

only elevated him to the pantheon of Baloch heroes and martyrs but also sparked an unprecedented wave of anti-Pakistan sentiments that in turn provided great impetus to the Baloch insurgency and the separatist cause. While Bugti was willing to hold dialogue with the federal government, the new cadre of Baloch leadership spurns dialogue and coexistence with the federation.

The Eighteenth Amendment

After assuming power, the Pakistan People's Party (PPP) government formed a 27-member Parliamentary Committee on Constitutional Reforms in 2009 to recommend a package of amendments for restoring the 1973 constitution to its original shape and intent. Members of the committee were drawn from all major political parties. Except for the Balochistan National Party (BNP-Mengal), all other major nationalist parties of Balochistan were represented in the committee. There was one member each from the National Party (NP), the PkMAP, the Jamhuri Watan Party (JWP) and the Balochistan National Party (BNP-Awami). In an unprecedented display of political maturity, the committee produced a consensus draft bill that the National Assembly and the Senate passed unanimously on 8 and 15 April 2010 respectively. On 19 April 2010, the President signed the Eighteenth Amendment into law.

The Eighteenth Amendment is widely considered as one of the most important milestones in Pakistan's political history. Its major features are:

- Restoration of the federal and parliamentary structure of the government as envisaged in the original constitution of 1973
- Abolition of the concurrent list and re-invigoration of the Council of Common Interests (CCI)
- Enhancement of the powers of the Prime Minister and the Parliament
- Increase in the number of Fundamental Rights in the constitution (right to fair trial, right to education and right to information)
- Strengthening of the Election Commission of Pakistan
- Strengthening of the independence of the Judiciary through the introduction of a consultative and transparent mechanism for judicial appointments.

Abolition of concurrent list

The Eighteenth Amendment fulfilled a long-standing demand of the smaller provinces pertaining to the abolition of the concurrent list. The concurrent list, which contained 47 subjects and had joint federal and provincial jurisdiction, has been abolished altogether. Out of the 47 subjects, one item has been shifted to the Federal Legislative List Part-I and two items have been moved to the Federal Legislative List Part-II. Other than these three entries, all other subjects previously in the concurrent list now fall under the jurisdiction of the provinces. The Federal Legislative List Part-I, over which the federal government has exclusive jurisdiction, has gone down from 59 to 53 entries. Similarly, the Federal

Legislative List Part-II has gone up from eight to 18 entries. Of these new entries, two have come from the abolished concurrent list, four entries have been shifted from Federal Legislative List Part-I and four new entries have been added.²⁸ Matters within the Federal List-II fall under the domain of the CCI – the highest conflict-resolution body on disputes between the centre and the federating units. The CCI has been reinvigorated and its membership has been strengthened.

The changes introduced by the Eighteenth Amendment have far-reaching implications for federation. First, the amendment has substantially enhanced the role of provinces in federal decision-making by expanding the Federal Legislative Part-II and strengthening the institutional mechanism regulating the affairs between the Centre and the provinces. Second, by abolishing the concurrent list and deleting certain items from the Federal Legislative Part-I, the Eighteenth Amendment has substantially increased the quantum of provincial autonomy.²⁹

Provincial autonomy

The Eighteenth Amendment has given provinces full control over social sectors such as education, health, population, labour, social welfare, Zakat, Auqaf, environment, tourism, print media and cinematograph films, culture and archaeology. For instance, provinces now have full control over the education sector. Though education was mainly a provincial subject previously, however, the overbearing role of the Centre in higher education, planning and syllabus design had significantly reduced the space for provinces. Now, federal government is only authorized to deal with international student exchange (Fed Leg List-I) and standards of higher education and research (Fed Leg List-II). Other than these two areas, provinces are solely responsible for the education sector. Besides, the insertion of Article 25A, which requires the state to provide free and compulsory elementary education, places additional responsibility on the provinces.

The Eighteenth Amendment has enabled the provinces to introduce education policies that not only aim at imparting quality and market-oriented education but also reflect their real cultural and political history. This is important because the inclusion of the authentic history of provinces and their renowned personalities in the school textbooks has long remained a key demand of the Baloch and Pashtun nationalists. The latter always complained that the state had been using curriculum not only to construct and propagate an “exclusivist” identity narrative but also to contaminate the minds of the younger generation about indigenous heroes and political leaders. Veteran leaders and freedom fighters who sacrificed their lives for today’s generation, the nationalists would lament, were portrayed as “traitors” in the Pakistani school textbooks. The Eighteenth Amendment has provided them with a rare opportunity to re-write history.

