

Constitutional Amendments and the Evolving Balance Between National Unity and Provincial Autonomy in Pakistan

Dr. Saima Butt

saima.butt2010@ymail.com

Assistant Professor, Faculty of Law, The University of Faisalabad, Pakistan

Irsa Hafeez

irsaw00@gmail.com

LLM (Scholar), Department of Law, The University of Faisalabad, Pakistan

Kulsoomelia Shigri

kulsoomelia@gmail.com

LLM (Scholar), Department of Law, The University of Faisalabad, Pakistan

Corresponding Author: Dr. Saima Butt saima.butt2010@ymail.com

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ABSTRACT

The constitution of 1973 of Pakistan provides country's federal structure which has impacted Pakistan's national unity and provincial autonomy through its evolution and revision in its amendments for forming effective and balanced federalism. It analyzed Pakistan's Constitutional Amendments and different Articles and its judicial precedents under the Supreme Court of Pakistan, using a doctrinal legal research method. The findings highlighted those pivotal reforms in 18th amendment has strengthened provincial autonomy by abolishing the concurrent legislative list and expanding governance at provincial level. However, the repeated constraints in implementation of constitutional frameworks have raised inter-provincial disputes over fiscal resources and institutional power. The result concluded that fostering an inclusive and stable approach towards resolving inter-provincial and federal-provincial disputes through National Finance Commission (NFC) and Council of Common Interests (CCI) to align provincial rights and national unity.

Keywords: Province, federation, provincial autonomy, constitutional amendment, legislative list, institutional power, National Finance Commission, Council of Common Interests.

INTRODUCTION

Since the independence of Pakistan, provincial autonomy and federal authority have been a prominent issue in country's political landscape, Pakistan was made upon the fundamental principle of provincial autonomy and national unity. The constitutional framework of 1973 reflected a fundamental distribution of federal authority intended to preserve national integrity, unity, autonomy and unique identities within the country. Historically the notion of constitutionalism has highlighted a constraints upon governmental authorities and the protection national rights of citizens (Ginsburg & Huq, 2020). However, there have been repetitive structural disparities between federal government and regional participation within provinces. This disparity of federalism and provincial autonomy manifested in the separation of East Pakistan (Bangladesh) in 1971. Consequently, the constitution of 1973 exhibited a bedrock objective to establish federalism, aiming to provide all the provinces an equal right to resources, institutional power and meaningful representation to each province.

Pakistan's numerous constitutional amendments have reshaped the governance in terms of its political dynamics, military involvement, parliamentary frameworks, democracy and provincial independence. As outlined under Article 1 of constitution of 1973, Pakistan is constituted as a federation on the basis of provincial authority and federal power while preserving a sovereign state. This framework highlights the provincial independence and autonomy while protecting constitutional rights and interests of the

people in various aspects. Similarly, Article 141 and 142 highlighted the distribution of judicial systems and legislative authorities between federation and the provinces, to ensuring legislation and governance across the provinces.

There have been multiple amendments in the constitution of Pakistan till today, which have raised a significant question concerning democracy, national authorities, political instability, governmental power and basic human rights. Provisional autonomy is significantly based on independent regional government, protection of public interest, equal resource distribution and federal protection within the province. In this article we aim to examine whether the provincial autonomy contributes to national unity within the order of federalism and how the constitutional amendments have affected provincial framework in Pakistan. In this regard, the eighteenth amendment of constitution under the Act of 2010, has a significant expansion on judicial system in provinces and balancing provincial autonomy and provincial governance, aiming to remove regional disparities and discrimination ensuring national unity (Waseem, 2020). The 18th amendment intended to strengthen provincial autonomy and devolve federal involvement in provincial matters, but its uneven implementation has constrained provincial rights within the province, particularly in Balochistan, Khyber Pakhtunkhwa and Sindh, because of the setback of its implementation across provinces (Akhtar, 2023). Federalism in Pakistan lags because of the weak federal institutions and its over-involvement at regional level.

The present study aims to examine how constitutional amendments have impacted provincial dynamics and contributed to national unity within Pakistan's federal framework. This study analyzes evolution of amendments under the constitution of Pakistan to study which constitutional framework have strengthened the provincial autonomy and relation between federal-provincial authorities.

