Implementation of the Eighteenth Amendment in Pakistan: An Analysis

Kamran Naseem
Amna Mahmood

Significant changes have been brought into effect in the political system of Pakistan under the Eighteenth amendment. Restoration of the parliamentary system envisioned in the 1973 Constitution was ensured, Concurrent Legislative List (CLL) was abolished and discretionary powers of the president curtailed. The said amendment ensured the transfer of seventeen federal ministries to the provincial level. The issues concerning the Higher Education Commission (HEC), oil and gas exploration, drug regulation, environmental protection, agriculture, Workers Welfare Fund (WWF) and Old-Age Benefits Institution (EOBI) have been discussed in the paper. Employees of certain devolved ministries and departments voiced their apprehensions about issues that were not effectively addressed. This paper discusses the same and recommends that the Constitution of 1973 should be followed in letter and spirit at the federal and provincial levels. This paper also analyses a few matters confronted in implementation of the Eighteenth amendment implementation. The qualitative research method has been utilized for this paper.

Introduction

A new turn of Pakistan’s history was the Carter of Democracy (CoD), which was assigned in May 2006. Two former Prime Ministers of Pakistan Nawaz Sharif and late Benazir Bhutto, the heads of two main stream political parties, Pakistan Muslim League Nawaz (PMLN) and Pakistan Peoples’ Party Parliamentarians (PPPP), who have been staunch political rivals in 1990s, showed political wisdom and flexibility to consolidate political forces against a military dictator. Since both former Prime Ministers Nawaz Sharif and late Benazir Bhutto were in exile therefore (CoD) was signed in London. A core objective of the CoD was to bring amendment in the 1973 Constitution; restoring the Constitution in prior 12th October 1999 position, reversal of the powers of the President to appoint the provincial governor and the chiefs of the armed forces of Pakistan, introduction
of a new mechanism for appointment of the judges of the Superior Courts, the establishment of the Federal Constitution Court, an announcement of the National Finance Award (NFC), resolution of the long unsettled issue of provincial autonomy, enhancement in the powers of the Senate and giving representation to minorities in the Senate, amalgamation of Federally Administered Tribal Areas (FATA) in the North West Frontier Province (NWFP) through consensus, introducing reforms in northern areas and giving constructional protection and empowering local bodies.

The general elections were held in 2008 and the PPP formed a coalition government with PML-N at the federal level. A Special Parliamentary Committee on Constitutional Reform comprising of 27 members belonging to different political parties sitting in the Parliament was established under the headship of Senator Raza Rabbani, a veteran politician. The task of the said committee was to suggest the amendments in the 1973 Constitution by keeping in view the CoD and Seventeenth amendment. The committee deeply studied the matter, took sufficient time, received suggestions from the public, journalists, and academia and finally prepared a proposed amendment draft. Both Houses of the Parliament (National Assembly and the Senate) passed the Eighteenth amendment through consensus, securing more votes than the constitutional requirement of two-third majority. The Parliamentarians showed extensive consensus in passing the said amendment.

BACKGROUND

On 14th August 1973, the Constitution of 1973 was ratified. It was a consensus-based Constitution as all the political parties representing in the assembly cast their votes in favour of the Constitution. It was the first constitution made by a directly elected parliament of Pakistan. It gave a parliamentary form of government in a federal state with four federating units and few federally administrative areas. Federal states need a rigid constitution so that the basic structure that was agreed upon at the time of formation could not be changed. Constitution of 1973 passed through seven amendments within the first three years of its proclamation. The prime minister enjoyed real powers and the president enjoyed ceremonial powers in the actual 1973 Constitution. These powers of the elected prime minister were reduced during the military regimes of General Zia-ul-Haq and General Musharraf through Eighth (1985) and Seventeenth (2003) amendments respectively.¹ The powers of the prime minister were restored by the thirteen amendments to the Constitution, in 1997. It abolished 58 (2B), the most controversial clause of the Eighth amendment to 1973 Constitution of Pakistan, that gave the power to dissolve the directly elected National Assembly, to the indirectly elected president of Pakistan, against the spirit of parliamentary form of government. However, it was annulled by Gen. Musharraf through Legal Framework 2002 and later restored 58(2B), in Seventeenth amendment.

These amendments changed the political system of Pakistan from a parliamentary constitution to a hybrid presidential system. The civilian interlude
between two military regimes from 1988 to 1999 became a period of political instability where the successor elected governments were dismissed by then presidents using 58 (2B). That political instability led to the fourth martial law in 1999. The prolonged military rule of Gen Musharraf put a question mark on the nature of the political system of Pakistan. The general elections were held in the country in 2008. The newly elected government of PPPP, under the rhetoric of CoD was compelled to restore the parliamentary spirit of the 1973 Constitution and address the demand of provincial autonomy, especially by the small provinces. Therefore in April 2010, the newly elected parliament under Asif Ali Zardari, newly elected civilian president passed the Eighteenth amendment. The politicians expressed broad maturity, inevitable to run federal states, in passing the said amendment. It was a massive overhauling of the constitution as about one-third of the Constitution was re-examined. One hundred and two articles out of total 280 articles of original Constitution of 1973 were addressed under this constitutional amendment.

