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Mapping the Post-18th Amendment Federalism in Pakistan: Hegemony, Centralization or Cooperation?

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Abstract

This introduction is a guide to the special issue of the *Journal of Commonwealth and Comparative Politics* on the question of the post-18th Amendment federalism in Pakistan. The 1973 Constitution remains a key turning point with the introduction of federalizing institutions such as the Senate and the Council of Common Interests. The 2010 18th Amendment marked a critical juncture in the constitutional history of Pakistan in terms of moving from *de jure* to *de facto* federalism. Considering the path-dependent evolution of the federal architecture in the country, there is need to investigate the political developments that led to this Amendment, the key changes introduced in the Constitution and the contentious process of its implementation. We situate this issue within the broader debate on federalism, with a focus on various dimensions of the federal system after 2010. This includes the discussion of such important issues as intergovernmental relations, opening the space for provincial autonomy in administrative and fiscal domains, mobilization for new provinces by ethnic minorities and the struggle of a peripheral region to seek membership of the federation. The last section provides a sneak peek of the basic arguments of the articles included in this issue.

Key Words: Provincial Autonomy, 18th Amendment, Fiscal Federalism, Ethnofederalism, Decentralization

Introduction

Federalism is an important component of the contemporary institutional architecture of nation-states across the globe. Yet throughout its existence, questions have been raised about its utility and effectiveness by academics and practitioners alike. Writing in 1969, William Riker, a leading scholar on federalism wondered: 'does federalism exist and does it matter?' (Riker, 1969). While Riker was frustrated with the state of research in the sub-field of comparative federalism, similar scepticism has been expressed about the effectiveness of federalism in Pakistan. This special issue of *Commonwealth and Comparative Politics* analyses the impact of federalism in various domains of decision-making in public life in the country with a focus on the post-18th Amendment developments. For Pakistan, federalism is the political expression of an institutional formula catering to the challenges faced by a complex multi-ethnic nation-state. Research on federalism in Pakistan also remains sceptical about its efficacy owing to the country's struggle in establishing democracy. This deficit of democracy directly impinges on the effectiveness of federalism. Pakistan is often compared with India in the context of their shared institutional-constitutional framework inherited from the British India. While Indian democracy's trajectory has been continuous, though at times uneven, Pakistan has experienced a prolonged struggle to establish civilian supremacy. Pakistan thus presents an intriguing case of a federal system functioning in the background of turbulent civil-military relations that has a direct bearing on the decision-making landscape of the country.

At the formal level, federalism remains a part of the legal fabric of states such as the US, Canada, Australia, India and of course Pakistan. In a federation, there exists a semblance of *de jure* or *de facto* sharing, dispersion or division of power between two or more levels of government. Owing to the perceived problem-solving nature of federalism, there are variations in the model of federalism as in the different cases of the United States (US), India, Ethiopia and Pakistan, to name a few. Federalism has been described as a 'tangled mess of definitions' (Landau, 1973, 173). Federalism has been especially adopted as an instrument to manage ethno-territorial diversity, and as a means of improving shared multi-level decision-making to enhance the democratic credentials of a system (Erk, 2006, 104). In the next section, we look into some of the important themes and debates covered within and outside the field

of comparative federalism. These debates set the stage for a discussion of Pakistan's federalism in the aftermath of the passage of the 18th Amendment in 2010. This amendment was the outcome of an unprecedented ethnic bargain and sought to transfer administrative and fiscal powers to provinces, restored parliamentary sovereignty by repealing Article 58 (2) (B) and linked the appointment of Chief Election Commissioner to a broad inter-party consensus (Rabbani, 2016). The second section of the Introduction will analyse these developments in detail. Finally, this introduction links together the scholarly contributions included in this special issue.

Federalism: From Division of Powers to Accommodation of Identity

Federal systems have been traditionally associated with demographically and geographically large states. Prominent examples in this category include the US, India, Canada and Australia. It is assumed that federalism, with its distribution of powers between the centre and territorial units, manages the diversity that is a hallmark of these states. Ethno-culturally diverse societies necessitate regional autonomy and decentralization (Burgess, 1999, 1-2). However even small states such as Micronesia and the Comoro Islands connect their diversity with broader patterns of decision-making and power-sharing through adoption of federalism as a framework for governance (Ancker, 2003, 103).

Federalism has gained currency as a potential conflict resolution mechanism in the Global South where states are often perceived as 'artificial creations', in which boundaries of nations and states do not naturally converge. In majoritarian systems where certain ethnic and regional communities feel marginalized, federal systems with their emphasis on devolving powers at the local level, and providing relief to minority communities are projected as a panacea. Thus, federalism acts as a tool for nation-states to 'manage' differences instead of seeking to eliminate differences in pursuit of a cult of unity (Mishra, 2014, 77). Since the end of Cold War, post-conflict states as diverse as Bosnia Herzegovina and Nepal have adopted federal constitutions. Federalism in that sense becomes an instrument of democratization in terms of transfer of power to local communities, that was not otherwise possible in a simple majoritarian democracy. Consequently, administrative, political, cultural and linguistic protection of ethnic minorities acts as a bulwark against the collapse of multi-ethnic states

(Diamond, 1999, 151-152). After the secession of East Pakistan, the new ruling elite of the country struggled to put together a new federal formula that provided more autonomy for provinces.

