

## **The Eighteenth Amendment and its Impact on Functionability of Provinces**

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Federalism has remained one of the thorniest issues in the history of Pakistan. The national consensus based on 1973 constitution tried to resolve the issue by providing Federal, Concurrent and Residual powers lists in addition to detailing fiscal federalism. The inability to realise the cultural identities had developed deep seated sense of alienation in the smaller regional units (provinces) and consequently engineered separatist tendencies which led to the separation of East Pakistan. The demarcation of powers of administrative and financial authority vis-à-vis the federation and the provinces always remained a contentious issue. Finally, the 18<sup>th</sup> amendment was termed as a genuine move towards real federal democracy by abolition of the concurrent list, giving the provinces access to their resources and acknowledging their right to make policies for revenue generation. However, still questions are being raised about the capacity of the provinces to deliver. This research article assesses results of the 18<sup>th</sup> amendment on the functionability of provinces in terms of strengthening national integration and good governance. Moreover, the research examines exact nature and extent of the autonomy allowed to the provinces and its implementation. The province of Khyber Pakhtunkhwa has been selected as a case study with the help of interviews and questionnaires as data collecting tools. The research establishes that the 18<sup>th</sup> amendment is a significant headway towards provincial autonomy enabling the provinces to acquire enough legal and financial autonomy with allocation of resources, as well as the capacity to expand the revenue base. It is concluded that the 18<sup>th</sup> amendment has ensured decentralization leading to true federalism and national integration.

**Keywords:** constitution, federation, provincial autonomy, council of common interest, concurrent list, national finance commission

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Contribution of Authors:

1. Collected and analysed data, did interviews with secretaries and experts with an aim to present the factual information and to get policy options.
2. Contributed in methodology of the study, conceptual frame work and literature review
3. Covered the constitutional aspects and worked on the suggested remedies

The political history of the country suggests that strong centralist polices laced with authoritarian rule has resulted in a fragile Pakistani state in terms of political capacity to merge ethnic groups into a single entity and develop a feeling of strong Pakistani nationalism among them. More or less all the ethnic entities belonging to the smaller provinces consistently came up with a demand for greater provincial rights, autonomy, and decentralization of power and devolution of authority (Kennedy, 2003).

The resolution of the most contested issue of distribution of the powers remained at the heart of the problem during constitution making right from Independence Act 1947 to the framing of the constitution of 1973. Finally, the 1973 Constitution tried to hammer out a solution in the form of federal democracy. The permanent Constitution was passed by the National Assembly on 10<sup>th</sup> April and came into force on the 14<sup>th</sup> August 1973. In this Constitution the four federating units were specified. The Constitution envisages a Federal Republic with a Parliamentary system both at the centre and the provinces (Munir, 1996).

Tragically, country could not be run in accordance with the sprit of the Constitution of 1973, thus resulted in the derailment of the democratic system. The non-democratic governments further centralised the power by altering various articles of the constitution. Consequently, the structure built around the constitution was dented. With promulgation of 8<sup>th</sup> and 17<sup>th</sup> Amendemnt, the system moved from a parliamentary form to a quasi-Presidential form of government. These new amendments resulted in weak political and democratic institutions and utilization of resources (Report 2010).

It was in this background that the 18<sup>th</sup> Amendment (thereafter the Amendment) was promulgated with an aim of consolidating democratic rule and provincial autonomy by ensuring independent and impartial judiciary and rationalising sharing of resources between the provinces and the Federation.

The Amendment, ever since its promulgation, has encountered several challenges towards its implementation. Fearful of the obstacles the framers of the Amendment quite at an earlier stage had been expressing their woes that the opposing forces would do everything to halt its implementation. No doubt, even after the passage of the Amendment the provinces are confronted with the problems in having their due shares in the distribution of funds and exercise of authority (Shah, 2019).

The Amendment is quite vast in its scope; therefore, this study will focus upon the issue of fiscal distribution and natural resources between the federal and provincial governments. It intends to find answers to the following questions:

1. What is nature and extent of autonomy granted to the provinces by the Amendment?
2. What is the extent of implementation of the Amendment?

The study investigates an important legislative mechanism used by politicians of the country to find a political solution to a problem that has long plagued the country.

