

# 18<sup>th</sup> Amendment and its Impacts on Pakistan's Politics

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## **Abstract**

This study discusses the potential impacts of 18<sup>th</sup> amendment created in Pakistan's law on political and social conditions of Pakistan. With the help of previous researches author proves that 18<sup>th</sup> amendment enhances the role of Parliament and it acts as a hurdle for dictatorship.

**Keywords:** 18<sup>th</sup> amendment, dictatorship, politics.

## 1. Introduction

The pattern on which a state is formed effects the nature of distribution of powers. Where previous distinct units create a state by giving up their some severing powers to centre there centre can enjoy only some exclusive federal powers along with concurrent powers and residuary powers remained to units. America, Australia and Switzerland are the best examples through a process of devolution only the provincial and concurrent but some states had adopted the nomination of both power like India and Pakistan. “Ideal distribution of power between governments in a federation to be one in each government also was able to act independently within its own water right sphere of responsibility. But concurrency has many advantages two. It Provide an elements of flexibility in the process of Law making”. If there is no concurrency in the constitution it has two advantages. It gave autonomy to the federating units and at demand there bounders of responsibility for each order of government.<sup>1</sup> After the elections of 2008 PML-N suppressed the PPP to act upon the Charter of Democracy and PPP also wanted to visualize its manifesto in which party made commitment to work for provincial autonomy. For this purpose a 27 members Special Committee on Constitutional Reforms (SPCCR) was appointed. Notable feature of this committee was the representation of big parties like PPP, PML-N and MQM which was only 9 while other 18 members were taken from small ethnic groups of small provinces. Senator Mian Raza Rabbani was chosen as the head of the committee. SPCCR served 385 hours on deliberations about new constitutional package. It received 982 proposals about the provincial autonomy. When it was moved in national assembly for voting 292 votes came into its favor and none in opposition. In April 2010 it was moved in senate for its passing and it received 90 votes in favor and passed from senate without any position. It was passed by National Assembly on April 8, 2010, Senate passed on April 15, 2010 and president signed it on April 19, 2010. Here role of President of Pakistan Asif Ali Zardari cannot be neglected who not only prepared to shift his powers to the Prime Minister and parliament but also facilitated the task.<sup>2</sup>

## 2. Salient features of 18<sup>th</sup> amendment

### 2.1. *Enhanced role of Parliament*

To 18<sup>th</sup> amendment is remarkable in this way that it's restored true parliamentary system in Pakistan. It transferred important presidential powers to prime minister and parliament and this extended the role of parliament in dissolving the assembly, appointment of governors of provinces and in declaring emergency in the country along with these other changes made in the constitution are as:

- i. National assembly is bound to hold its first session after the general election on 21<sup>st</sup> day if president not summoned the session before this day.
- ii. Hundred working days are fixed for senate despite its previous 90 days and days for recommendation on money bill has been increased from 7 to 14, religious majorities for the first time are granted 4 seats in senate which increased its total strength from 100 to 104.

- iii. Authority of president to hold referendum is abolished and granted to parliament. Now decision for referendum will be made by the joint sitting of parliament. President will work as nominal head of the state and will be informed about all matters of internal and external importance and about legislative measures. Schedule No.6 and 7 are abolished and it empowered the parliament for amending all laws.
- iv. Article 62 and 63 are modified to some extent relating to the qualification and disqualification of members for election to parliament. Election will be held within 90 days of expiry of existing assembly.
- v. Appointment of judges was another issue. The procedure for this purpose was adopted is that a free and fair judicial commission will nominate the judges and a joint committee of governmental and opposition leaders will appoint the judges.

**Identity:** The amendment renames the former NWFP as Khyber Pakhtunkhwa to settle the long standing issue for identity of its majority population.

**Social Sectors:** The amendment also brought following changes to subjects relating to social sector in Pakistan

**Education:** Education was included in provincial list in 1973 constitution. Centre was responsible for higher education, policy formation and planning, curriculum development, formulating centers of excellence, Islamic education and maintains standards of education. Eighteenth amendment has changed the situation. Now federal government is only responsible for professional and technical training, setting up of research oriented agencies and institutes, promoting special studies (Entry 16 of the Federal Legislative List, Part I). It is also in its jurisdiction to care that “Education as respects Pakistani students in foreign countries and foreign students in Pakistan” (Entry 17 of the Federal Legislative List, Part I). But the subject of “Standards in institutions for higher education and research, scientific and technical institutions” has been shifted under the Federal legislative List, Part II (Entry 12). Despite the standards of higher education and international student exchange programme, education sector became totally a provincial responsibility. The student exchange function can be performed by the Economic Affairs Division and the standards of higher education and CCI. Provinces are now free to have their own education policies to meaningfully reflect the socio-cultural diversities of the country.