MATERIAL AND METHOD OF STUDY

The study is based on doctrinal legal research method and it was primarily sourced by examining constitutional amendments of Pakistan, Acts and Articles, parliamentary documents, provincial legislation, reports of supreme court, highlighting several challenges each amendment (13th, 17th, 18th, 21st, 23rd, 25th, 26th) have caused and contributed to provincial autonomy. The constitution of 1973 was primarily sourced from authentic papers and several Articles (1, 58, 141/142, 153/154/156, 160), councils and commissions (CCI, NFC) related to provincial and federal legislation.

We analyzed judicial decisions as secondary constitutional sources to determine how Pakistani courts have conceptualized and implemented federalism, constitutional supremacy, parliamentary amendment power and the basic structure of the Constitution. Particular attention is given to *Nadeem Ahmed v. Federation of Pakistan*, *District Bar Association, Rawalpindi v. Federation of Pakistan*, *Sindh High Court Bar Association v. Federation of Pakistan*, *Sui Southern Gas Company Ltd v. Federation of Pakistan* and *Health Department, Government of Sindh v. Dr. Nadeem Rizwi*. These cases and their decisions are examined to evaluate judicial understanding of constitutional framework of distribution of power, fiscal, health, education resources among provinces in Pakistan.

Judicial case laws were examined as secondary source of data to analyze Pakistani courts, parliamentary evolution and constitutional structure to identify contemporary trends and challenges in constitutional implications. The current study aims to analyze consequences of constitutional evolution and distribution of equitable resources among federation and provinces, emphasizing several amendments their implementations and challenges.

DISCUSSIONS

Constitutional amendments and provincial autonomy

The constitution 1973 established a foundation for Pakistan's provincial authority and federal government balancing provincial representation in senate to protect uniqueness of each province. The

13th amendment (1997) under article 58 mandated to dismiss presidential power to dissolve national assembly aiming to protect provincial authorities and reinforcement for parliamentary government. Conversely, the 17th amendment (2003) mandated under the rule of Pervaiz Musharraf, restored political power and hindered equal distribution of provincial parliamentary authority, fostering military regime creating a setback to provincial autonomy.

Subsequently, the 18th amendment (2010) was judicialized, raised question on centralization, provincial parliamentary institution and became a subject to judicial scrutiny. The 18th amendment signifies constitutional decentralization aimed to support provincial autonomy by ensuring distribution of financial resources between provinces and federal government through National Finance Commission (NFC) award under article 160. It also strengthens the relationship between federal-provincial institutional functioning, under Council of Common Interests (Ahmad et al., 2007). Article 140A reflected the constitutional concern regarding local provincial government and embedded democracy at grassroot level to reinforce provincial autonomy and national unity. Under 18th amendment Article 142 empowered provincial assemblies as legislative institution, giving federal parliament rights over federal legislation to recognize legislative authority of provincial assemblies (Waseem, 2010).

The 21st amendment in the context of Peshawar in 2015, provided constitutional security subjected to a 2-year sunset clause, to combat terrorism by allowing military courts to operate in specific terrorism-based cases under article 175. Later on, 23rd amendment (Act, 2017) revived the provision of 21st amendment toward terrorism suspect for further 2 years of duration. These amendments established a hallmark on extraordinary national security at constitutional and state level. For national integration for tribal areas the 25th amendment (2018) was constitutionalized in political and provincial structure of Khyber Pakhtunkhwa which held under FATA regions (Federal Administered Tribal Areas). This amendment emphasizes provincial integration as an expression of national unity and autonomy demonstrating inclusive constitutional framework. Another major hallmark established in 26th (2024), which depicts significant changes in judicial structure and facilitates contemporary constitutional development within Supreme Court and High Court.

National Finance Commission (NFC) and paradox of Federalism

Under the article 160 (3A) (2010) of 18th constitution, National finance commission embodies a fundamental constitutional instrument to balance the distribution of fiscal and tax revenues between federation and provinces. Under article 160 the provincial share in NFC award is equal to the prior award, thus providing fiscal autonomy across the provinces ensuring equal distribution of fiscal resources (Ahmad et al., 2007). Despite of decentralization, this paradox reflected a vertical imbalance in which a province may possess a legislative power but remain financially dependent upon the federation.

