

Redefining Right to Information, Federalism and Decentralization Mechanism in Pakistan: Post 18th Amendment perspective

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Abstract

Right to Information, Federalism and Decentralization have been remained sensitive matters for Pakistan. It has been a federal state since its creation following Partition in 1947, though this has been episodic by some political heads (Military and civilian both) through various amendments. These steps resulted in instability in political and federal system, causing the state a great loss nationally and internationally. The 18th Amendment (2010) is a landmark event in the political history of Pakistan. The Amendment brought about a paradigm shift in the architecture of Pakistan's governance. It reduced the power of the center and devolved numerous responsibilities to the provincial governments, thereby reinstating the federal vision of the original constitution of 1973.

The main trust of this paper is to adequately explain how far the 18th amendment Package has redefined and redesigned the existing nature of the relationship between the Government and Right to Information, and federation and federating units of

Pakistan? On the basis of reviewing literature, this paper is organized into four sections; first part focuses on the brief but comprehensive background on research problem. The second part emphasizes on the conceptual framework of Government and Right to Information, and federalism in Pakistan in historical context .The third part deals with federalism apparatus in Pakistan under the constitution particular 18th Amendment. Finally, part of the paper related to some policy recommendation as well as a suggestion for the smooth functioning of the federal system of Pakistan.

It is hope that, this study addresses all dimensions of federalism and makes an impressive and quality contribution to the literature on federalism and fills the gaps which is missing in previous studies. It is suggested that, real decentralization process and devolution of power and responsibilities is essential for benefited of the people as well as federal system of Pakistan. For that it is necessary that eighteen amendments must implement in the latter and sprit.

Key Word: 18th Amendment Accountability, Right to Information, Decentralization, Local Government, Access to Information.

Introduction

Right to Information and decentralization initiatives have been emerged as an essential pre-requisite for sustainable socio-economic developments of any country everywhere particularly in Pakistan. Various approaches' of Right to Information and decentralized governance (some time refer local government) are discussed in the light of previous empirical research. The

significant objective of the Right to Information and decentralization is to make governance more, efficient, effective, transparent, accountable and responsive to the needs of the citizen at grassroots level.

1-1 Objective and important of the study

The objective of this descriptive paper is to understand the relationship between Right to Information, decentralization and governance, particularly how the latter influences the design of decentralization policies. The main thrust of this study is to evaluate the Right to Information, Federalism and Decentralization apparatus in Pakistan after 18th Amendment perspective. The study also throws light on federal system as well as Right to Information and decentralization process by illustrative the three tiers of government (center, province and local government relationship) and providing some recommendation suggestion to resolve problems.

Those are the hurdles in smooth function of the Pakistan's federal particular after 18th Amendment package. It is hoped that the expected results of this work will not only facilitate the scholars and expert of social science but will also be a massive contribution for the students in the field of journalism, federalisms as well as decentralization. More over it would be make a significant input for the literature and deliberate in this field. Ultimately it will open new avenues for further research to provide relevant information to the civil society and hence will remain a subject of common interest and beneficial to general public.

1-2 Methodology of the study

The study is planned as a qualitative method and based on available literature review on the research problem. Thus there is a combination of primary and secondary sources. On the basis of reviewed literature, this paper is organized into four sections; first part focuses on the brief but comprehensive back ground of

research problem. While the second part emphasizes on the conceptual framework of right to information and decentralization. The third part deals with Decentralized apparatus which exists at the local level governance in Pakistan under the constitution particular 18th Amendment. Finally, the paper concludes with some lessons and recommendations.

2-1 Literature Review and Conceptual framework of Decentralization

Right to Information and Decentralization has undoubtedly gained popularity within the last two decades; it is not a new concept. The theory of decentralization and accountability go back to Montesquieu [1748], Rousseau [1762] Mill [1895-61] and Tocqueville [1835-40], who debated the optimal size and conformation of political units that served the interests of their citizens. The terms of Right to Information and decentralization attracted attention in the 1980s when global agenda emphasis on socioeconomic human development and good governance. Decentralization is also described in various ways. Decentralization initiatives at local level have been emerged as an essential pre-requisite for sustainable socio-economic developments of any country everywhere. Right to information empowers the citizens of the state to get information about governments and make them accountable. The significant objective of the right to information and decentralization is to make governance more, efficient, effective, transparent, accountable and responsive to the needs of the citizen at grassroots level. Decentralization is a complex multifaceted concept which is defined and interpreted in several ways. (TAUSZ, 2006) According to Katalin Tausz(2003) decentralization is considered a term, sometimes a concept, a process, a theory, a methodology, or a policy, even a trend. One of the most common definitions is that it is a process through which authority, resources and responsibility for public functions is transferred from the federal and provincial government to local governments, civil societies and other non-government organizations. (Nikolov, 2006) Jennie Litvack (2013)

defines decentralization as the transfer of authority and responsibility for public functions from the central government to subordinate or quasi-independent government organizations and/or the private sector. (World Bank, 2013) According to Paracha (2003), decentralization or decentralizing governance, refer to the restructuring or reorganization of authority so that there is a system of co-responsibility between institution of governances at central, regional and local level. (Paracha, 2003) The term of Decentralization has been interpreted and defined by in various perspectives which cover a number of models such as the following:

- **Right to Information** mean the access to the information about governmental bodies, for the accountability and good governance. Many of the countries around the globe made constitutional amendments to give the access of information to every citizen of the country.
- **Decentralization** mean to shifting the functions responsibility and authority from on level of the higher government (central or federal) to another lower government (province /local units while maintaining the same hierarchical level of accountability
- **Delegation** is a process in which transfer of powers from central /federal government to local government or semi-autonomous bodies which are accountable to the federal government directly.
- **Devolution** is the process which transferring the resources functions, power and responsibility of political decision-making and implementation to local governments which is elected by people. Devolution is considered a form of political decentralization

Conceptual Frame Work of Right to Information:

The basic concept of right to information or access to information is to strengthen the democracy, make the government accountable. Press is the fourth pillar of the state it bridges the gap between the government and the people. It also acts as watchdog to the society. Concealing information is the concealing the truth therefore free flow of information gives the strength to the democracy and access to information to the citizens makes the governmental institutions accountable to the public.

Conceptual Frame Work of Federalism

The word federation is derive from Latin word – foedus mean treaty and fidere giving meaning to trust. Federalism mean to transfer of the resources functions, power and responsibility between federal government and its constituent units by the constitutional framework .it is democratic process in which sovereignty is shared and powers divided between two or more levels of government each of which enjoys a direct relationship with the people. In federal form of government consist of various type of or level of the government , mostly known as central /federal or national government and a set of regional or sub regional governments (mostly known asLänder in Germany states in Australia and United States and provinces in the Pakistan) From distinguishes to unitary systems , in federal systems resources , functions, legislative powers and responsibility and most important sovereignty rests with the constitution while in a unitary system it remain to central government.

Press Freedom and Right to Information in Pakistan:

The access to information is the back bone of journalism. Unfortunately the fair and free press in Pakistan always is a debatable topic since ages. Every government wants to curb the press freedom the reason behind it they feel fair about the press and restrict the free flow of information. The first martial law

promulgated in October 1958. Press and publication ordinance 1960 imposed a ban on press freedom. (Niazi, 1986) Afterwards during the Zulfaqar Ali Bhutto's government the relationship between the press and the government were not satisfactory. Many of the newspapers those are against the government policies were targeted. Daily Jasarat which was the right wing newspaper were under attack during the Bhutto regime. In April 1972 Bhutto's government arrested journalists Altaf Hussain Qureshi, Mujeeb ur Rehman Shami and Hussain Naqi. Government also cancelled the declarations of Urdu Digest, Zindagi and Punjab Panch, press also confiscated by the government. The military courts convict the said journalists with one year imprisonment and one hundred thousand as penalty. (Qureshi, 2016) During the Zia Ul Haq regime the same fashion also continued censorship imposed on press and journalists got punishments. On October 18, 1979 according to martial law regulation number 49 censorship on newspapers were imposed which lasted till January 1, 1982. (Khan, 2014) In comparison to the dictatorial era the democratic regimes are more favorable to the press freedom and the right to information. The key element of this phenomenon is the decentralized approach of the power and gives more space to the people to express their feelings without any restrictions. On the other hand dictatorial governments always want to gain all powers the government based on centralized approach where all powers belongs to the ruling class and press freedom become marginalized.

Article 19-A introduced in the 18th amendment where the access to information become the part of the constitution of Pakistan.

“Every Citizen shall have the right to have access to information in all matters of public importance subject to regulations and reasonable restrictions imposed by law”.
(National Assembly of Pakistan, 2010)

It is a landmark achievement towards the civil rights and transparency in the governance. After the amendment

not only journalists but every citizen of Pakistan may have the access to information. The government shall provide all sort of information to every citizen that is now constitutional binding.