Provinces are already responsible for elementary education. But the addition of the new Article 25A - Right to Education binds the state to provide education to all citizens of the state as their basic right and negligence to it will be denial of basic right. According to this Article: “The State shall provide free and compulsory education to all children of the age of five to sixteen years in such manner as may be determined by law.” The Constitution binds Provincial legislatures to implement this law within a maximum period of two and a half years.

**Health:** Health was also incorporated in provincial list in the existing constitution but with the passage of time and due to policies of authoritative governments, role of centre was

increased in this ministry too. Three major changes have been introduced under the 18th amendment. First is that the subjects of drugs and medicines including poisonous and dangerous drugs transferred to the Provinces. Second one, the Provinces now has the responsibly for “prevention of the extension from one Province to another of infectious or contagious diseases or pests affecting men, animals or plants.” And the third is subject of “Mental illness and mental retardation, including places for the reception or treatment of the mentally ill and mentally retarded” now came under the Provincial purview. And the last one is that regulation of medical professionals has been included in the Federal List, Part II. Effective implementation of 18th amendment would abolish the federal ministry of health.<sup>3</sup>

**Population Welfare:** Federal Government was only providing development funds to the provinces for this ministry otherwise each Province has his own separate Population Welfare Departments, Federal Ministry of Population Welfare was administering this developmental programme. Under the 18th amendment, when the ministry of health transferred to the provinces ,it was inevitable to transfer this ministry to the provinces too. Now provinces are fully responsible for the working of population development programmes.<sup>4</sup>

**Labour and Manpower:** Under the 18th amendment following more subjects are entrusted to the provinces along with already functioned by the provinces. Matters relating to the welfare and conditions of labour, trade unions, industrial and labour issues ,provident funds; employers responsibilities, regulation of labour and safety measures in mines, oilfields and factories, liability and workmen’s compensation, health insurance, old age pensions. Federal Ministry has no need to exist. Further with this complete devolution of Labour Ministry Provinces are free to adop their own policies and fix minimum wages. Organisations and institutions working for the betterment of labour and manpower like Employees Old age Benefits Institution (EOBI) and the Workers Welfare Fund (WWF)are declared provincial subjects.<sup>5</sup>

### **3. An Over View Of 18th Amendment**

#### ***3.1. Identity and representation***

In this amendment the long standing issue of identity in Psthun areas was solved through amending article 1 and changing the name of North West frontier province to Khaber Pakhtun Khaw, which shows the reflection of majority residing in that area but this amending in article 1 has also brought a sense of deprivation in Hazara Region which 25% and 20% respectively in area and population of the province. In the same style Saraiki people of Southern Punjab and Bahawalpur also started demanding Saraiki province and restoration of Bahawalpur province. Small nationalities are now demanding that federation should make a new contract by making new provinces in Pakistan. Prime Minister Yousaf Raza Gillani is suporting the Saraiki province but opposing the Bahawalpur and Hazara Provinces and PMPL N considered that new provncies are if necessary then it should be on administrative grounds not on ethnic are linguistic bases. While ANP is supporting Saraiki Province but opposing Hazara Province which shows a contradiction among political parties on the issue of new provinces. Another new Article 140-A which introduced local government to take financial and political and administrative responsibility and authority is conferred to local

representative may be used for the satisfaction to the local areas to be archived. Under representation of different classed are areas also tackled through article 27 in services of Pakistan.<sup>6</sup>

### ***3.2. Check for Dictatorship:***

To save the democracy from the dictators the article 6 has been extended in its boundaries and now the Act of “Collaborating” for putting constitution in abeyance and suspending has been added and this action is also called “high treason” and courts are restricted to validate this act. Concrete steps are taken to curtail the wishes of Army generals to rule over the country and make Pakistan a democratic republic according to the wishes of public and the Quaid Azam. Radical steps are taken for the power of Prime Minister to be transferred to him from president of Pakistan. Article 58(2)b which was added by a dictator Zia ul Haq by which democracy was derailed in Pakistan for many times has now been amended and article 58 (2)b has been abolished to take away the discretionary powers of president to dissolve the assemblies. Now the process of dissolution of assembly will only be made with the advice of prime minister. Under article 112 the chief ministers of provinces are also in power for the dissolution of provincial assemblies. For maintaining democratic norms two new articles are added. The article 19-A for “Right to information” and “freedom of speech”. Article 25-A is also added for granting free and quality education to children of country to save their basic rights.<sup>7</sup>

