

Post 18th Amendment Scenario of Higher Education: A Case Study of Sindh

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Abstract

The 18th Amendment to the Constitution of 1973 is regarded as a commendable achievement in the history of federalism and provincial autonomy in Pakistan. Among other developments, it abolished the concurrent list and devolved many subjects including higher education to the provinces. In theory this devolution worked well but in practice it appeared to be a move towards centralization. It developed many dilemmas regarding the powers and jurisdictions of central government, provinces and higher education institutions. The ongoing situation of higher education in Sindh can be cited here as the best example of these dilemmas where, because of ambiguity of powers and jurisdiction, a tug of war has started (1) between the center and the provinces over powers and jurisdictions of the two HECs and, (2) between the provinces and the universities, who are interpreting this devolution as the usurpation of their autonomy. This study is aimed to analyze these paradoxes and attempts to make some recommendations to solve them.

Introduction

The Eighteenth Amendment to the Constitution of 1973 is a historic achievement taken towards provincial autonomy and devolution of power. It not only ensured the parliamentary supremacy but also shifted the power balance from the center to the provinces. Before this amendment, though the Constitution of 1973 in itself was considered as a symbol of democracy and parliamentary system in many regards, it had a tilt towards the center in lieu of power and authority. For the power of legislation it had two legislative lists viz., the federal list and the concurrent list. For the concurrent list it was the authority of both the governments i.e. central and the provincial to legislate on the matters given in it. But the tilt of power has always been towards the center and the federation continued its domination by legislating for the issues enlisted in the concurrent list. Among the subjects given in the concurrent list, central government has been very keen to look after and

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legislate on education, specially higher education. It was largely responsible for managing and financing higher education but the higher education institutions specially the universities had considerable autonomy in running their daily businesses. This autonomy was given to the universities through the ‘Universities’ Act 1972’. After this act this autonomy of the universities was carried on by the Constitution of 1973 but the right to legislate over was kept in the concurrent list where the central government had the final word. In 2010, the historic 18th Amendment abolished the concurrent list and the subjects given in it are devolved to the provinces. Education is one of those ministries which are transferred to the provinces.

The main aim of the devolution of higher education to the provinces was the improvement and the development of the standard of higher education with maximum autonomy of the local administration. This amendment transferred the key matters of education planning, curriculum setting, policy making and implementation to the provincial jurisdiction exclusively. Furthermore, this amendment also reconstituted the federal legislative list. In the lieu of devolution of power from the center to the provinces the ‘standards in higher education, research and scientific and technical institution’ are kept in the Part II of the federal list which is placed under the domain of Council of Common Interests.¹

This shift in the jurisdiction of higher education was meant to enhance provincial autonomy and was considered a laudable step taken towards decentralization of power, atleast in theory. In reality, after its implementation, it appeared to be a move towards centralization at the provincial level, specially in terms of higher education. Though the spirit of the devolution and the rationale of the amendment cannot be doubted at all, it has proved to be a right step taken in a wrong way with particular reference to its implementation for higher education.

There is a gross confusion regarding the working and the jurisdiction of the higher education institutions e.g. Higher Education Commission (HEC), universities, training and research institutes etc. After the devolution of powers, provinces are solely responsible to conduct and manage all the affairs of higher education. It was thought that after the 7th National Finance Commission NFC Award, all the funds and expenditures would also come under the jurisdiction and domain of the provincial government in order to pursue excellence and advanced

¹ For details, Fourth Schedule[Article 70(4)]: Federal Legislative List Part I, Item Nos. 16, 17 and 32 and Federal Legislative List Part II, item Nos., 6,7, 11, 12, 13, 14. Eighteenth Constitutional Amendment to the Constitutional of 1973.

