

## **Lessons Not Learnt: Threat to Eighteenth Amendment and Federalism in Pakistan**

**MOHIT SHARMA**

Research Scholar

Academy of International Studies, Jamia Millia Islamia, New Delhi (India)

**Key Words :** Eighteenth amendment, Federalism, Constitutional history, Parliamentary committee

### **INTRODUCTION**

The episodes of centralization and re-centralization far outweigh the half-hearted sporadic attempts at effectively federalizing Pakistan during most of its political and constitutional history. Over three decades of highly centralized rule by unelected military dictators and struggling civilian regimes under the indirect shadow of the Army signify the decay of federalism in Pakistan.

The Eighteenth Amendment, which was passed in 2008 unanimously by political leaders of all hues, including religious ones, and received the consent of the then President of Pakistan, Asif Ali Zardari in 2010 was, by all standards, the most impressive attempt at proper re-federalization of Pakistan. Senator Raza Rabbani, the Chairman of the Parliamentary Committee on Constitutional Reforms, which authored the Amendment, described it as “the most comprehensive restructuring of the federal and provincial administration since 1947.”<sup>1</sup> It chronicled a paradigm shift in devolving power to the provinces legislatively with the abolition of the controversial concurrent list and transfer of several of its subjects to the federating units. The third tier of the political system - the local government – was given special attention to. Some of the structural flaws in the design of federalism were removed; one-man monopoly to dissolve assemblies at will was done away with and the role of the two houses of parliament was strengthened. The provinces were given more stakes

on their own natural resources. The provinces were economically empowered with the passage of the 7<sup>th</sup> National Finance Commission in 2009, which significantly increased the provincial share of revenues. For the first time in Pakistan’s chequered constitutional history, the promise of federalism made at the historic Lahore Resolution of 1940 seemed to have appeared on the horizon in economic and social matters. The provincial leaders welcomed the bouncing back of federalism in Pakistan after decades of autocratic rule by both civilian and military regimes. In the backdrop of this re-federalization through the Eighteenth Amendment to the Constitution of Pakistan, Mohammed Waseem termed Pakistan as a “Majority-Constraining” (2015) Federation, indicating years of domination of country’s politics by the powerful and self-aggrandizing Punjab province at the cost of development and welfare of the weaker provinces, especially Balochistan and Khyber Pakhtunkwa.

However, a decade into the Eighteenth Amendment, the political urgency and vigor with which it was passed is all but missing in its implementation and execution. The momentum made by the Implementation Commission initially is being increasingly lost. At a consultation on 25<sup>th</sup> July 2012, Qamar Zaman Kaira, Federal Minister for Information cast a doubt on the intent of the Amendment, to which Senator Raza Rabbani replied: “...it is an unfortunate mindset, in the bureaucracy but also within some political forces, that is centrist and has

1. Mian Raza Rabbani, *A Biography of Pakistani Federalism: Unity in Diversity* (Islamabad: Leo Books, 2012), p.297.

not accepted devolution.”<sup>2</sup>

In this context, this study looks into the attempts at dilution of the Eighteenth Amendment through political tactics. The study examines the unsatisfactory performance of the Council of Common Interest (CCI), dispute resolution body and delay in National Financial Commission Award (the last one being the 7<sup>th</sup> NFC), both institutions which epitomized the federal spirit of the Eighteenth Amendment. The recent Supreme Court decisions to reverse the possession of three hospitals in Karachi to the federation, which otherwise should have been under provincial control, is a case in point reflecting the underlying sentiment of erosion of the spirit of the constitutional federalism once again in Pakistan. The return of cash surplus by the provinces in November also reflects poorly on the federal macroeconomic management and provincial capabilities in Pakistan.

The study demonstrates that the Eighteenth Amendment faces threat, primarily by the handful of people at the Centre who see it as an encroachment on the large amounts of money at their disposal. The paper also argues that the continuing chorus of the centralizing forces that the Eighteenth Amendment and the 7<sup>th</sup> National Finance Commission have overburdened the federation economically is done to cover up their own administrative and institutional weaknesses. The federation’s unwillingness to devolve power and bring clarity to the roles of institutions at all three tiers of its political system are putting federalism in Pakistan under extreme stress. The study also finds that Pakistan Tehreek-e-Insaaf (PTI) that has coalition governments at the Centre and three out of four provinces is using its military-backed political clout to exploit the administrative and financial vulnerabilities of the provinces.

### **Promise of federalism for the new State of Pakistan:**

The Lahore Resolution of 1940, also known as Pakistan Resolution, became the foundation of a new structure<sup>3</sup> with federal undertones. It envisioned that the

“areas in which the Muslims are numerically in a majority, as in the North-Western and Eastern zones of India, should be grouped to constitute independent states in which the constituent units shall be autonomous and sovereign”.<sup>4</sup>

The vision of federalism and protection of minorities for a future Pakistan also echoed in the All India Muslim League Resolution Number 1 adopted at its 27<sup>th</sup> session on 23-24 March 1940:

...adequate, effective and mandatory safeguards should be specifically provided in the constitution for minorities in these (constituent) units and in the region for the protection of their religious, cultural, economic, political, administrative and other rights and interests in consultation with them, and in other parts of India, where the Musalmans are in a minority, adequate, effective and mandatory safeguards shall be specifically provided in the constitution for them and other minorities for the protection of their religious, cultural, economic, political, administrative and other rights and interests in consultation with them.