In terms of institutional design in practice in various federations around the world, a basic dichotomy exists between dual and administrative forms of federalism, also termed direct and indirect modes of federalism (MacMahon, 1972, 22). States such as the US and Switzerland historically operated under a dual federal framework. Federalism, like other institutional arrangements, is fluid. Dual federalism as initially applied to the US and similar cases entailed an arrangement in which both national and sub-national units could separately engage in policy-making. The constitutions in these cases lay out a 'watertight' compartmentalization of issues, policies and sovereign jurisdictions (Kincaid, 2017, 1064). As opposed to this, there is bifurcation in administrative federalist arrangements where the policy-making rests with the federal government while implementation falls within the domain of subnational units (Fenna, 2012, 752). In the dual federal model, several issues can be relegated to the 'local' level along with the accompanying fiscal autonomy in the context of decision-making (Mueller and Fenna, 2022, 3). Germany is projected as a model of non-dual administrative federalism where federations control the legislative domain while the *Länder*, subnational units, implement the federal laws. However, despite the preponderance of the federal government, a dense network of institutions ensures a collaborative functioning of vertical and horizontal intergovernmental relations (Behnke & Kropp, 2021, 36). Pakistan is clearly situated in the category of non-dual administrative federalisms. As Asma Faiz's (2024) article in this special issue reflects, there exist several institutional mechanisms which provide platforms for vertical and horizontal collaboration, at least in hypothetical terms. In theory, Pakistan's federal structure creates a functional division between federal and subnational governments, though the former retains the overwhelming advantage in political, administrative and fiscal domains.

After the 2010 18th Amendment significantly expanded the jurisdiction and powers of regional governments, the institutional and territorial accommodation of ethnic identities of the majority communities of the federating units potentially redefined Pakistan's federation. The federal structure of Pakistan is conventionally viewed as an example of 'nascent' ethnofederalism (Hale, 2005, 55). Indeed, any federation where at least one territorial unit is

associated with an ethnic category can fall in this category (Adeney, 2017, 125). Federalism became part of the institutional toolkit when political systems sought to find ways to accommodate diversity. However, these 'liberal' approaches to institution-building have recently come under attack as more and more polities witness the rise of majoritarian nationalism which attempt to 'secure or fortify the majority culture' (Gagnon, 2021, 100).

There are variations in the size and design of ethnic federations. In some cases, such as Canada only one unit, Quebec, falls along the identity-territory fault line. In other states such as India, Pakistan and Nigeria, there are multiple territorial units that are organized along ethnic lines. Ethnic federalism has received extensive criticism in academic and policy research. The critique of ethno-federalism portrays it as a destabilising arrangement that can rupture a federal edifice due to concentration of power in ethnically-centred subnational units. The institutional design at the heart of ethnic federalism, with its creation of powerful parallel institutions at the regional level, is assumed to mark the beginning of a secessionist conflict (Anderson, 2014, 166). Thus, privileging of ethnic identities at the expense of others starts a process that can culminate in ethnic wars (Roeder, 2005). For Roeder, the recognition of distinct ethnic identities by multi-ethnic federalism essentially provides a 'sovereignty card' to ethnic claimants who project their minority communities as sovereign nations (Roeder, 2009, 211-212). In these debates, an important assumption is the presence of autonomous and empowered institutions at the regional levels. However, in the relatively centralized federations such as Pakistan, while the fears of secession are part of the state's discourse, the subnational units remain far less autonomous as compared to those in several other federations around the world.

For some, the problem relates to disparity of power between territorial units and the broader framework of an ethnofederation. It has been argued that the Soviet Union failed as a federation due to the presence of a core ethnic region that was demographically much larger and more powerful than all the other units (Hale, 2005, 56). In such cases, the source of instability of ethnic federalism is considered to be the rival centre of power in the form of the core ethnic region. This eventually leads to the emergence of a parallel political imagination in ethnic communities which situate themselves outside the national framework (Hale, 2005, 57). For others, the presence of a dominant ethnic community - *Staatsvolk* or a

demographically and electorally dominant group - is assumed to provide the pivot of stability for a multinational federation (O'Leary, 2001, 285). The ethnic conflict management research points to institutional avenues that provide a 'healthier equilibrium between self-rule and shared rule' through collaborative multilevel governance mechanisms (Gagnon, 2021, 102). Thus, the research on ethnicity and federalism provides mixed observations about the consequences of institutional accommodation of ethno-religious diversity. A logical corollary of this research is that one needs to move beyond the question of ethnic federalism and explore both its design and practices in various cases across the globe.