standard with maximum autonomy. In spite of this explicit decentralization, the federal government still has a chunk of authority to administer the affairs of higher education through the newly established federal ministry of research and area study centers etc. This ministry has actually replaced the former ministry of education. So in theory, higher education is completely devolved to the provinces but, in reality, the establishment of this ministry and the coexistence of both federal and provincial HECs create an enormous confusion which ultimately would affect the performance of the universities and research centers. The entire education sector has been compartmentalized along horizontal and vertical lines with blurred boundaries of control between the center and the provinces.²

After the devolution of higher education with all its institutions and jurisdiction to the provinces, Sindh, among all the provinces appeared to be the forerunner of establishing the provincial HEC. Though, this process is halted by a stay order given by Sindh High Court over the appeal of Dr. Atta ur Rehman, former chairman HEC, and Ms. Marvi Memon, the provincial government of Sindh is performing several other tasks of managing and organizing higher education within the province. In this regard, the provincial assembly of Sindh issued 'Sindh Universities Laws Amendment Act 2013', in August 2013. This act soon after its issuance caused unrest among the ranks and file across the province, specially in the universities. To all the stakeholders, this act appeared to be an attempt to curtail the powers and autonomy of the universities which they were entitled to have since 1972 under the Universities Act of 1972. In response, all the universities joined their hands to launch a protest against this tyranny of the provincial government. In this protest they organized several meetings in their individual capacity and from the platform of Federation of All Pakistan Universities Academic Staff Association (FAPUASA). They also held seminars, talks, rallies, press conferences and meetings with MPAs, civil society activists and members of multiple political parties. The main objective of all such meetings and activities was to convince the provincial assembly to withdraw this act or to make certain crucial amendments in it as recommended by the universities. There has been a strong demand of devolution and provincial autonomy from the academia also but, as this is done through 18th Amendment, it appeared to be a nightmare for them. Before the 18th Amendment there was a

² M. Nizamuddin, 'The Relevance of Higher Education in the Aftermath of the 18th Constitutional Amendment', *Development Advocate Pakistan*, 2:1 (April 2015), Islamabad, p.31.

struggle against the centralization of powers of the central government. After the amendment this struggle is now against the centralization of powers of the provincial government in Sindh.

Higher education in Pakistan before 18th Amendment

Since 1947 education, specially the higher education, has generally been a provincial subject. However, because of highly centralized system of government, provincial governments could not exercise their free will in this respect.

Pakistan has adopted federalism as the system of government after its independence. The system provides a clear distinction of powers between the central and the provincial governments. This division of power is defined through a permanent constitution which explicitly divides the administrative and legislative powers of the government into separate legislative lists of federal and provincial governments. In this regard the interim constitution of 1947 and then the constitution of 1956 placed education exclusively in the provincial list. The constitution of 1962 provided a highly centralized presidential system of government. Unlike the early two predecessors, this constitution did not provide three distinctive legislative lists; rather all the major powers were with the central government that revolved around the president. It placed all important matters including defence, security, foreign policy etc. in the federal legislative list. There were total 49 items kept in the central legislative list, none of these dealt with education. So education including higher education with all the other residuary matters went to the provinces.

After 1962, the interim constitution of 1972 provided three separate legislative lists. viz., federal, provincial and concurrent, like the constitution of 1956. This interim constitution continued the tradition of keeping the subject of education, including higher education, into provincial domain. However it was the constitution of 1973 which provided only two legislative lists viz., federal and concurrent. Education/higher education was kept in the concurrent list. Though the concurrent list could be legislated on both by the federal and the provincial governments, in the practice the central government always played a significant role in management and legislation of all levels of education.