This was interpreted by Bengali, Sindhi, Baloch and Pashtun regionalists as the basis of a new social contract among provinces and became the basis of the agreement to become part of the new state where their regional sovereignty will be respected. The Lahore Resolution in a way marked the beginning of the quest for Pakistan as a potent political and constitutional reality. Reiterating his commitment to federalism, Jinnah during a presidential address to the first Constituent Assembly of Pakistan in Karachi on 11<sup>th</sup> August 1947 said: “You are free, you are free to go to your temples, you are free to go to your mosques or any other places of worship in this State of Pakistan. You may belong to any religion or caste or creed – that has nothing to do with the business of the State.”<sup>5</sup>

Such statements by Jinnah implied that the future Pakistani state would be of accommodative nature, one

2. Cited in Leslie Seidle and Zafarullah Khan, “Federalism and Eighteenth Amendment: Challenges and Opportunities for Transition Management in Pakistan”, *United Nations and Development Programme and Forum of Federation*, Islamabad, December 2012, URL:
3. Dr. Kaniz F. Yusuf, “Introduction” in Dr. Kaniz F. Yusuf, Dr. Saleem Akhtar and Dr. S. Razi Wasti (eds.), *Pakistan Resolution Revisited* (Islamabad: National Institute of Historical and Cultural Research, 1990), p.14.
4. Z.H. Zaidi (ed.), *Jinnah Papers: Pakistan At Last: 26th July to 14th August 1947* (Islamabad: Quaid-i-Azam Papers Project, Cabinet Division, Government of Pakistan, 1999), First Edition, p.230.
5. *Ibid*, p.537.

of the prerequisites for federalism to survive. However, Pakistan's leadership was faced with the daunting task of defending and consolidating a fragmented state against real and perceived external and internal threats.<sup>6</sup> The contents of his Lahore speech ought to be diluted as fears of "particularism who posed a serious threat to the establishment of central authority in the new state."<sup>7</sup>

#### **A brief overview of Federalism in Pakistan:**

Pakistan was born into an anomalous situation that led to two contradictory approaches: 1) making federalism the only option for a viable form of government, and 2) making it as toothless as possible.<sup>8</sup> M.P. Singh and Veena Kukreja have argued that Pakistan since its emergence has rhetorically or notionally been a federal state but in reality the Unitarian character of the state has prevailed.<sup>9</sup> Mohammed Waseem has called the phase 1947-71 in Pakistan as "pre-federalization".<sup>10</sup>

Jinnah bestowed himself with vast array of powers as the first Governor General of Pakistan and there were at least two decisions taken by Jinnah that marked a disappointing federal beginning - the dismissal of Dr. Abdur Ghaffar Khan Sahib's ministry in the North West Frontier Province and the declaration of Urdu as the national language without winning the confidence of the Bengalis. Jinnah's early death of tuberculosis in 1948 followed by Liaquat Ali Khan's assassination in 1951 deepened the political vacuum in Pakistan, allowing other forces to hijack the democratic and federal processes in its infancy.

The constitutional drafts of 1950 (equal seats to all provinces) and 1952 (50% seats to East Pakistan) presented by Liaquat Ali Khan and Khwaja Nazimuddin respectively could not be agreed upon. While the former was dismissed by Bengalis, who comprised the majority of population, the latter was opposed by all other

provinces. Mohammed Ali Bogra, as the third Prime Minister of Pakistan, came up with the solution of having a bicameral legislature with 175 seats each to both wings of Pakistan.<sup>11</sup>

But before this could be passed, Governor-General of Pakistan Ghulam Mohammed, who was the architect of the Punjabisation of Pakistan, dissolved the Constituent Assembly on 24 October 1954. By this time, bureaucratization/militarization of Pakistan was nearly complete with Ghulam Mohammed, a civil servant as Governor-General, Iskandar Mirza, former Indian Army officer as the first president and former member of the audit branch of British India, Chaudhury Muhammed Ali becoming the Prime Minister of Pakistan.

The new cabinet, under Ghulam Mohammed's thumb, set out to prepare a constitution to be prepared by bureaucrats, approved by the commander-in-chief and legally sanctioned by the governor-general.<sup>12</sup> The relationship between the federation and the federating units was further strained in 1954 with the imposition of One-Unit scheme through which four provinces of the Western wing were merged to counter the demographic strength of East Pakistan.<sup>13</sup>

In a hostile environment as this, Pakistan got its first constitution in 1956 which mirrored the colonial Government of India 1935 Act. The President was bestowed with enormous powers, most strikingly the veto to dissolve the National Assembly. According to Mehrunissa Ali:

The federal structure set up under the 1956 constitution did not differ much from that of the Government of India Act 1935. It retained the same method of dividing powers as provided in the 1935 act. Apparently, provincial powers were enhanced, but in reality the central government retained its hold in the legislative

6. Ziad Haider, *The Ideological Struggle for Pakistan* (California: Hoover Institution Press, 2010), p.6.

7. Ayesha Jalal, *The State of Martial Rule: The Origins of Pakistan's Political Economy of Defence* (Cambridge: Cambridge University Press, 1992), p.24.

