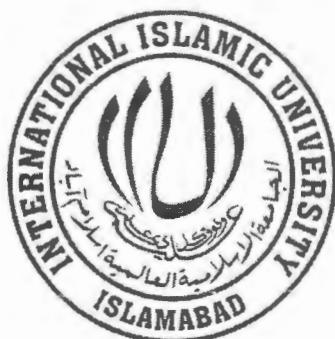


MS THESIS

**CENTER-PROVINCES POLITICAL-ECONOMIC
RELATIONS IN THE POST 18TH AMENDMENT ERA:
A CASE STUDY OF KHYBER PAKHTUNKHWA
PROVINCE**



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By

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Registration No. 32-FSS/MSPS/S15

Submitted in partial fulfillment of the requirements for the MS Degree in Political Science with Specialization in Center-Provinces Political-Economic Relations in the Post 18th Amendment Era: A Case Study of Khyber Pakhtunkhwa Province the Faculty of Social Sciences, International Islamic University Islamabad.

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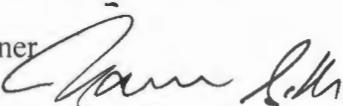
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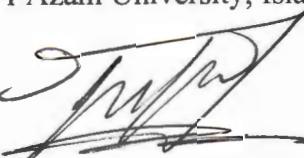
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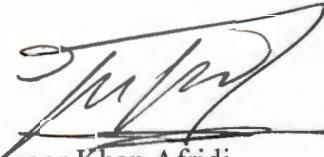
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Dedication

To

My family, especially my mother and father

for

their endless love, support and encouragement.

Contents

Acknowledgment.....	I
List of Abbreviations and Acronyms	II
Abstract.....	VI
Chapter I.....	1
1.1. Introduction.....	1
1.1.1. Rationale of the Study.....	4
1.1.2. Statement of the Problem.....	5
1.1.3. Objective(s) of the Study.....	6
1.1.4. Research Questions.....	6
1.1.5. Significance of the study.....	7
1.1.6. Delimitations of the Study.....	7
1.2 Conceptual framework.....	7
1.2.1. Operational Definition of Major Terms.....	9
1.3. Literature review.....	10
1.4. Methodology.....	18
1.4.1. Research Design.....	18
1.4.2. Case Study.....	19
1.4.3. Data collection	19
1.4.4. Data analysis.....	20
1.5. Plan of thesis.....	21
Chapter II.....	22
Federalism in Pakistan Theory and Practice	
2.1. Introduction.....	22
2.2. Federalism.....	2
2.2.1. Origin of federalism.....	25
2.2.2. Federal or plural society and federalism.....	26
2.2.3. Two approaches to the distribution of powers in federalism.....	27
2.2.4. Fiscal federalism or Fiscal decentralization.....	28
2.3. From Colonialism to Colonial Legacy.....	30
Phase I.....	30

2.3.1.	Political Struggle after the Failure of War of Independence (1857).....	33
2.3.2.	The 1861 Indian Council Act and the Central-Provincial Relations.....	33
2.3.3.	The formation of Indian National Congress, its impacts on 1891 Indian Council Act.....	35
2.3.4.	The Rise of 20 th Century and the All India Muslim League.....	36
2.3.5.	Morley-Minto Reforms or Indian Council Act 1909.....	37
2.3.6.	WW1 (1914-18), Hindu Muslim Unity and Importance of Lucknow Pact (1916)	37
2.3.7.	Montagu-Chelmsford Reforms (1919).....	38
2.3.8.	Indian Statutory Commission (1927).....	39
2.3.9.	The government of Indian Act 1935.....	41
2.3.10.	A decade of freedom struggle (1937-1947).....	43
2.3.11.	Lahore Resolution 1940	45
2.3.12.	From 1940 to 1947.....	46
2.3.13.	Islamic Nationalism or the Islamic Factor and Independence.....	48
	Phase II.....	49
2.4.	Federalism in Pakistan.....	49
2.4.1.	Ayub Era and His legacy (1958-71).....	55
	Phase III.....	62
2.4.2.	The Era of Federalism.....	62
2.5.	8 th Amendment	66
2.6.	LFO and 17 th Amendment.....	68
2.7.	Conclusion.....	71
	Chapter III.....	72
History, Natural resources and demographic profile of Khyber Pakhtunkhwa		
3.1.	Introduction.....	72
3.2.	Free Independence Era.....	75
3.3.	Post-Colonial History.....	80
3.4.	The status of Dir, Swat and Chitral.....	87
3.5.	Natural Resources of Pakistan.....	88
3.6.	Natural resource Profile of Khyber Pakhtunkhwa.....	89
3.7.	Water Resources and Related Issues.....	91
3.8.	Kalabagh Dam Issue.....	94
3.9.	Coal, Oil and Gas.....	97
3.10.	Dimensional Stones.....	100
3.11.	Land.....	100

3.12. Forests.....	101
3.13. Developmental Indicators.....	102
3.13.1. Education.....	105
3.13.2. Health.....	108
3.14. Grievances and their Historical Background.....	110
3.15. Grievances Redressal Mechanism in Pakistan.....	114
3.16. Conclusion.....	116

Chapter IV.....117

18th Amendment: An Inclusive Federalism

4.1. Introduction.....	117
4.2. Background.....	118
4.3. The Process of Enactment of the 18 th Amendment.....	119
4.4. Content of the 18 th amendment.....	122
4.4.1. Part I. Introductory.....	123
4.4.2. Part II. Fundamental Rights and Principles of Policy.....	124
4.5. Part III The Federation of Pakistan.....	126
4.6. Majlis-e-Shoora.....	127
4.7. The Federal Government.....	129
4.8. Part IV Provinces: The Governors.....	130
4.8.1. The Provincial Assemblies.....	131
4.8.2. The Provincial Governments.....	132
4.9. Part V Relations between Federation and Provinces: Distribution of Legislative Powers.....	132
4.10. Special Provisions.....	133
4.11. Part VI. Finance, Property Contracts and Suits: Finance.....	134
4.11.1. Borrowing and Audit.....	135
4.11.2. Property, Contracts, Liabilities and Suits.....	135
4.12. The Judiciary: The Courts.....	135
4.13. The Supreme Court of Pakistan and the High Courts.....	136
4.14. Federal Shariat Court.....	137
4.15. Part VIII: Chief Election Commission and Election Commissions.....	137
4.16. Election Laws and Conduct of Elections.....	138
4.17. Part X: Emergency Provisions.....	139
4.18. Part XII Miscellaneous.....	139
4.19. Armed Forces.....	140
4.20. Title, Commencement and Repeal: Transitional.....	140

4.21. Schedules.....	141
4.22. Critical Analysis.....	142
4.23. Implementation Process.....	142
4.24. HEC.....	143
4.25. Health and Population Welfare.....	146
4.26. Labor.....	147
4.27. Conclusion.....	148
Chapter V.....	149
Economic relations and issues between Centre and KP Province after 18th amendment	
5.1. Introduction.....	149
5.2. Council of Common Interest (CCI).....	150
5.3. NEC.....	153
5.4. National Finance Commission (NFC).....	154
5.5. Divisible Pool.....	162
5.6. The Financial Resource institutions which were... not transferred i.e. EOBI, FWO.....	163
5.7. Employment Old Age Benefit Institution (EOBI).....	164
5.8. Workers Welfare Fund (WWF).....	164
5.9. Tourism.....	165
5.10. Federal Quota.....	165
5.11. Local Government.....	166
5.12. Infrastructure Lag in Small provinces.....	171
5.13. CPEC.....	172
5.14. Conclusion.....	176
Chapter VI.....	164
Conclusion.....	178
References.....	182

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List of the Abbreviations and Acronyms

AIML	All India Muslim League
AL	Awami League
BD	Basic Democracy
CCI	Council of Common Interest
CJ	Chief Justice
CMLA	Chief Martial Law Administrator
CPEC	China Pakistan Economic Corridor
CRC	Constitutional Reforms Committee
ECP	Election Commission of Pakistan
EFA	Education for All
EOBI	Employs Old Age Benefit Institution
FATA	Federally Administered Tribal Area
FBR	Federal Board of Revenue
FCR	Frontiers Crimes Regulation
GDS	Gas Development Surcharges
GoPK	Government of KP
HEC	Higher Education Commission
IJI	Islami Jamhuri Itihad
JUI	Jamiat-e- Ulema Islam
KBD	Kala Bagh Dam Project
KP	Khyber Pakhtunkhwa
KPOGCL	Khyber Pakhtunkhwa Oil & Gase Companey Limited
LFO	Legal Framework Order
LG	Local Government

LPG	Liqefied Natural Gase
MDG	Millennium Development Goals
ML	Muslim League
ML	Martial Law
MRD	Movement for the Restoration of Democracy
NAP	National Awami Party
NAB	National Accountability Bureau
NEC	National Economic Council
NFC	National Finance Commission
NWFP	North West Frontier Province
OGDCL	Oil and Gas Development Corporation Limited
PATA	Provincially Administering Tribal Areas
PEDO	Pakhtunkhwa Energy Development Organization
PCO	Provisional Constitutional Order
PFC	Provincial Finance Commission
PML (N)	Pakistan Muslim League Nawaz
SPDP	Public Sector Development Program
PPP	Pakistan People's Party
PRODA	Public and Representative Officers Disqualification Order
SC	Supreme Court

Abstract

In a political economy setting, this research focuses on exploring the tensions and contestations between the Centre and the province of KP. Since inception, Pakistan is a federal polity but unfortunately with the adoption of a centralized Federal system, political elites, civil and military bureaucracy have failed to provide satisfactory institutional arrangements, which has brought dissatisfaction and unrest to the ethnic groups. The imbalanced power structure between the center and provinces and the unjust distribution of economic resources widened the trust deficit and increased inequalities, which resulted in a sense of alienation and deprivation. This sense of alienation and deprivation generated grievances in smaller provinces. The denial of provincial autonomy and lack of Fiscal decentralization resulted into the separation of East Wing of Pakistan. Likewise, the remaining part is still vulnerable to the ethnic unrest due to the political and economic exploitation. The 18th constitutional amendment was a step in the right direction which redefines the center and provincial political-economic relations but needs to be implemented in letter and spirit. The need of an organic constitution for a successful federal and democratic polity with a plural society is inevitable. In same fashion, democracy is the name of a continuous process of evolution, nothing could be achieved overnight in a democratic setup. In a nut shell this research focuses on the post 18th constitutional amendment center and Khyber Pakhtunkhwa relations in political and economic sittings, to find out the reasons of blame game and the deprivation of small provinces. Finally, this research comes out with significant findings regarding the issue.

Chapter I

“The state shall decentralize the Government administration so as to facilitate expeditious disposal of its business to meet the convenience and requirements of the public”

The constitution of 1973, Article 37 (i)

Introduction

In the checkered constitutional history of Pakistan 18th amendment is the only reform package after the 1973 constitution, which guarantee a genuine federal political system (Waseem, 2010). The 18th amendment (passed in April 2010) is the most reform package which was unanimously adopted by the parliament led by Pakistan People Party (Rabani, 2015; P: 276). Political forces envisioned 18th constitutional amendment with provincial autonomy. Along with other changes the Center-Provinces political economic relations were redefined to fulfil the small provinces political and economic demands particularly Khyber Pakhtunkhwa (KP) and Balochistan (Faiz, 2015). It abolished the concurrent constitutional legislative list, which was a historic demand of the federating units (Adeney, 2014). Now this is a challenge for the federal and provincial governments to materialize this historic development in its true sense.

Throughout history the political and specially the economic relations between the center and provinces remained very fragile particularly the resources distribution and ownership of natural resources remained a bone of contention. Due to this tension ridden relation the feelings of alienation and deprivation increased in the marginalized communities of the state. As a result of the omitting of concurrent list from the constitution

via 18th amendment, some subjects were transferred to Part II of the federal legislative list, which comes under the jurisdiction of the Council of Common interest (CCI). As a dispute resolution body the roll of CCI, National Finance Commission (NFC), National Economic Council (NEC) were not only redefined but were increased. These are the forums to solve the problems of resource distribution between the center and provinces and to solve the matters of common interest through consensus (See, for example, Nabee & Shaikh, 2010).

Federalism in Pakistan remained problematic since independence (Adeney K. , 2012). Khyber Pakhtunkhwa (KP) and other small provinces ever protested against the unequal resource distribution and over-centralization in a federal setup. Due to lack of provincial autonomy the feelings of deprivation and alienation in smaller provinces converted to grievances which sometimes took a violent shape. In this respect Stephen P. Cohen (2011) argues that “Pakistan has never had a workable arrangement between the state and those who are ruled”. Furthermore, he quotes Professor Hamid Kizilbash that “the people we ignored are taking their revenge” As a result Pakistan lost its half in 1971, Khyber Pakhtunkhwa (before 18th amendment NWFP), Balochistan and Sindh persistently raising their voices for the equitable distribution of resources.

In pre-independence era these provinces supported the cause of Pakistan for a purpose (that they will enjoy provincial autonomy) and when their voices were dubbed and their interests were encroached by the central government and the dominant Punjab province, they started both violent and non-violent protests. After the 18th amendment the reservations of Khyber Pakhtunkhwa and other smaller provinces were partially solved but still the federation has to go for enough to bring the small provinces to the level of larger

province. They are still protesting against the central government violation of constitution regarding the provincial matters and the subjects which are enumerated in Part II of federal list.

Since from the very inception the power pendulum swings in favor of central government (Shah A. , 2012). Lahore Resolution never remained favorable to the policy makers (Chandio, 2013). In first decade (1947-56) of independence Pakistan remained without a constitution and later on faced high constitutional mortality (Khan Z. , 2012). The constitution of 1973 was passed by parliament with the consensus of all major political parties. In the constitution it was promised that after 10-year provincial autonomy (by abolishing the concurrent list) will be provided, which were missing in the previous constitutions. But the coming governments and the frequent military interventions into politics never held the promises of the constitution. The powerful central government and the educated power elites failed to satisfy the marginalized groups and provinces which resulted in violent separatist movements and upheaval (For a discussion on power elites, see, Fatima (2014)).

The history of Pakistan is full of fluctuations. Army interventions in politics, desolations of elected political governments by thee presidents, assassinations, ethnic and militant insurgences and independence movements are the non-deniable facts of Pakistan's political and economic history (See for example, Khan, 2012; Rabani, 2015; Ahmad, 2009; Nasir, 2007). Though the politicians from the larger province has realized to some extent that further negligence and the encroachment of natural resources and economic rights of

the small provinces would be fatal but establishment is still not ready to listen the strings of the bill (Babar, 2015).

Now the question is, whether the 18th amendment was enough to address the smaller provinces demands and whether the amendment were implemented in its true spirit. The simple and clear answer is “no”, which is evident from the succeeding amendments and demands of small provinces. The 18th amendment may be a paradigm shift but there are many issues between the center and provinces which need the attention of the policy makers. Not only elites from the larger provinces but the provinces are equally responsible for the creation of inequalities among different regions.

1.2.Rationale of the Study

The resource distribution and provincial autonomy are the main issues between the center and KP. This case study will investigate the post 18th amendment Centre and KP relations from political economic perspective which remained unexplored till today. The federal government is supposed to be the custodian, to protect the rights of its small federating units and would not let the larger federating units to encroach their interests, but when the state is collecting taxes for the provision of basic services and is unable to protect the rights of the smaller units; they will try to challenge the state (Cohen, 2011) their feeling will be that of subjects and not of citizens. Different political arrangements are adopted to manage the state affairs, and involve the citizens in greater political activity; Pakistan is not an exception. Federal parliamentary and parliamentary presidential including the quasi-presidential political systems has been implemented but without the political will and lack of participation of the locals in their policy formation always resulted into chaos. The 18th

amendment is the most reformed package after the 1973 constitution. This research is focusing the center-KP relations from the political economic perspective which remain a gap of knowledge in the reviewed literature.

1.3.Statement of the Problem

Unfortunately, after five years of the 18th constitutional amendment, the smaller provinces (Khyber Pakhtunkhwa, Sindh, and Balochistan) are still demanding equitable distribution of resources. Khyber Pakhtunkhwa (KP) had ever raised its voice for equitable distribution of economic resources. But unfortunately, demands for provincial autonomy were perceived by elites as demand for independence. The 18th amendment was envisioned with provincial autonomy. But the issue of provincial autonomy related to political economy remained unresolved. The Federal institutions i.e. Council of Common Interest (CCI), National Economic Council (NEC) and National Finance Commission (NFC) were empowered to address the problems of the smaller provinces. But these institutions and the 18th amendment remained limited to the articles of the constitution and have no practice. The dominant educated power elites are still dominating the center of power and smaller provinces like KP is limited to unimportant ministries regarding the revenue generation and power decentralization.

In response to this issue the researcher will explore the tension ridden relations between KP and center related to political economy; that whether the 18th amendment contributed positively or negatively to the center-KP relations. These political economic relations and inequalities gained scant attention from researchers and scholars. The researcher will explore these issues in details.

1.4.Objective(s) of the Study

- To examine the post 18th constitutional amendment Era from the political economic perspective.
- To explore that weather the 18th constitutional amendment has resolved the reservations of KP province related to the distribution of financial and natural resources.
- To investigate the post 18th amendment Era and new generated issues between the Centre and KP province.
- To examine the role of local government in the post 18th amendment era in KP province.
- To analyze the inequalities between the center and KP province and inability of Federal institutions to adders the reservations of smaller provinces (KP).

1.5.Research Questions

1. In the post-18th amendment arena, what is the nature of tensions between the Centre and the province of KP?
2. To what extent the enactment of 18th amendment has addressed the issues and concerns of KP province related to political economy?
3. What are the new issues generated in the era after passing the 18th constitutional amendments?
4. What is the role of Local governments in KP after the 18th constitutional amendment?

1.6.Significance of the study

The center and KP relations related to political economy gained little attention of the scholars. This will fill the space on shelves related to the subject. The resource distribution between the center and provinces remained a dominant problem through out the history of Pakistan. In the checkered constitutional history of Pakistan 18th amendment is the only reforms package after the 1973 constitution which spoke for provincial autonomy. Pakistan lost its half due to the centralized political and economic system. Smaller provinces had always raised their voices for provincial autonomy, that's why this amendment was warmly welcomed by the people at large. Due to all these reasons the significance of this research is multifaceted.

1.7.Delimitations of the Study

This research will focus on center and KP province relations after the 18th constitutional amendment from political and economy understandings. This research is a case study so will focus specifically on KP and will explore the post 18th amendment positive or negative developments.

Conceptual framework

Federalism and fiscal federalism suits the study. Since, from independence Pakistan is a federal state. After independence the relations between the center and smaller provinces (KP, Baluchistan, and Sindh) remained problematic due to the demands of provincial autonomy and decentralization of powers (See, Mushtaq 2009). Federation in Pakistan remained in trouble because of the lack of provincial autonomy and unjust distribution of

financial and natural resources. Several attempts were made but without political will which is not enough to solve the core issues.

The focus of this research is the Center and KP province relations after the 18th constitutional amendment in the political and economic context. The first section of the topic is suited by the theory of federalism and the second will be addressed by Fiscal federalism.

To balance order with unity Federalism is a suitable political system adopted in Pakistan. In this system the unity of federation is preserved while the diversity retained by the units (Rabbani R. , 2011, p. 15). Federalism is a political system in which the two tires of the government are working in the bounds of constitution. The powers are constitutionally divided and protections to the smaller Federating units are given from the arbitrary use of powers by the Central government and larger units. The branches of the federal government like Supreme Court the senate (parliament), and the institutions e.g. CCI, NEC NFC work as the custodians to provide and safeguard them from tyranny. The powers are then decentralized to the level of local governments to enlarge the participation of the people in political process. Basically Federalism is a compromise between two opposing political forces. While quoting Freeman, Michal Berger (2006) discusses Federalism that it is a compromise between two extremes. In case of Pakistan the Federal system is working nominally, the dominant power elites had never compromised their powers for the decentralization of responsibilities and autonomy to the smaller provinces like KP. This research focuses in the first section over the troubled relationship between the Centre and KP after the 18th constitutional amendment.

The remaining part has been addressed by Fiscal federalism. Fiscal federalism refers to the independent management of fiscal affairs by the federating units which they demand (Rabbani R. , 2011). In 1959 Richard Musgrave the German born American scholar developed the theory of Fiscal Federalism. The theory argues about the just and equitable distribution of resources between and among the center and the federating units. Musgrave argues that, Federal governments have the ability to solve financial problems and provide stability to the local governments and to distribute the resources justly (Musgrave, 1971). This theory suits this research in which it focuses on the post 18th amendment economic, financial and resource distribution situation between the Centre and KP.

1.8.Operational Definition of Major Terms

Key Concepts	Operational Definition	Measurement
Federalism	The union of different political identities, entities and interests that join a larger union to protect their rights is called federation. Though the units join the larger union but retain certain level of autonomy. The powers are constitutionally divided between the center and federating units, and then decentralized to the local governments.	Through federal institutions, Senate, supreme court, CCI, NFC, provincial governments, local governments and the roll of prime minister and president.
Fiscal Federalism	A form of Federalism, this is about the resource distribution between the center and federating units. Different federal systems the decentralization of fiscal arrangements varies from one another.	Through ratios, NFC, grants to provinces etc (Analysis of the constitution)
18 th Amendment	Passed by parliament in April 2010. It amended the quasi-presidential constitution of Pakistan to parliamentary system. Along with other changes it redefined the center provinces relationships.	Pre and post 18 th amendment 1973 constitution
Share in Divisible Pool	Contain all the revenue received by federal government, all monies received as repayment and all loans raised by federal government are included	Ratios, Share of KPK as compared to Punjab and other provinces and

	in federal divisible pool. In divisible pool through a specified formula each province receiving a share.	through other grants by federal governments.
NFC	The resource distribution between the center and provinces on annual basis through a specified formula.	The annual transfer of monies from federal divisible pool to the provinces.
CCI	The constitution part-II subject's related matters and issues are decided on this platform. Prime minister is the chairman of this council and representation is given to all provinces.	Through the Number of cases submitted to the council and cases solved between the center and provinces by council of common interest
Inequalities between KP and other provinces	The unequal distribution of political and economic resources between KP and other provinces which is a concern for KP province.	Ratios, share of KP in divisible pool, provision of royalties to KP, infrastructure development etc
Local Governments after 18 th amendment	The third tire of government in a federal system. In which the people elect their local representatives. Special representation is given to peasants, workers and women.	Elections for local governments after 18 th amendment

Literature review

In his seminal work Easterly (2011) discusses the role of highly educated power elites in widening the gap between the rich few and the poor masses. He discussed that though Pakistan have highly educated elite diaspora but they are not investing in the human resource development because the educated people may be a hurdle to their dominance and will demand more rights and democratization of the system. This led to the inequality among different social classes and inequalities in the development of different regions in the state. The writer says that Pakistan is ethnically and religiously a heterogeneous country and where ever, these two factors are present, there will be the scares provision of resources for the social infrastructure, and human resource development. That's why there is a widened gap between the haves and the haves not. The writer says that though Pakistan

have decent GDP growth rate and has developed in some respects but not in social sphere which he calls “The political economy of growth without development”.

Regarding Federalism in Pakistan, its Problems and Prospects Kalid (2013) describes that the same interests of the people of Pakistan led to the creation of Federal form of government but with some demographic and ethnic problems which led to the separation of East Pakistan and distrust on central government. The geographic area on which Pakistan contains experienced little political attention at the time of British colony. This becomes a reason for the later problems in terms of unity and unequal development. First Pakistan adopted the 1935 act with some changes then the 1956, 1962 and 1973 constitutions were formed respectively. These constitutions were based on the strong central governments, along with the unnecessary changes in the 1973 constitution. Through 18th constitutional amendment the power center and the structure were altered. She also describes the inability of the ruling elites to solve the national problems. At the end she gives some reasonable suggestions.

Mushtaq (2009) in his work begins with introduction to federalism and says that Federations may vary according to the conditions. He while discussing the Federation says that Pakistan throughout history remained a Centralized state because of which the country remained vulnerable to ethnic movements. The Punjab dominated Central government remained powerful. The smaller provinces were marginalized in terms of autonomy in all respects. Constitutionally the Federal government has the power to intervene in Provincial matters on some pretexts. He further says that Pakistan is ethnically not homogenous but is a heterogeneous country dominated by the Punjabis and the other smaller provinces and

ethnic groups are alienated. Because of the dominance of one Province the history of Pakistan is full of political unrest due to these reasons Pakistan lost its Eastern part and remained politically unstable. Political stability depends on participatory democracy in heterogeneous countries. The writer suggests for the accommodation and consociation devices to solve the problems of federalism in Pakistan.

While discussing the Evolution of Federalism in Pakistan Dr. Syed Jaffer Ahmed (2014) defines Federal form of government quoting A.V Dicey "the political contrivance intended to reconcile national unity and power with the maintenance of the state rights". According to the writer Federation consist of the division of power centers. Quid e Azam Muhammad Ali Jinnah in the pre-partition era struggled for provincial empowerment and separate electorate system for the Muslims, after the partition the heterogeneity of the population in and the demand of decentralization led for Federal governmental arrangements. The article describes the constitutional history of Pakistan, that how the Civil and Military alliance filled the power vacuum and raised inequalities. Then he discussed the 18th constitutional Amendment that how it altered the whole shape of the constitution.

Nizer (2002) in her article gives an impressive account of the Ethnic issues and grievances under the federation of Pakistan. The writer traces the constitutional history of Pakistan to the 1935 act including all three constitutions and argued that under all these constitutions, Federal system with powerful central government were adopted against the wishes of the smaller provinces, which flam the fire of ethnicity for autonomy and independence. That needs greater political attention and not the use of force which is the

favorite tool of the central government. Due to the periodical military interventions, the grievances of smaller provinces increased. Punjab is well represented in the Civil and Military Bureaucracy and in the business cadre, which is a greater source of tension for the smaller provinces including the distribution of resources. All the provinces demand that the resource distribution shall be on its terms which suits its own interest, while Punjab is averse to the altering of the current resources distribution formula of which the major share goes to Punjab. She concludes with the sentence “autonomous and strong provinces mean a strong Pakistan”.

In his seminal work Chandio (2013) discusses Pakistani Federalism in details. He says that in the name of Islam and autonomy Pakistan was created but the promises which were made with the people of small provinces for autonomy were not met. Since from inception Pakistan dominated by Punjabi and Urdu speaking elites with centralized political system, which created ethnic unrest. He traces the constitutional history of Pakistan to 1935 act and argued that all the constitutions were centralized in nature dominated by Central government. Under the charter of democracy, the 18th amendment were passed, which had altered the whole constitution and is a paradigm shift. But need to be materialized through devolution of powers. The writer had discussed all the important issues in the Federation of Pakistan, regarding provincial autonomy resource distribution, inequalities, etc. He is not optimistic about the role of NFC, NEC, and CCI and makes the argument that the unjust distribution of resources in favor of Punjab has widened the gulf among the provinces because of which we lost one part of Pakistan. At the end he had given recommendations for the workable Federation in Pakistan.

Likewise, Shah (2012) focuses on the 18th Constitutional Amendment and its consequences in details. Shah argues that the amendment had restored the 1973 constitution in its true sense. Throughout history the balance of Power remained in centers favor, on the other hand military rulers also altered the power Balance. Due to inequalities the federation remained in trouble and Bangladesh had parted its ways from Pakistan. He discusses the pitfalls and the payoff of the 18th amendment in details and make the argument that this is a first step toward the provincial autonomy and for the workable Federalism. He says that the 18th constitutional amendment went a step further from the 1973 Constitution that transfers seventeen ministries and abolished the Concurrent list. The writer is of the view that this amendment is not enough for the workable Federation in Pakistan and need political, financial, local government and accountability reforms etc, on local level are necessary to strengthen the Federation of Pakistan.

Pakistan's constitution is based on Centralized Federalism of 1935 Act (Samad, 2010). Samad discussed federalism in different states. In Pakistan the central government ever dominates the scene. Due to the fear of domination of Punjab the provinces demanded decentralization and when their demands were not fulfilled the ethnic groups responded with violence. The writer suggests different strategies to handle the issues of ethnicity in Pakistan, while concluding he says to "adopt a home grown strategy" which suits the Pakistani political situation.

While discussing Federalism, Adeney, in her study discusses Federalism in Pakistan and India from a historical point of view. She makes the arguments that Pakistan and India can be comparable not only because of their shared vice regal colonial history

but also of their comparable institutional setup. She further discusses the success and failure of those arrangements in both countries. She makes the argument that in Federalism to manage ethnicity rather to solve the ethnic issues. The political system may be federal or Unitary according the circumstances prevail in the country. Pakistan was created from the fear of the Hindu majority rule. The federation was the ideal type of polity for both countries as the founding fathers desired in the pre- partition era, not that of British type of Federalism which produced more heat than energy but along with Federal form of government some other institutional arrangements as will to accommodate and to hold national unity. She further argues that to keep Muslims a permanent minority would have produced heat not harmony, that's why India though is successful in accommodating the linguistic problems but not that of religious. In Case of Pakistan on the basis of Lahore resolution a Federation must be form which suits the Pakistani society which produces harmony in the country not that system which is based on vice regal system. For both countries to successfully handle the ethnic issues is to adopt the capacity in their systems to accommodate their interests and demands. At the end she makes the arguments that there is obvious lesson for federal designers in studying the ethnically divided society (Adeney K. , 2007).

The article written by Ahmad (2010) focuses on Federalism and had discussed the federal arrangements of Pakistan in details. He discussed the reasons that why a workable federal system has not been developed. The 7th NFC award is also discussed in the paper.

While discussing Fiscal Federalism after 18th amendment and the emerging challenges Nabi & Shaikh (2010) found that 18th amendment had transfer means to acquire the

prosperity and developmental ends of the marginalized provinces. They further argue that in 7th NFC award the share of provinces were extended and the 18th amendments transferred more responsibilities with revenue generation powers to the provinces. While discussing the post 18th amendment generated issues the writers argue that resource distribution among the provinces and center always remained a bone of contention.

Mushtaq et al in their article (2011) discussed the Pakistani political system and the adoption of consociational model. They argue in their article that the present democratic arrangements are not successful because there is lack of cosocitionalism, in the presence of heterogeneity. He while comparing the Pakistani political systems in regard to the cosociational factors with some other federal governments, make the argument that Pakistan is far behind them in this respect that's why the threat of ethnic violence was never avoided and remained stick in an unreliable environment.

A good study conducted by Akhter (2008). He focuses the post 1998 inequalities among regions and provinces, which are the result of the dominant and powerful policy making elites. He argued that the inequalities are the result of the unjust distribution of natural resources and weak institutional arrangements. Punjab holds the majority population and as a result they dominate the three provinces regarding resource distribution, which is translated as the small provinces versus the Punjab (Akhar, September 2008).

The smaller provinces demand more fiscal decentralization and blame the central government of not giving their rights to them. This article focuses on fiscal federalism as a case study approach in Pakistan. He found that after independence Pakistan adopted the

British legacy of resource distribution which were blamed biased by the smaller provinces. He argues that fiscal decentralization is a tool to share the burden of Central government administratively, regarding responsibilities and to empower the local institutions. The 18th amendment and the 7th NFC award under the 1973 constitution had strengthened the perception of Federalism but due to the “incapacity” of provinces to generate extra financial sources the fruits of decentralization were not achieved (Rehman Dr, 2014).

