

National Plan for Devolution of Power under 18th Amendment: Challenges for Government in the New Pakistan

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Abstract *History of the politics of agitation and protest indicate that political agitation has always been converted from any point to the issue of provincial autonomy in Pakistan. The case of Pakistan Tehrik-E-Insaf (PTI), on alleged rigging after the general elections of 2013 also suggests that the protest after general elections 2018 would at last be transformed from rigging to demanding the redressal of provincial grievances over devolution of power under 18th amendment. Since, provincial governments including Khyber Pakhtunkhwa (KPK) had continuously been registering grievances about the transfer of liabilities without transferring corresponding assets and resources to provinces. In current scenario under the slogan of 'New-Pakistan' the registering of complaints by political leadership against federation though the card of provincial autonomy would have more and prolonged potential and attraction for the general public rather than merely protest on rigging. Therefore, the biggest challenge for the government in new Pakistan would be addressing the provincial issues. In the backdrop, this study highlights the challenges for newly established government of PTI in-terms of center-province relations over provincial autonomy. Further, conventional approach of federalism (extreme centralized federalism) still prevails in Pakistan which ultimately poses impediments to center-provinces virtuous working relations. That's why it would be significant to investigate that on what issues working relation between federal and provincial governments may potentially be deteriorate. Political and economic measures have also been suggested in this study for PTI government to address the regional grievances and disparity in 'New-Pakistan'*

Key Words:

Federalism,
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Thematic Background

The term provincial autonomy refers to transfer of political and economic powers from center to the provinces by transferring the liabilities along with transferring

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of corresponding assets and resources. Provincial autonomy has always been a heated subject of politics since creation of Pakistan. The history of federation-province working relations remained bitter in Pakistan under the constitutions of 1956 and 1962. After that the situation had gradually becoming worse. As a result acute differences have been observed between federal government and the provinces since the very beginning of constitution making process in 1973. These differences were mainly about the form of government and provincial autonomy because provincial leadership raising complaints that at many points provincial autonomy is being compromised by the federation.

For instance, provinces opposed the concept of recruitment of national services directly under the federal authority. Thus, protests to attain uncompromised level of provincial autonomy started at provincial and federal level; in Punjab province ferocious clashes have been witnessed between government and opposition, political tension in Sindh province was out of control, similar political instability had happened in NWFP and Baluchistan. Z.A Bhutto imposed central rule in Baluchistan and NWFP to deal with political unrest in February 1973. On the other hand, when conflict between federal government and provinces was at peak, the parliamentary political parties of opposition had given a call for 'Pakistan Black Day' on March 23, 1973 to register protest against the exploitation of provinces by federal authority (Naseer,2007). However, Bhutto's strategy remained effective in arranging political support of all mainstream political forces for proposed constitution-on the condition that uncompromised provincial autonomy; through continual and gradual process, would be ensured to provinces. The new constitution of 1973 was passed by the National Assembly on 10th April. Subsequent to it, Bhutto presumed office of the Prime Minister on 13th August and finally the constitution of Pakistan 1973 was implemented on 14th August 1973 (Abbasi, 2010).

Now that, apart from democratic struggle, Pakistan People Party (PPP) has always been claiming credit for two things: (i) architect of the prevailing constitution of 1973 and (ii) granting of provincial autonomy to provinces. In the backdrop of this, it was the best time for Pakistan People Party in 2008, after assuming power, to show commitment towards these claims under some concrete steps. Egocentric Amendments in the favor of reigning class had changed the original face of the constitution, therefore after Musharraf, being the architect PPP decided to bring the constitution in its original face. Further, at the time of getting backing from political parties Bhutto had committed that provinces would be granted the constitutionally promised provincial autonomy under gradual and frequent process. Therefore, for PPP it was mandatory to prove second clam through addressing the provincial grievances including the reservations over the criteria and share in National Finance Commission (NFC) Award. These accomplishments were as well binding for the government of PPP because all

political parties had agreed under COD to revive the constitution to its original position, mainly to ensure provincial autonomy (Abbasi, 2010).

