April 8, 2010 will be remembered as a mile stone in the constitutional history of Pakistan as National Assembly of Pakistan passed constitutional bill of Eighteenth Amendment in the Constitution of Pakistan 1973. It was a major breakthrough, the presidential authority to dissolve the parliament was abolished. According to the Parliamentary Constitutional Committee this amendment is an effort to revive the original shape of 1973 Constitution by maintaining balance of power between organs of the state. It changed the political culture of Pakistan from semi-presidential to parliamentary. An important development due to this amendment is renaming of North-West Frontier Province as ‘Khyber Pakhtunkhwa’. Moreover the word “Baluchistan” was replaced with the word “Balochistan”, and “Sind” with the word “Sindh”. The dictators disfigured the original constitution 1973 according to their own vested interest. It has become more democratic and parliamentary after the amendment and can ease political insecurity and instability in the country. The Senate of Pakistan passed the bill on April 15, 2010 and became an act of parliament when President Asif Ali Zardari signed on the bill on April 19, 2010. It was for the first time in the history of Pakistan that a president voluntarily withdrew a significant part of his powers happily and transferred them to parliament and the office of the prime minister to strengthen the democratic system.
The issue of provincial autonomy had been of great importance since the establishment of Pakistan and it was also an important cause in delay of constitution making. The Objective Resolution and certain clauses of Govt. of India Act 1935, which were adopted as Interim Constitution could not solve the problem of provincial autonomy along with other provincial rights due to which disharmony and distrust was automatically created among different provinces. Chaudhry Muhammad Ali tried to resolve these issues by introducing one unit scheme and later on the Constitution of 1956. Due to this the already complex situation became worst. It was one of the major factor for imposition of first martial law in Pakistan because the political system had failed to satisfy all the units on the issue of provincial autonomy. The 1956 Constitution could have been improved despite certain draw-backs but the political masters and the creator of the constitution had themselves become against it in the wake of power-play which resulted in to the abolition of the constitution in 1958. This was a bad start which paved the way for constitutional abrogation in future.

The 1962 constitution introduced presidential form of Government and its response was also disappointing because this was one man show and authoritative rule of Ayub Khan. The light at the end of tunnel emerged due to the abolishing of One-unit and introduction of the right of vote on the basis of adult franchise in Legal Framework Order of Yahya Khan. This resulted in awarding Balochistan the status of full-fledged province.

The 1973 Constitution also could not resolve the issue of provincial autonomy despite of being the only unanimous constitutional document in the constitutional history of Pakistan. So the struggle for provincial autonomy continued but the behaviour of the central government was of showing cold shoulder. In this paper an effort will be made to judge the Eighteenth Amendment in the context of provincial autonomy, with special reference to Balochistan. Furthermore it would also
discuss how the parliament deliberated upon the issue? Furthermore the standpoint of the people of Balochistan and the process of the implementation of amendment will also be studied.

Pakistan experienced all kind of rulers and governments; military, civilian and the quasi democracies; the unity of thought among them was that, they all by exposition of behavior were in favour of a strong centre at the cost of the provinces. This was due to psyche of the overpowering role of the centre, which is not only against the spirit of federation, but also hinders, the strengthening of trust among the centre and the provinces and at the same time within provinces also. On the other hand every consecutive government followed the theme, Jo nagh-i-khan tum ko nazar aay mita do, which resulted into various political and constitutional breakdowns. The constitutional history of Pakistan reveals that from Interim Constitution of 1947 to the 1973 Constitution a lot of amendments had taken place, which always altered the actual figure of the constitutions. Time and again every constitution was abrogated or held in abeyance, PCOs were also way of running the government. If we evaluate the constitutions of Pakistan, the 1962 Constitution was unique because it suggested presidential form of government, which gave absolute powers to a person, who was of the leaning to seize all powers not only constitutionally but practically in a more crude form. Hasan Askari, is of the opinion that some provisions of 1973 constitution assign preeminence to the centre at the operational level, the tendency is towards a strong Centre. Pakistan can thus be described as federation with strong centre. Some writers call it quasi federal system.