3 - Decentralization and Federalism in Pakistan:

3-1 introduction

The Islamic Republic of Pakistan lies at the crossroads of South Asia, Southwest Asia and Central Asia. According to the 1973 constitution Pakistan is a Islamic democratic parliamentary and federal state (National Assembly of Pakistan, 2010) In term of area, it is [the 33rd-largest country](#), covering 881,913 square kilometres .With area of 881,913 Pakistan is 33rd largest country. Pakistan has a population of about 209.975 million; making it the second largest Islamic state after Indonesia and ranking 5th in the world as far as population scale is concerned (2018 Censes est.) (Pakistan Bureau of Statistics, 2014)Article 2 describe Pakistan as federation stare which comprising the four provinces: Punjab (110.01 million largest province in term of population, Sindh (44.88 million), Khyber Pakhtunkhwa (30.52 million) and Balochistan (12.3 million). Islamabad is the capital of the country (with20 million) population.

Decentralization and Federalism in Pakistan: Historical context

Decentralization and Federalism have been remained a susceptible matter for Pakistan. Since its creation following Partition in 1947, it has been a federal state, though this has been intervallic by some political heads (Military and civilian both) through various amendments. These steps resulted in instability in political and federal system causing the state a great loss nationally and internationally. The people of Pakistan are faced with numerous problems today including poverty, terrorism, corruption, and unemployment as well as issues related to education, health,

urbanization and local rural and urban issues. These common national issues cannot be tackled without simultaneous action and response at the local and provincial levels. (Abid, 2013) Local government institutions, known as “local bodies” in Pakistan occupies the third and lowest level after federal and provincial governments. The concept of decentralized local governments (known as local bodies) is not new to Pakistan; (Waseem, 2013). During the seven decades of history of Pakistan, it has experienced three local government models; all were introduced by military regimes in 1958, 1977 and 2001 respectively. (Qaiser, 2013) See table no 1

Name of system	Pleader of the system	Time period
Basic Democracy system (BDS)	General Ayub Khan	1959-1969
Local Government System (LGS)	General Zia-ulHaq	1979-1988
Devolution of Power Plan (DOPP)	General Pervez Musharraf	2001-2008

Most recent decentralized model was Devolution Power Plan introduced by General Parvez Musharraf (1999-2008) in 2001. It was a plan to transfer the “Devolution of Power and Responsibility” to the grass roots level. Article 7 of the constitution of Pakistan 1973, described the affairs of the Federation of Pakistan divide among three tiers of the Government – Federal, Provincial and Local. Article 32 as well as 37(i) of the constitution in principle of policy, also deal with local governance and ask to state and governmental authority to support and encourage of local institution for convenience of the people. (National Assembly of Pakistan, 2010)

after 18th Amendment (2010) article 141-A insert in the constitution which describe that each province is responsible for making the local bodies law and devolve the financial administration as well as political power and author to the popular elected representative of the local. Election commission is responsible for to hold the local election. Above all three articles clearly local government is an essential part of the state and without local government state will remain incomplete.

3-2-post- 18th Amendment scenario:

Article 19-a gives the right to information to every citizens of Pakistan. But federation legally bonded to give access the information but the provincial governments also adopted the same phenomenon of the right to information. KPK introduced the Khyber Pakhtunkhwa Right to Information Act 2013 and the Punjab government also promulgates Punjab Transparency and Right to Information Act 2013 and the similar laws passed in Balochistan and Sindh. (Junaidi, 2014)

Process of decentralization has suffered from the lack of will after the eighteen **Amendments** on the part of the all-powerful bureaucracy as well as political elites to go the whole dominate in transferring state authority of the specified departments and divisions of the federal government to provincial governments. After a clear directive from the Supreme Court that provincial governments must ensure that they conduct LG elections by September 15, 2013. (Raja Rab Nawaz Vs. Federation of Pakistan and others, 2013) It also directed the provincial governments to complete and pass the LG laws from provincial assemblies till August 15, 2013. Hence, after the intervention of the Supreme Court of Pakistan hopes for the revival of local governments have been rekindled. By the end of 2016 all provinces had completed legislation on LG laws and local bodies' election has been held. .

