

Issues And Grievances Of Khyber Pakhtunkhwa In The Post 18th Amendment Scenario

Bilal Haider¹, Dr. Khan Faqir²

¹(Ph.D Scholar), Pakistan Study Centre, UOP.

²(Assistant Professor), Pakistan Study Centre, UOP.

Abstract

The passage of the Eighteenth Constitutional Amendment on April 20th, 2010, was hailed as a significant achievement in the constitutional history of Pakistan. The amendment, which was the result of the hard work of a committee comprised of political stalwarts and representatives of various political parties, was intended to strengthen democracy and devolve power to lower tiers of government, allowing people to address their problems more effectively.

However, more than twelve years later, issues still persist, and there is doubt regarding the federal government's role in the process. This study aims to analyze and critically evaluate the performance of political parties that played a key role in the development of the amendment, as well as identify the challenges that they faced in implementing it. The paper also highlights the challenges faced by the Pakistan's political leadership in fulfilling the goals of the amendment and achieving true provincial autonomy.

Keywords: Khyber Pakhtunkhwa, 18th Constitutional Amendment, Parliamentary Democracy, Provincial Autonomy, Federal Government, Dr. Khan Saib, Liaqat Ali Khan.

Introduction:

The interplay between the federal government and provincial governments in Pakistan has been a contentious issue since the country's inception. Historically, Pakistan was partitioned into two regions upon its creation in 1947: West Pakistan, consisting of present-day Punjab, Sindh, Khyber Pakhtunkhwa, and Balochistan, and East Pakistan, which eventually became Bangladesh in 1971. During this time, the central government held a significant amount of power, while the provinces had limited autonomy. (Rabbani, 2012)

Since its inception, Pakistan's ethnic diversity has presented an important challenge for the authorities to manage effectively. In the early stages of its existence, Pakistan faced various

major problems, one of which was the process of creating a constitution. Pakistan had been a British colony for a long time, and the authorities employed the same approach to colonial institutions and political practices. (Saeed, 2011) Due to their experience under colonial rule, the authorities recognized the Government of India Act 1935, with certain amendments, as the interim constitution. The Act segregated legislative and administrative powers between the federal government and the federating units of Pakistan, giving it a federal nature. However, the Act granted the federal government a commanding position over the provinces, which led to tensions between the center and the provinces. (Sayyed, 2008)

Grievances and their Historical Background

The unequal distribution of economic resources, one-sided constitutional provisions, and restricted access to indigenous natural resources and royalties has led to a sense of deprivation in smaller provinces like Khyber Pakhtunkhwa. (Ahmad, 2016) This over-centralization has caused alienation and grievances between the center and the provinces. Pakistan's interim constitution, adopted after independence, granted overriding powers to the Governor General and federal government over the federating units. (Chandio, 2009) This has led to a violation of federalism principles, resulting in the central government's intervention in provincial affairs and even the dismissal of provincial governments. These unequal distributions of resources and one-sided constitutional provisions have widened the gap between the center and the federating units, creating a trust deficit. The mistrust between the center and the smaller provinces eventually created distance, leading to a sense of deprivation among those provinces who felt that they were being denied their legitimate rights. (Khan, 2011)

Legitimacy has been a persistent issue for nationalist political parties, and after independence, the Governor General was granted authority, through a constitutional amendment, to dissolve provincial governments. Subsequently, the federal government dissolved the ministry of Dr. Khan Saib, which was the first provincial government, and replaced it with a league ministry led by Abdul Qayum. (Sultan-i-Rome, 2013) The government imprisoned and tortured nationalist leaders and their supporters who advocated for provincial autonomy within Pakistan. Although provincial autonomy was a major part of the Muslim League's agenda for creating Pakistan, they later denied the same right to smaller provinces. The central government's lack of tolerance toward federalists or nationalist leaders is evidenced by two noteworthy events.

(Islam, 1996) In the first, hundreds of Khudai Khidmatgars were massacred by government forces in Charsadda on 12 August 1948, while the second occurred on 23 March 1973 at Liaquat Bagh Rawalpindi, where the Federal Security Force opened fire on a rally led by nationalists, including Wali Khan. These two incidents, sponsored by the government, clearly illustrate how the central government perceived the demand for provincial autonomy as a demand for independence. (Bashir, 2013)

THE ROOTS OF FEDERALISM IN PAKISTAN

The process of constitution-making in Pakistan was a challenging task. After the establishment of the first constituent assembly, the passing of the Objectives Resolution in 1949 during the Liaquat regime was the first significant development from this constitutional assembly. Despite significant differences between the East and West wings of Pakistan, the resolution provided principles to guide the constitutional process in the country. Several key principles in the resolution paved the way for the federal structure, which was a significant achievement. However, the issue of representation in the National Legislature for the diverse units posed a major challenge for the federation in its early stages. (Saeed, 2011)