Within South Asia, both India and Pakistan represent variants of ethnic federation. In Pakistan certain ethnic groups, especially the Urdu-speaking *Mohajirs* (migrants) and Punjabis, have traditionally dominated the state institutions (Waseem, 1994). This led to the adoption of a 'group dominant approach' in Pakistan as state resources were controlled by two groups at the expense of others. Swenden traces adoption of this majoritarian approach by the early state managers to the attitudes of the Muslim League, the founding party of Pakistan (Swenden, 2018, 2, 26-27). In Pakistan, the pre-18th Amendment phase of the federal experiment was marked by the presence of an over-bearing federal government with minimal devolution of power to provinces. However, once the 18th Amendment materialized, fears were expressed about the potential disintegration of the country owing to the emergence of powerful subnational units. At the other end, the ethnic minorities within the provinces felt obliged to demand territorial reorganization as a reaction to the transfer of powers to provincial majorities (Siddiqi, 2024).

Federalism with its emphasis on pluralism and decentralization is projected as an ideal institution in managing complex modern nation states. Indeed, Elazar perceived federalism as the 'mother' form of democracy (Elazar, 1995, 476). For Riker, federalism's sharing of jurisdiction with constituent governments produced empowerment of communities that were otherwise marginalized at the national level (Riker, 1993, 512). Decentralization broadly refers to transfer of fiscal, administrative, and political powers from federal to subnational governments. This transfer is usually a result of contractual bargain between federal and regional governments driven by a wide range of factors such as defence against a common enemy, common market or the need to hold a multi-national state together (Rodden, 2004,

488-489). Here the question of regime type becomes contentious in the federalism research because non-democratic states also potentially pursue path of contractual decentralization towards regional governments.

These observations take a new meaning when one explores the crossover between federalism and democratization in Pakistan. From the beginning, the military's pursuit of the national project in Pakistan was antithetical to the functioning of the federal structure. The geographical disconnect between East and West Pakistan compelled the state managers to introduce *de jure* federalism. The two critical junctures in Pakistan's federalization trajectory, namely, 1973 and 2010 came in the wake of the military withdrawal from politics (Ayub and Yahya 1958-1971 and Musharraf 1999-2008). Military regimes in Pakistan generally preferred local government setups to bypass the ethno-regional elites dominating provincial governments and often challenging the supremacy of the military (Waseem, 2021). Similarly, it is during the civilian periods that the most agreeable fiscal arrangements were reached between the federation and provinces through the NFC Awards. Federalism and democracy thus remain contested terrains in Pakistan with ethno-territorial communities often leading the struggle towards federalization and democratization.

Establishing a functioning federal system that goes beyond 'paper federalism' (Lane & Ersson, 2005, 177) in Pakistan remained a challenge in the face of demographic, political and fiscal asymmetry between regional units and ethnic groups. Balochistan presents a long-running case of asymmetry and marginalization within Pakistan (Kakar, 2024). The creation of federal institutions such as the Senate and the CCI through the 1973 Constitution and their reinvigoration through the 18th Amendment attempted to produce 'demos-containing effect' on the federation of Pakistan precisely to curb asymmetry among provinces (Waseem, 2011).

When examining the trajectory of federalism across political systems, there is a recognition that exogenous factors can lead to changes in federal-subnational relations. In the US for instance, the post-World War II affluence saw the emergence of a 'cooperative' model of federalism in which the federal government increased fiscal flows to the states. Covering the period of the US affluence (1954-1978), the 'operational motif' of intergovernmental relations was cooperation (Kincaid, 1990, 140). The cooperative element of US federalism altered in

response to wider changes, such as economic decline, growing partisanship and a reduced flow of federal money to states, that encouraged a pre-emptive and coercive pattern of decision-making in Washington (Kincaid, 1990, 147-148). In Pakistan, we observe some kind of a reverse pattern as the pre-18th Amendment model of federalism comprised a top-down -- almost hegemonic -- process of decision-making from the federal government that left comparatively limited autonomy for the provincial governments. The 2009 National Finance Commission (NFC) Award and the 2010 18th Amendment sought to transfer crucial fiscal and administrative powers to the provinces. Hence, underlying the variation across policy areas and regions as covered by articles in this special issue, there is now a certain degree of decentralization introduced in Pakistan's federal architecture. And yet, Pakistan still remains a centralized federation as the articles in this issue amply reflect.

The 18th Amendment

It is imperative to situate the trajectory of Pakistan's federal system within the broader literature on historical institutionalism. It is true that the 'world is always already institutionalized' (Skowronek, 1982, 13). Nevertheless, it is pertinent to trace the patterns of continuity and change in the context of the ruling institutions. Path dependence within the historical institutionalism literature essentially argues that earlier developments have a causal impact on the later growth of institutions across time (Pierson, 2000, 252). The status quo-orientation of this approach is well-known. Path dependence essentially means that once institutions set in, the cost of inducing a change is too high; hence the previous sequence of events is more likely to repeat itself (Levi, 1997, 28). In this context, the comparative federalism literature brings in the notion of critical junctures. The idea is that the federal institutions originate at a critical juncture and once set in motion they either remain inert or pass through a gradual change (Broschek, 2013, 94). Broschek argues that if a critical juncture produces a federal outcome, then a pattern of self-reinforcement dominates the federal structure (Broschek, 2013, 95). Thus, various entrepreneurial agents such as political parties and regional or federal governments attempt to break the status quo embedded in the federal institutional architecture in pursuit of their respective agendas. However, these struggles do not take place in a vacuum. Instead, the 'historically constructed institutional configuration' itself shapes the contestation for change in federal systems (Broschek, 2013, 94).