Control over natural resources

Control over natural resources has long remained an outstanding demand of Baloch nationalists. The Eighteenth Amendment gives provinces 50 per cent

ownership of natural resources within their territorial boundaries. The amended Article 172 now means that the Balochistan government has an equal say in making decisions regarding its gas, copper and other natural resources. Additionally, the article declares that fish stock within territorial waters belongs to the provinces.³⁰

Before the Eighteenth Amendment, the net proceeds of federal excise on natural gas were paid to the provinces but not on oil. Now, Article 161 has been amended such that the net proceeds of federal excise on oil shall also go to the province of origin. Similarly, the revision of Article 157 has made it obligatory for federal government to consult a provincial government before constructing hydroelectric power stations within its territory.

Fiscal decentralization

With the devolution of certain subjects to the provinces, the Eighteenth Amendment increased the revenue generation potential of provinces by empowering them to levy fees in respect of these subjects. These subjects include state lotteries, duties in respect of succession to property, estate duty in respect of property, and taxes on capital value of immovable property. The federal government was never able to generate meaningful funds from the above sources. Now, provinces have been given an opportunity to exploit their potential. Given its serious capacity constraints, the Balochistan government is unlikely to fully exploit these revenue-generation sources in the short and medium term.

Additionally, the seventh National Finance Commission (NFC) Award recognized that tax on services is a provincial subject and may be collected by provinces if they so desire. The Eighteenth Amendment confirmed this right of provinces by excluding sales tax on services from the jurisdiction of the federal government. Finally, the Eighteenth Amendment permits provinces to raise domestic as well as foreign loans and issue guarantees subject to limitations specified by the National Economic Council. All of these sources, if utilized carefully and efficiently, have the potential to enhance the revenue-generating potential of provinces.

Seventh NFC Award

Another critical contribution of the Eighteenth Amendment was that it made the vertical resource distribution formula agreed upon in the seventh NFC Award irreversible. Article (3A) reads as follows: "The share of provinces in each Award of National Finance Commission shall not be less than the share given to the provinces in the previous Award." Similarly, another clause [3(B)] subjected the award to regular monitoring by the federal and provincial governments.

A brief summary of the unanimously agreed seventh NFC Award is germane to this discussion. The NFC awards design the formula for the distribution of resources between the federal and provincial governments and among the four provinces. Historically, the awards have been beset by deadlocks over both the

vertical and horizontal distribution formulae. Since 1971, there have been only three conclusive awards (1974, 1991 and 1997) and one presidential distribution order in 2007 prior to the seventh award. In all these four awards, the criterion for the distribution of the divisible pool among provinces was only population. As a result, the smaller provinces always suffered. With its meagre 5 per cent population but massive developmental challenges, Balochistan was the major victim of this unjust formula.

Against this backdrop, the seventh NFC Award can be regarded as a landmark achievement as it altered both the vertical and horizontal distribution of resources in profound ways. Beginning with the former, the award allocated 56 per cent of the divisible pool to the provinces for the year 2010–2011 and 57.5 per cent from the financial year 2011–2012 onwards. Compared to the previous award, this award increased the share of provinces by 10 per cent. As far as the horizontal distribution is concerned, the award for the first time took into consideration factors other than population. The erstwhile population-based distribution criterion was broadened to include factors such as poverty, revenue generation, revenue collection and area.

Balochistan was the biggest beneficiary of this new award. Its share in the provincial pool jumped to 9.09 per cent. Punjab was allocated a share of 51.74 per cent, Sindh 24.55 per cent and the NWFP 14.62 per cent. Whereas Balochistan's share increased by 1.82 per cent, the shares of Punjab, Sindh and KPK dropped by 1.27 per cent, 0.39 per cent and 0.26 per cent respectively.³¹ Balochistan's estimated share amounted to Rs.83 billion in the first year. The award guaranteed Balochistan the receipt of its projected sum and obligated the federal government to make up for the remaining funds in case of a shortfall.

