



18th Amendment: A Tool to Cut the Roots of Strong Federation

Gohar Masood Qureshi¹, Faiza Choudhary², Dr. Muhammad Ashfaq³

Abstract

This Research paper will explore the side effects of 18th Constitutional Amendment, 18th constitutional amendment is regarded as "Magna carta" of Pakistan but in reality, it is just as a needed amendment made by a political party to cater and help that specific party to gain its political goals as that party knew that gaining power is in federation will not be possible again but Sindh was as near to them as a palm of their own hand so to grab power with its full bloom in the province of Sindh was the original goal gained by the said Amendment. This qualitative research will point out areas where 18th Amendment is hurting the Federation and ultimately becoming the threat which could shake the roots of the Federation. In the end it contains some suggestion to fulfill the deficiencies.

Keywords: 18th constitutional amendment, the flaws in 18th amendment, harmful for federation of Pakistan, a political trump card to gain absolute power, power corrupts, and an absolute power corrupts absolutely

1. Introduction

Since inception, the constitutional growth in Pakistan took a roller coaster ride. Starting from objective Resolution to the constitution of 1973, faced many changing's, starting from the name to the nature. From Islamization of Zia to semi-modernization of Musharraf, from presidential in 1962 to parliamentary in 1973, since today the constitution had undergone 26 amendments.

Every amendment made in the constitution had its own importance, but 18th amendment was significant. It is talk of the town that 18th amendment gave constitution its real breath and endorsed the real shape of Federation, but if we give a critical analysis and to read under the lines, "18th Amendment" today is real cause of inequality among the provinces and being a cause of weak Federation. (Pakistan parliament agrees to curb presidential powers, 2010).

1.1. Historical Background

18th Constitutional Amendment was passed by the National Assembly of Pakistan on 8th of April 2010 and apparently turned Pakistan from a semi presidential to a parliamentary state curtailing the power of the president and making him only a "rubber stamp" and making him a Ceremonial statue, who will perform his duty only on the advice given by the Prime Minister. The most shining and the bright feature of the amendment were the empowerment of provinces. During the period of "Musharraf's enlightenment", Pakistan progressed in a number of sectors but the power rests with ultimately under a single person. Certainly when "democracy" revived the one man show evolved but originally "only in books". After the Assassination of former Prime Minister Benazir Bhutto Pakistan People's Party won the elections and gained power in the Parliament and formed government. After the Assassination of Mohtarma Benazir Bhutto, Asif Ali Zardari assumed the control of the party as co-chairman and eventually became the President of Islamic Republic of Pakistan. This amendment was made during the Regime of Pakistan People's Party, the same party which gave the Constitution in 1973. Although this amendment gave self-governing Legislative and Financial autonomy to the province but automatically shake the roots of a strong Federation in which the basic powers rested with the Federal government as it was in the era of General Zia-Ul-Haq and General Pervez Musharraf. The amendment was passed by the National Assembly on 8th April 2010, the Senate of Pakistan approved the same on 15th April 2010 and a distinct history was made when President Asif Ali Zardari signed it on 19th April 2010 and this amendment was made the law of land.

The major new features which were added to the constitution through 18th amendment were:

1. The name of former President of Pakistan, General Zia-Ul-Haq was removed from the text of constitution.
2. The Legal Framework Order as introduced by former President Musharraf was repealed.
3. Turned Pakistan from semi-presidential to parliamentary republic and the powers of president under article 58(2) (b) was abolished.
4. The self-governing legislative and financial autonomy was given to the provinces.
5. The name of NWFP province was changed and now it was named as Khyber Pakhtunkhwa.
6. The ban on third time prime minister ship and chief minister ship was lifted.
7. Holding constitution in abeyance would be High Treason under Article 6 of the Constitution.
8. The Council of Common Interests (CCI) was reconstructed with PM and head.
9. Judicial Commission was introduced who will recommend the appointment procedure of senior judiciary.
10. The appointment of Chief Election Commissioner will be held through consensus between treasury and opposition.
11. Islamabad High Court was established.

