

Distribution of Natural Resources: Prospects and Issues after 18th Amendment

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ABSTRACT

As a political structure, federalism is a scheme to classify and divide powers rather than emphasizing power concentration. The over centralization frequently results in the rejection of varied units and the deportation of various regions before they can have an opportunity to be heard. The constitution of 1973 provided strong federal system in Pakistan which is further strengthened by 18th Amendment through fiscal decentralization to provide material support to devolved subjects. Constitution of Pakistan provides equal joint administrative, executive, and regulatory authority in matters concerning natural resources. Confusion regarding devolution of tasks and responsibilities to the provinces and no explicit mechanism that may serve as a guide in the true implementation of amendment making resource distribution a challenge. Mechanism of Natural Resources Distribution along with concerns of different provinces discussed in this paper.

Introduction

The political history of Pakistan indicates that centralized polices entangled with autocratic leadership made the country enfeeble which badly affected the political aptitude to integrate subnational identities to form a single entity and stimulate the feelings of nationalism. Since inception, about all ethnic groups, mainly from smaller provinces, consistently demanding greater autonomy, power decentralization, and more rights to provinces (Kennedy, 2003). To address these demands, all three constitutions of Pakistan adopted federal structure of power sharing between center and provinces. By the broader spectrum of Pakistani political elite, 18th Amendment in 1973 Constitution of Pakistan, was a comprehensive reform package. This amendment along other federal issues, resolved the most salient issue of fiscal federalism and natural resources distribution in Pakistan.

In attaining the objective of fiscal federalism in Pakistan, 7th National Finance Commission Award is cherished as a big development. Likewise the 18th Amendment in 1973 constitution notably retrenched the responsibilities of the central government and at the same time enlarged the governmental spheres of four constitutional provinces of Pakistan-Punjab, Sindh, Khyber Pakhtunkhwa and Balochistan. At the same instant, 18th Amendment promised an active role of the Council of Common Interests (CCI) that work towards the better coordination of federal-provincial joint projects. It also directed the provincial government to devolve the powers to lower tier of government (Alam, 2017). It proved a notable attempt in fiscal decentralization which was further accompanied by NFC Award restricting federal government to lessen the revenue share of provinces since last year. .

The 18th Amendment has taken away number of powers from federal list and abolished that in joint jurisdiction that resulted in significant reduction in the powers of federal government.

Some of functions from concurrent list were assigned to Parliament and regulation and policies were given to the Council of Common Interests (CCI) that includes electricity, industrial development, economic planning, regulation and coordination, mineral resources and railways and public debt management supervision. Since the effectiveness of this amendment, the provincial governments are complaining and facing problems in securing their respective part of resource allocation. This Amendment is considered a prerequisite to strengthening the Federal system in Pakistan by empowering federal units but unfortunately, it is facing several challenges when it comes the matter of implementation. Authors of the Amendment in their very first cite apprehended by saying that the forces threatening provincial autonomy would use all conceivable means in order to prevent its implementation in true spirit.

Literature Review

Scholars supporting liberal school of thought like K. C. Wheare, D. L. Elazar A. Spinelli, and M. Burgees were on the view that a federal system emerged with intentions to “be under a single independent government for some purposes at any rate” (Wheare, 1964). Burgees and Elazar concluded that moral principles actively contribute to the creation of a federation (Elazar, 1998). Burgees pointed that creating a federation is fundamentally a political acquiescence (Dosenrode, 2010). Realist perspective on federalism was endorsed by David McKay and Riker and they believed that internal problems may be resolved within a federation. Scientific advancements have made it possible for a federal state to effectively govern such a vast region (Riker, 1964).

Another idea of federalism is the concept of dual sovereignty serves as the foundation for dual federalism. According to this idea both the federating unit and central governments operate in an ambient setting where they are treated as co-equals. Elazar, Clark and Grodzins, three political scientists, were critical about the idea of dual federalism. The terms "marble-cake federalism" and "layer-cake federalism" were initially used by Grodzins. Dual federalism was referred to as "layer-cake federalism" by him. He justify it as “like different layers of a cake, the federal government and the governments of federating units exert authority in their respective domains” (Schutze, 2009).