An analysis of the evolution of the federal system in Pakistan fits into the framework of path dependence. Federalism was introduced to the constitutional and political imagination of Pakistan through the 1935 Government of India Act. At that time, both the Congress and the Muslim League felt the need for a federal arrangement. Adeney argues that the Muslim League supported the idea of a federal India as a 'mechanism for minority protection for provincial Muslim majorities'; however, the experience of the Congress ministries (1937-1939) exposed the limitations of this vision (Adeney, 2007, 41-42). After partition, the new state of Pakistan which was no longer burdened by the need for protection of Muslims from the 'majority provinces' started to project the cult of unity in pursuit of the national project (Waseem, 2021, 108-109). Partition was a moment of break in the onward march of federalism whereby the agenda of protecting these provinces in the envisioned Indian federation was overtaken by the need to safeguard the seceding part of British India, that was to become the new state of Pakistan.

Thus, despite the introduction of federalism in the constitutional landscape of British India, decentralization remained an illusion in Pakistan. Indeed, this was a continuation from the British period since autonomous territorial units were never part of the British project up until the 1946 Cabinet Mission Plan. In 1955, Pakistan moved further down the road of centralization with the introduction of the 'roller coaster' of One Unit to create parity between the two wings of the state (Afzal, 1998, 227). The break-up of the country in 1971 proved to be a critical juncture as the state moved towards a new constitution which expanded provisions for federalism. At this point, several institutional mechanisms were introduced to create avenues for sharing of powers between the federal and provincial governments. These included bicameralism by way of a provision for the Senate. Additionally, the Council of Common Interests (CCI) provided a platform to settle contentious disputes between the federal and subnational executives. However, until the introduction of the 18th Amendment, the sharing of powers existed more in theory than in practice (Waseem, 2011, 217). The 18th Amendment and the NFC Award thus provided new vitality and flexibility to various layers of institutional apparatus in Pakistan (Lieven, 2011, 4). Prior to the 18th Amendment, federalism in Pakistan was sometimes described as an 'acute failure of the federal formula' (Aziz, 2017, 2).

The critical juncture of the 18th Amendment was an effort to significantly alter the federal structure of Pakistan by transferring powers from federal to subnational governments and making the prime minister chief executive in the *de jure* parliamentary system after removing Article 58 (2) (B) that gave the President power to dissolve the National Assembly. This Amendment was an attempt to undo the perceived disfiguring of the constitution that resulted from repeated military interventions. As we shall note in the next section, the most notable contribution of this Amendment was a substantial increase in the powers of the federating units in a system which traditionally operated within a centralized framework. The lowest point in Pakistan's experience with centralization was the One Unit (1955-1970) scheme whereby all the provinces and princely states of West Pakistan were merged to form a grand territorial unit. In this way, the state managers tried to create parity between the two wings in order to nullify the demographic majority of East Pakistan which was any way a politically and economically marginalized province (Burki, 2015, 51).

The year 2010 marks a critical juncture in the evolution of Pakistan's federalism when it moved from a *de jure* to a *de facto* framework for sharing power. Here, the role of various 'entrepreneurial agents' such as the military and the Supreme Court as well as political parties are essential to understand the causal mechanism at work (Adeney & Boni, 2023, 727). In Pakistan, the biggest factor was the collapse of the military regime of General Musharraf and the emergence of a broad-based consensus on the need for civilian supremacy among the two leading parties, the Pakistan Peoples Party (PPP) and the Pakistan Muslim League-Nawaz (PML-N). Both parties had been at the receiving end of the Musharraf regime's repressive measures. They ultimately decided to join hands to restore civilian rule in the country. The outcome of this collaboration was the 2006 Charter of Democracy (CoD) that sought to add a cooperative dimension to Pakistan's federalism. While the Charter focused on restoring parliamentary democracy, it also emphasized introduction of a model of decentralized federalism in Pakistan. In this context, the Charter proposed abolition of the Concurrent List, increase in the powers of the subnational governments, and fiscal decentralization through a re-negotiated National Finance Commission (NFC) award (Adeney, 2012, 546).

Historically, the military establishment has not been favourable to decentralization of power and the broader federal project in Pakistan. However, it did not resist the widespread changes proposed by the 18th Amendment. The timing of these reforms was an important variable. The 2007 lawyer's movement hastened an end to the Musharraf regime. The 2008 elections ushered in yet another period of democratic transition in Pakistan. The new PPP-led government constituted the Parliamentary Commission on Constitutional Reform (PCCR) that drafted the 18th Amendment report. The Commission comprised representatives from both the mainstream and ethnic parties, making this an unprecedented inter-ethnic compact. The military establishment, in a 'cold cost-benefit calculation' refrained from challenging this negotiated federalization process pursued by the political parties. Coming soon after the end of the Musharraf regime, the establishment considered it to be 'too soon or risky' to challenge the political parties (Shah, 2014, 1017).