### **Method**

The research is based on the case study method and the province of Khyber Pakhtunkhwa has been selected as a case study. The primary data was collected through interviews and questionnaires by visiting the offices of Provincial Secretaries of Finance, Mines and Mineral Development, and Inter Provincial Coordination Department to the Government of Khyber Pakhtunkhwa. These information sources provided first-hand knowledge on the impact of the Amendment in terms of its political, economic and administrative ramifications. The experiential knowledge of one of the authors also was instrumental in reflecting upon the acquired data. Reports appearing in newspapers and official publications were used as secondary data. To interpret the data meaningfully, the study draws insights from two streams of literature relating to federalism. One is nation state/ nationalism and the second is fiscal federalism. We in fact view the second stream a corollary of the first one. While the former deals with the problem of nation state and ethnic minorities at a more generic level the latter focuses upon the nature of problematic relations between the two layers of government in a federation at fiscal level. While remaining attentive to the overarching umbrella level debates among scholars about the problematic coexistence of nation state and smaller units our focus is upon the specific manifestation of this troublesome relationship in the fiscal relationships in our case study i.e Pakistan. We set the context of the problem by briefly looking at the relationship of central government with the federating units after establishment of Pakistan. We then analyze the 18<sup>th</sup> amendment as a significant step that endeavored to address the problem of problematic coexistence by redefining the relationship on a stronger footing to the satisfaction of the federating units. We then turn our attention to the post amendment developments in the case of Khyber Pakhtunkhwa province by reviewing the problems and obstacles faced in the province in implementing the provisions of the 18<sup>th</sup> amendment. We conclude that despite a major attempt at establishing fiscal federalism via the amendment the inherent problematic relationship of center and federating units still persists. Hence this dilutes the effect of an important development, spawned over the history of constitutional process.

### **Literature Review**

The political theorists have often been criticized for developing their theories around the taken for granted notion of the nation-state, ignoring the presence of conflict like situation between 'state nationalism' and 'minority nationalism' (Kymlicka & Straehle, 1999). Anderson in his celebrated book on nationalism describes the nation as a political community in imagination. This imagination is both inherently limited and sovereign... The imagination is based on the assumption that "the members of even the smallest nation will never know most of their fellow-members, meet them, or even hear of them, but in minds image of their communion exists" (Anderson, 1983, p.6). While Anderson does not see this imagined entity phenomenon as necessarily an ominous development, Adib-Moghaddam (2017) introduces the term "Psycho-nationalism" in order to connect the Iranian identity to its complications in the global context. Many authors (e.g Connor, 1972, 1984; Kymlicka & Straehle, 1999) assert that the common highlights of twentieth-century have been conflicts between state nationalism and minority nationalism. While in terms of identity related conflict issues of language and education policies have received major attention, of late a more finance related approach has also become popular among analysts of federal nation statehood. Fiscal federalism deals with the understanding of multiple layers of government in which focus is upon bifurcation of functions and policy instruments between the central government and federating units (King 2016, Oates 1999). It is basically the study of different sources of government revenue, its distribution to the administrative units and its expenditure in providing public goods, especially focusing on how we can make this process more efficient. Horizontal and vertical fiscal federalism are the two main

aspects of the issue that are studied by analysts. In the horizontal one, we study regional disparities and competition, and how fiscal federalism plays its role in this regard. According to Bird (2003), this area is less controversial than the vertical one which concerns with the imbalances between the senior layers of governments like center and provinces/states. The core interest of the literature on fiscal federalism has mainly remained around decentralization theorem (Koethenbueger 2008, Oates 1991), models explaining how to assign powers to the vertical layers of government (for instance, McLure 1993 examines intergovernmental spillovers and grants (Break, 1980), role of fiscal relations in the cases of migration and mobility (Wildasin, 1991) and how vertical fiscal disparities and inefficiencies can be minimized (Hunter, 1977). In this paper we review a constitutional amendment that aimed at minimizing the conflict like relationship between the central government and federating units by way of equitable fiscal federalism.

### **The Amendment – an overview**

The Parliament passed the Amendment with a unanimous vote. It was notified in the Gazette of Pakistan on 20th April 2010. The amendment brought about 36 per cent changes in the 1973 Constitution of Pakistan, as 102 out of 280 Articles of the Constitution were amended, inserted, added, substituted or deleted. In essence the whole structural contours of the state got redefined. The Amendment is said to have brought about a paradigm shift from a heavily centralised federal system to a decentralised federation with resourceful provinces. The Literature on federalism highlight that it was originally designed and continues to be taken as an institutional arrangement for demarcating power and sovereignty between national and regional levels of governments with an aim to minimise the possibility of an authoritarian or overly centralised government. In this context, the new constitutional mechanism has strengthened a multilayer political system by providing greater autonomy to the federating units (provinces) as well laying down foundations of substantive decentralisation at the lower tiers of the local governance (Waseem, 2015).