In 1938, the term ‘cooperative federalism’ was coined by Clark. During this time, United States of America was going through the Great Depression, and without strong state-federal cooperation, the central government was not able to handle all of these issues. However, the overlapping authorities and functions of central government and the states had made the situation worse. The critical situation necessitated a closer relationship than ever before between the federal government and state administrations. Resultantly, the concept of dual federalism was almost eliminated in US by this partnership, and the US found it effective to practice cooperative federalism (Frenkel, 1986). Scholars such as Morton Grodzins, Daniel J. Elazar, and Jane Perry Clark were negating the idea of dual federalism. Cooperative federalism's fundamental tenet is the joint obligations of the national and subnational governments. Therefore, the supporters of ‘cooperative federalism’ are not much interested in independence. They look convinced that the federal government cannot intervene in matters pertaining to the federating units by employing unconstitutional means. In addition, to encourage the formation of cooperative institutions, the cooperative federalism fosters a cooperative environment among the federal government and the governments of its federating units.

Through the theoretical framework of cooperative federalism theory, where there should be shared responsibilities, federal system can be analyzed in Pakistan. In Pakistan, the federal government and the provincial governments share some powers in accordance with CCI for matters listed under FLL-II. Prior 18th amendment, the number of subjects in FLL-II were eight which increased to eighteen subjects after 18th amendment. The Council of Common Interest has also been strengthened by 18th amendment. The Amendment has dissolved the Concurrent List powers. But, after amendment, still there are some joint functions undertaken

by the central government along with the sub-national governments by increasing the subjects of FLL-II. Article 172 is amended under 18th amendment in order to accommodate the joint ownership of natural resources. The transparent allocation of resources between the center and the provincial governments is guaranteed by National Finance Commission (NFC) where both federal and provincial governments have representation. Under the 18th Amendment, the National Economic Council (NEC) has been moved from Federal List-I to Federal List-II. The examples discussed above are sufficient to highlight that the 18th Amendment paved the way of cooperative federalism between central government and federating units due to shared functions.

Resource Distribution Mechanism under 18th Amendment

The Eighteenth Amendment has substantially changed the Constitutional and legal patterns by introducing Article 172 (3) to the Constitution of Pakistan that provides equal joint administrative, executive, and regulatory authority power role in matters concerning natural resources like natural gas, mineral oil, territorial waters etc. Under Article 172 (3) has made much clearer about their role in regulation, management, policy and administration regarding natural gas and mineral oil. This additional role was created alongside the CCI delegated power to Provinces. Mineral oil & natural gas is found FLL and pursuant to Article 154 (1) the relevant issues reside in the only domain of Council of Common Interest bound authorized to generate plans and exert authority over other concerned bodies (Senate, 2017). Despite the 18th Amendment, the position of stated articles remained unchanged. Thus, Ministry of Petroleum & Natural Resources is wrong in asserting their executive power over oil and gas remained exclusively under the Federal Government as it was always governed by CCI's decision and consent of the Province. In addition, for matters concerning oil & gas, Council of Common Interest itself supervision and monitor Ministry of Petroleum & Natural Resources. Article 97 hence elaborate "extent" of the Federal authority to implement its administrative powers. This will, therefore, imply that the Federation can enjoy complete authority on items listed under Part I of the Federal Legislative List except items named under Part II which also includes oil and gas whereby its authority is contingent upon the Council of Common Interest where all Provinces has representation in the basis of equality. In addition, the essence of Article 172(3) has also give new meaning to the "extent" of Federation to act upon oil & gas matters and now Provinces and Federal government must act together while exercising its jurisdiction (Amendment, 2010). Article 172(3) has entirely altered the scope of executive powers of Federation and now it is essential for federal government to exercise jurisdiction and authority in collaboration with Provinces.

The difference in Resource Distribution Mechanism Before and After 18th Amendment

After 18th Amendment, the issue of natural resources was addressed by giving more rights to provinces over their resources which were previously only under the jurisdiction of federal government. Given table will distinguish the situation of natural resources before and after amendment.