This amendment reversed the extraordinary powers of the president given under Eighth and Seventeenth Amendments. The president could dissolve the national assembly prior to the Eighteenth amendment scenario. The president's discretionary powers including dissolution of the national assembly have been taken back. The president could take 30 days for approval of the bill. Under the said amendment, the president has ten days for approval of the bill. In the post-Eighteenth amendment scenario, it is obligatory that the governor of a province should be an inhabitant of that province. The Concurrent Legislative List (CLL) was annulled and five subjects of the Federal Legislative List (FLL) I was transferred to the provincial level. The appointment of the chief election commissioner was made by the president before the said amendment. The discretionary power of the president has been reversed and a new procedure has been introduced under the said amendment. Consultation between the opposition leader in the national assembly and the prime minister has been made mandatory. A period of five years has been fixed for the Chief Election Commissioner of Pakistan.

A new mechanism of the judicial commission has been introduced for the appointment of judges in the superior courts. A new High Court in federal capital Islamabad was instituted. Powers of the Senate (upper house) have been enhanced. Under the Eighteenth amendment, the federal cabinet is accountable to both chambers of the parliament. Three new fundamental rights have been inducted. Democracy was protected by revising article 6. The Eighteenth amendment ensured that suspension of the Constitution of 1973 shall also be considered as high treason.

Along with these significant changes in the political system of Pakistan under the Eighteenth Amendment, a major change was the abolition of CLL. The said amendment ensured the transfer of seventeen federal ministries to the provincial level. It was a great decision to address the demand for more provincial autonomy. However, this transformation was not well planned and therefore was
not without trouble. Using the Qualitative research method this paper investigates the implementation of Eighteenth Amendment and the issues confronted in its implementation process regarding the Higher Education Commission (HEC), Oil and gas exploration, drug regulation, environmental protection, agriculture, Workers Welfare Fund (WWF) and Old-Age Benefits Institution (EOBI). It also explores the role of Implementation Commission in performing its task.

THEORETICAL FRAMEWORK

The powers and functions are divided between the central government and the regional governments in a federation. Some of the common features of a federation are; a written constitution, two levels of government, rigid constitution, a bicameral legislature, and supremacy of the constitution. The term dual nationalism and dual citizenship are used for a person's citizenship category. The said term is used for a person who enjoys citizenship of more than one state. Some states don't allow dual citizenship. Variations in state laws dealing with citizenship can be easily found in the world.

Federalism is the best solution for such states which have the heterogenic population and large areas. The federal constitutions have some common features. These features are the distribution of powers, independence of Judiciary, a written constitution, and two sets of government. However, every federal state is unique. Different factors such as history, social and political conditions perform a significant function in framing a federal state's basic structure. The units make a consensus for the formation of a federation and achieve particular objectives. Ivo D. Duchacek designed ten yardsticks of federalism to test states that declared or thought to be federal; Comprehensive Control over Foreign Policy, Surrender of Sovereignty to the Federation, Independent Role of the Centre, The Federal Constitutions and Amendments, Indestructible Autonomy of Units, The Issue of Residuary Powers, The Principle of Geographical Parity among Units, Two Sets of Courts, The Apex Court and Principle of Distribution of Power. He observed that we should not show any rigidity defining federalism as every state has varied conditions. Different theories of federalism have been presented by scholars and have been discussed below.

Scholars such as A. Spinelli, D. L. Elazar, K. C. Where and M. Burgees were the advocates of the liberal school of thought. They concluded that a federation is the result of a desire to “be under a single independent government for some purposes at any rate”. Elazar and Burgees observed that moral values perform a vibrant role in the establishment of a federation. Burgees opined that the formation of a federation was a political compromise. Riker and David Mckay were proponents of the realist theory of federalism. They opined that a federation has the capability to solve internal problems. The scientific innovations have paved the way for a federation to control over its large territory.
Dual federalism is another theory of federalism based on the principle of dual sovereignty. This theory contends that the governments at the central and unit levels perform their responsibilities in an independent atmosphere and both are taken as co-equals.\textsuperscript{11} Dual federalism was criticized by political scientists such as Grodzins, Clark, and Elazar. Grodzins first used the term ‘layer-cake federalism’ and ‘marble-cake federalism’. He used the metaphor, ‘layer-cake federalism’ to explain dual federalism. He says that the federal government and the federating units’ government exercise powers in their own spheres like separated layers of the cake.