The 18th Amendment brought significant changes to the existing power-sharing matrix between the federation and subnational units as defined in the 1973 Constitution. It abolished the Concurrent List. The subjects included in the Concurrent List were devolved to the provinces with the introduction of a new Federal Legislative List that was divided in two parts. Part I contained subjects controlled by the federation. Part II included subjects that were to be covered by the CCI (Adeney, 2012, 547-548). The 18th Amendment introduced changes ranging from the transfer of 40 subjects and 17 departments to subnational governments to reversing the powers vested in the office of President as per Article 58 (2)(B). Yet another significant component of the Amendment related to the mechanism for making appointments to the higher judiciary. On the one hand, responsibility for appointment of judges shifted from the President to a new institution, the Supreme Judicial Council. On the other hand, the composition of the Council became controversial whereby the Chief Justice demanded a majority of judges as its members. The government obliged by passing the 19th Amendment.

In a major step towards empowering the smaller units in the federation, the 18th Amendment sought to strengthen the upper house, the Senate. Its membership increased from 100 to 104. Money bills were mandated to be presented to the Senate which could now deliberate on them for up to 14 days (Hamid, 2015, 77-78). Similarly, the 18th Amendment strengthened the CCI as a platform for the resolution of conflicts between the federation and the

subnational units. The Amendment widened the membership of CCI with the prime minister and chief ministers of provinces becoming its permanent members. The Amendment ordained the establishment of a permanent Secretariat for the CCI thereby making it a visible entity within the federal institutional architecture of Pakistan (Faiz, 2023, 8-9). The rationale behind strengthening of the CCI was to create greater parity between the federal and subnational governments when it came to key aspects of policy-making. Through these changes, the Amendment sought to provide a conflict-resolution mechanism where the smaller units of the federation could negotiate with the federal government in a comparatively equitable environment.

Nearly a decade and half after the passage of the 18th Amendment, an assessment of its impact on the federal architecture of Pakistan provides a mixed picture of successes and failures. On the positive side, the process of enactment and implementation of the amendment, albeit complex and incomplete, carved out a normative framework for provincial autonomy in the contested federation of Pakistan (Waseem, 2024). On the practical side, the provincial governments' capacity to handle policy-making and implementation increased significantly. This disproved many of the negative predictions about the incapacity and inadequacy of the provincial governments to handle the responsibilities transferred to them because of the 18th Amendment (Kureshi, Sayeed & Waseem, 2024, 7).

One of the limitations of the Amendment relates to the messy process of its implementation, especially with reference to the transfer of departments and divisions from the federation to the provinces. Some key institutions and departments became the focus of contestation between the federal and provincial governments. Historically, control over schoolbooks and education remained a perennial source of conflict, because textbooks were important instruments of the nation-building project. Various ethnic communities including Bengalis before 1971, as well as Sindhis, Pakhtuns and the Baloch complained about their marginalization and misrepresentation in textbooks. In this respect, the 'otherization' of domestic religious and ethnic minorities has long been a part of the official history and textbooks in Pakistan (Waseem, 2021, 361-364). The 'communalization' of textbooks reached new heights under Zia's martial law (Arif, 2007, 145). The transfer of education to the provinces through the 18th Amendment sought to decentralize the preparation of textbooks

so that regional communities could participate in the process of history-writing. However, with the advent of the Single National Curriculum (SNC) in 2019, the proposed decentralization of textbooks in Pakistan remained a distant dream.

Control over minerals and energy resources has been a contentious issue between the federal and provincial governments, especially with reference to Balochistan. The deepening of separatist insurgency in the province in recent years was partially fueled by the Baloch anger over Islamabad's lack of inclusivity in managing the natural energy resources. As per Article 172 (3), the 18th Amendment ordained 50 percent control of the provincial government over any revenue generated from minerals and energy resources. This was a significant step in moving towards a collaborative framework of intergovernmental relations in Pakistan. However, provinces remain critical of the federation as they demanded equal share in any decision-making about minerals and natural resources. One of the reasons behind the failure to implement this article is the confusion surrounding the word 'jointly' inserted in Article 172 (3), which remained open to different interpretations. Also, there were no mechanisms to develop a working model of federal-province coordination over mineral and energy resources (Khwaja, 2017, 9-11). In December 2022, the federal parliament hastily passed the Foreign Investment (Promotion and Protection) Bill 2022 once again putting the decision-making over the Reko Diq project in the federal domain. This project is located in Chaghi district of Balochistan, supposedly home to 'one of the biggest undeveloped copper and gold deposits' (*Arab News*, 22 March 2024). Initially, the Balochistan government proposed to establish a petroleum directorate. It also wanted the transfer of control of federal agencies such as the Oil and Gas Development Company Limited (OGDCL) to provinces. These proposals were never accepted by the federal government. The smaller provinces of Khyber Pakhtunkhwa (KP) and Balochistan remain aggrieved over other issues such as the planning and management of the China-Pakistan Economic Corridor (CPEC) (Adeney & Boni, 2024). These are two examples of continuation of a path-dependent centre-dominated federal structure of decision-making in Pakistan.