In the first instance, the Articles 6 and 270 being amended focuses to prevent any possibility of future Army takeover, one of the major causes of the disruption of federalism. Article 6 now in explicit terms places an embargo for the judicial validation of unconstitutional military interventions (Ahmad, 2010). The second most important aspect of the Amendment is the restoration of parliamentary system by transferring back all powers to the Prime Minister which had been usurped by the President through various amendments in the past.

Thirdly, education has been made a fundamental right with the insertion of Article 25. The other most important change was the abolition of the concurrent list of legislative subjects considered to be a giant leap towards provincial autonomy (Ahmad 2010)

### **Fiscal federalism and the Amendment**

Article 160 of the Constitution of Pakistan, makes it mandatory for the President to constitute the National Finance Commission (NFC) for a period of five years with a task to work out resources between the Center and the federating units in accordance with the formula already agreed upon. However, no worthwhile progress has been made ever since passage of the 7th NFC Award. There has been a stalemate between the Centre and the provinces over its successor awards — the 8<sup>th</sup>, the 9<sup>th</sup> and the 10th (Shah, 2019).

NFC is a constitutional body, consisting of the Federal Minister of Finance, who acts as the as Chairman, four Provincial Ministers of Finance and one non-statutory member from each province. The non-statutory member generally is a person with some technical competence in public finance and fiscal decentralisation issues (Bengali, 2015). Although the President has notified the 10<sup>th</sup> National Finance Commission, acrimony has developed over its composition and terms of reference. Almost, all opposition parties including the government of Sindh have opposed its composition and variation in the terms of reference (Kundi, 2020). Significantly, safety cushion in the form of Article 160 of the Constitution has specified that in future NFC agreements the shares of the provinces should not be reduced than the enumerated share in the previous NFC Award. This acts as a bulwark in the form of constitutional safeguards against any future deviation from fiscal federalism (Constitution of Pakistan 2012).

There has been enhancement in the last Award in the shares of the provinces in the federal divisible pool from 47.5% to 57.5%, a significant rise of 10%. In addition to that, the sole criterion for resource distribution is not only based on population but also poverty, revenue generation and inverse population density (Ahmad, 2010).

The weights for each of the four criteria have also been shown in the following chart:

Criteria	Weights
Population	0.820
Revenue	0.050
Backwardness/ Poverty	0.103
Inverse Population Density	0.027

Source: Pakistan Development Advocate

Moreover, an agreement over the outstanding issues, such as the arrears owed to Khyber Pakhtunkhwa on net hydel profits and to Baluchistan on gas development surcharge (GDS) by the center has also reached. Under this the frontline status of the Khyber Pakhtunkhwa province in the “war on terror” by apportioning an additional 1% of the total divisible pool has also been accepted (Ahmad, 2010)

### **Council of Common Interest**

The role of Council of Common has also been enhanced due to the inclusion of nine new items to the Federal Legislative List II, in relation to subjects of shared legislative interest between the center and provinces. The meeting of CCI has now been made mandatory once every 90 days. For this a secretariat has been established in Islamabad. Steps have also been taken to overcome its previous sporadic functioning. The policy control over reservoirs in addition to natural sources of water supply has been given to the council. Without the consultation of the provinces, the Federation cannot build hydroelectric stations in any Province.

### **Issues and Challenges and Provincial Stance on the Implementation**

Although the Amendment has tried to settle the thorny issue of fiscal federalism, the provinces are still facing formidable challenges in its implementation. The Government of Khyber Pakhtunkhwa has expressed the following concerns with the Federal Government after experiencing difficulties in the implementation of the Amendment.

### **Oil and Gas and Natural Resources**

Imposition of Excise duty by the Federal Government on the local production of crude oil is the demand of the province but despite an agreement, the federation is reluctant to go for that. The suggestive levy of the Government of Khyber Pakhtunkhwa is Rs. 1000 per barrel. Matter is pending consideration with the CCI. If levied, such a duty can fetch around Rs. 10 billion (Energy Department Khyber Pakhtunkhwa 2017).