Clark was the first person who used the term cooperative federalism in 1938.\textsuperscript{12} It was the time when the USA was passing through the Great Depression and the federal government was unable to deal with the situation without close cooperation of the states. But it was not possible because there was an overlap in the powers and functions of the states and the federal government. Due to critical circumstances, the federal government and the state governments were compelled to function in a very close manner as compared to the past. This cooperation virtually ended the idea of dual federalism and the US moved towards cooperative federalism. In 1937, the US Supreme Court declared the ‘New Deal’ policies constitutional and consequently the dual federalism legally as well.\textsuperscript{13}

Dual federalism was rejected by scholars such as Daniel J. Elazar, Jane Perry Clark, and Morton Grodzins. The core principle of cooperative federalism is the joint responsibilities of the governments of the federating units and the federal government. Advocates of cooperative federalism are not in favour of absolute independence. They are of the view that the federal government cannot use unconstitutional power to interfere in the federating units' affairs. The theory of cooperative federalism not only encourages cooperative institutions but also a cooperative atmosphere in the working of the federal government and the federating units' governments.\textsuperscript{14} The theory of cooperative federalism constitutes the theoretical framework of this study.

As mentioned above, the theory of cooperative federalism believes in joint responsibilities. In Pakistan, through the Council of Common Interest (CCI), the provincial governments and the federal government carry out joint powers and functions on the subjects enumerated in the FLL-II. Prior to the Eighteenth amendment, there were eight subjects in the FLL-II. After the amendment, there are eighteen subjects in the FLL-II. The Eighteenth amendment has also reinforced the CCI.\textsuperscript{15} Under the Eighteenth amendment, the CLL was abolished from the 1973 Constitution. However, some joint functions are still performed by the federal government and the provincial governments under the Eighteenth Amendment.

According to the Eighteenth Amendment, the list of subjects that fall under FLL-II have been enlarged.\textsuperscript{16} The amended article 172 recognizes the joint ownership of natural resources.\textsuperscript{17} To ensure transparency the National Finance Commission (NFC) decides the distribution of resources between the provinces and the federal government. The federal government and the provincial...
governments have representation in the NFC. The National Economic Council (NEC) has been shifted from FLL-I to FLL-II under the Eighteenth Amendment. The power to proclaim emergency has to be shared by federal parliament and the concerned provincial assembly under this amendment. The aforementioned examples are enough to demonstrate that under the Eighteenth Amendment, the federal government and the provincial governments interact and perform joint responsibilities, showing the traits that are the fundamental canons of cooperative federalism.

Establishment of an Implementation Commission
In order to implement the Eighteenth amendment an ‘Implementation Commission’ was established by the federal government on 4th May 2010, which took a number of the steps towards the task assigned to it. This commission notified the composition of the National Economic Council on 26th May 2010. Rules of business for Provincial governments were amended to facilitate them to carry out the devolved functions. The commission endeavoured to accomplish the constitutional provisions concerning the calendar of both houses of the parliament. Notification of new rules of procedure of the council of common interest was issued. Commission also issued directions to the Federal Board of Revenue (FBR) not to prepare any tax scheme related to any subject that is not listed in the FLL or the former CLL. The commission cautiously overviewed each article of the Eighteenth Amendment. It also forwarded the provisions which were essential to different departments for necessary actions. This report of all actions taken for implementation was sent to the prime minister, the president, the speaker national assembly, the chairman Senate, the speakers of four provincial assemblies and the chief secretaries of the four provinces. The devolved divisions/ministries under the Eighteenth amendment were directed by the commission not to take decisions concerning new recruitment and cases for promotion of the employees. The commission authorized indispensable recruitment only. The Council of Common Interest (CCI)’s meeting was held under the headship of the prime minister on 18th July 2010. The commission gave details of the implementation of the Eighteenth Amendment to the prime minister. All the devolved ministries/divisions were directed to work out a detailed statement concerning the report related to time-period of devolution. The establishment division was advised to present a summary related to transition aftermaths (particularly employees) of the devolved ministries/divisions. A meeting with federal secretaries was held under the headship of the chairman implementation commission on 20th May 2010. The federal secretaries gave details and also proposals related to the implementation of the Eighteenth Amendment. The rules of procedure of the implementation commission were sanctioned by the CCI on 18th July 2010.