3.3 -Federalism a Theoretical Perspective in Pakistan

The issue federalism has received great attention since the inception of Pakistan. To understand the real picture of federalism in Pakistan, it is necessary to know about the history. After the independence, newly-born Pakistan has adopted the India Act of 1935 as a provisional constitution until it would adopt its own constitution. But Pakistan has failed to make its own constitution till nine years. The main reason of this delay in constitutional making process was the controversy over the issue of distribution of power between the central government and its units. First constitution of Pakistan was promulgated on 23th March 1956 after the nine years of independence. 1956 constitution has given three legislative list central list, provincial list as well as concurrent list. Unfortunately Constitution of 1956 was failed to build up any considerable structure related to the distribution of powers particular financial resources between the federal government and its units. 1956 constitution was abrogated by martial law in October 1958 and country was directly control by General Ayub Khan. (Siddiqi, 2008). He replaced the 1956 constitution by his own made constitution in 1962. Unlike the previous constitution, 1962 Constitution differentiated the distribution of powers by giving a federal list. Forty nine subject was given to federal government while all residuary power was given to provinces,(at that time only two provinces east Pakistan and west Pakistan Practically, there was less provincial autonomy and none of provincial governments working during the Auyb Khan Era (1962-69).After the separation of East Pakistan (1971) third constitution was promulgated on 14 August 1973 made by Zulifqar Ali Buttho(1971-1977) . Unlike the previous two Constitutions, this third constitution 1973 has given TWO legislative list federal list(sixty seven subject) and concurrent list(forty seven subject) Like the previous practice all residuary power was given to provinces. There was a understanding that concurrent legislative list (consist of 41 subject) would be abolished after 10 years and power were given to provinces but

due to Zia martial law constitution was suspended and this was not implemented. Latter in 2010 concurrent list was abolished by eighteen Amendment..

3.3-2 Federalism in Pakistan after the 18th Amendment

After the general elections of 2008 held by General Parvez Musharraf, the Pakistan People Party (2008-13) came into power. It is an unfortunate fact that after the elections, the devolution of power Plan was hastily and sharply abandoned without any proper assessment of its merits and demerits. No serious effort was made to modify or remove its weaknesses to retain and build on its strengths. Unnecessary controversies have been initiated on points that have nothing to do with devolution itself. The responsibility for local government was moved to the Provinces in January 2009 in line with the Constitution, and councils were dissolved. (Qaiser, 2013) After the assuming power, newly elected PPP government constituted a Parliamentary Committee on Constitutional Reforms (PCCR), headed Senator Raza Rabbani (latter become the chairman of the senate) in 2009, to recommend a package of amendments in order to restore the 1973 constitution. (Waseem, 2013) The 27-members PCCR consisted from all major political parties with representation in either National Assembly or the Senate and other stakeholders. (Waseem, 2013) Backed by all political parties, the 18th Constitutional Amendment was unanimously passed by Parliaments on 10th Aril 2010 and notified in the Gazette of Pakistan on 20th April, 2010. As deliberated by Mr. Rabbani, this “negotiated legislative revolution has changed more that 36% (102 Articles) contents of the Constitution, which is the first ever home-grown initiative to reclaim the original federal character and spirit of the country. (Sattar, 2011)

The landmark 18th Amendment was billed as the most comprehensive reform package after the passage of the 1973 Constitution. It has ushered for a new area of federalism as well as relation between central and federated unties. The Amendment also brought about a paradigm shift in the architecture of

Pakistan's governance. Another innovative feature of the 18th Amendment is the restoration of parliamentary form of government. (Islam, 2013)The 18th Constitutional Amendment introduced has changed the power politics of the country at least in theory. It reduced the power of the center and devolved numerous responsibilities to the provincial governments thereby reinstating the federal vision of the original constitution of 1973.The 18th Amendment was major step toward decentralization as well as provincial autonomy. Articles 141-174 (part V and VI of the Constitution of 1973) were specifically related to relationship and distribution of power between the center and its units. Seventeen article (17) was changes out of thirty four (34) articles. The major amendments included:

- Concurrent legislative list was abolished and fort of its forty seven(47) subjects transfer to the provinces
- This list was the bone of contention between federation and provinces since last 30 years. It also empowers the provinces by providing the joint control of eighteen subject with federation which were part of federal legislative list II.
- These are very key power like census, natural recourses sea port national planning , all regulatory authorities, through council of common interest .
- moreover joint and equal ownership of natural recourses like gas and oil were given by this amendment
- The jurisdiction and scope of council of common interest is increased by given more power and representative.

Amendment has retained the article 140-A, which related to the devolution of power to the local another change by the Amendment that election commission of Pakistan is responsible for to hold the local bodies election of local bodies . Every province is responsible to make the local government laws and

held the election .Another important measure was that the permission of the concern provincial assembly is require for imposition of emergency rule in any province.