8. Mohammed Waseem, "Federalism in Pakistan", *The Forum of Federations* (Karachi), August 2010, p.3

9. M.P. Singh and Veena Kukreja, *Federalism in South Asia* (New Delhi: Routledge, 2014), p.75.

10. Mohammed Waseem, "Federalism in Pakistan", *The Forum of Federations* (Karachi), August 2010, p.5.

11. M.R. Kazimi, *A Concise History of Pakistan*, (Karachi: OUP, 2009), p.260.

12. Jalal, *The State of Martial Rule: The Origins of Pakistan's Political Economy of Defence*, p.200.

13. James Wynbrandt, *A Brief History of Pakistan* (New York: Infobase Publishing, 2009), p.178.

and executive spheres with the help of which it frequently interfered in the provincial affairs.<sup>14</sup>

In 1958, Pakistan was put under its first martial law and General Ayub Khan assumed the office of the President and Chief Martial Law Administrator. Gen. Ayub promulgated the 1962 constitution, a highly centralized Presidential form of governance system, which drew strength from the principle of Basic Democracy that bypassed the provinces altogether.<sup>15</sup> Moreover, Gen. Ayub rejected the recommendations of his own Constitution Commission, which suggested curtailment of the President's powers. Under the 1962 Constitution, Gen. Ayub Khan became all-powerful and the provincial autonomy was extremely controlled – federalism being the ultimate casualty. Gen. Ayub Khan was replaced by another martial law administrator General Yahya Khan following a public movement in East Pakistan against the former.<sup>16</sup> Gen. Yahya Khan tried to bring Awami League leaders to the talking table and advocated provincial autonomy, but the damage had been cast and the Awami League, who won the majority in the 1970 elections, was not ready to settle for anything less than complete autonomy. The refusal of Zulfikar Ali Bhutto to accept the electoral verdict followed by a fierce military crackdown on Bengalis led to the break-up of Pakistan to form Bangladesh in 1971. With this, Pakistan failed as a federal polity and became the first post-colonial country to divide on ethnic grounds.

Zulfikar Ali Bhutto, the Chairman of the Pakistan Peoples Party (PPP), emerged as a strong civilian leader and came up with the 1973 Constitution. Although the 1973 constitution enhanced provincial autonomy and brought the country back to parliamentarianism, the upper hand of the Centre prevailed. The provincial list continued to be absent. Bhutto turned out to be a centralist than a

federalist. Bhutto, despite his often expressed sentiments in favour of federalism, was no more willing to shift power from the centre to the provinces than any of his predecessors.<sup>17</sup> One of his most criticized actions was the dismissal of Balochistan government that bred one of the most aggressive insurgencies in the province, which not only crushed hopes of national integration during a civilian government but also precipitated a constitutional crisis in the country.<sup>18</sup> As Bhutto tried to take away the constitutional protection to civilian bureaucracy to tighten his hold over Pakistani politics, his handpicked General Zia-ul-Haq imposed the third martial law in 1977 and put the 1973 constitution in abeyance. About two years later, Bhutto was executed on charges of a murder conspiracy in April 1979.<sup>19</sup>

Not only did Gen. Zia's tenure deeply Islamized the country and the Army, it militarily ruled the country for 8 years putting the constitution in abeyance and centralized the polity even further with his Provisional Constitutional Order (PCO), 1981, Revival of the Constitution of 1973 Order (RCO), 1985 and the Eighth Amendment, 1985. The main feature of the RCO and later Eighth Amendment was that the President was empowered to dissolve the National Assembly at his discretion.<sup>20</sup> Once again a strong Centre had been created – federalism continued to be defunct.

In August 1988, about two years after Benazir Bhutto, Zulfikar Ali Bhutto's daughter, returned to Pakistan, Gen Zia mysteriously died in an air crash. Between 1988 and 1999, civilian leaders Benazir Bhutto (PPP) and Nawaz Sharif (PML-N) tried to democratize the Pakistani polity through the weak governments they formed at the Centre but could not complete their terms. In 1997, using the overwhelming majority in the parliament, Nawaz Sharif promulgated the Thirteenth Amendment, omitting Article 58(2)(b) which allowed the President to

14. Mehrunissa Ali, *Politics of Federalism in Pakistan* (Karachi: Royal Book Company, 1996), pp.93-94.

15. Basic Democracy was a pyramidal plan enabling the people to elect directly to local councils the men of their choice who would in turn elect the upper tiers of the administration.

16. Anthony Hyman, Mohammed Ghayur and Naresh Kaushik, *Pakistan: Zia and After* (New Delhi: Abhinav Publications, 1989), p.18.

17. Ian Talbot, *Pakistan: A Modern History* (New Delhi: Oxford University Press, 1998), p.229.

18. Mehtab Ali Shah, *The Foreign Policy of Pakistan: Ethnic Impacts on Diplomacy* (London: I.B. Tauris, 1997), p.171.

19. Shahid Javed Burki, *Pakistan Under Bhutto: 1971-77* (Lahore: Macmillan, 1988), p.202.

20. Charles H. Kennedy, "Constitutional and Political Change in Pakistan: The Military-Governance Paradigm" in Rafiq Dossani and Henry S. Rowan (eds.), *Prospects for Peace in South Asia* (California: Stanford University Press, 2005), p.42.

dissolve the provincial assemblies at will<sup>21</sup> against the wishes of the bureaucratic-military axis.

Pakistan saw its fourth military coup in 1999 by General Pervez Musharraf who put Pakistan back to a highly centralized military rule through Legal Framework Order (2002) and Seventeenth Amendment (2003) empowering himself to dissolve the National and Provincial Assemblies whenever he desired.<sup>22</sup> Through Seventeenth Amendment, the presidential dominance was attempted to such an extent that the incumbent president was allowed to seek another term through a vote of confidence through the assembly rather than holding elections.<sup>23</sup>

Gen. Musharraf's pro-Americanism, sacking of Chief Justice of Pakistan (CJP) Justice Iftikhar Muhammad Chaudhry and suspending the constitution triggered a civil society movement led by lawyers. Gen. Musharraf had to step down. Once again, a leader of the PPP, Asif Ali Zardari, widower of Benazir Bhutto, rose to power and became the president in 2008.

