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Fiscal Federalism: An Analysis of Khyber Pakhtunkhwa's Share in the National Resources in the Post-18th Amendment Period

Abstract: *Decentralization of power and distribution of resources has remained a contentious issue between the Federal government and provincial governments in Pakistan. The 7th NFC award and 18th amendment to the constitution have further strengthened the federalist structure in Pakistan by adopting multiple criteria and ensuring provincial autonomy respectively. The Constitution of 1973 provided a well-structured mechanism for fair and just distribution of resources and inter-governmental harmony in the form of NFC and CCI and offered solutions to the contentious issue of distribution of power. Khyber Pakhtunkhwa is blessed with abundant natural resources in the form of water resources, crude oil production, natural gas and LPG and making extensive contributions to the energy sector of Pakistan. Although the constitution of Pakistan, in theory, is clear regarding revenue distribution the cleavages in its practical implementation in the context of the fiscal relationship between the federal government and Khyber Pakhtunkhwa are creating hurdles in their smooth relation.*

Key Words: CCI, Fiscal Federalism, NFC Award, 18th Amendment

Introduction

The Council of Common Interests (CCI) was established in 1973 to mediate disagreements between the federal government and provinces. However, it has faced challenges in its s implementation due to the dynamics and interactions between conflicting parties. The 18th Amendment mandated the CCI to report its activities to both lower and upper chambers of parliament, increase the number of federal cabinet members serving on the CCI, establish a permanent secretariat, and grant authority over linked institutions. The federal government is responsible for 93% of the total income, while provinces contribute only 7% (E. Ahmad 2010). The National Finance Commission (NFC) simplifies the process of transferring funds between accounts, including tax income distribution, management of discretionary transfers, and advice on borrowing money. The Niemeyer Award and Raisman formula were established under the India Act of 1935 and 1947, respectively, to distribute revenue from taxes. However, the NFC Awards failed to bring provinces to an accord, leading to political impasse. In 2006, President Musharraf announced a fixed level of province involvement at 45% and a 1% per year increase in provincial contributions. A significant improvement was achieved in 2009, with the provincial contribution increasing from 46% to 55% for the fiscal year 2010-11 and 57.4% for the subsequent four years (K. Adeney 2012). Additional considerations such as population size, poverty rate, income generation, and inverse population density were added to the criteria for the NFC Award. Punjab received 51.74 percent of the total, while Sindh received 24.5%, the North West Frontier Province received 14%, and Balochistan received 9%. This marked a significant advance towards the formalization of fiscal federalism (Ali, 2022).

The 18th Amendment enacted provisions such as consulting with the provincial government before constructing hydroelectric power plants, ensuring provinces' allocation should not be lower than specified in previous Awards and implementing biannual monitoring of the NFC

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Award by finance ministers at the federal and provincial levels of government. The distribution of water in Punjab, Pakistan, has been a contentious issue, with disagreements and distrust between provinces (Rashid, 2023). In 2009, Punjab requested the Indus River System Authority (IRSA) to oversee the Chashma-Jehlum connection canal, a request that could lead to the loss of over 3 million acres of land for cotton cultivation (Ali, 2022). However, the IRSA only maintained a canal flow of 5000 cusecs, despite the required demand of 18000 cusecs (Bengali 2015). The Sindh Assembly reviewed the province's discontent with the decreased water quantity compared to its allocation under the 1990 Accord. Punjab successfully added 3.5 million more hectares of agricultural land to its holdings but removed its delegates from IRSA meetings in May 2010. The IRSA was accused of misleading practices and failing to comply with the water accord by withholding 5,000 cusecs of water from the Chashma-Jehlum Link Canal. The Kalabagh Dam on the River Indus has further strained the federation, with the provincial assemblies of Sindh, Baluchistan, and the Northwest Frontier Province opposing it. This has resulted in political parties being split along province-provincial lines (Ahmad, 2017).