3.3.3 Federalism in Pakistan after the 18th Amendment

The general elections held in May 2013 brought the Pakistan Muslim League (N) into power, with high expectations for the citizens regarding to transfer of power and responsibility at gross root level in the spirit of 18th Amendment. But newly elected government has been less keen to hold elections for local government. Process of decentralization has suffered from the lack of will. After the eighteenth amendment on the part of the all-powerful bureaucracy as well as political elites to go the whole dominate in transferring state authority of the specified departments and divisions of the federal government to provincial governments. After a clear directive from the Supreme Court that provincial governments must ensure that they conduct LG elections by September 15, 2013.It also directed the provincial governments to complete and pass the LG laws from provincial assemblies till August 15, 2013. So, after the intervention of the Supreme Court of Pakistan hopes for the revival of local governments have been rekindled. By the end of 2016 all provinces had completed legislation on LG laws and local bodies election has been held.

3.3.4 Impact of 18th Constitutional Amendment

Summarily, the envisioned impacts of the 18th Constitutional Amendment include:

- Right to information to all citizens
- Stabilizing Federation through Provincial Autonomy
- Equitable Development through Devolution Centralized

Right to Information:

Article 19-A ensure the access to information to all citizens of the state. It is the major shift from censorship to access to the information. Every government tries to conceal the information from citizens and journalists. Flow of free and fair information is essential for the accountability and transparency. Now every citizen has right to information to the all governmental department and they are bound to provide the authentic information within prescribed time. It makes every citizen empower to make them accountable and it is the first step towards transparency.

3.3.4(1) Stabilizing Federation through Provincial Autonomy

The Federation-Provinces relationships were deteriorating since the inception of Pakistan in this context the eighteen amendments, has taken key landmarks decisions where Federation-Center dynamics would significantly change for the welfare and betterment of the citizen. The amendment is more focus on provincial autonomy by given them more political financial and administrative powers and responsibilities .these measures mean to bring a climate of healthy competition and cooperation between center and provinces as well as among the federated units . Such type of atmosphere is the basic essence to strengthen of the federation of Pakistan.

3.3.4(2) Equitable Development through Devolution Centralized and top-down development planning is considered to be the major root- cause of the failures of development outcomes in Pakistan. This centralist paradigm has not delivered social services to the people of Pakistan proportionate to the financial resources allocated and spent. Pakistan thus has become the history of wasted resources, missed targets, failed opportunities and increased disparities in social development sector. The 18th Amendment, however, has instituted a durable and constitutionally guaranteed process of devolution by devolving subjects, functions, policies, planning and implementation to the provincial domains.

4-1 Discussion / Recommendations:

After the eighteenth amendment, right to information is become the part of the constitution and the passage of its implementation of decentralization is main at the federal and provinces level, but in the districts level are only little developed or even non-existent. The issues of decentralized governance have frequently been addressed by political leader /politicians via electronic and print media. However, the improvement is still unsatisfactory. Keeping in view of above discussion, there are several administrative and political policy recommendations/reforms for making more effective and accountable in decentralized Pakistan. These include:

4-2 Political Reforms

- The District Nazims and Tehsil Nazim should be elected directly by the voters rather than indirectly by the Union Nazims for increasing accountability.
- However to ensure the accountability and transparency it is necessary that chairman of district as well as Tehsil level have to impeached by the union councilors
- Electoral reform for free and fair election need to be ensured.
- There needs to promote good governance and e-governance for social services delivery at ross root level Effective media campaign for voters' education need to be made.

4-3 Administrative and financial Reforms

- The demarcation and clarification of responsibilities accountability mechanisms between the Provincial and District Governments should be drawn more clearly and explicitly.
- Ending uncertainty on constitutional position of local government.

- Regular meeting between elected representative and government official need to be convened for better mechanism.
- There needs to disseminate information to all stake holders to ensure that what decisions were taken and why?
- There needs to provide opportunities to local people to have a check on how money is spent locally.
- There requires to provide well publicized routes for citizens to make their voices heard.
- There needs to provide opportunities for 'scrutiny' of proposals (which can be informal) within the decision making process

5- Concluding Thoughts

Access to information laws which was adopted earlier in west not is the part of constitution which makes the government institution accountable and they don't deny giving any sort of information in public interest. Decentralization initiatives at local level have been emerged as an essential pre-requisite for sustainable socio-economic developments of any country everywhere particularly in Pakistan. The significant objective of the decentralization is to make governance more, efficient, effective, transparent, accountable and responsive to the needs of the citizen at grassroots level. The landmark 18th Amendment was billed as the most comprehensive reform package after the passage of the 1973 Constitution. It has ushered for a new area of federalism as well as relation between central and federated unties. The Amendment also brought about a paradigm shift in the architecture of Pakistan's governance. Another innovative feature of the 18th Amendment is the restoration of parliamentary form of government. (Islam, 2013) The 18th Constitutional Amendment introduced has changed the power politics of the country at least in theory. It reduced the power of the center and devolved numerous

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