CCI had decided allocation of 100 MMCFD of gas through PPIB (Private Power Infrastructure Board). The demand of the Government of Khyber Pakhtunkhwa is that 100 MMCFD Gas should be utilized by the Provincial Government being a gas producing Province in line with Article 158 of the Constitution. Work for setting up of a thermal power plant has also been initiated but can only start when the gas is allocated to the Provincial Govt.

The Government of Khyber Pakhtunkhwa insisted that payment on account of the windfall accrued on oil and gas w.e.f 19-04-2010 (with advent of the Amendment) should be done by the Federal Government. The collection and payment of royalty on LPG should also be paid to the Provincial Government in light of the judgement of the Peshawar High Court dated 30-04-2013.

The province of Khyber Pakhtunkhwa also attaches great hopes to the progress of its oil exploration company 'Khyber Pakhtunkhwa Oil and Gas Company Limited' but still considers that the lukewarm attitude of the Federal Government is a hindrance in the implementation of the provisions of the Amendment pertaining to natural resources and minerals. Under Article-161 (1) (b) of the Constitution of Pakistan, net proceeds collected on account of oil levied at well head are not part of the Federal Consolidated Fund. Therefore have to be paid to the province wherein the well head of oil exists (Constitution of Pakistan, 2012).

The necessary implication of such an arrangement is that there has to be straight transfers of the excise duty on the crude oil produced in the respective provinces. But, the failure of the Federal Government not to levy any excise duty on oil has caused Khyber Pakhtunkhwa a loss of about Rs 12 Billion per year or more. In the suggestion, the Government of Khyber Pakhtunkhwa has stated that by reducing Petroleum Levy, Rs 1,000/Barrel Excise Duty on crude oil can easily be balanced off. The imposition of more than 56% GST on petroleum products at the nozzle by the Federal Government accounted for Rs 30/Litre. However, Rs 1/litre replacement at nozzle is not acceptable to the Federal Government. Despite the fact that Article-172(3) of the Constitution gives joint and equal ownership to the provinces along with the federal government over mineral and natural resources, Rules of Business have not been changed (Razi 2019).

It empowers the provinces to jointly award and execute petroleum concession agreements and regulate up, mid and downstream petroleum activities. A number of meetings have been held with the Ministry of Petroleum; however, the rules have not been finalised as yet. Petroleum policy 2012 and Petroleum rules 2013 bring out some of the essence of the Amendment but not to its fullest. The Amendment gives the Federal and provincial Government equal powers in Oil and Gas exploration and productions but not in revenue streams. By equally sharing the powers, the essence is to expedite Oil and Gas production whereas the revenue is totally a different affair under the constitution. As step-1, the petroleum policy 2012 constitutes a Board at Director General, Petroleum Concession where each province is represented by a nominee of that Provincial Government. It may be interesting to note that the Federal Government has neither paid salaries to these Directors nor

convened a single meeting. The matter has been agitated many times without much support from the Federal Government (Razi 2019).

The Government of Khyber Pakhtunkhwa's point of view is that the Constitution being supreme spontaneously causes changes in all Acts, Policies and Rules. Therefore various Laws, Policies and Rules need to be amended to make Article 172.3 implementable. The Government of Khyber Pakhtunkhwa has therefore brought changes in various Acts to make 172.3 implementable.

Razi is of the view that in this context the following Articles of the Constitution, Laws, Rules agreements and polices regulating the natural resources and minerals, have to be brought in consonance with the Article 172.3 and 161 (1) (a) (b)

**Laws:**

- a) Regulation of Mines and Oilfields and Mineral Development (Govt Control) Act 1948
- b) Presidential Order N.8: Mineral (Acquisition and Transfer) Order 1961
- c) Petroleum Products (Petroleum Development Levy) Ordinance 1961
- d) OGRA Ordinance 2002

**Policies:**

- e) Petroleum Policy 2012 (also see PP 1991, 1993, 1994, 1997, 2001, 2007, 2009)
- f) TG Policy 2011
- g) Low BTU Gas Pricing Policy 2012
- h) Marginal/Stranded Gas Fields – Pricing Criteria & Guidelines: 2013
- i) LPG (Production & Distribution) Policy Guidelines 2013

**Rule:**

- j) Pakistan Onshore Petroleum (Exploration & Production) 2013 (also see 1949, 1986, 2001)
- k) Petroleum Products (Blending, Refining & Marketing) Rules 2002
- l) NGRA (Licensing) Rules 2002