A few realities must be considered regarding geography and the demography of Balochistan when provincial autonomy or share of Balochistan in the constitution is under discussion. The province is distinctive and diverse due to its ethnic composition i.e. Baloch, Brahvi, Pushtoon, Hazara, Lasie and the settlers.
Historically there is need to focus on British Balochistan as well as the States. Politically Balochistan has different shades:

1. National Political Parties
2. Regional Political parties
3. Religious Political parties
4. Angry/armed/militant groups

The above mentioned grouping is very important; every group has its own different viewpoint regarding all important issues related to Blochistan and their solutions. Centre-province relations may take different turn in the context of present changed scenario after the establishment of Gilgit-Baltistan Province and eighteenth amendment. All stake holders in Balochistan should be given due consideration so that the sense of deprivation may not increase in any group. “All key positions are with the Baloch, including Governor, Chief Minister and the Chief Secretary etc. Pashtoons have been marginalized. As a result of this deprivation, there are chances that Pashtoons may demand that the province of Balochistan should be renamed.” That might be Bolan-Pashtoonkhwa or separate Pashtoon identity and the name. In all this context the centre have to play distinct positive role—not like the doom of first provincial assembly to the present assembly where a minority party is holding the government. Target killing and the Missing persons are the regular features of Balochistan today. The conflict in Balochistan intensified significantly in recent years with the number of incidents rising from 139 in 2006 to 609 in 2010. The number of civilian killed has also risen dramatically from 35 deaths in 2006 to 129 in 2010 with the number injured rising from 91 to 682. If we want to avoid tragedies like debacle of East Pakistan, the feelings in the area must be redressed as soon as possible. As a gesture of good will
the president has apologized for the mishandling and wrongs done with the people of Balochistan. The introduction of a full-fledged package, *Aghaz-e-Haqooq-e-Balochistan* for the province has not been enacted so far. A 38-page progress report on the *Aghaz-e-Haqooq-e-Balochistan* package, prepared by the Establishment Division, states that the government has not acted on most of the proposals even 16 months since the package was introduced. Among the proposals awaiting implementation are: a 500-megawatt Dera Ismail Khan-Zhof electricity transmission line; the Sobekzai, Mirani and Check dams; Quetta-Zhof-Dera Ismail Khan Road and Quetta-Zhof section of the National Highway; a 300-line telephone exchange for Musakhel district; a cancer ward at the Sandeman Hospital in Quetta; interest-free loans for the mining sector and waiving agricultural loans of up to Rs 500,000. The real Haqooq can be provided to the people of Balochistan if democratically elected provincial government have full authority to govern over the province and fundamental rights as mentioned in the constitution of Pakistan be provided in letter and spirit. PPP central leader Mir Baz Khan Khetran was of the opinion that, the *Aghaz-e-Haqooq-e-Balochistan* package was the beginning; he hoped that the 18th amendment to the Constitution would do some good. In the context of above discussion the introduction of 18th amendment is a historic step towards right direction.

The fruits of provincial autonomy would be beneficial if the 18th Amendment is implemented in its letter and spirit and also would be great achievement of the Government. However the tendency of tilt towards strong centre is still prevailing. The establishment is ever holding cards in its hands by one or the other way. There was need to restore the original shape of 1973 Constitution and to shift the powers given to the office of the president under Zia ul Haq and General Pervez Musharaf regimes. The changes made in the Constitution by two military dictators through the 8th and 17th Amendments not only undermined the democratic institutions but also deprived the provinces of their legitimate constitutional rights.
Mian Raza Rabbani and the members of Parliamentary Committee on Constitutional Reforms, while examining the various provisions of the Constitution 1973, kept in view; transparency in system, minimizing individual discretion, strengthening Parliament and Provincial Assemblies, Provincial Autonomy, independence of the Judiciary, further strengthening fundamental rights, the question of merit, good governance and strengthening of institutions. Suggestions from the public were invited by the Committee and in response 982 proposals were received. The Committee also asked the representatives of political parties to submit their proposals for amendments to the Constitution. As a result 91 such amendments were received by the committee.