NFC Award: Khyber Pakhtunkhwa's Shares in the Divisible Pool

Constitutional Provisions

The allocation of federal funds to the provinces in Pakistan is subject to the approval of the President, who exercises this authority via the NFC Award, as stipulated in Article 160 of the Constitution of the Islamic Republic of Pakistan. The approval was granted based on the proposals put forward by the National Finance Commission (NFC) (Faiz, 2015).

1. Clause 3(B) of Article 160 of the Constitution of the Islamic Republic of Pakistan provides as follows:
2. In pursuance of the above provision, it is imperative for the Finance Ministers of the Federal and Provincial Governments to monitor the implementation of the Award biannually and lay a report before both Houses of the Parliament and Provincial Assemblies.
3. The Bi-Annual monitoring report for the period from January to June 2021 was approved by the Federal and Provincial Finance Ministers for lying before both Houses of the Parliament and Provincial Assemblies.
4. The Bi-Annual Report contains total FBR collections during January-June, 2021, details of Non-Divisible Pool Components, Vertical Distribution of shares between Federal and Provincial Governments, Horizontal Distribution of shares between the Provinces and details of Grant-in-Aid as well as Straight Transfers to the Provinces (Government of Pakistan, 2022).
5. The report also includes details of efforts by Federal and Provincial Governments to streamline their tax collections system to reduce leakages and increase their revenues as well as efforts to maintain fiscal discipline at the Federal and Provincial level during the reported period.

The Implementation of the NFC Award

The Second Biannual Monitoring study assesses the progress of the Seventh National Finance Commission (NFC) Award implementation in Khyber Pakhtunkhwa, Pakistan. The Federal Board of Revenue (FBR) reported a total amount of tax revenue collected of 2,532.357 billion rupees during the first half of the fiscal year 2020-21 (Ahmad, 2010). After deducting non-divisible pool components and the one percent allocated for collecting costs and the War on Terror (WoT) in Khyber Pakhtunkhwa, the total amount of money that can be distributed is Rs. 2,418.797 billion. The remaining amount for the federal government is Rs. 1,027.989 billion. The province component is allocated according to the breakdown: Rs. 719.604 billion (51.73 percent), Rs. 342.443 billion (24.54 percent), Rs. 203.332 billion (14.61 percent), and Rs. 126.423 billion (9.08 percent). The total budget for anti-terrorism efforts in Khyber Pakhtunkhwa is 24.43 billion Pakistani rupees. Between January and June 2021, a total of $22.243 billion was received in revenue from natural gas royalties, gas development surcharges, and crude oil royalties (Haider, 2023). Provinces received Rs. 4958 billion from the excise tax on Natural Gas collected during the designated time period.

1. According to the Award (and more specifically, Articles 3 and 4 of the Order), the federal government, the provinces, and the provinces among themselves are responsible for contributing their respective portions of the taxes levied on divisible pools.
2. The requirements of the Award regarding the distribution of royalties to the provinces, the installation of a surcharge on gas, and the charging of excise duty on gas are implemented into the Order via Articles 5 and 6 of the Order.
3. Article 7 of the Order stipulates that the provinces are to receive their proportionate part of the reward in line with the conditions of the reward.
4. Article 8 of the Order addresses the Goods and Services Tax (GST) that applies to services.
5. The percentage of taxes paid to GDP is expected to reach 15% during the 2014-2015 fiscal year. In accordance with the second clause of Article 9 of the Order, the National Finance Commission (NFC) has proposed a strategy for both the Federal Government and the Provincial Governments to implement in order to accomplish the aforementioned objective.
6. The necessity for economic discipline on both the federal and provincial levels is emphasized in the Order's Article 9. Clause 3 (Pakistan 2022).

Division of Divisible Pool Taxes

Article 1 of the "Distribution of Revenues and Grants-in-Aid Order, 2010 (Award)" signed by the president defines the award, while Article 2 of the same document explains the award's nomenclature. Because of this, it is not essential to take any more action on these particular articles. Both the vertical distribution of these taxes throughout the four provinces and the horizontal distribution of these taxes between the federal government and the provincial governments are governed by Articles 3 and 4 of the President's Order, respectively (Shah, 2023).