**Agreements:**

- m) PCA
- n) GSA
- o) GPA
- p) COSA

The essence of Article-172(3) of the constitution is to transfer regulatory control over oil and Gas exploration to the provinces as mineral in general belongs to provinces. The authors of this amendment state that the Government of Baluchistan was adamant to get Sui and other fields after the expiry of their leases which was resisted by the Federal Government. But, on the eve of this bill, a compromise was reached to start with fifty-fifty powers and see how the model worked. In discussions between the provinces and the federation, the provinces had requested that they may be allowed to call bids for concessions on which they had done geological and geophysical studies and to include provinces in provisions where G2G is allowed. The Government of Khyber Pakhtunkhwa had already sent the desired changes to the Ministry of Petroleum (Owais 2020).

Ownership, revenue sharing or otherwise and joint & equal “vesting” are three separate subjects and should not be mixed and confused. Article 172.3 cannot be read in isolation as it is directly linked with Article 161 (1) and (a). Under these the provinces as owners of natural gas get transfers proceeds of royalty and excise duty. Federal Government is merely a collecting agency which charges 2% collection fee and transfers the proceeds to provinces. The same article bars the

Federal government from making royalty proceeds and excise duty on gas as part of the Federal Consolidated Fund. It means Federal Government cannot include royalty or excise duty on gas as part of Federal Budget as their receipt i-e non tax receipt is under Article 78, 79 & 80. Moreover, Article 161(1) (b) by stipulating the levy of excise duty on crude oil also bars Federal government to make excise duty on crude oil as part of Federal Consolidated Fund or Federal receipt in Federal Budget (Owais 2020 ).

The framers of the Constitution have, in fact, transferred the subject of collection of royalty on oil to the provinces as a residual subject. Under Article 161(1) (b) the excise duty and its transfer of proceeds are being done by the Federal Government but the same is silent over collection of royalty on crude oil. Thus, collection of royalty is a residual subject to be legislated by provincial assemblies and its proceeds are provincial receipts. Provinces can legislate through provincial assemblies how to collect royalty on crude oil.

Vesting of joint and equal authority solely reflects “regulatory control” over the mineral oil & gas. This was previously, under the complete control of Federal Government under Regulation of Mines and Oilfields and Mineral Development (Government’s Control) Act 1948. This joint regulatory control is stipulated in the Article 172(3).

Under this scheme the Federal Government as well as the provincial governments are entitled for the revenues. Therefore; the revenue streams catered to the needs of these governments. With the provinces taking more of the burden, revenues would also go to the accounts of the provincial governments. The number of revenue streams that have been dedicated to the federal and provincial governments by the Constitution, laws and rules, are as follows;

- (a) Provinces get 100 % of the royalty and excise duty on crude Oil, and GDS. However the collection is being done by the Federal Government.
- (b) 100% of Production bonus and welfare funds go to the District Civil Administration directly from the oil and gas Exploration & Production companies.
- (c) Windfall Levy (WFL) and Training Funds are collected by the Federal Government and divided between the Federal and provincial governments. The Petroleum Policy-2012 states that WFL is to be split. However, the Government of Khyber Pakhtunkhwa has requested that 80% of the Training Funds i.e. USD 20,000 out of USD 25,000 should be given in order to keep the accounting books.
- (d) Income Tax and General Sales Tax from the Oil and Gas Exploration & Production goes to the divisible pool and distributed as per the NFC Award.
- (e) GIDC and Petroleum Levy are collected by the Federal Government and are not part of the divisible pool. But, the provincial governments have requested the Federal Government for a joint use. OGRA has decided in SNGPL FY 2015-16 case that GIDC has to be used for laying distribution gas pipelines in the gas producing districts (Razi 2019 ).

### **Net Hydel Profits**

Article 161 (2) clearly stipulates that earnings of net profits by the Federal Government or any bulk generation of power at hydroelectric station under an undertaking so established or administered by the Federal Government should be paid to the Province wherein the hydroelectric station is situated” (Constitution of Pakistan modified 2012).

The key outcomes of the White Paper of the Government of Khyber Pakhtunkhwa on Budget 2019-20 revealed that the notification for uncapped net hydel profit as determined and transmitted from NEPRA was issued on March 7, 2016. This enabled the provisioning and releasing of the payment of the net hydel profit to the Government of Khyber Pakhtunkhwa at the revised rate of Rs1.15 per KWh (of the electricity production in K-P). Additionally, the actual payment of 58.1 billion has been made out of the total share of Rs 70 billion on account of uncapped net hydel profit arrears, leaving a balanced amount of Rs11.9 billion (White Paper 2019-2020).

