

**FINANCIAL AUTHORIZATION OF  
PROVINCES UNDER 18<sup>TH</sup>  
CONSTITUTIONAL AMENDMENT IN  
PAKISTAN: A CASE STUDY OF THE 7<sup>TH</sup>  
NFC (NATIONAL FINANCE COMMISSION)  
AWARD**

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*“Federalism isn't about states' rights. It's about dividing power to better protect  
individual liberty”*  
Elizabeth Price Foley

**Abstract**

Since inception, Pakistan is having a federal democracy. Provinces are authorized in the important subjects with regard to public services of the economy including security and law making at Provincial level. The first part of the paper briefly discusses the 18<sup>th</sup> amendment which was incorporated by the National Assembly of Pakistan on 8<sup>th</sup> April 2010. The amendment has not only brought major changes in the constitution of 1973 but has redefined the correlation between the two significant tiers of the governments. Central government was entrusted with the domains such as defense, currency and foreign affairs etc. while all the residuary powers were given to the Provinces. The second part of the paper primarily focuses the empowerment of the provinces in terms of financial matters under 7<sup>th</sup> NFC Award. Pakistan has designed an elegant fiscal arrangement under National

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Finance Commission (NFC) which has chalked out the procedure for distribution of national revenue between the federal government and the governments of federating units. Along with the comparison of previous six NFC awards this paper briefly discusses the need and importance of the 7<sup>th</sup> NFC Award. Similarly the challenges faced by the federal and provincial governments are discussed in detail

**Keywords:** *Federal, democracy, 18<sup>th</sup> Amendment, National Finance Commission, Province*

## **Introduction**

Federalism is a form of government in which the supreme governmental powers are distributed by the constitution between the central and provincial government or government of the federating units. In such type of arrangements, the constitution provides for autonomous status of the federating units. Neither the government of the States or federating states nor the central government can intervene in each other affairs assigned to them by the constitution.

Federalism can be best for the multi ethnic and multilingual societies and is the best mechanism of the proper representation of multiple ethnic groups and other diverse communities. This is the reason why 28 important major states are having federal democracies which represent 40 % of the world population. (Ahmad & Georgio, 2006).

As Federalism is about the powers decentralization and distribution in a political system, therefore this paper is primarily focused on fiscal or monetary decentralization matters in Pakistan. Since inception, Pakistan is having federal system. Before partition in British India, the sub-continent was declared to be Federal democracy through Government of India Act 1935 but it did not ensure complete autonomy of provinces because residuary powers were entrusted to the governor general. (Waseem, Mohammad 1999),

Another Act was promulgated with the name of Indian Independence Act 1947 that recommended the Indian Act 1935 as an Interim Constitution for both countries till the time the countries frame their own constitution. When Pakistan framed her first constitution in 1956, it declared Pakistan to be a federal democracy with three lists of powers. i.e; Central list, Provincial List and Concurrent List. Concurrent list is the one from both central and provincial governments can legislate. Similarly, the constitution of 1962 also provided for federal structure of government.

Pakistan's current constitution of 1973 too provided for federal government. Its federal character was modified in 18<sup>th</sup> Amendment in 2010, in which the provincial list was abolished and only powers of central government were defined and rest of the powers were entrusted to the government of federating units.

Pakistan currently is having one of the best mechanisms of federal democratic structure in the world. This paper primarily focuses the economic empowerment of the provinces in 18<sup>th</sup> amendments with special reference to the National Finance Commission. The NFC Award was officially signed in Gawader Port Baluchistan on 30<sup>th</sup> December 2009 (Dawn, Dec 31, 2009). It was the first rational attempt towards realization of provincial autonomy in terms of distribution of economic resources. Moreover, it would not be wrong if it can be named as "Reconciliation Award". There are two unique characteristics of this award. First, this award was unanimously accepted by all the provinces without a single dissenting note either from provinces or central government. Second, the central government made sacrifice and give 10 percent of share in favor of the provinces. (Salamat, Zarina, 1992)

### **The Status of Federation and Provincial Autonomy before 18<sup>th</sup> Amendment**

The original 1973 constitution provided for the federal system in Pakistan. The powers were distributed between the central and provincial governments in three lists i.e. In Central list, the major powers such as defense, foreign affairs and currency were given to the federal government. While the subjects like police, health and education were enlisted in provincial list (Hamid 2001). The third list namely concurrent enunciate some less important powers over which both the central and provincial governments were given authority to legislate (Jaffer 1990). However, in case of contradiction over any subject of concurrent list, the central government pronouncement was decided and agreed to have had final authority. Before going into the details of fiscal decentralization in Pakistan under 18<sup>th</sup> amendment which is the basic the basic theme of this paper, let's throw some light on background of provincial autonomy in Pakistan. (Ahmad and Geroge 2006)

