

The Content of the Eighteenth Constitutional Amendment and Balochistan: A Critical Appraisal

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Abstract

The research investigates the question of provincial autonomy in case of Balochistan province after 18th constitution Amendment. As the region being rich in terms of natural resources; however, remains the least developed and poorest federating units among the four provinces of Pakistan. The impoverished province has always protested against the constitutional rights with respect to its just shares in resources explored in the region. Several times, undemocratic means have been used to oppress their rising demands of provincial autonomy. However the power elite has been failed to materialize it. Rather, the notion of unjust sharing of resources has augmented the contestation between the center and smaller federating units.

The nature of these issue are not new, rather these are historic. Several efforts in the shape of constitutional amendments were made to deal with the issue of disparity and inequality; however, nothing productive has been done. The rising gap of inequalities, unjust distribution of the resources and the question of political autonomy has continued problematic between the center and Balochistan even in the post 18th constitutional Amendment. The central government and power elite in the province are contributing in widening the prevailing disparity and imbalanced distribution of resources in the region. The masses of the province have considered themselves as disregarded and are being cheated by a ruling elite power.

Key Words: Center province relations, provincial autonomy, natural resources, National Finance Commission (NFC).

Introduction

Since its inception, the federation of Pakistan has faced persistent friction between its Eastern and Western Wing. Several steps have been taken to address these instabilities in the shape of Objectives Resolution (1949), the One Unit (1955) and the development of several constitutions along with

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adoption of various constitution amendments; however, these initiatives proved ineffective in addressing core political concerns between the wings. As a consequence, this attitude of the power elite of West Pakistan led to the emergence of Bangladesh. After the fall of Dakha and the formation of four provinces under a centralized federal system, the dissemination of resources and distribution of political powers have remained a main bone of contention between the center and federating units (Khalid, 2013).

In this respect, various constitutional amendments and reforms package have been made to give more power to the smaller provinces since 1973. In the initial phase, both provinces (Balochistan and Khyber-Pakhtunkhwa) temporarily recognized the 1973 Constitution with a promise that concurrent list would be abundantly eliminated within a duration of ten years; however, this has never happened. In addition to that the Article 158 of the Constitution guarantees the provinces by receiving the first right to consume and fulfill their requirements of all resources including oil and gas before these are transferred to the other federating units. Similarly, the Article 172-3 of the constitution states that both the province and the federal government have the share of 50:50 for mineral oil and natural gas. The federal issue in Pakistan is deep-rooted in the tenacious crisis of center province relations. A profile of Punjabization of the state underlines the claim for provincial autonomy in the three smaller provinces (Balochistan, Sindh and KP) (Khan H. , 2012, pp. 884-89)

In this regard, the 18th Constitutional Amendment destined to be a landmark accomplishment in constitutional history of the federation since it granted maximum provincial autonomy to the provinces with respect to their resources. In addition, it attempted to bring about a balance of power between the center and provinces (Mujahid, 2010). This amendment was also meant to upsurge the power of the constituent units with regard to their domain of legislation and execution of the administrative and financial matters, abolished the concurrent list, provided more autonomy to the units over their natural resources and more importantly it reduced the role of president in imposing emergency over the provinces matters. More significantly, local government and devolution of power was another significant development of this Amendment which facilitated the government to come closer to the people (Sattar, 2011).

History of Eighteenth (18th) Constitutional Amendment

- ***The Necessity of Introducing 18th Amendment***

The continuous civilian and military leaderships have always attempted to accumulate powers of a de facto rule in the country by refusing to serve the masses under the constitution. Their interventions have never let the parliament

and cabinet to work independently. No doubt, the provisions of 1973 constitution and several constitutional amendments were meant to serve the good will of the military; instead focusing on public good. For instance, in the 1973 constitution, the 8th Amendment, Legal Framework Order (LFO 2002), and the Seventeenth Amendment have been considered as the key developments in the constitutional history of Pakistan which not only undermined the parliament's sovereignty and denied the peoples' political, civic and fundamental rights, but also discouraged the democratization process (Hanif & Khan, 2011). As a result of these developments, the democratic and parliamentary culture could never flourish in the country.