Without the proper nourishment of the roots of a tree, that cannot sustain for viable time. But it needs proper care. Same is the case with federalism. Raza Rabbani presented the case of federalism in his seminal book, “*A Biography of Pakistani Federalism, Unity in diversity*” (2011). He is a staunch supporter of federal political system in Pakistan which suits the local environment: He starts his discussion with a brief background and then discussed the history of Pakistani Federalism. He argues that though the way to the fruitful federal political system is difficult, but is the only way to a successful management of all political, economic, social and administrative issues of Pakistan. Rabbani further argued that the growth of federalism altered by military interventions. He is quite optimistic about fiscal arrangements because these are in its initial stages. He discussed 18th amendment in detail related to federalism. This book is a witness to the constitutional history of Pakistan. His motto in this book is “unity in diversity” (Rabbani R. , 2011)

The constitutional history and Federalism in Pakistan has been thoroughly discussed by local and foreign scholars. The reviewed literature has focused on the issues related to Federalism in the context of constitutional developments and ethnic issues. The

issue of Centre-KP province relations in the political economy perspective remained an unresolved question in the available literature; this research will try to address this issue.

Methodology

This research will explore the issue in-depth while conducting mixed research using qualitative and quantitative methodologies and analytical research to understand the prevailing situation between the Centre and KP after the 18th amendment from the political economy perspective. Different sources (primary and secondary) like books, research articles, newspaper articles internet and all the available literature will be consulted to dig out the post 18th amendment impacts and effects on center and KP relations in political economic settings; and will examined that how for 18th constitutional amendment redefining their relations.

1.9. Research Design

Due to multiple problems the center KP politico-economic relations remained strained. This research is a case study, and will investigate the post 18th amendment situation between the center and KP province. That how for the 18th amendment responded to the demands of KP? The raised questions are answered through critical policy analysis of data. Further this research will examine NFC, CCI and NEC, that how for these institutions performed their work. From different sources like books, journal articles, newspaper articles, archives, different public documents and from online journals data will be collected during the study. The collected data has been analyzed through critical policy analysis, and the problem were intensely investigated.

1.10. Case Study

This research is a case study of Centre-KP relations after the enactment of 18th constitutional amendment from political economy perspective. A Case study is conducted for single specific case (relatively bounded) (Singh, 2006). The underpinning Case has been investigated in-depth and all the peculiarities regarding the subject are explored (Tellis, 1997). The Case study approach gives subjective not objective knowledge about the object (Singh, 2006). This approach is confine to a smaller area of study. As P.V Young defines Case study is an “empirical enquiry that investigates a contemporary phenomenon in depth and within its real-life context, especially when the boundaries between phenomenon and context are not clearly evident”. (Yin, 2009) On another place he says that “A fairly exhaustive study of a person or group is called a life of case history”, the unit of study may be individual, group, community or institution. (Singh, 2006, p. 148)

The group is studied and attention is paid to their problems. The research object will likely to be intricately connected to historical, social, political or economic parameters. Data is collected from a verity of sources and techniques. The data will be contextually analyzed through critical policy analysis. The researcher will focus on the post 18th amendment political-economic situation between the center and KP as the unit of study, that how for the amendment is successful to address the concerns of KP.

1.11. Data collection

In order to conduct an effective case study different extensive data sources have been consulted. According to the needs of research both primary and secondary data have

been collected. They include the qualitative and quantitative data. Library, web information, official documents, statistics, previous research, different reports, journal articles and news-papers were helpful in this regard. To manage the data, it has been systematically arranged.

1.12. Data analysis

The collected data wither primary or secondary has been analyzed qualitatively through Critical policy analysis; to understand the Centre smaller province (KP) political economic relations after the 18th constitutional amendment. The gap between theory and practice has been investigated from the critical policy analysis. Critical policy analysis cannot afford to ignore the technical issues in 18th amendment and others in the constitution because through technicalities the policy and the scene can change in favor of dominant few. This research also critically analyzed that how for this succeeded in achieving the values of democracy and federalism. For in-depth understanding the constitutional subjects of part II, divisible pool, 7th NFC award, National Economic Council, Council of Common interests, energy resource production and distribution between provinces (specially oil and gas), comparison between different major cites consumption of energy resources, infrastructure comparison between and among provinces, the growing tension on CPEC between the center and province of KP etc has been analyzed to develop this case study. Different sources have been consulted and analyzed from an impartial view point to explore that how far 18th amendment responded to the prevailing mistrust, reservations and grievances of marginalized people about the inequality and unjust distribution of resources between and among center and KP.

Plan of thesis:

This research consists six chapters. First chapter is the introductory part and consist of literature review, research questions, theoretical framework and other introductory thread like other MS thesis. Chapter two discusses the overall troubled historical background of Pakistani federalism from politico-economic and the constitutional perspective. Chapter three provide a detail historical background, natural resources and the demographic profile of KP. Next chapter four is about the contents of 18th amendment followed by critical analysis of post-18th amendment center KP relation. It is a case study so the main questions will be investigated in-depth in these two chapters. Logically chapter six provides the findings and conclusion of the thesis.

Chapter II

Federalism in Pakistan Theory and Practice

Introduction

South Asia is home to different ethnic, religious, linguistic communities and races. After the departure of Colonial Masters, Pakistan was one of those countries which faced and still facing the ethnic accommodationist problems. Pakistan adopted federal polity as a colonial legacy and as an instrument to accommodate ethno-political and linguistic communities. Pakistan presented a unique case of federal centralization with two wings with a thousand miles distance in between. From 1935 onwards till today the federal era can be classified into three main eras' namely the pre-independence federalism (1935-47), post-independence federalism (1947-73) and 1973 onwards federalism. History of Pakistan is full of fluctuations, ups and downs, with power elites sitting at the center of power, while the masses are suffering from different problems.

This chapter is devoted to the historical background of federalism in Pakistan. But before to begin it is necessary to discuss the theory of federalism and fiscal federalism that the study may proceed in a harmonious way.

Federalism

The conditions of societies differ from place to place, country to country and from time to time. The social and economic compositions of institutions in federations are different from one another. In these states some are centralized while others are highly

decentralized polities. Some of them are integrative while others are devolutionary; bringing together the pre-existing political units or transform the unitary state into a federal state and some may have both the integrative as well as the devolutionary features. Some of them have prime ministers while others have presidents. Some may have clear distinction of powers while others have overlapping ones. Some federations have two political parties while others have many. Some are stable while others are unstable and have cleavages with high vulnerability. In some the component units are free to form their political arrangements and in some they do so according to the federal constitution. No single model would be suitable for all circumstances. (Anderson, 2008; p, 2: Blindenbacher & Ostien, 2005; p, 8-9).

Many scholars defined federalism but a common agreed definition always been lacking. Sbragia quoted by Johan Law (2013; p-E-90) states that "...scholars of federalism find it impossible to agree on a common definition". George Anderson says about federations that 'despite many differences there are few common characteristics in federalism which make it different from the rest of the political systems'. They may include at least two orders of governments one at the center for the whole country and the other for the regions. A written constitution which may not be amendable easily. Independence of judiciary which he called an impartial umpire, bi-cameral legislature, division of powers among the center and the federating units and devolutions of powers including decentralization of fiscal powers and a genuine autonomy for the provinces (Rabani, 2012) etc, but due to the changes with the passage of time, a clear, distinct and standard meaning of the concept has always been disagreed. (Shah, 1996; p, 11)

In the classical terms federalism means an agreement when separate or autonomous political entities merge together to create a state with single central government while retaining certain level of autonomy. Federalism derived from the Latin word “Foedus” meaning compact or agreement (Rabani, 2012’p, 14). Moreover, Rabani argues that “in federal form of government different political units are bound together, with power distributed between the center and provinces. It ensures national unity while preserving the diversity and distinctiveness of provincial entities.” A.V Dicey quoted by M.J Shah (1994; p, 12) define federal system “as a political contrivance intended to reconcile national unity and power with the maintenance of state rights.” According to K.C Wheare “By the federal principle I mean the method of dividing powers so that the general and regional governments are each within a sphere, co-ordinate and independent” (Wheare 1946; p, 11). In the report on the Royal commission on the Australian Constitution 1929 Sir Robert Garran defines federalism as “a form of government in which sovereignty or political powers is divided between the central and the local governments, so that each of them within its own spheres is independent of the other.” (Shah, 1994; p, 12) R.L Watts argues about federal principles “as the principles of organization, whereby a compromise is achieved between concurrent demands for union, and for territorial diversity within a society, by the establishment of a single political system, within which federal and regional governments are assigned coordinate authority in a way that neither level of government is legally or politically subordinate to the other.” (Shah, 1994; p, 12)

(There are some futures defined by scholars, which are essential and necessary for a successful and workable federation including a written constitution, in which the powers

and responsibilities are demarcated between the center and the federating units. Both the central and the units will derive their powers directly from the constitution, which is a supreme document. From this principle another feature coming out that there should be two levels of governments. And if there is any disagreement over any matter there is a need of Supreme Court which can interpret the constitution and resolve the issues between and among the center and the provinces. All these would be enforced in letter and spirit (Shah, 1994)).

There are Unitary systems having units elected independently and have responsibilities; they derive all their powers from the central government or the central legislature which can be taken back. In some cases, unitary systems have devolved more powers than federal systems. So federal usually but in some cases unitary systems had more decentralization than federal states. (Anderson, 2008; p,4)

2.1 Origin of federalism

Federalism or federation means “covenant” emphasis on the deliberate coming together of different political units, or to rearrange a previously unitary country and even a system of both together as equals to establish political systems in different circumstances and through different ways to retain certain level of define autonomy (Anderson,2008;p , 7:Elazar,1991,p,2-6).

Every federation is different from the rest and is unique and got a different political history regarding its origin and evolution. Federations emerged through the following ways which are discussed by Anderson.

- Coming together. Shared common interest and identity convince different units, independent states or colonies to come together and form federation under a central government. The units retain certain level of autonomy.
- A previously unitary country under the pressure for autonomy and devolution from the majority of population, convert the system into a federal polity.
- In other cases, the two mentioned processes get birth to federal political system.

United States and Switzerland are the initial federal states started with confederations. The experience of United States with confederation (formed in 1781) lasted only eight years (ended in 1789) when they adopted an effective federal system. The Swiss confederation lasted for more than five centuries and eventually after a brief civil conflict adopted federal political arrangements in 1848. In the post-colonial world India, Pakistan, Malaysia and Nigeria adopted federal constitutions. And now world have 28 federal states, with 40% of the world population resides in them. Belgium is the clearest example to adopt federal constitution from the unitary one in 1993. (Anderson, 2008; p, 8-9)

2.2 Federal or plural society and federalism

The political systems of a state reflect the nature and characteristics of a society. Largely societies with homogeneous nature opt for unitary systems, while plural societies which consist of more than one society adopt the political system which best suits its political aspirations. (Shah, 1994; p, 1) Various groups which desires to leave together through mutual consent they adopt the federal system which have the potential to achieve their goals. Federal system basically means consent. Usually societies which are plural opt

for federal political system. The concentration of different ethnic, cultural and linguistic groups in particular areas make that society plural. Michal Stein argues that multi-lingual and multi-ethnic societies are federal in character. While Livingstone consider geographical groupings as essential to describe a society as federal (Ali,1996; p,7-10).

2.3 Two approaches to the distribution of powers in federalism

Anderson (2008) had mentioned broadly two different approaches: the dualist and the integrated model: while different countries have the elements of both. The dualistic approach is based on the division of powers; that each level of government has defined and clear jurisdiction, which than deliver and administers in its jurisdiction. On the other hand the integrated approach is based on the shared competences and co-operation. K.C Wheare (1994) while supporting the dual federalism which is evident from his definition of federalism, “By the federal principle I mean the method of dividing powers so that the general and regional governments are each within a sphere, co-ordinate and independent”.

Livingstone rejecting the notion of dual federalism, he argued that “the key to the nature of federalism is in the division of powers.... federation implies the existence of two co-ordinate sets of government, operating at two different levels in two different spheres...the line between spheres is drawn by the constitution.” (Ali, 1996; p, 5). A.H Birch have the same feeling about Wheare notion of dual federalism and define federalism “as one in which a division of powers between one general and several regional authorities, and each of which in its own sphere is co-ordinate with the others, and each of which acts directly on the people through its own administrative agencies” (Ali, 1996; p, 5). In a nutshell no federal arrangements are made of one pure model (Anderson,2008).

About the allocation of powers to the units each state has its own approach to the devolution of powers to the units. Political and constitutional arrangements are different from state to state. Some have powerful central government while others have devolved their powers to the units. The federal government in the United States has only 18 subjects and actually most of these are concurrent with the federal supremacy. The Indian constitution has three lists, the federal or union list has 97 subjects, concurrent has 47 and the states or the units has 66 subjects (Anderson,2008; p, 21-29). Likewise, the 1973 constitution of Pakistan after the 18th amendment have only one list... and have part two subject to the Council of Common Interest (CCI).

2.4 Fiscal federalism or Fiscal decentralization

Human being is a social animal, living together to fulfill their necessities; organized themselves in political societies. And if justice is not going to happen in that respect, the social contract (Living together) will suffer from disorder and chaos. In both developed and developing countries' governments are turning to devolve responsibilities in order to provide better serves to the people and for the better performance of the public sector. Provincial governments and the local governments being near to the people can provide services better than the central governments while insuring quality and participation in policy formation. (Oates, 1999; p, 1) Fiscal decentralization is very important in this respect, because the money matters in a federation as much as in general (Anderson; 2008; p, 30- 31). Oates (1999; p, 1-2) observed that the objective of the fiscal decentralization in developing countries is to break the chains of the central planning which failed to bring them on the path of development. Likewise, he quoted Alexis de Tocqueville that the “the

federal system was created with the intention of combining the different advantages which resulted from the magnitude and littleness of nations”.

James Edwin Kee (2004; p,3) defines fiscal decentralization as “it is the devolution by the central government to local governments (states, regions, municipalities) of specific functions with the administrative authority and fiscal revenue to perform those functions”. There are two issues in fiscal decentralization, the first is regarding the division of revenue raising and spending powers among the levels of governments and the second is the discretion given to the regional and local governments. These two varies in different federations.

In a federation the money raising, sharing and spending on equal putting are very important for the smooth working of the inter-governmental relations. According to Anderson (2008) largely due to the varying constitutional arrangements, histories of revenue raising and political cultures on different levels of government are different in practice, though in theory there may be the same principles. Some states with the non-federal arrangements are more decentralized than the federal ones. The federal governments in all federal states raise more revenue than it spends. The dependency of units on the federal transfers from central governments vary from federation to federation (Anderson,2008; p, 35-38).

Among federations the developmental level of constitutional units largely varies from each other. For the equalization the central government makes special transfers to the vulnerable units, (Anderson, 2008;36-38) like in Pakistan for Balochistan special grants were given to bring the province to the level of the other provinces. In federations some

units are richer than the others in respect of natural resources; the resource ownership (the revenue raising) and the spending powers cause problems in federations (Anderson, 2008; p, 31-34).

From the above discussion we can derive that broadly in a federation the revenue raising and then the distribution between the center and among the federating units is called fiscal federalism. The money raising and spending principles are different from state to state and the level of decentralization also varies from federation to federation. The fact is some non-federal states are more decentralized than some federal states.

From Colonialism to Colonial Legacy

Phase I

The resource rich Indian sub-continent attracted rulers and merchants from all over the world. From very ancient times Indians have trade relations with the World. Sub-Continent is richer in flora and fauna and other natural resources. All the necessities of life are available in plenty. First the Arabs and then those were the Europeans, where life was hard at the time of winter, to make that easy and to provide the new necessities (raw material) of industrial development. The European nations were keen to get rid of Turks, who were charging their cargos from India on their Egyptian ports. The Portuguese find new roots to India and established trade relations with the Indian rulers. Due to their traditional way of life, their decline period started and the Britishers influence started to increase. (Vatsal, 1982; p, 1-12)

From the very ancient times India had Commercial Contacts with the West. (K.Ali, 1968) The British entered into subcontinent as traders and merchants through East India Company, chartered in 1599 by British Crown. They sent ships with some merchants to India in 1608. They got trading rights from the Moguls Court (from Mogul Emperor Jahangir) and established their trade ports. With shrewd use of power and material their influence increased with the every coming day.

The English East India Company and the Dutch East India Company were founded almost at the same time. First both of them were allies to get rid of Portuguese in India, but latter on they become arch competitors and their friendship converted into enmity. Both these Companies had diversified the Indian trade with the other parts of the world not only its commodities but they diversified the ingoing and outgoing market. (Vatsal, 1982)

The Portages and the Dutch made many problems for the British especially the Portages who had influence in Moguls Court, and because of them Aurangzeb denied the permission to the East India Company to form its trading ports. However, they got permissions from the Moguls and dually increased their power and over powered their enemies and competitors.

Initially British established three presidencies i.e. Madras, Bombay (Now Mumbai) and Calcutta. These presidencies were independent from each other, were responsible directly to the court of governors of the East India Company in London. (Muntazir Nasir: Vatsal, 1982; p, 44) They established factories in their influenced area and settled the settlers. No doubt that the Moguls were directly benefited from the custom duties, tolls and other tax levied on them. Moguls could have thrown them out of India because at the start

the foreigners did not possess the material and armies on ground which can resist to the Emperor. So long as the India were happy and were benefiting from the trade of foreigners so they allowed them to settle down and carry their trade activates. (Vastsal, 1982)

Under the Regulatory Act of 1773 the office of Governor General (GG), who was the former Governor of the Bengal were created and the presidencies of Calcutta and Madras were subordinated to the Bengal. The GG were assisted by a council of four. Under this Act some parliamentary control was also established over the GG (Vastsal 1982: Nasir). This act is very important; this was the first effort to regulate the affairs of the Company. A process was started which ended in 1858.

After the Regulatory Act of 1773, the subsequent legal changes by the British Parliament, the powers and the position of the GG were strengthened through the Acts of 1773, 1793, 1833 and 1853. During this period the British through parliamentary measures devolve some powers to the provinces but extensive overriding power remain with the center. Federalism was not formally introduced (Nazir, 2001). A judicial system was established (Nair, 2001: K.Ali, 1968). Lord Dalhousie 1848-56, the Youngest GG of British India with the vision of representative democracy in Sub-Continent introduced the far reaching reforms in infrastructure development, democracy, the first three Universities (Calcutta, Bombay and Madras) began in 1857, collages and schools, he laid the first railway line, the modern telegraph, and many other administrative reforms credited to him (vistas; 1982). The critics advance the arguments that the reason behind the extension of the railway lines and the modern communication system to the for flung areas was not to facilitate the locals but to bring the raw material to the port and to facilitated and strengthen

there hold by providing quick and modern communication facility to ensure better coordination and cooperation for their forces (Babar, 2015, p. 39).

2.5. Political Struggle after the Failure of War of Independence (1857)

After the failure of 1857 struggle for Independence, some basic changes were brought to the administrative arrangements of British India. The company had already lost its major trading rights. In 1857 it was just a company of administrator's governing the colony on Queen's behalf. In 1858 the powers of the company took by the British Crown and the company was formally abolished. Instead the President of Board, the office of the Secretary of State was created, assisted by fifteen-member council usually experienced in serving India in high capacity. The Governor General were honored with the title of Viceroy with his autocratic rule, the direct representative of the British Crown. (Vastsal; 1982).

2.6. The 1861 Indian Council Act and the Central-Provincial Relations

In 1861 through Indian Council Act the executive council of Viceroy was increased to five. The legislative council was also increased. Apart from the five executive members it was consist of six to twelve members nominated by Viceroy. For the first time in history, three Indians were included to the Viceroy council, but without any check to the Viceroy or his Majesty government and powers. The council was to discuss only those matters which were to be placed before it without voting power on that. Though insignificant but the process of the Indians inclusion started from 1861 (Vastsal, 1962; p, 134-135).

Through 1861 Act the powers of the presidency governments were restored and were provided for the nominated legislative councils on provincial level under the Lieutenant Governor. On some important subjects the previous sanction of the GG was required, while having the power to veto any provincial legislation. Without his dually assent any provincial bill was not liable to become law.

The Budget system was introduced in 1870. According to this the provinces had a considerable level of autonomy particularly in police, civil and criminal justice, prison, the assessment and the collection of revenues, education, medical, sanitary, irrigation, building and roads etc. Even they were given some leeway on the spending of budget but without increasing the annual estimate of the said budget. Though the central government had the overriding powers but had refrain from undue middling in provincial affairs.

In 1870 and then in 1877 some subjects were devalued to the provinces, including jails, registration, police, education, roads, civil building, medical services, miscellaneous public improvement (1870), land revenues, excise, stamps, general administration, law and justice (1877).

Lord Ripons government in 1882 classified all the expenditure and revenues into three heads i.e. the imperial only the central domain, the provincial only provincial domain and the joint subjects on which both had equal rights. (Nazir, 2001)

Before heading to the next topic it is important to mention the contribution of Sir Syed Ahmad Khan in the awareness of the Muslims, contribution to the education particularly and as a founder of the two nation theory. Ram Gopal comment about Sir Syed

Ahmad Khan that “he was an institution”, he did what he can for the promotion of the “legitimate” interests of the Musalmans, he established, schools, different societies and most importantly Aligarh Collage which give a new impetus to the independence movement (Gopal, 1976).

During the war of independence 1956 Sir Syed Ahmad Khan was loyal to the Britishers. He was a far-sighted man, started to educate the Muslims with western education because he could see the shabby conditions of the Muslims which were worsening as the Hindus were taking their place. At the same time a parallel school of thought, who were the followers of the teachings of Shah Waliullah were allergic to the western education started their own Madrassa at Lucknow called Deobandi school of thought. It was this Deobandi school and Maulana Moududi who rejected the notion of Pakistan on the basis of Islamic ideology. Babar Ayaz states that after independence these two schools worked side by side or against one another. Further he argues that Sir Syed left the only whole by restricting the Muslims from joining the Congress which helped parting ways from a united Hind.

2.7. The Formation of Indian National Congress, its impacts on 1891

Indian Council Act

The autocratic rule of the Britishers caused the emergence of the Nationalist feeling in middle class Indians. Indian National Congress came into being in 1885, under the leadership of A.O Hume. Due to the demand of Congress, representations in the legislative council of GG were increased, including the selected members. For this purpose, indirect

election was adopted. The members of the provincial legislative bodies were also enlarged. Along with these changes the GG did not lose any of his power or position and retained his overriding powers.

2.8. The Rise of 20th Century and the All India Muslim League

With the rise of the 20th century, the nationalist movements were on the eve to burst. To represent and safeguard the interests of the Muslims, the foundation of All India Muslim League were laid out in 1906 with sir Salimullah Khan of Dacca as its president. In pre-independence era Muslim league strive for consociationalism and accommodationalism in the constitutional setup (Adeny, 2007; p, 67). Due to the demands of Congress for more decentralization, as they adopted the self-rule as their objective in 1905, and the demand of the Muslim League for separate electorate the Indian Council Act of 1909 were implemented.

Lord Curzon (1898-1905) introduced many administrative reforms; he created a new province named North West Frontier Province (now Khyber Pakhtunkhwa) under a Lieutenant Governor who was directly responsible to the Viceroy (Vastsal; 1982).

Some scholars consider the separation of east and west Bengal very relevant to the independence of Pakistan. In this respect Ayaz argue that for the first time the Britishers divided Bengal with the consultation of Muslim Business community. Though the culture, tradition and way of life of both east and west Bengal were the same but were divided on religious basis; on which latter on the sub-continent were divided. Muslims and Hindus are different in their way of life (Jinnah himself argued on the occasion of Lahore resolution

1940 in his presidential address) but they also lived together for centuries. Not only Hindus and Muslims but Sikhs too were fought to gather with other religious groups in 1857 war of Independence (Babar, 2015).

2.9. Morley-Minto Reforms or Indian Council Act 1909

In the first decade of 20th century the Britishers felt that more decentralization will not only strengthen the administrative system of British India but will also advance their interest. Three factors contributed to the 1909 reforms; first the demand of the Indian leaders for more powers as Congress adopted self-rule as their objective and the creation of Muslim League and their demand for separate electorates. Second the appointment of the Royal Commission on Decentralization. We can derive the third point from the upper two mentioned points that the Britishers understood that the Decentralization is in greater good not only for the Indians but also for their interests. Under these reforms the Viceroy council was enlarged and its powers were increased to discuss the budget and recommendations powers. The elected elements were also increased to the legislative councils. For the first time in Indian History the provincial executive councils were also enlarged and Indians were included to them. (K.Ali, Vistsal 1982,Nasir)

2.10. WW1 (1914-18), Hindu Muslim Unity and Importance of Lucknow Pact (1916)

Majority of Indian Political Parties supported Britishers during World War First (WWI). Turkey joined the war on German side, who ultimately lost the war and the allied powers started to liquidate its parts. Muslims started Khilafat movement in India to protect

their sacred places. The British war policy in India was on two principles (1) to suppress all the revolutionaries and (2) to introduce constitutional reforms in India with a promise of self-government in British Commonwealth, to double cross its opposition. For the Muslims this period is considered very important for their political awakening; the power of Hindu Muslim unity was demonstrated.

Muslims and the Hindus the two major political forces were reached to a fact at Lucknow in 1916 and unity were observed. For the Muslims this fact is very important because the congress recognize them as a separate community with separate electorate and weightage were accepted for the Muslims. 1/3 seats in the central government for the Muslims were agreed upon. (I.Q Qurashi pp; 140)

2.11. Montagu-Chelmsford Reforms (1919)

War ended in 1918 and the allied powers came out victorious. In pursuance of the policy to introduce reforms, Montagu the secretary of state visited India in 1917-18 in company of Chelmsford the viceroy. The report which followed this tour in 1918 was in the shape of recommendations. These recommendations were passed by the British parliament as the government of India Act 1919.

Under this Act the Legislative Council was replaced by a bicameral legislature at the center consisting of legislative assembly and council of states. The act increased the elected members in the central and provincial legislatures. The act constitutionally divided the subjects between the center and provinces. The provincial subjects were including local self-governments, education, sanitation, public works, health, railway,

agriculture, industry, excise, veterinary department, irrigation, forest, justice, police, prison, police, inspection of factories and stores. While the major and important subjects including defense, foreign affairs, currency, and telecommunications were allocated to the center. Whereas the GG retained his overriding powers in the shape of residuary powers; the subjects which were unclear to be central or of provincial mandate were to be decided by him; he also retained the power to issue ordinances (Faiz, 2015; p, 272).

Under the act the provincial legislatures were assigned more responsibility and no longer need the prior sanction of the GG. On administrative side diarchy were introduced on the provincial level. Under the system of diarchy subjects were divided into transferred and reserved. For the transferred subjects the ministers were responsible to the legislative councils while for the reserved subjects the ministers were answerable to the provincial Governors who were responsible to the GG (Nazir: 2007).

2.12. Indian Statutory Commission (1927)

The system of Diarchy was failed and the demand for an India oriented government came from almost all political forces from all over India. From different platforms different political parties, the non-cooperation movement of Gandhi (1921-22) and various others movements strengthened the demand. To review the Government of India Act 1919 and to inquire the future working of the Indian constitution the British government appointed Sir Johan Simon in November 1927. All members on this mission were whites and Indians were not represented on this commission. The secretary of state Lord Birkenhead justified the all-white members and made the statement that there is no body on which the Indians could be united and could present a unanimous formula. The congress reacted with a call

for all parties' conference, and appointed a committee in the chairmanship of the Motilal Nehru. This committee presented their report and recommended that separate electorate and weightage shall be immediately abolished, NWFP should be given full provincial status and Sindh should be separated from Bombay. Nehru report was based on the principles of unitary government. (Qurashi, 2009p;47; Ram Gopal; p, 213-15)

The Muslims saw themselves in Nehru report that where they are standing; so a reaction from the all shades of Musalmans was a necessary suit. The Nehru report was followed by Muhammad Ali Jinnah fourteen points in which it was made clear and loud that any future constitution which deviates from these points will not be acceptable, the important points were including the federal form of government for India with a uniform measure of autonomy and residuary powers to be lifted for provinces (Shah M. H: 2008).

The report of the statutory commission which was published in May 1930, recommended Federal form of government with devaluation of powers to the provinces, diarchy should be scraped and the provincial government should be responsible to the popularly elected legislative assembly. For NWFP a legislative council should be given but not a responsible government. Congress rejected this report and started civil disobedience movement under the leadership of Gandhi. While the Muslims reserved their reaction because it was not a final report and that things would be finalized after the Round Table Conference and then be enforced as the government of India act (Qurashi, 2009).

2.13. The government of Indian Act 1935

To come to a compromise, the Round table conference were held in London from 1930-32. The recommendations of the conference were published in a white Paper in March 1933. The English Parliament discussed its recommendations and was referred to a joint committee, on which representation was also provided to the Indians. The committee submitted its final report on 22 November 1934. This was not a unanimous report; nineteen members of the committee signed the Report while nine members opposed these recommendations. The report after discussion in parliament was passed in December and after the Royal assent on 24 Jul, 1935 become an act.

The 1935 act is very important to the Indo-Pak history; this provides a base for the future constitutions of both India and Pakistan. The act was divided into two parts. The act came in to practice except the part two which was about the federation; it was provided that it will be enforced when a particular number of princely states accede to the federation. Which never happened and this part never came into practice. For the first time in the Indian constitutional history powers were divided into three lists i.e. the central, provincial and concurrent lists, residuary powers were given to the GG. The central list was consisting of 59 subjects and the provincial list on 54 subjects. Both the center and the provinces could legislate on concurrent list but in case of a conflict, the central government had the overriding powers. This list was consisting of 36 subjects. Those were to be determined by GG that a particular power to be exercised by the province or the central government. The provinces were provided the councils of ministers. Their advice was binding on governors

except his discretionary powers which were to be exercise by his individual Judgment; and the NWFP were given full provincial status (Qurashi, 2009).

The system of diarchy was introduced on the federal level. The federal subjects were divided into two parts i.e. transferred and reserved. Defense, finance, foreign affairs and administration of tribal areas were in reserved part and the GG was the sole executor of them. All the other (transferred) subjects were provided to be exercise by him on the advice of the council of ministers who held offices and chose by him (Nazir, 2007).

The 1935 act giving autonomy to a number of provinces, which derives their authority directly from the Crown and not from the central government then the powers were distributed under the federal structure, under which the powers were demarcated between the center and provinces (Shah M. H, 2008). They were authorized to legislate and execute their respective laws. But there were also some restrictions on their powers. The governors were provided special powers e.g. his veto power, emergency powers, and his previous sanction was required for the introduction of some bills. Same was the case with GG. On administrative sphere the provincial governors were provided to act on his discretion and have some responsibilities including safeguarding the interest of minorities, to maintain peace and order of the province etc. the governor was responsible for these powers to GG (section 93-103, Nazir). Through 1935 Act British tried to strengthen its colonial hold (Chandio 2013; p, 8) because there was no such provision for a dominion status (Adeney; 2007). The Act was criticized by Quaid-i-Azam saying that “it was devoid of all essential elements and fundamental requirements which are necessary to form a federation” (Naseer, 2007). The act provided provincial autonomy on one hand and took it

on the other by providing overriding power to the GG and the Governor who were the representatives of the GG appointed by and were only responsible to him.