This paper focuses on the provincial autonomy in Pakistan in the framework of economic and political federalism. In this regard, many attempts have been made in the recent years to bring attention to this burning issue. Majority of them are parallel to that of the concept of complete sovereignty of the federating units which was visualized in Lahore

Resolution 1940(Afzal 1998).The same vision was expressed in the alliance made by the opposition leaders against General Zia ul Haq in August 1986 known as Movement for Restoration of Democracy (MRD). MRD demanded for complete provincial autonomy and suggested only four subjects with central government i.e. communication, currency foreign affairs and defense. While all the residuary powers were decided to be commended to the federating units (Sadaf 2006).

The existing federal structure of Pakistan is a legacy of the British Colonial Era that believed in supremacy of the central government (Maryam 2010)

There is a strong notion that the existing federal structure of Pakistan has been made with the intentions of having strong center which was envisaged in the British colonial era (Maryam 2010). It is also believed that there is a formidable gap between the privileges to produce resources and expenditure. The Central Government produces ninety three percent of the resources while its share is seventy two percent in the total expenditure. Conversely to this the federating units are assigned with seven percent resources with twenty eight percent of expenditure (Raza 2012). There are five expenditure departments with central government and two departments are related to provincial autonomy. These are Public Sector Development Program (PSDP) and the expenditure of operating the civil government. Provinces can be assigned with several subjects who are given to federal government under PSDP. In this way, the subjects of concurrent list will go into the provincial list which in turn will increase the volume of the NFC (Katharene 2007).

Four out of seven NFC awards since 1973 constitution of Pakistan have put forward some more measures which are taxation, revisiting of provincial share and composition of divisible pool. Such measures do not ensure the provincial autonomy in true sense. (Abdul 2010). Thus there is a huge gap in balancing the needs of the federating units and there are many ways and means to empower units in terms of financial affairs.(Rehman 1996) A long term plan can best address the problem of fiscal decentralization of the provinces by giving them different packages and grants. (Ali, Zaka 2013)

### **A Diminutive overview of 18<sup>th</sup> Amendment**

Eighteenth amendment was proposed by All Parties Parliamentary Committee which was successfully approved by both the Senate and National Assembly with overwhelming majority. The president finally signed this amendment on 19<sup>th</sup> April 2010. It was one of the remarkable

achievements by the parliament ever in the history of Pakistan. This amendment not only restored the constitution of 1973 in its original form rather strengthened the federation and ensure more provincial autonomy in almost every aspect.

Following are the examples of those changes which were incorporated in this amendment.

1. These amendments has affected a total of eighty three articles and consist of almost 100 changes in itself .It has also dismantled the effect of 8<sup>th</sup> and 17<sup>th</sup> amendment enacted by General Zia ul Haq and General Pervez Musharraf respectively. Some of the prominent changes incorporated in the 18<sup>th</sup> amendment are worth mentioning.
2. The North West Frontier Province was given a name of Khyber Pakhtunkhwa along with modification in spelling of other two provinces of Baluchistan and Sind.
3. A new clause (2A) was added to article 6 of 1973 constitution which probed the higher courts from the validation of high treason.
4. Two new clauses 10A and 19A were added to ensure the fundamental rights of everyone regarding fair trail and right to information.
5. The most important change was the removal of 58(2B) which allow president to dissolve parliament.
6. The establishment of Islamabad high court was approved and for the appointed of Judges to Supreme Court and high courts. Supreme Judicial Council and Parliamentary committee were made also its composition was explained.
7. One of the most important changes was that of provincial autonomy. They were given more powers in the issue of Production of electricity, NFC Award, Natural gas and other legislative powers. Provincial assemblies will make laws regarding criminal law procedure and evidences.
8. In fact, Parliament has been strengthened through this amendment. The office of the prime minister and parliament were given more powers over President. Moreover the name of General Zia ul Haq was removed as president.
9. In senate four seats were allocated for minorities' i.e. one from each provinces
10. Council of common interests was formed to resolve issues of concurrent lists.
11. Composition of Parliamentary committee was introduced i.e 50% from opposition parties .also its number should not increase than 12 members and one third will be from senate.

12. Restriction for the terms to become prime minister or chief minister has been removed.
13. The number of senate members has been increased from 100 to 104 and its working days from 90 to 110.
14. Appointments of chief of staff and chairman of federal public service commission would be done by president on the advice of the prime minister.