FBR Tax Receipts

Federal Board of Revenue (FBR) reported the following tax collection for Financial Year 2020-21:

Table 1

Total FBR Collection during FY: 2021-22 (Rs. in billion)

A	Provisional collection reported on a fortnightly basis during FY, 2020-21.	4,640.091
B	Arrears worked out on receipt of final reconciled collection for F.Y. 2019-20 reported in F. Y. 2020-21	104.6231
C	Total Collection reported during the FY 2020-21	4,744.721

Report on Biannual Monitoring on the Implementation of NFC Award (January-June, 2022)

The Federal Board of Revenues collected a total of Rs. 4,744.721 billion in tax income in the 2020-21 fiscal year, from which the government distributed a total of Rs. 4,744.721 billion to the provinces. The first six months of the 2020-21 fiscal year tallied in at a total of Rs. 2,212.352 billion, while the subsequent nine months, from January to June of that year, tallied in at a total of Rs. 2,532.3521 billion.

Distribution of Divisible Pool Taxes

The components of divisible pool taxes are outlined in the Order issued by the President in 2010 and may be found in Article 3, Clause 1 of that document (Khan, 2017). The sum of money collected by the Federal Board of Revenue (FBR) does not consist of all of its individual components in their individual whole. After taking these aspects into consideration, it was determined that the total amount collected in taxes amounted to Rs. 4,744.712 billion, while the amount collected in gross divisible pool taxes was Rs. 4,546.863 billion. The remaining six months of the fiscal year 2020-21, which run from January through June 2021, will bring in a total of 2,476.631 billion rupees from the gross divisible pool tax (Ali, 2023).

Table 2

Details of Non-Divisible Pool Components (Rs. In Billion)

	FY 2020-21	2nd Half (2021-22)
Total Collection FBR Receipts	4,744.712	2,532.351
Less Non-Divisible Pool Components	197.851	55.722
GST on Services	19.894	4.791
WWF	20.013	0.922
Excise Duty on Natural Gas	9.585	5.061
Exp. Development Surcharge	8.518	4.943
Refund through Supplementary Grant	139.841	41.000
Gross Divisible Pool Tax	4,546.862	2,476.631

Report on Biannual Monitoring on the Implementation of NFC Award (January-June, 2022)

Vertical Distribution

To determine the net amount of taxes attributable to the divisible pool, first, the FBR taxes are decreased by the non-divisible pool components, and then the collection expenses are subtracted from this new total. When that time has passed, the funds are subsequently distributed between the Federation and the Provinces in accordance with the principles outlined in Articles 3 and 4 of the Order. The following table contains the data for the vertical distribution for both the whole fiscal year 2020-2021 and the second half of the fiscal year 2020-2021 (January-June 2021) (Bhutta, 2022).

Table 3

Vertical Distribution of Share for F.Y-2021-22 (Rs. In Billion)

	FBR Receipts	Collection Charges (1%)	Net Divisible Pool Taxes	1% WOT for Khyber Pakhtunkhwa	Balance Net Divisible Pool	Provinces Share (57.5%)
Divisible Pool Taxes	4,546.864	62.280	4,484.584	44.846	4,439.738	2,552.849
Income Tax	1,681.154	33.623	1,647.531	16.475	1,631.056	937.857
Capital Value Tax	0.636	0.006	0.630	0.006	0.623	0.358
Sales Tax	1,867.107	18.671	1,848.436	18.484	1,829.952	1,052.222
Federal Excise	266.773	2.668	264.105	2.641	261.464	150.342
Customs	731.194	7.312	723.882	7.239	716.643	412.070

Report on Biannual Monitoring on the Implementation of NFC Award (January-June, 2022)

Table 4

Vertical Distribution of Share for 2nd half F.Y-2021-22- January-June-2021-2022 (Rs. In Billion)