Education saw a major jurisdiction shift in 1973, when it was formally incorporated in the concurrent and federal legislative lists in the constitution of Pakistan 1973. In the federal legislative list Part-I three entries dealt with education. Whereas the concurrent list included important

entries like education policy, planning, curriculum, syllabus, standards of education and Islamic education, thus empowering the federal government to play a dominant role in the affairs of education.³

The constitution of 1973 placed education including the higher education into the concurrent list which provided significant room to the central government to intervene in general matters of policy making, planning and curriculum development. In spite of that, institutions of higher education, specially the universities, have been enjoying maximum autonomy in administrating and executing their affairs ranging from management to curriculum planning and recruitment or admission policy. This autonomy to the universities was given by an exclusive act in 1972, called, 'Universities Act 1972'. This act placed administration and management of all the academic and non-academic matters into the jurisdiction of the universities but within prescribe limits. By having the governor as the chancellor of all the universities in the province, the universities, research institutes and area study centers were considered as federal bodies under the federal jurisdiction. Despite this, these institutions were given maximum autonomy to regulate their academic affairs and their administration.

Universities Act of 1972 guarded the institutions of higher education from the direct control of provincial governments. This autonomy helped the universities to excel their performance to international standards. However, the central government remained responsible for finance and other major issues like recruitment of key officials etc. This act provided autonomy to some major statutory bodies of the universities i.e. the Senate, the Syndicate, the Academic Council etc. These statutory bodies were given respective set of laws to follow but within the premises of these laws, they were given maximum autonomy in formulating their academic and admission policies; in setting and developing their curriculum; in recruiting their academic and non-academic staff and in maintaining their academic links through MoUs with different universities and organizations. All the universities have been enjoying this autonomy since 1972 and, because of it, several disciplines achieved many breakthroughs especially in research. In spite of this autonomy, there had been a demand from the different corners of

³ *Eighteenth Constitutional Amendment: Federal and Provincial Roles and Responsibilities in Education*, Institute of Social and Policy Sciences (I-SAPS). http://www.aserpakistan.org/document/learning_resources/2014/18th%20Amendment%20Federal%20and%20Provincial%20Responsibilities%20in%20Education.pdf, accessed on 20 March 2015.

the society that higher education, with all other levels of education, should be devolved exclusively to the provinces.

The constitution of 1973, promulgated after this act, kept higher education in the concurrent list.

In the aftermath of inclusion of education in the concurrent legislative list it has remained a joint function, federal as well as provincial. At federal level, Ministry of Education formulated policies, plans as well as the national curriculum, whereas the provinces developed their own planning and implementation schemes in the larger framework as envisaged in the national policies and curriculum.⁴

The constitution of 1973 has under went change through various amendments. Despite changes in the jurisdiction of central and provincial governments brought about by these amendments, the universities continued to enjoy their autonomy given to them by Universities Act of 1972.

Table 1: Education in different constitutions of Pakistan.⁵

Subject	Govt. of India Act, 1935	1956 Constitution	1962 Constitution	1973 Constitution	
				Before amendment	After the 18 th amendment
Right to education	Recognized but not justiciable	Recognized but not justiciable	Recognized but not justiciable	Recognized but not justiciable	Justiciable right
Education policy & planning	Provincial legislative list	Provincial legislative list	Provincial legislative list	Concurrent legislative list	Provincial subject
Curriculum	Provincial legislative list	Provincial legislative list	Provincial legislative list	Concurrent legislative list	Provincial subject
Standards in higher education	Provincial legislative list	Provincial legislative list	Provincial legislative list	Concurrent legislative list	Federal list Part II

Source: Report of syndicate 4 (9SMC), National Management College, Lahore.

In 2002, the federation established the Higher Education Commission (HEC), which was given the prime task of regulating the financial and

⁴ *Ibid.*

⁵ Ahsan Rana, *Decentralization of Education under the 18th Amendment*. www.economic-review.com.pk/may-2013/decentralisation-of-education-under-the-18th-amendment, accessed on 1 December 2014.

academic affairs of all the universities. The HEC replaced the University Grants Commission (UGC), established in 1974 by a parliamentary act. It was responsible for the promotion, improvement and the regulation of the higher education across the country.

