

REPORT

Impact of the 18th Constitutional Amendment on Federation-Provinces Relations

*Briefing Session for the Honourable Members and Staff of the
Provincial Assembly of the Punjab
& Senior officials of the Government of the Punjab*

July 22, 2010; Hotel Pearl Continental, Lahore

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Head Office: No. 7, 9th Avenue, F-8/1 Islamabad Pakistan
Registered Office: 172-M, DHA, Lahore, Pakistan
Ph: (+92-51) 111 123 345 Fax: (+92-51) 226 3078
E-mail: info@pildat.org Web: www.pildat.org

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Abbreviations and Acronyms

NFC	National Finance Commission
CCI	Council of Common Interests
PML-N	Pakistan Muslim League-Nawaz
PML-Q	Pakistan Muslim League-Quaid-e-Azam
PPP	Pakistan Peoples Party
PPPP	Pakistan Peoples Party Parliamentarian

REPORT

Impact of the 18th Constitutional Amendment

Briefing Session for Punjab MPAs

PREFACE

A PILDAT Briefing for the Members of the Provincial Assembly of the Punjab, Media and Senior Provincial Government Officials on the **Impact of the 18th Constitutional Amendment and the 7th NFC Award on the Federation-Provinces Relations and the Follow-up Challenges** was held on **July 21, 2010** at Hotel Pearl Continental, Lahore.

The objective of the Briefing was to explain the changes brought about by the 18th Amendment and the 7th NFC Award as these directly relate to the provinces and would bring about far-reaching changes in the relations between the Federation and Provinces.

Key speakers at the Briefing Session included **Mr. Shahid Hamid**, Senior Advocate Supreme Court; former Minister for Defence, Establishment & Law and former Governor of the Punjab; **Senator S. M. Zafar**, Constitutional Lawyer; Member Parliamentary Committee on Constitutional Reforms, former Federal Minister of Law; **Mr. Nohman Ishtiaq**, Consultant and **Mr. Sartaj Aziz**, Vice Chancellor Beaconhouse National University; former Federal Minister for Finance and Foreign Affairs. The Briefing Session was chaired by Honourable Speaker Provincial Assembly of the Punjab **Rana Muhammad Iqbal Khan**.

The Briefing attempted to answer questions such as how the 18th Constitutional Amendment will impact the relationship between the Federation and the Provinces; what will be the impact of the 7th National Finance Commission Award on Resource Sharing and what will be combined effect of the 18th Constitutional Amendment and the 7th NFC Award on Federation-Provinces Equation.

This report carries an overview of key presentations while capturing the interaction that took place between participants and the panelists.

Acknowledgment

The Briefing was organised by PILDAT as part of the *Parliamentary and Political Party Strengthening Project* which is funded by Canada's Department of Foreign Affairs and International Trade-DFAIT and is implemented jointly by the Parliamentary Centre, Canada and PILDAT.

Disclaimer

PILDAT team has made every effort to ensure accurate reflection of the Briefing Session in this report and any omission or error is not deliberate. The content of this report does not necessarily reflect the views of PILDAT, the Parliamentary Centre Canada or Canada's Department of Foreign Affairs and International Trade-DFAIT.

Islamabad
August 2010

Welcome Remarks and Introduction

Mr. Ahmed Bilal Mahboob
Executive Director, PILDAT



Mr. Ahmed Bilal Mehboob, Executive Director PILDAT, welcomed the participants of the briefing session. He said that the Briefing has been arranged at the desire of the MPAs as they are keen to understand the role and scope of the Provincial Assembly after the 18th Constitutional Amendment and the 7th NFC Award. He further said that this briefing session was the first of the series and detailed briefings on various sub-issues will be facilitated by PILDAT.

Mr. Mehboob said that 18th Amendment and the 7th NFC Award represent historical consensus with far-reaching impact on the way relations between the federation and the provinces are to be conducted. A greater awareness of this change and the resulting requirements of capacity enhancement and better governance need to be created at all levels of the society but especially among the provincial legislators, provincial government officials and the Provincial Assembly Staff.

Impact of the 18th Constitutional Amendment*Briefing Session for Punjab MPAs*

Rana Muhammad Iqbal
Honourable Speaker
Provincial Assembly of the Punjab



Thanking PILDAT for holding the briefing session on the crucial subject, Rana Muhammad Iqbal said that the 18th Constitutional Amendment has been achieved through the joint efforts of all the political parties and it has strengthened our parliamentary system.