The award also revised the formula for the computation of gas development surcharge (GDS) on the demand of the government of Balochistan. The rate of excise duty on gas was increased from Rs.5.09 to Rs.10 per MMBTU. The new formula meant an additional increase of Rs.2 million per annum to Balochistan government. Moreover, the award also provided for the retroactive payment of GDS arrears to Balochistan on the basis of the new formula. These gains, nevertheless, were a bit offset by the abolition of the grants-in-aid to all provinces given under the previous award.³² Finally, another significant feature of the seventh NFC Award was the acceptance of provincial rights over revenue from General Sales Tax (GST) on services. Revenue from GST on services will no longer be a part of the federal divisible pool.

Conflict-pacifying impact of the Eighteenth Amendment

The devolution of powers under the Eighteenth Amendment has affected the ethno-nationalist politics of Balochistan in diverse ways. Although it is a bit too early to accurately appraise these effects, some emerging trends can be identified. To begin with, a considerable degree of conflict-pacifying effect can be discerned, thus corroborating the view that decentralization defuses, if not resolves, ethnic conflict. This is demonstrated by an improvement in the levels of political

participation, weakening of the ethno-nationalist narrative and increasingly pro-federation attitude of the moderate ethno-nationalists.

Improvement in political participation

There has been a qualitative and quantitative improvement in levels of political participation in the post-Eighteenth Amendment Balochistan. All major Baloch and Pashtun ethno-nationalist parties that had boycotted the 2008 general elections re-entered the electoral fold in the 2013 general elections. Having remained on the margins of political process since 2006, these parties began to shun political dormancy during the deliberations of the Parliamentary Committee on Constitutional Reforms that prepared the draft of the Eighteenth Amendment bill. When the 2013 elections approached, the Baloch ethno-nationalist parties – the BNP and NP – were under tremendous pressure from the hardliners and separatists to boycott the elections.³³ Despite threats from militants and reservations about the military establishment's continued meddling in political affairs, the nationalists decided to contest the elections. While there were multiple factors that shaped this decision, the devolution of powers combined with the relative democratic consolidation in the country served as great pull factors.³⁴ The devolution of powers to provinces incentivized ethno-nationalist parties to re-join the electoral process and exercise the newly-devolved authority. Ethno-regional parties have traditionally found it easier to secure power at provincial level.

The decision of the ethno-nationalists to participate in the elections appeared to receive endorsement from a significant segment of the population. The 2013 elections saw the highest voter turnout in Balochistan compared to the previous two elections (see Figures 10.1 and 10.2). The turnout was 43 per cent and 41 per cent in the national and provincial assembly elections respectively. Although

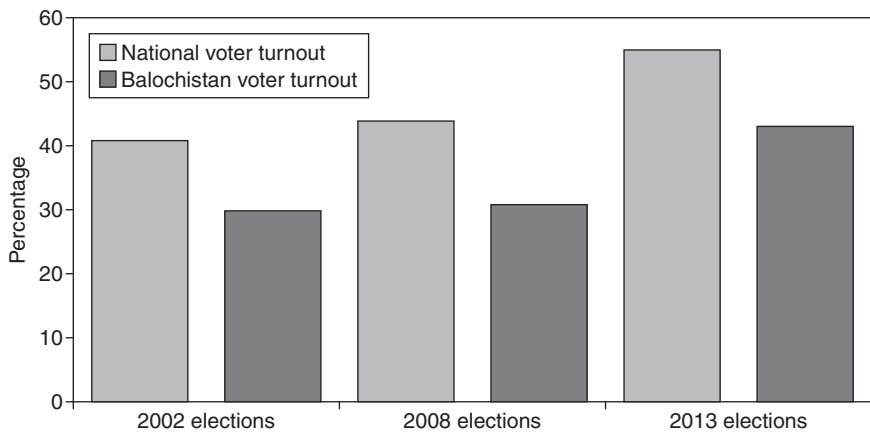


Figure 10.1 Voter turnout in national assembly elections (%).

Source: The Election Commission of Pakistan.