In this state of affairs, the parliamentary and democratic forces have realized the necessary to correct the democratic course by reestablishing the true spirit of the 1973 constitution; so as the parliament and other nominated governments could function and play their due constitutional roles with full freedom. In this regard, the need of 18th Constitutional Amendment came into being.

- ***Constitutional Reforms Committee 2009***

When the elections of 2008 were conducted by Musharraf, the Pakistan People's Party (PPP) secured maximum seats and undertook power in the country. Right after assuming power, the PPP leadership constituted a Constitutional Amendment Committee in 2009 to suggest a package of constitutional amendments so that to restore the original nature of 1973 constitution. The Committee consisted of 26 members who were chosen from major political parties. These stakeholders developed a consensus draft bill which was discussed in the senate and National Assembly and then was anonymously passed on April 20, 2010.

The constituted 26-Member Committee included only 11 members from the mainstream political parties, i.e., the PPP-5, the Pakistan Muslim League-Nawaz (PMLN) 3 and the Pakistan Muslim League Quaid-i-Azam (PML-Q)-3. The remaining 15 members included the MQM-2, the ANP-2, the Jamiat Ulemai-e-Islam Fazlur Rehman-2 and one each from the Balochistan National Party (BNP), Jam'at-e-Islami Pakistan (JIP), the National Party (NP), the Pakistan Peoples Party-Sherpao (PPP-S), the National People's Party, the Pakhtoonkhwa Milli Awami Party and the Jamhoori Watan Party (JWP).” (Khan M. H., 2011)

The main emphasis of the committee was on the 17th Amendment, Charter of Democracy (2006) and provincial autonomy of the provinces which was further extended to the following areas; strengthening the role of parliament and provincial Assemblies, promoting good governance and transparency,

granting more provincial autonomy, strengthening independency of judiciary and institutions and respecting merit respectively. Thus, the 18th Constitutional Amendment was an enormously significant move in the chequered political and constitutional history of Pakistan. This amendment has reclaimed the actual spirit of 1973 constitution which was passed by the Parliament on 20th April, 2010 (Musarrat, Ali, & Azhar, 2012).

This historic achievement in a way was accomplished as a result of several rounds of discussions and concessions. (Hashumi, 2010). The amendment presented significant changes in the 1973 Constitution. About 36 percent of 1973 constitution was amended .102 articles out of 280 Articles either were amended, deleted or added (Rabbani, 2012). The 18th Amendment has brought a major paradigm change in the hefty centralized federal arrangement into a decentralized one by encompassing more administrative, political and financial powers to the provinces. The 18th Amendment may be termed as a second Grand National political consensus after the adoption of the 1973 Constitution. The only purpose of this development was to strengthen the feeble democratic structure of the country (Khan, 2012).

The Contents of the 18th Amendment

The 18th Amendment has brought about a major paradigm shift in the heavy centralized federal structure into a decentralized one by extending more political, financial administrative powers to the provinces. To some extent, it reclaimed and strengthened the true nature of 1973 constitution by accomplishing the long standing demands of provincial autonomy of the smaller federating units have been fulfilled by the federal government (Javed, 2010). (Also see, “Analysis: Five Years of the 18th Constitutional Amendment”, 2015). The paper will try to through a glance whether changes brought in the constitution and the autonomy granted to the Balochistan province have been fulfilled or not. The main changes made in the Constitution, were as follows;

- Under this Amendment, the nature of federal and parliament of the constitution was restored.
- The 8th and 17th Constitutional Amendments were abolished from the constitution under 18th Amendment,
- Under this Amendment, the presidential powers have been transformed to the parliament and to the office of Prime Minister. It empowered and enlarged the role of senate and made the cabinet accountable for any move. The members of senate were increased from 100 to 104. It also increased the working days of the senate from ninety to one hundred

and ten. (Tirmizi, *The News*, 7 April 2010). The provinces have the same kind of powers.