He believed that it is critical for MPAs to understand the new demarcation of Provincial Assembly's role in the light of the 18th Amendment. Citing a few salient features of the 18th amendment he said that the number of sessions of the Provincial Assemblies have been increased from 70 to 100 in a year and the provinces would now be able to enact laws on several subjects which earlier used to be the domain of the Federation.

He further said that the NFC Award issue has been resolved amicably and Punjab has played the role of an elder brother and it has been accepted and appreciated by other provinces. He was of the view that this would help bring positive change in the lives of the common people.

Impact of the 18th Constitutional Amendment on Federation-Provinces Relations and its follow-up Challenges

Mr. Shahid Hamid

Senior Advocate Supreme Court;
former Minister for Defence, Establishment & Law and
former Governor of the Punjab



Mr. Shahid Hamid in his opening remarks said that we need to pay homage to a lot of people as far as the 18th Constitutional Amendment is concerned. Senator Raza Rabbani and Senator S. M. Zafar need special mention in this connection. Consensus on 18th Constitutional Amendment is unprecedented in the history of Pakistan. It is feather in the cap not only of the Government but all the political parties of the country.

Mr. Shahid Hamid said that Government of India Act 1935 was translated into the Constitution of Pakistan and 93 items were placed on the Federal and Concurrent Lists. The 1956 and 1962 Constitutions of Pakistan had one thing in common and that was the number of the subjects under Federal and Concurrent lists was reduced to 56 from 93. The provincial autonomy on papers was at least tremendous in these two constitutions.

The 1973 Constitution saw an increase in the subjects of the Federal Legislative List but a Council of Common Interests (CCI) was created to be chaired by the Prime Minister or any Minister nominated by the Prime Minister. The Council of Common Interests, also included the four Chief Ministers. The Council of Common Interest was to lay down some 8 of the subjects of the Federal Legislative List.

The 1973 Constitution increased the power of the Federation and from the day one it was demanded by the

smaller provinces that they be provided provincial autonomy.

The 18th Amendment has brought about a change and the Concurrent List has been abolished. Now, both Provincial Assemblies and the Parliament can enact laws on Criminal Laws, Code of Criminal Procedure and the Evidence Act on which both the Parliament and the Provincial Assemblies can make laws.

Under the 18th Amendment, the remaining 47 subjects of the Concurrent List have been abolished. But the Federal Legislative list has increased from 67 to 77 and the part II of the Federal Legislative List has increased from 8 to 18. The 18th Amendment calls for a strengthened Council of Common Interests with a permanent secretariat and mandatory to meet once a quarter.

While drawing a comparison with India, Mr. Shahid Hamid was of the opinion that there were suspicions in the Punjab and elsewhere that the loosening of the Federation in the wake of the 18th Amendment might result in erosion of the national stability. In India, the Federal and Concurrent Lists have 144 subjects while we have had 114 and now 77. He further said that India is a Union and it had 16 provinces at the time of partition and now there were 32 provinces. In India the number of the provinces has been increasing with the passage of time while in the case of Pakistan, this has not happened. Formation of new provinces in Pakistan would have addressed the issue of provincial autonomy earlier. With smaller number of provinces, we have to devolve more subjects to the provinces.

The 7th National Finance Commission Award, its impact on Resources sharing and Challenges for the Future

Mr. Nohman Ishtiaq
Consultant



Mr. Nohman Ishtiaq, while addressing the gathering said that the 7th NFC Award is about the distribution of revenues between the Federation and the Provinces. According to the Article 160 of the 1973 Constitution the President would form the NFC (National Finance Commission) award in 6 months and it would include the Federal Finance Minister, Provincial Finance Ministers and those nominated by the President in consultation with the Governors would be the members of the NFC. The NFC would present its recommendations to the President. On the recommendations of the Commission, the President issues an order about the grants revenue division between the Provinces and the Federation. The 7th NFC Award has not yet been presented in the Provincial Legislatures for debate.

The taxes are distributed among the provinces according to the NFC Award. Besides taxes, emergency grant, aid for the provincial projects, loans, excise duty and surcharge are also distributed among the provinces. These are collected by the Federal government and distributed among provinces.

