Soliciting inputs—Health and the 18th amendment

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Health and the 18th Amendment

Governance

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The implementation commission of the 18th constitutional amendment, in its recent session, has taken the final decision to devolve the Ministry of Education. The next round of deliberations will decide the modalities of devolving another set of ministries, including the Ministry of Health (MoH). My comment in these columns on December 25, 2010 – The Vanishing Ministry – outlined several institutional considerations that need attention whilst making decisions in this regard. One of these refers to the question of the national role in health and related institutional arrangements. Lessons from other countries are instructive in this regard. There are at least 25 countries with federating structures where health is a fully devolved subject. All have federal institutions – a ministry, state department, directorates or equivalent institutions – taking responsibility for 'national mandates' in health.

Contrary to what is being planned, there is need for stepping up capacity within the MoH, as there are many ominous indications of its constrained capacity – the case of polio and H1NI are illustrative. But it seems that for the implementation commission, 'ministerial abolition' in subjects, which have been devolved, has become symbolic of the entire process of devolution. The best option is to develop a constitutional solution.

This viewpoint is being used to draw attention to a recently conducted analysis, on which inputs are being solicited. The paper presents the technical and constitutional rationale for retaining the national role in health and discusses options for a way forward.

The paper defines the following as national functions in health: health information and disease security, international commitments, drug regulation, certain aspects of human resource regulation, overarching norms, and standards where inter-provincial conformity is needed. It then goes on to discuss the impact of certain changes brought about by the 18th Amendment on these national functions - abolition of the Concurrent Legislative List (CLL), shifting of entrees from Part 1 to Part 2 of the Federal Legislative List (FLL), insertion of a new entry in Part 1 of the FLL, amendments in Article 144 and 270.

Although sweeping changes have been made by the 18th Amendment, the Constitution still provides space for the federal level to assume responsibilities for most of the national functions referred to above. The only exception is drugs.

The paper makes a strong case for also retaining 'a national role in health' and underscores the need for an appropriate federal institutional arrangement to fulfil national health responsibilities. Attention is drawn to constitutional provisions and rules of business of the federal government, which when viewed in context of the present devolution drive, call for creating a health division.

The paper also discusses systemic challenges, which plague the current MoH and stresses on the need to use the present opportunity to bridge these weaknesses as the ministry is 'recast' as a division. The relationship of five institutional streams, which are envisaged to report to/link with the health division, has been elaborated.

It has been accepted that with the responsibility for health completely devolved, the policymaking role has automatically been transferred to provinces. This notwithstanding, areas within the national policy purview have been enumerated and the convening fora for mandates granted to the national level under Part I and II of the FLL have been discussed – in particular prerogatives of the cabinet vs. the council of common interest.

On the subject of regulation, the paper refers to the post-18th Amendment prerogative of parliament to create federal regulatory authorities and alludes to the problem which can arise when the subject for which a federal regulatory agency is created, is devolved. The complexity of this for the area of drugs regulation has been alluded to in detail in the paper. This consideration has implications for the regulatory mandate in many other areas/subjects, and deserves a dedicated discussion in another comment.

With respect to drugs, the paper emphasises the strong policy rationale for retaining regulation at the national/federal level and elaborates why the appropriate constitutional mechanism to enable that is Article 144. Other subjects touched upon in the paper include national functions with respect to service delivery, national public health programmes, health information systems, human resource, federal fiscalism, health financing and international agreements.

With respect to the national public health programmes, incremental devolution has been recommended and a unified interim federal structure has been described to assume responsibility till such time that provincial capacity is fully developed. A case has been made for folding all programmatic activities, such as research, health information and mobile service delivery, in other cross-cutting interventions. The need for retaining a unified minimal federal structure has also been flagged to support functions on an ongoing basis where inter-provincial policy coordination is needed.

The analysis states how the amendment does not drastically alter federal functions related to human resource but describes the interplay of provincial concurrence, which may now become necessary for human resource decisions at the federal level. A section of the analysis clarifies the constitutional position with regard to health information, which the viewpoint argues is an important national/federal responsibility in the wake of disease security concerns. It clarifies that constitutional provisions potentially enable the function to be retained federally, but makes a strong case for reform of the health information institutional landscape to bridge current weaknesses in individual streams. It also calls for creating an apex mechanism to comply with International Health Regulations, 2005.

Through this comment, I am soliciting inputs on the draft paper. A copy of the latter can be made available by sending a request at sania@heartfile.org. Meaningful feedback will be collated and acknowledged in the paper.

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For this and many other reasons, there is a strong case arguing against MoH's abolition.

Contrary to what is being planned, there is need for stepping up capacity within the MoH, as there are many ominous indications of its constrained capacity—the case of polio and H1NI are illustrative in this regard. But it seems, however, that for the Implementation Commission, "ministerial abolition" in subjects, which have been devolved, has become symbolic of the entire process of devolution. In view of this, the best option is to develop a constitutional solution for establishing a national role in health.

Within this context, this viewpoint is being used to draw attention to a recently conducted analysis, on which inputs are being solicited. The paper presents the technical and constitutional rationale for retaining the national role in health and discusses options for a way forward as the Implementation Commission opens its discussions on the subject.

The paper defines the following as national functions in health: health information and disease security, international commitments, drug regulation, certain aspects of human resource regulation, overarching norms, and standards where inter-provincial conformity is needed. It then goes on to discuss the impact of certain changes brought about by the 18th Amendment on these national functions—abolition of he Concurrent Legislative List (CLL), shifting of Entrees from Part 1 to Part 2 of the Federal Legislative List (FLL), insertion of a new Entry in Part 1 of the FLL, amendments in Article 144 and 270.

The analysis opines that although sweeping changes have been made by the 18th Amendment, the Constitution of Pakistan still provides space for the federal level to assume responsibilities for most of the national functions referred to above. The only exception is drugs, where the constitutional prerogative to retain the federal role without the consent of the concerned provincial legislature, is less clear.

While supporting "devolution of health" overall, the paper makes a strong case for also retaining a "national role in health" and underscores the need for an appropriate federal institutional arrangement to fulfill national health

responsibilities. Attention is drawn to constitutional provisions and rules of business of the federal government, which when viewed in context of the present devolution drive, call for creating a Health Division.

The paper also discusses systemic challenges, which plague the current MoH and stresses on the need to use the present opportunity to bridge these weaknesses as the ministry is "recast" as a Division. The relationship of five institutional steams, which are envisaged to report to/link with the Health Division, has been elaborated.

On the question of the health policymaking prerogative, it has been accepted that with the responsibility for health completely devolved, the policymaking role has automatically been transferred to provinces. This notwithstanding, areas within the national policy purview have been enumerated and the convening fora for mandates granted to the national level under Part I and II of the FLL have been discussed—in particular prerogatives of the Cabinet vs. the Council of Common Interest.

On the subject of regulation, the paper refers to the post-18th Amendment prerogative of the Parliament to create federal regulatory authorities and alludes to the problem which can arise when the subject for which a federal regulatory agency is created, is devolved. The complexity of this for the area of drugs regulation has been alluded to in detail in the paper. This consideration has implications for the regulatory mandate in many other areas/subjects, and deserves a dedicated discussion in another comment.

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