The procedure of the devolution was a purely technical task. The law professionals were recruited and sub-committees were established by the commission. The basic purpose was to make suggestions related to assets and employees’ issues and for bringing amendments in rules of the devolved
ministries/divisions. The administrative, financial and legal features of the devolution were also examined by the commission. The commission identified the federal ministries/divisions whose functions partially or entirely had to be devolved to the provinces. The parliament can still pass laws on subjects enumerated in the FLL under Article 70 (4). However, it was significant that activities of some federal ministries were not incorporated in the CLL or FLL. The rules of business of the II schedule were examined and rearticulated. Under the headship of the deputy chairman implementation commission Ishaq Dar a committee was formed on 7th July 2010, to examine the financial affairs of the ministries/divisions which were devolved to the provinces. However, Ishaq Dar gave the resignation later on and the committee could not accomplish its task. The meetings with the related ministers and secretaries whose departments partly or entirely had to be devolved to the provinces were held on a continuous basis by the commission. The provincial chief secretaries passed information to the commission about their arrangements related to the devolved ministries.

Different teams were instituted by the commission to visit the headquarters of the provinces to check arrangements for performing responsibilities of the devolved ministries. Four meetings of the implementation commission were held under the headship of the prime minister. The Commission pledged that the process of the devolution would be accomplished before 30th June 2011.21

Implementation Commission’s Recommendations

The recommendations for a smooth transfer of functions of devolved federal ministries to the provinces were made by the implementation committee. Abolishment of five federal ministries at the first stage, namely the Zakat and Usher, Special Initiatives, Youth Affairs, Population Welfare, and Local Government, was recommended by the said commission. It also recommended the transfer of provincial subjects to the provinces and assigning the residual functions to other federal ministries/divisions.22

At the second stage, the abolishment of five federal ministries, namely tourism, special education, livestock, education, and culture, was recommended by the commission. Under the 18th amendment, some of the functions of the following federal ministries such as ports and shipping, law, interior, and finance, were repealed. On 31st March 2011, Capital Administration and Development Division (CADD) were established on the recommendation of the commission to manage the affairs of the devolved ministries. At the third stage, the commission gave recommendation for annulment of seven federal ministries such as women development, environment, sports, labour, minority affairs, health, and food.23 The recommendations of the commission to wind up five federal ministries at the first stage were sanctioned by the federal cabinet on December 1, 2010. The dissolution of five ministries at the second stage was approved by the federal cabinet on 3rd March 2011. The abolition of seven ministries at the third stage was sanctioned by the said cabinet on 28th June 2011. Under the Eighteenth amendment, seventeen
federal ministries were abolished and their functions were transferred to the provinces. The federal government made adjustments of employees of seventeen ministries. Sixty-eight meetings of the implementation commission were held. The said commission finished its task within the assigned time period.24

The Post-Eighteenth Amendment Scenario

The proponents of the Eighteenth amendment envisaged good governance and balance of power in inter-governmental relationships. It was observed that bureaucracy and politicians did not desire to transfer numerous functions to the provinces. Their assumption was that the provinces were lacking expertise, experience, and capacity to take this tedious task.25 Even after devolving ministries to provinces, the federal government established parallel ministries in the centre again. Raza Rabbani, the ex-chairman senate criticized the PPP government to establish new ministries at the federal level and remarked that the establishment of new ministries was unconstitutional after the Eighteenth amendment. He opined that a “new concurrent list,” has been prepared by the federal government and also observed that it was dangerous for the solidarity of the federation.26 Some of the issues confronted with in the post-Eighteenth amendments scenario are discussed below.

Firstly, the provinces are entitled to take foreign loans under the Eighteenth Amendment. However, the required laws have not been made by the federal government. Secondly, seventeen federal ministries were abolished under the said amendment. Functions of the abolished ministries come under the domain of the provinces. The federal government transferred the employees of the abolished ministries to other federal ministries or transferred to the provincial level. These employees faced a lot of problems at the time of their retirement as they were not owned at both levels of government. A feeling of anxiety had developed in the employees of devolved ministries. The writ petitions were also filed by some of them against the federal government. Thirdly, puzzlement was also seen concerning the mandate to regulate the functions which were devolved under the Eighteenth Amendment. The regulation of the devolved subjects was the responsibility of the CCI under Entry 6 of the FLL Part II. The notifications of the Pakistan Standard Quality Control Authority (PSQCA) were cancelled by the Sindh High Court giving the judgment that it was subject of the province. Analogous issues emerged in the past because the powers of the Drug Regulatory Authority of Pakistan were also unclear. The Supreme Court assessed the legality of the aforesaid authority.27

Another source of tension between the federal government and the provinces was some regulatory problems of which the higher education was the best instance. Likewise, liabilities and assets also stimulated a conflict. The federal government had been unable to establish focal institutions at the federal level to help the donor agencies that could negotiate the provinces directly. The result was a loss of donations and international co-operation.
The federal government was not given the power to establish parity between the provinces under this amendment. It could only intervene if the provincial assembly passes a resolution under article 147 and request the federal government to do so. Therefore, the aforesaid jurisdiction of the federal government will be of great importance in the coming National Finance Commission (NFC) Award. The federal government plays a crucial role in a federal state as it fulfills the responsibility to employ the federating units in a joint economic union and provides much incentives effectual decision-making concerning the demarcation of the limits between the provincial governments and the federal government’s areas of jurisdiction should be made by the Council of Common Interest (CCI).