In 2010, the President's consent was accorded to the Eighteenth Amendment, a comprehensive constitutional exercise that was hailed as a landmark step in the federal history of Pakistan in the direction of participatory federalism. The provincial autonomy was enhanced, concurrent list was abolished, and the provisions for military takeovers and dissolving assemblies were amended among others. Federalism in Pakistan was, to some extent, renewed. But, an analysis of a decade into the Eighteenth Amendment shows a strong resistance to change being mounted by the centrist forces.

### **Threat to the Eighteenth Amendment and Federalism in Pakistan:**

The Eighteenth Constitutional Amendment in

Pakistan ushered-in the governance structure that promised administrative and financial empowerment of the provinces and trimmed Centre's powers most notably with respect to unilaterally dissolving assemblies. The Constitution was subjected to some serious introspection as evident from the fact that the Parliamentary Committee on Constitutional Reforms held 77 meetings, for a total of almost 400 hours, between mid-2009 and early 2010.<sup>24</sup> As a result, 69 of the 280 Articles of the 1973 Constitution were amended, 20 were substituted, seven were inserted and four were deleted or repealed.<sup>25</sup> Indeed, the relationship between the federation and the federating units was completely overhauled and the structural affairs of the country moved from a mainly centralized to a largely decentralized federation.<sup>26</sup> The Council of Common Interest, a dispute resolution body that remained dormant since 1973 was reinvigorated. The 7<sup>th</sup> National Finance Commission Award significantly increased the provincial share of revenues. Both were progressive steps in the direction of administrative and fiscal federalism in Pakistan.

However, strong resistance to change by the federal government impedes the realization of the desired outcomes of the Eighteenth Amendment, eating into the original intent of the constitutional reform. In the following sections, an assessment of the CCI would be made besides an analysis of the extent to which the revenue transfers as per the 7<sup>th</sup> NFC Award were able to address the fundamental economic vulnerabilities of the provinces.

### **Council of Common Interests (CCI):**

Described as a "quasi-executive"<sup>27</sup> body especially until the passage of the Eighteenth Amendment, the CCI came into being through Article 153 of the 1973

21. Shahid Javed Burki, *Pakistan: Fifty Years of Nationhood* (New York: Westview Press, 1999), p.20.

22. Iram Khalid, "Politics of Federalism in Pakistan: Problems and Prospects", *A Research Journal of South Asian Studies* (Lahore), Vol.28, No.1, January 2013, p.206.

23. *Ibid*, p.207.

24. Amjab Bhatti, "Operational Manual: Transition Management of Democratic Devolution in Pakistan", Forum of Federations, Ottawa and Centre for Civic Education, Islamabad, URL: , p.19.

25. Cited in Leslie Seidle and Zafarullah Khan, "Federalism and Eighteenth Amendment: Challenges and Opportunities for Transition Management in Pakistan", *United Nations and Development Programme and Forum of Federation*, Islamabad, December 2012, URL:

26. Zeeshan Ashfaq, "Impact of 18th Constitutional Amendment on Governance of Renewable Energy in Pakistan", Heinrich Boll Stiftung, World Wind Energy Association Policy Paper Series, December 2017, URL: , p.VII.

27. Mohammed Waseem, "Pakistan: A Majority-Constraining Federalism" in Asma Faiz (ed.), *Making Federation Work: Federalism in Pakistan After the 18th Amendment* (Karachi: Oxford University Press, 2015), p.29.

Constitution to manage the disputes between the centre and the states or between the states. However, since its creation in 1973, the CCI remained largely unutilized<sup>28</sup>. Robust in theory, CCI lacked implementation as is evident from the fact that it met only 11 times during 37-year of its existence from 1973 till 2010. The CCI was re-energized after the Eighteenth Amendment as substantial increase in number of meetings held since 2010, which are 29 till November 2018 shows. (Interprovincial Coordination Division, 2019). This shows that all parties at the Centre – PPP (2008-2013), PML-N (2013-2018) and PTI (2018 onwards), at least, acknowledged the importance of cordial centre-province relationship for stability.

However, reports suggest that despite clear devolution of powers in the Eighteenth Amendment vis-à-vis CCI, the majority of key issues remain unsolved and federating units often use the forum as a vent to fish out their anger with no effective outcome. The Article 153(2) of the Constitution which empowers the Prime Minister to nominate three federal ministers to the CCI without any bar has also remained a bone of contention. The reconstitution of the CCI under the chairmanship of Prime Minister Shahid Khaqan Abbasi on 31<sup>st</sup> August 2018 led to increase in number of Members from Punjab from 2 to 4, which resulted in Balochistan and Khyber Pakhtunkhwa losing one member each. After becoming the Prime Minister, Imran Khan again reconstituted the CCI with four members from Sindh origin amid uproar by a number of PPP leaders, including party chairman Bilawal Bhutto Zardari and former Senate chairman Raza Rabbani, against any plan to roll back the Eighteenth Amendment<sup>29</sup> Such instances of PM using his veto in picking federal ministers have led to speculations of misuse of the body by the ruling federal dispensation.

The issue of a permanent secretariat for the CCI has also not been taken up seriously by the federal government raising doubts. The failure of the strengthened Council of Common Interests (CCI) to function as an effective dispute resolution body demonstrates that the federation and the federating units are not on the same page on most issues.