The Parliamentary Committee on Constitutional Reforms, representing 14 political parties and Federally Administered Tribal Area (FATA), took over nine months to prepare a unanimous draft bill, although different parties have added separate notes of reiterations to outline their individual party positions. This consensus is a remarkable development in a sense that politicians had demonstrated similar maturity by showing extraordinary flexibility for consensus building as was during the formulation of the 1973 Constitution.

The momentous constitutional (18th Amendment) Act 2010 was passed unanimously by amending as many as 102 articles. The basic features of 1973 Constitution like Islamic Republic, parliamentary democracy, federal structure, independence of judiciary are retained. Besides, most provisions of earlier amendments, especially those relating to religion, are retained. For example the Second Amendment introduced in 1974 declaring Ahmadia community as non-Muslim minority continues. Similarly, Islamisation clauses of 8th Amendment were retained. Making the Objective Resolution of 1949 was made a substantive part of the constitution, instead of placing it at preamble previously. Establishment of Federal Shariat Court and the
inclusion in the oath of all legislatures to say “strive to preserve the Islamic ideology, which is the basis for the creation of Pakistan”. Provisions of the 17th Amendment like increased numbers of legislatures also retained, while some provisions were deleted like the powers of the president to dissolve the national assembly or the requirement of graduate qualification for legislatures. The appointment of judges through a judicial commission was an important addition.

The federal and parliamentary spirit of the 1973 constitution was restored in 18th amendment. Furthermore, most of the constitutional changes inserted during the authoritarian regimes of Zia and Musharaf, who ruled Pakistan for nearly 20 years during the past three decades, have been removed.

Pakistan had the disturbing constitutional history which showed that the issues of social justice and provincial autonomy were not given due importance i.e. the provinces were deprived from the fruits of NFC, CCI and distribution of resources. Whereas this amendment can be considered as an attempt to resolve these problems. The principle of policy has been settled to coordinate between central and provincial governments. Under different constitutional reforms the power is being transferred willingly to provinces, as a result the proficiency of governance will enhance. Moreover as an initial step the power of ministries is being transferred to provinces i.e. education, health and local govt. etc.

In this regard it has been observed that the biggest beneficiaries are the federating units who have got full autonomy to legislate on forty seven subjects placed in the Concurrent List earlier. From Balochistan, Senators Mir Hasil Khan Bizenjo of the National Party (NP), Agha Shahid Bugti of the Jamhori Watan Party (JWP), and Israrullah Zehri of the Balochistan National Party (BNP-Awami) were the prominent Baloch leaders who signed the 18th Amendment Bill. Most of the Baloch nationalist
parties had no representation in Parliamentary Committee on Constitutional Reforms under the Chairmanship of Raza Rabbani that prepared the 18th Amendment Bill as they boycotted the last general elections.

The Baloch nationalists have completely rejected these constitutional reforms as the new legislation was expected to help in reducing the tension in Balochistan but it was not happened so. However, apart from the National Party, whose two leaders are members of the Parliamentary Committee on Constitutional Reforms; all other major nationalist groups declared they will not accept anything less than the right to self-determination.

The 18th amendment is being termed the most important constitutional consensus after the 1973 constitution as it is new legislation supported by all mainstream parties. On one hand it removes distortions introduced by successive dictators in the constitution and on the other hand grants more autonomy to provinces. It is very important that after abolition of the concurrent list, a number of powers would be transferred from the federation to the provinces. This new legislation promises 50 per cent share in their resources for the respective provinces. The share is almost what the Baloch nationalist parties had been demanding till date. Their relations with the federation reached a point of no-return after a military operation was launched in Balochistan.