Council of Common Interests and Federalism

Under article 153/154 of 1973 constitution, the council of Common Interests (CCI) was established to address equal structural interests shared across provinces such as preserving policymaking, coordination, legislation, infrastructure, education, health, industry and organizations, politics, finances and basic necessities and resources for all four provinces. It also regulates to solve any federal-provincial dispute or inter-provincial disputes (Shah, 2014).

Provincial autonomy and national unity

Provincial autonomy reflects the universal right of any province to independently govern and exercise its legislation and administrative power within the order of the its Constitution. Provincial autonomy is constitutionally protected and strengthened under the evolution of amendment of constitution of Pakistan. There have been challenges regarding national integrity in Pakistan's history because of unequal political and fiscal distributions across its 4 provinces. Particularly the 18th amendment,

devolve the federal power to reinforce provincial interests. The abolishment of concurrent legislative list under 18th amendment (2010), is a structural component of Pakistan's constitution that transfer executive power in matters like fiscal, health, education, politics, law, policy making, labor, local governance to the provincial assemblies, under the article 142. Thus, this transfer of power at provincial level foster greater autonomy across regions ensuring national unity, while sovereign subjects were strictly handled by federal government (Waseem, 2010).

All the provinces of Pakistan possess different economic structures and distinctive provincial interests on the basis of their resources. The province of Balochistan is significant for its natural minerals with 50% provincial ownership of its resources, the province of Sindh is significant about central oil and gas productions, Khyber Pakhtunkhwa has significant resources of hydropower plants and Punjab is significant about its agricultural and industrial power. These distributions of resources have made each province independent for decision-making, fostering unique economic profile that ultimately reinforces national unity.

Contemporary Constitutional issues and provincial autonomy

One of the major contemporary constitutional issues undermining provincial autonomy in Pakistan is unequal distribution of fiscal resources between provinces and federation. Under article 160 (3A) of constitution (2010) protects provincial share of fiscal resources constitutionally, mandated that provincial share will be less than 57% while National Finance Commission Award (2009) asserted that provincial shares shall not be less than 57% pool. This has created a friction between provincial resource distribution and fiscal autonomy that can generate a distrust among federation and provinces. Provinces require adequate fiscal resources to effectively perform their assigned responsibilities but federal control over revenues and resource distribution has constrained provincial autonomy. Secondly there has been an uncertainty regarding federal and provincial legislation. The 18th amendment (2010) abolished the concurrent legislative list to foster provincial legislation, but there have been a friction between educational authorities like Higher Education Commission (HEC federal-based authority), where equal distribution of educational resources among provinces have been neglected specially over-involvement and resistance of funding by HEC in provinces like Sindh and Balochistan has generated provincial marginalization, exploiting every citizen right to education (Amir, 2015).

Under article 140A mandates that each province should establish a local government and perform their assigned responsibilities however, weak implementation of political and administrative structures have hindered provincial autonomy. The political power of provinces have been deteriorating from past 10 years that has impacted municipal elections, political polarization and fiscal resources ultimately hindering provincial autonomy, federal involvement at provincial assemblies have reduced meaningful local government eventually creating an inter-provincial friction. Persistent political interference is a major concern of constitutional instability that has been impacting coordination and nations confidence on federal government creating void in political interests eventually hindering national unity over political disputes.

The Government should adopt an inclusive approach to enhance federal-provincial coordination; Council of Common Interests (CCI) and National Finance Commission (NFC) should adhere to resolve these disputes to foster public confidence on constitutional government. Similarly, every citizen should rightfully participate their democratic and constitutional rights irrespective of their province, religion, political interest and ethnicity.

Constitutional Case laws under Supreme Court of Pakistan

The case of Nadeem Ahmed Advocate v. Federation of Pakistan (2010), questioned the 18th amendment of constitution of Pakistan regarding federalism, democracy and judicial independence of provinces. Supreme court depicted this case under article 175A to parliament for appointing judges to the courts under federal court transferring judicial power back to federal government. This case signifies supreme

courts recognition of federalism and constitutionalism raising question over 18th amendment implementation. Another case of District Bar Association, Rawalpindi v. Federation of Pakistan (2015), regarding judicial independence, the petition highlighted an important constitutional framework regarding parliamentary power, judicial and constitutional supremacy for judicial appointments and provincial autonomy. This case challenged the 18th and 21st amendment of Pakistan's constitution.