In the backdrop of this, 18th amendment has been brought about as National Plan for Devolution of Power (NPDP) from center to provinces in-order to create opportunities for provinces to enjoy provincial autonomy-the long-lasting demand since inception of Pakistan.

Problem Statement

Since the general elections 2018, politics of protest and agitation under the slogan of electoral rigging has been observed as a prominent feature of politics within and outside the parliament. The newly formed government of Pakistan Tehrik-e-Insaf (PTI) has to face this for its five years' tenure. PTI's commitment of new province in South Punjab, coalition government in Baluchistan, PPP government in Sindh, strong opposition in Punjab and at center, commitment in KPK for the completion of ongoing projects and inclusion of new projects, and free, fair and across the board accountability without NRO till the looted money back to Pakistan would add fire to protest politics that would come up with more political and economic challenges to PTI government in 'New-Pakistan'.

Theoretical Perspective and Analysis

A strong federation is less vulnerable to domestic, regional and international challenges, and strong federating units strengthen the foundation of federation. Mr. Raza Rabbani the architect of the devolution of power plan under 18th amendment conversed that strong Islamabad is not the guarantor of resilient Pakistan but strong federating units are the guarantor of stable and prosperous Pakistan. Federating units inherit strength from devolution of power mechanism under the constitutional provisions (Daily Times, 2018). The concept devolution signifies, transfer of political and economic power from federation to federating units in a well-structured way under the principle of 'Self-rule and Shared rule'. The eighteenth amendment was approved as National Plan for Devolution of Power (NPDP) on 19th April 2010. At the time of finalizing the draft of NPDP under eighteenth amendment, Parliamentary Committee on Constitutional Reforms (PCCR) kept on discussing three hundred and eighty-five hours to review 982 proposals submitted by political parties. Eighteenth amendment amended 102 Articles of the Constitution of Pakistan 1973 out of which 78 Articles relate to devolution of political and economic power to provinces. That's why the 18th amendment also called NPDP. The beauty of this amendment is that after the creation of the constitution of 1973 this was the first extensively consensus based document in the history of Pakistan. This amendment has been considered as milestone towards granting the provinces uncompromised

provincial autonomy which had been a long lasting petition of provinces in Pakistan (PCCR Report, 2010).

Provincial Autonomy is obligatory and independent of provinces having authority of execution of power over the delegated subjects by the federation under constitutionally protected and well-built mechanism for devolution. Under this definition the Constitution of Pakistan 1973 under 18th amendment has evolved National Plan of Devolution of Power (NPDP) as under:

- i) Part-V of Constitution of Pakistan 1973 deals with political dimensions of provincial autonomy under three chapters and Articles from 141-159.
- ii) Part-VI of Constitution of Pakistan 1973 deals with Economic dimensions of provincial autonomy under three chapters and Articles from 160-174.
- iii) Under Article 70(4) the forth schedule of constitution deals with federation-provinces' joint sharing of powers under legislative list Part-I containing 54 subjects and part-II containing 18 subjects

However, it is mandatory to restore the powers to three institutions of government prior to evolving the devolution mechanism for provincial autonomy. Therefore, NPDP under 18th amendment reduces the power of president for dismissal of parliament and restored sovereignty of parliament by revoking the Article 58(2) B. This has become a unique instance in the history that in Pakistan that an incumbent president willingly truncates his powers. This amendment imposed restriction on president to issue an ordinance when parliament is in session. The eighteenth amendment increased independence of judiciary in Pakistan by empowering the judicial commission for the appointment of judges of Supreme Court. Judicial commission comprised of 7 members including 4 judges, Minister for law, Attorney General and a member of Supreme Court Bar-Association. This amendment at some places seems to be elite power centric as it removed the limit on becoming third-time Prime Minister of Pakistan.