2.14. A decade of freedom struggle (1937-1947)

For the division of Indian subcontinent, the decade from 1937-47 is very important. Because after the elections of 1937 (held under the 1935 constitution) the whole scenario of Indian sub-continent changed and the Muslims demanded a separate country where they have no majority fear from Hindus. The discussion from 1937 till the end of the congress ministries is important to mention here because the later unfolding events are very relevant to these elections.

Elections to the provincial assemblies were held in 1937 for a total of 1,585 and in addition to these there were 186 seats in the upper houses of six provinces, viz., Bengal, Bihar, Assam, Bombay, Madras and the United Provinces. Congress won 702 seats out of a total of 1, 771 seats. In NWFP, congress with the help of Khudai Khidmatgars got majority in the provincial assembly. Out of 482 Muslim seats Muslim league won only 102 seats (Qurashi, 2009; p, 61-65).

After the elections the attitude of the congress changed completely, could be summed up from a letter written by Jawaharlal Nehru the president of the Congress to Muhammad Ali Jinnah in January 1937, i.e. 'In the final analysis there are only two forces in India today British imperialism and the Congress representing Indian nationalism... The Muslim League represents a group of Muslims, no doubt highly estimable persons, but functioning in the higher regions of the upper-middle classes and having no common

contacts with the Muslim masses and few with the Muslim lower middle class' (Gopal, 1976; p, 251). The League claim that they are representing the whole Muslim Community were challenged by the Khuday Khidmatgar in NWFP and in Punjab by Unionist Party (Adeny 2007; p, 90).

The Congress governments were not less than a nightmare for the Muslims. On 20th March 1938 the Council of All India Muslim league due to complains from all India passed a resolution and formed a special committee under the Raja Syed Muhammad Mehdi of Pirpur to collect information about the congress rule. The committee submitted its report on 15 Nov 1938. The report is balanced and well written. The report says that the Congress had adopted a "close door policy" and their actions contradict with their words. Pirpur Report and the two others i.e. Shareef and the Fazlul Haq Reports, giving a comprehensive account of Congress atrocities and their majoritarian tyrannical rule. Beef were prohibited for the Muslims including the sacrifices of Cow, Muslim were killed, families assaulted, their houses were burned, pigs were thrown into the mosques, and their businesses were boycotted (Qurashi,2009; p, 87-93). Socially politically and economically Muslims were tortured.

In 1939 the World War II broke out. Due to differences on WWII with the Britishers the congress ministries resigned (Ali, 1968; p. 233-34: Qurashi, 2009) and the League absorbed the day of deliverance. During this period the land for the demand of a separate country were prepared at the hands of the congress. Resolutions were passed; rallies and gatherings were arranged against the congress rule. Most importantly the two nation theory

were strengthened. Muslim nationalism went to the epic and they demanded the separate country in the annual session of Muslim league at Lahore on 23 March 1940.

2.15. Lahore Resolution 1940

Jinnah's presidential address to the annual session of All India Muslim League in March 1940 held at Lahore made the principle of separate nation state as their future and ultimate goal. He drawn a clear line of distinction between Musalmans and other communities.

He declared that the Muslims of India stands for the Independence of the whole of India not for a section. He said that if the Hindus would be free and the Muslims were to be their slaves, it is hardly a freedom worthy to fight. He told to the gathering that the Muslims are a nation by any definition, and that they must not be subjugated to the level of "Mass Subjects".

After the presidential address Fazli Haq introduced the historic resolution. The document says "that no constitution plan would be workable in this country or acceptable to the Muslims unless it is designed on the following principles, that the geographically contiguous units are demarcated into regions which should be so constituted with such territories readjustments as may be necessary, as in the North- western and Eastern zones of India should be group to constitute 'Independent states' in which the constituent units shall be autonomous and sovereign"(Qurashi, 2009; p, 111: Rabbani, 2012; p, 27). After the creation of Pakistan, Bengalis, Sindhes, Pashtoons and Balochs interpreted the Lahore

Resolution as having a confederation type government (Raza Rabani, 2012, p, 20: Faiz; p, 20, 273).

This time the Muslims did not demand provincial autonomy but a complete independence because they had experienced the Hindu majority government and that only independence from the Britishers will not liberate the Muslims. Eventually the destiny would be a complete and independent state with self-rule. Along with experiencing the Hindu majority, Muslim League were not able to form governments in the Muslim majority provinces, except Bengal and Sindh which produced coalitions, which were not entirely controlled by the Muslim League (Faiz, 2015; p, 20).

2.16. From 1940 to 1947

After the resignation of the congress ministries and the Muslim league famous Lahore Resolution 1940, both the major political forces did not accept any constitutional proposal which were against to their goals. The 7th Aug 1940 offer and the Cripps mission in 1942 were the efforts to the future constitutional changes but Congress and the League rejected them. Congress demand was the independence of the united India while the League demand was based on Lahore resolution, and nothing less could have satisfied them.

The viceroy announced elections to the central and provincial legislatures to be held in 1946 and it was made clear that the constitutional making body will be made on the basis of representations in these elections. League came out as the sole representative of the Muslims and so the Congress of the Hindus (Qurashi, 2009; p, 201-03).

After WWII the British government was serious to give independence to India. Election were held in 1946. Muslim League used partition of British India and the creation of Pakistan as their election manifesto while Congress contested for united India. The results justified Muslim league demand for Pakistan in shape of overwhelming majority of the Muslim seats.

British sent three men, the Cabinet Mission consisting of secretary of state for India (Lord Pithick--Lorence) the president of the Board of Trade (Sir Stafford Cripps) and the first Lord of the Admiralty (A.V.Alexander). The mission proposed a three tier federation for India with a weak central government only with the subjects of foreign affairs, defense and communications; residuary powers were provided to be given to provinces. Three groups of provinces were proposed. A, B, and C. Group A would consist of six Hindu provinces, group B and C will contain the North West and the North East provinces respectively (Nazir, 2007; p,83-84). the provinces were given the choice that after initial ten years by a majority vote they can reconsider the relations with the federation. (Qurashi, 2009; p, 217-18). It was made clear that the plan should be accepted or rejected in total and if any party rejected, the government will move ahead with the other party (Nazir, 2007; p,84).

Muslim league accepted the plan because they were sure about autonomy and seen the creation of Pakistan after ten years: Congress rejected the plan because they were opposed to the divided India. Wavell postponed the formation of interim government and did not call the league according to the plan to form the government. Congress were insisting on its interpretations of the plan, which amounted resentment from the league and

they decided to withdraw their first decision (Nasir,2007; p,84-85: Qurashi,2009, p,224-25). Congress was unhappy on the recommendations of Cabinet Mission Plan because it was consisting on too much consociational measures for the Muslims (Adeny, 2007; p, 65).

British government realized that the only possible solution to the Indian problem is to divide British India. For the purpose his majesty government recalled Wavell and appointed Lord Mountbatten as the new viceroy. The British government decided to grant independence to the Sub-Continent till Jun 1948, but they realized that due to anarchy, violence and disorder they can't hold till that long. (Gopal, 1976; p, 326) Mountbatten announced the plan on third Jun for the partition of British India into two states. The plan was passed by the British parliament in July. The powers were transferred to the two newly born states Pakistan and India on 14 and 15 August 1947 respectively. The constituent assembly were divided into two and given the power to adopt the 1935 Act as the interim constitutions with necessary changes.

2.17. Islamic Nationalism or the Islamic Factor and Independence

Muslims ruled India approximately for 650 years but they never felt that they were in minority. Baber Ayaz advance the arguments that when the people of sub-continent lost the war of Independence and the Britishers started democratization of the British-India the Muslims for the first time felt that they are in minority and if the democratic system of "one person one vote" is going to prevail then thy will be subjugated to the permanent Hindu majority. He further states that this was right but was too much exaggerated.

Baber Ayaz arguing that after loss in 1937 elections the All India Muslim League (AIML) started the propaganda of Islamic nationalism without any hesitation. In Punjab the Muslim league (ML) attracted Pirs, Murshids and the related community who had great influence and followers in these regions and among the rural elites. He says that the theory of Islamic Nationalism was wrong which latter on proved in 1971 with the separation of East Pakistan. Sindh was the first province to pass a resolution in favor of Pakistan, the Sindhes did not want the centralization of powers in Mumbai and the rural elites were afraid of the Congress socialist policies; in KP the situation were uncertain, the politicians were divided, the Khudai Khidmatgars of legendary Bach Khan boycotted the referendum because they were of the view that they had won the elections in 1946 and that a third option be provided in the referendum: in Balochistan Qazi Muhamad Essa was the leader of the ML, the only leader who supported the cause of Pakistan was Nawab Akbar Shabazz Bugti, there were no threat to him but the reality is that he was interested for in his previous independent status which he had lost to the British government in a contract; that was why the different provinces supported the cause of Pakistan due to their own vested interest.

From 1947 to 1956, the Colonial Legacy

Phase II

Federalism in Pakistan

“It is true that politicians and technocrats fear to take this path, since they have innate dread of ceding autonomy to the provinces. Yet, even the road is rough and the journey may be tourours, it is the right way ahead for our country”. (Raza Rabbani)

Pakistan's social contract were shaped by its colonial legacy, its historical fears of the future, troubled constitutional history, struggling ethno-political identities against each other on power pie and the state institutions which shaped the power structure (political institutions & distribution of powers). In the post-independence era socio-economic inequalities between provinces and regions converted with the passage of time to grievances, which generated both violent and non-violent struggles for political identities and for the socio-political and economic equality (Faiz, 2015). These conflicts and grievances weakened the social contract; due to these tensions Pakistan lost Bengal in 1971.

Pakistan parted its ways from united India in 1947, literally the new state was not possessing government institutions and it has to build it from the scratch (Adeney, 2007; p, 62). At the time of independence Pakistan faced internal insecurity as a plural society with different ethnic identities, leaving in their core ethnic areas and the separation of two wings by a thousand miles and India sitting in between, further aggravated the problem (Nasir, 2007); as well as externally dependent over India for its economic needs and other issues which have extensive ramifications over state institutions and the future unfolding of events (see, Adeney, 2007).

On the other side the critical to the state views, scholars argue that provincial autonomy were the major element behind independence, critical to the widely accepted view of two nation and religious differences; after the establishment of Pakistan, the promises for provincial autonomy were not fulfilled and small provinces were subjugated to the majority of Punjabi and Urdu speaking elites (Jami Chandio, 2013; p,1). Federalism

were a suitable form of government but centralization was accompanied by non-participatory government" (Nazir, 2008; p, 2); One Unit were formed in West Pakistan, negating federalism to the smaller provinces (Chandio, 2013; p, 5). Moreover, Chandio argue that "not only does one province dominate decision making process, military and bureaucratic appointments, and the state coffers, but smaller provinces have suffered destructive cultural, linguistic, and economic policies" (2013; p, 5).

The people of North-West Frontier Province voted for khudai Khidmatgars in 1937 and 1946; the "two nation theory did not impress Pakhtoon nationalists"; they approached to the GG that to give a third option of not joining India or Pakistan but to vote for "Pukhtunistan" their demand were neglected, however Muslim League succeeded to win the referendum before independence (Mushtaq 2009; p, 5-6).

Both Pakistan and India inherited the vice regal system from its colonial masters. India in the presence of charismatic and seasoned leadership converted that into a viable federal political system while Pakistan presenting the one eighty-degree opposite angle (Nasir, 2007). Under the Indian Independence Act, 1947, Pakistan adopted the Government of India Act 1935 with certain changes as the interim constitution of Pakistan; which had "strong and assertive center" (Rizvi, 2006; p,10) with unique powers for Governor General and Governors. The federation of Pakistan was established through Pakistan provisional constitutional order (khan, 2009). Federalism were formed with five major ethnic communities i.e., the Bengali, Punjabi, Sindhi, Pakhtoon and Balochs with federally administered tribal areas which was governed completely different from the rest of Pakistan (Adeney, 2007; p,64). Though federalism remained the essential part of every

constitution in Pakistan but remained elusive in practice. In the words of Sajjad Naseer throughout “history Pakistan experienced “guided”, “controlled”, “indirect”, “remote controlled”, or “military democracy”” (2007; p,2).

Almost a decade (1947-56) Pakistan failed to make its constitution. (Nasir, 2007; p, 7). The refugees problem, the Kashmir Issue, Jinnah’s death in 1948 followed by the assassination of Prime Minister in 1951, and the absence of seasoned leadership instead of greedy and selfish politicians, the absence of homogeneity (though Bengal were homogenous but the rest of Pakistan were multi ethnic) were the hindrances along with others in the formation of constitutions. After partition the constituent assembly of Pakistan was dominated by Muslim League at least till its dissolution in 1954; in this period fractions were emerged in Muslim league (Adeney, 2007; p, 64). The dissolution of “Dr. Khan’s ministry” in N.W.F.P and the emergence of Jagto front in Bengal” after elections of 1954 in East Pakistan created tension and mistrust between the center and provinces over provincial autonomy (Jahangir, 2002). The first significant step toward the constitution of Pakistan was the Objective Resolution passed by the Constituent Assembly in March, 1949 (Khan, 2009). This Act laid the basic structure and the broad outlines of the future constitution. Islamic ideology and the principle of federalism were adopted as the future constitutional foundations.

It is also argued by Kundu and Jahangir (2002) that if the constituent assembly of the newly created state wanted they could reduce the powers of the central government in the interim constitution. But they did not and this ruined the hopes of nationalist and

provincial leaders; which created mistrust, tension and grievances. Slowly and gradually they led to the feelings of alienation in smaller provinces. (Faiz, 2015)

In each of the constitutional draft federalism were recommended. But the balance between East and West wing and the center and provinces remained the epic challenges. When the constituent assembly repealed the PRODA (Public and Representative Officers Disqualification Order) Act and reduced the powers of the Governor General, by amending section 9, 10, 10A, and 10B of 1935 Act; Governor General reacted with hard stroke by dissolving the constituent assembly in the pretext that it has lost the confidence of the public (Khan, 2012; p,78-80). The second constituent assembly consisted completely different from the first one, with the emergence of United Front in East Pakistan. To solve the representation and power distribution issue under the West Pakistan Act 1955, four provinces of West Pakistan were merged in to One Unit. The supporters of this political development argued that with the simplification of federal structure, tensions would be released among the four provinces of West Pakistan. This development produced more heat than energy. Somehow initially provincial assemblies including N.F.W.P adopted resolutions in support of One Unit (Khan, 2012; p, 92-93) hoped that it will strengthen the federation but ultimately the pressed communal feelings burst and the demand for provincial autonomy once again started with new zeal. Adeney (2007, p, 78: Faiz 2015; p, 24) argue that "...they were short sighted in not accommodating these linguistic groups using consociation formula". This was to counter the Bengali demographic dominance and with the capital in Lahore to consolidate in a Multiethnic province the Punjabi dominance. This policy intensified the feelings of "them vs us". Particularly NWFP, Sindh and

Balochistan opposed the One Unit because of their feelings of further political and economic alienation (Nazir, 2001).

The constitutional crises came to an end and the first constitutions of Pakistan were enforced on 23 March 1956. Under this constitution parliament consisted of 310 members equally divided between the East and West wing under parity formula among them 10 seats, five each for both Wings were reserved for women. Kundu & Jahangir (2002) argue that parity was not adopted among the West Pakistan's Punjabi, Pashtoon, Sindhi and Balochs, seats allocation but were provided on population basis. Grievances of these communities simmer the nationalist sentiments and presented a challenge for the administration (Rabani, 2012; p, 35-36). Weightage were given in the parity formula to the western heterogeneous Wing (Adeny, 2012; p, 72).

Article 61 and 94 of the 1956 constitution define separate federal and provincial consolidated funds respectively in the same manner (for details see, Rabani, 2012; p, 60-61). In Article 106 three legislative lists has been provided i.e., federal (30 subjects), provincial (94 subjects), concurrent (19 subjects). Residuary powers were left with the provinces and in case of any difference over concurrent subjects the Centre's view were given precedence. Under Article 118 National Finance Commission (NFC) were formed. It is to give recommendations to the president over the resource distribution between the center and provinces. While article 129 provide the "dispute resolution" mechanism between the central government and provinces and among provinces, it says that if a dispute is not in the jurisdiction of supreme court than any party can refer to the Chief justice, He will appoint a tribunal which will decide the issue. Article 199 provide for

National Economic Council (NEC) to advise the federal government. (Rabani, 2007; Khan, 2012: p, 103-5). Urdu and Bengali were declared national languages. But only recognition is not enough to assimilate diversity; the important thing is to remove the discriminatory measures (Adeney 2007; p, 144).

Unlike the government of India Act 1935, the 1956 constitution does not possess any provision through which the central government can intervene in to the provincial matters on the ground of national interest. However, there were two such situations one in case of the authorization by the provincial legislature and seconded in case of threat to the economic life of Pakistan or security (internal or external threat), the proclamation of an emergency (Khan, 2012; p, 104).

The 1956 constitution proved to be a weak document, (produced political instability) which was the result of compromises and concessions. The first constitution lasted far only two and a half years with political instability on its epic. Four ministries in only two years were sworn including Chuadhri Mohammad Ali, Suhrawardy, Chundrigar and Feroze Khan Noon: these ministries replaced each other respectively. But no one survive in the “political cut throat game”. The downfall of Muslim League and the emergence of high bripe political parties (lack of institutionalized political parties), One Unit, representation in national assembly, Separate or Joint electorates, a weak constitution and most importantly the selfish and parochial Punjabi and Muhajir power elites were the main causes of political instability. Lack of proper elections, undue interference by the central government in provincial assemblies and interference by the head of the state in

political parties, provincial ministries and lack of organize and discipline parties and bad character of politicians were the causes of constitutional failure (see Khan; p,139-30).

2.18. Ayub Era and His legacy (1958-71)

When the pressure of political instability and holding of general elections (never happened under 1956 constitution) mounted, on 8 Oct 1958, power high sparrow president Iskandar Mirza proclaimed Martial Law with Ayub Khan as Chief Martial Law Administrator (CMLA). Every legislative assembly was disallowed and all political activities were banned. The 1956 constitution was once enforced by Him (Mirza) in 1956 as GG and were demolished by him as President in 1958. This was a setback to federalism particularly to the relationship of East and West wing (Kundi & Jahangir; p, 26). Once again Judiciary came to the rescue as it did to legalize the *de facto* martial law, as it did in Tamizuddin Khan case and Usaf Patel case under the Doctrine of State *Necessity*; this time the same Chief Justice relying upon Huns Kelsen's theory (General theory of Law and State) (for details see, Hamid Khan, 2012). These acts question the integrity and independence of Judiciary which is a basic component of federalism.

Ayub Khan broadened his support base through promulgation of Basic Democracy Order, 1959 (Faiz, 2015). This is a comprehensive system, works from below and going to the top. The roles of local government (Basic Democracy or BD's) were increased to electing the members of provincial and national assemblies. They were used for the referendum, to give Ayub Khan the mandate to form the new constitution and to elect him as President for the first five years' term. In which he was successful, securing 95.6% of total (80,000) (see, Khan,2012).

In the chairmanship of the former Chief Justice of Pakistan, Justice Shahabuddin, in February, 1960 Ayub Khan appointed a constitutional commission, to present its report about the new constitution and investigate the failure of parliamentary democracy. This constitutional commission worked hard and submitted its report on 6 May, 1961 with the hope that it will be considered seriously. But when the constitution of 1962 appeared, the commission report was largely ignored. This was a “brain child” of Ayub and representing his philosophy about the governance system in Pakistan (Kundi & Jihangir; p, 27).

Unlike 1956 constitution 1962 constitution concentrated all powers in the hands of president as the head of the state and head of government. It retained One Unit and parity between the East and West Pakistan. Federalism received a serious jolt as important powers were given to the central government. Unlike the previous constitution the power distribution method was simple as only the central list was provided (including 49 items) and all other subjects were left to the provinces. However, in case of threat to national security, economic development or achievement of uniformity in any respect and at any part and matters of national importance, the center was given overriding powers. There were also provisions for the appointment of NFC and NEC. It was mentioned that the NEC will be used to remove disparities among regions and to ensure the effective use of resources. In these times Judiciary in the capable hand of A.R Cornelieus remained highly independent and retains its integrity (Khan; p, 138-47). The constitution of 1956 and 1962 under the one unit neglected federalism in West Pakistan (Rabani 2012; p, 12)

Though Ayub’s era was the decade of economic development and political stability, but on the cost of East-West Wing relationships (economic inequality and huge disparities);

which broaden the gap between the two wings as unequal resources distribution were accompanied by centralization of powers in the hands of Panjabi's and Muhajirs, which created ethnic bias (Adeney; p, 78-79). Through economic development national unity can be achieved but through equitable and just distribution of resources (Nazir, 2008; p, 2). The case in Pakistan is totally different, no heed was paid to the resource origin provinces and areas, these sentiments created violent movements, as a result many areas become "no go areas" (Chandio 2013; p, 5-6).

The revival of political party's act, 1962 restored the political activities and political parties started to reorganize their organizations. A faction of Muslim League (Conventional) invited Ayub Khan to accept the leadership, which he accepted. With the revival of political parties, they started to give tough time to the CMLA. The opposition annoyed attitudes made him to make some concessions in constitution. The Combined Opposition Parties (COP) in 1964 presidential elections troubled Ayub, but due to the use of government machinery COP did not succeed. Tashkent declaration (after 1965 War with India), was exploited by the opposition and with charismatic leader of Pakistan People Party leader Zulfiqar Ali Bhutto who parted his ways with the president on Tashkent declaration added to the sufferings of the government. From Bengal the lack of defense at the time of 1965 war were exploited by Awami League and to counter the West Pakistan dominance Mujeeb-ur-ahman presented the Six point agenda with fully autonomous provinces and the center with only defense and foreign affairs (for details see, Hamid Khan 2012; p, 179-181). Mujib were arrested (then leveled in Agartala conspiracy) for anti-state activities against which demonstrations were broke out (because the demand found foots

in alienated Bengali's) and the state machinery fall in grave difficulties (Khan, 2012; p, 179-195). Demonstration of political parties for the restoration of fully democratic government in west wing and for autonomy in east wing went out of control. Ayub handed over government to the Army Chief Yahya Khan. He enforced Martial Law, abrogated the constitution, and dissolved national and provincial assemblies (Khan, 2012). It is argued by Raza Rabani the Chairman of the senate that under the 1956 and 1962 constitution Pakistan "was ruled by a Unitary set-up" (2012; p, 1).

CMLA announced the dissolution of One Unit and announced elections. East wing with 55% of population and 25% of land area were balanced through parity and One Unit but Yahya khan with no public mandate unilaterally disallowed the only province of West Pakistan into the previous four. Full provincial status was given to Baluchistan (Kundi & Jihangir, 2002; p, 28). The annulment of One Unit, which was against the understanding between the East and West wing, ultimately resulted in succession of Bengal from Pakistan. Elections for national assembly were held in Dec 1970. This was the first nationwide election held on the principle of "one man one vote". Awami League (AL) fought the elections on six-point agenda and won 167 out of 169 allocated seats for East Wing. On the other hand, PPP won majority (81 seats) of seats in West Pakistan (Khan 2012; p, 204-209). In NWFP National Awami Party (NAP) led by Wali Khan won 12 seats, Qayyum Muslim League followed with 10 seats (Khan 2012; p, 208).

According to the plan the resulted government would make constitution within 120 days. It was the right of the Awami League to form the government and to make the constitution but the West Pakistani Politicians was not prepared to just hand over power to

the Bengal based party. Awami League was intended to give autonomy to the East Pakistan on the basis of six points agenda (Khan 2012; p, 212). Awami League (AL) was in favor of federal system with maximum provincial autonomy, they wanted confederation type arrangements and they were not in favor of secession on the first place (Adeney, 2007; p, 158). AL in East Pakistan and NAP in West Pakistan were the in favor of loose type of federations or a confederation (Faiz 2015; p, 178-79). The national assembly session was postponed by the CMLA on the ground to give time to the political parties of both wings for a compromise but they were not ready to lesson one others view. It was actually to mounting presser on Awami League not to make “compromise over six point” (Kundi & Jihangir, 2002; p, 28). ML wanted discussion in parliament while PPP was in favor of back door settlement, both were not agreeing to one another due to fear (discussed later). Awami League resorted to violence, when Islamabad did no honor their mandate (Kundi & Jihangir, 2002; p, 28), the army came into action. On the pretext of Hijacking Indian Airline, India started helping separatist in Bengal called *Makti Bahini* and started war against Pakistan. After a full fledge war on 16 Dec 1971 Pakistan army surrendered, Bangladesh came into being and the dream of peaceful transfer of power and federation shattered into winds. A main stream writer and politician says about the relationship between the two wings that the distance between the two provinces pushed the ruling elites towards centralization of all meaningful powers in its own hands (Rabani 2012; p,21). Distance cannot be an excuse but this was the arrogance, self-interest priority over national and parochial thinking that after the first general elections they were afraid of revenge by Bengalis in return of their ethnic bias.

Now the only men who command the political authority were Bhutto and his PPP, having majority seats in National Assembly assumed power as Civilian Martial Administrator. On the announced of Bhutto, the majority parties NAP and JUI form governments in NWFP and Baluchistan. Soon after PPP started to make troubles for Wali Khan as he termed him disloyal to Pakistan and his NAP (Adeney, 2007). After independence Pakhtoon nationalists leave behind the demand for “Pashtunistan”; after “tripartite accord in 1973 over the formation of constitution, Pashtoon nationalist Abdul Ghafar Khan declared that “Our demand for Pashtunistan has been fulfilled” (Ahmad, 2009; p, 283).

Pakistani society ever remains a polarized one, which alienation ethnic groups and did not accommodate ethnic and cultural diversity and did not learn from its history (Samad, 2010: Ahmad, 2009). Bhutto supported rival parties in small provinces, ultimately dismissed the government in Baluchistan and in NWFP the coalition resigned in protest (for details Hamid Khan, 2012; p, 259-61). In 1975 NAP were banned on the charges of anti-Pakistan activities (Kundi & Jihangir, 2002; p, 28). It is argued by Hamid Khan that the central government exploited the resources of NWFP and Baluchistan to give benefit to Punjab and was neglecting the legitimate grievances of Pakhtoons and Balochs (p, 261). In early 70s language crises raised, actually Sindhes feel insecure in the political and administrative system of Pakistan. Their insecurity was from the Muhajirs in Urban Sindh and the Pakhtoons and Punjabi migration, particularly the educated Muhajirs population based in urban Sindh who were exploiting the federal jobs quota for Sindh. It was Bhutto

whose quota policy doubled the native Sindhes in “civil and business elites” (Adeney, 2007; p, 161).

The establishment dominated by Punjab and Urdu speaking Muhajirs are not ready to accept that Pakistan is a multi-cultured state consisting of five major ethnic groups based on linguistic diversity. First Urdu, which is only the language of three percent population were given the status of national language instead of Bengali which was a language of more than fifty percent, and it was not a big deal to adopt more than one language as national languages as India did: and then the Bengalis accepted the one unit and parity formula as their language were provided the national language status. After the 1970 elections the leadership transferred to the NWFP and Balochistan which was not accepted to the Punjabi and Muhajir dominated establishment, third six points of Mujib were the result of their grievance’s, which is evident from the distribution of economic resources. From 1950-70 the total government spending are \$30 billion, in which the west Pakistan received 21.49 billion or 69 percent, and east Pakistan received 9.45 which is just 30 percent of the total. During these years 80 percent of foreign assistance were spent in west Pakistan and the 70 percent of developmental budget were also spent in west Pakistan. The major industries in Bengal were that of west Pakistani investors all these things resulted in six points and eventually the separation of Bangladesh (Babar, 2015).

Phase III

The Era of Federalism

The 1973 constitution were the result of consensus among the major political parties including PPP, Awami National Party (ANP) and JUI (Asma Faiz, 2015; p, 24).

This was a paradigm shift in favor of federalism; it tried to accommodate the majority ethno-nationalist identities with more bargaining powers but ignored the “sub-ethnic identities” in these provinces (Urdu, Hindko, Pashto) (Rabni, 2012; p, 1-2: Faiz, 2015; p, 17-18,168). This constitution was less centralized than the previous two constitutions (Adeney 2007; p, 158) but at the time of Bhutto mainly remained centralized (Kundi & Jihangir, 2002; p, 28).

After the debacle of Dhaka Punjab emerged as the largest province, small provinces demanded more provincial autonomy due to the fear of “majoritarian rule” and ethnic biasness (Faiz, 2015; p, 8: Samad, 2010) before separation of Bangladesh, the establishment was not ready to the resource distribution on population basis but when Punjab emerged as 56 percent population of the total, resource distribution started on population basis.

With a new power arrangement, the new constitution was consisting of two legislative lists i.e. the central and concurrent lists, residuary powers were given to provinces (Hamid Khan, 2012; p, 277). The central list was consisting of two parts; part I were exclusively central while part II were the matter which were about common provincial interests, for them Council of Common Interest (CCI) were provided for “conflict resolution” and representation to all provinces were given; after the failure of One Unit it was a better mechanism (Faiz 2015;146). Small provinces i.e. Sindh, KP and Balochistan on account Concurrent list, the Central Government interference led to the demand of removal of this list; though Bhutto was agreed that after ten years’ concurrent list will be removed but that did not happen until 2010 (Faiz; 2015; p,28). For the first time in Pakistan a bi-cameral

legislature (national assembly and senate were provided for the federation; to balance Punjab demographic dominance but in reality with no powers). The National Assembly elected on population bases while in the senate equal representation were given to all provinces regardless of population and area as a balancer to the national assembly, but it is worth mentioning here that the Senate have no financial powers (Faiz, 2015; p, 17, 25: Khan, 2012; p, 277-279). The little role of the senate as long as the central and the absence of provincial list are concerned with dominance of Punjab in lower house and bicameralism itself did not guarantee equality in respect of resources distribution or representation (Ahmad, 2010; p, 20: Faiz 2015; p,27). National Economic Council and National Finance Commission were also formed to resolve inter-provincial issues with the central government. Practically few meetings make NEC weak in practice (Nazir, 2008; p,13) resource distribution in Pakistan always remained a source of contestation, through NFC resources are distributed systematically, the share of the provinces were increased from 28% to 45 and after 18th amendment the provincial share has been increased to 57% and new criteria's i.e. poverty, revenue generation, and inverse population density were included to the formula (Faiz 2015; p, 30). Due to the pressure from regional party's Fiscal federalism were more tilted towards decentralization and a "share out of resources between center and provinces" were provided but the constitutional federalism is countered by "bureaucratic centralism" (Faiz, 2012; p, 18). For economic development provinces are dependent on the center and have subjective powers; along with these the resource ownership is a major issue between the center and provinces (see the coming chapters) (Nazir, 2008; p, 12).