	FBR Receipts	Collection Charges (1%)	Net Divisible Pool Taxes	1% WOT for Khyber Pakhtunkhwa	Balance Net Divisible Pool	Provinces Share (57.5%)
Divisible Pool Taxes	**2467.630**	**33.421**	**24341.241**	**24.431**	**2418.790**	**1390.800**
Income Tax	863.400	17.260	846.150	8.460	837.690	481.000
Capital Value Tax	0.160	0.003	0.160	0.001	0.163	0.092

	FBR Receipts	Collection Charges (1%)	Net Divisible Pool Taxes	1% WOT for Khyber Pakhtunkhwa	Balance Net Divisible Pool	Provinces Share (57.5%)
Sales Tax	1040.689	10.400	1030.200	10.300	1019.900	586.919
Federal Excise	151.060	1.510	149.511	1.496	148.060	85.031
Customs	421.300	4.231	417.100	4.170	412.923	237.910

Report on Biannual Monitoring on the Implementation of Nfc Award (January-June, 2022)

Horizontal Distribution:

The percentage distribution among the provinces is decided based on the allocation of the provincial portion of the divisible pool taxes, which is detailed in Clause (2) of Article 4 of the President's Order. The following method was utilized to arrive at the final result for the calculation of the distribution of provincial shares for the entirety of the Financial Year 2020-21:

Table 5

Horizontal Distribution of Shares for (FY-2021-22) (Rs. In Billion)

	Punjab (51.73%)	Sindh (24.54%)	Khyber Pakhtunkhwa (14.61%)	Balochistan (9.08%)	Total (100%)
Divisible Pool Taxes	1320.840	626.724	373.227	232.030	2552.840
Income Tax	485.240	230.241	137.115	85.250	937.85
Capital Value Tax	0.186	0.087	0.052	0.033	0.358
Sales Tax	544.423	258.320	153.833	95.640	1052.022
Federal Excise	77.780	36.989	21.981	13.656	150.342
Customs	213.209	101.163	60.240	37.457	412.479

Report on Biannual Monitoring on the Implementation of NFC Award (January-June, 2022)

Table 6

Horizontal Distribution of Share for 2nd Half of FY-2021-22 (Jan - Jun 2022) (Rs. In Billion)

	Punjab (51.73%)	Sindh (24.54%)	Khyber Pakhtunkhwa (14.61%)	Balochistan (9.08%)	Total (100%)
Divisible Pool Taxes	719.600	341.245	203.330	126.624	1390.800
Income Tax	249.210	118.250	70.410	43.729	481.760
Capital Value Tax	0.047	0.022	0.013	0.008	0.092
Sales Tax	303.941	143.790	85.740	53.308	586.460
Federal Excise	44.009	20.900	12.446	7.738	85.130
Customs	122850	58.290	34.715	21.580	237.440

Report on Biannual Monitoring on the Implementation of NFC Award (January-June, 2022)

During the financial year 2020-21, the total amount of money that was allocated to Khyber Pakhtunkhwa was Rs. 418.072 billion. The total amount of money that was spent from January to June of 2021 was 227.769 billion rupees (Hameed, 2023). The following table provides a breakdown of the budget allocations for the province of Khyber Pakhtunkhwa.

Table 7

Releases to Khyber Pakhtunkhwa on Account of War on Terror (Rs. In Billion)

Particulars	FY 2021-22	2nd half of FY 2021-22
Share in Divisible Pool (14.61%)	373.228	203.335
1% war on terror (WOT)	44.845	24.341
Total	418.070	227.769

Report on Biannual Monitoring on the Implementation of NFC Award (January-June, 2022)

Article 4 Clause 3, just like Article 2 of the President's Order, stipulates that Balochistan will receive its equitable share of the net earnings from divisible pool taxes. In addition, the federal government is required to make use of its own resources in order to make up for any shortfall that may occur within this allocation (Rana, 2021). The following examples explain how the extra transfers provided by the federal government are distributed:

Table 8

Extra transfers provided by the federal government (Rs. In Billion)

Particulars	FY 2021-22	2nd half of FY 2021-22
Share in Divisible Pool 9.08%)	232.055	126.422
Additionally Paid	19.611	0.59
Total	251.660	125.833

Report on Biannual Monitoring on the Implementation of NFC Award (January-June, 2022)

It should be noted that the above releases cover the entirety of the fiscal year 2021–2022 and that they have been reconciled with the relevant provincial finance departments.