The Federal Government’s Decision about Regulatory Authorities

On 19th December 2016, Prime Minister Nawaz Sharif decided to hand over the administrative control of the five key regulatory authorities to the concerned federal ministries. It was elucidated by the federal government that regulatory authorities’ administrative control was transferred to the concerning ministries; however, regulators would still enjoy regulatory powers. However, the PPP, major opposition political party in the national assembly (2013-2018), criticized the aforesaid decision of the prime minister.

Murad Ali Shah, Chief Minister of the Sindh also criticized the decision of the prime minister and opined that permanent secretariat of the CCI has the power to control the regulatory authorities under article 154 (1) and (3). He remarked that the constitution empowers the CCI to supervise and devise a policy of these authorities and demanded from the prime minister to announce a meeting of the CCI to examine the issue and also suggested to withdraw the notification. The Senate’s functional committee on devolution commented that independence of the regulatory authorities must be ensured and also expressed that the federal government’s decision was the violation of the 1973 Constitution. The decision of the federal government was challenged in the Lahore High Court by a citizen Ali Irfan and the PTI’s senior leader Jahangir Tareen and the Court repealed the notification and made the judgment that "the prime minister should have sought approval from the CCI before issuing the notification."28

Oil and Gas Exploration Issues

Oil and gas provide a large number of benefits to mankind. It provides energy for different sectors. The issue of distribution of natural resources among the provinces was quite critical for the Federation of Pakistan. The article 158 of the constitution of 1973 addresses natural resources. Itsays:

The province in which a well-head of natural gas is situated shall have precedence over other parts of Pakistan in meeting
therequirements from that well-head, subject to the commitments and obligations as on the commencing day.\textsuperscript{29}

Over the last decade, an increase has been seen in the per consumer consumption. The Sui Southern Gas Pipeline Limited (SSGPL)’s increase was six percent and Sui Northern Pipeline Limited (SNGPL)’s increase was five percent. The deregulation of prices could result in curbing the crisis. The article 172 relates to providing concession for exploration of oil and gas. However, the phrase “jointly and equally” was ambiguous. Originally the licenses were given by the federal ministry of natural resources. A demand was made by the provinces that they should also be given the opportunity to take part in the aforesaid process as the mutual ownership of gas and oil has been recognized under the Constitution. The constructional right of the provinces in planning and fixing prices of gas and oil must be accepted by the federal government.\textsuperscript{30}

The oil and gas producing provinces enjoy administrative control and fifty percent ownership on mineral resources, gas, and oil in their relevant area under article 172 (3). However, the federal government and the provincial governments interpret the above-mentioned article in different contexts. A demand is made by Sindh that the extension of exploration licenses to gas and oil companies is the constitutional right of the province. The international, as well as national oil exploration companies, were permitted to explore gas and oil in 50 blocks in different provinces in 2013.\textsuperscript{31} Disagreement over this issue resulted in the tussle between the respective provinces and the federal government and exploration process of oil and gas was stopped. The rivalry between the federal government and the provinces became the major hindrance in the way of exploration of gas and oil resources since the international oil and gas exploration companies lost the appetite to invest in Pakistan due to the aforesaid issue.

After the Eighteenth amendment, a further lethargic situation was observed in this regard. The bidding that had to take place in June 2010 was cancelled. The federal government announced the postponement of petroleum policy 2012 for more than two years. The process of bidding was initiated in March 2013, however, it could not be completed till March 2014. The rules and regulations were not followed in the bidding process and consequently, not a single foreign exploration company took part in the bidding. The Pakistan Petroleum Limited (PPL) and Oil and Gas Development Company Limited (OGDCL) were granted the present blocks. The international exploration companies such as British Petroleum of UK and Broken Hill Proprietary Company of Australia left Pakistan.\textsuperscript{32} According to the petroleum policy 2012, representation of the provinces was increased. In fact, true implementation of the Eighteenth amendment can increase participation of the provinces and better administration of gas and oil sector can help in the resolution of the issue. One of the reasons for uncertainty in the gas and oil sector was misinterpretation and lack of understanding of the Eighteenth Amendment. It is expected that the below-mentioned proposals can be helpful in betterment in the gas and oil sector.
• A body “under the rules of business” should be established. The focal point of the body should be to bring harmony between the provinces and the federal government and to point-out hindrances related to the implementation of amended article 172;
• The word “Ownership” means equal part of owners in royalty and it does not mean the assigning of executive and law-making powers to the provinces;
• The foreign oil and gas exploration companies can be attracted by making the provinces “co-license holders”.