¹ Lecturer, Department of Law, University of Sialkot, Pakistan

² Lecturer, Department of Law, University of Sialkot, Pakistan

³ Assistant professor, Department of Law, University of Sialkot, Pakistan, Email: dr.muhammadashfaq1983@gmail.com

12. Right to education was revived under article 25A.
13. The power to dissolve the Parliament was taken away from the president.

2. Literature Review

Positive criticism is not everyone's cup of tea and it needs a bleeding heart and a set of metallic bones when you hold a pen to write against the ruling elite in a country like beloved homeland so nothing much has been written already on the topic in hand, however two very famous articles are prevailing in the market.

18th amendment; Historical Development and Debate in Pakistan by Iman Ahmad; the aforesaid scholar has written some golden words in the aforementioned topic but it was rhyme in favor of those who amended the Constitution and not against the **kings in khaki**. The second one is the **18th amendment to the constitution; Pakistan Dilemma written by Sidra Azeem**, It was a well written and very informative content. The learned author provides every minute detail regarding 18th amendment and a brief but very positive criticism was also regarding the said amendment. But that was much away from those topics which are unfolded by the research paper in hand. My research paper is based on the recent problems faced by the public and defining the reason behind those hindrances which is needed to meet the ends of much needed Constitutional stability.

2.1. Criticism

Article 58(2) (b) of Constitution of Pakistan 1973: the powers of President to dissolve Assemblies.

President Asif Ali Zardari was praised, that he made his Prime Minister more powerful by giving up his power under Article 58(2) (b) and he reported on a number of times on different occasions that he is the only person in Pakistan who made a cut in his powers. Several people compared him with Henry the 3rd and his amendment to "Megna Carta", but this was not true, Technically, even after giving up the powers under article 58(2) (b) Asif Ali Zardari enjoyed that power "Not expressly but impliedly" as he was a party head and under article 63 if a member does not comply with the orders passed by the party head ceases to be the members and ultimately loses his seat as the member of national assembly. So, he remained powerful, whether or not empowered by Article 58 (2) (b).

2.2. No Centralized Police

Due to this amendment policing was now totally a provincial matter and now there is no unanimous single police chief in Pakistan. Every province has its own police chief who follows the order of chief minister. At the time when the ideas of central Government collide with the Provincial Government he had to guard his boss who is the Chief Minister what if a political party of certain province having Government in that province, with the help of police of that province launch a campaign against the Federal Government and use his police as human shield to guard its own interest recent examples are there when a political party against the will of the state.

A number of times, Imran Khan former Prime Minister tried to use the provincial police to guard his Protestants to reach the Federal area in collision with the Federal Police Authorities.

Dua Zahra case is also a recent example of a flaw in policing caused by 18th constitutional amendment. Dua Zahra, a Karachi inhabitant was kidnapped in April 2022. Dua's parents logged an FIR on 16th April 2022. In April 2022, the Karachi police chief Ghulam Nabi Memon constituted a special team to trace the girl but the main hurdle was the "provincial limits" and the jurisdiction of the police chief. Even the Honorable Sindh High Court gave an observation about this investigation and called it a "nail speed investigation". In the same case honorable Sindh High Court issued a show cause Notice to the IG Sindh, who powers become dim outside his province. Such problems could be overruled if we have one police chief head of entire police of Pakistan.

2.3. Single National Curriculum

After 18th amendment, the Department of Education was a toddler given to the province, which crippled it further. In Pakistan we have different models of studies, most popular of them is the English medium for public schools like Lawrence College, students are served with foreign degrees of "O" and "A" levels. People from lower middle class send their children to the "Urdu medium school" and if you visit KPK you will find the most popular medium of education is the Madrasas education.

In this regard the education system itself generating discrimination among the masses; but in Pakistan we face lack of sequence, the economic hurdles and above all, as it's a provincial department every province in this aspect shows its supremacy and this Chaos is toxicating the education system. English and the overdue respect toward this language remind the colonial era. Even in our textbooks the provinces try to make them distinct. Even the Pakistan Studies syllabus does not match if you cross the boundary of one province and enter to another one. The last, PTI government tried to make this dream come true. Specially the President of Islamic Republic of Pakistan Dr. Arif Alvi put some tangible efforts for this cause but eventually failed because every province wanted to endorse its own Ideas for this policy and in the end the provincial autonomy killed the single National curriculum with the four different daggers.