The distribution of powers between diverse units was another momentous obstacle in the process of framing the first constitution in Pakistan. In 1956, Pakistan established a federal system of government with its first constitution. Despite the adoption of a federal system, the central government maintained extensive powers, including the ability to dissolve provincial governments, leading to disputes between the center and the provinces. East Pakistan felt particularly marginalized and discriminated against. Although considerable efforts, it took nine years for Pakistan to acquire its first constitution, which unfortunately only remained in effect for a brief period of two years. The

unstable political environment and uncertain situation in Pakistan led to military dictators entering politics with their own strong-centered constitution and unicameral legislature in October 1958. (Mushtaq, 2016)

After the tragic events in East Pakistan, the political leadership of Pakistan, with the consensus of all political parties, succeeded in passing the 1973 Constitution of the Islamic Republic of Pakistan on August 14, 1973, through the Constituent Assembly. This constitution provided greater guarantees for provincial autonomy, representation, and distributional issues than the previous constitutions of 1956 and 1962. (Shah, 2012) Pakistan adopted a new constitution in 1973 to address some of the provinces' grievances. The constitution aimed to recognize the principle of provincial autonomy by devolving some powers to the provinces, such as the authority to collect taxes and legislate on various issues. However, the central government continued to retain significant powers, including the power to dismiss provincial governments in specific circumstances. The Constitution of Pakistan contains provisions in Articles 141-147 that outline the relationship between the federal government and the provinces. Proper implementation of these provisions could lead to improved relations between federal government with the federating units. (Islam, 2018)

Before the 18th Constitutional Amendment Act, the highly centralized nature of the Pakistani government had suppressed the provinces' right to ownership of their natural resources. However, after the amendment, the provinces' right to possession of their natural resources has been officially recognized. (Ozair, 2017)

Notwithstanding constitutional provisions for provincial autonomy, tension between the center and the provinces has persisted. Some provinces have accused the central government of infringing on their powers and not distributing

resources equitably. In recent years, there have been attempts to address the balance of power issues in Pakistan. The passage of the 18th Amendment to the constitution in 2010, for instance, devolved more power to the provinces, giving them the ability to make decisions on education and healthcare, among other matters. However, the Amendment aimed to redefine the functional responsibilities of different levels of government. The amendment abolished the Simultaneous Legislative List in the Constitution and revised the Federal Legislative List (Parts I and II). The functions that were previously on the Simultaneous Legislative List were transferred to the provinces, and at least 17 federal ministries were devolved to the federating units. (Zafrullah Khan, 2018) However, despite these efforts, the balance of power between the center and the provinces remains a contentious issue in Pakistani politics. (Butt, 2016)

18th Constitutional Amendment and Khyber Pakhtunkhwa

The passage of the Eighteenth Amendment to the Pakistani Constitution was considered a significant achievement in the country's constitutional history of Pakistan. A total of 102 articles were amended or deleted, and some articles were added, inserted, or substituted, resulting in amendments to 36% of the constitution. This was a considerable development in Pakistani constitutional history. After the amendment's passage, the Pakistani government formed an implementation commission on May 4, 2010, to ensure that its provisions were implemented fully and effectively. (Zaman, 2018) The enactment of the 18th Amendment in Pakistan brought major changes in the distribution of fiscal, administrative, and political powers between the central and provincial governments. Nonetheless, the process of implementation faced some challenges. One of the contentious issues was the establishment of new ministries at the federal

level, despite the transfer of seventeen ministries to the provinces, which raised concerns about the federalization of the system. Additionally, some programmes and institutions remained under federal control, leading to complaints from the provinces about devolution of responsibility without economic empowerment. (Rizvi, 2010)

Impacts of the 18th Constitutional Amendment

The founders of the 1973 Constitution of Pakistan had made a decision to remove the concurrent list from the constitution within ten years of its promulgation, but it could not be implemented. In the 18th amendment, the political parties committed to resolving this issue once and for all, which was a significant step towards provincial autonomy. This was expected to reduce the sense of deprivation among the people of small provinces, particularly Balochistan. Article 142 was amended to transfer the subjects of the concurrent list to the provinces to achieve this objective. (Sethi, 2015)