An important issue at the heart of a federal framework in any political system is the distribution of financial resources between the central and subnational governments. In Pakistan, the resource transfer paradigm has historically remained a contentious issue

between the federal and provincial governments. The National Finance Commission (NFC) was constituted under Article 160 (1) of the Constitution, with the aim to streamline the distribution of financial resources between the centre and provinces. A federal-provincial consensus on fiscal distribution is essential for collaborative functioning of the federation. Historically, financial awards issued during the military regimes of Ayub, Zia and Musharraf in 1961, 1964, 1979, 1985, 2000 and 2006, were not the result of a broad-based consensus between the federal and provincial governments. In contrast, the 1974 NFC Award finalized during the Bhutto period and the 1991 and 1996 NFC Awards negotiated during the Nawaz Sharif governments were concluded with a general consensus between the two executives (Waseem, 2011, 220). The 2009 7th NFC Award was a watershed moment in fiscal federalism in Pakistan. This award increased the provincial share of the divisible pool from 47 percent to 56 percent for 2010-11 and to 57.5 percent for the following years (Pasha et al., 2010, 565-566). More alarmingly for the federal government, the 18th Amendment mandated that the vertical provincial revenue share could not be reduced in the subsequent awards.

The 18th Amendment also devolved the General Sales Tax on Services (GST) to provinces. A popular criticism of fiscal devolution was the prospective failure of provinces to generate revenue. However, the provincial revenue generation capacity has gradually increased since the enactment of the Amendment. All provinces were collecting the GST on services by 2015. Indeed, the provinces reportedly fared better than the federal government in GST collection. For the federal executive, the average annual growth rate in collection of GST on goods was 14.1 percent by 2022, while the provincial growth rate on GST on services was 23 percent for the same period (Kureshi, Sayeed & Waseem, 2024, 17). Despite the consistent pressure from the civil and military quarters to reduce the provincial share of fiscal resources, the 2009 formula remains in place. All provinces including Punjab agree on continuing the formula. Moreover, a formal mechanism to reduce the share of provincial revenue does not exist (Kureshi, Sayeed & Waseem, 2024, 17-18). One of the critiques of the NFC award is the absence of a downward fiscal decentralization mechanism through the creation of a Provincial Finance Commission. The federation also complains about a lack of funds after the transfer to provinces mandated by the 7th NFC Award (Sherani, 2024). Another layer of pressure comes from the International Monetary Fund (IMF) to reduce the provincial share in the light of resource disparities between the federation and provinces (*Express Tribune*, 14 March 2024).

However, by 2024, the fiscal decentralization ushered in by the 7th NFC Award and the 18th Amendment remained in place against all odds.

A Preview of the Research Findings

Contributions to this special issue have been arranged thematically. Waseem (2024) sets the context for the discussion through the conceptual and empirical analysis of the evolving federal system in Pakistan. While Faiz (2024) and Kakar (2024) provide an account of federal-provincial relations with reference to the cases of Sindh and Balochistan respectively, Kureishi and Waseem discuss federal-provincial relations with in the context of police postings. Siddiqi (2024) shifts the focus from the state to society by examining the agenda of new provinces upheld by provincial minority communities. Adeney and Boni (2024) widen the debate by bringing in the exogenous factor of CPEC in terms of its contribution to centralization of Pakistan's federal matrix. Finally, Racine (2024) traces the journey of Gilgit-Baltistan as a marginalized region that seeks to join the federation of Pakistan.

Waseem (2024) argues that there is need for going beyond the legal design of the federation in Pakistan to locate the determinants of its structural dynamics. This brings in the priorities of the supra-parliamentary forces led by the military establishment. A major issue is under-representation of the sub-units in the federation, resulting from both the indirect method of elections to the territorial chamber, the Senate, and the latter's limited policy scope vis-à-vis the population chamber, the National Assembly of Pakistan. The fact that certain ethnic groups feel disenfranchised due to their limited power at the national level points to the need for ways to improve their representation withing the federal context. The perceived ethnic pressure for secession led to centralization of the federation, denied legitimacy to language as a source of identity and thus closed the doors on the agenda of provincial reorganization. As opposed to the 'national project' of the federation, ethnic parties pursued the 'federalist project' all along. Consequently, there was a gradual increase in ethnic representation in the federal system and its territorial expression. A decade and half of the implementation of the 18th Amendment has increased contestation around federal matters, especially the transfer of resources from the federation to the provinces as per the 2009 7th NFC Award. The Supreme Court considered whether the 18th Amendment had changed the basic structure of

the Constitution. The establishment feared what it considered the disintegrative effect of the Amendment. However, what the federation lost by design institutionally and financially, it gained by way of an increase in the number of stakeholders in the system. Waseem looks at the 18th Amendment as a step forward as a distributive mechanism for sharing resources.