Describing the past practices he said that the revenue was distributed among the provinces according to India Act 1935 till 1950. The NFC Award 2006 was amended by the President and the 1974, 1990, 1996 and 2009 NFC Awards had complete consensus. All the other NFC Awards did not have the recommendations of the National Finance

Commission. Punjab would get 52 per cent of the Federal taxes according to this 7th NFC Award.

Under the 18th amendment the Federation and the Provinces would expand their tax net to improve revenue collection. The NFC would hold its meeting after very four months to review the implementation on its recommendations. In the 7th NFC Award 1190 billion rupees would be transferred to the provinces. It is almost 80 per cent amount that will be transferred to the provinces under the 7th NFC Award. Punjab would get the larger share of the Federal funds followed by Sindh, Khyber Pakhtunkhwa and Balochistan. The funds distribution would be on the basis of population, poverty ratio, area, backwardness, etc.

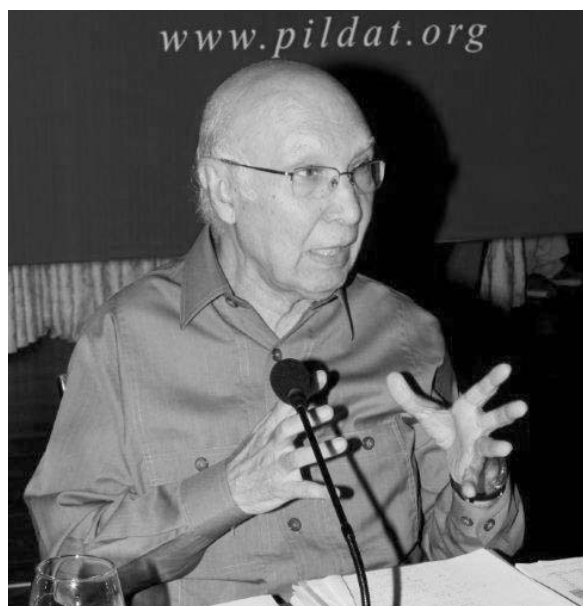
The 7th NFC Award has transferred a larger share of Federal government revenues to provinces and it would help them serve people in an effective manner.

The total revenue of the Federal government for the next year would be Rs. 2412 billion and out of this Rs. 1034 billion would be transferred to the provinces. The federation would have Rs. 1378 billion while its expenditure is of more than Rs. 2000 billion. The increase in the fiscal deficit would result in more loans in the coming years which would make it difficult for running the economy of the country. The responsibilities of the provinces in this scenario would increase manifold.. They would have to improve their monetary monitoring, fiscal discipline, increase tax net, better projects planning, long and short term planning, etc.

Impact of the 18th Constitutional Amendment and the 7th NFC Award on Federation-Provinces Relations

Mr. Sartaj Aziz

Vice Chancellor Beaconhouse National University;
former Federal Minister for Finance and Foreign Affairs



Mr. Sartaj Aziz was of the view that both the 18th Amendment and the 7th NFC Award were important topics. The process of the 18th Amendment begins with the Charter of Democracy. The constitution without amendments reflects the maturity of the society. The two dictators distorted the 1973 Constitution and it is difficult to restore the Constitution in its original essence. The amendments in the constitution created imbalance among the four pillars of the state.

A weak judiciary cannot ensure protection of the rights of the people. Likewise, a weak Parliament cannot fulfill the aspirations of the elected representatives. The 18th Amendment is a historic step in the right direction. It has increased the provincial autonomy. The Concurrent List has been abolished and some of its subjects have been included in CCI. The 1991 Water Accord was reached at during the CCI meeting which took place for the first time in 13 years during the first Nawaz Sharif regime.

Mr. Sartaj Aziz was of the view that the civil-military relations are of immense importance. The devolved functions have to be taken up by the provinces and we would have to look how far they are effective on this front. The provinces have been provided resources to run their own affairs under the 18th Amendment.

The political consensus is good for the country. The

divisible pool has increased and the horizontal transfers to the provinces are made under multiple criterions. The total transfers from the Federation to the provinces, after the passing of the 18th Amendment, would be increased tremendously.

Discussing the role of the Implementation Committee on the 18th amendment he said that the situation has emerged that the provinces would perform their tasks with more autonomy. It is the responsibility of the provincial governments to handle the situation. The Implementation Commission is there to oversee all the matters.