The Higher Education Commission

An effort was made to transfer the functions of the HEC in post-Eighteenth amendment scenario. The HEC filed an appeal in the apex court and a status quo order was given. The court gave the judgment that “the HEC ordinance 2002” has constitutional protection. The said ordinances shall remain functional unless it is amended by the parliament. The issue was also discussed at the forum of the CCI. It was decided by the CCI that the provincial governments and the federal government would plan educational schemes and they would also collaborate the CCI. The CCI can be helpful in bringing a solution to the problem. The Sindh Provincial Assembly passed the Provincial Higher Education Commission Act on the last day of the PPP government (2008-2013). PTI’s government in the KPK (2008-2013) established a working group to examine the issue. However, the PML-N, ruling party (2013-2018) wanted to retain HEC at the federal level as a powerful body. The appointment of the universities’ vice-chancellors was made by the governor before the Eighteenth amendment. The said amendment has given the power of appointment of the vice-chancellor to the provincial chief minister.

Under the Eighteenth amendment, the federal education ministry was abolished and its functions were devolved to the provincial level. Sindh and Punjab provinces instituted HECs at the provincial level. The central HEC and the federal law ministry opposed the formation of provincial HECs and remarked that it was a violation of the 1973 Constitution. The meeting of the CCI was held in March 2015 and a task force was instituted to resolve the disputes. The Pakistan Human Rights Commission report 2017 revealed that higher education was in ‘serious crisis’ in the country. Some apprehensions from the central HEC can be observed in Balochistan universities. The federal and provincial HECs have still overlapping claims of jurisdiction.

Drug Regulation

The CLL was removed from the 1973 Constitution under the Eighteenth Amendment. The subjects of the former CLL fall under the jurisdiction of the provinces under the said amendment. The below-mentioned entries concerning drugs were part of the CLL.

Entry 19: Opium, so far as regards cultivation and manufacture.
Entry 20: Drugs and medicines.
Entry 21: Poisons and dangerous drugs

The regulation of the opium issue is the jurisdiction of the federal government. The regulatory authorities were placed in the FLL II under the Eighteenth Amendment. Prior to this amendment, the functions of the drugs were under the jurisdiction of the federal ministry of health under Drugs Act 1976. Approximately 70 patients lost their lives at Punjab Institute of Cardiology (PIC) in January 2012 due to medicines of inadequate quality. Supreme Court took the notice under sub-moto and instructed to establish the Drugs Regulatory Authority. In compliance, the Pakistan Drugs Regulatory Act was promulgated on 13th November 2013.

Environmental Protection

The provinces enjoyed complete jurisdiction over the subject of the environment under the previous Constitutions (1956, 1962). The national assembly (federal legislature) had the powers to make laws related to the implementation of accords with other states and international bodies. The subject of the environment was put in the CLL (entry no. 24) under the Constitution of 1973. The subject ‘environmental pollution and ecology’ (entry no. 24) of former CLL has been devolved to the provincial level. However, a lot of governance problems related to environment remained there. The country still failed to execute existing laws related to the environment and also to fulfil obligations related to international accords.

A core problem can be seen concerning devising and execution of National Environmental and Quality Standards (NEQS) such as water and air quality, liquid and industrial waste, etc. The Environmental Protection Council (EPC), a federal body, had the power to design the NEQS before the Eighteenth amendment. There is a lack of harmonization between the NEQS and the EPC of each province. A few non-Governmental Organizations (NGOs) were opposed to devolution of environment ministry to the provincial level. The reason quoted was incompetency and lack of preparation on the part of provinces. The federal government instituted a new ministry of climate change in post-Eighteenth amendment scenario. However, nominal regulatory functions should be carried out by the above-mentioned ministry. A leading role in the execution of the existing environmental laws should be performed by the provinces. However, preparation and supervision of the NEQS can be performed by the federal EPC. The environmental department should be strengthened at the provincial level.

Agriculture

The federal ministry of agriculture and food performed considerably in national food security. The responsibilities of planning, policy-devising and economic coordination concerning agriculture and food grains lied in the domain of the said ministry. According to the Eighteenth Amendment, the ministry was transferred to the provincial level. However, the federal government created a new ministry, namely, national food and security research. The functions of fixation of support prices, provision of regulatory and assessment services are carried out by
this ministry.\textsuperscript{40} The transfer of power of fixation of crops’ prices to the provincial level could be problematic. The difference of fixation of support price of the same crop in different provinces can create disharmony and can promote smuggling. To deal with this issue the forum of the CCI can be utilized for fixation of common support prices of crops.