- Article 6 of the Constitution provides for penalty of person found guilty of High Treason. However, the Eighth Amendment altered it considerably by adding a new clause 6 (A) which states that it shall not be validated and recognized by any court whether it is High Court or Supreme Court. By doing so, it may help to reduce repeal of the constitution and lessen the military rule in the country.
- Regarding the basic and fundamental rights, a new article 10 (A) and 19 A have been introduced in the constitution that every citizen of country shall without any judgment and discrimination has the right to just trial and access to information in all matters pertaining to public importance. Also in the same chapter, article 25A was added that it is the state's responsibility to provide free education to the children from the age of 5 to 16. (Fakhr-ul-Islam, 2013)
- Another significant development in the Amendment was granting greater autonomy to the smaller federating units. After the enactment, the parliament would have the power to make legislations with regard to federal legislative list. It also granted power that the provincial assemblies will make laws with respect to any matter not counted in the federal legislative list. The concurrent list has been removed from the constitution. The following articles 70, 142, 143, 144, 149, 157, 160, 161, 167, 172, 232, 233, 234 of the constitution were either modified or fully altered. (Fakhr-ul-Islam, 2013).
- Seventeen federal ministries were handed over to the provinces. Under the Article 38, the promotion of socio-economic uplift of the citizens has been guaranteed by the federal government. Through addition of a new paragraph to article 38 of Principles of Policy, disparities on the concerning shares of provinces in numerous services have been removed.
- The edited Article 39 was aimed at involvement of people from all provinces in Armed Forces have balanced the representations including all minorities of the federation in the military which was meant to be accomplished within 5 to 10 years.
- Around 61 to 231 staffs of the federal government employees are repositioned in the wake of abolishment of these ministries.
- Article 140-A is retained. It meant to delegate powers to the local bodies and elections shall take place under Election Commission of Pakistan. The term of Election Commission was extended from three to five years by the ECP.

- The demand of self-rule by the provinces was fulfilled by introducing new changes in the constitution. Around 63 federal subjects were transformed to the federating units such as oil and gas, taxes on the oil and gas. Assets, excise duty and taxes on goods and passengers. (Farzana, 2015)
- As per Article 153, the Council of Common Interest was strengthened and empowered with maximum mandate with regard to dispute settlement. The Prime Minister Acts as the head of CCI. Its members were elected from both, the center and province to settle the emerging issues between the center and smaller provinces. It has to meet once in quarter. (Hamid, 2010)
- Article 156 of the constitution deal with the National Economic Council (NEC) was reformed which previously gave the provision to the president to appoint one member from each province with the consultation of provincial government. However, under the 18th Amendment, this responsibility went on the shoulders to the Prime Minister to nominate the Council's members. This in fact is a clear violation of the rights of the province and provincial autonomy. (Khan M. H., 2011)
- Article 157 was abolished from the concurrent list and transformed to the Federal List Part-II by which more responsibility and greater provincial autonomy (administrative and financial) was met to a great extent. It is now dealt with Council of Common Interests. It provides constitutional arrangements where the disputes are resolved between the central and provincial governments. So any issue related to this article may be moved to the CCI. Prior to taking any decisions with respect to construction of any hydro-electric, power installations or grid station for generating electricity, the federal government should consult the provincial governments (Rabbani, 2012).
- Article 160 of the constitution was amended on two grounds; I) (3A) and (3B). Clause 3A specifies that the share of the provinces shall not be less than that of the preceding one. It was expected to transfer the financial revenues from the center government to the provinces and to compensate the past imbalances. Clause 3B was introduced and appointed the federal and provincial finance minister to look after the Award to better govern and administer the pertaining matters of the provinces and federation (Hanif & Khan, 2011).
- With respect to natural gas and hydro-electric power, the 18th Amendment adds clauses to the Article 161 that: (a) "The net proceeds of Federal duty of excise on natural gas levied at well-head and collected by the Federal Government and of the royalty collected by

the Federal Government, shall not form part of the Federal Consolidated Fund and shall be paid to the Province in which the well-head of natural gas is situated;

(b) The net proceeds of the Federal duty of excise on oil levied at well-head and collected by the Federal Government shall not form part of the Federal Consolidated Fund and shall be paid to the Province in which the well-head of oil is situated.” (Hashumi, 2010).