Faiz (2024) analyses the intergovernmental relations in Pakistan after the passage of the 18th Amendment under the rubric of executive federalism, with a focus on relations between the federation and province of Sindh. She assesses the dynamics of party competition which influence executive formation at the federal and provincial levels. She takes an institutional approach to executive federalism by looking at various platforms used for inter-governmental relations, including the CCI, the Senate, the NEC, the IRSA and the NCOC. While looking at various models ranging from coercive federalism in the US to the integrated federalism in Canada during the COVID-19 crisis, she locates Pakistan closer to the latter, albeit with a stringent control of the federation over the provinces.

Various factors have explanatory potential for these outcomes. A way out of ethnic inequality prevalent in the federal system of Pakistan is government formation by ethnic parties, in this case the PPP in Sindh. In this regard, bicameralism helped provide a domain for deliberations on the floor of the Senate on behalf of the federating units, especially after the 18th Amendment was passed. Similarly, the CCI operates as a semi-executive body since its members include the heads of federal and provincial governments. The 18th Amendment expanded the CCI's membership and provided for its mandatory quarterly meetings. Faiz finds differences between the federal and regional executives, when it came to handling the Covid-19 pandemic, very instructive. She also discusses the conflict over distribution of water between the province of Sindh at one end and the federation and Punjab at the other. The article locates the patterns of party-based opposition displayed through divergence of policies and strategies in the framework of executive federalism.

Kakar (2024) focuses on the interplay of the two factors of territory and ethnicity in Balochistan in pursuit of autonomy and identity respectively. He looks at the issue of conflict between the federation and the province from the latter's perspective, couched in its demand structure and issue-formation. This includes under-representation of the Baloch in the

bureaucracy, the military, and the higher judiciary; the NFC formula which privileged population as a factor to guide the distribution of resources - with the Baloch at a mere 4.5 percent; and a low share of investment in physical and social infrastructure that accrued from FPSDP. The author highlights the role of the CCI as a conflict resolution body, expansion of the powers and privileges of the Senate and fiscal measures that transferred resources to provinces.

Kakar points to the peculiar situation of the 'two nations' of the Baloch and Pakhtuns co-existing in Balochistan that has ended up squeezing their political space vis-à-vis each other. The author points to Punjab's demographic preponderance that shapes the majoritarian nature of the federal design. It makes Punjab the most rewarded -- as opposed to Balochistan as the least rewarded -- constituency for political parties in an election scenario. Balochistan had a meagre gas consumption ratio despite being the largest producer of gas in the country. The 18th Amendment opened the doors for political participation to the Baloch and Pakhtun nationalists who had earlier boycotted the 2008 elections. The moderate political elements generally sought integration in federal politics. In the expanded political space, ethnic parties competed for rewards. However, the perceived situation of persistent marginality in the larger framework of the federal project pushed Baloch nationalists to a low-scale insurgency.

Adeney and Boni (2024) point to the external impact on centralization of the federation in Pakistan in the form of CPEC projects relating to energy, infrastructure, and development of Gwadar Port. Two parallel challenges operated in this context: a fragile equilibrium between the civilian leadership and military officials; and a gap of trust between the smaller provinces and the federation. Moving from the initial geopolitical considerations, CPEC was gradually sucked into the vortex of federal-province relations. The design of CPEC, which recognised marginalized regions, was at odds with the practice on the ground which prioritized projects with a head-start, such as the 'eastern route' passing through Punjab and Sindh. Thus, Balochistan and KP which sought to develop the 'western route' wanted the CPEC agenda to be placed in forums such as the CCI where their representatives were present. Eventually, CPEC developed the narrative of 'one corridor with multiple passages'.

The net result of CPEC's operation was to enhance the centralization of the federation since provincial representation in the decision-making bodies remained minimal. Similarly, the development projects along the eastern route were completed earlier than those along the western route. The CPEC Authority, led by a retired general, was abolished in 2022 in the face of opposition from the civilians, especially as provinces were not part of its structure. Indeed, the CCI which was responsible for policy formulation about CPEC was sidelined in the process. Additionally, the power for allocation and management of Special Economic Zones (SEZs) in the provinces gradually drifted to the federation. Adeney and Boni show that the completion rate of the CPEC energy projects in Punjab and Sindh was higher than in Balochistan and KP. This study develops an interesting model of the impact of foreign investment on centralizing the federal system of the recipient country.