Higher Education is monitored and steered by the center through the Higher Education Commission (HEC). The reason given for this arrangement is to ensure standardization and Equality control at higher education institutions and enable a unified system for the higher education sector. The result has not been desirable in terms of academic and research excellence.⁶

Even though HEC used to perform various significant jobs including financing and supervising numerous matters of the universities, the statutory bodies of the universities continued to exercise their autonomy in their jurisdiction. This situation got changed after the passage of 18th Amendment in 2010, specially in Sindh, where this autonomy of the universities was usurped by the provincial government in the name of devolution.

Higher education after 18th Amendment

The 18th Amendment passed in August 2010 brought a paradigm shift in Pakistan with reference to the division of powers between the central and the provincial governments. Interalia, it abolished the concurrent list which cleared the ambiguity of jurisdiction for all the subjects given in this list including education and particularly higher education.

The 18th Amendment is considered as the breakthrough in the movement for provincial autonomy and devolution of power to the grass roots level. It devolved nearly 47 subjects from the Federal Legislative List (FLL) to the provinces and by abolishing the concurrent list. Among these devolved subjects and ministries, education specially higher education is also included. The subjects which are devolved to the provinces are residual, in terms of higher education they include: centers of excellence and standards of education, curriculum, policy, planning and Islamic education. However, the 18th Amendment also inserted some new entries related to higher education in FLL; entries 16 and 17 include: national planning and national economic coordination, standards in institutions of higher education and research, scientific and technical institutions. Entry 16 relate to 'Federal agencies and institutes for...research, for professional or technical training, or for the promotion of special studies' and entry 17 covers '...Pakistani students in foreign

⁶ M. Nizamuddin, *op.cit.*

countries and foreign students in Pakistan'. These two entries have remained unchanged, thus the primary role of federation will be positioned on the basis of these two entries.⁷

In addition to the above two entries, three new entries in the FLL Part II are also very important. These are in the mandate of Council of Common Interest (CCI), which after the 18th Amendment is reconfigured and more empowered and has shared representation of both the federation and the provinces. These entries i.e. entry 7 (national planning and national economic coordination including planning and coordination of scientific and technological research), entry 12 (standards in institutions for higher education and research, scientific and technical institutions) and entry 13 (inter-provincial matters and co-ordination), have given a role to the federation in sharing HEC with the provinces. The provinces want to keep the HEC in their jurisdiction.

The commotion seen in the aftermath of the passage of the 18th Amendment over the ultimate fate of the Higher Education Commission of Pakistan emanated from the transfer of the above three subjects to the Federal List Part II. Provinces demanded devolution of the Commission, but the Federation opted to retain it (at least until the expiry of the current NFC Award), as it pertained to 'Standards in institutions of higher education and research.'⁸

After introducing the 18th Amendment, with regard to its proper implementation, the Senate of the time constituted a 'special Senate committee on the implementation of the 18th Amendment, in May 2010. It was given a time of three months to present its report. One of the major decisions taken by this committee included that the federal government would continue the financing the higher education and the universities till the expiry of the 7th NFC Award.

Apart from all these, there are some other important decisions taken in the name of devolution through the 18th Amendment with special reference to the higher education. These include the formation of a federal ministry now with the name 'Ministry of Federal Education and Professional Training'. This ministry actually replaced the former Ministry of Education with new rules and businesses. But ironically with the changes in the rules and jurisdiction of this ministry its name also kept changing; its name got changed four times in four years! It is argued here that the creation of this and other such ministries diluted the spirit of

⁷ *Eighteenth Constitutional Amendment: Federal and Provincial Roles and Responsibilities in Education, op.cit.*

⁸ Ahsan Rana, *op.cit.*

devolution because devolution is not only about transfer of ministries but it means empowerment as well.

... participation and equity, are shown to be bound up with the notion of empowerment, that is, the process of gaining and exercising power over circumstances.⁹

Furthermore, the devolution is more about the division of powers and autonomy which clearly envisages the division of sovereignty.