### **7<sup>th</sup> National Finance Commission: Fiscal Federalism in Pakistan:**

On the economic front, the 7<sup>th</sup> National Finance Commission was approved in 2009. It was a major breakthrough and by far the most progressive step in the direction of fiscal federalism in Pakistan. There was an increase in the provincial share of the divisible pool from 47 per cent to 56 per cent for 2010-11 and to 57.5 per cent till 2015. The Award also changed the ratio of distribution of resources to provinces: Punjab got 51.74 per cent, Sindh 24.55 per cent, NWFP 14.62 per cent and Balochistan 9.09 per cent. It decreased Punjab's share considerably while almost doubling the share of most exploited province Balochistan.<sup>30</sup> More importantly, the sole criteria of "population" taken into account while distributing the funds before the 7<sup>th</sup> NFC Award, benefitting the most populous Punjab, was extended to poverty (10.3 %), revenue generation (5 %) and inverse population density (2.7 %) besides population (82 %)<sup>31</sup>, which had been an impending provincial demand. This was a welcome departure as since 1973, and unusually for a federal system, resources have been distributed solely according to population, benefitting the province of Punjab.<sup>32</sup> Hafiz Pasha calculated that in 2010 almost Rs. 300 billion was added to the four provincial budgets as a result of larger federal transfers; Rs 178 billion more than the 2006 formula under Gen. Musharraf.<sup>33</sup> The

- 
28. Zafarullah Khan, "Future of Pakistani Federation: A Case Study of the Council of Common Interests" in Faiz (ed.), *Making Federation Work*, p.146.
29. Amir Wasim, "Reconstituted CCI has most members from Sindh", *Dawn* (Karachi), 6<sup>th</sup> September 2018, URL: <https://www.dawn.com/news/1431262> (accessed on 29 January 2019)
30. Usman Mustafa, "Fiscal Federalism in Pakistan: The 7th National Finance Commission Award and Its Implications", *Pakistan Institute of Development Economics* (Islamabad), 2011, URL: <http://www.pide.org.pk/pdf/Working%20Paper/WorkingPaper-73.pdf>
31. Singh and Kukreja, *Federalism in Pakistan*, p.88.
32. Jalal, *The State of Martial Rule: The Origins of Pakistan's Political Economy of Defence*, p.220.
33. Cited in Katherine Adeney, "A Step Towards Inclusive Federalism in Pakistan? The Politics of the Eighteenth Amendment", *The Journal of Federalism* (London), Vol.42, No.4, February 2012, p.548.

insertion of Article 160 (3a) also required that the share of the provinces in each NFC award could not be less than the share given in the previous award.<sup>34</sup> The fiscal federalism thus envisaged included resource ownership and economic empowerment of the provinces. However, both political and economic federalism in Pakistan have met institutional and paradigmatic hurdles.

The Centre has been setting up a narrative to reduce the increased revenue share to provinces under the Eighteenth Amendment by claiming that the 7<sup>th</sup> NFC has reduced their share of the pie leading to financial problems in the country, an unfounded accusation to hide their own weaknesses. “Instead of blaming the NFC awards for the growing debt level, the federal government needs to focus on structural reforms that require current expenditure containment and greater resource mobilization.”<sup>35</sup>

Even at present in Pakistan, the 7<sup>th</sup> National Finance Commission Award continues to be in practice.<sup>36</sup> Due to lack of consensus between the federation and the provinces, the new Award could not be finalized yet and the 7<sup>th</sup> NFC Award is being extended in an ad hoc manner. While the Centre and the Armed Forces want to rebalance the transfer of larger chunk of divisible pool resources to the provinces under 7<sup>th</sup> NFC award<sup>37</sup>, provinces are wary of the proposed demand of 7% upfront cut in the new NFC Award.<sup>38</sup> The competing compulsions in Pakistan to be a federation on the one hand and to have a unitary sort of state, on the other<sup>39</sup> continue even after a decade since the Eighteenth Amendment was promulgated.

### **Resisting change: Pull towards recentralization:**

The case of transfer of control of three hospitals in Karachi - Jinnah Postgraduate Medical Centre, National Institute of Cardiovascular Diseases and National Institute of Child Health — back to the Federal Ministry of National Health Services, Regulations and Coordination, Islamabad by the Supreme Court of Pakistan in 2019 eroded the spirit of provincial autonomy accorded to the federating units by the Eighteenth Amendment. Encroaching into the provincial domain and holding that the transfer of the hospitals from the federal to the provincial government under the 18<sup>th</sup> Amendment was invalid, the court, by a majority of four to one reverted control of the hospitals to the federation.<sup>40</sup> This was done despite health being exclusively a provincial subject as per Article 97. The interpretative reason given for the transfer of the hospitals was that they fell under Entry 16 of the Federal Legislative List, which allows the federation to undertake works in any of the province for its purposes, showing the centrist mindset of the federation. This also shows the attempts of the federal government to dilute the provisions of the Eighteenth Amendment through different ways. As one observer puts it: “The rollback of the 18<sup>th</sup> Amendment, proving impossible due to a lack of parliamentary and cross-party support, is underway through a dilution by interpretation.”<sup>41</sup> Reflecting on the blatant attempt to encroach upon the constitutionally designated jurisdiction of the provinces, Justice Maqbool Baqar, wrote in his dissenting note:

“The very spirit and essence of a federal

34. See the Constitution of the Islamic Republic of Pakistan, URL: [http://www.na.gov.pk/uploads/documents/1333523681\\_951.pdf](http://www.na.gov.pk/uploads/documents/1333523681_951.pdf)

35. Muhammad Asif Iqbal and Muhammad Sabir, “Strengthening Fiscal Federalism in Pakistan: The Way Forward”, *Social Policy and Development Centre* (Karachi), January 2018, p.38.