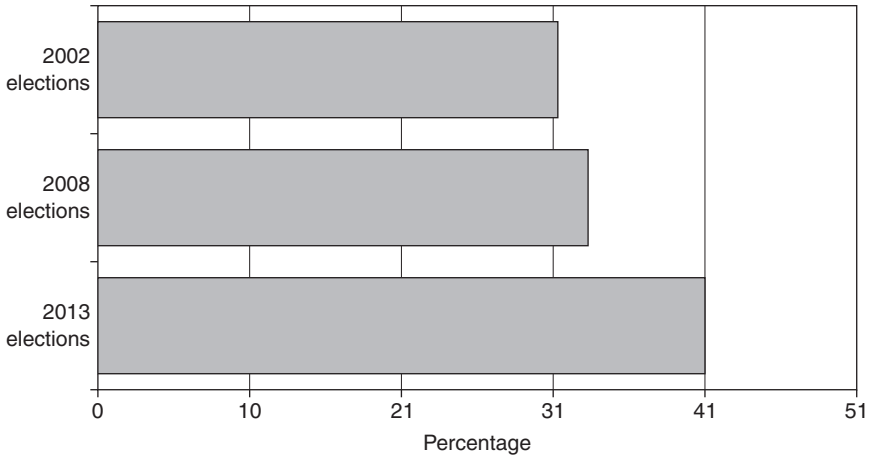


Figure 10.2 Balochistan assembly elections voter turnout (%).

Source: The Election Commission of Pakistan.

it was still below the national average, turnout in the 2013 elections was a significant improvement over the turnout of the last two polls. Notwithstanding this improvement, the turnout was terribly low in some insurgency-hit areas in Southern Balochistan. Nevertheless, the low turnout areas were few in number. Out of the 51 provincial assembly constituencies, only five (10 per cent) experienced a voter turnout below 20 per cent. In 32 (63 per cent) constituencies, the turnout was above 40 per cent (see Figure 10.3). This rise in turnout was an indication of the increasing public confidence in federation and parliamentary politics.

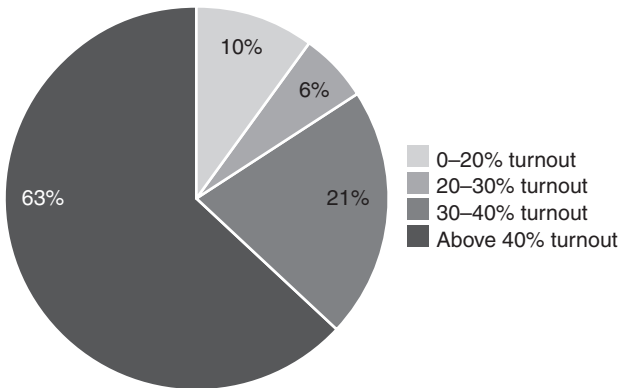


Figure 10.3 Categorization of Balochistan assembly constituencies based on voter turnout.

Source: The Election Commission of Pakistan.

The re-entry of ethno-nationalists in the electoral arena and their subsequent formation of the provincial government also signify a qualitative shift in the politics of the restive province. In the 2013 elections, the Baloch and Pashtun ethno-nationalist parties collectively secured 45 per cent of the total provincial assembly seats, the largest share grabbed by them in the last four general elections. In terms of support base and social composition, there is one key feature that makes these parties stand out from the traditional and religious parties such as the PML-N, PPP and JUI-F. Ethnic parties have a strong support base among a politically-conscious middle class comprising educated youth and professionals. This middle class often constitutes the “ideological core” of these parties. Ethnic parties are more deeply rooted and connected at the grassroots level compared to the state-wide parties. The voter base of ethnic parties is relatively wide and often transcends tribal loyalties. In contrast, the state-wide parties almost always comprise tribal chiefs and political turncoats with a personalized and narrow voter base. The state-wide parties have rarely been able to cultivate support among the common masses or establish a group of core supporters who subscribe to the party’s programme. Instead, they have often relied on the ever-green tribal chiefs and their individual support base. Conventional practices associated with brokerage and patronage define the modus operandi of the state-wide parties in Balochistan. They do not have a meaningful organizational presence at the grassroots level. As a matter of fact, given Balochistan’s unique demographic features and Pakistan’s majoritarian federalism model, the state-wide parties have very little incentive to make political investment in Balochistan. Balochistan has only 17 seats in an assembly of 342 members. The majoritarian institutional structure makes Balochistan the least rewarding political constituency for state-wide parties. This in turn has obstructed the rise in political competition and accentuated regional disparities.

