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CENTRE FOR PEACE, SECURITY AND DEVELOPMENTAL STUDIES

ROUNDTABLE ON
18th Amendment
Pitfalls and Opportunities

Roundtable Report

Karachi, Pakistan

30 April 2019

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18TH AMENDMENT: PITFALLS AND OPPORTUNITIES

Organized by

Centre for Peace, Security and Developmental Studies
(CPSD)

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Editors

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Executive Summary

To critically evaluate the opportunities offered by the Eighteenth Amendment and to address the legal, social, and political concerns attached to it, CPSD organized a roundtable on the topic of “Eighteenth Amendment: Pitfalls and Opportunities” on 30 April 2019. The objective of the roundtable was to initiate an intellectual discourse on the intended and unintended consequences of the amendment and to promote the democratic culture of resolving issues through debate and discussion. Another aim of the roundtable was to present innovative solutions for power sharing between federal and provincial governments and to promote transparency and accountability in their functions.

Since the adoption of the Eighteenth Amendment by the National Assembly of Pakistan in April 2010, the debate over the implications of this amendment in the Pakistan constitution has never ended. Avoiding the controversial politicization of the matter, the roundtable discussion at CPSD revolved around an intellectual debate on the tangible and practical concerns of policymakers, politicians, jurists, analysts, and other stakeholders. In addition to central issues like abolition of the Concurrent Legislative List (CLL), provincial autonomy, fiscal and legislative power sharing between the central and provincial units, and the presidential versus parliamentary system of governance, the speakers also talked at length on neglected issues of the local government system, education management, and human rights.

The program began with introductory remarks by the Executive Director of CPSD, Mr. Umer Khan, followed by presentations by esteemed speakers on their respective topics. After individual presentations, there was a collective panel discussion on the subject, during which the attendees asked questions and made critical remarks on legal, political, financial, and administrative dimensions of the Eighteenth Amendment. At the end of the panel discussion, the panelists came up with some key recommendations to resolve the problems highlighted during the program.

It was unanimously agreed that Eighteenth Amendment must be applauded for strengthening democracy and any effort to revoke such an amendment would disrupt the political stability of Pakistan. However, the participants agreed that it is in the spirit of democracy to discuss the pitfalls and opportunities arising out of the implementation of the Eighteenth Amendment. The participants discussed the ambiguities and offered solution for the devolution of legislative and executive power to the provincial and local government, resource sharing through NFC award, and better management in social service sectors like Education and Healthcare. The roundtable concluded on a positive note that similar exercises will be held in future to debate other amendments of the constitution.

Recommendations

- ▶ The Eighteenth Amendment was passed with the consensus of all major political parties in Pakistan and should not be subject to pointless controversies. Instead, the policymakers and the politicians should encourage a healthy intellectual discussion on the implication of the amendment through the involvement of policy think tanks, subject matter experts, and those directly or indirectly affected by this amendment.
- ▶ In order to erase the confusion over the devolution of legislative items listed in CLL to the provinces, a Provincial Legislative List (PLL) should be developed clearly citing all the key areas under the legislative authority of provincial governments.
- ▶ The government should also establish a joint Inter-Provincial Commission (IPC) to discuss all devolved subjects with members representing provincial and federal governments.
- ▶ The provincial governments should ensure the smooth transfer of legislative power and resources at the local level.
- ▶ The democratic culture of accountability and power sharing should be instituted through the establishment of trade and student unions.
- ▶ The judiciary, having better understanding of legal discourse, should review the future amendments to improve their articulation and to remove ambiguities.
- ▶ The issue of devolution of higher education needs to be resolved on a priority basis in a way that warrants autonomy of higher educational institutions and clarity over the role and scope of the Higher Education Commission.
- ▶ Policy think tanks should play a role in increasing public awareness regarding the implication and importance of the Eighteenth Amendment.

List of Speakers

Justice Sarmad Jalal Osmany,

Dean Faculty of Law, Dadabhoy Institute of Higher Education

Dr. Kaiser Bengali

Former Head of Chief Minister's Policy Reform Unit, Government of Balochistan

Mazhar Abbas

Journalist and Senior Political Analyst

Justice M. Shaiq Usmani

Senior Advocate Supreme Court of Pakistan

Taimur Malik

Founder Courting the Law and Partner in Clyde & Co.