Due to irresponsible behaviour the radical Baloch nationalists seek an independent Balochistan, and say that they do not need any "relief" from Pakistan. They are of the view that the 18th Amendment or the Balochistan package is just like a trap for them. They do not want relief but freedom. The most radical nationalist party in Balochistan Balochistan National Movement (BNM) publicly supports the armed struggle waged by Baloch Liberation Army. The party’s president, Ghulam Muhammad Baloch, along with his two other comrades, Muneer Ahmed (known as Lala
Muneer) and Sher Muhammad was killed on April 3, 2009 in Turbat. The incident stirred violent protests throughout the province, as intelligence agencies were blamed for the killings.

According to the present scenario the constitution of Pakistan has lost its significance when dictators are changing it according to their will and wish with all the 'apparatus' of legitimacy. The innocent Baloch must not be victim of any law enforcing agency. The 18th Amendment must benefit Balochistan by redressing the wounds of the Baloch by recovering missing persons and stopping killings. The Balochistan should be treated as a province according to the constitution.

Member of the Parliamentary Committee for Constitutional Reforms and Vice-President of the National Party, Senator Hasil Bizenjo hailed the 18th Amendment as the biggest success since the 1973 Constitution. He said that even Mir Ghaus Bakhsh Bizenjo, Khair Bux Marri and Ataullah Mengal, despite years of struggle could not persuade Bhutto and others to abolish the concurrent list which has been done now. So he declared it as a great achievement.

Senator Dr. Malik Baloch, President of the National Party and member of the Constitutional Reforms Committee, said that some of the Baloch demands were accommodated. He said that they demanded that Pakistan should be declared a multi-national state and the languages of all the ethnic groups' i.e. Balochi, Pashto, Sindhi and Punjabi should be granted the status of national languages. This demand was not accommodated; however he believed that the abolition of concurrent list and giving 50 per cent share to provinces on oil and gas resources was a progress in the right direction. He reiterated that though the demand for 'complete provincial autonomy' was not granted to the provinces but even then, “...it will be disaster if the implementation of 18th amendment is stopped.”
Since 2001, Balochistan has been under the grip of a low-intensity uprising. The demand for separation of Balochistan has become phenomenon of the day by Baloch militants. Other moderate nationalist parties, including Balochistan National Party and the National Party, have been demanding provincial autonomy. On the other hand the government has claimed that the constitutional reforms package will really address the grievances of the Baloch and the demands of the Baloch nationalists. However, the representatives of almost all the nationalist groups showed distrust on the promises of federation and it can be observed that the gulf between the Baloch nationalists and the government was so wide that it could not be bridged easily and just through promises but concrete practical steps are urgently required.

Rehman Malik, the Interior Minister have declared a few months ago that there were negotiations on various issues between the government and Brahmndagh Bugti, the grandson of Nawab Akbar Khan Bugti who is playing leading role in the Baloch insurgency. It have been expectation in certain circles that the government has taken Brahmndagh and other Baloch nationalist leaders on board particularly on the constitutional reforms. However, it must be kept in mind that other than the National Party, no other ‘nationalist group’ was consulted on the issue so far. In contrast to the claim of the interior minister, the Secretary General of the Brahmndagh’s Baloch Republican Party there was no contact between the government and Brahmndagh Bugti and no negotiations have taken place between them.

Habib Jalib, Secretary General of the Balochistan National Party was of the view that the central government must not be trusted. He said that the Frontier Corps check-posts were still there although promised to be abolished in Aghaz-e-Huqooq-i-Balochistan package. He said that his party does not demand anything less than the right to self-determination. The Balochistan National Party which was being considered relatively a moderate
party has even hardened its stance now. It demands something more than the provincial autonomy. The founder of the party, Attaullah Mengal, struggled for a long time for the abolition of the concurrent list. Habib Jalib said that, "Pakistan has failed and its constitution has failed to solve the Baloch issue. We want the United Nations to intervene and play the role of a mediator," 16

On its part, the biggest Baloch nationalist party, the Balochistan National Party of Sardar Akhtar Mengal categorically rejected the constitutional package by saying that the government ‘April-fooled’ the Baloch with the constitutional package. According to Mengal, a former chief minister of the province, his party was not a part of the constitutional committee and the closure of Concurrent List is entirely inappropriate in the present circumstances when Balochistan is engulfed in a war-like condition.