After the implementation of the 18th Amendment, the provinces in Pakistan were granted several powers and rights, including the ability to create laws related to criminal law, criminal procedure, and evidence. Additionally, the governor of a province would be appointed from the same province where his vote is registered. The North-West Frontier Province (NWFP) was renamed as Khyber Pakhtunkhwa. If the federal government wishes to construct hydro-power projects, it must first consult with the relevant provincial government. (Shahid, 2015)

The 18th amendment had significant impacts on the political situation in Pakistan. The most prominent of these was the elimination of the controversial power of the president and governors to dissolve national and provincial assemblies without the advice of the prime minister. This had been a cause of political instability in the past. Another important change

was the granting of citizens' right to access information, which was considered a positive development for democracy and transparency. (Zaman, 2018)

Furthermore, the amendment aimed to improve the efficiency of the Senate and Provincial Assemblies by increasing their working days. The transfer of power from the federal government to the provinces was also seen as a positive step towards greater provincial autonomy, but its implementation has faced some challenges. (Tareen, 2015)

The amendment of the constitution to strengthen the Election Commission under Article 140A was seen as a positive step towards ensuring free, fair, and transparent elections, which was welcomed by the electorate. Similarly, the Council of Common Interests (CCI) was further strengthened by bringing significant changes to the constitution. The transfer of subjects from the Concurrent List to the Federal List had significant impacts on the government's smooth functioning and policy-making. Furthermore, political parties were strengthened by amending Article 126, which mandated that elections be conducted through secret ballot, except for the prime minister and chief ministers. This was intended to prevent floor-crossing and ensure that members could not change their loyalties easily. (Razia, 2010)

The 18th amendment transferred power from the president to the prime minister and strengthened parliament by increasing seats in the Upper House for minority representation. It abolished the president's discretion to appoint ministers and made them responsible to the entire parliament. The judiciary was also made more independent, and education was affected with free education up to age 16 and granting autonomy to universities. The number of cabinet ministers was limited to 11%, and federal services' share was secured for the four provinces. (Shah, 2019)

Grievances of Khyber Pakhtunkhwa in the post 18th Amendment Scenario

The feeling of being deprived among the provinces has resulted in increasing tensions and conflicts between the center and the provinces. In an effort to resolve this issue, there have been attempts to devolve more power to the provinces through constitutional amendments and reforms. Nevertheless, these efforts, the balance of power between the center and the provinces continues to be a source of contention. Some provinces continue to feel that they are not receiving adequate resources and autonomy, while the central government faces difficulties in addressing the diverse needs and demands of the provinces. (Kamran, 2017)

The management of natural resources, as well as the taxation and sharing of natural resource has always been a central issue in public governance in Pakistan. However, its implementation has been hindered by political difficulties. The unequal distribution and reimbursement of natural resource have been a long-standing source of disagreement within provinces. The challenges of implementing natural resource management policies have been exacerbated by the geographic and economic conditions of the rents. For example, the concentration of gas production and tax bases in sparsely populated Balochistan has complicated the distribution of natural resource rents. Some of the federating units have raised concerns about the lack of equalization of surcharges, gas royalties, and the use of well-head prices. (Nabi, 2010)

After the implementation of the 18th Amendment in Pakistan, there have been debates and concerns over the transfer of powers from the federal government to the provinces, with Khyber Pakhtunkhwa (KP) expressing reservations about the process. To some extent, the move was widely viewed as a positive step towards granting greater provincial autonomy. The KP province has called for a more comprehensive approach to devolution

that encompasses economic devolution and a just distribution of resources. (Faiz, 2015)

Before the implementation of the 18th Amendment in Pakistan, the provinces did not have the right to own their natural resources. However, with the amendment in place, the provinces have been given ownership rights over their natural resources. Nonetheless, the central government still holds control over policymaking and related institutions. The provincial government of Khyber Pakhtunkhwa has regularly voiced its objections to the central government's unjust policies, but tensions between the two entities have persisted. (Waseem, 2015)

After the implementation of the 18th Amendment to Pakistan's Constitution, Khyber Pakhtunkhwa province has expressed dissatisfaction with the central government, citing inadequate resources and autonomy even with the power devolution to the provinces. The province also alleges that it has been unfairly treated in terms of financial resource allocation and has not received a fair share. The distribution of financial resources is a crucial issue between Khyber Pakhtunkhwa (KP) and the central government of Pakistan. (Ahmad, 2020) KP has expressed concerns that it is not receiving its fair share of resources, particularly in terms of the National Finance Commission (NFC) Award, which is a constitutional mechanism for the distribution of financial resources between the federal government and provinces. KP is demanding a greater share of resources from the federal government, arguing that it is a smaller province with fewer resources and greater security challenges. (Rehman, 2020) Moreover, KP is also pushing for a larger portion of the revenue generated from its natural resources, such as natural gas, oil, and hydroelectric power. Despite being a major contributor to the national economy, KP believes that it is not receiving a just share of the revenues generated from these resources. The distribution

of resources from the divisible pool has been a contentious issue, with population being the sole criteria used and not taking into account other international best practices until the 7th NFC award. Although the 7th NFC award incorporated other standards to create a more systematic formula, the lack of permanency still causes discontent and strains the relationship between the federation and its units. Consequently, the strained relationship between KP and the federal government is due to the province's perception of being treated unfairly and neglected by the central government. (Kundi, 2020)