Mr. Sartaj Aziz also shed light on some of the potential problems that might need to be addressed such as transfer of Federal employees/department and their budget. The development budget is not included in the NFC Award. These are serious issues and the provinces would have to see all the issues. The provinces should develop medium term budgetary framework for two or three years to increase their implementation capacity. Merit based recruitment, training, fiscal discipline, monitoring, planning, etc. would have to be ensured by the provinces to improve the situation.

Impact of the 18th Constitutional Amendment*Briefing Session for Punjab MPAs***Senator S. M. Zafar**

Constitutional Lawyer;
Member Parliamentary Committee on
Constitutional Reforms; former Federal Minister of Law



Senator S.M. Zafar in his remarks said that he was proud to be the part of the committee that drafted the 18th Amendment. The 18th Amendment has a broader spectrum than the Charter of Democracy. The 18th Amendment suggests that stronger Provinces would make the Federation stronger.

Since 1947 to the 18th amendment we have been running somewhat unitary form of government or extremely centralized federation. From a very centralized federation we have moved towards a Participatory Federation in the wake of the 18th Amendment. The CCI is to arbitrate between the provinces and the Federation. The federation and the provinces would jointly form the policies on certain subjects and bodies have been formed to ensure participatory approach.

He further said that the Hydro Electric Power projects had been the prerogative of the federation but now it would have to consult the Provinces before its execution. The quantum leap has been that the minerals extracted from any province were the wealth of the Federation, but from now on any minerals would be jointly owned by the Province and the Federation.

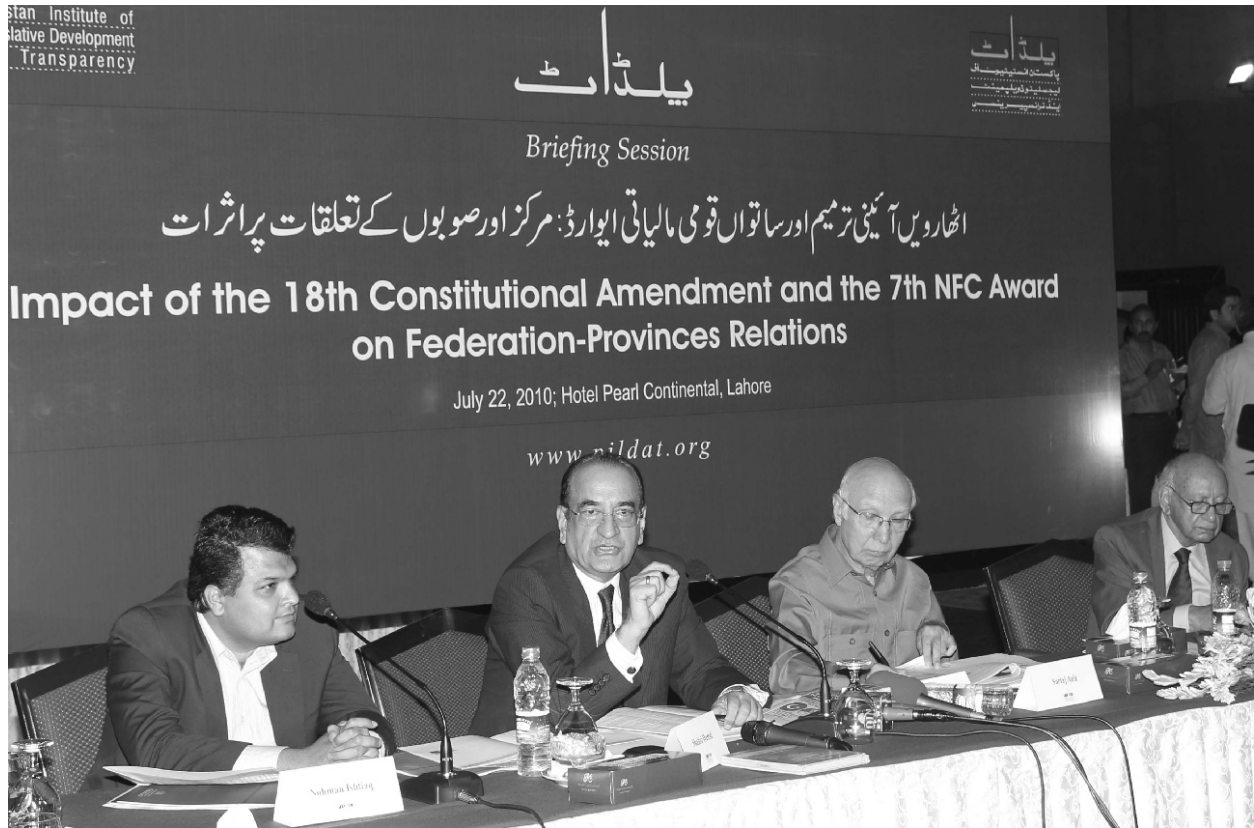
Senator Zafar also said that the abolishment of the concurrent list would increase the responsibilities of provinces and it would make Provinces and the Federation stronger. The provinces have been strengthened in fiscal