36. Ifthikar A. Khan, “Provinces to get Rs3.2 trillion under NFC award”, *Dawn* (Karachi), 12 June 2019, URL: <https://www.dawn.com/news/1487710> (accessed on 21 August 2019)

37. Khaleel Kiani, “9<sup>th</sup> NFC Reconstituted to Disburse Resources”, *Dawn* (Karachi), 12 January 2019, URL: <https://www.dawn.com/news/1457010> (accessed on 13 May 2019)

38. Foqia Sadiq Khan, “Federalism and NFC”, *The News* (Karachi), 3 March 2019, URL: <https://www.thenews.com.pk/print/438938-federalism-and-the-nfc> (accessed on 3 March 2019)

39. Cited in Ibid.

40. Mirza Moiz Baig, “Can We Keep the 18<sup>th</sup> Amendment?”, *Dawn*, Karachi, URL: <https://www.dawn.com/news/1486075> (accessed on 3 June 2019)

41. Abdul Moiz Jaferii, “Diluting Provincial Autonomy”, *Dawn*, Karachi, URL: <https://www.dawn.com/news/1491192> (accessed on 30 June 2019)

constitution is the distribution of legislative powers between the federation and the provinces... Disregarding [such] mandatory provisions of the Constitution and the categorical mandate prescribed thereunder would embolden and encourage those who are averse to the rule of law and have scant regard for the supremacy of law, thereby strengthening those who want to create dissension and discord in our national polity."<sup>42</sup>

The Karachi banks case, therefore, is a testament to the dilution of the provisions of the Eighteenth Amendment.

The recent refund of Rs 202 billion of cash surplus/ unspent money jointly by the four provinces to the federation is another case of weakening of federal practices in Pakistan. The case is particularly curious as "the three provinces ruled by the PTI or its allies were more frugal in development spending and overzealous in cooperating with the Centre for maximum support."<sup>43</sup> Out of 202bn, Sindh, the only province not being ruled by PTI or its coalition, provided the lowest cash back – Rs 35.5bn – to the Centre, the rest was returned by Punjab, Khyber Pakhtunkwa and Balochistan. The closeness of PTI with the Army is also seen as a worrying sign by provincialists who fear unfolding covert military authoritarianism in Pakistan. The provinces were found to have spend disappointingly on the implementation of development schemes to improve the quality of lives of their people, allowing the federal government to lay claim on the unused funds. Not only does it reflect poorly on the capacity of the federal government to manage its macroeconomics, it also casts a serious doubt on any improvement in the administrative and political capabilities of the provinces to make use of the devolution as per the provisions of the Eighteenth Amendment and the 7<sup>th</sup> NFC

Award. According to a report by Social Policy and Development Centre, although there was an increase in social sector expenditure after the Eighteenth Amendment and 7<sup>th</sup> NFC, this didn't lead to better social sector outcomes, partly because of increase in population and partly because of non-development of power.<sup>44</sup> In addition to this, the incapability of the provinces to spend on development works in their jurisdictions made it easier for the federal government to eat into their cash surpluses. As per Pakistan's finance ministry, Punjab, Khyber Pakhtunkwa, Balochistan and Sindh extended the cash of Rs 75.4bn (21% of its total revenue), Rs 54bn (38%), Rs 37.3bn (43.4%) and Rs 35.5bn (18%), respectively.<sup>45</sup> An observer pointed out: "If in times of fiscal constraints, the provinces are squeezed to the enormous extent that the newly released fiscal numbers suggest, then the 18<sup>th</sup> Amendment has already been reduced to little more than a formality."<sup>46</sup>

The continues projection of the Eighteenth Amendment to be too harsh on the federation economically by the present Pakistan Tehreek-e-Insaf's Imran Khan government indicates the lack of political will in ensuring the proper implementation of its provisions. Rather than nurturing provincial autonomy provided through the Amendment, encroaching into the provincial money through political machinations by PTI-led Imran Khan government at the Centre not only shows the unwillingness of the centralizing forces to respect provincial autonomy but is also leading to anxieties in the provincial leaders, especially Pakistan People's Party (PPP) warning against any dilution of the Amendment provisions. Senator Raza Rabbani, the Chief Architect of the Eighteenth Amendment, has claimed that any rollback of the provincial autonomy guaranteed by the Eighteenth Amendment will have "serious consequences on the federation".<sup>47</sup>

42. Ibid.

43. Khaleeq Kiani, "Provinces Forego Uplift Plans, Return Rs 202bn to Centre", *Dawn*, Karachi, 9<sup>th</sup> December 2019, URL: <https://www.dawn.com/news/1521186> (accessed on 9<sup>th</sup> December 2019)

44. Muhammad Asif Iqbal and Muhammad Sabir, "Strengthening Fiscal Federalism in Pakistan: The Way Forward", *Social Policy and Development Centre* (Karachi), January 2018, p.55.

45. Khaleeq Kiani, "Provinces Forego Uplift Plans, Return Rs 202bn to Centre", *Dawn*, Karachi, 9<sup>th</sup> December 2019, URL: <https://www.dawn.com/news/1521186> (accessed on 9<sup>th</sup> December 2019).