Zulfiqar Ali Bhutto's election manifesto includes "socialism is our Economy" for the purpose he started to nationalize public utilities, introduced reforms in Bureaucracy, land reform etc but along with his lack of tolerance for his political opponents his kind of federal politics alienated the small provinces including the former NWFP (now KP) and Balochistan. His 3rd and 4th amendment to the constitution curtailed the power of Judiciary and included to the central government arsenals for political victimization; also banned NAP in 1975 due to the fear of charisma of Wali Khan (Khan, 2012; p, 293-294).

Bhutto was confident about his victory in the coming elections; he even hired a constitutional expert to form a presidential constitution for Pakistan; he announced elections to be held in March 1977; nine opposition parties formed the common alliance called Pakistan National Alliance (PNA). PPP won more seats than expectation: along with independent candidates; PPP won 81.5% seats in national assembly (Khan, 2012; p, 308).

PNA alleged that elections have been rigged on a large scale and started mass movement to press Bhutto to resign and to hold new elections. Dialogues between the two did not produce a compromised. Unrest in the country resulted in another Martial Law imposed by CMLA Gen Zia-ul-Haq to fill the space created by the political parties. This time the constitutions were suspended and were announced that new elections will be held but the CMLA went back on his promise and delayed the elections. Bhutto were latter on prosecuted in a death case and were hanged on 4 April 1979. Judiciary were humiliated by taking new oath, those who did not were dismissed.

Successive military interventions in politics weakened political parties and give a setback to the democratic-federal system (Asma Faiz, 2015; p, 8). Zia on mounting

pressure decided the revival of 1973 constitution but with more powerful presidential powers; he also decided to take first a civilian face; for the purpose he used Islam and arranged a referendum; as expected the results were in his favor. After referendum elections were held in Feb 1985 for the national assembly on “non-party basis” resulted with no party positions Junijo were elected as Prime Minister.

2.19. 8th Amendment

Regarding the 1973 constitution “Revival of the Constitutions of 1973 Order” (RCO) was issued in 1985. Significant changes were brought to the constitution through 8th amendment passed by the national legislature; made RCO and some other presidential ordinances part of the constitution. It weakened the position of the prime minister and the president became independent in exercise of his powers like 58(2) (B), which is regarding the dissolution of the national assemblies, the same powers were given to the governors. Zia got what he wanted due to the vulnerable position of Junijo government. Due to this amendment Junijo government, two terms of PPP and one of PML (N) in 1996 were dismissed through 58 (2) (b); brought once again political instability. Independent nature of Junijo led to his demise. During the two terms of PPP and PML (N) the federal government always tried to destabilize the provincial government and mold the situation in party’s favor. The law and order situation in the country deteriorated day by day particularly in Karachi and Balochistan. After Zia’s martial law Judiciary suffered many ups and downs and played a very controversial role because of political appointees and lack of separation between the Executive and the Judicial branches; the restoration of Nawaz government, Justice Sajjad Ali Shah Case, and appointment of Judges Case are important examples regarding the role of Supreme Court. In 1990s political parties went to

extremes; Executive and Judiciary were at logger head; at the time hearing the contempt case against PM and others, PML (N) stormed Supreme Court to disrupt it's working.

Due to the lack of adoption of an organic political arrangement in Pakistan the inter-regional, inter-provincial and the grievances of different ethnic groups resulted in the process of social exclusion on different levels (Ahmad 2010; p, 21), different magnitude in different times and places within the country. Multiple layer identities in Pakistan are stick to their native and their preliminaries, instead of loyalty to the state: these are the result of extensive corruption, maladministration, and parochialism in politicians (and other elites) and from different ethnic groups most importantly forgetting the purpose of the creation of Pakistan. Small provinces hold the view that they are underrepresented in military and in civil bureaucracy while Punjab command majority in these important institutions e.g. in 1971 the share of 54 percent population (east Pakistan) in central civil services were 16 percent, in foreign services 15 percent and in army out of 17 generals only one were Bengali (Babar, 2015, p. 68).

After the general elections of Feb 1997 in which PML (N) got two third majority in the national elections; they decided to get rid of 8th amendment, brought 13th Amendment and passed it hurriedly (Khan 2012; p, 451-52). This amendment omitted the discretionary powers of the president and governors, most importantly the dissolution of assemblies and appointments on important posts (Khan 2012; p, 451); once again president became just a figure head of the state. To stop flour crossing and horse trading amendment fourteen were passed; in 1993 in Punjab and in 1994 in NWFP, governments were thrown through defection (Khan 2012; p, 452).

On the demand of rename NWFP as Pakhtoonkhwa, Awami National Party (ANP) deserted the government; bad law and order in Karachi, humiliated judiciary, differences with army, failure on economic front, alienation of small provinces were some of the features of Nawaz second term. After the Kargil episode the relations between army and Nawaz government went to the lowest ebb. On 13 Oct 1999 General Pervez Musharraf removed the government and suspended the national and provincial assemblies; constitutions were also held in abeyance, and Provisional Constitutional Order (PCO) was proclaimed (Khan 2012; p, 279).

Musharraf enforced Emergency instead of Martial law and assumed the office of the Chief Executive; he restricted the Courts that they would not pass any kind of ruling against emergency and the Chief Executive or any his designated authority. He announced a seven-point agenda including “strengthening of federalism by removal of inter provincial disharmony”, revival of the economy, devolution of authority and others.

2.20. LFO and 17th Amendment

Musharraf arranged a “sham” referendum (Rabani, 2012; p, 122) to legitimize himself in the court of the masses. After assuming the office of the president, he instituted a Legal Framework Order (LFO) 2002. The number of seats in national assembly were increased, 58 (2) (b) (the dissolution of national assembly by president on his discretion) were reintroduced and article 212 (2) (b) regarding governors, prime minister’s advice was not anymore binding on the president, (Article 101 (1)) can appoint Governors, army chief and services chiefs (Article 243 (3)), chief election commissioner (Article 213) and other important persons on his discretion (Rabani 2012; p, 123-126). Once again presidents

become the sole beholder of powers and could act independently (Article 260). Added to Article 63 about the disqualification of a member; 140 (A) is about local governments to be introduced.

17th constitutional amendment validated LFO, and other presidential order along with some other changes in constitution e.g. the national Security Council were omitted which was included in LFO, it has changes regarding Judiciary and many others. After this constitutional amendment, parliamentary system become quasi- presidential.

Like his predecessors Musharraf held Local Government elections in 2004 throughout Pakistan. It is an irony that the democratic governments in Pakistan were too shy to hold the Local Government elections but on the other hand the army governments utilized this for their support.

Once again a divided Judiciary played a very controversial role, Chief Justice (CJ) Saeed-uz-Zaman Siddiqui and some others refused to take oath under the PCO, while others led by Justice Irshad Hassan Khan took the oath; Hassan Khan as the senior Judge were appointed as the Chief Justice, who legitimized the Musharraf take over while leading a SC Bench; after his retirement he was rewarded with the office of the Chief Election Commissioner (CEC) (Khan 2012; p, 506).

Judiciaries were humiliated in Musharraf era. Due to judicial activism, CJ Iftikhar Muhammad Chaudhry was restricted from working and a reference against him were filed to the Supreme Judicial Council; followed by lawyer movement in support of CJ. Once

again Musharraf proclaimed emergency on 3rd Nov 2007 and promulgated PCO, latter on upheld by SC (Khan, 2012).

General Elections were announced by Musharraf, to be held on 8 January 2008. Election campaigns were started by political parties; on 27 Dec 2007, while addressing a public gathering Benazir Bhutto was assassinated at Rawalpindi Liaquat Bagh. Elections were held on 18 January; the results came in favor of PPP.

PPP and PML (N) reached to a settlement on restoration of Judges and to restore the 1973 constitution; they form coalitions government, PPP government used delaying tactics in restoration of judges; lawyers started the restoration of Judiciary movement again and held a long march resulted in a failure. Somehow Judiciary was restored but PPP lose its Coalition with PML (N). PPP and PML (N) once again resumed talks, they prepared a charge sheet against Musharraf for impeachment; due to the fear of being impeached, Musharraf decided to step down and on 18 Aug while addressing the nation on TV and Radio he announced his resignation (Khan, 2012; p, 536).

The “Charter of Democracy” signed in London in 2006, both major political parties PPP and PMLN (N) agreed to restore the free 12 Oct 1999 constitution and to restore the federal parliamentary system through an amendment to the constitution. After hard working, the 18th amendment bill was presented in the national assembly and passed on April 18, 2010.

Along with other issues the water distribution between Sindh and Punjab produced tension, both claiming that ISRA (Indus System River Authority) not providing its due

share; the issue of Kalabagh Dam also produced better heat, Punjab and federal government in favor of its construction while the other three provinces had passed resolution against it (Faiz, 2015; p, 32-33: Nazir; p2). The threat of terrorism, alienation of Balochs and Pakhtuns and resource distribution in Pakistan are the issues, which needs government attention; the 7th NFC award were a step in the right direction followed by 18th amendment (Faiz, 2015; p,46-48).

Conclusion

Pre and post-independence history of Pakistan is a better story of religious, ethnic-sectarian and political tensions. During the course of history power relied with Punjabi and Muhajir power elites having the same thirst and hunger for power. Federalism in Pakistan ever remains dysfunctional. This chapter presents a very brief account of constitutional, political and economic history full of surprises and expected institutional moves. Federalism in Pakistan remain in embryo; power elites are doing the same dirty politics of “divide and rule” as did by the colonial masters. The ethnic bias, dominancy of Punjab in every elitist institution and the unjustifiable and unequal distribution of resources alienated the smaller provinces, which boiled the ethnic issues. There is huge “gap between theory and practice”. Though Pakistan is a federal state in theory but practically powers resides with few. First due to the internal and external fears Pakistan adopted the 1935 act as an interim constitution with centralization, which lasted for NINE years followed by 1956 and 1962 constitutions with centralized arrangements. After the cessation of East Pakistan, on the issue of provincial autonomy followed by 1973 constitutions: which passed the stony way of 8th and 17th amendment and got restored by 18th amendment.

Chapter III

History, Natural resources and demographic profile of Khyber Pakhtunkhwa

“... All those angularities of majority and minority communities...regards Muslims you have Pathans, Punjabis, Sunnis, Shia’s and so on...will vanish. Indeed, if you could ask me this has been the biggest hindrance in the way of India to attain freedom and independence and but for this, we could have been free people long ago....” (11 Aug, 1947: Form Quaid-e-Azam speech in the National Assembly)

Introduction

Khyber Pakhtunkhwa (KP) formerly known as N.W.F.P (North West Frontier Province), situated to the North West of Pakistan (as its former name suggest). Geographically its position remained very important, as to its western neighboring Federally Administer Tribal Areas, to the northwest the Pakhtoon ethnically dominated country Afghanistan, to its northeast is Gilgit-Baltitan, Azad Kashmir lies to the east and Punjab border the province to the southeast. To the south a small chunk but stretch from south to north are the Federally Administered Tribal Areas (FATA) and below to FATA there is Balochistan but it does not share boarder with KP (About Khyber Pakhtunkhwa, Aug, 2015). According to the 1998 census, KP total population was 17 million approximately with a ratio of 52% and 48 % male and female respectively. The population of Pakistan was 191.71 million in 2015; it was estimated 188 million in 2014 with the population growth rate of 1.92 in 2015 as against 1.95 in 2014 (Division E, 2014-15). In 2016 the population of KP has been estimated 27.5 million and the province stands as the third largest province by population in Pakistan: area wise KP is the fourth largest province

spread over 74,521 sqkm (MC, 2016). At the time of independence NWFP was consisting of the settled districts, FATA, PATA and the princely states of Swat, DIR and Chitral.

Khyber Pakhtunkhwa remained as a gateway entrance to the Sub-Continent from the West. The conqueror from the West, passed through the Pakhtoon territories to enter the rest of the Cotenant. On different occasions these conquerors brought with them different ideas and cultures, which flourished and developed great civilizations but were shattered with the passage of time ; the glimpse of rich cultural heritage can be seen in the Gandhara archaeological sites including Gur Katree (Peshawar), Takht Bahi, Seri Behlol, Shehbaz Gari (these three sites are in Mardan district), Nimo Gram Stupa in Swat and the remains of Gandhara art which are preserved at Chakdara, Swat and Peshawar museums (About Khyber Pakhtunkhwa, Aug, 2015). Pakhtoon culture absorbed and enriched from the foreign cultures but Pakhtoons did not lose their particular identity and culture popularly known as “Pukhtunwali” which is not less than a way of life, however it became a mixture of native and foreign cultures and ideas by intermingling with each other. History witnessed that due to independent nature of Pakhtuns, it was easy to occupy their land and conquer them but it ever remained difficult to sustain and rule them easily.

First Hinduism and then Buddhism flourished in these areas formerly known as North West Frontier Province (NWFP) (now Khyber Pakhtunkhwa). Gandhara was once the greatest seat of learning and Knowledge; which produced many famous Buddhist intellectuals, who spread Buddhism to the other parts of Sub-Continent and also to some other countries. With the arrival of Arab traders, later on followed by Muhammad Bin Qasim an Arab general, who entered from Sindh (also called Babul Islam) as conqueror in

to India, brought with him a new religion i.e. Islam. The people of KP i.e. Pakhtuns accepted Islam and today approximately they all are Muslims.

After Mughuls, N.W.F.P remained under the Sikh Empire created by Maharaja Ranjeet Singh. It was the Britishers who followed and defeated Sikhs. NWFP remain for fifty years as part of Punjab; in 1901 it was declared a province and was separate from the Punjab. This province laid the greatest and huge sacrifices in independence movement: prominent and famous movement of the Pakhtuns are “The Khudai Khidmatgars” of legendary Khan Abdul Ghaffar Khan known as Bacha Khan and Fakhre Afghan (some also called him frontier Gandhi) and the tribal Pakhtoons fought “Jihad” for many times (we can say continuously) against the British troops and made it uneasy for the colonial masters to rule them easily. After independence N.W.F.P were included into the federation of Pakistan by a controversial referendum held in 1947.

Pathans are basically five major clans, divided into sub-clans or tribes numbered 405 (Jillani, 2014). Today the population of KP is more than 27 million; spread over 74,521 sq km. Administratively KP is divided into three parts i.e. the settled areas, PATA (Provincially Administered Tribal Areas) and FATA (Federally Administered Tribal Areas). Pakhtoons are the majority ethnic community in KP and the Hazara's (Hindko speaking) are the non Pakhtoon major racial group; after renaming KP as Khyber Pakhtunkhwa, the issue of creating Hazara province in KP were raised on ethnic grounds (Zulfiqar, Summer, 2012)

3.1. Free Independence Era

Khyber Pakhtoonkhwa witnessed many war adventures from the West, spread to the East. The Persians, Greeks led by Alexander, Chandra Gupta established Hindu dynasty and spread Buddhism, Kushana Kings followed by White Huns, then comes the Muslim period; first they had trade relations with India; in 712 AD Muhammad Bin Qasim interred to Indian Subcontinent through Sindh; this expeditious was sanctioned by Khalifa Hujaj Bin Yousaf; the Tatars and Afghan invasions comes next (Ghaznavids followed by Ghorids), there were also Mongols periodic invasions but that was just for loot and plunder. In fourteen century a Muslim Empire (Khilj Empire) was created by Alauddin Khilji. After the decline of Khilji Empire, Timur extended the Mogul Empire through North-West, extended by his successors to the rest of India. In 15th century Lodhis of Afghanistan established their sway over India. After the death of Nadir Shah (1747) the Afghans Empire started to decline. Sikhs defeated the Afghans and started to rule over a large chunk of India; from 1818 till the annexation, N.W.F province remained under Sikha Shahi. The founder of the Sikh dominance Raja Ranjit Singh died in 1839 after ruling Punjab for 40 years and the Frontier for nearly twenty years. Sikhs were defeated by Britishers many times; to rule peacefully British accepted Sikhs authority over Punjab and the frontier under the young Maharaja Duleep Singh. Sikhs ruled Frontier through power during their rule and after the death of Ranjit Singh, the proud, Pathans were not subjugated for too long, they were always remained active for their independence (Obhrai, 1938).

In 1849 British annexed Punjab (districts of N.W.F were the part of Punjab) with their territories and so started the British Era in N.W.F province. The only threat to the

British India was from the Western gateway, invasion to India (particularly from the Soviet) and from the proud Pathans on the boarder and Afghanistan. Peace and security on Western border were guarantee to the rest of the India. Britishers realized the reality from different expeditions that Afghanistan can be invaded easily but cannot be maintained for long, so they adopted the policy of friendship and good relations towards Afghanistan, they bribe the Pathan tribes, on different times, give them weapons to keep them (Britishers rule) safe from the Western frontier but that weapons were used against them (in the times of call for Jihad etc in the tribal areas); the Britishers did not intervene until Afghan government remained free from outside influence. But when they felt enemy influence they thrown the Kabul government and did not even shy of invading Kabul. First boundary between Afghanistan and British India were drawn in 1880 and were modified in 1893, called the "Durand Line". Britishers established security posts throughout the Frontier. The absence of foreign invasion led to the economic development, peace and political stability which was lacking from the seven centuries past. To control the kidnapping, killings, loots and the frequent attacks of the barbarian Pakhtuns the British Indian army led many expeditions to the tribal areas on different times (Obhrai, 1938).

The five settled districts of N.W Frontier which were part of the Punjab including Peshawar, Bannun, Hazarra, Dera Ismail Khan and Kohat districts. These districts were under the administration of Punjab during British rule, they "enjoyed civil and criminal administration" along with Punjab. From the time of Ghori these districts were the part of the Panjab province and somehow were separated from the Afghanistan. After the 1857 war of independence (throughout which blockade were enforced in NWFP); economic

activity, political and social progress accrued in Punjab, missionary activities were also carried out in NWF districts of Punjab, hospitals, schools and colleges were constructed (Obhrai, 1938).

To carry the business of trans-border tribes and to control their activities political agencies of Khyber and Kurram were created in 1878 and 1879 respectively; other remaining three agencies of Malakand, Tochi and Wana were created in the year from 1895-96 (Obhrai, 1938).

To subject the five districts of NW Frontier to the self-administration on lower level, in 1901 they were separated from Punjab and were given the status of Chief Commissioner Province on experimental basis. In 1922 "a Frontier Enquiry Committee" was formed to investigate the working of the new status of NWF province. They reported that due to the separation from Punjab the 1909 and 1919 reforms were not carried out in NWF province (because NWF province were still not given the status of a full fledged province). During this era the "Forward Policy" was carried out. This policy was failed badly. The people of the province participated in Khilafat and Hijrat Movements in large numbers (Obhrai, 1938).

This region remained part of the great game between Great Britain and Soviet Russia. Largely Afghanistan remained neutral between them but whenever the balance of power changed, Afghanistan became the victim of great powers rivalry. Afghanistan and Britain fought three major wars i.e. the first Afghan war 1839-42, second Afghan war 1878-80, third Afghan war May 1919-Aug 1919 and numerous skirmishes.

NW Frontier Province was a Muslim majority province dominated by Pakhtoons politically and ethnically. They were in favor of complete independence started a social awareness movement turned to a political struggle called the nonviolent movement "Khuday Khidmathgars" in the leadership of the frontier Gandhi, in 1930s affiliated to the Congress due to same agenda (they first contacted Muslim League for their support but on their refusal they joined the Congress). While the minority Hindus and Sikhs were in favor of re-unification with the Punjab due to their socio-economic position. The economic position of the province after 1901, with a start of 36 lacks revenue and 76 lacks expenditure; the deficit exceeded from its revenue because of its security and special position with special expenditure (Obhrai, 1938).

The "Frontier Crimes Regulation 1901" which is also called "Black Law" were enforced to control the crimes in certain districts of NWF province, latter on extended to the Agencies and still it is enforced in the tribal areas or FATA (a FATA reforms committee were formed by Nawaz government headed by Sirtaj Aziz adviser to Prime Minister on foreign affairs, which has recommended that to step wise FATA be absorbed in Khyber Pakhtunkhwa (Aditorial, 2016)); and PATA (Provincially Administering Tribal Areas) this is a judicial system with "combined punishment" principles, with penalties in shape of blockades, fines on tribes, arrest, imprisonment with no right to appeal but a "restricted revision by the Chief Commissioner" were provided. In 2011 the FCR were amended to exempt "women over the age of 65and children below the age of 16 from the collective punishment" (Zulfiqar, Summer, 2012: Obhrai, 1938).

Due to the popular feelings, in 1932-33 changes were carried out in the constitution of NWF province. The province was elevated to the status of Governor Province and a legislative council was provided; the 1919 reforms were immediately extended to the province as the province were elevated to the status of a full pledge province (Obhrai, 1938).

The tribal people were always remained busy giving tough time to the British troops in wars for their independence. To gain the support of the tribal people and to neutralize them, the British government had taken a number of steps. Due to their policy, Arms were distributed among different tribes on different time for the purpose that they will be a strong hurdle in the way of invasions from the West along with arms they also offered allowances to the Khans and Maliks (DmG.Ramssy, 1981; Obhrai, 1938).

Abdul Ghaffar Khan popularly known as Bacha Khan; a nationalist leader also known for Khudai Khidmatgars or the Red Shirts Movement, which was started in 1929: this was an un-armed, non-violent and a peaceful movement for the independence of NWF Province. He emerged as the undisputed leader of the Pakhtuns (Banerjee, 2008). He organized the Khudai Khidmatgars on the military type discipline; wearing red uniform and training were imparted to them. On different occasions he traveled the Pakhtoon belt and addressed them: he also toured India and was received with great enthusiasm. In 1931 they joined Congress party along with his organization because he realized that they and the Congress have a common goal of Independence; without the help of a political force it was difficult for them to realize their destiny. The Red shirts rendered great sacrifices, paid with their blood and lives for the Pakhtoons rights. On different times their leaders and

workers were arrested and were imprisoned for long times (Years); but they did not lose their heart. In the start it was a social reform movement but latter on they participated in the elections and won the unexpected victory during the 1937 and 1946 elections. This was a popular movement of the Pakhtoon (it is impossible to discuss every aspect of this movement here in this work) (Lashari, 2012:Ahmad I. , 2005:Shah, 2008).

In 1937 and 1946 elections the Congress won majority of seats in NWF province (through Khudai Khidmatgars), due to the Red shirts public personalities like Khan Brothers i.e. Abdul Ghafar Khan and Dr. Khan Sahib and because of their demand for "Swaraj" or self-government. North West Frontier Province was provided equality with the other provinces and the coming constitution of India i.e. 1935 Act was extended to the NWF Province on the same footings with the other provinces (Obhrai, 1938).

3.2. Post-Colonial History

"...social change is a key factor in producing conflict when it is not effectively managed by the state and when it is combined with perceived poverty and sense of alienation from the state in ethnic, cultural, linguistic or sectarian terms". (Waseem, 1997)

According to the independence act it was announced that NWF province will decide its future through referendum, on the question that whether they want to join Pakistan or India. The nationalist and the ruling party demanded the provision of a third option i.e. not opting for Pakistan and India but to form independent state of Pakhtunistan; they also insisted that they had won the elections in 1946 so there is no need for referendum and the right to decide the province future should be given to the elected representatives of the people (Lashari, 2012). These demands were rejected and referendum was held on sixth

Jul 1947. On the demand of Muhammad Ali Jinnah, the referendum was held under the direct supervision of Governor (Jillani, 2014). The results of referendum were in favor of joining Pakistan by 51% votes, the process of referendum were doubted (Lashari, 2012). This referendum was held in six districts: the tribal areas, Swat, Dir and in Amb stats -this polling's were not held and the Red Shirts boycotted the referendum.

After independence the first ordinance which was issued by Quaid-e-Azam was the dissolution of Dr.Khan Sahib ministry in NWFP and Abdul Qayum, a league ministry was installed; the start of Pakistan was faulty, same was happened in Sindh, though it was the need of the time but were against the principles of federalism and the promises of provincial autonomy (Gopangh, 1998) (Mushtaq, 2009). Nationalists in NWFP recognized Pakistan, Bacha Khan took oath in the National Assembly as its member and started struggle for provincial autonomy within Pakistan; Pakhtuns fought against the Britishers for independence, they were against the idea of Pakistan; along with opting for Pakistan or India they demanded a third option to vote for Pashtunistan but on the negation of that, the nationalist Pakhtuns boycotted the referendum, they were in favor of unification of all Pakhtuns across the border (Lashari, 2012). The cry for provincial autonomy was termed as disloyalty and breaking Pakistan by the ruling elites (Faiz, 2015). The nationalist leadership from the backward communities (NWFP and Balochistan); who were against the creation of Pakistan, after independence “suffered from lack of legitimacy” (Waseem, 1997).

Those who were in Congress before independence, after the creation of Pakistan were not trusted by the Punjabi and the migrated Urdu speaking elites. They imprisoned

Bacha Khan, his Son Wali Khan and many other “Khudai Khidmatgars” and were tortured through different ways¹. They also pressed Bacha Khan for joining the League but he refused. The conditions in NWF province were critical; Ghaffar Khans party was banned, the nationalist started protest against the government attitude and malicious step through peaceful means. In 1948 at Charsadda, people were protesting against the imprisonment of Bacha Khan, the forces unleash unprovoked firing which killed hundreds of innocent people, Bacha khan was released after six years instead of three years’ sentence (Lashari, 2012)

In 1955 the four provinces of West Pakistan were merged into One Unit; this was against the “unity in diversity” principles of federalism. The 1956 and 1962 constitutions were made on the basis of “One Unit” principle which provided parity in national assembly between East and West Pakistan. The nationalist parties were against this development including the nationalists in NWFP. National Awami Party (NAP) was one of those political parties who pressed for the dissolution of One Unit and they also passed resolutions from assembly against the “one unit” scheme; it was dissolved in 1970 by Yahya Khan (Khan, 2012: Lashari, 2012).

In 1948 nationalists from all over Pakistan gathered in Karachi, including G.M Syead, Shekh Abdul Majeed Sindhi and others, the conference was charred by Bacha Khan: this conference laid the foundations of an Opposition party named “All Pakistan People’s Party” Bacha Khan was elected as its president. But soon this party was failed with the

¹ These atrocities were not limited to just one event but on different times through different tactics these nationalist leaders, their supporters and their parties were suffered from legitimacy problems.

imprisonment of its leaders. In 1957 six political parties gathered and merged into one party named “Pakistan National Party” (Lashari, 2012). This party was extended to East Pakistan and in 1957 it was reorganized with the name of National Awami Party (NAP); Mualana Abdul Hameed Bhashani was elected as its president: the dissolution of One Unit was a principle goal of their manifesto.

On 31 Aug 1965 (and on the same day in the Coming years) Pakhtunistan day was celebrated, at that time Bacha Khan was in Kabul, in 1969 “Baloch and Pakhtun day” was celebrated. In 1967 NAP divided into two fictions i.e. East Pakistan group was led by Bhashani and the West Pakistan group was led by Wali Khan (Ahmad...).

After the dismemberment of Pakistan Zulfiqar Ali Bhutto’s PPP came to power; National Awami Party made alliance with Jamat-e- Ulema Islam and formed governments in NWFP and Balochistan. During this period the Pakhtun nationalist leader Wali Khan Put back the promises regarding renaming NWFP as Pakhtunistan and to “replace Urdu by Pashto as a provincial official language”; he was making national stature which did not liked by Bhutto (Jefferlot, Jan 1999). He dissolved Balochistan government on the pretext of treacherous activities and disloyalty to Pakistan which ended the tri-partite accorded² (Hashmi, 2014). NWFP government resigned in protest. Though Bhutto’s government was democratically elected but he was not tolerant to strong opposition and rival political parties, he banned NAP and in 1975 filed a petition in Supreme Court (SC). Once again the judiciary played its dual role favoring the ruler. In SC the loyalty of Wali Khan was questioned regarding Pakistan and asked the Question that is he “First a Muslim, a

² This accord was signed among the PPP, NAP and Jamat-e- Ulema Islam.

Pakistani or a Pakhtun" he answered that he is a Pakhtun by six thousand years, a Muslim by thousands years and Pakistani by 27 years (Mushtaq, 2009: p,283).

After the 1973 constitution, the nationalist including NAP were against the "concurrent" list; they saw it as an instrument of federal government to intervene in the provincial affairs; a second chamber but without important (economic) powers were provided to pretend the provision of rights to the small provincial. Council of Common Interest (CCI), National Finance Commission (NFC) are working under the federal government and distribute the resources only on the basis of population (till 7 NFC Award) which make its role a bit controversial. National Economic Council (NEC) were also provided but due to the ineffectiveness of these institutions, provinces resorted to ethnic movements and violence (Hashmi, 2014); sometimes these movements became violent especially in Case of Balochistan (Mushtaq, 2009).

In 1973 a tragic incident accord at Liaqat Bagh Rawalpindi, where firing were broke out on unarmed demonstrators: Wali Khan was there on the stage, majority of victims were Pakhtoons and when the dead bodies of Pakhtoons were brought into Peshawar Wali khan did not make it the issue of Pathan vs. Punjabi or life and death, he did not call for revenge, instead he handled the situation peacefully with his charismatic stature; anybody who have a doubt on his character can imagine his loyalty to Pakistan from that state sponsored incident through Federal Security Force (Khan, 2012).

Pakistan went through various constitutional engineering by military- bureaucratic centralism, pretended provincial autonomy in the name of populist governments but "non-

recognition of elected mandate as the final source of legitimacy led to the emergence of ethnic movements in East Pakistan, NWFP, Balochistan and Sindh" (Waseem, 1997).

When Zia promulgated Martial Law (ML) the leaders of NAP were released from the jail including Wali Khan who was arrested by Bhutto and the cases were dismissed. NAP were the part of the Movement for the Restoration of Democracy (MRD) lunched in 1983 but due to concessions from Zia government to Pakhtoons and his democratic promises NAP did not press too much on his government (Jefferlot, Jan 1999).

In 1980s 3.5 million Afghan Refugees were entered in to Pakistan due to the Afghan war majority of them resided in NWFP. With those refuges weaponization was flourished, they brought with them sophisticated weapons and drugs uses were increased; the criminal activities increased in the province.

Due to the ill-fated policies of the central government, KP suffered the most after the Russian intervention and particularly 9/11 attacks on American soil. They brought a war to us, Pakistan become the Non-NATO ally and a front line state; in war against terrorism the people of Pakistan suffered economically, politically, socially and psychologically (Rabbi, 2012). Thousands of innocent people including children, women, elders, political figures and security persons were killed due to the Talabanization, militancy and military operations in Swat, Malakand and Waziristan; the prude Pakhtoons were also suffered in men and material before independence but this time suffered the most humiliation when they become refuges in their own province and in their own territory within Islamic Republic; the government and administration failed to provide protection while fighting the American wars.

During Junaju time in 1986 when political parties were allowed to reorganize themselves NAP re-emerged with the name of Awami National Party (ANP). In 1988 they contested elections and formed alliance with the PPP, again after the 1990 elections ANP formed alliance with the IJI (Islam Jamhuri Itihad) in leadership of Nawaz Sharif; but when IJI refused to rename NWFP as Pakhtunistan, ANP abandon their government.