Subject	Before Amendment	After Amendment	Remarks
Ownership of oil and natural gas	Possession of Federal Government.	Placed under shared jurisdiction of Federal Government and Provincial Governments. In territorial waters, ownership belong to federal government if resources are situated beyond 12 nautical miles according to the Article 173(2) – Offshore and Article 172(3) – Onshore	
Utilization	Provincial Government	Continue to be the same	According to

	has right to utilize natural gas as priority in the Province where it produce		NFC Award, Royalty on Oil and Gas, Excise duty on Gas and Development Surcharge are being paid to provincial.
Gas Royalty	According to Article 161 (a), it was exclusive right of the respective Provincial Government.	Continue to be the same	
Oil Royalty	According to Article 161(b), there was no specific provision on payment of royalty on oil	Continue to be the same	
Excise Duty on Natural Gas	According to Article 161(a), it was exclusive right of the respective Provincial Government.	Continue to be the same	
Excise Duty on Oil	Not available	Article 161(b), given to Provinces	

Retrieved from Senate Ruling (Senate, 2017)

Legislative and administration power related to natural resources are given below:

Subject	Before Amendment	After Amendment	Remarks
Legislation	According to Article 142(a), Article 97 and Section 6 of 1948 Act, it was the exclusive right of the Federal Government.	Continue to be the same	The 'mineral oil and natural gas' has been retained in the FLL Part II- Paragraph 2 of the Constitution.
Regulatory control	According to 1948 Act, it was the exclusive right of the Federal Government to regulate Mines, Oilfields and Mineral Development	Continue to be the same	After the Amendment, to some extent, joint and equal ownership created and given some rights to legislate and regulated petroleum.

Retrieved from Senate Ruling (Senate, 2017)

Despite these Article 172 (2), of 1973 Constitution before amendment stated that "Ownerless property: (1) Any property which has no rightful owner shall, if located in a Province, vest in the Government of the Province, and in every other case, in the Federal Government. (2) All lands, minerals and other things of value within the continental shelf or underlying the ocean within the territorial waters of Pakistan shall vest in the Federal Government." (Amendment, 2010)

The Article 172 is amended and now states that "172 Ownerless property. (1) Any property which has no rightful owner shall, if located in a Province, vest in the Government of that Province, and in every other case, in the Federal Government. (2) All lands, minerals and

other things of value within the continental shelf or underlying the ocean beyond the territorial waters of Pakistan shall vest in the Federal Government. (3) Subject to the existing commitments and obligations, mineral oil and natural gas within the Province or the territorial waters adjacent thereto shall vest jointly and equally in that Province and the Federal Government.” (Amendment, 2010)

According to Constitution and different laws describing the revenue distribution in Pakistan between center and provinces is given below:

(a) Federal government will collect royalty and excise duty on oil and gas and transfer 100% revenue to provinces.

(b) From exploration companies 100% of welfare fund and Production bonus will go directly to the District Civil Administration.

(c) Federal government will collect and equally distribute Training Funds and Windfall Levy (WFL). According to the 2012 Petroleum Policy Windfall Levy is supposed to be equally divided between center and provinces.

(d) General Sales Tax (GST) and Income Tax from the production and exploration of Gas and Oil become the part of divisible pool and NFC Award will be distributed according to the criteria.

(e) Federal Government collects Petroleum Levy and GIDC but does not make it the part of divisible pool. In SNGPL FY 2015-16, it was decided by OGRA that ‘GIDC has to be used for laying distribution gas pipelines in the gas producing districts’ (Shah, Spring 2021).

All the policies and strategies related to oil and gas would be formulated, assessed, managed and reviewed jointly by Ministry of Petroleum And Natural Resources, Director General Petroleum Concessions and Director General Gas.