Devolution is the creation or strengthening financially or legally sub-national units of government, activities of which are substantially outside the direct control of the central government.¹⁰

Therefore, this devolution of higher education to the provinces caused an unrest across the country mainly because of the confusion created by the devolution of HEC and then reassembling of federal powers by creating this aforementioned education ministry. In addition to that the continuous existence of the federal HEC with its considerable powers and jurisdiction, still making a mockery of devolution, the provinces have now established their own provincial HECs which are somehow operational. The coexistence of two HECs in a single province is also diluting the spirit of the 18th Amendment.

The real issue is not HEC or devolution but the appropriate level of autonomy of the university campus. Academia fears intrusion by the provincial bureaucracy and politicians.¹¹

Higher education in Sindh after 18th Amendment

There have been two main dilemmas related to the 18th Amendment in the provinces. These are the status and the jurisdiction of federal and provincial HECs and the autonomy of universities. Among all the

⁹ Luiz Carlos Bresser-Pereira, 'Democracy and Public Management Reform: Building the Republican State', *Oxford Scholarship Online*, November 2004. <http://www.oxfordscholarship.com/view/10.1093/0199261180.001.0001/acprof-9780199261185-chapter-17>, accessed on 10 May 2015.

¹⁰ D. Shah, *Country Report on Decentralization in the Education System of Pakistan: Policies and Strategies* (Islamabad: Academy of Educational Planning and Management, Ministry of Education, 2003), in, Syed Manzoor H. Shah, Muhammad A. Asghar and Khawaja Sabir Hussain, 'Implementation of Devolution Plan; Variations in the Perceptions of District Education Officers of Pakistan', *Journal of Research and Reflections in Education* (June 2012), pp.30-39. <http://www.ue.edu.pk/journal.asp>, accessed on 12 May 2015.

¹¹ Ijaz Khan, '18th Amendment, HEC and higher education', *Daily Times*, 8 April 2011.

provinces Sindh appeared to be the first province who became the victim of these dilemmas. The confusion created by the coexistence of two HECs in a single province, has created a fury across the country and in case of Sindh this situation has become more perplexed as the government of Sindh, federal HEC and the institutions of higher education, i.e. the universities, are at par with each other over the issues of their respective jurisdictions and powers.

As far as legislation on higher education at provincial level is concerned, the Sindh Provincial Assembly passed Provincial Higher Education Commission (PHEC) Act during the closing days of previous government which was challenged in Sindh High Court Karachi on the grounds that the provincial act was in conflict with the Constitutional (Article 143 in which no provincial law can be introduced in the presence of the federal law, unless the federal law is amended) and was contrary to the recommendations of the 18th Amendment Implementation Commission as well. Some constitutional experts have suggested that this matter be left with Council of Common Interests.¹²

For the creation of the provincial HEC, Sindh appeared to be the pioneer but this process of establishment was halted by a stay order of the High Court over an appeal made by Dr. Atta ur Rehman and Ms. Marvi Memon. The provincial government took this matter to the CCI where the Prime Minister formed a task force under the supervision of Ahsan Iqbal, Minister for Planning and Development, to look into this matter of jurisdiction and duties of provincial HEC.¹³ Though the establishment of Sindh HEC is halted, the institution somehow had started working in its jurisdiction. As this issue of jurisdiction gets resolved the provincial HEC definitely would be given some responsibilities to rationalize its existence in the name of devolution. In this scenario, for example, a student of a university in Karachi has to consult with three types of HECs for various purposes, i.e. federal HEC in Islamabad, regional center of federal HEC in Karachi and if the stay order gets over, the provincial HEC as well. For attestation of degrees, regional center of federal HEC in Karachi is responsible; for attestation of PHD degrees and matters of equivalence, the federal HEC in Islamabad is entitled to deal with, and for some other purposes, provincial HEC would also be given some

¹² Murtaza Noor, *Predicament of post devolution Higher Education*, at <http://www.citizenswire.com/predicament-of-post-devolution-higher-education/>, accessed on 23 February 2016.