In Pakistan the NPDP under 18th amendment has built the confident of provinces on federation through resolving most of contentious economic and political issues as under:

- i. Abolition of concurrent list and reformation of Federal list-I and II-
- ii. Devolution of Ministries
- iii. Strengthening the Council of Common interests (CCI)
- iv. Redefining the criteria of National Finance Commission (NFC) Award
- v. Establishment of Inter-Provincial Coordination Ministry
- vi. Powers, procedure and functions of National Economic Council (NEC) reformed

- vii. Powers of Auditor General of Pakistan enhanced
- viii. Powers delegated to provinces to domestic or International loan

But, where 18th amendment has opened new spaces for provinces to enjoy uncompromised level of provincial autonomy, the process of devolution is facing some impediments as well. Here impediments towards implementation of NPDP are analyzed that may potentially be the slogan of opposition for politics of agitation in the name of provincial autonomy to pose challenges to PTI government.

Challenges to Federal Government in New-Pakistan

The first and foremost challenge for the new government of PTI would be redressing the provincial grievances, which they are registering even after the 18th amendment. For this the foremost step is the fully implementation of NPDP that has been lingered on for eight years. Under the Article 270 AA (8) a cutoff date to complete the process of devolution of power from federation to provinces was “thirtieth day of June two thousand and eleven” but still the plan has not been fully implemented.

The second immediate but potentially more difficult challenge for PTI government in New-Pakistan is to deal with the narrative set by PTI Chairman Imran Khan himself regarding electoral process and particularly the appointment of Chief Election Commissioner (CEC). Imran Khan had continuously been setting a narrative that that leader of the house and opposition leader unfairly bargain over the appointment of CEC without taking the other political parties onboard. The constitutional mandate for such process of electing the CEC has been given to the leader of the house and opposition leader under the 18th amendment. Now, when all the political parties in opposition are raising the same concern, which Imran Khan had been raising for last five years that CEC should resign on the issue of alleged rigging, it is to see that how free and fair electoral process would be ensured through taking meaningful constitutional steps in New-Pakistan. Further, evolved mechanism to observe merit and to ensure a comprehensive political agreement between government and opposition political forces would be critical for the appointment of Chief Election Commissioner.

At third, it would be a great challenge for PTI government to devolve the political and economic powers to local governments in rest of the provinces by following KPK model in-order to implement the devolution plan under 18th amendment in true spirit. Further for PTI government it would not easy to convince provincial governments for devolution of political and financial resources from provinces to local governments due to trivial attitude of provincial governments.

The fourth challenge is about the nomenclature and creation of new provinces. Under NPDP the nomenclature of North West Frontier Province

(NWFP) has been altered as Khyber Pakhtunkhwa (KPK). The linguistic face of renaming the province created feelings of displeasure and denial amongst Hindko speaking community and it had protested against renaming NWFP as KPK on the basis of cultural and ethnic identity. This protest turned into political violence that compelled the political parties to come on table for debate over renaming of province. After a lengthy debate of mainstream political parties and stakeholders the nomenclature of NWFP as KPK was ratified (Khan, 2010). Now for PTI government there would be a great challenge to create new province of South Punjab and then develop an agreement over the nomenclature of newly created province. Addition to that, Hindko speaking community of KPK may potentially pose a same challenge to new government again when the promised province of Southern Punjab is created.

Fifth challenge is dealing with lack of provincial capacity to comprehend the devolved responsibilities under NPDP. It has been observed that devolution plan has not been fully implemented because bureaucracy at provincial level is not trained in this regard and infrastructure at provincial level to carry out the responsibilities under NPDP is insufficient as well etc. It would be a great challenge for federal government to support provinces in their capacity building endeavors.

Sixth Challenge for the PTI government in New-Pakistan is technical in nature. Ongoing projects initiated by the Central government went beyond provincial borders, caused political problems. Because, a number of functions have to be retained by various devolved federal ministries and divisions, which created impediment towards implementation of the devolution plan. In this regard collaborative work with provinces would be a great challenge particularly in Sindh for the PTI government.

At seventh, all provinces have been continuously registering complaints that under 18th amendment the functions of the devolved ministries have been transferred to the provinces but the transfer of assets are yet to be devolved which brought further challenges to provincial governments. It would be crucial for the new government to ensure the transfer of assets and resources to the provinces along with the transfer of liabilities under devolved ministries.