Pakistan mostly ruled by military governments directly or indirectly (dominating and command influence in policy formation) and the lack of balance between the national institutions complicated the problem to the edge (Waseem, 1997). Whose centralized policies led to the negation of the principles of federalism and the small provinces were dodge with empty promises for autonomy, which alienated and marginalized the small communities (Faiz, 2015). Islam were instrumentalised by the national elites (particularly military) and Urdu were used for nation building process but elites from the under-privilege provinces resorted to their ethnicity “based on language and other identity symbols” (Jefferlot, Jan 1999).

The nationalist movement in Khyber Pakhtunkhwa lost its zeal due to “the gradual ascendency of Pakhtuns in the military-bureaucratic establishment, the preservation of autonomy for tribes, expansion of the Pathan commercial interest throughout Pakistan and emergence of a large number of urban working class from NWFP to Karachi and later on to Middle East” (Waseem, 1997) resultantly they changed their policy of separation to provincial autonomy but the issue of economic decentralization still roar between the center and KP which will be discussed latter on.

3.3. The status of Dir, Swat and Chitral

The history of Dir and Swat has no difference to the others parts of the tribal area's in NWFP. After the downfall of Sikh rule in Sub-continent, British expanded their control to the settled areas and also created agencies and somehow tribal built of NWFP were ruled by them. The states of Dir, Swat and Chitral were among those areas which were not completely under the British control, and the colonial masters accepted a limited autonomy of these princely states "the British political agent of Malakand agency were use to look after the British interest in these states" (Yasin, 2010)

In 1897 British given the title of Nawab to the ruler of Dir, who was an authoritarian person, having contempt for modern education, he deprived the People of Dir from modern day facilities. The Colonial masters given the honor of 15 guns salute to the Wali of Swat (Yasin, 2010), to the Mehther (title of the ruler of Chitral) of Chitral had given the title of his highness and were given the honor of hereditary 11 guns' salute. The states of Dir, Swat and Chitral resorted to violence against each other on different occasions but after the elevation of Miangul Abdul Wadood Khan (latterly known as Badsha Khan) to the leadership position as the Wali of Swat, the Swat state maintained its hold over its territories, and was able to expanded its boardres (DmG.Ramssy, 1981); Swat state during the era of Badsha Khan (1916-49) and his capable Son Miangul Abdul Haq remained stable while showing economic, administrative and social progress (Yasin, 2010). The state of Chitral intervene on different times into the territories of Swat but due to the effective management of the Wali Swat those interventions were stopped (DmG.Ramssy, 1981). The

British did not disturb largely their prevailing administrative systems and were given a level of autonomy like other princely state.

The economic conditions of Swat were better than the state of Dir and Chitral at the time of merging in Pakistan. The commissioner of Malakand at that time wrote about Swat that the current infrastructure is enough and only need to sustain it. The Wali Swat established an effective and modern education system. In his time Swat progressed.

The government of Pakistan under the accession provisions of 1935 act recognized the autonomous status of Dir, Swat and Chitral till they were merged by the notorious dictator Yahya Khan through undemocratic way acceded these states and made them part of the Malakand Division and were kept under the Commissioner of Malakand Division until Musharraf devolution plan (Khan, 2012; Yasin, 2010)

3.4. Natural Resources of Pakistan

In developing countries natural resources play an important role in national income while “natural riches” play a minor role in that of develop countries e.g. USA, Switzerland, Japan, Singapore etc (Zoega, 2002). Pakistan is divided tectonically into eleven Metallurgic Zones, which are rich in natural resources. Pakistan is blessed with different kind of natural resources largely unexploited, the need is bigger than production; including that of energy (Oil & Gas, Coal), fertility of its soil which is producing rich flora and fauna, water resources which give the cheap hydroelectric power and also provide plenty of water for irrigation purposes; Pakistan is among those countries who poses the largest man made irrigation canal system and the Indus water system is the world largest irrigation system.

Pakistan is considered a heaven for mineral resources including Gold, dimensional stones including the worlds famous verity of gemstone i.e. aquamarine, topaz, peridot, emerald, ruby and “rare earth menials bastnaesite and xenotime, sphene, tourmaline and many varieties and types of quartz” (all M. T., 2013) which are largely founded in KP, AJ&K and GB in huge deposits, famous for their quality and verity throughout the world, copper and other precious metal particularly in Chaghi Balochistan, Waziristan and the Northern Areas, marble and granite, these mineral assists are in plenty in KP, a rare incarbonatitites extracting from KP; Pakistan have the “industrial rocks and minerals” with huge potential for industrial commodities particularly coal resources are in abandon. (Khan:Khalid Mahmood, 2013:Meezan Z Khwaja, 2009). All over the world pakistan have second largest salt mines and coal reserves, fifth larfest gold and copper reserves and huge oil and gas resouves (all M. T., 2013)

Due to the unequal and unjust distribution of resources, breaded conflicts throughout history in Pakistan. Over the issue of access and distribution or ownership of these natural resources is the fountain of contistation among provinces and the central government (Meezan Z Khwaja, 2009). The resource rich but poorist provinces in the federation of Pakistan are KP and Balochistan. Here we will disscusse and confine oversilves to the discussion over KP's resources and resentment with the center and other provinces.

3.5. Natural resource Profile of Khyber Pakhtunkhwa

In Asia still majority of the rural population is heavily dependent on natural resources including soil, water, minerals, forests etc. Pakistan is a low income country and

it is estimated that 26% of national wealth is contributed by the natural resources in low development countries, while 13% in middle and only two % in develop economies (All, 2008).

Khyber Pakhtunkhwa is the third largest province in terms of population out of the four provinces in Pakistan, with 27.5 million population spread from Khyber to the border with China; its share in Pakistan's GDP stands 10.5% historically, 11.9 percent of Pakistan's population resides in KP (MC, 2016)

“Human resource” is the prime resource to every secondary resource. Whether a country exports primary or secondary items, are highly depends on the skills or its human development; countries exports human resources if they are skilled they will earn and send larger remittances than the unskilled labor force. Not only the quantity of the labor force but the quality increases its importance manifold. If the population is healthy and the basic needs are available to them without discrimination, in a peaceful environment, the country will accomplish the development process.

KP suffered from the worst law and order situation in the successive years particularly after 9/11. The province remained on the forefront in war against terrorism and militancy which also affected its economic development and went into billions of dollars' losses to the province. Its population faced losses in men and material and with the sufferance of displacement from militancy and military operations. The economic activity which was affected from the sluggish law and order situations has been restored to the greater extent and the government is trying to set the tune to attract the international and local investment particularly regarding the extraction of natural resources. A brief account

of important natural resources with which KP has been blessed, has been given in the successive paragraphs.

3.6. Water Resources and Related Issues

Pakistan is an agriculture country with 21% contribution to the GDP. KP has the largest water reserves in shape of stored water (Dams), rivers, canal system, underground water and moderate rain fall. Terbela dam is one of the world largest water reservoirs and is the largest producer of cheaper Hydel Power for Pakistan. The whole country has the potential of 50,000 mg (also estimated 60,000 mg) of hydroelectric power of which only 15 % has so far been tapped. Pakistan have a total installed capacity of 20,000 MW of which 30 to 35 percent is produced from the water largely from KP; from 1999 onward WAPDA is solely responsible for the distribution of Hydel power except to some parts of Kohistan and Chitral and is also responsible for the construction of large projects (department, 2010, pp. 47-49).

Till 1991-92 KP did not received any royalty from the cheaper source of hydroelectric power which it supplied throughout the years. In 1991 through an agreement it received 5.99 billion as “net hydro-power royalty” but latter on the royalty were capped by the federal government on various excuses, which become a source of tension between the center and KP, while on the other hand the constitution recognize the right of provinces to receive the royalty of the hydropower. In 1996 the federal and KP government agreed through NFC that the arrears which are not received by KP will increase by 11% annually but unfortunately the governments did not “stood in the cut throat game of politics” and on 12 Oct 1999 Musharraf suspended the constitution and proclaimed martial law. In 2002

another agreement signed with MMA government. According to the agreement it was decided that the pre-1991 royalty be decided later on and the post-1991 arrears of royalty were decided but without any practicality (Meezan Z Khwaja, 2009).

WAPDA is a power distributing authority, sells power on higher prices than the previously determined prices, as a result the province demanded increase in their royalty. In 2009 the federal government agreed to Arbitration Tribune and released 10 billion rupees; the balance Rs. 100 billion were paid in four equal installments of Rs. 25 billion till 2014 and a technical committee were formed which will decide the remaining contestation; on Feb 25, 2016 a memorandum of understanding was signed between the central government and by the provincial government (also approved by CCI), a total of Rs. 70 billion has been agreed as the final settlement which will be paid by WAPDA sanctioned by CCI for the 2015-16 Rs. 25 billion be given to the government of KP and Rs. 15 billion in successive three installments (White Paper 2016-17, 2016) currently the chief minister of KP has expressed his reservations over the central government that they are stealing 600 mg share of electricity daily (Baat, 2016), it means that the power producer does not receiving for his own use. Pakistan's total Hydel Power production is 6,600 mg of which KP is producing nearly half (Pakhtunkhwa G. o., 2016)

Pakistan's 21 % GDP is coming from the agricultural sector; it accommodates 44 % of work force and having large backward and upward linkages which is earning precious revenue from the export of industrial outputs and giving jobs to thousands of peoples; for industrial plants and local usage KP provide Gas and Hydel power; to grow the crops,

Pakistan have the largest artificial system for irrigation while in the northern parts of the country having frequent rain falls and glaciers which provides water for these purpose.

Another project i.e. Ghazi- Barotha's royalty is also a source of tension; the whole of its headwork's complex and other facilities are situated in KP except the power house and a part of canal is in Punjab territory while Punjab is taking the whole royalty from this project, ignoring KP altogether (Meezan Z Khwaja, 2009).

Table 3.1: Electricity Generation Consumption in Pakistan and KP

Year	Pakistan		Khyber Pakhtunkhwa		Khyber Pakhtunkhwa as %age of Pakistan	
	Generation Million (KWH)	Consumption Million (KWH)	Generation Million (KWH)	Consumption Million (KWH)	Generation Million (KWH)	Consumption Million (KWH)
2012-13	96122	76789	3930	6863	4.09	8.94
2013-14	103670	83409	3939	6862	3.79	8.23
2014-15	103670	83409	3930	6862	3.79	8.23

Source: Development Statistics of Khyber Pakhtunkhwa 2016

After 18th amendment provinces have the right to develop power stations, install transmission lines, grid stations and also can determine tariff for distribution of power (Khan M. Z., 2015). Government of KP (GoPK) issued the hydropower policy 2016, and through Pakhtunkhwa Energy Development Organization (PEDO) will provide one window operation to the investors and sponsors; through this organization the government has simplified the investment system by attracting local and foreign investors, and is giving large incentives to them (Pakhtunkhwa G. o., 2016). Currently the GoKP is conducting feasibility studies of different magnitude of hydropower projects (has also completed

some), there are also a number of projects under construction in public, public-private and through private investments (Pakhunkhwa, 2014)

3.7. Kalabagh Dam Issue

“To be available in practical sense, the supply must be fairly continuous and dependableCrops cannot grow on expectations of average flows which do not come, nor on recollections of unusual flows which have passed down the stream in prior years.” (US Supreme Court, Wyoming versus Colorado (1922) Quoted by Ghazanfar, 2008)

The Kalabagh Dam project is highly controversial and has been highly politicized. The case of Kalabagh Dam construction also comes under the Environmental Injustices. This theory says that “Environmental injustices take place when some people or communities bear environmental burden disproportionately, like those of hazardous, waste dumps or has unique access to environmental goods, like clean air, or has less opportunity to participate in environmental decisions making process” (Hadi, March 2015). If the Dam builds, KP will bear the burden of mass resettlement, land acquisition and losses to the productivity, on the same footings losses to vegetation will occur in Sindh due to the manipulation of water and the salty water which will intrude to the delta; it is also calculated that the affected land will be more than it brings under cultivation (Khan S. R., 1998).

Two views are found regarding this project one in its support (no doubt the Punjab) and the second is against the project (three small provinces). KP governments arguing that due to this project Nowshehra will be completely drowned and the surroundings of Mardan will be affected from salinity and water logging, while Sindh and Balochistan think that it will affect the flow of water and will barren their lands; to sum off that it will only benefit

Punjab at the cost of the small provinces (Lashari, 2015). The supporters advance the arguments that it will displace only 48500 people (only 4500 in KP and 44000 in Punjab no displacements in Sindh and Balochistan) with 24500 acres of land including 2900 thousand of irrigated land. This is the cost which has been told to us with the problems of salinity and water logging has been solved in the construction design of the dam. In KP when the opponent of the dam raised the issue of its height which will drown Nowshehra, WAPDA responded that the actual height of 10 ft. has been reduced to 915 feet, but according to the plans the height has not been reduced but what it means that beyond 915 feet will not be filled (Ghazanfar, Sep, 2008).

KBD project became controversial, because WAPDA (technical and large projects career) had issued different figures and facts on different occasions, secondly, the small provinces due to the better previous experiences with Punjab, are not ready to trust over Punjab easily. In this respect WAPDA did two surveys, first consists of 64 years from 1922-1996 and the second from 1976 to 1994, a period of 22 years; the second calculation is a revised one and is shorter, contain on “wet cycle period”. In the first calculation the statistics shows 138 MAF flow of water annually in river Indus while in the second it is 143 MAF³, clearly it is believed to manipulate the facts and to legitimize the project. Secondly during the second calculated period 4 MAF water would be contributed by the three eastern Ravi, Bias and Sutlej rivers but the only available water to Pakistan is the canals extracted from the western rivers. Some argues that this 4 MAC water is generating

³ MAF, “One Million Acres Feet is the quantity equal to one foot deep water standing over one million acre area. One MAF is equal to 1.3 billion cubic meters. One cusec is water flowing at the rate of one cubic foot (28.3 litres per second). One cusec water flowing continuously for 24 hours equal’s to 1.98 feet of standing water” (Ghazanfar, Sep, 2008).

in Pakistan below to the headworks but the issue is Pakistan has accepted the Indian rights over these three rivers. Next according to 1991 Water accord the flow to sea is 10 MAF while that has been reduced to 5.8 MAF which is the violation of the accord. Due to the "Indus Water Accord" for the four provinces there are 117.4 MAF water allocation; the first estimates shows after calculating the loses, extractions etc shows 5.2 MAF deficit while the revised data shows 17.2 MAF surplus for the justification of Kalabagh Dam. In Sindh to maintain its mangroves in reasonable healthy conditions-needs 27 MAF, which is 7 MAF more than the current and if the Kalabagh dam were constructed the situation will be worse; most importantly except the availability of unexpected flood water, in peak times shortages occurred for Sindh in normal times (Khan S. R., 1998) (Ghazanfar, Sep, 2008).

On the other hand, this project seems that it will clearly affect the Indus Delta. Because of reduction in the flow of water to the sea resultantly the salty-water will intrude to the level inland, secondly, the sea waves will erode the Delta, as a result the vegetation of the area will be vulnerable (Khan S. R., 1998).

When in 1982 the issue of the construction raised, the nationalist leader Bacha Khan started a campaign against its construction and ultimately the government has to stop working on it. On different time this issue has been raised by the Punjabi dominated central government while all the three provinces are against to its construction (Lashari, 2015).

While the supporters of this dam advance the arguments that Pakistan is an agricultural country with rapid population growth and with increasing demand for electricity; this large water reservoir will bring huge land under cultivation and will fulfill the nations power needs. They advance the revised statistics that after the construction of

this dam it will store 6.1 MAF, which will be distributed with the ratio of 1.1, 2.1, 2.1 and 0.7 MAF for KP, Punjab, Sindh and Balochistan respectively; 2.4 million acres of new land will come under cultivation; it will generate 36,000 mg electricity and flood could be controlled. The federal government says that annually 35 MAF water fall into the sea, largely that would be stored; due to the falling capacity of Terbela and Mangla, due to sedimentation, there is a need to construct new and huge water reservoir over Indus and for controlling the flood water. If these are the facts than why the small provinces are making it a political issue (instead everyone has the right to debate over the issues which affect him directly or indirectly and every issue of Public importance is political issue on the first place) (Ghazanfar, Sep, 2008).

There are some other exaggerations about Kalabagh dam as well, which contains on expectations, no single statistics are available, which makes it a highly controversial project, suffered from trust deficit with previous poor record (among provinces). In a democratic and federal Pakistan, consensus is the need of the hour (for more details see, Ghazanfar, 2008). There are also other options available if the federal government is interested. KP government had suggested some hydel power stations which would be helpful while controlling the power shortage, there are also suggestions for other dameds, but all of this needs political will and national level consensus.

3.8. Coal, Oil and Gas

KP province is rich in energy resources. After 18th amendment mutual ownership of the natural resources has been accepted by the center. Now the provinces have greater responsibility about its extraction and production without damaging the resources and the

surrounding environment (KPOGCL), 2016). KP lacks industrial infrastructure so it only supplies electricity, gas and petroleum, while in return it only gets empty promises from the central government and not even receives its due share of electricity from the national grid station (Baat, 2016).

Currently Oil and Gas is contributing over seventy percent of total energy mix with the ratio of 29% and 45 % respectively; the imported energy resources (particularly oil) contribute 30 % of total energy production (Jamil, November, 2015: Economic Survey, 2014-15). KP produces more than 50 % of the Pakistan crude Oil, which make this province the largest producer of Oil in Pakistan. Huge Oil and Gas reserves have been discovered in KP including that of district Kohat and Karak “it has also produced 380 million cubic feet Gas per day and 350 tons of LPG daily”, KP is “producing 15 % of gas and 25 % of LPG alone” (KPOGCL, 2016).

KP have recoverable natural gas resources estimated some nine Trillion Cubic Feet, while it also has 500 million barrels of recoverable Oil resources; currently ten companies are busy in “exploration and production activities in KP and FATA” (KPOGCL, 2016). In table 3.2 and 3.3 the 2012-13 data has been provided.

Article 158 of the 1973 constitution says that “*the provincenatural gas is situated shall have precedents over other parts of Pakistan in meeting the requirements from the well head...in the commencing day*” and Article 161 have provision for Gas and its section 2 is about the hydroelectric power royalty (Khan M. Z., 2015) but there is huge gap between theory and practice; along with these the distribution formula of “Divisible Pool” is a source of heat because only on the basis of population resources were distributed

till the 7th NFC award; in 1991 the central government through NFC recognized the right of the provinces over natural resources (for details see, Khwaja Z et all, 2009); even after 7th NFC award the small provinces are not happy from the distribution formula and resultantly the 8th and 9th NFC awards were not been issued and the 7th NFC were extended.

Table 3.2: Province Oil Production in percent (2013)

Province	Oil Production (Million Barrels)	% Share
Sindh	11.37	40.63
Punjab	5.26	18.90
KP	11.24	40.4
Balochistan	0.2	0.07
Pakistan	27.84	100

Source: Adopted from Abdul Hadi (Hadi, March 2015)

Table 3.3: Province-wise Gas Production and Consumption Trend, (2012-13)

Province	Total Gas Produced (Million Cubic Feet)	Total Gas Consumed (Million Cubic Feet)	Ratio (Consumption vs Production in %)
Sindh	10,033,794	576,519	55
Punjab	69,220	542,185	783
KPK	126,234	65,179	51
Balochistan	276,593	84,097	30

Source: Adopted from Hadi (2015)

KP providing “one window of operation facility” through the creation of KPOGCL as totally provincial holding entity; it works as facilitator, extractor and it works to diversify the KP resource extracting points through attracting foreign and indigenous investors (KPOGCL, 2016).

Due to the improvement in law and order situation E & P activities are improving. KP holds promises of uncap hug Oil and Gas resources to be exploited for the local and national well being.

3.9. Dimensional Stones

KP has plenty reserves of “Dimensional stones” including ... stones, marble & granite, industrial minerals and many others (Meezan Z Khwaja, 2009). In total more than 20% of mining in Pakistan and 78% of marble extracted from KP. KP is rich particularly in gem. KP has also precious and semi-precious minerals including “peridot, aquamarine, topaz, ruby, emerald, sphene, tourmaline and many varieties and types of quartz” (all M. T., 2013) large quantity of rare carbonatites and the world famous gemstone is found in KP, AJ&K and Gilgit-Baaltistan (Khan A. , ...).

3.10. Land

About 28 % of land area is arable in Pakistan, most of which is in Punjab and Sindh (Meezan Z Khwaja, 2009). KP consists of plain area to the South and mountainous terrain to the north. Its plain areas are very productive, while the northern area are producing rich flora and fauna, different rivers generates from these mountainous areas which are a cheap source for Hydel power and agricultural use. KP consists of largest forest cover in Pakistan. 21% of KP provincial GDP is produced from the agriculture sector and its sub sectors (Department, 2015: p, 31)

It produces rich flora and fauna; KP is full of beautiful natural sites including rivers, dams, forests, waterfalls, glaziers and other natural sceneries which attract foreign and local

tourists. Sugarcane, wheat, corn, rice, tobacco and vegetables are its major crops. As the majority (80%) of population resides in rural area, they fulfill not only their different needs but also supply timber, fruits and other necessities to the country.

3.11. Forests

“Pakistan is a forest poor country”, its forest cover is only 5.01%. KP is the largest holder of forests in Pakistan and account for 42% of total forests found in Pakistan. These forests are of different kinds including small and large trees, scrub and rangeland (working paper, 2009). KP forest cover is 20.3% and the province forests are about 36% of the countries total forest area (Department, 2015).

KPs forests are precious asset which provide “medical, aromatic and other economic plants, mushrooms, honey, wild fruits, resin, chilghoza, nuts and a variety of other products”, they preserve water, decompose pollutants and also protect the soil erosion; these forests also feed millions of domesticated animals and provide home to wildlife. Riverine forests, Mangrove forests, irrigated forests, scrub forests, coniferous forests and rangelands are important in KPs forests (working paper, 2009: UNDP).

Pakistan’s population growth is high, it was 32 million in 1952 and is estimated over 180 million in 2016 (different statistics found, also estimated 191.77 million). Pressure is mounting on forests to meet the energy, construction, medicine, infrastructure and other industrial needs; due to these reasons deforestation is in full swing. Majority of Pakistani population is living in rural areas as a result they are dependent on forests for different needs including for fire-wood, the most important. Deforestation is accruing on a large scale; official figure is 27,000 ha annually, while according to the NCS annually

deforestation is from 7,000 to 9,000, this is a dilemma in the growing needs for different kind of wood and timber (working paper, 2009). Recently the Pakistan Tahreek-e-Insaf (PTI) led government has started Green KP campaign, under the “Green Growth Initiative”, the project “The Billion Tree Tsunami” were started; PTI government has allocated \$ 150 million for the forests. The provincial government also started efforts to control deforestation (Khan R. S., 2016).

KP is largely a rural economy, forestry is a labor intensive sector which is providing livelihood at the doorstep to the local population. To attain the sustainable development goal seven, the sustainable environment and preservation of forestry is very important.

These forests are helping to preserve the Biodiversity and Wild life inhibitive, attracting foreign and local tourists and keeping the weather normal and helping to control pollution. National level initiatives are very important in this respect.

Developmental indicators

“Human development is mainly about education, health, water and sanitation” (Tribune, 2016). For effective planning purposes and according to the need distribution of financial resources and Census is very important; through it population can be measured from different perspectives. Due to the excuses of federal government, since 1998 census were not conducted, which is producing heat between the center and provinces; the provinces demand immediate census and the Punjabi dominated Central government is delaying them. The United Nations Committee for the elimination of racial differences had also showed its grave concern over not holding census in Pakistan while the Supreme Court

had already said that without proper census the coming elections of 2017 will not be fruitful and has ordered the federal government to give a proper time frame; the central government according to the constitution is bound to hold census after every ten years (Rashid, 2016). KP coalition government led by PTI, claiming that they are giving high priority to Human Development by spending huge sums in related sectors (Tribune, 2016).

Table 3.4: Population below the poverty line

Province	Overall	Provincial Capital	Large Cities	Small Cities	Rural Areas
Punjab	26	19	21	42	24
Sindh	31	11	20	38	38
KP	29	28	0	41	28
Balochistan	48	16	0	41	52

Source: Adopted from Raza Ahmad (Ahmad R. , Sep,2010)

Table 3.5: Population below poverty line in KP Districts

So. No:	Districts	Ratio below poverty line (%)	So. No:	Districts	Ratio below poverty line (%)	So. No:	Districts	Ratio below poverty line (%)
1.	Kohistan	95	10.	Banu	58	18.	Lower Dir	41
2.	Torghar	92	11.	Hangu	55	19.	Mansehra	40
3.	Shangla	80	12.	Swat	55	20.	Nowshehra	37
4.	Dir (upper)	76	13.	Karak	50	21.	Malakand	37
5.	Bata gram	75	14.	Kohat	47	22.	Mardan	33
6.	Bonier	71	15.	Charsadda	44	23.	Abbottabad	32
7.	Tank	71	16.	Sawabi	43	24.	Peshawar	31
8.	D I Khan	65	17.	Chitral	43	25.	Haripur	24
9.	Laki Marwat	62						

Source: (Dawood, 2016) Daily Express

(highly inequality is found on both federal and provincial level)

Population is an important component of state. Nearly every aspect of state life affects from the pattern of population growth. For the purpose of political, economic, social and administrative planning the role of census is very important. In the coming lines Pakistani population generally and KP in particular has been discussed. For the better economic growth, the quality of population is the most important aspect of an economy. HDI of provincial rural and urban rankings has been shown in table 3.6.

Table 3.6: Human Development Index

Area	HDI	Ranking
Sindh Urban	0.659	1
Punjab Urban	0.657	2
KP Urban	0.627	3
Balochistan Urban	0.591	4
Punjab Rural	0.517	5
KP Rural	0.489	6
Balochistan Rural	0.486	7
Sindh Rural	0.456	8

Source: Adopted from Raza Ahmad (2010)

From 1947 onward till today five population censuses have been conducted so far i.e. in 1951, 1961, 1972, 1982 and the last from 2nd to 18th March 1998 respectively. The population of KP according to the 1998 Census Report of Pakistan was about 17.74 million; which constitutes about 13.40% of Pakistani population. Pakistan's national population growth rate was 2.62 annually, while KP population growth rate exceeds, it was of 2.82 annually. Currently the population of Pakistan is estimated 191.71 million in 2015 and the total labor force estimated in 2013-14 was 60.09 million (Division E, 2014-15). Inter-censal data has been provided in table 3.7.

Table 3.7: Census and population increase in (%)

SI. NO	Year of Census	Population (In millions)	Inter Censal increase (%)	Annual Growth Rate-Inter censal (%)
1.	1951	4.57	-	-
2.	1961	5.73	25.77	2.34
3.	1972	8.39	46.37	3.32
4.	1982	11.06	31.86	3.32
5.	1998	17.74	60.34	2.82
6.	1951-1998	-	289.24	2.93

Source: Bureau of Statistics Planning & Development Department Government of

Khyber Pakhtunkhwa(www.kpbos.gov.pk)

According to the 2.82 annual growth rate the population of KP in 2010 was 23,273 thousand and in 2015 was 25,826 thousands 13.41 and 13.47% of Pakistani population (12, 2015).

Education

“The State shall provide free and compulsory education to all children of age of five to sixteen years in such manner as may be determined by law” (Article 25 A)⁴ (Khan M. Z., 2015)

Education is important to meet the modern day globalize competition and has become a very sensitive need in case of technological advancement, political, economic, social, administrative and for cultural survival (in a global village). All the developed countries have high literacy ratios while the developing states are far behind them. Interestingly education is relevant and related to all other aspects of life, it helps in reducing poverty, improve health, productivity, human resource development, increase social and

⁴ This text has been added to the constitution by 18th amendment.

political awareness; in short all aspects are not possible to discuss here but modern education is very important for a state to leave with grace in the changing global dynamics.

In Pakistan education is compulsory and free from the age of five to sixteen; is a fundamental right with equality for both sexes (Khan M. Z., 2015). After 18th constitutional amendment education is a provincial subject (Malik Dr et all, 2014) In Pakistan education institutions consist of government, semi government, private and madrasa's system; in all of them different syllabuses are thought.

Like other developing countries Pakistan have a low literacy rate, 42 percent population is illiterate who cannot read or write; the school enrolment rate is low and the drop out is too much high. The national government had started a number of programs to achieve the high rate of enrolment including "National Action Plan of Action for MDGs Acceleration Framework (MAF) (from 2013-16)" and others to attain the MDG Goal No. 2 and No.3.⁵ According to the Education for All (EFA) currently in Pakistan there are 6.7 million children's who do not go to schools with the ratio of 55 % girls which is a hurdle in achieving the EFA and gender equality to impart education. On national level the primary enrolment ratio has been grew from 46 % to 57% from 1990-91 to 2013-14 and literacy rate for 10 years and above from 35 to 58 respectively: which make it impossible to achieve the MDGs goals of 100 % enrolment and 88 % literacy ratio till the time frame provided (Pakistan's Economic Survey, 2014-15).

Table 3.8: Literacy Ratio in KP (2014-15)

⁵ UN had declared that 100 percent enrolment and 100 percent completion of Grade 1-5 would be achieved till 2015, in Pakistan the targets did not realized and the literacy rate is somehow stagnant at 58.

KP Net Primary enrolment 5-9	KP Literacy Ratio 10 Years and Above
Total=54,	Total=53
Male=62	Male=72
Female=46	Female=36

Source: Pakistan's Economic Survey 2014-15

The education ratio in Pakistan shows stagnancy as the pace of growth has been slow down, and recorded a 2.0 percent decline as the ratio recorded 58 %⁶; the gender gap is one of high with 70 % male and 47 % female education (Pakistan's Economic Survey, 2014-15). Gender gap is very high in KP which is evident from the table 3.8 and 3.9.

KP recorded a negative rate of Gross enrolment rate of 89 % in 2013-14 as against 91% in 2012-13. The federal and provincial governments are executing different programs for HDI in education sector including, PM tuition fee re-embouchement program, Laptop schemes, awarding local and international scholarships and other initiatives has been started to create the skilled Human Resource (Pakistan's Economic Survey, 2014-15).

Table 3.9: Literacy ratio 2014-15 (%)

Item	Pakistan	Khyber Pakhtunkhwa
Both Sexes	60.0	53.0
Rural	51.0	50.0
Urban	75.0	66.0
Male	71.0	72.0
Urban	65.0	70.0
Rural	82.0	80.0

⁶ In 2012-13 it was recorded 60 % this decline is recorded due to the only 2% GDP expenditure in education sector.

Female	48.0	35.0
Rural	37.0	31.0
Urban	68.0	52.0

Source: Development Statistics of Khyber Pakhtunkhwa, 2016: Bureau of Statistics

After the 18th amendment provinces have taken the responsibility of education sector and is implementing different kind of reforms in education sector, including monitoring, stipends and increasing the budget for this sector. After Eighteen Amendment only KP and Punjab showed improvement. (for more details including controversy over HEC see the succeeding chapters).