taxes matters. For the better future of the country, greater responsibility lies with the provinces. Each NFC award would not be less than the previous award for the provinces so that the provinces do not see any reduction in their resources.

He expressed the hope that the public would hold the Provincial Governments accountable and the Federation would focus more on the national issues like defence, debt, foreign policy etc. The provinces can now take the international loans according to some conditions. The provinces would have to perform their tasks effectively for chalking out a bright future of the country.

Impact of the 18th Constitutional Amendment

Briefing Session for Punjab MPAs



Q&A / Comments

Dr. Zamurad Yasmeen Rana
W-317 PML(N)

Has Punjab like Balochistan and Khyber Pakhtoonkhawah been given special grant? Secondly, what would be the percentage of the minerals ownership between the federation and the provinces?

Mr. Nohman Ishtiaq
Consultant

The Punjab government is getting a grant of Rs. 5 billion under the head of hydels.

Ms. Faiza Malik,
W-343 (PPP)

Pakistan is getting economic assistance but we have never

known that where reimbursement is accounted for in our national budget? The control of Federal bureaucracy has been a bone of contention between the federation and provinces. The provinces do not have the capacity and their autonomy would be compromised if it is controlled by the Federal bureaucracy?

Mr. Nohman Ishtiaq
Consultant

The government takes loans and grants from domestic banks and international institutions. The grants would be a major part of budget this year. The coalition support fund is in non-tax revenue and the amount is spent in defence budget. The coalition support fund is carried in the defence budget in the form of additional grant. This is reflected in the revised budget.

Rana Munawar Ghous Khan

PP-36 (PPPP)

How the deficit of the Federal government would be met?

Mr. Nohman Ishtiaq

Consultant

Some functions would be transferred to the provincial government this would help reduce the Federal government deficit. The government would have to look into its policy of subsidizing commodities to reduce expenses. We spend more than Rs. 250 billion due to public sector losses annually. We would have to resolve the circular debt. We would have to improve the tax base. The volume of the Cabinet should have been brought to 13 per cent but currently it is 40 per cent.

Mr. Sartaj Aziz

Former Federal Minister

We would have to plug in the tax evasion. The tax system in Pakistan is very poor. If we improve the tax base, we can progress and reduce our dependence on foreign aid. Various sectors are non-taxed in Pakistan and we would have to bring all those in the tax net. There are methods available but the real thing is the will to implement them in letter and spirit.

Mr. Muhammad Mohsin Khan Leghari

PP- 245 (PML)

Why do we have such a large cabinet? And why the rule of 13 per cent is not applied to this set up? Is there any special reason for this exemption?

Senator S.M.Zafar

Constitutional Lawyer; Member Parliamentary Committee on Constitutional Reforms, former Federal Minister of Law

It was discussed in the 18th Amendment committee meetings. It was the unanimous decision that there were coalition governments in provinces and we postponed till the next set up. Otherwise it would have derailed the current dispensation. Definitely there were pro and dissenting voices about the issue but we let sanity prevail and put it off till the next election and formation of the new government.

The 18th Amendment is not any God-sent document. It has been created by human minds and might carry some faults but would go a long way in resolving our national problems.

Mr. Muhammad Mohsin Khan Leghari

PP- 245 (PML)

Why Punjab has elder brother syndrome?

Mr. Sartaj Aziz

Vice Chancellor Beaconhouse National University; former Federal Minister for Finance and Foreign Affairs

Punjab has sacrificed a little percentage of its funds but it would get royalty from natural gas, thus increasing its share along with Balochistan. Overall, Punjab has got increase of about more than Rs. 200 billion rupees.



Head Office: No. 7, 9th Avenue, F-8/1 Islamabad Pakistan
Ph: (+92-51) 111 123 345 Fax: (+92-51) 226 3078
E-mail: info@pildat.org Web: www.pildat.org