"Resultantly 18th amendment is responsible for this Chaos and 18th Amendment is disallowing to bind Pakistani students under single National curriculum".

2.4. Single Health Policy

Pakistan is one of those countries in the world whose citizens face drastic problems in health sector, even those who ruled the country for decades need to travel abroad to see a doctor. During 2020 and 2021 Covid-19 hit Pakistan with its boom. Thousands of people were affected, hundreds of people died, emergency was declared in

hospitals and government tried its best to deal with the catastrophic condition. The pandemic cut a swath around the country due to its decentralization and fragmentation of health care department the country was severally affected. Even the chief of the World Health Organization "Tedros Adhanom Ghebreyesus" urged countries like Pakistan to invest in setting their Healthcare system rather than two scramble for any areal of solution. The Prime Minister of Pakistan and his cabinet decided to bind Pakistan under a strict lock down at first instance following the model of other countries. As health was the jurisdiction of provinces, a province among all denied to follow these instructions. That specific province allowed transporters to continue with the business throughout the pandemic and history is evident, they suffered a lot more than any other province and eventually this whole episode made this clear that in presence of 18th amendment it is impossible to bind Pakistan under a single health policy.

3. Suggestions

Federation is always the root which bind the country and the stem from where the branches, the provinces grow. The stem the Central point the pivot should be strong so that it could host the branches. Weak Federation could not result in a better Republic. 18th amendment granted provincial autonomy to the provinces and in sense that it is weakening the Federation and putting Pakistan in a disease of negative provincial and legislative Chaos. Parliament should be powered upon this time and resolve the same to make this country a true land for its inhabitants as it was said by Quaid that

"we are Pakistani first and afterwards we are Punjabis, Pakhtuns and Balochis". But this law, this specific amendment created a division among the provinces which with the passage of time appearing to be dangerous rather".

4. Conclusion

18th constitutional amendment and its concept of empowering the provinces more than the federation is against the original framework and concept of "the state", the thinkers, the philosopher and the states man who gave the concepts of the state were of the view that state should be a legitimate power above all, which can insure the rule of Law and accountability uniformly and across the board and all the federating units shall follow the instruction of the state without any ifs and buts;

The Concept of State According to Niccolo Machiavelli

Machiavelli, a thinker, a statesman, a philosopher was a staunch admirer or a flag bearer of the concept of strong state. In his masterpiece "The Prince" he wrote that

"The state is superior to all associations in the human society" It is sovereign and autonomous even religion cannot interfere in the affairs of state.

Plato's Concept

Plato, the father of political science, gave the same concept in his most famous and the most popular book "The Laws". He said "Law is superior to everyone and a strong state can implement the laws accordingly, and state rules due to the rule of law.

Iqbal Concept of State

Iqbal, the national poet, the thinker, the philosopher also talked about the strong state in his book "The reconstruction of religious thoughts in Islam". Only a strong state can safeguard the real interest and rights of the citizens.

Resultantly if we need Pakistan to come out of this catastrophic condition, we need to take measures to make our state strong and reviewing 18th amendment should be the 1st step.

References

- Analyzing the Pros and Cons of single National Curriculum
- Constitution bill sent to Senate, Dawn (newspaper), 2010-04-10
- Constitution of Pakistan, Article 58(2)(b), 41, 43, 45, 90, 91, 97, 98 and 99
- Dua Zahra Case, FIR and case proceeding
- Impact of 18th Amendment highlighted Published in Dawn, May 29th, 2022
- NA passes 18th Amendment Bill, PM felicitate the Nation Archived 2012-03-18 at the Wayback Machine, Associated Press of Pakistan, 2010-04-08
- Pakistan case details, COVID-19 health advisory platform by Ministry of National Health Services and Regulations, accessed 12th July 2020
- Pakistan Hospitals Struggles on Cronavirus case, explode by Hashim Asad.
- Pakistan parliament agrees to curb presidential powers. (2010, 04 08). Retrieved from BBC News: http://news.bbc.co.uk/2/hi/south_asia/8609814.stm