Concerns of provinces

Mainly Sindh, Balochistan and Khyber Pakhtunkhwa show dissatisfaction on the distribution of revenue generated through natural resources. The concerns of provinces are as:

Issues of Sindh Government

Sindh is producing more than 68% of natural gas used in the country but for their own use, Sindh is receiving only 44% gas that causes energy shortfall in the province. Sindh is dissatisfied on this situation and threatening federal government to stop the supply if government doesn't revisit their policy and provide lion share of gas to Sindh. The federal government took this issue on priority bases after the protest of Sindh government, both governments agreed on a committee to revise the distribution policy (Dawn, 2017).

Sindh government also looks concerned about the policy of Weighted Average Cost of Gas (WACOG), according to this policy, the local gas and LNG pooled together and a combined tariff is imposed which Sindh government declared it unconstitutional and a strain on the industrial sector which produces negative economic impacts (Dawn, 2017). The Sindh government is on the view that the policy of WACOG is not applicable on Sindh enriched in gas because that, "the use of gas by the Sindh relative to other provinces is protected by Article 158 of the Constitution," and demanded uninterrupted power supply to Sindh province according to the essence of the Constitution (News, 2023).

As the Article 161(1) of the Constitution, accepts the right of provinces over natural gas and mineral resources since inception and make Federal government responsible to transfer all the Federal duties and royalty to the provinces. According to this article, Sindh has concerns of making this revenue part of the ‘Federal Consolidated Fund’ instead of direct payment to the concerned province. According to Sindh government, Article 161(1) allows the central government merely to collect these revenue and transfer it to provinces. It would be unacceptable to Sindh, if the Article 172 (3) study with Article 16(1) alone without considering Article 154(1) which can better define federal government's jurisdiction in context of natural gas and mineral oil relevant affairs. Sindh government has concerns over non implementation of these articles in true spirit and demands from Federal government to

accept the equal share of provinces in administrative, regulatory and executive spheres (Hussain, 2019).

Concerns of KPK

Khyber Pakhtunkhwa has some serious grievances regarding resources distribution even prevailing after 18th Amendment. In the first week of January 2019, when Prime Minister Imran Khan tried to give assurance to the government of Khyber Pakhtunkhwa that concerns regarding net hydel profit would be resolved and provinces' dues will be handed over as per AGN Qazi formula. According to the constitution of 1973, there is a clear provision in Article 161 (2) to design a framework for determining and paying out the net hydel profit. According to the same article, net payments resulting from bulk power generation at a hydroelectric station should be deposited in the pocket of that province. The K-P government issued a white paper on the budget 2019-20 which claim the Memorandum of Understanding (MoU) between KP and Central government has been signed to resolve technically two issues, firstly, "net hydel profit arrears" and secondly, "the major results consisted of that the fixed uncapped net hydel profit" Resultantly, the major National Electrical and Power Regularity Authority notified on 7th March, 2016 and staged payment in respect of such amount would be made towards Khyber Pakhtunkhwa government at the new rates of Rs. 1.15 per KWH on production of electricity. Also, out of total claim of Rs.170 billion captioned uncapped profit on net hydel dues as arrears only Rs. 58.1 billion has been disbursed to the Khyber-Pakhtunkhwa government deprived from the balance amount of Rs. 11.9 Billion (Budget, 2019-2020). However, parliamentary leader of ANP, Sardar Hussain Babak, delivered a speech before Khyber Pakhtunkhwa Assembly stated that "the province's NHP arrears since 2015 amounted to Rs500 billion but the Centre had not only denied those payments but also waived off Rs300 billion on account of the Gas Infrastructure Development outstanding against different entities" (Shah, 2019). In this way, practically, KP government does not looks satisfied from the distribution of resources and protest time to time against federal government for deprivation of their legitimate share.

Concerns of Balochistan

The grievances of Baloch people culminate with the occupation natural resource, which is the backbone of Baloch resistance movement in opposition to the federation, giving them reason to believe that they are under a pseudo-colonial mode where colonial master is exploiting their resources. As the most pertinent part of the Balochistan puzzle is, "the contentious relationship between the resource-dependent Baloch and the resource-extractive Pakistani state", while importance of Balochistan only analyzed in terms of its resources like minerals, oil gas and its long coast along the Arabian Sea (Tariq, 2014).