- Article 167 provides the privileges to a Province which may raise domestic as well international loan by guaranteeing on the safety of the Provincial Consolidated Fund.
- Similarly, article 172 (3) reads that the resources (mineral, oil and natural gas) are adjacent to the territorial waters within the provinces then the provincial government and central government will jointly and equally benefit from such resources. (Hamid, 2010)

Rights Given to the Provinces with Special Reference to Balochistan

The pre-and post-partition politics of the sub-continent has revolved around the critical question of rights of the tiny states or provinces. Federalism, as a democratic notion of constitutionally separated powers between the federal governing mechanism or an authority and federating units, has been a promise for the creation of Pakistan. The proclaimed founder himself in an interview with the Associated Press of America on 8th November 1945 had explicitly elaborated that

“The theory of Pakistan guarantees that federated units of the national government would have all the autonomy that you will find in the constitutions of the United States of America, Canada and Australia. But certain vital powers will remain vested in the Central Government such as the monetary system, national defense and other federal responsibilities” (Khan, 2012).

Since the emergence of the federation, question of provincial autonomy has remained a bone of contention between the center government and its federating units. The centralization of political power within some power elites in the country has caused a sense of deprivation and marginalization among the people of smaller provinces including Balochistan.

Critical Analysis of the 18th Amendment

The 1973 Constitution also could not deal with the issue of provincial autonomy in spite of being the mere unanimous constitutional document in the political and constitutional history of Pakistan. The fight for provincial

autonomy continued, but the attitude of the central government was of showing cold shoulder (Mujahid, 2010). In this regard, the 18th Amendment was an attempt to revive the original structure of 1973 constitution. It was considered as a comprehensive reform package proposed the federal government to grant enough provincial autonomy to the smaller constituent units particularly Balochistan to meet out their persistent demands including the demands of provincial autonomy (Waseem 2010). Theoretically, the long standing demand of provincial autonomy was in a way fulfilled by the enactment of the 18th Amendment. So the paper will try to analyze whether the rights given to Balochistan constitutionally, have been materialized or it was just a kind of documentation to gather dust in the pages of history.

The Amendment meant to address this claim of Article 172-3 which states that for any Mineral Oil and Natural Gas discovered within the provincial territory then both the provincial and federal government will be the Joint and Equal Owners. In contrast, Article 158 states that: “The Province in which a well-head of natural gas is situated shall have precedence over other parts of Pakistan in meeting the requirements from that well-head, subject to the commitments and obligations as on the commencing day”. It is unfortunate to know that still many parts of the province have no access to domestic gas for cooking purposes, despite Balochistan being the major supplier of Natural Gas in Pakistan (Tareen, 2015).

Under the 18th Amendment, the formula for distribution of financial resources was envisioned through the 7th National Finance Commission (NFC) Award. It is stated that all matters falling in Federal Legislative List Part II will be dealt in the Council of Common Interests respectively. Similarly, the article 154 (1) states that the CCI shall meet at least once in every 90 days, but unfortunately, a forum of such importance is not taken honestly and the meetings are not summoned as per the designed schedule. The 7th NFC has improved the share of Balochistan province in Federal Divisible Pool from 7.05 to 9.09 percent which has resulted in inflow of supplementary funds of above 40 Billion in post 7th NFC award in the year 2010-11, but the amount was misused and injected as the Non-Developmental Expenditure which ought to be allocated for mega infrastructure developmental projects instead of wasting it under the Non-Developmental Expenditure (Faiz, 2015).