### **National Finance Commission Awards: A Short Review (1947 – 2010)**

The history of the First National Finance Commission NFC Award dates back to the promulgation of 1973 Constitution. The significant among NFCs constituted so far has been the 7<sup>th</sup> NFC that succeeded in bringing consensus between the Central and Provincial Governments. Prior to Independence's era, a Niemeyer Award was replaced by a Raisman Award. There were followed by the 1961 and 1964 Award under One Unit Revenue with the largest share (54 %) went into West Pakistan and 46 % to the East Pakistan.

Before, the 7<sup>th</sup> NFC Award, the major criteria followed for distribution of resources was "Population" that made the separation of East Pakistan – Bangladesh in today's world – justified from the West Pakistan. Had the 'Population, ever been the best indicator for resource division then the biggest share ought to have had gone in favor of the then East Pakistan in the awards.

Coming to the 7<sup>th</sup> NFC Awards, the promulgation of the 1973 Constitution under article 160 (3A) made it obligatory to set up commission after every five year. In the first NFC Award (1974), Punjab share was raised from the previous situation (1970) with an increase of about 3.75 % (60.26-56.50) at the cost of other provinces losses.

Under the Second NFC Award (1979), no proposals were made and therefore the first NFC was followed resultantly for resource distribution. But, the consensus of 1981 helped occurring improvement in situation of both Baluchistan and Sindh whose share were increased 5.30 % from and 23.34% against respectively in the light of adjustment. However, there was no change or adjustment in the share of KP.

The third NFC Award (1985) outlined no change despite nine meetings held in three years. The major reason of failure of 2<sup>nd</sup> & 3<sup>rd</sup> Awards was the era of a military dictator who remained in power from 1979 to 1988. No change was observed in the resource distribution from 1974 to 1990.

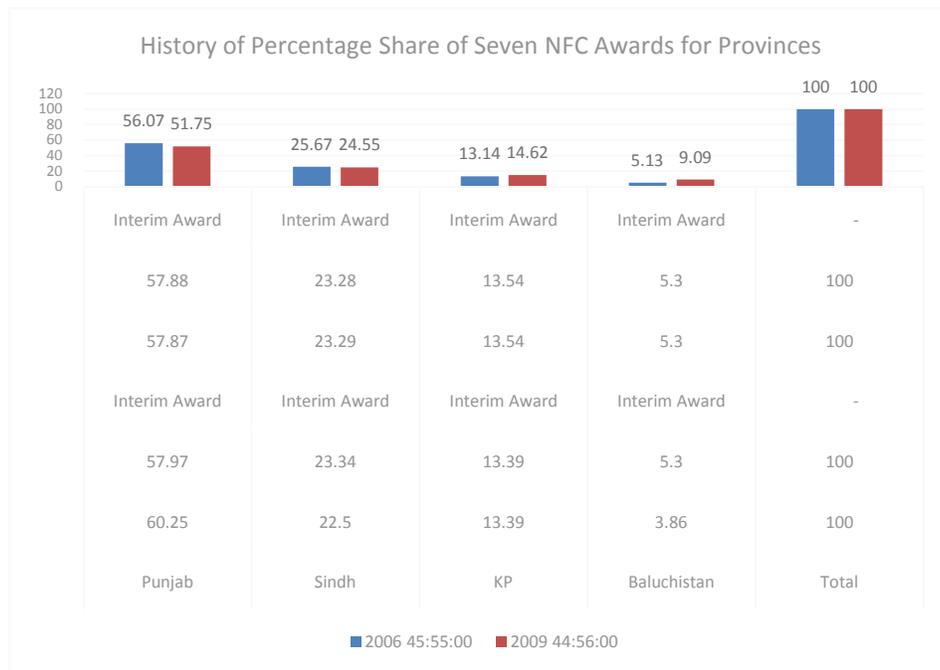
The next (4<sup>th</sup> NFC) Award was established in 1990 in the regime of Mr. Nawaz Shariff. Though, it also had not brought any success stories because of the sole criterion of "Population" for distribution of resources. However,

it is worth noting that there were some vital developments under this Award, such as increase in the portion of Provincial share in comparison to the 1<sup>st</sup> NFC Award of 1974. There was almost 18 % increase in the share of the provinces because of the inclusion of two cash crops in the divisible pool, previously which was part of the non-divisible pool.