Major gas fields in Balochistan include Pirkoh, Uch, Sui, Loti and Zarghun (most of them found in Dera Bugti-the notoriously conflict-riddled district). These gas fields are producing close to 35 percent of Pakistan's total gas output. Despite getting around 17% of the gas production, the rest of the country consumes the lion's share of the gas produced. Balochistan accounts 40 percent of Pakistan's primary energy, comes from natural gas, oil and coal. Additionally, Balochistan is enriched in minerals like platinum, silver, gold, copper, coal and uranium. Within four years of passage of 18th amendment, the province earned nearly Rs 2489 million from its mineral resources and the provincial government granted 9 licenses of mining and exploration (Nation, 2013).

The Baloch leaders have concerns for decades that their natural resources are being used endlessly and they want the right over the ownership of land, coastline, resources and the use of land. Before 18th amendment, the capital was not only able to dismiss these arguments categorically but also continue to exploit the resources of Balochistan instead of using it for the development of the province. The greatest manifestation of exploitation of resource was as gas was discovered in 1953 at Sui, Lahore and Multan in Punjab were receiving gas in the early 1960s but Quetta did not until 1986 (20 years after the start of gas provision to the major cities in Punjab). Before the last NFC Award, the nationalists in Balochistan declared

central government of guilty as the Federal government did not paid royalties to Balochistan's government which is about hundreds of billions of rupees. While on another instance, the Baloch claimed that the Federal government paid government of Balochistan merely 1/5th of total royalties the federal government paid to rest of the provinces and that it also discriminated and paid a lesser prices for Balochistan gas. They also alleged that the government failed to accord trust to Baloch leaders in order to make them the part of talk of mega development projects laid in the province and that it tightly controlled gas fields (Naseem, 2019).

Major Concerns Related to Resource Distribution in Pakistan

Oil and gas offers numerous gains to any state. It provides driving force to various sectors. However, the problem of fair diffusion of these resources between the provinces emerged as a very sensitive issue for state of Pakistan. The subject of natural resources covered under Article 158 of constitution. It says: "For well-heads for natural gas located in province, they shall have priority over rest of Pakistan as a subject to the commitments and obligations as on commencing day from that well-head" (Article 158). Some serious concerns over distribution of resources among provinces are given below:

- The expression "jointly and equally" lack clarity. Initially, federal ministry of natural resources issued the licenses and provinces demanded that provinces should also be allowed to participate in it as the co-ownership of gas and oil has been assured in the Constitution. Islamabad should acknowledge provinces right to plan and fix oil and gas prices in the constructional setting (Review, 2012). Under Article 172 (3) provinces will confer 55% administrative control on mineral resources, gas, and petroleum to the concerned provinces. Nevertheless, the provincial governments and federal government interpret the said article differently. Sindh claimed that it is the province's constitutional right to issue and extend the licenses for exploration of oil and gas. In 2013, the government allowed 50 blocks in several provinces to be explored by international and national oil exploration companies (Nishtar, 2015).
- The fight among the federal government and affected provinces is the consequences of disagreement over above described issue, and the quest for gas and oil was unsuccessful. The contention between the central government and federating units result in foreign oil and gas exploration corporations' loss investment interest in Pakistan. In post Eighteenth Amendment era, this sluggish perspective persisted in this field. The June, 2010 auction that was scheduled to happen but was rescheduled. Petroleum Policy 2012 was postponed by the federal government for more than two years. The procedure of placing bids started in March 2013 and ended in March 2014. Nevertheless, due to norms and regulations being broken during the bidding procedure, no foreign exploration business entered the competition. Pakistan Petroleum Limited (PPL) and The Oil and Gas Development Company Limited (OGDCL) were given the current blocks. Pakistan was abandoned by multinational exploration firms such as the United Kingdom's British Petroleum and Australia's Broken Hill Proprietary Company. In accordance with the 2012 petroleum policy, there are now more provincial delegates. The three provinces have now formally asked for the start of oil and gas exploration again, warning that there could be long-term repercussions if no fresh blocks are explored for five years. They claim that some of the important players in the Centre are deliberately neglecting domestic exploration in order to facilitate import of LNG (Kiani, 2017).
- Likewise the provinces have complaints against Centre for not implementing Articles 154 and 158 of the Constitution which must be taken into consideration (Kiani, 2017).
- Former Chief Minister of Balochistan alleged that "Federal petroleum ministry should have been abolished after the passage of 18th amendment. In its place, there should have been a directorate for facilitating the provinces which are producing gas and oil. A large chunk of Balochistan's gas and petroleum resources are being explored by the Oil and Gas Development Company Limited (OGDCL) and Pakistan Petroleum Limited." (Ahmed,