Straight Transfers or Grants in Aid to Khyber Pakhtunkhwa

Distribution of Royalty on Crude Oil

Article 5 of the President's Order addresses the question of how the income from the Royalty on Crude Oil should be distributed among the various government agencies. The Petroleum Division is responsible for collecting this fee and reporting its status to the Finance Division on a monthly basis in order to ensure that the money is distributed to the appropriate provinces in a timely manner (Kamran, 2022). As a direct consequence of this, the Petroleum Division distributed the resulting net revenues across the provinces in an equitable manner.

Table 9

Royalty on Crude Oil (Rs. In Billion)

Period	Khyber Pakhtunkhwa
FY:2021-22 Full Year	14.658
2nd Half FY: 2021-22 (Jan-June, 2022)	7.213

Report on Biannual Monitoring on the Implementation of NFC Award (January-June, 2022)

Distribution of GDS and Royalty on Natural Gas

Article 6 of the President's Order outlines the manner in which the Development Surcharge on Gas (GDS) and the Royalty on Natural Gas are to be distributed to the appropriate parties. The Petroleum Division is the agency that is tasked with the responsibility of collecting both of these fees. The money that has been gathered is then sent on a monthly basis to the Finance Division in order to be distributed to the Provinces. The table that follows illustrates how the entire net gains that were reported by the Petroleum Division as a result of the Royalty and Development Surcharge on Gas were distributed to the Provinces (Mustafa, 2022).

Table 10

Total Distribution of Royalty on Natural Gas and GDS for FY.2021-22 (Rs. In Billion)

Item	Khyber Pakhtunkhwa
Royalty on Natural Gas	7.840
Gas Development Surcharge	2.696

Report on Biannual Monitoring on the Implementation of NFC Award (January-June, 2022)

Table 11

Amount of Royalty on Natural Gas and GDS in 2nd Half of FY.2021-22 (January - June 2022 (Rs. In Billion)

Item	Khyber Pakhtunkhwa
Royalty on Natural Gas	4.558
Gas Development Surcharge	0.645

Report on Biannual Monitoring on the Implementation of NFC Award (January-June, 2022)

Distribution of Excise Duty on Natural Gas

In accordance with the provisions of Article 161 (1) of the Constitution of the Islamic Republic of Pakistan, payments for the natural gas excise tax must be sent to the province that is home to the wellhead. The Federal Board of Revenue (FBR) is in charge of levying and collecting this tax in the United States. The money that has been collected is reported to the Finance Division on a monthly basis before it is distributed to the Provinces (Yousafzai 2023). Following is the breakdown of each Province's share of the country's total net revenue, as determined in line with the aforementioned rule:

Table 12

Excise Duty on Gas (Rs. in billion)

Period	Khyber Pakhtunkhwa
FY: 2021-22 Full year	1.513
2nd Half FY 2021-22 (Jan-Jun, 2022)	0.847

Report on Biannual Monitoring on the Implementation of NFC Award (January-June, 2022)

General Sales Tax on Services

General Sales Tax on Services (GSTS)

According to Article 8 of the Order, the National Finance Commission (NFC) concurred with the provinces that they had the constitutional right to impose the General Sales Tax on Services. This was the conclusion reached by the NFC. Therefore, the ability to impose this tax is left up to the provinces, and they are free to do so if they so want.

Each province government has formed its own Revenue Agency and has begun autonomously collecting the goods and services tax (GST) on a range of services. The Provincial Revenue Authorities have compiled the following information on the Goods and Services Tax (GST) for the time period that was specified in the previous sentence.