In its stance Government of Khyber Pakhtunkhwa has stressed the implementation of the AGN Kazi Committee Methodology duly approved by the Council of Common Interest (CCI). Unfortunately, WAPDA is avoiding implementing the decision and federal government is also not honouring the commitment (White Paper 2019-2020).

#### **Issuance of Sovereign Guarantees:**

Under Article 167 (4), the provinces are at liberty to raise domestic or foreign loans or give guarantees against the security of the Provincial Consolidated Fund. But this prerogative has to be exercised within such limits and subject to such conditions as may be specified by the National Economic Council. However, despite lapse of five years; authority of provincial governments remains ineffective because neither the requisite framework has been prescribed by NEC nor Provincial Government was provided a separate and distinct borrowing limit while disconnecting the same from National Debt (White Paper 2017-2018).

#### **Excise and Taxation**

Before 18<sup>th</sup> Constitutional Amendment, the Khyber Pakhtunkhwa Province levied the Sales Tax on services through Khyber Pakhtunkhwa Finance Act, 2000. However, the Federal Government through the Federal Board of Revenue was mandated as the Collecting Agent for collection of the tax. Apart from Sales Tax on Goods, the Federal Excise Duty (FED) is also the mandate of the Federal Government under the Federal Legislative List of the Constitution. The FED is being collected under the VAT mode, akin to Sales Tax on Goods and Services. However, in the pre-devolution era, the FED on services never gave rise to double taxation of services as the services levy able to FED were not levied to Sales Tax on services by the provinces and vice versa. Consequent upon the Amendment, the provinces established their independent revenue authorities (KPRA in KP) for the purpose of administration of Sales tax on Services. (Department of Excise and Taxation, Khyber Pakhtunkhwa).

While the financial devolution under the spirit of the Amendment was in the offing, it was one of the decisions of the meeting between the Federal and provincial Finance Ministries that as soon as the provinces enact laws and provide for independent revenue authorities, the Federal Government would delete the list of services liable to taxation from FED Act in order to avoid double taxation. The FBR has not honoured that decision. Consequently the province has been deprived of a big chunk of revenue.

In view of the precarious situation, the FBR is required to abide by the decision. The reluctance on part of the FBR is most probably due to the pressure of TELECOM Companies. They want to withdraw Telecom service only, while not touching other services in the Table 11 of the Schedule 1 of the FED (Department of Excise and Taxation Khyber Pakhtunkhwa).

### **Mega Projects**

The Government of Khyber Pakhtunkhwa has stressed that its mega projects such as Chashma Right Bank Canal, **Swat Motor Way and Hydel Power projects should** be made part of the Pak China Economic Corridor.

The Secretary Planning and Development was of the view that the Government of Khyber Pakhtunkhwa feel neglected in allocation of funds in their recommended priority projects, stressing that those should be included in the Public Sector Development Programmes. Last year 65 projects were sent to Federal Government but none of them was included. Moreover, grievances against, less releases were also aired. Last year against allocation of Rs. 84 billion only 44 billion were released.

After the 18th amendment, while the provinces have greater funding and have gone for more development and bigger projects still the federal planning process and ECNEC guidelines set the parameters. Major provincial projects in roads and power sector although fully funded by provinces still go to the CDWP and ECNEC for approval which results in delays in many projects and at times face observations based on non-technical issues. The argument is based on weaker provincial capacity to handle major projects which is arbitrary, and many federal projects face similar issues in implementation, so the capacity argument is at times used for control. Our provinces are bigger than many countries and their capacity is also built over time with the increased responsibility. Post 18th amendment, major rise in development funds and their utilization in major projects like Swat Motor way, Matiltan hydro project, Rapid Bus project is a testimony to the fact that provinces have built up their capacity and now require greater autonomy in approval of projects. An approval can therefore be enhanced by these bodies to Rs 50 billion plus to ensure greater provincial autonomy (Planning & Development Government of Khyber Pakhtunkhwa).