### ***3.2. 18<sup>th</sup> Amendment and Making Imagination of State:***

Despite the utmost efforts of establishment of Pakistan it could not be able to wipe out ethnic politics from the country. It started in new Pakistan when military hanged an elected prime minister of the country Z.A Bhutto whose PPP became the federal based party but with a colour of ethnicity smaller provinces have always grievances against Punjab on the issues of distribution of water and other resources. 1973 constitution introduced the basics of provincial autonomy to the provinces in political and physical matters, but they also have grievances against Punjab for its large share in civil and military bureaucracy. Military is not oblivious to the demands of small provinces for better share. It also started empowering small provinces to reduce their ethnic stance against military by approaching the neglected factions of society. Military has taken radical steps for removing the concepts of Punjabi army and for the promotion of the sense of national army. Military has changed its recruitment policy. A report revealed by the Inter Service Public Relations (ISPR) states that in 2001 the percentage of Punjabis in army was 71% it was gradually reduced and brought about to 57%. This report also indicates that the reduction of Punjabis in army will further be taken place and it would be reduced to 54% by 2012. It also stated that with this reduction policy, induction of human intake would be done from other provinces. Army planned to increase the Pashtuns in army from 2001 to 2011 from 1 percent to 14.5. The share of Sindh in recruitment would increase from 15% to 17%. Baluchis would increase in army by 4% till 2011. The recruitment from northern area and Azad Kashmir which was 0% in 2001 would increase to 9% in 2011.<sup>8</sup>

### ***3.3. Aftermath of 18<sup>th</sup> Amendment:***

Despite the ten years of promised period by the members of constitution framers for abolishing concurrent list after 37 years it was done during which small provinces with small ethnic groups demanding provincial autonomy and end to concurrent list there longings were hailed after 37 years. On June 29, 2011 process of provincial autonomy was almost completed when 17 subjects was transferred to the provinces but it raised many questions and generated many issues some of them are as follows:

### ***3.4. Devolution without Solution:***

Ministries are transferred to the provinces without any paper and ground work by the center and provinces. From where provinces will gain the technical support, staff and finance to run these ministries and what will happened to existing staff is still un clear. This also exposed the character of regional and ethnic parties and provincial government who has not made any plane to run these ministries and it might create harm for “Macro level national development in Pakistan”<sup>9</sup>

### ***3.5. Blurred Future of Different Polices:***

After many years of hard work and struggle central government formulated polices for social sectors in the country like education, labor, population and youth affairs for the development of these sectors. After June 29, 2011 they are still hanging between the centre and provinces. Provinces has not enough finance to maintain these policies controversy aroused on the devolution of Higher Education Commission caused a great panic in the country. Vice Chancellor of the universities there staff and students remained on roads for many days and at last government decided not to hand over Higher Education Commission to the provinces till the next decision. But the chairman of parliamentary committee on constitutional reforms Mian Raza Rabani is committed to devolved this department also to the provinces. Scholarships provided by the government to many scholars and students were suspended by the central government and provincial government did not know from where they can provide this scholarships to the students. Some expert’s view that Devolution of education to the provinces will harm national unity and integration. State will be lacking in uniformity of curriculum and educational activities in absence of national policy.

A radical constitutional clause 25-A is introduced in constitution under which state is bound to provide free and quality education to every child of 5 to 16 years of age. After giving educational subject to the provinces they are failed to react promptly and if it could not be done properly it would be denial to the basic rights of the people. Another question is that who would be responsible for that commitment which the central government has made to the national and international community.<sup>10</sup>

### ***3.6. Funding ambiguity:***

Some provincial communities are also uttering that provincial autonomies granted by the central government is only to reduce its expenditures. Anyhow provinces are still un-aware how much will be the cost on this decentralization and from where funds will come. It was



roughly estimated that devolution process will cost hundred billion rupees, from where provinces may generate this amount, what will happened to running Public Sector Development Program, in what form assets and liabilities would be distributed among centre and provinces ,is still not clear. Center allocated zero funds for dissolved subjects in 2011-12 budget which created an issue between center and provinces because centre also with held 41.166 million Rupees in comprising to 2010.11 budget.

### ***3.7. Lack of Institutional Mechanism:***

Provinces did not plan for required staff, matching structure and capacity to maintain decentralized ministries which mean that provincial setup has not the ability to direct social and developmental issues and new institutional structure will have to be evolved promptly. For this purpose experienced and sharp minded official are required which are still short in provinces.

### ***3.8. Sentiments of Deprivation are still present:***

Some faction of people also says that provincial autonomy and passing of 18th amendment was necessary to appease the sense of deprivation in small provinces particularly in Baluchistan and devolution of power was hastily made in the absence of funding and resources and without solving the issue of missing person in Baluchistan it is very hard to reduce the sense of deprivation in province of Baluchistan despite the Agahz-e-Haqooq-Baluchistan package.<sup>11</sup>

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