46. Author Anonymous, "Relying on Provinces", *Dawn*, Karachi, 10<sup>th</sup> December 2019, URL: <https://www.dawn.com/news/1521446/relying-on-provinces> (accessed on 10<sup>th</sup> December 2019).

47. Hasan Mansoor, "Attempts to roll back 18th Amendment will harm country: Rabbani", *Dawn* (Karachi), 20 October 2019, URL: <https://www.dawn.com/news/1441993> (accessed on 29 October 2018).

The implementation process has indeed been fraught with political bickering between the centre and the provinces and resistance by powerful groups which are beneficiaries of the centralized Pakistan.<sup>48</sup> “At one end, federalism moved to the centre of the political discourse and public policy. At the other end, the legal-institutional structure of the state operated as a bulwark against what was perceived to be the dilution of its authority.”<sup>49</sup>

The domineering by Punjabis continues to pose threats to a federal balance. In the words of Aslam Khwaja, a researcher from Sindh, “There are major problems with implementation that have yet to be addressed and given that Punjabis dominate the bureaucracy, manipulating the implementation was an option.”<sup>50</sup> Mohammed Waseem argues that even after the Eighteenth Amendment... the profile of Punjab’s dominance over the federation was by no means diminished in the absence of a meaningful expansion of the recruitment base of the two state apparatuses of the army and bureaucracy.<sup>51</sup>

The problem is likely to continue until there is a fundamental rethinking on the part of the military establishment and bureaucracy, which remains highly unlikely. Having watched Pakistan split in 1971, those who govern it now should be aware that ethnic conflict still carries a great potential for violence and political instability. The provinces have not been able to accrue the benefits of increase of provincial ownership of natural resources as envisaged in Article 161 (1) (a) under the Eighteenth Amendment. The transfer of control of mineral resources to the provinces under the Eighteenth Amendment is also being seen by the Centre as a reduction of their monopoly in managing the provincial resources. In the 41<sup>st</sup> meeting of the CCI that took place

after a gap of 13 months on 23<sup>rd</sup> December 2019, the provinces out rightly “turned down a proposal floated by the federal government to withdraw their first right of use over natural gas.”<sup>52</sup> “Besides, the province of Balochistan remains fragile due to poor development outcomes, geo-strategic security complications, and high-levels of sectarian and intra-provincial ethno-nationalist conflict.”<sup>53</sup> Sindh is rife with ethnic conflict too. Azad Kashmir and Gilgit-Baltistan continue to be constitutional ambiguities that require a separate analysis, not done in this paper, as it is confined to the four provinces.

Put simply, while the Eighteenth Amendment did open a window for federal improvisation in Pakistan, its success and failure will highly depend on how those charged with policymaking decide to move forward and make use of the opportunities made available.<sup>54</sup> So far, the signs of federalization in the backdrop of the Eighteenth Amendment are not encouraging enough. What is required is fundamental rethinking from the centralizers to save Pakistan from descending into yet another spell of over-centralization.

### Conclusion:

The seizure of power at the Centre by the centralizing forces (particularly the Army) in the formative years of Pakistan directly affected the federal growth and the country went astray towards a highly authoritarian path. After decades of over-centralization in Pakistan by both military and civilian regimes and various ethnic conflicts between the federation and the provinces that even resulted in the bifurcation of the country in 1971, the Eighteenth Amendment was unanimously passed in 2008 that was seen as a huge respite to provincialists. The structural contours of the state were redefined by

48. Raza Rumi, *The Fractious Path: Pakistan’s Democratic Transition* (Noida: Harper Collins Publishers, 2016), p.230.

49. Ibid, pp.41-42.

50. Cited in Adeney, “A Step Towards Inclusive Federalism in Pakistan? The Politics of the Eighteenth Amendment”, p.552.

51. Mohammed Waseem, “Pakistan: A Majority Constraining Federalism” in Asma Faiz (ed.), *Making Federation Work: Federalism in Pakistan After the Eighteenth Amendment*, p.40.

52. Zafar Bhutta, “Deadlock Persists as Provinces Refuse to Give Up ‘First Right of Use’ of Natural Gas”, *Dawn*, Karachi, 23<sup>rd</sup> December 2019, URL: <https://tribune.com.pk/story/2125056/deadlock-persists-provinces-refuse-give-first-right-use-natural-gas/> (accessed on 24<sup>th</sup> December 2019)

53. Umar Javed and Ijaz Nabi, “Heterogeneous Fragility: The Case of Pakistan”, *Commission on State Fragility, Growth and Development* (London), April 2018, p.5.

54. Burki, “The 18th Amendment: Pakistan’s Constitution Redesigned” in Faiz, *Making Federation Work: Federalism in Pakistan After the 18th Amendment*, p.73.

the Eighteenth Amendment through the shift of paradigm to decentralization from the heavily centralized federation.<sup>55</sup> Indeed, the relationship between the federation and the federating units was completely reoriented. This was followed by the 7<sup>th</sup> NFC Award in 2009 which economically empowered the provinces. Together, these two developments tried to bring country's federalism out of its defunctness, but, at the same time, it caused restlessness among the proponents of a strong Centre, especially the deep state in Pakistan.