This has important political implications. First, the ethnic parties have furthered national integration by bringing a frustrated segment of the population, especially the educated middle class, closer to the government and connecting them to the state. Given that the contemporary Baloch insurgency also draws support from educated middle class,³⁵ the ethnic parties are in effect shrinking the size of the pool from which the separatists draw support. In other words, by swaying the educated middle class towards parliamentary politics, the ethnic parties are stymying the growth of the secessionist movement. Second, owing to their peculiar composition and support base, ethnic parties, more than any other party, will have to contend with the aspirations of the middle class i.e. efficient and effective public service delivery, reduction of barriers to upward mobility within party and internal party democracy, and protection of core ideological interests of the party. The future electoral success of ethnic parties greatly depends on how they deal with these aspirations and pressures. Indeed, some shifts along these lines can already be discerned.

Weakening of ethno-nationalist narrative

Since Pakistan's creation, provincial autonomy has remained the most important irritant in centre-province relations. By devolving powers to the provinces, the Eighteenth Amendment addressed an issue that has been defining and shaping ethno-nationalist politics in Pakistan since its inception. The devolution of power combined with the passage of the seventh NFC Award have not only accommodated long-standing demands of ethnic minorities but also effectively reduced the range of issues to be politicized by ethno-nationalist parties. It has transferred the target of political mobilization from the centre to the provinces. In the new scenario, political parties, civil society organizations and the common public are focusing more on internal issues and the role of provincial government in exacerbating or resolving these issues. Consequently, the ability of ethno-nationalist parties to politicize ethnicity and "otherize" the dominant ethnic group – the Punjabis – has been significantly constrained. In other words, these parties will find it increasingly difficult to evade their responsibility and deflect blame onto Islamabad. They can no longer secure electoral gains purely on the basis of an "anti-Islamabad" narrative. In the emerging political scenario, ethno-nationalists will face stronger accountability and will be able to sustain electoral victories mainly through governance performance.

It can be argued that devolution of powers has weakened the narrative of ethno-nationalist parties. Traditionally, ethnic parties sought support from their respective ethnic groups based on their claims of being the defenders of the rights of these groups. Under military and highly centralized civilian regimes, these parties often remained in opposition and championed the cause of smaller provinces and ethnicities within a radically restructured federal framework. Over the years, the non-recognition of their demands and the use of repressive tactics by successive governments enhanced their legitimacy and enabled them to claim a high moral ground before a domestic political audience. These parties mainly focused on ideological politics and did not pay meaningful attention to service delivery, arguing that the latter cannot be ensured without first achieving a significant degree of self-rule.

In the post-Eighteenth Amendment period, these parties will have to deliver and perform in order to secure and sustain electoral gains. Cognizant of the changing political trend, the ruling ethno-nationalist parties in Balochistan have not only shifted attention to service delivery³⁶ but also moderated their position and rhetoric on certain ideological issues. From issues concerning violation of the Eighteenth Constitutional Amendment by federal government to grievances about the province's share in the China-Pakistan Economic Corridor, the ethno-nationalist parties have avoided taking the hard line characteristic of them in the past. Similarly, Baloch nationalists have lately become relatively quiet on the military's continued use of force against Baloch separatists. Lastly, the Pashtun ethno-nationalist party, PkMAP, has traditionally been opposed to recognizing the Durand Line as the international boundary between Pakistan and Afghanistan. In the past, it had raised its voice against the Pakistani government's

proposal of fencing the porous border for curbing cross-border movement of militants. Recently, the Pakistani government dug a deep, long trench along the troubled border.³⁷ Contrary to its previous vociferous resistance, the PkMAP maintained silence on the project.

The above analysis does not imply that ethno-nationalist parties will not try to mobilize people along ethnic lines or resort to traditional anti-Islamabad or anti-Punjab rhetoric. Instead, it suggests that these parties would find it increasingly difficult to secure electoral gains purely on these grounds. The politics of service delivery seems to be taking precedence and the ethno-nationalist parties will have to adapt to this changing reality if they want to succeed in the electoral arena. They will have to come up with new attractive political programmes to retain the support of voters.