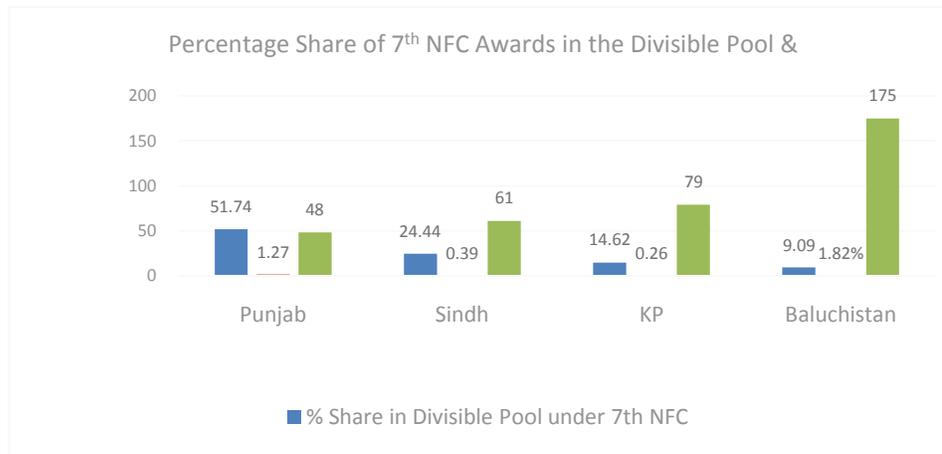
A big stride was seen in the Fifth NFC Award (1996) as the preceding award has paved way for departure in few aspects. The divisible pool under this award was expanded and royalties on crude oil as well as development surcharges in the form of straight transfers were included in addition to inclusion of all tax revenues.

### The Major Characteristics of 7<sup>th</sup> NFC Award

The 7<sup>th</sup> NFC Award is a pivotal progress regarding disbursement outlay of intergovernmental transfers. The table below highlights the complete history of all the seven NFC Awards, the percentage share assigned to the provinces under various NFCs Awards.

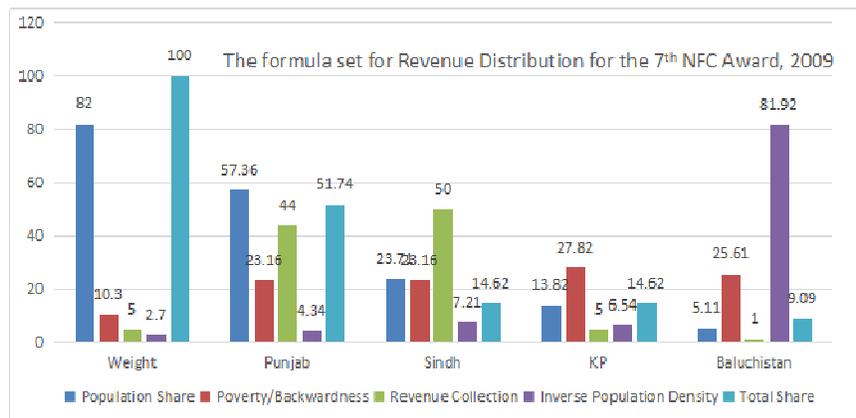


Source: Government of Pakistan (1991)



Source: Pakistan Statistical Year Book 2008.

Under the 7<sup>th</sup> NFC Award, The province of Punjab share in the divisible pool is highest (51.74%), followed by the province of Sindh (24.44 %) with KP getting the share of (14.62%) as the next number and Baluchistan share as (9.09 % ), the lowest share among all provinces. However, looking into the Additional Budget/Supplementary Budget, one can observe a reverse approach against with the biggest share going to the Province that had lowest share in the divisible pool and the lowest share to the province that had highest share in the pool. Baluchistan supplementary budget is (175%), KP share is (79 %), Sindh has (61 %) and Punjab (48 %).



Source: Fiscal Federalism in Pakistan: The 7<sup>th</sup> National Finance Commission Award & its implication.

The 7<sup>th</sup> NFC Award has adopted a multiple criteria for distribution among the provinces. This multiple criteria are applicable for horizontal disbursements.

### **Implications of the 7<sup>th</sup> NFC Award**

The 7th NFC award was announced in 2009 having profound changes. For instance, the criteria for allocation of resources, for the first time, included inverse population decay and exponential rate, change in poverty, provincial GDP and revenue collection and urban density factor. Previously, population was the major source for resource sharing among provincial and federal governments. According to the 7th NFC award 3 percent of the total economics was allocated for National Security forces; 4 percent for FATA, GB and AJK; 1 percent special allocation for KPK apart from her provincial share as a compensation for being affected by the War on Terror; and the remaining 92 percent was distributed among the provinces as Punjab (51.74p), Sindh (24.55p), KPK (14.62p) and Baluchistan (9.09p). While it required deliberations in order to promulgate the 7<sup>th</sup> NFC award with unprecedented changes, the award remains prone to criticism and has many implications.