The eighth challenge about the Article 142 (b) under which a new concurrent list has been created as the federal parliament and a provincial assembly both have power to make laws with respect to electricity, criminal law, criminal procedure and evidence etc. The joint ownership provides the federal government opportunity to intervene into the provincial subjects to restrict provinces of limited legislation. This is the reason that Punjab and KPK can legislate over 49 subjects out of 75, whereas, Sindh 09 and Baluchistan can legislate on only 06 subjects. If the federal government wants really to work with provinces in New-Pakistan, it should devolve the complete and intervention less political and economic autonomy to provinces (Daily Times, 2018)

The ninth challenge is about informal working of Council of Common Interest (CCI)-the only forum to resolve the conflict between federation and federating units. CCI has been working under complex and frail mechanism for federal-provincial joint ownership and completion of projects. Further it has supposed to be met quarterly but it can meet 19 times out of 24 in last 8 years where no any significant settlement has been achieved over conflicting issues including water issue. CCI is composed of 8 members of which four from federal government and four from provinces. Technically federal government dominates because it requires only one vote from any of provinces to supersede in decision making. Therefore, provincial representation must be increased to really annul the impression of federal domination. New government must revisit the structure and functioning of CCI in New-Pakistan.

The tenth challenge is regarding performance of National Finance Commission (NFC) under Complex Fiscal Design. It is the unclear fiscal design that 8th NFC Award is overdue for more than three years. Provinces are demanding more tax revenue from center which has created deadlock between center and provinces. For PTI government it would a great challenge to solve this riddle in the way of 8th NFC Award.

At eleventh, PTI has experienced that for provinces to seek foreign loans under 18th amendment the federal government pledges guarantee for it. The condition of federal guarantee creates obstacle in seeking international loans by provincial governments. Now in New-Pakistan it would be a test for PTI government that how it facilitates provinces in this regard or amends the clause of federal guarantee for provinces to seek external loans.

The twelfth is about tax collection at provincial level. Provincial governments are less equipped therefore less motivated to collect the tax. The failure of provincial governments regarding collection of taxes is one of the major challenges for new government.

Remedies to Potential Challenges

i) Political Perspective

- a) Being the provincial representative house the role of Senate must be increased through empowering the upper house equal to the national assembly over fiscal matters.
- b) New provinces on administrative bases must be created

ii) Economic Perspective

- a) Provincial Self Guarantee for international loans must be accepted
- b) Revenue share for federal government must be linked with performance of CCI

- c) Criteria of NFC Award must include need based assessment of provinces

Conclusion

It is concluded that to overcome the negative impact of agitation politics started after the general elections 2018 it is important to avoid conflicting relations between federal government and provinces which depends upon the strategy of newly form government to deal with the potential challenges posed by the fragile National Plan for Devolution of Power under 18th amendment. Because the current slogan of rigging for agitation would not be working after two years therefore the politics of agitation would have to switch to another slogan of provincial autonomy. It is therefore recommended for government that within two years existing challenges to federation-provinces relations must be redressed at maximum level so that the protest after two years cannot play the card of provincial grievances. For this, political will is required on the part of federal and provincial leadership of PTI government. The institutions like Council of Common Interests (CCI), National Finance Commission (NFC), National Economic Commission (NEC), Coordination Ministry and Election Commission of Pakistan must be well functional and effective to deal with challenges of government in New-Pakistan. Further to enhance the capacity at provincial level, federal government must invite Good Governance Working Group (GGWG) and Forum of Federations (FOF) to initiate technical and financial assistance in Pakistan with the objective of bringing together government bodies at federal and provincial level through professional training of Parliamentarians, Ministers and Bureaucracy. Federal government must ensure satisfactory representation from Baluchistan in stronger institutions of the state. Additionally, the PTI government must function effectively within the regional and international political environment to create political balance so that internal vulnerabilities of Pakistan cannot be exploited. However, where the National Plan for Devolution of Power has created windows for provinces at the same time it has fixed a responsibility towards provincial governments to understand that every step of federal government is not the intervention but on several occasions it provides assistance to the provincial governments in pursuits of common good.

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