- ***The Issues of Devolution***

Devolution has been another critical issue between the province and the federation of Pakistan. In fact, the 18th Amendment was an initiative made by the central government to transfer the key federal ministries and departments to the provinces so that they better perform in their respective premises.

However, the result seems disappointing where the Key ministries have not been devolved to provinces yet. The Labour Ministry has been devolved, but the Federal Government still grips the revenue generating EOBI. Similarly, the Ports and Electricity is a joint subject under Federal Legislative List II, where the province doesn't have not inclusive control over it. Same as the case with the present Federal Health and Education Ministries that have been delegated to province with the greater interest of the federal government; however it lacks the required facilities and the province doesn't have the capacity to improve it. Thus, Article 172-3 cannot help the people of Balochistan until and unless all the corresponding rules and policies related to oil and gas are revisited in accordance with the 18th amendment (Khan, 2015).

Moreover, it is not the case with the Balochistan government that persistently points the finger at the discriminate policies of the center government, but also the Jamit-e-Ulma Islam's leader has believed that provincial government has no authority with regard to the matter pertaining at provincial level. Currently, most of the powers are rested and regulated in the hands of the FC and IGFC. Furthermore, he says that even today the people of region called the policies of the power elite as "third umpire". In the same fashion, Afrasiab Khattak of Awami National Party (ANP) said that the (CCI) was supposed to meet at least once every 90 days, but it had not met for over six months. He said no meeting of the CCI has been summoned for so long (Khan I. A., 2014).

Apart from Balochistan, the Chief Minister of Sindh Qaim Ali Shah expressed apprehensions many times that the 18th Amendment is not being implemented completely by the federal government. There used to have around ten ministries which have not been transferred to the provinces. He said that he had taken the matter to the CCI and to the committee of the inter-provincial coordination forum. However, a very little has been done to implementing this issue (Ghori, 2016). Similarly, "If it is not fully implemented in its true spirit, it will be a negation of the real federation and will increase tensions and widen the gap between the Centre and the provinces, especially Balochistan," it says (Rabbani, 2012).

- ***The Injustices in the Higher Education Commission (HEC) Quotas***

It is a matter of grave concern that the Terms of References (TORs) and HEC ordinance 2002 do not comprise information related to its functions that how HEC resources should be distributed among the provinces. While looking at the HEC's annual report of 2010-11, it does provide the answer for this question. The Executive Committee of National Economic Council (ECNEC) permitted the provincial quotas in PhD scholarships in July 2011 in which the share of Balochistan was fixed to six percent (Amir, 2015).

After the approval by ECNEC with regard to the provincial shares, three annual reports have been issued. In those issued reports Balochistan has botched to receive none PhD scholarships in its established share. In the years, 2011-12 Balochistan managed to get 1% of 5,524 PhD Scholarships. In the year 2012-2013, Balochistan only succeeded to get 1.04% out of 2,895 PhD scholarships. However, in case of 2010-11, Balochistan's shares in HEC quota in PhD scholarships were at all-time less than of 0.11 percent. So, in the last three years, the aggregate share of the province is 0.72% as contrasting to its mandated share of six percent which evidently shows that HEC authorities are openly violating the decisions made by the ECNEC (Amir, 2015).

There is another critical issue of the six percent of quota in federal departments for the residents and local holders of Balochistan. In these departments, the local or domicile holders of Balochistan are systematically made deprived of their prescribed six percent share in the federal departments and respective ministries. It is said to mention that on the top bureaucratic position, the representations of the people of Balochistan are extremely lacking to make their way to certain ministries and hardly the Baloch are positioned. Out of 49 federal secretaries even not a single person is from the province. More importantly in the most top administrative hierarchies, the Baloch are hardly adjusted. However, several attempts have always been made to balance the existing gap of injustices by giving the low-scale jobs to the residents of Balochistan (Hamir, 2015). This attitude of the ruling political power elite of not only of the center, but also of the province has produced a great sense of anger within the educated youth of Balochistan. The educated class considers it as a well-structured, planned and systematic deprivation of the people from the federal jobs.