¹³ *Dawn*, 19 March 2015.

crucial tasks to handle. This situation is nothing but the irony of the concept and spirit of devolution and 18th Amendment. It is argued here that, in the name of devolution, it is actually the segmentation of federal HEC in order to please different parties and people by distribution of the key functions of HEC in the form of various ministries.

The governing model of higher education is quite ambiguous at the moment. Both federal and provincial governments are involved in the functioning of higher education institutions. Heads of the provincial higher education institutions, Vice Chancellors and Rectors, are appointed by the Provincial Chief Executives and these institutions operate under the regulation of provincial governments. The federal government runs these institutions through the central HEC by releasing recurring funds for various academic programs, since higher education was a federal subject prior to 18th amendment. On the other hand, the provincial governments also fund these institutions for infrastructure development. What is reflected in this picture is that the governance model of higher education in Pakistan is not monochromatic, which creates a clash of interests between the center and the federating units. It also curtails the institutional autonomy of these institutions which ought to be autonomous in conducting research and development activities.¹⁴

Moreover besides the issue of HEC's status and jurisdiction, there is another highly controversial and sensitive issue of higher education in Sindh, which has caused an anxiety among all the stakeholders and as a result has doubted the spirit of devolution in 18th Amendment. This issue is related to the question of autonomy of all the public sector universities in Sindh.

In August 2013 the Sindh government passed an act titled, 'Sindh Universities Laws Amendment Act 2013', in order to amend the existing status of autonomy and the jurisdiction of all public universities in Sindh. Before this act all these universities had a considerable autonomy in dealing with their day to day affairs of administration, recruitment, management and education. This autonomy within the prescribed limits of jurisdiction, was given to them by the University Act of 1972 which provided a substantial autonomy to the universities and

¹⁴ http://www.pk.undp.org/content/pakistan/en/home/library/hiv_aids/development-advocate-pakistan--volume-2--issue-1/opinion--the-relevance-of-higher-education-in-the-aftermath-of-t.html, accessed on 23 February 2016.

empowered the different statutory bodies of the universities, i.e. the Senate, Syndicate and the Academic Council. According to this act these bodies had the full authority in finalizing several decisions related to their academics and administration. For instance, all the universities in Sindh had the full autonomy in making their own admission policies or recruiting their academic or administrative staff. All the concerned statutory bodies used to exercise their autonomy within the prescribed limits set by the Act of 1972. This autonomy is highly desirable in universities to develop and excel in academics in order to meet and set the standards. Universities are not only the institutions of knowledge transfer, rather these are the places where knowledge is created, where the social and political discourse take place and where the scientific inventions and innovations are made. To foster this phenomenon of creation, learning and development of knowledge, significant freedom and autonomy is essential. Unfortunately this whole process is attacked and interfered by those very people who actually had initiated it.

The provincial government of Sindh issued this controversial ‘Universities’ Laws Amendment Act 2013’ in the name of devolution. Before 18th Amendment universities and higher education were the central subjects yet they enjoyed autonomy both under democratic and dictatorial regimes, except for some turbulent times. A strong demand even from the universities for the devolution of power and provincial autonomy reflects the true spirit of federalism.

Federalism was originally devised and continues to be viewed by political scientists as an institutional mechanism for dividing power and sovereignty between national and regional levels of government in order to reduce the likelihood of authoritarian or overly centralized government.¹⁵

Unfortunately when this demand of provincial autonomy and decentralization was materialized, it appeared to be a nightmare for Sindh. As through the Act of 2013, decentralization of powers from the center to the provinces proved to be centralization of power at the provincial level which ultimately undermined the true spirit of the amendment. It did not devolve powers to the grass roots level atleast in terms of higher education. Rather the existing authority and the autonomy of the universities are severely undermined.