2015). The shares of province has to be transferred to the concerned government but in reality it is not happening.

Conclusion

The 18th Amendment and its fiscal measures proving to be troublesome when it comes the matter of implementation and show the problematic relationship, and posing barrier to achieve the goal of an imagined community. The fiscal federalism promised to federating units under 18th amendment is still facing execution challenges that can be sum up as: the provinces lack capacity, the lack of urge of the federal government to devolve departments as promised under 18th amendment, confusion regarding devolution of tasks and responsibilities to the provinces and no explicit mechanism that may serve as a guide in the true implementation of amendment. Therefore, if the promised share of revenue on the basis of the province's natural resources by the federal government failed to materialize, it is feared that development will be effect in the province and that the hopes raised by the 18th amendment will be shattered. The federal government inefficiency and incapability of providing the necessary funding to provinces has halted development, particularly in Balochistan and KPK. The national economy as a whole is already in disarray. There are fears that unfair distribution will alienate the people more. Therefore the Federation, in order to circumvent the abject fallouts, should add enough to its finances so as to give the provinces the rightful amounts besides the 18th Amendment.

As a political structure, federalism is a scheme to classify and divide powers rather than emphasizing power concentration. The over centralization frequently results in the rejection of varied units and the deportation of various regions before they can have an opportunity to be heard. Federalism would be strengthened if the provinces granted political and financial authority by taking into account Pakistan's diverse cultural and ethnic makeup. Additionally, this will encourage and support cooperation and greater harmony throughout the various parts. Federal system with the goal of provincial autonomy is a useful tool for fostering unity among cultural variety. Even after 1973 Constitution, smaller provinces have not been satisfied with their autonomy, although the federal government has occasionally encroached on their territory. Under these circumstances, the 18th Amendment appeared as a prompt step toward decentralization and the transfer of power and responsibility to the provinces.

Therefore, in order to effectively employ the limited resources to facilitate the citizens by raising the standards of living, promoting economic and social wellbeing, and enhancing physical infrastructure, provincial governments also need to employ the limited resources with greater responsibility. Otherwise, they would not be able to hold the center responsible for their failed ventures following the seventh NFC award and 18th Amendment. Following are some recommendations to address provincial concerns related to natural resources distribution:

- In reality, the provincial participation in the resolution of the issue can be enhanced by the full implementation of the Eighteenth Amendment, as well as by improved management of the gas and oil sectors. Misunderstandings and ignorance of the Eighteenth Amendment are the causes of uncertainty in the gas and oil industry, which need to be addressed.
- Establishing a body "under the rules of business" is necessary. The body's main goals should be to improve relations between the federal government and the provinces and identify obstacles to the application of the amended Article 172.
- Making the provinces "co-license holders" will attract foreign oil and gas exploration companies. The phrase "ownership" refers to an equal share of owners in royalties and does not imply on the provinces executive or legislative authority.
- The provinces have insisted that they should be assigned certain duties as well, like testing and prospect surveys for hydrocarbons before going to bid and award.
- Provinces have suggested that empowerment of provincial energy departments on the line of DGPC collaborate with the central government in order to distribute newly discovered gas and oil equally and cooperatively.
- Provinces marginalization can be prevented by giving provincial governments rights of bidding and licensing if any explore able area is identified by the provincial government.

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