Dr. Moiz Khan

Assistant Professor, University of Karachi

Sidra Imran

Member Provincial Assembly, Sindh

Proceedings of the Roundtable

Welcome Remarks and Introduction of CPSD by Umer Khan

Mr. Umer Khan, the Executive Director of CPSD commenced the event by welcoming speakers of the roundtable for taking out time from their busy schedule for the roundtable. While providing the objectives behind conducting a roundtable on the Eighteenth Amendment, he held that this is termed as a revolutionary amendment in the constitutional history of Pakistan. However, there are critics who consider it a hastily done affair. There is a growing view that the amendment has weakened the state and has been a major reason for the country's economic crisis. He held that the debate initiated by CPSD is to provide the speakers of the roundtable with an opportunity for the audience present at the event and for those watching the live stream across the globe. Mr. Umer gave a brief introduction of CPSD, highlighted its mission and vision, and provided details of the current and past projects of the organization.



Justice Sarmad Jalal Osmany



Speaking on the topic of “Legislation after the Eighteenth Amendment,” the former Chief Justice of Sindh High Court, Justice Sarmad Jalal Osmany pointed out some key legislative ambiguities resulting from poor implementation of the Eighteenth Amendment. According to him, the abolition of the Concurrent Legislative List (CLL) without developing a Provincial Legislative List (PLL) has caused overlapping of roles and duties amongst the federation and provinces. He was of the opinion that a PLL along with Federal Legislative List (FLL) can mark a clear boundary between the legislative authority of the federation and provinces, which would eventually improve public administration in sectors such as healthcare, education, and public finance.

Justice Osmany pointed out several examples of the intervention of the federal government in sectors that ought to be administrated by the provincial governments. For instance, the Child Marriage Act that was presented in the National Assembly for discussion falls under the purview of the provincial government after the Eighteenth Amendment. Similarly, the higher education sector is facing turmoil due to parallel administrative bodies despite the devolution of federal ministry of higher education. He also criticized the government for a double taxation system where both federal and provincial governments are collecting taxes on a single entity. He pointed out that double taxation is prohibited under the law and surprisingly no one has yet challenged it in the courts. Justice Osmany concluded that without developing a PLL there will always be a conflict between provincial and federal governments and the Eighteenth Amendment would remain a “half-baked recipe” only.

Dr. Kaiser Bengali

Dr. Kaiser Bengali began his presentation by negating the criticism over the Eighteenth Amendment, pointing out that it was passed with the consensus of all 17 parliamentary parties elected to the National Assembly of Pakistan. He held that the proponents of centralization intentionally made it controversial to retain the power at the center. The amendment has actually given the smaller provinces a stake and ownership in the federation, which has strengthened the integrity and sovereignty of the country. He explained that the abolition of CLL is not causing the problems; the administrative issues after the eighteenth amendment were due to the absence of a working relationship between provincial and federal governments. For this, the federal government must provide provincial governments a chance to prove their operative capacity through faithfully implementing the Eighteenth Amendment. He proposed creation of a joint inter-provincial commission (IPC) for each devolved subject, composed of representatives of all provinces and the federal government. He held that the federal fiscal problems are the result of the failure of the government to raise tax-GDP ratio and reduce current expenditure. Dr. Bengali termed democracy the final solution of every problem and concluded that democracy should prevail for the bright future of Pakistan.



Mazhar Abbas



Mr. Mazhar Abbas spoke on the topic of “Empowering Local Governments: Prospects Offered by the Eighteenth Amendment.” Providing a historical context of local government system in Pakistan, Mr. Mazhar Abbas highlighted the irony of democracy in Pakistan where almost all local governments were established by military dictators. He held political parties responsible for this. The renowned journalist criticized the propaganda of political parties that undemocratic powers are not allowing them to flourish. He commented that no power has stopped provincial governments from building trade unions. Yet these political parties themselves lack the democratic mindset and the lust of absolute power has never allowed our politicians to devolve power to the local government level. He criticized provincial governments for collecting taxes on the behalf of local bodies for years, not letting the local bodies collect and spend taxes on their own. He was of the opinion that while the eighteenth amendment has great prospects to offer in terms of devolution of power, those are just on paper. The real change requires political will and honesty. Mr. Mazhar Abbas also shed light on the growing gap between political parties and public and recommended building bodies like Public Complain Commission to serve as a bridge between people and government.