The distribution of water resources in Khyber Pakhtunkhwa is a major source of tension between the federal government and the province. Additionally, the proposed Kalabagh Dam has become a contentious issue between the central government and the federating units, particularly Khyber Pakhtunkhwa. The dam is planned to be constructed in Khyber Pakhtunkhwa, but it is mainly intended to benefit the Punjab province. Due to environmental concerns and potential hazards, all three provinces have passed resolutions against the construction of the dam in their respective provincial assemblies. (Ozair, 2017)

The lack of fair distribution of royalties for natural resources and their due share to smaller provinces is a major reason for the autonomist mindset and activities, along with resentment towards the central government. Khyber Pakhtunkhwa is a major producer of natural gas, oil, and hydroelectric power for industry and households. However, the issue of payment and access to these resources creates tension in the relationship between the central government and the province. Khyber Pakhtunkhwa produces more than 15% of natural gas, over 25% of Liquid Petroleum Gas (LPG), and over 50% of crude oil, with the potential for further extraction. Despite this, the federal government and Punjab province

are not supporting fair distribution of resources. (Kiani, 2016)

After the 18th Amendment, the National Economic Council (NEC) underwent changes to accommodate the increased provincial autonomy. The council's role is to design and supervise economic policies and development programs in Pakistan. The federal government has retained the revenue-generating ministries, depriving the provinces of their share of revenue and causing a severe imbalance in the balance of payments. While the power ministry has been devolved to the provinces, revenue collection remains under federal control. Thus, the 18th Amendment has stripped the provinces of their legislative and executive powers in this regard. However, Khyber Pakhtunkhwa has reservations about the functioning of the NEC. The province feels that it lacks adequate representation on the council and that its views and concerns are not taken seriously. The province has also criticized the distribution of resources under the NEC's domain, arguing that it has not received an equitable share of development funds and investment. (Mahmood, 2011)

To address these issues, the Khyber Pakhtunkhwa government has proposed various reforms, including a fair distribution of resources and better representation on the NEC. The province has also pushed for more local control over development programs and policies, as well as greater transparency and accountability in the allocation of resources. The distribution of resources and representation on the NEC continues to be a contentious issue between Khyber Pakhtunkhwa and the federal government, and discussions are ongoing to find a mutually acceptable solution. (Sattar, 2012)

Similarly, the Council of Common Interests (CCI) became a contentious issue between the federal government and Khyber Pakhtunkhwa (KP). The CCI is a constitutional body that serves as a platform for the provinces and the federal government to work together and coordinate on

issues of national importance, such as social, economic, and political matters. However, KP has expressed concerns about the performance of the CCI, citing concerns about resource allocation and decision-making. The province believes that it is not adequately represented on the council and that its opinions and concerns are not adequately considered. The Council of Common Interests (CCI) could potentially handle these issues, but so far it has not been addressed. The Government of Khyber Pakhtunkhwa has expressed concerns with the Federal Government about these difficulties in implementing the Amendment. In addition, certain subjects, including the census, public debt, and natural resources, that are under joint control should be addressed as a priority through the Council of Common Interest. The federal government has been criticized by Balochistan and Khyber Pakhtunkhwa for not fulfilling their rights outlined in Article 158 of the Constitution. According to this article, each province has the right to utilize its own resources, including oil and gas, to meet its own requirements. However, the current situation in Pakistan is contrary to this provision. (Shah, 2021)

Conclusion:

After analyzing the situation of Khyber Pakhtunkhwa (KP) in the post-18th amendment era, it becomes evident that there are several challenges that must be addressed to ensure fair distribution of resources and power among all provinces. KP faces various difficulties in generating revenue, achieving financial autonomy, and obtaining political representation. Moreover, the province receives inadequate portions of national resources and development projects, leading to feelings of neglect and marginalization among its people. Overall, this study emphasizes the urgent need for increased cooperation and collaboration between the federal and provincial governments to overcome

the challenges faced by KP and ensures the stability and prosperity of the country.

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