Table 13

GST Collection (Rs. in billion)

Province	B.E 2021-22	Receipt up to June 2022	(%) over B.E
Khyber Pakhtunkhwa	19.851	19.363	97.53%

Report on Biannual Monitoring on The Implementation of NFC Award (January-June, 2022)

Steps Taken by Government of Khyber Pakhtunkhwa in terms of Tax Collection:

- In order to encourage the growth of the economy, the government of Khyber Pakhtunkhwa has taken measures to reduce or do away with some taxes and levies, such as the Capital Value Tax and the Stamp Duty. During fiscal year 2021–2022, great progress was achieved across the board in terms of revenue collection. The goal of 50 billion rupees was reached by 15 percent, resulting in a grand total of 59.493 billion rupees received via Provincial Own Receipts. There was a total of 25.942 billion in money from various sources, in addition to the 33.552 billion in tax revenue. The amount of revenue that was brought into the province during the first six months of the next fiscal year, 2022, was a total of Rs. 35.572 billion (Mumtaz 2016).
- For the Financial Year 2021-22, the total amount of Sales Tax on services collected by the Khyber Pakhtunkhwa Revenue Authority (KPRA) was 19.355 billion rupees. This is an increase of 15% when compared to the amount collected in the previous Financial Year (2020-21), which was 16.965 billion rupees. The amount of Rs. 9.425 billion that was collected as payment for Sales Tax on Services during the second half of the Financial Year 2020-21 (January to June) is shown below (Shahid 2015).

Conclusion

Federalism is a political system where political units are united to ensure autonomy. The 1973 constitution of Pakistan declared it a Federal republic, consisting of four provinces and special regions. The sharing of financial resources between the federal and provincial governments has been the thorniest issue in Pakistan's history. The constitution provided for a bi-cameral legislature, equal representation of federating units, and the establishment of the National Finance Commission to ensure fair distribution of resources. The Council of Common Interest was established to ensure inter-governmental coordination.

Khyber Pakhtunkhwa, a province with vast reserves of natural resources, has the potential to produce significant amounts of oil and natural gas. However, the effective implementation of the constitution is hindered by the province's inconsistent demand for gas allocation to the industrial sector. The Supreme Court and Presidential Order no 3 of 1991 have not used the Kazi Committee Methodology for the calculation of National Hydrogen Potential (NHP), causing billions of rupees loss to Khyber Pakhtunkhwa annually. Following the provisions of the constitution is necessary for the smooth functioning of the federation.

The 18th amendment to Pakistan's constitution passed on 20th April 2010, has significantly changed the country's constitutional history by introducing 34% changes and redefining the federal structure. The Council of Common Interest (CCI) has been increased, with matters under its regulation and supervision. However, the 18th amendment has not been implemented in Khyber Pakhtunkhwa's interest, as it has not been established for over 12 years. The amendment also added two sub-clauses to clause 3 of article 160, ensuring that the share of Provinces in each National Finance Commission award should not be less than previous NFC awards given to Provinces. This has led to irregularities in CCI meetings and a lack of permanent secretariats for the CCI. The 18th Amendment also provided for joint and equal ownership of mineral oil and natural gas between provincial and federal governments. However, the federal government has consistently denied the intent of the framers of the amendment, leading to contention between the federal government and smaller provinces. Khyber Pakhtunkhwa has been unable to benefit from this provision, as it has not been able to determine the

Federal Development Levy on oil. The 18th amendment has also disrupted the economic growth of Khyber Pakhtunkhwa, which is responsible for 80% of the total tobacco production in Pakistan and 97% of the export quality of Flue-cured Virginia species. The 25th amendment to the constitution has led to changes in the demographic structure of Khyber Pakhtunkhwa, with the provinces raising their voice to increase their share in the divisible pool. However, neither the provinces nor the federal government have ensured consistent flow of funds for the economic uplift of newly merged areas, creating severe economic crises for Khyber Pakhtunkhwa.

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