\textbf{Workers Welfare Fund (WWF) and Old-Age Benefits Institution (EOBI)}

The federal government established WWF in 1971. It was for the whole areas of Pakistan under section (1). A sum of 100 million rupees was allocated in the fund by the federal government. Under article 4 of WWF Ordinance 1971, “Every industrial establishment having the total income of five lakh rupees or more pays to the fund in respect of that year a sum total of 2 percent of its total income to the federal government.”\textsuperscript{41} According to section (7), a governing body was also instituted. The responsibility of the chairman is carried out by the federal secretary of the concerned ministry. All the provinces have their members in the executive council.\textsuperscript{42} Item no. 26 of the former CLL addressed functions related to social security of workers (Item No. 26, 31).

Item No. 26: Welfare of labor, conditions of labor, provident funds, employer’s liability and workmen’s compensation, health insurance including invalidity pensions, old age pensions (The Constitution of 1973). Under the Eighteenth amendment, the abovementioned functions were transferred to the provinces. The federal government executed the EOB Act in 1976. The basic objective was the achievement of the aims of the article 38 (C) of the 1973 Constitution.

Article 38 (C): "Provide for all persons employed in the service of Pakistan or otherwise, social security by compulsory social insurance or other means."\textsuperscript{43} (The Constitution of 1973). The federal government appoints chairman EOBI and the assumed annual income of EOBI is 30 billion rupees. Approximately, 800 million rupees are paid per year as annual benefits. Under the Eighteenth amendment, ministry of labour has been devolved to the provinces. The provinces can legislate and establish new bodies for workers' welfare under Article 142 (C). The handing over of funds of WWF and EOBI to the provinces can create an enormous issue of financial contribution and release of grants among the provinces. A critical situation may emerge if any person working in one province, shifts to his native province after completing the service. The federal government can simply transfer WWF to the provinces and keep EOBI by itself. In this way, all the provinces would equally achieve benefits. At present, the EOBI is facing serious problems and it is the foremost obligation of the federal government to play its vital role. It is impossible for the EOBI to enhance retired employee’s monthly pension of 6,500 rupees, in effect since April 2015.\textsuperscript{44} It also seems that the very existence of the said institution is in peril.

The Prime Minister chaired a meeting of the CCI on September 24, 2018. The council instituted a task force to examine the matters of EOBI and WWF.
said council established a special committee and a task force to execute the policies of all federal regulatory bodies and keep an equal standard of food items in all areas of Pakistan. The council stressed that harmony between the federal government and the provincial governments can bring improvement in education standards and help in the execution of a single education system. The directions were given to the HEC to prepare proposals regarding this issue. The council also analysed recommendations of the petroleum division on the amendment of petroleum policy 2012 and sent the recommendations to the Economic Coordination Committee. The Prime Minister also chaired a meeting of the federal ministry of petroleum on March 11, 2019, and gave instructions to the said ministry to design an incentive package for exploring companies. An amended petroleum policy would be presented in the forthcoming meeting of the CCI by the petroleum ministry.

CONCLUSION

Under the Eighteenth amendment, 102 articles of the 1973 Constitution were addressed. The genesis of parliamentary system was restored, the role of the elected representatives was enhanced and the long-standing demand of provincial autonomy was addressed through the abolishment of CLL and bringing changes in article 157 and article 172. All the political parties in the parliament showed extensive consensus over the Eighteenth amendment.

However, issues of implementation of the Eighteenth amendment are still there. The federal and provincial governments are in the middle of the process of resolving them through consensus. There are differences between the federal petroleum ministry and the provinces over the interpretation of article 172 (3). As a result, the exploration of gas and oil was effected in Pakistan. The settlement of the said matter can be helpful to overcome the deadlock. There is also a need to bring changes in the HEC Act at the federal level. The CCI should decide about the distribution of powers and financing of higher education between the federal government and the provincial governments as earliest as possible. Under the Eighteenth amendment, all the functions related to the labor were transferred to the provinces. The future of the EOBI is yet to be determined by CCI. The federal government could not decide yet to return back the funds to the provinces collected under the WWF.

Ministry of agriculture was abolished under the Eighteenth Amendment. The federal government gave approval of a national agricultural emergency program on March 18, 2019. To achieve better results both the federal and provincial governments need to coordinate with each other in the agriculture sector. Ministry of health was abolished under the Eighteenth Amendment. Different issues emerged in the health sector at the provincial level after the implementation of the said amendment. To meet these issues provincial governments surrendered their control on a voluntary basis and the Drug Control Authority was established through mutual consent by all stakeholders. Similarly
the subject ‘environmental pollution and ecology’ was devolved to the provinces under the Eighteenth Amendment. A new Ministry of Climate Change was established by the federal government after the said amendment. It is concluded that the provinces should play a leading role in the implementation of the current laws related to the environment.