The special allocation of 8 percent among KPK, FATA, GB and AJK as well as National Security is largely criticized by Sindh Government by rendering it as unconstitutional.

Since the security conditions and terrorism related chaos in the present is far more improved, the provisions of the 7th NFC award are perceived as incompatible with the present situations.

Added to it, the award was meant for a 5 year period from 2010 to 2015. However, upon the failure of the incumbent government to reach a consensus regarding the formulation of the 8th award, the 7th NFC award was used twice in the previous years as criteria for economical distribution.

After the recent census which presents sharp demographic changes in the provinces, the inadequacy of the 7th award is highlighted with the need of an award compatible with the demographic changes.

Moreover the education and health spending which saw an increase in the award could not help Pakistan to be among the nation's with required spending on the two social services to achieve improvement.

The award benefits the two socially deprived provinces of KPK and Baluchistan, thereby sparking a debate of injustice by Punjab and Sindh.

So apparently, it acted as a source of intra provincial disharmony .Since the harmony among provinces is a pre-requisite for national integration, the said award is likely to have implications for national integration.

## **Conclusion & Recommendation**

### **Conclusion**

The 18<sup>th</sup> Amendment has basically curtailed presidential powers and empowered the Parliament which is a bold step. However, the supremacy of Parliament could have the ability of producing civil dictators. Therefore, the institutions, the political parties and civil society need to play their role in obstructing from producing the civil dictators.

Since its creation, Pakistan is a federal country. Different public policies are imperative in nature with the Financial Policy being among one of them. It is playing a cardinal role in strengthening the federation. Winners and losers at different stages of the government can be determined with it. There are different levels i.e., State, provincial or local. All the important decisions regarding people's federations and governance are made by the government body which is holding central authority. Fiscal Federalism is originated in geo-political background that vigorously influences it. There are some grave challenges which Federation of Pakistan is facing at the moment. There are many reasons that led to the creation of Bangladesh in 197 but the distribution of resources is at the top. The discriminatory approach enraged the people of East Pakistan and they revolted against the government headed by the West Pakistan. Pakistan is facing a serious issue regarding the shift of power from Islamabad to Provinces. After, joining hands with the United States against terrorism, a new wave of terrorism entrapped the entire country, especially Baluchistan. Next is the country's move towards greater achievement of democracy. Another issue is the NFC Award, tarrying for 19 years is finally resolved with the accommodation among the provinces. On National and International level, the 7<sup>th</sup> NFC Award has been recognized, turning out to be the symbol of success of the provincial powers and the democratic system. These achievements are realized by the political specialists. According to the economists, this is the ground work for fiscal federalism. After the 18<sup>th</sup> Constitutional amendment and the 7<sup>th</sup> NFC Award, the provinces have become strong regarding political and financial powers. These powers are removed from the central governments to the provinces which is significant change in the federal structure of Pakistan.

The common weighting indicator among all the provinces is population, although its way of measuring is different. The formulation of multiple criteria and democratic process is resulted in the form of NFC Award. The following recommendations can be proposed in order to make NFC Award effective as well as strengthening of federation.

## Recommendation

There is need to stress on improved inducements and direction in the area of tax revenue mobilization and overall fiscal stance through all tiers of government. Therefore, careful options in the form of NFC framework or as a subject matter for the Council of Common Interest need to be deliberated. The CCI which is intended to give space to the provincial government regarding formulation policy concerning the matters that falls under the jurisdiction of federal government related inevitably with the provinces is expecting much now. According to CCI, these policies should be strengthened and the meetings regarding these issues should be regularized.

There should be effective mechanisms for fiscal discipline and coordinating fiscal stance, increasing the flexibility of the fiscal framework, improving incentives for tax revenue mobilization and coordinated administration, greater ownership of and burden-sharing with respect to joint tasks, improving the efficiency of public expenditure. Moreover, the devolution of expenditure and revenue to local governments over the medium term is necessary for next NFC award. The Federal spirit must be maintained while formulating the constitutional reforms. The spirit of democracy, identity, languages and cultural diversity should be retained along with the constitutional amendments. The issue of water distribution which creates conflicts and disagreements among the provinces ought to be negotiated further.

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