¹⁵ Michael Stein and Lisa Turkewitsch, *The Concept of Multi-level Governance in Studies of Federalism*, at http://paperroom.ipsa.org/paper_4081.pdf, p.12, in ‘Development Advocate Pakistan’, Islamabad, UNDP, 2:1 (April 2015), p.3.

Sindh Universities' Laws Amendment Act 2013 and the issue of devolution

The provincial government of Sindh issued this act in August 2013 in order to amend the previous Universities Act of 1972 according to which all the public sector universities were being governed since 1972. This act was prepared and implemented by the Pakistan Peoples' Party (PPP) government under Zulfikar Ali Bhutto in 1972. Bhutto's vision of democracy, devolution and empowerment was well depicted in this act in the shape of maximum autonomy to the universities. The Act of 2013 is also given by the PPP government as an amendment to the previous act in the aftermath of 18th Amendment, but this time this vision of devolution and empowerment is lacking in the universities' act. The articulation and the language of the Act of 2013 suggests that this is an attempt of centralization and usurpation of powers of the autonomous universities by the government of Sindh. For instance, the preamble of the Act of 1972 provides 'Whereas it is expedient to reconstitute and reorganize the University of Karachi for the purpose of giving it necessary autonomy and improving its administration',¹⁶ the preamble of the Act of 2013 asserts that, 'Whereas it is expedient to maintain uniformity in the organization, management and control of public sector Universities and degree awarding Institutes in the Province of Sindh and to amend certain laws relating thereto, in the manner hereinafter appearing....'¹⁷ If the language and the intentions of both the acts depicted in their words are compared, it can be noticed that the Act of 1972 provides 'autonomy' to the university, while the act of 2013 provides the words 'uniformity' and 'control' for the universities and other degree awarding institutions. Similarly in dealing with all other powers and rights or duties of different competent authorities and statutory bodies of the universities, either a phrase is added i.e. 'on the recommendations of the government' e.g.

(ii) in clause (x), after the word 'Chancellor', the words 'on recommendations of Government' shall be added;

(iii) for clause (xiii), after the word 'Chancellor', the words 'on recommendations of Government' shall be added.¹⁸

Or the powers are categorically shifted to the government. e.g.

5. In section 16, in sub-section (1), for the word 'Chancellor', the word 'Government' shall be substituted.¹⁹

¹⁶ The University of Karachi Act, 1972. Sindh Act No. XXV of 1972.

¹⁷ The Sindh Universities' Laws (Amendment) Act, 2013. SINDH ACT NO. XLIII OF 2013.

¹⁸ *Ibid.*, p.6.

Furthermore, the powers and the autonomy of the universities in formulating the administrative and admission policies is vehemently taken away from them and given to the provincial government.

1. After section 6, the following section 6-A shall be inserted:-

‘6-A. The policy of admission of the University in general including its constituent colleges, institutes and centers shall be followed as determined by Government from time to time in order to provide equal opportunities to all the students of Province of Sindh’.²⁰

This is how the provincial government with all the powers in its hands and having a final word in decision making, appears to be the most competent authority with heavy centralization of power.

When this act was passed all the universities across the province got united against usurpation of power through this act and organized protests for the withdrawal or further amendment in it as per recommended by the universities. In this agitation all the universities of whole Pakistan sided with universities of Sindh from the platform of FAPUASA and launched a vigorous movement against the act. They organized rallies, observed black days, called strikes and protested in front of Chief Minister House. The representatives of teachers’ society of different universities of Sindh and of the FAPUASA met with the MPs of various political parties and showed their serious reservations over the act. After all these rigorous efforts and struggle the provincial government finally handed over this issue to a standing committee which will, after meeting with all the stakeholders, present its report with further recommendations to the assembly. FAPUASA with all the universities of Sindh is waiting for the report and the decision of the assembly which is due most probably within next three months.