Health

Healthy population can contribute and can use their potential to the maximum level for the economic development and social progress: different indicators which determine the state of health of a population are multifaceted including “health awareness, sanitation facilities, environment, sports, mass awareness, resources and technologies” (Statistics, 2016, p. 145). Though in Pakistan the federal government is claiming of spending huge sums on health care and is running a number of programs against different kinds of diseases e.g. Malaria, TB, AIDS control and lady health workers programs, but the desired results were never achieved: a new program named “Prime Minister National Health Insurance Program” were also started: with the growing population the demand for the services has been increased, to bridge the gap between the “demand and supply” the private sector is reducing the pressure on the government sector hospitals and other facilities (Pakistan E, 2014-15:p, 189). Due to different socio-economic factors, there are huge inequalities among different areas, regions and provinces.

Table 3.10: Health Profile KP 2016

Year	Hospitals (*)		Dispensaries (*)		R.H.Cs		TB Clinics	
	Nos.	Beds	Nos.	Beds	Nos.	Beds	Nos.	Beds
2009	163	13814	411	87	89	1331	25	134
2010	173	15340	421	86	86	1435	26	72
2011	177	16020	425	86	86	1421	26	72
2012	183	16867	442	96	91	1548	26	82
2013	183	16867	434	79	91	1548	26	82
2014	190	175602	446	26	92	1514	30	62
2015	207	17560	454	26	92	1502	33	62

(*) = Including private institutions.

Source: Development statistics of Khyber Pakhtunkhwa 2016 (Pakhtunkhwa, 2016).

There are marked disparities in urban-rural regions in Pakistan with insufficient medical staff and skilled birth attendants in rural areas. Due to disaster vulnerability of Pakistan in 2005 massive earthquake killed thousands of people; in 2010 and 2013 floods killed and affected thousands of peoples including massive damage to KP in men and material (Organization, May 2013).

After 18th amendment the health sector has been devolved to the provinces. Recently the government of KP has started its initial reforms in health sector; GOKP under the Independent Board of Directors has given statutory autonomy to all the major hospitals in the province. The health care sector declared as a priority sector by the provincial government, in 2016-17 budget, the allocation of funds has been raised by 18.29 % (White Paper 2016-17, 2016)

The current provincial government appointed hundreds of doctors, paramedics, nursing staff along with allocation for free medical treatment for certain disease and free medical availability in emergency wards and appointed hundreds of lady health workers (Budget Speech 2016-17, 2016).

3.12. Grievances and their Historical Background

Due to unjust and “one sided constitutional provisions”, lack of access to their indigenous natural resources use and their royalty, KP feels deprivation from their inherent rights (Meezan Z Khwaja, 2009)

Over centralization is the major cause for the alienation and the feeling of deprivation in the small provinces. After independence Pakistan started its constitutional history from over centralized interim constitution with over-riding powers for Governor General and federal government. Throughout history the central government had intervened in the provincial domain, violated the principles of federalism and even dismissed provincial governments (Chandio, 2013). The federal government dominated by Punjabi elites, intervened in provincial matters dissolved provincial governments, violating the self-governing principals (Ahmad, 2009: p, 287).

The Nationalist political parties suffered from lack of legitimacy. Though immediately after independence the Governor General with an amendment to the constitution assumed the powers to dissolve the provincial governments; the first provincial government which were dismissed in the history of Pakistan were in Khyber Pakhtunkhwa that of Dr. Khan Sahib and installed the government of Abdul Qayum Sahib. To imprisons and torture the Nationalist leaders along with innocent supporters who ever raised voices

for provincial autonomy within Pakistan which was once the Muslim League main agenda on what they laid the foundations of Pakistan but latter on they themselves denied the same right to the small provinces (Chandio, 2013). The successive constitutions till 1973 were mainly centralized and the powers remained with the two major communities i.e. Muhajirs and the Punjabis (Mushtaq, 2009). The Constitution of 1973 to some extent agreed to the provincial autonomy but the successive military take over's disfigured its parliamentary federal structure with iron hand.

The years after independence and in 1970s the Nationalist leaders in KP were imprisoned, tortured and their innocent supporters in peaceful demonstrations faced the unprovoked bullets of the security forces. The first major incident accord at Charsadda and the others including at Liaqat Bagh Rawalpindi etc (Lashari, 2012).

Water issues were solved in 1991 through an agreement but due to the lack of sufficient infrastructure for the water carriage KP share were used by Punjab. KP is claiming its rights for the royalty of that water which also created tension.

Kalabagh Dam is project to be built in KP but the major beneficiary will be Punjab and the small provinces will just bear the environmental waste of this project. This issue may be considered as the three small provinces versus Punjab. Because all these three provinces had passed resolutions against the creation of this Dam but the only Punjab is in favor of this project and from time to time the issue is raised from different platforms to heart the feelings of small communities (Ghazanfar, Sep, 2008). This is a trend against the principles of federalism and democracy but in Pakistan there is a huge gap between theory and practice.

It is also evident from the facts that Army and national institutions particularly Bureaucracy is dominated by Punjab and the Muhajirs though Pakhtuns formed a major share in army but the trend is changing in the favor of Punjab.

Denying the royalties of natural resources to the small provinces and keeping them under-develop is the main cause for the nationalist feelings, movements and resentment against the central government and Punjab. KP is producing over half of natural gas and huge oil resources along with historically supplying the cheap Hydel power to the Punjab based industry and for domestic usage but the issue of royalty of these resources bring discomfort to the relations of federation and the province.

Over 15 % of natural gas and over 25 % of LPG is extracted from KP and producing over 50% of “Crude National Oil” and hold rich promises for further extractions (KPOGCL), 2016).

Till 18th amendment the provinces were denied the Ownership of their own Natural Resources. The small provinces just supply the raw materials and the energy resources to the Punjab based Industry. The provincial government of KP from time to time termed the federal government as usurper on the part of natural resources and energy distribution.

The Small provinces were kept politically, economically, socially and administratively underdeveloped, backward and their resources were enjoyed by the educated power elites mainly the populace in Punjab in the central government (Faiz, 2015: Mushtaq, 2009: Hadi, March 2015). Due to the historical socio-economic and political dominance by the large province Punjab the grievances of small provinces particularly in

Khyber Pakhtunkhwa and Balochistan created violent and non-violent agitations and nationalist movements.

Throughout history the independence of Judiciary and its role remained controversial. Whenever military dictators have jumped into politics the judiciary had legitimized their de facto face as de jure. Those military rulers had centralized the system presented their constitutions and altered the shape of the prevailing constitutions e.g. 8th and 17th amendments to the 1973 constitution (Khan, 2012). They violated the federal structure of the constitutions and ruled through iron hand, all these created a situation of discontent for the small provinces, who were promised provincial autonomy at the time of independence (Mushtaq, 2009:Faiz, 2015).

The institutions of NFC and NEC were provided for the conflict resolution between the central and provincial governments and among provinces but their role remained controversial due to one province inflexible behavior towered the other federating units (Faiz, 2015). The system of distribution of resources from divisible pool is a controversial one only considering the population as its sole criteria and not considering the other “international best practices” (till 7th NFC award). In addition to them the permanency of the award is the major impediment which had widened the friction between the center and provinces (Ahmed et al 2007). After the 7th NFC other standards have been included to make the formula systematic but the lack of permanency still creating discontent and is fracturing the smooth relations between the federation and its units.

Lack of holding census is a better issue in Pakistan; the small provinces are demanding the immediate holding of population census while the central government is delaying these on different pretexts. (for more discussion see the successive chapters)

3.13. Grievances Redressal Mechanism in Pakistan

Since inception a number of political and administrative measures were taken including the Federal constitutions i.e. the 1935 centralized federal act with certain changes as first interim constitutions, 1956 and 1962 constitutions under the One Unit scheme, followed by the constitution of 1973 with the consensus of all major political parties but soon after the military governments disfigured its original face and included the ferocious amendments like 8th and 17th amendments. The concurrent list was abolished after the 18th amendment, and largely those powers were devolved to the provinces. Senate⁷ the second chamber provided in 1973 constitution but without powers and throughout history the judicial branch played a very controversial role (all these are discussed in this and in chapter II with details).

NFC, NEC, and CCI are the institutions that were provided by the constitution for the redressal of different kinds of economic grievances, which I consider the most important, because all the political matters are somehow linked to economy related issues between the center and the small provinces including KP. Though the 7th NFC award and the 18th amendment had provided some relief to the small provinces including the multi-

⁷ The 1973 Constitution consists of two houses i.e. National Assembly and the Senate. Senate was created for the purpose to balance the federal structure. But the irony was that this institution does not have any economic powers. After the 18th amendment somehow its role has been increased in financial matters but it cannot vote on a money bill, which literally means that still Punjab have superiority in these matters.

standard formula adopted in 7th NFC award and after the 18th amendment some ministries have been devalued to the provinces with different kind of administrative and revenue raising rights along with shared ownership of natural resources (Faiz, 2015). The issues of hydropower royalty were partially solved in 2009; in 2016 an MOU has been signed between the center and KP government ratified by CCI.

Though these institutions are there but their role is a question mark; due to its irregular meetings and its deviation from the constitution has created issues and unrest. It is worth mentioning here that the 8th and 9th NFC awards were not formed due to the unresolved issues between the center and provinces (NFC, NEC and NFC will be discussed in details in the coming chapters).

CCI and a standing committee are provided for the regulation of water in Pakistan. Along with these “parliamentary bodies”, under the “Indus Apportionment Accord of 1991” a statutory body “Indus River System Authority” governing the water sharing issues. There is heat between the center and provinces over the role of this authority; one among them is the lack of equal representation for all four provinces. (Humayun, 2014).

Conclusion

This chapter briefly discussed the free and post-independence history of KP, demographic, topographic, natural resource profile, human development index, issues and contestations between the center and the KP province and the issues redressal mechanism which were adopted throughout different constitutions and other administrative actions and agreements. It can be assumed from this chapter that the small provinces remained backward socially and economically due to the imbalance distribution of political and

Chapter IV

18th Amendment: An Inclusive Federalism

Introduction

In 2010 through a joint political effort by all major political forces, the historical Eighteen Constitutional Amendment was adopted. This development was a watershed in the checkered constitutional history of Pakistan, which not only revive the 1973 constitution but went a step further by abolishing the concurrent legislative list and activated the “damage-control system” more effectively than the original constitution. Approximately seventy articles were affected to whom 95 amendments were happed. A total of 102 article were amended in the process⁸. The amendment undue the impacts of 8th and 17th amendment. For the implementation process an implementation commission were provided in the constitution. The commission completed its work within the specified time frame. Devolved Seventeen Ministries in three Phases from center to the provinces.

This chapter specifically discuss the contents of Eighteen amendment in details. In the first section a brief account of background has been provided, that what made it inevitable. The second section handling the process of adoption of the Eighteen amendment. In third section the contents and the previous status of these articles has been under discussion. The last section of this chapter consists of the implementation

⁸ Inserted, omitted, Amended or spelling changes.

process of the Eighteen amendment. Last but not the least at the end, conclusion of this chapter has been given.

4.1. Background

Unanimously adopted 1973 constitution suffered soon after its adoption from the fate of suspension and from changes in its basic structure. It was a federal constitution but were converted into quasi-presidential one, it provides two legislative lists i.e. the federal list (Part I and Part II)⁹ and the Concurrent list (Rabbani: 2012): It was promised to the federating units that the concurrent list will be abolished after 10 years and its subjects would be devalued to the provinces but the political crises and the frequent military Coups thwarted the federal political process which had promised provincial autonomy.

General Zia by eighth amendment in 1985 and Musharraf in 2002 by seventeen amendment validated their military cues and legitimized their political-constitutional deeds. Legitimately elected governments has been the victims of these amendments. The historical demand of provincial autonomy by the small provinces were neglected; authoritarianism and dictatorship prevailed on the political arena. In 1990s three democratically elected governments were dismissed through the constitution Article 58 (2) (b), provided by the military government (Khan, 2012).

The elected government of Nawaz Sharif in 1997 revived the parliamentary democracy by thirteen Constitutional Amendment but in Oct 1999 Pervez Musharraf removed him and suspended the constitution. He followed the footprints of his

⁹ Part II contains the combined management of subjects by the Federal and Provincial governments. For the purpose CCI has been provided.

predecessors by issuing LFO in 2002, validated in the seventeen amendment which once again converted the system into a quasi-presidential one. In this whole pack of his adventure, the judiciary played the role of a joiner partner and validated his Coue. (for more details see chapter II)

4.2. The Process of Enactment of the 18th Amendment

The ice between the two major political parties and victims of the 8th and 17th amendments i.e. PPP and PML (N) was about to melt in 2002. Before the summit meeting of the leaders of these political parties i.e. Nawaz Sharif and Benazir Bhutto in 2005, discussions were held among the leaders and thorough intra-party consultations were arranged. In 2005 the summit meeting was held at the residence of Nawaz Sharif at Jeddah; they developed consensus and formed a four-member committee to prepare a proper plan for the implementation of the agreement. The committee were consisting of Senator Mian Raza Rabbani, Senator Safdar Abbasi of PPP and Senator Ishaq Dar and MNA Ahsan Iqbal of PML (N). Due to their hard work finally in 2006, the Charter of Democracy were signed at London" (Rabbani, 2012).

The charter blame the military junta for the political crises and the trouble history of Pakistan that "the threats to its survival, the erosion of the federation's unity, the military's subordination of all state institutions, the marginalization of civil society, the mockery of the constitution and representative institutions, growing poverty, unemployment and inequality, brutalization of society, breakdown of rule of law and, the unprecedented hardships facing our people under a military dictatorship, which has pushed our beloved country to the brink of a total disaster...history's lesson that the

military dictatorship and the nation cannot co-exist-as military involvement adversely affect the economy and the democratic institutions..." (Dawn, 2006).

To put the country on the path of every kind of stability the charter observes that it is necessary that the current prevailing backwardness in all sectors be turned to "economically sustainable and socially progressive, politically democratic and pluralist, federally cooperative, ideologically tolerant, internationally respectable and regionally peaceful basis in the larger interests of the people of Pakistan..." (Dawn, 2006).

The charter promised that the pre-Oct 12, 1999 constitutions of 1973 shall be restored. LFO of 2000 and the 17th amendment to the constitutions will be annulled. The powers regarding the appointment on important posts by the Prime Minister and the powers of the chief executives of the provinces shall be restored. The independence of Judiciary, decentralization and devolutions of powers to the local governments shall be ensured. The most important, historical and previously promised demand of abolishing the concurrent list were also agreed upon to be deleted from the constitution. Strengthening of Senate, issuing of new NFC, inclusion of FATA into KP empowerment of Gilgit Baltistan and holding of free and fair elections were among the consensus and agreement (Dawn, 2006: Waseem 2010).

When the civil government came to power in 2008, they formed a Special Parliamentary Commission of Constitutional Reforms committee (SPEER) in this regard. The most important matters and emphasis of the (SPCCR)¹⁰ were on provincial

¹⁰ Commissioned by President Asif Ali Zardari in 2009

autonomy by abolishing the Concurrent List. The Charter of Democracy signed by the PPP and PML (N) was backed by an All Parties Conference in London; the nationalist parties in the small provinces and the civil society concurred for the abolishing of the concurrent list (Rabbani, 2012; p, 143).

After the returning of democracy to Pakistan the 7th NFC award was the first step towered the inter-provincial harmony; included poverty, inverse population density and tax collection measures in the resource distribution formula though consensus. This was followed by “participatory federalism” through 18th constitutional amendment (Shah, Sep, 2012, p. 393).

Frequent interventions by army in politics have been disfigured the Federal structure of Pakistan and has been weakened the already sick political culture. Different federal arrangements and the historic unjust distribution of economic and political rights has adversely affected the relations of the federating units with the center and among the provinces. These arrangements created legitimacy problems for federalism in Pakistan because the federation of Pakistan fulfills minimum criteria of federal structure (Adeney, 2013).

The 1973 constitution was adopted through consensus by all major stake holders; accommodating majority of the demands of the ethnic communities due to the recent secession of East Pakistan. When the political government returned to Pakistan in 2008; the PPP led government according to the previous consensus on the Charter of Democracy formed SPCCR in 2009 in the leadership of Mian Raza Rabbani¹¹ as

¹¹ The other members of the committee including Maulana Fazlu Rehman, Ishaq Dar, Raja Pervaiz Ashraf, Gulam Mustafa Jatoi, Baber Awan, Syed Naveed Qamar, Serdar Mehtab Ahmad Khsn Abbasi, Haji Lashkar Raisani, Wasim Sajjad, Humayun Saifullah, S.M Zafar, Monir Khan Orakzai, Shahid Bugti, Abdur Rahim

Chairman of the committee to finalize the supposed Eighteen Amendment for the restoration of 1973 constitution.

SPCCR completed its work in nine months; on 19 April 2010 the amendment was adapted to the constitutions. It reviewed 102 articles, among those the number of amended articles are 67, Substituted are 20, new inserted are 7, omitted are three and the repealed are the most important 17th amendment and the sixth and seventh schedules (Ghuas-Pasha, September 2013: Fakhr-ul-Islam, April,Jun 2013: Amendment, April,20, 2010). Furthermore 11 recommendations under the federal authority were also adopted (Chandio, Oct 2013); 95 amendments were proposed in approximately seventy articles (Fakhr-ul-Islam, April,Jun 2013). The committee not only created consensus among the political parties but also the other stack holders including provincial governments and the public.

The constitution of 1973 has been created the institutionalized majoritarian rule in Pakistan which converted some economic-com-ethnic problems to violent struggle (Adeney, 2007).

4.3. Content of the 18th amendment

The civilian government after the 2008 elections started the process of finalizing the historical, thorough and the major changes in shape of 18th constitutional amendment to revive the 1973 constitution, for the purpose of the institutional strong

Mandokhel, Aftab Ahmad Khan Sherpao, Hasil Bisanjo, Professor Khurshid Ahmad, Israrullah Zehri, Abdul Razzaq Thaheem, Rehmatullah Kakar, Haji Mohammad Adeel, Afrasyab Khattak, Ahsan Iqbal, Haidar Abbas Rizvi and Farooq Sattar. Among them nine members were belonged to the three major political parties i.e. PPP, PML (N) and PML (Q) while the rest were from the ethnic political parties in the small provinces.

federal constitutional democracy, to be exercised by the representatives of the people in the public interests. Eighteen Amendment played the part of “damage control”, by omitting the impacts of the 8th and Seventeen Amendment from the 1973 constitution, in which 90 and 26 article were altered respectively (Hassain, Junuary, 2012; Fakhr-ul-Islam, April,Jun 2013). The important contents of the 18th amendment are discussed here in details.

4.3.1. Part I. Introductory:

In Article one the spelling of “Sind” and “Baluchistan” has been corrected as “Sindh” and “Balochistan”. Similarly, the name of “North West Frontier Province” (NWFP) were renamed as “Khyber Pakhtunkhwa” (KP) (Amendment, April,20, 2010). The frequent use of 58 (2)(b) was fatal for the civilian governments. For the purpose to hold the way of military interventions into politics, clause one of article 6 has been substituted and in clause 2 the word “collaborating” and the clause (2A) has been inserted by eighteen amendments (Khan M. Z., The Constitution of Islamic Republic of Pakistan, 2015).

Debate: While correcting the spellings of Sindh and Balochistan no further information has been provided except that it was a colonial legacy and particularly renaming Khyber Pakhtunkhwa (KP), the historical demand of the nationalist and regional forces was satisfied, to draw difference between the Afghani Pakhtoons and Pakistani Pakhtoons the word Khyber were included to Pakhtunkhwa on the insistence of PML (N). Historically for the central government and establishment, renaming KP was an impetus to the separatists.

In article 6 to check any misadventure from army into politics the words “suspension” and “holding in abeyance” were included in the category of high treason (Fakhr-ul-Islam, April, Jun 2013). The collaborators were also to be treated as traitors. General Zia and Musharraf had used those terms at the time of their military coups. To block the way to military into politics, it was also added that such kind of actions must not be validated by any court including high court and supreme court (Hassain, Junuary, 2012).

Other issues were solved with consensus but renaming NWFP and the appointment of Judges procedure created deadlock, but was successfully resolved (Fakhr-ul-Islam, April, Jun 2013). While renaming KP it raised the issue of new provinces particularly Hazara province. Just one day before the adoption of this historical amendment violent protests were breaking out in Hazara district, in which Seven people were killed (Hassain, Junuary, 2012).

4.3.2. Part II. Fundamental Rights and Principles of Policy

About the fundamental rights Article 10A was inserted after Article 10, it ensures fair trial, Article 17 has been repaired. This article provide right to association on which through executive orders restriction was imposed at the time of military rule, article 19A after article 19 was inserted which is about the right to information about matters of public importance subject to reasonable restrictions, Article 25A after Article 25 has been inserted; this article guarantees free education to all without discrimination of age five to sixteen (Amendment, April, 20, 2010).

In article 27 a proviso has been inserted about the redressal of the under-representation of any class or region “in the service of Pakistan” would be addressed in such a manner as may be determined by parliament.

In article 38 after minor changes a paragraph (g) has been inserted. The paragraph speaks about the securing of share for the federating units in the autonomous or state controlled institutions and if in the past any injustice has been done with any province that shall be rectified.

Debate: With the insertion of these new articles it was provided that faire trial and due process of law is the right of every citizen in case of “arrest or detention”. Repairing article 17 the political parties were allowed to work freely without any fear of arrest or any misuse of powers from the government or any other entity, but these are subject to reasonable restriction. Right to information was provided through insertion of a new article in matters of public importance. Still in south Asia, Pakistan is the lowest in ranking regarding the right to information. Through this article the public can access the important information and can make accountable the government and the relevant institutions etc. These are very healthy developments for the growth of federal democracy, which remain throughout history in state of uncertainty. To end the social imbalances free and compulsory education from age of five to sixteen has been provided as a fundamental right (Hassain, Junuary, 2012).

It is worth mentioning here that the article which garneting the free and compulsory education from age 5 to 16 is contradicting with the constitution. The constitution permitting the age above from 14 to engage in labor (Humdani, 2014).

Most importantly to boast the downtrodden classes and provinces, arrangements were made to compensate them. It was also provided that underrepresentation of any class or area in the services of Pakistan will be addressed and it would be made possible that they might not be considered as discrimination about any class. For the purpose responsibility has been assigned to National Economic Council (NEC). Security to the provinces about their share in federal services were also provided which was one of their most important demand. In most of the federal institutions the small provinces grievances were provided to be addressed. The small provinces, neglected classes and areas would be brought to the level of other regions (Hassain, Junuary, 2012).

4.4. Part III The Federation of Pakistan:

After small changes in Article 41 clause 3, the clause 7, 8 and 9 has been omitted, which has given legitimacy to Musharraf presidential rule after assuming the office of the president; the dust of the LFO and Seventeen amendment has been cleared from the prescribed article. Similarly, in article 46 the prime minister was bound to inform the president about the decisions of the cabinet, likewise the president can ask for reconsideration. These powers were lapsed in the eighteen amendment (Fakhr-ul-Islam, April,Jun 2013).

In Article 48 through insertion and substitutes the President has been held bound to act on the advice of the Prime Minister within 10 days or within fifteen days he can require the cabinet and Prime Minister to reconsider. Clause 6 has been substituted by taking back the role of the president in holding of referendum; this has been specified for the prime minister and the parliament (Amendment, April,20, 2010).

Debate: The powers which were given to the office of the president by Zia-ul-Haq and Musharraf were taken back by the Eighteen amendment. Once again his position was reduced from the chief executive. The position and powers of the PM were restored as the chief executive of the government. He exercises these executive powers in the name of the president and later act on the advice of the previous. All the important powers belong with the Prime Minister. The president cannot exercise his important power on his own but will exercise on the advice of the PM.

4.5. Majlis-e-Shoora

The changes did by Musharraf in Article 51 regarding the seats in the National Assembly¹² and Senate were retained in shape of substitutes and has been held to be substituted with legal “effect from 21 Aug 2002”.

A provision the military dictators choose for themselves as the protectors of the nation by which several civilian governments has been ousted and give birth to political crises; the Article 58 (2)(b) including clause 3 has been omitted which give the discretionary authority to the president for the dissolution of the national assembly. (once again the supremacy of the parliament has been restored)

The seats of the Senate have been raised from 100 to 104 by substituting Article 59 through 18th amendment. Each of these four members will be elected by each province from the non-Muslim communities.

In Article 70 the word “Concurrent Legislative List” has been omitted because this list has been altogether omitted from the constitution and the federal government ceases

¹² Musharraf increased the seats of the National Assembly from 207 to 342.

its authority to administer these powers except those which were transferred to the Part II related to the mutual inter-provincial and center-provinces mutual interests.

While empowering Senate in financial matters a role has been given to the Upper House (Senate) by amending Article 73. Originated in the National Assembly including the annual budget must be simultaneously presented to the Senate. To Article 73 a new Section 1A has been inserted, by which the Upper House can give recommendations on the money bill within fifteen days of its transmission but the national assembly is not bound to adopt Senate's recommendations.

Changes have been made to the Article 75 by which the power of the president to withhold his assent from a bill were further confined. After substitution, article 75 says that if the president returned a bill to the Parliament and if it is passed by a majority of the joint meeting of the Majlis-e-Shoora, then the president shall give has assent, if he failed to do so the bill shall be considered to have been received the presidential assent (Khan M. Z., The Constitution of Islamic Republic of Pakistan, 2015).

The powers of the Senate are increased and that of president has been decreased in case issuing "Ordinances"; adding the word "Senate" to the Article 89 clause 1. The president cannot issue Ordinances if the Senate and National Assembly or one of them is in session. Along with other small changes a proviso has been added to prescribe article, by the virtue of that proviso the either house can only extend ordinance for once on its expiration of the one hundred and twenty day for another same time. Section of this article has been substituted.

Debate: 58 (2) (b) one of the dangerous weapon in president arsenal provided by Zia and then by Musharraf once again was removed. This weapon so far hited the civilian

government for three times i.e. twice that of PPP and for once that of PML (N) in 1990s. It is also argued by legal experts that with the removal of 58 (2) (b) the safety measures to level an authoritarian and irresponsible government has been removed; it is also said that the version of Musharraf's 58 (2) (b) was more making sense in which the SC has to validate the dissolution within 45 days (Hassain, Junuary, 2012).

Parliament was empowered by 18th amendment. The CCI and NEC were made accountable to the parliament as they will submit annual reports to both of the houses. To delay the legislation, the presidential powers has been decreased from 30 to 10 days. The emergency powers of the president were checked by parliament as within ten days the approval of such activity is necessary (Amendment, April,20, 2010).

Senate members were increased. Somehow its powers have been increased. When the senate is in session the president can't issue ordinances. It can also extend such ordinances for once. Similarly, the parliamentary committee have important role in the appointment of Judges and Chief Election Commissioner (Hassain, Junuary, 2012).

Senate represent the federating units, with equal representation. Eighteen amendment has enhanced its role. The working days of the senate has been increased from 90 to 110. The days for the consideration of the budget bill were also increased from 7 to 14. The senate has also given the power to consider the report of the Auditor General (Hassain, Junuary, 2012).

4.6. The Federal Government:

Major changes have been made to the article 90 for the revival of the original 1973 federal parliamentary constitution. By substituting this article through eighteen amendments the lost status of the prime minister has been given to him. The quasi-

presidential systems introduced by Musharraf were once again converted to the parliamentary type of government. The prime minister one again become the real chief executive, who can exercise has powers independently from the president on his name by himself or through the cabinet (Amendment, April,20, 2010).

Changes have been made to the article 91, increasing the role of the representative national assembly in the appointment of the leader of the house (Prime Minster) The bar on PM that he would not stand for more than two terms, were removed. The power of the president to appoint the prime minister on his discretion, from among the appointed national assembly, who in his opinion command the majority in the lower house, has been taken from him. Along with reshuffling the clauses, in clause 4 of the same article the word “Senate” held federal cabinet collectively responsible to upper and lower house (Khan M. Z., The Constitution of Islamic Republic of Pakistan, 2015). Article 99 was substituted by Eighteen amendment and it is made that the federal government shall determine the business of the federal government in the name of the president. Before the amendment the president poses this authority to determine the rules and business of the federal government (Khan M. Z., The Constitution of Islamic Republic of Pakistan, 2015).

Debate: The removal of restriction from more than two terms of prime minister set the stage for Nawaz Sharif as Prime Minister. In sum in these articles the powers of the president were transferred to the federal government and to the parliament.

4.7. Part IV Provinces: The Governors:

In Article 101 for the appointment of the Governors of the provinces the Prime Minister's advice has been made compulsory to the president. Before only consultation

was provided. And it is made necessary that the person to be appointed as governor must be a registered voter of that province.

Article 105 has been amended on the same putting of parliamentary principles. It is provided that the Governor should act on the advice of the cabinet or chief minister within ten days and he could ask the chief minister to reconsider such advice within fifteen days. Clause four has been omitted.

Debate: parliamentary procedure has been adopted for the appointment of the Governors. To end exploitation, it is made obligatory that the Governor must not be from another province and will be a registered voter and resident of that province (Hassain, Junuary, 2012).

4.7.1. The Provincial Assemblies

In article 106 the changes of the LFO and seventeen amendment regarding seats in provincial assemblies were retained and it was provided that these changes would be of legal effect from 21 Aug of 2002.

Article 112 (b) regarding the dissolution of the provincial assembly on the discretion of the governor has been omitted from the constitution.

Just like the president the governor were held bound in article 116 that after a bill is presented to him he would assent the bill or would returned to the assembly and if passed again he will give his assent within ten days failing such the bill will be considered to have been assented. Once again the position of the Chief minister and the provincial legislature were given their pre-dictatorial status or we can conclude that their position has been enhanced with the transfer of the concurrent list to the provinces.

4.7.2. The Provincial Governments

After the important changes have been made to the Article 129, the provincial executive authority shall be exercised by the provincial government (the Chief minister and Ministers) in the name of the Governor (Amendment, April,20, 2010).

For the Chief Minister the same procedure of election has been adopted as for the prime minister to uphold the principles of parliamentary democracy on the provincial level; these changes have been accommodated in Article 130. The restriction of the two terms for the Chief Minister has been removed (Khan M. Z., The Constitution of Islamic Republic of Pakistan, 2015).

Parliamentary color has been given to the article 139; in clause 3 instead of governor the provincial government has been given responsible for “the allocation and transaction of its business” (Khan M. Z., The Constitution of Islamic Republic of Pakistan, 2015).

After article 140 a new article 140A regarding the local government has been inserted by Eighteen Amendment. This article made it necessary for each province to develop its local government system and “to devolve political, administrative and financial responsibility” to them. It is also worth mentioning here that article 140-A regarding the local governments were inserted by LFO 2002 which were retained with slight changes (Amendment, April,20, 2010).

4.8. Part V Relations between Federation and Provinces: Distribution of Legislative Powers

As the eighteen amendment has abolished the concurrent list, it established and strengthen the parliamentary democracy and its subjects has been transferred to the

provinces by giving a substantial level of provincial autonomy, resultantly article 141, 142, 143 and 149 has been changed accordingly (Amendment, April,20, 2010).

Debate: Article 142 clause (b) and (c), the provinces have given the power to legislate regarding evidence, criminal law and criminal procedure (Hassain, Junuary, 2012).

4.9. Special Provisions

The role of the Council of Common Interest (CCI) has been increased by amending Article 153. The Prime minister will Chair the council and he will nominate three other members from federal government. Clause 3 has been omitted and it is made compulsory for the CCI that it must submit its annual report to both the houses of Parliament.