By analyzing the statement of Sardar Akhtar Mengal, it is safe to say that the armed groups involved in Balochistan for separation having more radical views than Sardar Mengal, will not take the constitutional package very seriously. Even many of the armed groups and ‘nationalist organizations’ have not considered the package of the worth to be commented. Furthermore it is still to be awaited that how the federal and provincial governments interpret the 18th Amendment for the restless province of Balochistan. The government has to elucidate if the package include what it takes to put out the fire in Balochistan. While discussing the implementation of the amendment, even the Pakistan People’s Party leader Mir Baz Khethran is of the view that it is not up to the mark.

If one goes into the details, the implementation side of the story is rather bleak. The volcanic situation in Balochistan still continues, target killings and missing persons is the panorama of Balochistan same as before the amendment. Twenty eight fundamental rights were originally provided in the Constitution. 17
By virtue of the 18th Amendment, an addition of three fresh fundamental rights has been made which are: a right to fair trial which provides that all persons shall be entitled to a fair trial and due process in civil and criminal proceedings; a right to information which provides that every citizen shall have the right to have access to information in all matters of public importance subject to reasonable restrictions imposed by law; and, a right to education which provides that free and compulsory education for children of the age of five to sixteen years shall be provided by the State. But in Balochistan all the three fundamental rights are factually denied i.e. in Balochistan its common perception that thousands of Balochs are still missing and even the Chief Justice of Pakistan on 21st October showed his concern on the issue. Secondly the right to information has also been totally ignored, the relatives of missing persons are hand in glove with famous activist Amina Masood Janjua wandering on the roads of Islamabad just crying for this ‘right to information’ to know about their relatives. And the education is the most neglected scene in Balochistan. Fazila Aliani is of the opinion that provincial government is toothless regarding real authority. She has also predicted that the results of 18th amendment would be negligible in Balochistan due to wrong policies of the establishment.

The only way forward is for the state to address the Balochistan issue seriously and implementing 18th Amendment in true sense by taking into account historical, cultural, economic and political factors. The best way out of Balochistan’s horrifying crisis is to develop a social and economic bond between the Baloch and the state by increasing the Baloch people and Baloch youth’s stake in the system. If the FC, Coast Guard, Navy, police and all government security consists of non-locals, what option and trust will the Baloch youth have in the state system?

Recommendations

- Federal encroachments must come to an end in reality into the provincial matters.
All the missing persons must be brought in front of courts.

Target killing must be stopped by all means.

There must be proper representation on key positions of all the shades of the province.

Steps should be taken on war ground to improve the situation in Balochistan.

More rhetoric is not sufficient, real steps are required.

Just shifting of ministries is not the key to the solution; in fact, the trained, well-groomed manpower is also a must.

Influx of more funds is not reducing the miseries of people in Balochistan, but real check and balance must be visible.

Notes and References


4 Pak Institute of Peace Studies, Balochistan: Conflicts and Players (Islamabad: Pak Institute of Peace Studies, 2009), p.41.

5 Abdul Basit Mujahid, ‘Federalism and Centre-province Relationship’ in Maqsoodul Hasan Nuri, Azhar Ahmed and


8 Newsletter, November-December, 2010, Pak Institute for Peace Studies, Islamabad.

9 Maqsudul Hasan Nuri, Azhar Ahmad and Farhat Akram, eds., Balochistan: Rationalisation of Centre Province Relations, p. iii.

10 Nawa-i-Waqat, Islamabad, April 5, 2010.


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14 The militant comprises of the Baloch Liberation Army, the Balochistan Liberation Front and the Baloch Republican Army.


16 ‘Dissenting Note: 18th Amendment Fails to Appease Most of Baloch Nationalists’ on the site


19 Fazila Aliani, ‘Role of Civil Society in Balochistan’, in Maqsudul Haan Nuri, Azhar Ahmad and Farhat Akram, eds., p.82.