Another sensitive matter is of the fake domicile holders. Most of the people from other provinces are trying to benefit themselves from the shaky province. The deteriorating education state paves the way for those who are having bogus domiciles who are neither the natives nor the residents of the respective province. Shah Meer writes in his article "The reason having a fake domicile is clear: to take advantage of the lack of access to education in Balochistan that gives these "carpetbaggers" a testing advantage in the government's competitive examinations, and the knowledge that Balochistan's citizens lack the means to challenge the hijacking of federal posts, Central Superior Services (CSS) quotas and foreign scholarships" (Meer, 2016).

In CSS exams in 2014 the two candidates, having bogus domiciles, were declared fake who were positioned against the Balochistan quota. Likewise, once a petroleum engineer from Balochistan was in search of a job. Interestingly, the guy was asked by a high official from Islamabad that why he

wouldn't acquire a fake domicile of Balochistan and would easily secure a job in OGDCL. The Baloch seethed inside and said "Sir, I belong to an area of Balochistan where gas is being produced and companies are working; yet I have been denied a posting there. On the other hand, people from other provinces come and join companies with fake domiciles. But I can do nothing while all this is being done in front of my eyes." (Meer, 2016). Also one can find the evidences from the Higher Education Commission as well. If the government of Balochistan initiates verifications of the candidates awarded foreign scholarships under the Agaz Haqooq Balochistan, then one can find numerous cases of fake domicile holders who are securing jobs in the federal departments.

In this regard, while addressing a meeting of the Senate standing committee on inter-provincial coordination, the former Chief Minister of Balochistan Dr. Abdul Malik said that they have been raising complaints with regard to fake domicile holders. He urged the federal government to guarantee the scrutiny of bogus domicile holders before granting jobs to them on the basis Balochistan quota.

- ***The Question of Provincial Autonomy***

The 18th Constitutional Amendment carried some changes with respect to provincial autonomy where the constituent units were empowered with regard to provincial autonomy; however, there has always been conflicting views from the provincial government that they have hardly consulted in their provincial related matters especially in case of ongoing mega projects. It is evident in case of Balochistan that the former CM Abdul Malik Baloch questioned the federal government about the Gwadar deal. (Shah, 2015). But he said that nothing has been done so far and all the powers are being exercised by the federal government. (Pakistan Post, 2015). Thus, the prevailing circumstances of the province discloses the fact that the 18th Constitutional Amendment continued dysfunctional in Balochistan as it failed to integrate the group of estranged Baloch within the federation.

Conclusion

In the chequered political and constitutional history of Pakistan, there has always been a demand of provincial autonomy by the constituent units against the federation of Pakistan. This demand did not appear right after the formation of this country; however, the nature of this demand was inborn in struggle movement for a separate homeland during the colonial period. Even the Pakistan movement was mainly centered to gain more autonomy with respect to the Muslim majority regions. The founding members of Pakistan movement believed that after getting independence from the colonial rule, the

issue related to autonomy would be resolved. However, the result was *vis versa*; and competition emerged within the masses for their rights.

In the early days of independence, the country faced challenges and then the issues were accelerated in the shape of the constitutional building. The previous constitutions couldn't cope with rising demands of the provinces. Though the ruling elite used different tactics (coercion, use of force, operations etc.), but couldn't sustain its supremacy at the societal level. The 1973 constitution in a way resolved the tenacious demand of autonomy; however, it couldn't completely deal with the prevailing demands of provinces. More importantly, the growing military rule in the country also accelerated this notion of distrust.

In this context, the 18th Constitutional Amendment came up with an accomplishment in the constitutional history of Pakistan. Most of the Pakistani scholars and policy makers consider it as reform package initiated with the consent of the central and provincial government. This package was aimed at granting concentrated autonomy to the smaller provinces to strengthen the federation of Pakistan. The smaller federating units (Sindh, Balochistan and PK) have protest against the mishandling of the federal government. Balochistan being the most resource rich region, considered itself is the most deprived province in the Pakistani federation.

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