The Article 154 has been amended accordingly as the constitutional concurrent legislative list were abolished. It was made compulsory for the CCI that it shall meet at least once in ninety days. And was provided that it must have a permanent secretariat. Article 156 has been substituted. The National Economic Council (NEC) has been made responsible to the Majlis-e-Shora by extending its work and role. It was made compulsory that it shall meet at least twice in a year and will submit annual report to each of the house. The president discretion has been abolished from this article.

In article 157, clause one, after the first paragraph a proviso has been add that in case the federal government want to construct a hydro power station in a province, the provincial government of that province must be consulted. At the end of this article, clause 3 has been inserted which says that in case of any disagreement between the federal and any provincial government regarding this article, the issue would be raised in the CCI for resolution (Khan Q. Z., 2011).

Debate: To make CCI and NEC more effective and operational as dispute resolution entities and to create conducive environment for the equal development of all the provinces and regions and to resolve the lingering issues and grievances of the provinces.

It was provided in the 18th amendment that CCI will have PM as its Chairman, will have a permanent Secretariat and will meet once in ninety days as obligatory. The PM can call it any time in urgent matters. It has also given the responsibility to resolve the issues regarding royalty of electricity, particularly with the KP.

Similarly, NEC has given the responsibility that it will ensure a balanced and regional equality in the process of development. To hold these institutions accountable, and hold a check on them, it was also provided that both of them shall submit annual reports to both houses of Parliament. To keep the NEC working it is made necessary that it shall meet twice a year.

4.10. Part VI. Finance, Property Contracts and Suits: Finance

In article 160 with the inclusion of (1) (b) recognized the right of the provinces on the net proceeds on the duty of oil, collected by the federal government. Now the provinces will receive this duty. Two new clauses 3A and 3b has been inserted. According to 3A the share of the provinces in each NFC shall not be less than the previous award. The finance minister of the federation and the provinces shall monitor the implementation of the award and will submit annual report to the parliament and provincial assembly (Amendment, April,20, 2010).

Debate: The net duty on oil like that of gas will not form part of federal consolidated fund and will be paid to the province from which it is extracted.

4.10.1. Borrowing and Audit

In article 167 a new clause 4 has been inserted by which the provincial government can raise domestic or international loans on the security of its consolidated fund within the limits prescribed by the NEC (Khan M. Z., 2015).1

4.10.2. Property, Contracts, Liabilities and Suits

Article 172 clause 2 for the word “within” the word “beyond” has been substituted by which the land, minerals or the things with value beyond the waters of Pakistan has been given to the federal government ownership.

A new clause 3 has been inserted to this article. Under clause three the oil and gas within the province and the territorial waters subjects to the existing commitment has been vested equally to the federation and provinces. The right of the provinces was recognized on its resources, previously this was a major demand of the provinces. (for more discussion see chapter III)

4.11. The Judiciary: The Courts

In article 175 a high court for the Islamabad capital territory has been included and explanation were also given accordingly.

A new article 175 A has been inserted to the constitution about the appointment of Judges to the Supreme Court (SC), High Courts and the Federal Shariat Court. The issue of the appointment of Judges to the higher courts has been produced a better controversy in the past by which the role of the judicial branch of the state has been remained controversial and produced hot debates on different forums. In this article for the appointment of judges a Judicial Commission of Pakistan and the Parliamentary

committee has been provided. This was followed by 19th constitutional amendment to make the process neat and clean. But still the process is doubted. There are still the supporters and opponents of the new process. (will be discussed later)

4.12. The Supreme Court of Pakistan and the High Courts:

Article 177 and 193 has been changed accordingly that the president will appoint the Chief Justice and other judges according to the article 175 A. while in article 193 the age limit for a judge in high court has been raised from forty to forty-five. In Article 194 for the oath of the Islamabad high court judges and Chief Justice a proviso has been added in the pattern of SC.

After clause one in article 194 clause 1A for the high court in Islamabad capital territory has been added that its principle seat shall have in Islamabad. A bench of the Peshawar High Court has been provided at Mingora and of Balochistan High Court has been provided at Turbat (Amendment, April,20, 2010).

Small changes have been done to article 199. In article 200 the last proviso of clause 1 and clause 4 has been omitted by 18th amendment while ensuring the independence of judiciary.

Debate: For the appointment of SC, High Courts and Federal Shariat Court Chief Justices, and the appointment of Chief Justice (CJ) process has given rise to some suspicious views. The CJ will pass two hurdles one, the Judicial Commission and second, the parliamentary committee. It was also pointed that this process will politicize the procedure of appointment (Hassain, Junuary, 2012).

4.13. Federal Shariat Court:

Article 203-C is about the appointment of the judges in Federal Shariat Court (FSC). It has been provided in 18th Amendment that the Judges of this Court shall be appointed according to article 175A. The qualification for the FSC Judges has been extended that a Judge must have fifteen years of experience in Islamic Law, Research or Instruction. The influence of the president has been removed from judiciary and it was made clear that the removal of Judges from this court shall be done as other judges of the SC. Clause 4C and 5 has been omitted from the article. For clause 9 the changes are to be deemed as amended of legal effect from 21 Aug 2002.

4.14. Part VIII Chief Election Commission and Election Commissions:

In the appointment of Chief Election Commissioner (CEC) the discretion of the president has been omitted from article 213. New clauses have been added to this article about the appointment of the CEC, the PM on the consultation of the leader of the opposition may forward three names to the parliamentary committee to finalizing one. The parliamentary committee shall consist of fifty percent from the treasury benches and fifty percent from the opposition parties, its strength must not be more than twelve members of about one third to be nominated from the senate. In case of any disagreement the leader of the opposition and the PM must forward separate lists of candidates to the Parliamentary Committee.

Eighteen amendment has extended the tenure of the CEC and its other members from three to five years. It is provided in article 315. In article 218 the formulation of the Election Commission has been more democratized by 18th Amendment. The same

democratization process has been happened to the article 219 and two new paragraphs about the functions of the EC has been added. The holding of elections to the National Assembly, Provincial Assemblies and Local Government and such other functions as may be specified by act of Parliament.

Debate: Before the Eighteen Amendment it was the discretion of the President to appoint the Election Commissioner but this power was taken back from him in article 213. The parliamentary committee recommend the name of the person and the president just sign the name.

4.15. Election Laws and Conduct of Elections

Through Article 224 the procedure of the appointment of the care taker government on the expiration of the term of the legislature or provincial assembly has been provided and amended by Eighteen Amendment. The process has been democratized that the care taker government shall be appointed on consultation with opposition parties in the center by the president and in the provinces by the governor by the consultation of the going chief minister within sixty days.

In article 226 all the elections except the PM and Chief Ministers are provided to be secret ballot. Before 18th Amendment all the election was constitutionally held by secret ballot.

Debate: In Pakistan the need for holding free and fair election remained a dream. After every election the loosing parties blame for rigging and misuse of powers in elections. For the purpose to make sure the peaceful transfer of power from one government to another, it was the need of the hour to provide a system of care-taker government, the integrity of which may remain beyond doubts.

4.16. Part X. Emergency Provisions

Regarding emergency, in article 232 new proviso has been inserted. According to that if a situation has been arising beyond the control of that provincial government, it is made necessary that the assembly of that province will pass a resolution for the imposition of emergency. And in case the President act on his own than within ten days the approval of both houses of parliament is required.

Debate: Eighteen Amendment had blocked those holes which were used by military to derail the civilian government. Emergency powers was the most lucrative provisions which were used by army usurpers. In the constitution 18th amendment it was made mandatory that if the president is imposing an emergency he will take approval of the parliament and the approval will be taken separately from both houses with in just ten days which is a better difficult than the joint one. (Hassain, Junuary, 2012).

More autonomy has been given from the past to the provinces as a resolution is required from that provincial government where emergency is being enforcing (Hassain, Junuary, 2012, p. 83).

4.17. Part XII Miscellaneous

Through amendment in article 242, Chairman of the Federal Public Service Commission shall be appointed by the president on the advice of the PM, while relating to the province shall be appointed by governor on the advice of the chief minister. In both cases the discretion of the President and governor has been abolished by revisiting the parliamentary system.

4.18. Armed Forces:

The appointment of the Chairman, Joint Chief of Staff Committee and three services chiefs and their salaries and allowances in the military forces, on the consultation with Prime Minister has been substituted for his advice. This is an important amendment to the constitution article 243 by which the grab powers by the president has been taken back.

Debate: the process has been doubted because it had pose a huge responsibility on PM that it would give courage to slain merit. On the other hand, the opposition leader Khursheed Shah has express his concern and suggested that the Army Chief can be appointed on the procedure adopted for the Chief Justice (Nation, 2016).

4.19. Title, Commencement and Repeal: Transitional

Article 267A empower to remove difficulties regarding the enforcement of 18th amendment for one-year legal effect and 267B removal of doubts has been inserted to the constitution.

To clip the wings of the president article 268 clause 2 has been omitted. This clause was providing for 35 laws in schedule six, which were not amendable, repeal of alterable without the prior permission of the president (Hassain, Junuary, 2012).

In article 270A clause one some lines regarding the validity of some presidential orders and ordinances has been omitted and clause 6 has been substituted accordingly.

In article 270AA the Musharraf's 1999 emergency, provisional constitutional order, the Oath of the office (Judges) Order, amendments made to the constitution through Legal Framework amendment 2002 and the Legal Frame Work (second) are declared of having no legal effect. In article 270AA the previous martial law chapter

has been closed. this article gives time to adjust the 18th amendment with the constitution. It gives the 13 of Jun 2011 for the completion of the devolution process of the concurrent legislative list to the provinces and also provide a clause to form an Implementation Commission for the enforcement of the Eighteen amendment.

The general elections held in 2002 for national and provincial assemblies were given legal cover in article 270B. After this article a new article 270BB has been inserted about the 2008 general elections that these were held under the constitution.

4.20. Schedules

In the fourth schedule Federal Legislative List, Part I with small changes some entries have been omitted including entry 21, 33, 38, 40, 45, 46, in entry 49 sales tax has been inserted, from entry 50 capital gains has been omitted.

In the fourth schedule Part II a new entry 4 (electricity) were added from the federal concurrent list. Part II contain on those subjects which are consist of joint interest of the federation and provinces. And for them federal institution like CCI, NEC and NFC is working.

The concurrent legislative list which were consist of 47 subjects were omitted and majority of its subjects were transferred to the provinces.

Debate: Concurrent Legislative List has been discussed from different angles but here it is worth mentioning that there were small regional and nationalist political parties who were not satisfied with the autonomy given by the Eighteen Amendment. They were in favor of just four subjects with the federal government. On the other side the centralist was also against the altogether abolishing of the concurrent list. One of the founding father of the 1973 constitution S.M Zaffar has observed that the commitment

of abolishing this list altogether “on or after ten years is not born by any historical record”. These centralist also advance suggestions that how it was possible to give provincial autonomy without abolishing this historical three legislative lists, constitutional old practice (Hassain, Junuary, 2012).

Critical Analysis

4.21. Implementation Process

Pakistan has experienced many political ups and setbacks. The constitution of 1973 was the product of the remaining Pakistan's major political parties including those of nationalist in the small provinces. Though this constitution survived for four decades but it failed to fulfil its commitment about the provincial autonomy which was promised to the small provinces. This was a condition on which the small provinces agreed to support unanimously adopted 1973 constitution.

Eighteen Amendment is a historical constitutional development whereas the governments did not implement it in its true spirit. Though the federal government approved the provincial autonomy but created the devalued ministries with other names: retaining some powers and programs like National Programs on Tuberculosis, AIDS and Malaria and creating new ministries is giving the benefit of doubt that the federal government is sceptic about the capacity of provincial governments (Ali, 2014). But it would be childish to think that the provinces are unable to pick up their burden because these provinces are historically governing themselves and have a long history then Pakistan.

Within fifteen days of commencement of this amendment the federal government was directed to form an Implementation Commission for the devolution process. In

three phases the implementation commission completed the task of devolution of seventeen ministries under Article 270AA (Khan, 2011). It is also argued in a debate by legislatures in the upper house that provinces would not be benefited if the federal government is making again the devolved ministries with other names¹³.

After the passage of 18th amendment to monitor the practical devolution process a cell was established in the cabinet division, which was handling the matters of the Seventeen devolved ministries. It worked for a year but after that there is no one to take the responsibility of implementation process (Kakakhel, 2016).

Eighteen amendment had transferred the concurrent list subjects to the provinces except electricity which was transferred to federal legislative list Part II; similarly, there were subjects which were transferred from federal list Part I to Part II. Part II is a joint venture of federal and provincial governments.

It was expected that the small provinces will benefit from the devolution but here what happen that the developmental budget of Balochistan decreased and non-developmental budget increased (Kakakhel, 2016).

It is difficult to discuss all the controversies raised by Eighteen Amendment but some important issues are discussed in the coming pages. (also see chapters V)

4.22. HEC

The controversy over the devolution of HEC were emerged from the dichotomous federal and provincial lists. About education the federal government have the foreign funding, foreign students, technical education, special studies along with research are

¹³ Seven new ministries were established for the purpose of co-operation and coordination with international entities (Kakakhel, 2016).

given in federal list Part I and did not touched by 18th amendment (Raza, 2014). HEC created in 2002 by Musharraf for the provision of quality education to be monitored on the federal level. Eighteen amendment not only resolved major issues but also created some controversies of which one is the devalue HEC or not to the provinces. Education with planning, policy, center of excellence and standards of education were devalued but HEC were retained on the federal level. In the process one of the issue is that the provinces do not have separate funding procedure for the higher education “raised the possibility of revisiting a hard won NFC a year earlier”; on the other hand HEC is of the opinion that without amending the HEC Act, its devolution is not possible, and that the eighteen amendment has protected its autonomous status under the constitution forth Schedule to “monitor standards in higher education and ensure inter-provincial coordination” (Executive Summary, 2014). The HEC also initiated a media campaign, in the month of July 2012 the Executive Director of HEC in an interview argued that the provinces are more interested in money rather to shoulder HEC responsibilities (Raza, 2014). The overlapping provisions of 18th amendment with the provisions of other articles is also a concern. As mentioned earlier in this chapter that compulsory and free education up to the age of 16 and the 14 years of permission by the constitution to engage in labor; both are the responsibility of the federal government to make sure to its citizens. Other complexities are the capacity of provincial government, threat to national cohesion and national integration. The government of KP has form an Education Policy to be implemented from 2015, other provinces are also in the process of adjusting themselves with the new system of devolution. It is also argued by the experts that a step wise devolution of HEC would be more affective and will be less

harmful for the scholars who are engage with the HEC different programs (Ali, 2014). In Nov 2012 the senate committee on practical education and training took the notice of HEC issued extension of the appointment of its executive director. The post remained vacant till the SC intervened into the matter and issued instruction to the HEC for the appointment of the new Executive Director. Furthermore, the head of HEC refused to accept the orders of the federal government. The first Executive Director Dr. Atta-ur-Rehman replaced in 2009, who was first a minister in the cabinet of Musharraf and its principle architect, started campaign against its devolution, he argued that the provinces are interested in the division of its funds. Curriculum and Syllabus are devalued to the provinces, which were opposed by many in the name of national integration and cohesion. Foreign funding, NGO's programs etc. and the inter-provincial coordination and monitoring of higher education is necessary on the national level (Ali, 2014). It is also argued that the hasty devolution may result not only in lowering the standard but may result in the fall out of the foreign funds (Raza, 2014). Previously Punjab and Sindh established their own higher education commissions but the HEC and the federal law ministry declared them unconstitutional, the CCI has made a task force to resolve the issue (Analysis, 2015). It is also suggested by experts that the HEC should adopt a more flexible opinion and must negate the parochialism. While the government need to adopt a more realistic view (Ali, 2014).

4.23. Health and Population Welfare

Health like Education suffered from the overlapping and hasty devolution of powers to the provinces. With the abolition of concurrent legislative list and the Federal Health Ministry the provinces were given 'poison, dangerous drogues and their prevention from one province to another, infectious diseases, pollution, environment and ecology. Population and welfare of labor and statistics and inquires'. 'Legal Medical and other profession' were omitted from Concurrent List and were inserted into federal list part II. Some new entries were also included into federal list part I i.e. 'international treaties, conventions and arbitration'. National Planning, economic development and the technological development and scientific research were shifted from Part I to Part II. The constitution giving an important role to the federal government regarding panning, international commitment, research and human resource. But after the eighteen amendment the abolishing the ministry of health on national level a quick transfer of these subjects to the provinces not only created problems for the federal government but also for the provinces. It undermined the capacity of federal government while the provinces are facing the problem of insufficient funds (Nishter, 2014).

Drogues and medicines are creating problem for the center and units. This entry was deleted from the concurrent list and was given to the center by virtue of entry six in federal list. The centralists are of the opinion that the provinces may not be able to properly monitor the regulation and standard. At the center the health related subjects and programs were placed under different ministries and divisions which created the threat of mismanagement (Nishter, 2014).

After the devolution process of 18th amendment population welfare is managed on federal level by different ministries particularly including the Inter-Provincial Coordination and Planning and Development Division which do not have the technical expertise in this sector. The federal ministries and the provinces are not looking on the same page. The will abolished ministry of Population Welfare and its programs were devalued to the provinces and were divided to the ministries and divisions who lack the requisite now how. Some of the programs of the defunct ministry of Population Welfare after the devolution process lack ownership problems its example is the revised Population policy of 2010 (all, 2014).

4.24. Labor

Abolition of Concurrent List led to the devolution of the entry regarding labor to the provinces. However, the center is able to legislate on labor related matters by virtue of other entries. The federal government has retained seven wings of the defunct ministry of labor. Covered by entry 27 of the concurrent list the trade unions, labor and industrial disputes were devalued to the provinces but the this does not restrict the federal government to legislate for the labor related issues. The constitution provides for the elimination of exploitation, suitable working conditions, and also speaking for the other basic necessities, Old Age Benefit Act and insurance, and the international commitments are broadly the responsibility of the federal government. The age 5-16 years of compulsory and free education is also contradicting with the legally engaging in labor at the age of 14 (discussed earlier). KP has adopted its own Industrial Relation Act 2010 but the remaining laws regarding labor remain untouched and are enforced through article 270-AA (Humdani, 2014). (for more details see chapter V).

Conclusion

The years 2009 and 2010 (7 NFC award and 18th Amendment respectively) will be remembered as the potential governance changer in the history of fiscal decentralization and provincial autonomy. But the attitude towards its implementation were remain cool (Ghuas-Pasha, September 2013). The principle architect of Eighteen Amendment Senator Raza Rabbani currently the chairman of the Senate once argued that 18th amendment is the “most significant restructuring process” after the 1973 constitution. 18th Amendment has devalued seventeen ministries in three phases by abolished the concurrent legislative list. It not only revived the parliamentary democracy and independence of judiciary or we can say that separation of powers with strict checks and balances. Eighteen Amendment not only resolved the lingering issues between the center and provinces but also created controversies in the post-18th amendment scenario. The center devalued powers to the provinces on one hand and took it with the retaining of those functions on the central level on other hand. It is also found in this chapter that the center must trust on the capacity and capabilities of the provinces and avoid the hasty decision and give proper time to the transition process because “Rome wasn’t built in day”.

Chapter V

Economic relations and issues between Centre and KP Province after 18th amendment

Introduction

The 1973 constitution of Pakistan govern the political, economic and administrative relationships among three tires of governments. Historically the federal government enjoyed more powers in practice than the specified powers (which are also much more than needed) of the constitution. In theory all the constitutions of Pakistan provided federal structure but in practice the system remained and held a majoritarian centralized authority. While altering the relations among the three tires of government both vertically and horizontally, after Eighteen amendment approximately all the major public services became provincial ones. Seventeen ministries were transferred to the provinces with a total budget of PKR 49 billion for the FY 2011. The amendment had broadened the revenue generation bas of the federating units e.g. sales tax on services which has the potential of revenue generation from 0.5-1 % to GDP, but during the devolution process the federal government had transferred responsibilities to the provinces and retained some financially rich institutions like Employes Old Age Benefit Institution (EOBI), Workers Welfare Fund (WWF), HEC, etc. while re-establishment of departments and ministries with changed names by the central government are complicating the environment further. The Eighteen amendment took place in a unique environment, in 2009, the 7th NFC award were announced in which the new resource distribution formula was provided while in 2010

responsibility without sufficient funds were devalued to the provinces. The devolution process under the amendment is a “too-little, too-late, and too-much, too-soon” development but it could be accepted as healthy development for the federation in long run.

In this chapter the economic relations and issues between the center and the provinces particularly KP and the central government has been discussed. CCI, NEC, NFC, Divisible pool, financial institution, federal quota, local government, infrastructure lag in small provinces and China Pakistan economic corridor (CPEC) are discussed subsequently in this chapter and the historical and a current picture after Eighteen amendment has been provided. At the end the chapter has been finished on conclusion.

5.1. Council of Common Interest (CCI)

The article 153, of the 1973 constitution provides Council of Common Interest (CCI) for the Inter-Provincial Coordination (IPC) and as a dispute resolution entity. Since from the adoption of the 1973 constitution CCI remained inactive. Till 2010 it held only 10 meetings. The military rulers, first Zia-ul-Haq and then Musharraf held it in abeyance for a long time and then converted it in to a quasi-presidential institution. The Eighteen amendment introduced more effective combined management of shared responsibilities. It provides a reformed CCI for the 18 subjects mentioned in Part II of the constitution. Eighteen Amendment enhanced the importance of the CCI by abolishing the Concurrent legislative list and making the Prime Minister as its Chairman, other members are the four chief ministers of the four provinces (making a conducive and cooperative environment) and three members are nominated by the Prime Minister from the federal government.

Rabbani argues that the Council will become an effective dispute resolution, economic planning and a developmental forum. And that the Prime minister shall constitute the CCI within thirty days of his oath taking of the office (Rabbani, 2012). Previously the president could appoint any federal minister as its head. When Eighteen Amendment was passed several subjects were transferred to federal list part II, most importantly electricity was transferred from concurrent list. Other important entries which enhanced the importance of the CCI are including the National Planning and economic coordination, railways, natural gas and oil, electricity, federal regularity authority's, major forts, census, management of public debt etc, and some other entries from the federal legislative list Part II and some were created newly. After 18th Amendment it took some major issues between and among the Centre and the Provinces. It is an effective mechanism but unfortunately never meet to its constitutional responsibilities (several times the government has been accused of sheer violation of the constitution as not calling its meeting) (Zahid, 2013). In Article 153, 154, 155 and 157 regarding the functions, composition and mandate of the CCI were revisited along with other articles of the constitution. 18th amendment provides that it shall have a permanent secretariat, shall submit an annual report to the parliament and shall meet at least once in 90 days. The Prime Minister can convene its meeting on the request of a province on an urgent matter at any time (Eighteen Amendment, 2010). Prior to 18th amendment Cabinet Division was its secretariat, which was transferred to the Inter-Provincial Coordination Division.

Shared ownership of natural resources were provided in 18th amendment. And any disagreement among provinces or between Centre and the provinces would be brought into

CCI and if the CCI failed to resolve the issue by a majority vote then may be brought to the parliamentary joint meeting and its decision will be final.

After 18th amendment not only the CCI but the government were accused of sheer violation of the constitution by the small provinces. They argued that the government is not only failed to convene its meeting but also bypassing the provinces and CCI by taking decision in the Cabinet e.g. Committee on Energy headed by Prime Minister and Economic Coordination Committee headed by Ishaq Dar regarding the new explore Oil in KP, changes in Gas prices¹⁴, a combined own resource, matters about Liquefied Natural Gas (LNG) (Sindh moved a reference supported by KP to the Centre that the decisions of the ECC and CCE shall be declared null and void) and matters about electricity to be solved by the CCI. (kiani, 2015).

Chairman Senate and the architect of the eighteen amendment worn the government about the violation of the constitution. He has given ruling on a motion in the senate that for the last one year the government is not fulfilling its constitutional duty to convene the meeting of the CCI. He argued in ruling that neither it is for the prime minister nor the cabinet to take decisions and subsequently took it for approval from the CCI. He also worn the government that it will create chaotic situation in politics (Dawn, 2016). Till 2016 the issue of royalty on net hydel power and the distribution of water among provinces were not resolved completely. Till 2016 CCI was supported by the IPC which is an integral part of the federal government, which make its independent nature doubtful (Aditorial, 2015). Some entries of the federal legislative lest needs explanation as the 50 percent ownership

¹⁴ KP is the major producer of Oil, Gas and hydel power.

and management of natural resources particularly Oil and Gas. KP demanded provincial representation in the management of the federal institutions, which was supported by other provinces. Due to the lack of “subordinate” legislation, there are problems while defining the domain of the CCI (Analysis, 2015).

5.2. National Economic Council (NEC)

The constitution has placed a very huge responsibility over NEC. The constitution article 156 provides for the composition, powers and its responsibilities. The Prime Minister will be its chairman, other members including the provincial chief ministers and one member each is appointed by the chief ministers, four members are appointed by the prime minister from time to time. The council has been empowered to play a proactive role in national economic stability and to ensure an equal and balance economic development. It is empowered to review the overall economic conditions of the country, planning activities, approves different projects and to advise, assist the federal and provincial governments. It must meet twice in a year. The NEC is responsible to the Parliament and shall submit its annual report to both of the houses (Rabbani, 2012: Eighteen Amendment). The national economic council is considered as the leading institution of economic policy making and development (Dawn, 2011).

The CCI was adopted in the 1973 constitution to harmonize inter-provincial relations after the better experience of the one-unit scheme with highly centralization of powers which ultimately led to the separation of East Pakistan.

After Eighteen Amendment provinces can borrow loan from local or international market on its consolidated fund, for which the approval of the NEC is mandatory. The constitution Eighteen amendment also provided that economically backward classes or any injustice or discrimination done in the past shall be eliminated. In this respect the NEC can play a vital role to bring those under developed and neglected section of the society to the level of other area of the country. Pakistan needs to federalize the planning instead of centralization. Because centralization of planning led to the separation of Bangladesh and in future could create problems for the central government (Haq, 2016).

5.3. National Finance Commission (NFC)

Article 160 deals with the duties, powers, composition and responsibilities of NFC. The decisions taken in the 7th NFC award were given constitutional cover in the 18th amendment. The federal government is bound to constitute NFC every after five years by the president. Its members are the federal finance minister, provincial finance ministers and the president may appoint other persons after consultation with the governors. Its duty is to make recommendations to the president about the distribution of financial resources from divisible pool and governs such other economic relations between and among the center and provinces. The constitution of 1956 visualized devolved fiscal federalism. The process was hindered soon after the military takeover. Ayub khan converted the political system into a quasi-presidential system with centralization of fiscal powers. This centralization of fiscal powers resulted into the dismemberment of the federation of Pakistan but it is a reality that Ayub era was the golden era of economic development; no other political or military government were ever able to achieve the economic growth what

he did. The 1973 constitution was adopted with concurrent legislative list by giving a transitional time to the provinces that these powers will be decentralized after some time but once again the military Coup led by Zia derailed the process of decentralization. Every time the military had tried to dodge the political parties on the lower level by holding the local government elections and by controlling them directly through civil and military bureaucracy. They ever created a new version of loyalist on the local level. This was done by the three notorious general i.e. Ayub khan (Basic Democracies), Gen Zia (local governments) and Musharraf (devolution process). When the civil government came to power in 2008 the major political parties were even against the positive reforms introduced by the military government of Musharraf. This environment helped to create consensus over the 7th NFC award and then immediately on 18th constitutional amendment (Shah A. , September 2012).

Since from inception Pakistan remained a centralized federal state in which the revenue was largely collected by the central government and is pooled into federal divisible fool. The central government collect 90 percent of revenue while its expenditure is 68 percent. The remaining 10 percent of revenue is collected by the provinces while their expenditure is 32 percent of the total expenditure. From these figures it is evident that there is vertical imbalance of “which the NFC aim to reduce”. The provinces are highly dependent on central government to meet their expenditures because they are dealing with more subjects then they generate the revenue (Saleem, 2015).

The 7th NFC introduced structural changes to reduce the socio-economic imbalances vertically and horizontally by introducing the multiple criteria. This award

generated consensus over resource distribution between the centre and provinces. It increased the federal transfers by 22 percent of the expected 24 percent. It increased the provinces share in the divisible pool from 47.5 percent to 56 percent in the first year of its commencement and for its remaining years 57 percent with a guarantee provided in the constitution Eighteen Amendment Article 160 (3A), that the federal transfers must not be less than the previous award. The silent futures of various awards are given in chart 1.

Table 5.1: NFC History

Award Year	Divisible Pool	Vertical Distribution	Horizontal Distribution	Grants and Aid Criteria	Straight Transfers
1974	<ul style="list-style-type: none"> Taxes on Income Taxes on Goods sales and Purchase Export Duties on Cotton 	Provincial Share 80percent Federal Share 20 percent	Population	<ul style="list-style-type: none"> KP100 million Balochistan 50 million 	
1990	<ul style="list-style-type: none"> Similar as 1975+ FED on Tobacco and tobacco manufactures and sugar 	Provincial Share 80percent Federal Share 20 percent	Population	<ul style="list-style-type: none"> Punjab one billion for 3 years Sindh 700 million for five years KP 200 million for three years Balochistan 100 million for three years 	<ul style="list-style-type: none"> Share in total Crude oil royalties on the basis of a share in crude oil production Share in Natural Gas surcharges

1996	<ul style="list-style-type: none"> Taxes on Income Wealth Tax Capital Value Tax Taxes on Sale and Purchase Export Duties on Cotton Custom Duties FED excluding FED on Gas Any other tax 	<p>Provincial Share 37.5percent</p> <p>Federal Share 62.5percent</p>	Population	<ul style="list-style-type: none"> KP3.31b illion for five years Balochistan 4.08 billion for five years Additional grant to each province on achieving a growth of 14.2 percent in provincial receipts ^a 	<ul style="list-style-type: none"> Share in total Crude oil royalties on the basis of a share in crude oil production Share in Natural Gas surcharges
2006 *	Similar as 1997 NFC and Sales Tax on Services (CE mode)	Provincial Share 41.5-46.25 percent ^b	Population	27.750Billion ^c Grant will increase each year at same rate as growth in divisible pool	
2009	Similar as 1997 NFC ^d	Provincial Share 56percent 2010 11a nd 57.5 percent in 2011-12 onward	<ul style="list-style-type: none"> Population Poverty and backwardness Revenue collection and Generation Inverse population density 	0.66percent in the share of each province in divisible pool	<ul style="list-style-type: none"> Share in total Crude oil royalties on the basis of a share in crude oil production Share in Natural

					Gas surch arges on the bases of aver age rate per MM BUT
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*Distribution of Revenues and Grants-in-Aid Order 2006

- a: Rs500 million each to Punjab and Sindh and Rs100 million each to KP and Balochistan.
- b: 2006-07 41.5 percent, 2007-08 42.50 percent, 2008-09 43.75 percent, 2009-10 45.00 percent and 46.25 percent.
- c: The share of each province in grants is as follows: Punjab 11.0 percent, Sindh 21.0 percent, KP 35 percent and Balochistan 33 percent.
- d: Sales tax on services given to provinces.