### **Stance of Federal Government**

The Special Committee on Constitutional Reforms deliberately distanced itself from government functionaries fearing that they might sabotage their sincere effort which were aimed at strengthening national integration and good governance that the country with diverse group of people/ regions badly needed. The Amendment not only restored the original shape of the 1973 constitution but also addressed to a great extent the long-standing issue of provincial autonomy. However, at the execution stage, the following reasons are being given by the federal government functionaries to be impeding smooth implementation of the amendment: -

1. In the absence of concerned Ministry/Division, it will not be possible to coordinate with international organizations/forums for implementation of earlier commitments and future discussions;
2. Devolution of regulatory bodies at the national level may lead to complications in terms of maintenance of national standards apart from registration and certification of products.
3. The Provinces had already been allocated sufficient resources under 7<sup>th</sup> NFC Award to handle devolved responsibilities.
4. The Amendment leading to the abolition of the concerned Ministries/Divisions does not involve transfer of the attached departments/semi-autonomous organizations/corporations as well.
5. The provinces do not have proper capacity and the essential framework to manage the devolved subjects.

The provincial governments are insisting upon the complete implementation of the amendment and transfer of the corresponding resources. They don't accept the stance of the federal government that the increase in their resources under 7th NFC Award was meant to finance additional obligations.

The most often argument of the critics is that under the garb of the administrative and financial autonomy of the provinces, gates have been opened for a confederal structure, thus weakening the authority of the federal government. They also claim that with the transfer of a major part of fiscal resources to the provinces, the financial space for the federal government has shrunk; making it difficult to carry out the responsibility for defence expenditure and debt servicing that constitutes the biggest chunk of the budget. But the supporters of the Amendment refuse to buy the idea by saying that the federal government still have surplus funds after paying for defence and debt servicing to meet other expenses. If the economy is in shambles aspersions cannot be cast on the Amendment but the bad policy management (Zahid 2019).

### **Political, Economic and Social Impacts of the 18<sup>th</sup> Amendment**

Certain quarters occupying chairs in the centre and military establishment in particular do not look favourably at the distribution formula regularising the division of finances considering it a hindrance towards the security of the state. The Amendment was described as the cause of imbalance between the federation and the provinces under the "Bajwa Doctrine. According to this doctrine the Amendment was more lethal than the six points of Sheikh Mujibur Rehman as it had made confederation out of Pakistan. The view taken under the doctrine was that the provinces were devoid of the capacity to shoulder all the responsibilities that have been transferred therein. On the contrary, the Amendment is seen as a vehicle for enhancing efficiency and socio-economic development by the mainstream analysts (Ziauddin 2018).

The Prime Minister of Pakistan Imran Khan also echoed same feelings at a public gathering at Gothki that "after the 18<sup>th</sup> Amendment, the federation has become bankrupt. At the start of every fiscal year the centre had to face shortfall to the tune of Rs 600 billion due to debt servicing, federal transfers to provinces, and defence budget that leaves nothing for development" (Ahmad 2019).

In reaction to the Prime Minister Aftab Sherpao President Qaumi Watan Party came hard on him by stating that the Amendment had no connection with the distribution of resources among the provinces. The fact was that the resources were distributed among the provinces under the National Finance Commission Award.

Noted economists such as Dr. Hafeez Pasha are also of the opinion that the abolition of the Concurrent List has made greater fiscal equalization possible between the federation and the federating units as well as among the federating units, thereby the new Constitutional provisions have strengthened the Federation of Pakistan" (Hafeez 2018).

Responding to the claim that the amendment had drained the resources of the federation, Dr Pasha contends that the revenue basket of the Federal Government consist of tax revenues net of transfers, as well as of non-tax revenues. The Federal Government retains more or less all the tax net revenues, excluding some small straight transfers. Therefore, according to Dr Pasha, total revenues of the Federal Government are quite enough to meet the cost of debt servicing. Besides, also adequately cater for the expenditure of the defence and other miscellaneous expenditure incurring

on the affairs at the Federal level. For instance, the net revenue receipts of the Federal Government were Rs 2583 billion in 2016-2017. Out of that the expenditure incurred on debt servicing and defence was Rs 2237 billion, leaving a surplus of Rs 347 billion to meet other expenditures. (Hafeez 2018)

According to Dr Pasha the retention of the divisions out of 41 in the Federal Government, is not advisable, many of which in his opinion, are contrary to the spirit of the 18th Amendment. He further asserted that Provinces have a strong case for the transfer of functions and financial responsibilities in line with the 18th Amendment. This would ensure lessening the burden and expenditure of the federal government and give a larger role and more autonomy to provincial governments.

