality but under the eighteenth amendment, these limits were explicitly abolished which again provided the political freedom to run free and fair democratic practices. This not only developed democratic atmosphere but also preserved the civil rights because the elimination of these limitations ended the socio-political inequality (Ivanyna & Shah, 2012).

### ***Addressing Marginalized Community***

The minorities and marginalized communities were also addressed under 18<sup>th</sup> amendment because it awarded the sour reserve seats to the minorities in Senate so that their political rights might also be protected. Later, the same initiatives were taken at the provincial level as well to protect the social and political rights of the minorities in Pakistan (Mahmood, 2018).

### ***Limited Presidential Powers***

Under the previous amendments during the military regimes, the military rulers had been enjoying the extreme powers in Pakistan. They were political move and initiative used to be taken according to their consent but this amendment curtailed the powers of president. Now president does not possess the powers to dissolve the assembly by its own rather there is provided a democratic way to dissolve the assembly under which the elected members of the National Assembly have main rule. Now, assembly can only be dissolved through the advice of prime minister and president can dissolve the national assembly on the advice of PM (Ashraf, 2016).

### **Cons of 18<sup>th</sup> Amendment**

Apart from the pros, there are also some cons related with eighteenth amendment. The federal units' powers have been reduced which led to a streak of confusion among them because the amendment devolved the administrative and fiscal powers to the provincial and local level institutions. The federating units were given the powers in accordance to concurrent list, which are now ended and now dealt by the provinces. Provinces are now equipped to take initiatives by their own and federal units are excluded from such issues because created a sense of competition between the provincial and federal governments.

### ***Leadership Crises***

Leadership crisis is another issue related to amendment because a sound political system requires suitable leadership. At the center level, there is found seasoned leadership but the same is lacked in accordance to the provincial setup (Ivanyna & Shah, 2011). The provincial governments are unfortunately established because of provincial ethnicities where the dominance of same ethnicity does not allow the intervention of the other ethnicity of central governments. Hence, a well-disciplined and mature leadership is pre-requisite for the provincial autonomy otherwise; it may lead to bad governance at the provincial level due to supremacy of a single political party in a province (Hamid, 2010).

### ***Federal Dominance***

Another disadvantage of the amendment is abolishing the concurrent list, which includes the matters to be sorted out with the collaboration of both central and provincial governments. This amendment provides that provinces have the right to manage labor laws; environmental impact of development in both the public and the private sectors of the economy; generation of much larger amounts of electricity than currently permitted; development of infrastructure; movement of goods and commodities within their own boundaries; improving the level of education and providing for the acquisition of usable skills by the populace. This can only happen if central government provides the smooth share of budget otherwise the provinces will be dependent on them where the above-mentioned spheres of businesses will be affected (Kalid, 2013).

### ***Fear of Losing Powers***

The eighteenth amendment is chiefly based on the provisions of devolution of the powers and responsibilities. It is right that devolution of the powers will strengthen the democratic practices but it works only in the developed countries where both politicians and the common people know about the importance of democracy. But in the perspective of countries like Pakistan, the politicians are not ready to share their powers with their subordinates. The central government is not willing to establish a smooth system of powers sharing and likewise the provincial

governments hesitate to foster well-managed local government system due to fear of losing their role at respective levels i.e., central and provincial. In such view, the eighteenth amendment is not imparting its actual fruits even after thirteen years of its enactment (Rehman, 2010).

### ***Challenge to Resources Distribution***

Under the eighteenth amendment, there are made so many changes to the constitution of Pakistan, which required the collaboration between the federal and provincial governments. However, unfortunately, both of them are not willing to cooperate with each other, which is leading to bad governance. The central government are not giving resources' share to the provinces, which is another drawback on amendment (Institute of Public Policy, 2011).

### ***Weakening the Central Government***

Through eighteenth amendment, the central government became just a puppet in the internal matters of the country. The abolishment of the concurrent list weakened the role of central governments and all of the rest of the major responsibilities have been transferred to the provinces (Niaz, 2010).

### **Recommendations**

In accordance to the detailed discussion on the eighteenth amendment, following are a few recommendations proposed by the authors so that this amendment may prove fruitful for country.

- The provinces should be given appropriate share of financial resources.
- There should be built a liaison between the provincial and national governments.
- Provincial autonomy should be used for the welfare of the country not for ethnic or personal gains.
- A well-managed local government system should be developed to foster socio-economic development at the local level.
- A democratic-based decentralized politico-administrative system should be established which strives for the national and provincial development.

### **Conclusion**

Pakistan has a long constitutional history, which continued to change over the period. The political history of Pakistan has gone through different military interventions where the military rulers amended the constitution and used it to maximize their powers. Zia-ul-Haq and Pervez Musharraf enjoyed the same constitutional powers through reforms they introduced in the constitution. The eighteenth amendment is an initiative taken by the political alliance in order to minimize the presidential powers specially to dissolve the national assembly. Under this amendment, there have been made plenty of changes in the constitution, which fostered the provincial autonomy and established a desacralized political system. Although, the democratic step has been taken in the form of eighteenth amendment, there are some challenges need to address on priority basis to foster socio-economic development of the country.

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