Source: Pakistan Development Advocate Volume 2, Issue 2 June 2015

After independence the distribution of financial resources governed by the Niemeyer Award under the 1935 Act. At that time the divisible pool was consisted only of income tax, of which provinces received 50 percent: the taxes on goods and services was provincial subjects. Under that formula KP and Sindh were provided annual grants. In 1952 the Raisman award were adopted under which 45 percent were transferred to the East Bengal and the remaining 55 percent were distributed among the West Pakistan four provinces¹⁵ (Saleem, 2015). During the one-unit era two awards were announced i.e. first in 1961 and the second in 1964. Under these awards the share of East and West Pakistan were 54:46 respectively. Under these awards the distribution of 30 percent of sales tax in the pool was on the basis of contribution. The details NFCs after the adoption of 1973

¹⁵ Under this award 50 percent share were given to the central government to deal with the refugee's problem. This was the remaining 50 percent which were distributed as mentioned accordingly.

constitution are provided in chart 1. In these awards the revenue was distributed largely on the basis of population. ...Due to different issues between the Centre and provinces the 6th NFC award were issued through a presidential order “*Distribution of Revenues and Grants-in-Aid Order 2006*”. In 7th NFC Award one percent share were allocated for KP on the part of loses in war against terrorism and federal government surrendered the sales tax to the provinces. Rights over arrears of Net Hydel Prophet were given to KP and the Arrears of Gas Development Surcharge (GDS) were given to Balochistan. The GDS computation were revised (the resultant revenue were distributed among the provinces of its origin) and the excise duty on Gas were increased for per MMBtu from Rs. 5.09 to Rs. 10 MMBtu.

The (Saleem A. b., 2015)

In Pakistan about 93 percent of revenue is collected by the federal government and the rest is collected by the federating units. To address these imbalance article 160 provides the NFC award for the sound inter-governmental transfers of resources. After the 7th NFC award the federal share decreased to 44 percent in its first year and a further to 42.5 percent in its remaining years. The share of Punjab, Sindh and KP were reduced by 1.27 %, 0.39% and 0.26 % respectively; this reduction combines 1.92 were given to Balochistan. The major beneficiary of 7th NFC award is Balochistan. The new distribution formula the horizontal share of Punjab reduced from 57.36 to 51.74 which was compensated by raising the overall divisible pool to 57 percent. Sindh's share increased from 23.71 percent to 24.55 percent, furthermore KP share were increased from 13.82 to 14.62 percent. While the major beneficiary of this award i.e. Balochistan received a share of 9.09 percent as compared to 5.11 percent previously. The table 5.1 and 5.2 provides the details about the changes

introduced by 7th NFC award (H.Khan, 2016). The provincialization of General Sales Tax (GST) largely benefited Punjab and Sindh because they have large tax base, on the other hand KP and Balochistan are lacking the large tax bases (Bangali, 2016). So the 7th NFC award created a win-win situation for Punjab.

Table 5.2: 7th NFC Award and Resource Distribution Under New Formula

Contents	Overall	Punjab	Sindh	KP*	Balochistan
Papulation	82	57.36	23.71	13.82	5.11
Revenue	5	44	50	5	1
Backwardness	10.3	23.16	23.41	27.82	25.61
Invers papulation density	2.7	4.32	7.18	6.51	81.99
Provincial Horizontal share	57*	51.74	24.55	16.62	9.09

*For the first year of the award this share was 56 and for the remaining years of the award were 57 percent.

*KP received 1 percent of divisible pool for the lost as a front line province in war against terror.

Source: <http://www.pk.undp.org/> & (Mustafa, 2011)

Prior to the 7th NFC award from 2005-6 to 2009-10 in 6th NFC award about an amount of Rs. 2630 billion were received by the provinces. Comparing to the previous five years under the new 7th NFC award the provinces received Rs. 6671. Which is about 2.6 times higher than the previous transfers. During this period the collections to the divisible pool by FBR increased from 395% to 57%. Which clearly indicate that the provinces received a substantial amount. In a short time too much resources were transferred which were beyond the provinces capacity to absorb immediately without prudent planning and effective handling of the social sector (H.Khan, 2016).

Now the question is, has the provinces utilized these resources? Or did the federal government transfer these resources in appropriate manner? What kind of improvement did it has brought to the provinces? Dr. Khan argue that “in contrast, to promoted fiscal

discipline it contributed immensely to perpetuating the very macro-economic instability that hinders sustainable economic growth". Further he is not satisfied from the implementation of the 7th NFC award. The data after 7th NFC and the Eighteen Amendment suggest that without KP other provinces did not showed any improvement in the health and education sector and in fact in Punjab, Sindh and Balochistan the trend were reversed and recorded negative progress, same is the case in health sector except Punjab and KP, in fact Pakistan witnessed for the first time fall in educational ratio from 60% to 58% in 2013-14. Secondly the awards timing and its management both were handled inappropriately. The award preceded the 18th amendment which give the provinces the justification of demand for more resources for the transferred subjects. Secondly the federal government did not implement the award in latter and spirit. Central government used different techniques to retain the transferred amounts and the share of the provinces for example the transferred funds were delayed to much that the provinces were unable to utilize them completely, as a result those funds were lapsed, federal spending were increased due to the intensity in war against terrorism and the other geo-strategic and defense expenditures: Pakistan is engaged in different international programs like IMF and the Sustainable Development Goals (SDGs) program to meet their demands the federal government has to take the responsibility because in a short time the provinces are unable to meet the service delivery as specified in SDGs and others. To finance the fiscal deficit, the federal government converted different non-tax items to other taxes and appear some items "above the line items". The provinces were forced to cut their budgets and to produce surplus budgets as a result of IMF conditions and huge federal budget deficit. As a result of the "too late too quick resource transfers" is not only is a healthy development but on the other hands give

rise to problems. It is also argued that the provinces now to share the overall macro-economic stabilization responsibility with the federal government (H.Khan, 2016). Jamal argue that “Punjab and Sindh did not lose either in at least or in absolute terms. It makes the award a fiscal equalizer” (Jamal, January 2015)

The finance minister of KP Muzaffar Said advance the arguments that the vertical and horizontal distribution of resources under the 7th NFC award should be revisited. The federating units should be given 80 percent of divisible pool. One percent share in the divisible pool on the part of loses due to war on terror should be increase to three percent. KP suggested excise duty on crude oil and want an equitable distribution of Public Sector Development Program (PSDP) because so far KP has been neglected. The share on the basis of population should be decreased, the lack in infrastructure and investment should be added to the distribution formula. The divisible pool is distributed largely on the basis of population so it is important to hold census immediacy for the exact assessment (Khan, 2015).

5.4. Divisible Pool

In Pakistan the central government collect different taxes and then redistribute vertically between the center and provinces and horizontally among the provinces. The taxes which are collected by the center are assembled in a pool which is called federal divisible pool. The taxes include income tax along with corporation tax but the income earned from remuneration is not included which is paid out from the divisible pool, taxes on sales and purchase of goods, export duty on cotton, excise duties and such other duties as specified by the president. The reassignment of taxing powers after 18th amendment

has been shown in the table 5.3. For detail information regarding divisible pool see section ,7th NFC award.

Table 5.3: Reassignment of taxing powers after 18th Amendment.

Federal Tax Powers	Provinces Tax Powers	Local Government Charges
Added:	Added:	No Charges
Taxes on the sale and purchase of goods	VAT* on services	
Taxes on the capital value of assets, excluding immovable property	Taxes on immovable property	
Deleted:	Zakat and usher	
Estate and inheritance taxes (wealth tax, including agricultural wealth)	International and domestic borrowing, subject to limits and conditions imposed by National Economic Council	
VAT on services		
Zakat and usher		

*Value added Tax

Source: (Shah, September 2012)

5.5. The Institutions with Financial Resource which were not devolved to the Provinces

Eighteen Amendment transferred seventeen ministries to the provinces including the labor ministry. Employs in those federal ministries are in an uncertain situation regarding their promotion and other privilege's. The provinces are of the view that the federal government did not provided funds for the transferred programs (Saleem A. b., 2015). They also demand the devolution of EOBI, WWF, HEC etc. which are resource rich institutions. A brief description of some of these institutions are given here.

5.6. Employment Old Age Benefit Institution (EOBI)

EOBI was created in 1976 for the provision of compulsory social insurance to fulfill the requirements of the article 38 (C). It poses assets worth rupees 148 billion. The Federal Board of Revenue (FBR) collect five percent from the wages of the workers in industry, paid by the owner and one percent by the worker. After its collection the EOBI handle them and pay them to the survivors of the workers to extend benefits through pension, grants and invalidity grants. All the four provinces are demanding its devolution (Saleem A. b., 2015).

5.7. Workers Welfare Fund (WWF)

Its assets are calculated 81 billion rupees. FBR deduce it from the registered industrial units' whose income is above 500,000. Punjab wants its assets distribution on NFC formula, Sindh on the basis of its 'collection and deduction of welfare fund and pension', while KP and Balochistan are in favor of the existing formula because they are receiving larger funds (Saleem A. b., 2015). The allocation ratio to the provinces of this fund is 43 percent for Punjab, 42 percent for Sindh, 8 percent for KP and 7 percent is allocated for Balochistan. Through the Companies Prophet Act 1968, the companies pay five percent profit to the Workers Participation Fund; after a meager transfer to the workers from this fund, the remaining is transferred to the Workers Welfare Fund established in 1971 through Workers Welfare Fund Ordinance. After Eighteen amendment the labor ministry were devalued to the provinces, resultantly 32 laws regarding workers were transferred to the federating units. Now the same law is applied differently in provinces because of the vested interest of the provinces. The compensations in case of death or total

disabilities varies from province to province in the post-Eighteen amendment era (Rahim, 2016: Rahim, 2016)

5.8. Tourism

After Eighteen Amendment Pakistan Tourism Development Corporation (PTDC) and its subsidiaries has been transferred to the Inter-Provincial Division. Currently the authority has 35 Motels, one Hotel and five Restaurant across the country. The KP government strongly is in favor of its devolution and pressing for the transfer of 'PTDC along with 20 motels and restaurants, and a tourist's information Centre to the province' (Saleem A. b., 2015).

Same is the case with Pakistan Baitul Mall. It was shifted to the Prime Minister secretariat while provinces are demanding its devolution.

5.9. Federal Quota

Quota system was established to give representation to every region in the service of the state. In civil services only 10 percent are elected on merit and the rest are recruited on quota basis. There is a quota for every province and region in the federal jobs and in different institutions. KP have 11.5 percent quota in civil services. To ensure no discrimination, eliminate disparities among different regions and to make sure adequate representation in the service of Pakistan from every region it was considered important to extent the federal quota system for another 20 years in 2013. Originally in 1973 constitution the quota system was adopted for ten years but later on in 1980s and 1990s were extended

for more 40 years this term was expired on 13 Aug 2013. For the purpose another 20-year extension were given (Ghumman, 2013).

In 1949 for the first time, quota system was introduced in Pakistan, but after the separation of East Pakistan, the constitution of 1973 were adopted and the rules for the federal quotas were revised. There are two kind of view regarding the Quota system in Pakistan i.e. extension of merit seats, abolishing the quota system, abolishing it but to retain it for some deprived regions (Siddique, 2012)

5.10. Local Government

Pakistan have a very unique history of local governments. Though it is considered a prerequisite for democracy but on contrary in Pakistan the local governments grow under the shades of dictatorship. Eradicating regional disparities, ensuring better service delivery including the provision of education and health facilities, water, gas, electricity, roads, taxation, policing, the resolution of minor disputes on local level (DTCE, May, 2014); ensuring efficiency, transparency, accountability and participation in decision making on the lower level, the sum total of these is that the local government can be used for creating a real welfare society and for the betterment in the governance system, which makes accountability and participation on local level.

The Britishers introduced local governments in sub-continent but their purpose was not to facilitate the people. Their purpose was to penetrate into the local affairs and control the people through local elites. For this purpose, selection instead of election was a perfect tool; the nominated persons were controlled by the strong central British government. After

independence the journey of local governments in North-West Frontier starts from Municipal Act 1950 (DTCE, May, 2014). In the post-independence era this lose type of local government system were continued till Ayub Khan government. Ayub Khan facilitated the reforms process and introduced Basic Democracies (BD) system in 1959 through an ordinance supplemented by Municipal Administrative Ordinance 1960 which not only performed the electoral college roll for the election of provincial and federal assembly's, and for the president but played the role of "genuine" local governments, consisting of four tiers. BD's performed different social, political, administrative, economic and developmental functions (Rabbani, 2012: Khaliq, 2012: DTCE, May, 2014). Ayub system of local government were more than just a local government because along with the functions of local government as electoral college, great responsibilities were entrusted to it. This system lasted till the 1969 martial law. And with the demise of Ayub khan his local government were ended too. General Zia-ul-Haq ousted Bhutto's government (during Bhutto era no practical steps were made for developing and holding the local governments elections) in 1977 and in 1979 through "Local Government Ordinance" once again introduced local governments. To legitimize himself elections to the local governments were held in all four provinces on non-party basis. Zia local governments were different in some respects from his predecessor. He adopted the populist strategy by electing all the local government representatives through adult franchise. While creating hurdles in the way of his opponents and to minimize the influence of the provincial and central parliament, he held those elections on non-party basis. The tension ridden relations of Zia's local government led to its suspension from 1993 to 1998.

The military in Pakistan always messed with constitution and changed the constitution accordingly as what they think suitable for democracy in the country. After assuming power Musharraf issued seven-point agenda including devolution of power (Rabbani, 2012). While, quoting Musharraf regarding what the military presumed their responsibility for democratization, he said "*I am involving myself in politics in the interest of democracy maturing democracy and consolidating democracy*" (Pattanaik, Apr-Jun 2004). Moreover, Musharraf as a military person exploited the local governments for the purpose to legitimize himself by creating a new cadre of politicians. Musharraf did the same as his predecessors did by issuing a local government ordinance in 2000 followed by the four provinces local government ordinances to give effect to the devolution plan. A phase out local government election was held in four stages till Aug 2001. The devolution plan was a new experience in which the traditional rule of bureaucracy was undermined. The *Nazims* and *Naib Nazims* was the powerful persons on the district level, controlling police, and governing the districts politically, administratively and economically. A short term constitutional protection was given to the local government in LFO followed by Seventeen Amendment in which six years' protection were provided, during this time any changes to the "local government legislation could not be made without the prior permission of the president"; the constitutional protection was ended in 2009 (Yusuf, 2010).

The eighteen amendment revived the 1973 constitution and retained the provision of article 140-A regarding the local government introduced by Seventeen Amendment with slight changes. After the 2008 elections the civilian government were not willing to

continue the Musharraf era economically and administratively powerful devolution system, though there were some ambiguities in the prescribed legislation of Musharraf but were easily amendable. The civil government and bureaucracy started propaganda against the said legislation because they were afraid of their power status and position. Resultantly the devolution process started by Musharraf were suspended by the first chance in 2009. Khyber Pakhtunkhwa government replaced the 2001 local government ordinance by introducing the new legislation but after the elections the new government replaced the former legislation by KP local government act 2013 (DTCE, May, 2014, p. 6). The said act was introduced on 31-10-2013, the first KP local government amendment were introduced on 21-3-2014, the second KP local government amendment on 17-2-2015, third on 24 Aug 2015 followed by fourth, fifth and sixth and the KP local government amendment act 2016. (<http://lgkp.gov.pk/downloads/>). The new local government in KP consist of village, neighborhood, tehsil, town, district and city district. The only city district Peshawar consist of town municipal administration, neighborhood council, village council and for the other districts tehsil municipal administration, neighborhood council and village council are provided (FAFEN, 2015). Elections to the Local governments in KP were held on 30th May 2015 by the election commission of Pakistan with in the time frame (ultimatum given by the apex court because the government were delaying the local government elections) (Dawn Report, 2015). Neighborhood and village council's elections were held on non-party basis while district and tehsil council elections were held on party basis. Due to lack of clarity election were held under a confused environment because the stockholders involved were unaware of their role because of the new and complex legislation. Legislation regarding the local governments is the responsibility of provincial governments

while conducting the election is entrusted to the Election Commission of Pakistan (ECP) (FAFEN, 2014) which is creating a confused environment.

The economic devolution did not materialize on the provincial level. For this not only the provincial but the federal government is also responsible equally, because the timely transfer of finances does matter in the process which unfortunately did not happen (many reasons can be provided) in the current Nawaz government. The ratio of devolution of financial resources to the local governments by Provincial Finance Commission Awards (PFC) remained very low. In Punjab it is 24 percent, Sindh 6 percent and for KP 4.6 percent. The devolution was hindered due to the lack of local government elections for ten years (Saleem, 2015, p. 01).

Multiple indicator formula has been adopted for the Provincial Finance Commission (FPC) Award to transfer resources to the local governments including fiscal needs, poverty, infrastructure lag and population etc. monies from the FPC award, commission secretariat shall be transferred to the local governments. Historically local governments are provincial subject but the previously the federal government did the major legislation. For the first time the provinces brought their own legislation and form of local governments. The level of autonomy can be determined from the fiscal powers of local governments (Nazeer, 2014). The 2013 local government act gives powers the KP local governments for the supervision of the functions of different offices on the local level including revenue offices. The local governments in Pakistan are largely dependent on PFC for their expenditures. While, the taxation powers have been restricted. The act provide that separate funds shall be established on the district, tehsil, neighborhood and union

council level for the respective councils. Transfers from the PFC, special grants, taxation by local governments, income from markets or fairs regulated by the local governments, monies from the fines imposed by the local government, gifts and proceeds from the investment of the local governments has been devolved are on the disposal of local governments in KP (KP, 2013). The government of KP has promised 35 percent of developmental budget to the local governments in the new budget of 2016-17 (Ahmed, 2016). The developmental pace of KP government is not what the PTI government had promised and was predicting. 68 percent budget in 2013-14, 81 percent in 2015-16, 62 percent budget in 2015-16 has been spent in KP; the reason KP government advance is that the federal government released funds at the end of the fiscal year which largely lapse. The federal government to meet its fiscal deficit and conditionality's of IMF, using these and other tactics. The KP government has promised to transfer huge financial resources for the developmental purposes to the local governments which no other province has yet allocated in their fiscal budget (Khan M. Z., 2016). The start of KP regarding local governments is that of promising one for the devolution of powers, authority and responsibility but need to increase its spending capacity.

5.11. Infrastructure Lag in Small provinces

The government of KP demands, increase in vertical transfers in NFC, while, horizontally inclusion of new heads to the distribution formula i.e. lag in infrastructure/investment deficient (Said, 2015). Pakistan is a federal state while the small provinces like KP and Balochistan always demanded its due share which were negated by

the Punjabi dominated central government on one or other pretext; these injustices build grievances, not only produced heat but just in three decades Pakistan lost its half.

Currently China is investing under the China-Pakistan Economic Corridor (CPEC) which is termed not only by the federal government but the all other stakeholders as a game changer not only for Pakistan but for the whole region. The project has given birth to the controversy of unjust distribution of different projects under the CPEC. Small provinces i.e. KP and Balochistan has strongly reacted to the federal government stance over the project.

5.12. China-Pakistan Economic Corridor (CPEC)

The “all weather friendship” between China and Pakistan has been time tested. Both states have created strong and effective political, strategic and defense ties but the economic side remained shallow (Butt, December 09–10, 2015). The 2015 witnessed the historical development of CPEC agreement between China and Pakistan to further deepen their economic and strategic ties. With this project the geo-strategic relations have been turned to the geo-economic relations. CPEC is an overland route which will connect Gwadar port with Kashgar through road and railway track. It is not just a transit route but is an energy corridor. The route not only give stimuli to the economic relationship but also has the potential to connect the other regional actors to increase strategic relations. Furthermore, the project will increase and diversify infrastructure in Pakistan. Under the projects trade centers, economic zones throughout country will be created; energy is the top priority of the governmental agenda in this project. It contains on railway line, fiber optics, oil and gas pipelines, electricity, LNG and a number of economic zones and other

facilities. Through this mega project China is investing \$46 billion (the investment has been raised to 51 billion dollars); this is the biggest ever single country investment in Pakistan. The 3,000 kilometers' connectivity project will play the role of new silk route which will connect three billion people across Asia, Africa and Europe (Khan R. , 2016).

For China the project will diversify its trade routes, will increase its energy security, will increase security and defense cooperation with Pakistan, will diversify its import and export markets and will help China to execute its "Western development Strategy (WDS)¹⁶" (Butt, December 09–10, 2015). For Pakistan the project has several social, economic and political opportunities. The route has geo-strategic importance for both countries. Due to the huge economic importance of the project, the small federating units in Pakistan are demanding that the fruits should be distributed equally. In this section we will discuss the controversy surrounding the CPEC.

The development of western parts of China is the corner stone of CPEC in Chines developmental strategy. China has established a Joint Cooperation Committee (JCC) for handling CPEC; they give permanent representation to the Sinkiang province¹⁷ on this forum. While in Pakistan a parliamentary committee has been established for the purpose, in which six of seven members are belonging to central Punjab; Gilgit Baltistan (GB), Balochistan, KP and South-Punjab are neglected altogether instead the CPEC starts from

¹⁶ This is the strategy of development for the Western parts of China contains six provinces, five autonomous regions and one municipality. The region consists of China 71 percent of mainland area but only have 28 percent of China population. These parts are the most under-developed parts of China. The CPEC will provide huge opportunities for economic development to these parts.

¹⁷ Sink Yang is a South-Western province of China dominated by Muslim and a Uyghur separatist movement is going over there.

Gilgit Baltistan and ends in Balochistan, were the jewel crown of this project Gwadar port is situated. The said areas are the most under develop areas of Pakistan. The proposed Economic Corridor before the Nawaz government were the Western route i.e. GB, KP, south Punjab, Balochistan. Though the federal government is giving assurances that there isn't any change in the route in fact in the press release of APC May 28, it was written that "there will be one rout with multiple passages"; even it does not mention the western rout. Same is the case when the China embassy statement which gives reasons to doubts that the current government has diverted the main route from western to eastern route passing from central Punjab ignoring the western parts including KP; in case of Lahore Orang Train project the federal government was making statements that it is not part of CPEC but in Chines embassy statement it is a part of CPEC (Safi, 2016: Safi, 2016).

The federal government held confidential the details of CPEC which breads the controversy and giving rise to doubts on the part of federating units. Though the political leadership of different political parties are on the same page regarding the benefit of the project but are totally hold opposite sides regarding the implementations of the project. KP and Balochistan are demanding the western route construction not only on priority basis but are insisting that if the federal government has not diverting the main route, as the APC on 28 May assured and all parties were agreed to but latter on statements from the federal government further complicated the matter. Due to the subsequent issuance of maps regarding the corridor, which neglect the western route, has strengthened the doubts of small provinces regarding the changing of the main corridor route. The KP assembly has passed a resolution in which it demanded from the central government to make the

agreement between China and Pakistan a public document, furthermore, the decisions of the 28 May APC should be implemented in latter and sprite (Khattak, 2016). Due to lack of clarity the provincial government persistently making the demands for the inclusion of all the amenities along with the western highway. KP chief minister Pervez Khattak made it clear that the province does not need just a highway and that the full pledged corridor with all its amenities should be given to the western route.

Under the CPEC the priority has been given to the energy sector. Instead of thermal energy projects concentrating in Punjab the coast effective hydel projects were ignore in KP (Safi, 2016). Currently the KP government has proposed 29 hydel projects having 2,600 MW power generation capacity to the standing committee on CPEC to make these part of the CPEC. The KP government also made it clear that they do not need financial assistance for these projects but if these were made part of the mega project, will be completed on past track (Raza, 2016).

In a briefing by the national highways authority official to the KP assembly, it was told that only 20 billion rupees has been allocated to the western route and 120 billion has been allocated to the eastern route. Projects are approved under the CPEC but resources for their construction are not provided. The KP assembly has passed five resolutions about CPEC demanding from the federal government to implement the May 28 APC decisions, to allocate resources for the western rout not just for the road but with all the facilities which was promised; and to make the environment clear about the western route. The KP government has written a letter to the federal government but they found the reply dissatisfactory, the speaker of KP assembly took the issue to the Peshawar High Court

(PHC) filing a writ petition demanding the western route completion with part on eastern route (Shah W. A., 2016: Dawn, 2016).

A rare occurrence in KP and Balochistan the left and right political parties are on the same page against the deprivation of these small provinces in CPEC even the PML (N) in KP has supported the resolution demanding clarity over western route. Not only the political parties in KP and Balochistan are against the deprivation of the backward area but the Senate also showed its reservations on making it China Punjab Economic Corridor (Raza, 2016) (Courier, 2016). If the central government is entrusted to make it China Punjab economic corridor than it has to face the fatality faced by Pakistan after the 1955 one-unit scheme (Amir, 2015).

Conclusion

Internally the small provinces are not trusting on Punjab and there are abounded reasons to do so. History can be a best guide in this respect to understand the reasons behind this trust defecate. Pakistan movement were supported due to greater provincial autonomy. In Pakistan there is more conflict regulation than the recognition of ethnic identities (Adeny, 2007). After independence the power structure were centralized which was against the pre-partition consent provided for the social contract of Pakistan. Not only politics but the national purse throughout history controlled by the Punjabi and Muhajir power elites. The economic relations of the center and the federating units not only weakened but in fact broke away the social contract. In the first three decades the western Pakistan elites (Punjabi and Muhajir) ruled the East Pakistan like there colony denning their genuine political and economic rights. Under the 1973 constitution a number of measure were

adopted for the power devolution but the frequent military interventions and the lack of political will on the part of politicians and bureaucracy hindered the process. In this chapter a number of political and economic issues (both are inseparable) which affect and affected the relation of the federation and the units are discussed including the resource distribution formula of NFC both vertically and horizontally; the role of NEC, CCI; lack of devolution of political and economic powers to the provinces and the local governments. The 7th NFC award were presented before the 18th amendment which created problems to balance the responsibility and resources allocation. Currently the CPEC mega project has attracted the local and the international attention. The provinces are of the view that the original route which was to benefited the under develop areas of Pakistan has been changed and is diverted to the regions which are already developed (they are calling it the Punjab China economic corridor). This issue needs political sagacity in the larger interest of the federation.

Conclusion

This research develops a case study of political and economic relations of center and KP province after the Eighteen Constitutional amendment, which ever in the history produced more heat than energy. Indian sub-continent witnessed a number of interventions including the Arians, Turks, Manguls. Moghuls etc. They ruled India differently; some of them came to India as conquerors and started to rule, some of them came for a short time to India and went back. Different religions and cultures flourished and vanished with passage of time. Muslims ruled Indian sub-continent nearly for 650 years. Due to the resource richness of the Indian Sub-Continent, India remained a flash point and remained vulnerable to foreign interventions. Traders from all over the world established trade relations with the people of India via sea and land route. The Silk road rout is a famous land route of this regions. Due to vulnerability Indian and he independent nature of the majority of regions and princely states the rules did not tried to directly intervene into the local affairs and these regions and princely states retained their independent nature. During the Moghuls era the local Maharajas, Nawabs and Khans ruled their area without any interference, the sole duty of them was to pay taxes and provide solder in time of war. The areas where such arrangements were not available they appointed governors. After the analysis of pre-British era one thing is for sure that though different areas and regions were independent in their local affaires but federal form of government was not existential. The case of Britisher is different altogether from their predecessors. They came to India as traders and subjugated the whole of India (including the current KP) to a centralized government under the authority of Vice Roy. During their era different initiatives were

taken from the locals, most important to the thesis from Afghanistan and the frontiers regions, the security of this region was considered as the security to the whole Indian-continent. Till 1901 to its special status, the North-West Frontier remained part of Punjab province. In 1933 the province got the status of full pledge governor province. The real representative and federalist reforms starts from the Monto-Morley reforms (as intensity were witnessed in the independence movement) introduced by the British government. Muslims formed All India Muslim League (AIML) for the protection of the rights of the Muslims. The prominent political party of Pashtuns came into being in 1927 as a social reform movement under the leadership of Abdul Ghaffar Khan known as Bacha Khan. Their demand was not only independent state for Pashtun papulation called Pashtunistan but the independence of the whole sub-continent. They demanded provincial autonomy and special representation in different institutions. The 1935 act introduced federal form of government but the theory of federalism under 1935 never came to practice. The 1937 general elections determined the destiny of the AIML for a separate Muslim state for which they used the religious propaganda without any hesitation. After independence to 1956 Pakistan were solely ruled under the colonial legacy of 1935 act. Though the constitutions of 1956 and 1962 have some minimum federal arrangements but Pakistan from the inception remained under the centralized political authority in which the power were remained with the Punjabi and Muhajir power elites. In the first three decades the East Pakistan were ruled like a colony from the west Pakistan and their political and economic rights were denied to them resulted in the fatality of separation of East Pakistan in 1971. In Pakistan the establishment including army and civil government are not prepared to change their attitude toward the small provinces and they ever remained to the fear of

security challenges. Unfortunately, the small provinces suffered from the legitimacy problems. The 1973 constitution were adopted with the consensus of all major political parties but soon after the disruption of military general stopped the process of democratization of the system. In 2008 the civil government returned to power. First the civil government formed the 7th NFC award, including for the first time multiple indicators for the resource distribution, followed by Eighteen amendment reviving the 1973 constitution and devaluing the concurrent legislative list to the provinces. Though the devolution process was completed to some extent in the constitutional prescribed one year; seventeen ministries were devolved but the federal government remained skeptical about the capacity of provincial government. That's why on the federal level some ministries were one again created with other names. Different programs were retained while their ministries have been devolved to the provinces. The CCI, NEC and NFC did not fulfill their constitutional duties. The resource rich institutions were retained by the federal government while the federating units are demanding their devolution. Currently the provinces are not satisfying with the current distribution formula of the NFC and want some other heads to be included in it. The devolution of HEC, Labor ministry while retaining its financial institutions on the central level, lack of census, and some others are the main issues in the implementation of the eighteen constitution inn latter spirit. In Pakistan the local government ever has been formed by the army government to legitimize themselves. After the eighteen amendment for the first time in the history of Pakistan the provinces have issued their local government ordinances including KP. Elections were held to them in KP but proper powers have not yet given to them. It is a healthy development and will take time because democracy is the name of a continuous process. Different

political and economic relations and issues with historical background has been discussed and a case study of the center and KP province has been provided. The thesis argue that change in the attitude of establishment and Punjabi dominated central government is inevitable for the development of sound federal political arrangement and that the institutions must fulfill their constitutional duties.

The resource distribution and the ownership of those resources remained a bone of contention in a fragile federal arrangement, closely linked to the language and cultural diversity; the politicians had realized that further avoiding the fact may produce the uneven circumstances, of which the civil and military bureaucracy hesitating to accept. The development of a democratic and just federal system is a process which cannot be achieved overnight, 18th amendment is not perfect, which is evident from the succeeding amendments into the constitution but is a step in the right direction. The continuation of this process is very important to the development of the a conducive and equitable federal arrangements in multicultural society of Pakistan. The recognition of the ethnic classis may not be fatal but would be used as a strength. The constitution is not a sacred book, changes which are in the best interest of the federation would produce good results. But there is a need of effective implementation procedure and the political will.

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