Siddiqi (2024) discusses the demand for new provinces after the passage of the 18th Amendment. While ethnic majorities of the four provinces were thus empowered, their minority communities were rendered comparatively insecure. The KP Assembly passed a resolution in 2014 for creating the Hazara Pakhtunkhwa province, with the PTI as the ruling party in Peshawar. In Sindh, the MQM was inconsistent in its demands for a new province to be carved out of Sindh. However, the issue of a new province for south Punjab was upheld by the three mainstream parties, the PML-N, the PPP and the PTI. In 2012, the National Assembly passed a resolution to that effect. The Punjab Assembly responded by passing a resolution for creating two provinces in that region. All along, the federation was more tolerant of administrative decentralization rather than identity-based agenda. Siddiqi discusses the way the 2012 National Commission on New Provinces struggled with the question of whether the Constitution allowed the formation of new provinces. The Commission rejected the claim of Bahawalpur for restoration of its provincial status because there was none before. In the context of party manifestos, the PPP supported new provinces in 2013, and a province in south Punjab in 2018. The PML-N favoured Hazara province in KP and south Punjab in 2013, but none in 2018. The PTI supported a new province in south Punjab in 2018. Ethnic parties demanding new provinces generally failed to create popular movements. They faced an uphill task of convincing a two-thirds majority in the National Assembly and the relevant provincial assemblies to pass legislation to that effect.

Kureishi and Waseem (2024) construct an interesting model of federal-province relations with reference to the issue of posting of police officers in Pakistan. They argue that alignment between the (military) establishment and the ruling party in the province along with the nexus between the ruling party and the Inspector General of Police (IGP) in a province was crucial for the latter's transfer. The ruling party in a province needs to win elections, secure patronage for its constituents, and reduce its vulnerability vis-à-vis the establishment. Thus, it seeks to control the bureaucracy and replace non-obliging officers. While the Concurrent List was abolished by the 18th Amendment, a grey area of law for conflict between the federation and the province remained untouched, comprising criminal laws, criminal procedure, and evidence. The authors point to a high level of political turnover leading to a high level of bureaucratic turnover such as in Punjab under the PTI government (2018-2022). The low political turnover meant a stable pattern of bureaucratic postings such as in Sindh where the PPP entered its third consecutive term in 2018. Under the formula of vertical fragmentation, if a ruling party in the province wants to dispense with an IGP, the latter either accepted the transfer orders or challenged them in court or resigned. In Sindh, the transfer of two IGPs by the PPP government led to cases in the High Court that they won. In similar cases of three police chiefs in Punjab, the federal and provincial governments confronted each other, two officers accepted their removal, and the third officer won in the court. This study brings out the crucial interplay of multiple stakeholders, the federal and provincial governments, bureaucracy, and judiciary.

Racine (2024) addresses the issue of Gilgit-Baltistan (GB) seeking membership of the federation of Pakistan as a province. GB's struggle is rooted in its stateless position, as part of the Kashmir dispute between India and Pakistan. The fact that GB has become the entry point of CPEC into Pakistan has given it a strategic position, despite its powerlessness in a constitutional sense. Ever since the merger of GB with Pakistan through the 'secret' 1949 Kashmir Agreement, GB has struggled against its perceived 'colonial' position vis-à-vis Islamabad in the context of arrangements for rule from outside the region. Successive governments tried to mitigate the situation by establishing institutions ranging from the Northern Area Advisory Council 1970 to Gilgit Baltistan Empowerment and Self-Government Order 2009 that provided a partly – later fully -- elected legislature. The rule of dyarchy –

comprising local representatives and the Governor of GB and Prime Minister of Pakistan – remained the order of the day.

The possible inclusion of GB in Pakistan's federation as a 'provisional province' pending the settlement of dispute with India has been on the agenda of Islamabad from the 2017 Sartaj Aziz Commission report onwards. The Supreme Court stressed the need to take GB out of its 'constitutional limbo', by giving it representation in parliament and extending its jurisdiction over GB. The 18th Amendment's provision for greater provincial autonomy raised GB's hopes for joining the federation, in the face of Islamabad's procrastination on this issue. Racine points to alternative voices in the form of GB's 'nationalist' platforms active both inside and outside the region. The voices from across the border with India, both official and dissident, warn against the federalist agenda for GB because of its adverse effect on the resolution of the Kashmir issue.

Conclusion

This special issue evaluates the impact of the 18th Amendment on the federal architecture of Pakistan examining theoretical underpinnings, intergovernmental relations, ethnic conflict, policing, planning and execution of complex development projects such as CPEC, provincial reorganization and the peripheral regions. The Amendment led to competition between multiple institutions, executives and political parties. Contributors to this issue looked beyond the theory and design to the practice of federalism. While the perceived empowerment of ethno-territorial groups reinvigorated the quest for provincial reorganization in Pakistan, the basic mode of the federal system can still be discerned in the current practices. The federation continues to be the dominant revenue-generating authority that presides over the resource transfer regime between the federation and provinces. Yet, the 2009 7th NFC Award remained in place. Pakistan's peripheral regions, one inside the federation - Balochistan, and two outside it - AJK and GB, continue to be governed by Islamabad in a top-down manner. The federal project in Pakistan is still viewed with scepticism by the establishment. While the 18th Amendment does not symbolize the emergence of radical decentralization in Pakistan, the hegemonic control of the federal government over provinces has been meaningfully reduced.

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