On the one hand, devolution of power to the provinces has weakened the narrative of ethno-nationalist parties; on the other hand, it has also promoted greater regionalization of politics not only in Balochistan but also in rest of the country. It has incentivized political parties with a particular regional base to think increasingly in terms of “regional interests”. While ethno-nationalist parties are self-confessed defenders of the rights of particular ethno-regional groups, the ostensibly non-ethnic and non-regional state-wide parties have also become increasingly “provincial” in their approach. The positions taken by the PTI regarding power outages and tariffs and the China–Pakistan Economic Corridor are indicative of an increasing regionalization of politics.³⁸ Similarly, the PML-N and PPP have begun catering to their provincial base and are becoming increasingly inward looking. This chapter maintains that the regionalization of politics does not necessarily translate into a weakening of the federation. Especially from the perspective of smaller provinces, the increase in political protests along provincial lines acts as a stabilizing force rather than a disintegrating force. The fact that political parties from Balochistan and Khyber Pakhunkhwa have protested against what they satirically dub as the “China Punjab Economic Corridor”³⁹ is indicative of their willingness to economically integrate in the federation and use non-violent parliamentary means for the pursuit of desired goals.

Greater stake in federalism and democracy

Lastly, decentralization has given ethnic minorities a greater stake in the maintenance of a democratic and federal Pakistan. Traditionally, ethno-nationalists from Balochistan have strongly opposed authoritarian regimes, which, they believe, are strongly linked with centralization of power and political exclusion of genuine representatives of people. The post-Eighteenth Amendment political dispensation was the closest, at least in theory, to what ethno-nationalists have been demanding since Pakistan’s independence. Therefore, it not only incentivized them to participate in the political process but also gave them a greater stake in the preservation of the political system. This was evident during the political crisis generated by the marathon sit-in of the PTI and cleric Tahirul Qadri’s group in Islamabad in late 2014. Baloch and Pashtun ethno-nationalists feared

that the crisis might derail democracy, which in turn would put the hard-won provincial autonomy in peril. Therefore, NP, PkMAP and ANP extended unconditional support to the ruling PML-N. In contrast, the MQM and Jamat-e-Islami seemed to be playing on both sides of the fence whereas PPP and JUI-F supported the government though not without conditions. It was a remarkable turn-around of history when the likes of Hasil Bizenjo and Mehmood Khan Achakzai, who had been branded as “traitors” in the past and whose ancestors had served long prison sentences for the same “crime”, wholeheartedly came forward in defence of democracy and parliament. While requesting the political forces to form a democratic front for safeguarding the country’s constitution and parliament, Achakzai warned that the federation’s existence would be endangered if democracy was derailed.⁴⁰ The fact that Baloch and Pashtun nationalists extended unwavering support to a Punjabi Prime Minister to defend democracy reveals how the decentralized institutional structure may give ethnic minorities a higher stake in the preservation of the political system.

Baloch and Pashtun nationalists tie the success of federalism with the consolidation of democracy in the country. Although democracy reinforces majoritarian federalism – a fact that does not necessarily augur well for smaller provinces – these nationalists nevertheless feel that they stand a better chance of renegotiating the rules of the game in a democratic set-up, however fragile it may be. They feel more comfortable in dealing and bargaining with the Punjabi civilian leadership compared to military leadership. Therefore, they seem willing to work under a majoritarian federation in a democratic set-up, hoping that one day they would be able to constrain the “majoritarian” aspect of Pakistani federalism through steps such as the enhancement of the powers of Senate. The Eighteenth Amendment has increased their stake in the federation and by extension in the preservation of the fledgling democratic set-up.

Major challenges in the post-Eighteenth-Amendment Balochistan

Although the devolution of power has defused the ethnic conflict to a considerable extent, it has been unable to put an end to the conflict. A low-scale insurgency continues to threaten peace and stability in the province. A number of challenges continue to fuel sentiments of marginalization and deprivation among the masses.

Persistence of repressive approach

First, the policy of use of force against Baloch militants and political activists that has remained the key driver of conflict over the past decade has remained in place after the Eighteenth Amendment. The military and other security agencies are not subordinate to the civilian leadership. Though the nationalists-led civilian regime tried to assert civilian control over security agencies, it was able to secure only marginal gains.⁴¹