The case of Sindh High Court Bar Association v. Federation of Pakistan (2009), under supreme court of Pakistan omission of article 270A the provincial orders of Gen. Pervez Musharraf and removed the non PCO judges outside of judicial supremacy and removed all the previously extra-constitutional emergency measures. Regulating that all the governmental authorities should exercise their power within the constitution. Furthermore, in another case of Mustafa Impex, Karachi v. Government of Pakistan (2016), supreme court of Pakistan evaluated that executive fiscal authority should be distributed constitutionally to provide each province fiscal autonomy with legislative competence under article 160 and the National Finance Commission.

In another case of the Sui Southern Gas Company Ltd v. Federation of Pakistan (2020), the petition overlooked the constitutional framework of natural gas distribution among provinces. Under article 158 and 172(3) the provinces owning these gas-based resources are to its requirements and have equal right to use minerals oils and gases in the territory of the province. This litigation under article 158, has arisen inter-provincial dispute over gas production and distribution. The dispute of Health Department, Government of Sindh v. Dr. Nadeem Rizwi (2019), highlighted transfer of major health institutions to provinces by federal government that created a debate over the subject of health under 18th amendment to provinces and federal government disagreement over it.

RECOMMENDATIONS

- Council of Common Interests (CCI) should operate more effectively to actively resolve federal-provincial disputes by inclusive meetings, participation and implementation of constitutional decisions to reduce institutional friction between authorities.
- National Finance Commission (NFC) should adequately and equally distribute resources among provinces on the basis of their interests and responsibilities assigned by federal government.
- Federal legislation should comply to the constitutional decision of abolishment of concurrent legislative list and recognize provincial subjects at constitutional level to promote provincial autonomy.
- Provinces should establish their own local governments determining political, administration and financial authorities under article 140A, to promote provincial autonomy.

CONCLUSION

The constitutional evolution of the Islamic Republic of Pakistan has demonstrated that national unity and provincial autonomy can operate together under the framework of federal constitution. The constitution of 1973 mandated a federal structure and recognition of political and legislative identity of each province, to preserve integrity and sovereignty of Pakistan. Subsequently the 18th amendment of constitution of Pakistan has regulated the equal distribution of legislative and administrative authorities between federation and provinces. It represents a hallmark in the history of Pakistan's constitution aimed at strengthening provincial autonomy through abolishment of the concurrent legislative list of subjects. But devolution of constitution is not what seems important for provincial autonomy but it depends more on equal distribution of provincial resources to better perform their responsibilities assigned by government, under article 140A.

Furthermore, the Supreme court demonstrated that federalism is an important part of the Pakistan's constitution, case of Nadeem Ahmed explained challenges to 18th amendment while demonstrating judicial limitations, similarly the case of district bar association case provided us with the framework concerning constitutional amendments and Sindh court bar association reinforces constitutional power and removed extra constitutional measures within government. Now the issue is not related to shifting authorities to provinces but it has marked a question that how constitutional power can cooperate with provincial autonomy and strengthens national unity. Disputes over fiscal distribution, legislation, local government and political interference have raised distrust between federation and provinces because of the wrong implementation of constitutional framework (Waseem, 2010).

National unity in Pakistan is not an issue of centralization or decentralization rather it is more about effective constitutional implementation of provincial legislation and due rights of all the provinces discussed above to maintain effective federal-provincial coordination. It is only possible if all the provinces would be given and respected for their resources, legislation, institution (article 140A), and a better functioning body (NFC, CCI) to resolve their disputes and take accountability to foster cooperative federation and meaningful democracy at local level.

Ultimately, provincial autonomy and national unity become constitutional objectives rather than mutually exclusive principles. Provincial autonomy can contribute to national integration and unity when provinces have confidence that their constitutional, political and financial interests are protected within a unified constitutional order. Conversely, excessive centralization, unequal resource distribution and disregard for constitutional mechanisms may deepen regional grievances and weaken national cohesion. The future of Pakistan's federal constitutionalism therefore depends upon maintaining an appropriate equilibrium between unity, autonomy, constitutional supremacy and cooperative governance.

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