Efforts afresh have been started to review the 18<sup>th</sup> Amendment and the National Finance Commission (NFC) Award. In this context the Federal Government has approached several political parties through back channels. (The Economist 2020). In this connection, Asad Umar, the Minister for Planning in a talk show on GEO TV argued that gaps had been observed in the Amendment and the provinces and political parties would be taken into confidence. He also expected that the provinces having gained experience during the corona crisis would understand the complications and cooperate with the centre (Naya Pakistan Geo TV 2020).

However, Senator Sherry Rehman the leader of Pakistan People's Party had described the Amendment as a sacred part of the Constitution, therefore guarantee for an amicable relationship between the federation and its units. While opposing the move, she denied the impression that PPP was in contact with the government on this issue (The News 2020).

### **Conclusions and recommendations**

The Amendment and the difficulties in implementing its fiscal provisions betray the problematic relationship that authors of nation state as an imagined community have been referring to. The fiscal federalism that the amendment has guaranteed to the provinces has not yet been realised. The main challenges highlighted by various critics included lack of capacity of the provinces, reluctance on part of the federal government to part with devolved departments and assets as well as confusion about distribution of roles and responsibilities between the provincial and the federal governments, and lack of an operational framework that may serve as a guiding principle to the much longed for implementation of the amendment. Despite all odds, it can be learnt from the case study of KP province, that the amendment has quite to an extent has settled the issue of administrative and financial authority through the process of devolution to the provinces. The message conveyed through the Amendment is that rights could be achieved by following the path of political process within the orbit of constitution.

Federalism as a political concept is a contrivance to demarcate and divide powers rather than concentration of powers. Centralization generally results in deprivation of different units and deprives the diverse regions of the opportunity to effectively raise their voice in the system. Keeping in view the heritage and diversity of the Pakistan, bestowing the provinces with political and financial authority will strengthen federalism. This will also ensure and promote greater harmony and cooperation amongst the diverse regions. Federalism with tinge of provincial autonomy is a viable devise for evolving unity within diversity.

While smaller provinces in Pakistan have not been satisfied with the autonomy given to them even under the 1973 constitution, the centre has off and on been interfering in their specified

jurisdiction. Under these circumstances, the Amendment apparently is a timely step in the right direction towards decentralisation and devolution of powers to the provinces. The abolition of concurrent list has removed the confusion over the jurisdiction of federal/provincial governments, once for all. The amendment not only mandates provinces rights over their natural resources, but also ensures that provinces would be able to run and administer their own local government systems. They can also enter into direct financial loan or credit arrangements with the external and internal lenders.

The Provincial Governments will also have to behave in a more responsible manner for efficient utilisation of the scarce resources to serve people by improvement of the state of security, social/ economic services and physical infrastructure. After the 7<sup>th</sup> NFC award and settlement of financial issues in the aftermath of the Amendment, they would not be justified to blame the centre for their failures. They have to explore avenues for generation of additional resources by imposing GST on services, Capital Value and Wealth Tax on property and agriculture income tax to be able to meet wider obligations. Apart from the constitutional rights already envisaged, the Amendment has conferred upon the Provincial Governments another important responsibility of ensuring free education to every child between the age of 5-16. They also need to put their heads together at the CCI for achieving consensus to build water storage dams to take out the country from existing power and looming water crises.

Some recommendations are as follows:

- All relevant Acts and Rules, Rules of Business and policies should be amended in consonance with the spirit of the Amendment
- The provinces are quite capable of carrying on mega projects, therefore the ECNEC approval should be dispensed with unless finances involve funding of the federal government.
- New NFC Award should be announced within the constraints of the Amendment
- All outstanding should be resolved by convening the meetings of the Council of Common Interest regularly.
- Arrears of net hydel profit and revenues accruing out of gas and oil must be paid to the provinces
- Provincial governments also need to explore avenues for generation of additional resources by imposing GST on services, capital value and wealth tax on property and agriculture income tax
- Government functionaries at the federal and provincial level are to demonstrate sense of responsibility to implement the Amendment in its true spirit.
- The federal government should desist from creating new Ministries/Divisions
- The Federal government and provinces must settle differences over interpretation of relevant articles of the Constitution
- Provinces should be taken into confidence while deciding perk and privileges of the employees

Further research can consider the problems faced by other provinces of the country in the context of true implementation of fiscal federalism envisaged by the Amendment and to determine the extent to which problems are of similar nature or different to a varying degree.

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