Conclusion

The 18th Amendment to the constitution of 1973 is a commendable step taken towards the devolution of power and maximum provincial autonomy. Many subjects and ministries are devolved to the provinces including the higher education. The higher education in Pakistan has always remained under the jurisdiction of the central government directly or indirectly, with the rationale to bring unity, harmony and national

¹⁹ *Ibid.*, p.2.

²⁰ *Ibid.*, p.3.

cohesion and to promote shared national values. But unfortunately the outcome of this centralization has never been much fruitful.

Before the amendment, the higher education was in the concurrent list of the constitution of 1973, where the central government was more dominating in taking final decision. But after the 18th Amendment and the abolition of the concurrent list, inter alia, the ambiguity of the jurisdiction between the center and the provinces gets clear and now provinces are responsible for all the matters of higher education. However, as the implementation process started, confusion regarding jurisdiction and working capacity has re-emerged between the center and the provinces and between the provincial government and the other higher education stakeholders within the province. Since the beginning of the implementation process there has been an enormous confusion and a sort of tug of war between the center and the provinces especially over the administration, legislation and the institutions of the higher education. This dilemma is well evident from the creation of federal education ministry under several names and simultaneous existence of both federal and provincial HECs. It is also evident from the creation of 'National Curriculum Council' even after the devolution of education to the provinces. Another perplexity is over the status and the jurisdiction of the higher education institutions in a province.

Among all the provinces Sindh emerged as the first province to face these dilemmas. By establishing provincial HEC it came at loggerheads with those who are against the devolution of higher education to the provinces. As a result, the implementation process is halted and now the matter is in High Court and in the CCI. Over the issue of National Curriculum Council, the Sindh government not only stood with KPK against but also recommended the matter to the CCI.

Furthermore, Sindh came at par with the higher education institutions within its premises over the issue of implementation of the devolution. The way the provincial government exercised its devolved power in higher education went against the autonomy of universities and other degree awarding institutions. The provincial government in this regard has issued a controversial act in 2013 in order to amend certain laws and regulations of the previous act of the universities. All the universities across the province neither are against devolution nor against the amendment of the previous act. Rather they just want to retain and enhance their freedom and autonomy which is much desirable for their research and other academic activities. However, the language and the objectives of the Sindh Universities' Act of 2013 suggest that a step taken in the name of decentralization proved to be a move towards heavy

centralization at provincial level which is against the very spirit of the devolution and 18th Amendment.

This situation is very alarming and can cause a roll back of the whole amendment, i.e. for the whole movement of federalism, provincial autonomy and the development of higher education. Therefore, in order to deal with all these challenges of higher education, generally, in Pakistan and, particularly, in Sindh an extensive and broad-based collaborating effort should be initiated by all the stakeholders. Some recommendations are given here for the federal and the provincial governments, specially of Sindh, to follow:

Recommendations:

1. For the central government:

- The devolution of higher education to the provinces should be completed.
- The provincial HECs should be empowered by giving clear jurisdiction to conduct the affairs of higher education.
- All the recommendations given by the 'Implementation Commission' should be implemented without any further delay.
- The meetings of the CCI ought to be more frequent and its decisions should be implemented fully.
- The central government should realize that devolution of education is working well in many federations because, in a diverse society, federating units can integrate their education system well with their needs. That would be more fruitful for the whole society.

2. For the provinces:

- Provinces should ensure that devolution is done to the grass roots level.
- The autonomy of the universities and other higher education institutions should be restored.
- There should not be any political intervention in higher education affairs specially in recruitments, admissions and examinations.
- Some crucial powers can be retained by the provincial government e.g. financing and appointment of certain major posts of vice chancellors, registrar etc. But these appointments should not be political decisions and should be based purely on merit by a proper procedure and a board of relevant experts.
- The prestige, autonomy and the status of the statutory bodies of the universities must be restored and enhanced.