Justice M. Shaiq Usmani

Addressing one of the most pressing issues of political governance in Pakistan, “The Presidential vs. Parliament System,” Justice Shaiq Usmani gave an account of the bitter political history of Pakistan. He held that the Eighteenth Amendment has made the same demands as presented by Mujeeb-ur-Rehman in 1971 and if the Pakistan People’s Party had accepted these demands in the past, Pakistan would not have lost its Eastern province. Justice Shaiq shed light on the need for regulation of political autonomy, explaining that mere autonomy could not solve



governance issues in Pakistan. Instead, there is a need to regulate the political autonomy to the grassroots level, because without regulation powers remained confined to certain families, classes or individuals. He held that the Eighteenth Amendment has not yet achieved its objective of autonomy because the system necessarily required intervention of the federation for regulation resulting in a power imbalance. He maintained that a presidential system is more effective in the regulation of power because it involves only one authority with the decision-making power. He closed his address with the conclusion that if a parliamentary system has to continue in Pakistan, it must ensure devolution of power to the local level and a rigorous model of checks and balances.

Taimur Malik



Mr. Taimur spoke on the ramifications of Article 160 of the constitution which defines the resource allocation process between the federation and provinces. He began his talk by addressing the issue of political will, stating the need to move beyond the legislation and ensure the implementation of laws. He emphasized that Pakistan is a national security state and its policies cannot be made in isolation with national security concerns. Speaking on the amendment of Article 160, he pointed out the ambiguous phrasing of Clauses 3A and 3B. For instance, clause 3A says that the share of the provinces in each National Finance Commission (NFC) Award shall not be less than the share given to the provinces in the previous award. He was of the opinion that such a statement does not clarify whether it only talks about the collective share of all four provinces or their individual share as well. Similarly, he elaborated on lack of clarity in Clauses 4, 5, and 6 of article 160. He held that for better verbalization of the constitution, legal experts having a better grip over legal dialect should be involved before the legislatures bring any amendment in the constitution.

Dr. Moiz Khan

Speaking on “Education Management after the Eighteenth Amendment: Highlighting the Ambiguities for Higher Education Institutes” Dr. Moiz Khan highlighted the issue of mismanagement in the education sector of Pakistan. He was of the opinion that the Eighteenth Amendment has brought a new set of challenges for the higher education institutions in the country. After the amendment, two parallel Higher Education Commissions (HEC), one under the provincial government and another under the federal government, have been established. The autonomy of higher education institutes has been sacrificed, as these institutions have to look up to HEC for their day-to-day affairs. He explained that after the Eighteenth Amendment the education policy and planning and curriculum development is a provincial subject but the standards in higher education are under the federal government. The devolution of Higher Education to the provincial government was to be settled by Council of Common Interests (CCI) but it has failed to chalk out a plan for this devolution even after 9 years. Dr. Moiz made some key recommendations to resolve the issue. First, the autonomy of higher education institutions has to be restored so these institutions could generate their own funds. Second, the government should provide sufficient amount of funds for research directly to the institutions. Third, the government should ensure clear and consistent policies for the smooth functioning of the universities.



Sidra Imran



Ms. Sidra Imran talked on the important topic of “Building a Working Relationship between Provinces and Federation after the Eighteenth Amendment.” She commended the Eighteenth Amendment as an amendment “to watch for” but shared her disappointment with the politicization of this important constitutional and technical matter. She was of the opinion that implementation of the amendment necessarily requires a good working relationship between provinces and the federation, which is hard to achieve unless all stakeholders are taken on board. She underlined the role of policy think tanks in developing an environment of debate and discussion and providing space for stakeholders to resolve their concerns on the table. She also highlighted the need to create awareness among the public about the role of the legislature, so they build their expectations with the elected members accordingly.

Panel Discussion

During the Panel discussion, the audience asked questions from the speakers about the implications of the Eighteenth Amendment. A consensus was reached that the work of the Parliamentary Committee involved in drafting the amendment should be lauded and there should not be any rolling back from the same. While some of the speakers pointed out the lack of political will to implement the amendment, some others identified the important changes that have been brought about by the amendment. Both positive and negative consequences of the amendment were brought to the table. A heated discussion on the suitability of the presidential system was closed with the conclusion that any system of governance can work in Pakistan if the people involved in running the system are sincere and principled. Mr. Ashir Wilson, Intern CPSD, proposed developing a quota for disabled citizens in the constitutional assemblies of Pakistan. All panelist agreed with the proposal and supported it.



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