For the effective working of the federation, it is inevitable that the subjects enumerated in the FLL-II should be decided at the forum of the CCI and the federal government should avoid taking unilateral decisions. The CCI should fully utilize its conflict resolution modus operandi to facilitate and resolve the issues discussed in this paper. The provinces should learn from experiences regarding the devolved functions. Moreover the implementation of article 154-III of the 1973 Constitution must be ensured by the federal government through the establishment of a secretariat of the CCI and holding meetings of the CCI on a regular basis. To ensure the effective implementation of Eighteenth amendment the federal government should not intervene in the subjects which were transferred to the provincial governments and should remain confined to act as a ‘coordinating body’. Pakistan is considered to be an evolving federation and democracy-in-transition grappling with teething problems. It has been facing many challenges to national integration as well. Provincial demand for more autonomy has been addressed through the Eighteenth amendment with national consensus. Now the true spirit of provincial autonomy, envisioned under this amendment must be upheld.
Notes and References

4 The variations can be seen in different federations. Federal states can implement a presidential or parliamentary system. The nature of federalism in any state may vary over time. Pakistan was a federal state according to the Constitution of 1956 with parliamentary democracy. Although the status of a federal state was maintained in the 1962 Constitution yet the presidential system was introduced instead of the parliamentary system. Both the mentioned Constitutions retained unicameral legislature. In contrast, the 1973 Constitution maintains the bicameral legislature. The 18th amendment brought significant changes in the nature of federalism in Pakistan.
5 Muntza Nazir, Federalism in Pakistan: Early Years (Lahore: Pakistan Study Centre, 2008), 7-33.
13 Ibid., 96.
14 Ibid., 101.
15 All issues concerning the federation are discussed in the council. The prime minister is to be chaired the CCI. It consists of the four chief ministers and three members nominated by the federal government. It is obligatory for the council to meet at least once every quarter. The council has been given the power concerning supervision, decision making, monitoring and control over the FLL-II. It contains conflict resolution; norms in education and research; regulation of the medical, legal and other professions; regulation of public debts; provincial police powers beyond provincial boundaries; census; federal regulatory authorities; fiscal coordination and national planning; industrial policy; electricity; railways; minerals, oil and natural gas; harmful materials and major ports (Constitution of the Islamic Republic of Pakistan 1973).
16 Four items; national economic coordination and national planning, census, major ports and extension of powers and authority of provincial police force to the railway and other...
provinces have been transferred from Part-I of the FLL to Part-II (shared responsibility). The items in the CLL have been delegated to the Provinces. Two items, medical, legal and other professions and electricity have been shifted to FLL-11 (Constitution of the Islamic Republic of Pakistan 1973, Fourth Schedule). Article 157 has been amended in two aspects. Firstly, the Federal Government shall consult the concerned Provincial Government before the construction of a hydro-electric power station in that Province. Secondly, if any dispute arises between the Federal Government and the Provincial Government and, the issue shall be solved by the CCI (Constitution of the Islamic Republic of Pakistan 1973, Article 157).

17 Article 172 addresses ownership. According to the Eighteenth Amendment, a new section (3) has been inserted. It states that the natural gas and mineral oil within the boundary of the province or the territorial waters in its adjacent area shall vest commonly and equally in that province and the federal government (Constitution of the Islamic Republic of Pakistan 1973, Article 172).

18 According to the Eighteenth amendment, two new Sections 3 (A) and 3(B) have been added in Article 160. According to the Clause 3 (A), the share of the province shall not be less than the one allocated to the provinces in the former Award (Constitution of the Islamic Republic of Pakistan 1973, Article 160).

19 The council reviews the overall economic condition of the country and advises the federal government and the provincial governments, formulate plans in respect of financial, commercial, social and economic policies. The prime minister is head of the council. The composition of the council has been revised under the 18th Constitutional Amendment. There are two members including the chief ministers from each province and four members from the federal government, appointed by the prime minister. The council has to meet after every six months. According to Article 156 (5), the council will have to submit its annual report to both houses of the parliament (Constitution of the Islamic Republic of Pakistan 1973, Article 156). Now, the subject of national planning is performed jointly by the federal government and the provinces (Constitution of the Islamic Republic of Pakistan 1973, Fourth Schedule, FLL-II, Entry 7).

20 It is the constitutional prerequisite that the concerned provincial assembly must pass a resolution if the circumstances are beyond the control of the provincial government. In case, the president declares an emergency by himself, the matter will be put before both the houses of the parliament. Then both the houses will have to decide within ten days (Constitution of the Islamic Republic of Pakistan 1973, Article 232).

21 Government of Pakistan, Report of the Inter Province Coordination, (Islamabad: Inter Province Coordination Division, 2012), 1-5.

22 Ibid., 7-9.

23 Ibid., 10.


26 Raza Rabbani, interview with authors, March 9, 2017.


The Constitution of 1973, article 158.


Sania Nishtar, “18th Amendment: Five Years On.”


Ibid.

Sania Nishtar, "18th Amendment: Five Years On."


Social Development in Pakistan, 71-83.


Social Development in Pakistan, 71-83.