The provincial parties have again started to “smell a conspiracy to bring back a unitary system curbing the autonomy of the federating units”<sup>56</sup> by the present dispensation at the Centre being run under the indirect shadow of the Army. Even after a decade, 7<sup>th</sup> NFC Award continues to be functional due to non-consensus on a new Award and the federal government/higher judicial courts are increasingly interfering into constitutionally designated provincial domains to assert their supremacy as is clear from the three banks' case and return of cash surpluses to the federation. The unprecedented opportunity presented by the Eighteenth Amendment and the 7<sup>th</sup> NFC Award to bring about meaningful decentralization in Pakistan is, therefore, being increasingly lost. The federal fabric in Pakistan, especially the provisions of the Eighteenth Amendment, is coming under stress due to absence of proper co-ordination mechanisms at all three tiers of the federation. The lack of provincial control over its finances and resources despite mandated by the Eighteenth Amendment and lack of clarity on the roles and responsibilities of institutions at all levels of the government structure even after a decade since the passage of the Eighteenth Amendment clearly tell a story of confusion and chaos in a country that has a tendency to fall back to authoritarian ways to exercise power.

## REFERENCES

- Adeney, Katherine, “A Step Towards Inclusive Federalism in Pakistan? The Politics of the Eighteenth Amendment”, *The Journal of Federalism* (London), Vol.42, No.4, February 2012.
- Ali, Fahad, “Provinces Handing Over Money to Islamabad”, *The Weekender*, Karachi, 15<sup>th</sup> December 2019, URL: <https://www.theweekender.news/politics/fahad-ali/8600/> (accessed on 16<sup>th</sup> December 2019).
- Ali, Mehrunissa, *Politics of Federalism in Pakistan* (Karachi: Royal Book Company, 1996).
- Burki, Shahid Javed, *Pakistan Under Bhutto: 1971-77* (Lahore: Macmillan, 1988).
- Burki, Shahid Javed, *Pakistan: Fifty Years of Nationhood* (New York: Westview Press, 1999).
- Dossani, Rafiq and Henry S. Rowan (eds.), *Prospects for Peace in South Asia* (California: Stanford University Press, 2005).
- Faiz, Asma, *Making Federation Work: Federalism in Pakistan After the 18<sup>th</sup> Amendment* (Karachi: Oxford University Press, 2015)
- Iqbal, Muhammad Asif and Muhammad Sabir, “Strengthening Fiscal Federalism in Pakistan: The Way Forward”, *Social Policy and Development Centre* (Karachi), January 2018.
- Jalal, Ayesha *The State of Martial Rule: The Origins of Pakistan's Political Economy of Defence* (Cambridge: Cambridge University Press, 1992).
- Javed, Umar and Ijaz Nabi, “Heterogeneous Fragility: The Case of Pakistan”, *Commission on State Fragility, Growth and Development* (London), April 2018.
- Khan, Foqia Sadiq, “Federalism and NFC”, *The News* (Karachi), 3 March 2019, URL: <https://www.thenews.com.pk/print/438938-federalism-and-the-nfc> (accessed on 3 March 2019)
- Khan, Ifthikar A., “Provinces to get Rs3.2 trillion under NFC award”, *Dawn* (Karachi), 12 June 2019, URL: <https://www.dawn.com/news/1487710> (accessed on 21 August 2019)
- Kiani, Khaleel, “9<sup>th</sup> NFC Reconstituted to Disburse Resources”, *Dawn* (Karachi), 12 January 2019, URL: <https://www.dawn.com/news/1457010> (accessed on 13 May 2019)
- Kiani, Khaleeq, “Provinces Forego Uplift Plans, Return Rs 202bn to Centre”, *Dawn*, Karachi, 9<sup>th</sup> December 2019, URL: <https://www.dawn.com/news/1521186> (9<sup>th</sup> December 2019).
55. Zahir Shah, Dr. Manzoor Ahmad and Naveeda Yousaf, “The 18th Amendment and Federalism in Pakistan: Provincial Perspective”, *Transylvanian Review*, Vol. XXV, No. 14, 2017, p.367.
56. Zahid Hussain, “Debating 18<sup>th</sup> Amendment”, *Dawn* (Karachi), 6 February 2019, URL: <https://www.dawn.com/news/1462145> (accessed on 6<sup>th</sup> February 2019).

- Mansoor, Hasan, "Attempts to roll back 18th Amendment will harm country: Rabbani", *Dawn* (Karachi), 20 October 2019, URL: <https://www.dawn.com/news/1441993> (accessed on 29 October 2018).
- Mustafa, Usman, "Fiscal Federalism in Pakistan: The 7th National Finance Commission Award and Its Implications", *Pakistan Institute of Development Economics* (Islamabad), 2011, URL: <http://www.pide.org.pk/pdf/Working%20Paper/WorkingPaper-73.pdf>
- Rumi, Raza, *The Fractious Path: Pakistan's Democratic Transition* (Noida: Harper Collins Publishers, 2016).
- Shah, Zahir, Dr. Manzoor Ahmad and Naveeda Yousaf, "The 18<sup>th</sup> Amendment and Federalism in Pakistan: Provincial Perspective", *Transylvanian Review*, Vol. XXV, No. 14, 2017.
- Shah, Mehtab Ali *The Foreign Policy of Pakistan: Ethnic Impacts on Diplomacy* (London: I.B. Tauris, 1997).
- Singh, M.P. and Veena Kukreja, *Federalism in Pakistan* (New Delhi: Routledge, 2014).
- Talbot, Ian, *Pakistan: A Modern History* (New Delhi: Oxford University Press, 1998).
- Zaidi, Z.H., *Jinnah Papers, Pakistan: The Goal Defined (1 January to 31 August 1940)*, 3<sup>rd</sup> Series (Islamabad: Quaid-i-Azam Papers Wing, Culture Division, Government of Pakistan).

\*\*\*\*\*