

FEDERALISM IN PAKISTAN : ISSUES AND ADJUSTMENT

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The adoption of a constitution is a momentous event in the life of a nation. A constitutional charter is a document of past struggles, achievements, issues, arguments and compromises which have been crystallised and purified. It is at the same time a practical machinery of government, a code of conduct for the statesmen of the present. It is also finally a symbol of hopes and aspirations to the entire nation it serves.¹

Federalism is a form of government in which powers are divided between the central government for the whole country and governments for parts of the country, better known as federal units. The federal form of government is a common existing form of government. It is because of the fact that the federal form of government is more suitable for those societies which are heterogeneous in character. A majority of the societies in the world comprise different ethnic, cultural and linguistic groups. If the diversity of these groups is not united by a viable political system, the survival of the particular society may be at stake.

A federal form of political system provides two divisible sets of subjects for the two kinds of governments (federal and state/provincial). There can be a third list of the subject, commonly known as concurrent, over which both federal and state governments can exercise power; nonetheless, in the case of differences over the exercise of power, the right of the federal government will prevail. Thus, both the governments derive their powers from a single federal constitution.² The strength of federalism, which has emerged as a philosophy of politics and a successful mechanism of government to attain

political unity between various social entities in a society in large number of nation-states, springs from constitutional foundations. In the case of Pakistan, a heterogeneous society being divided into a number of ethnic and linguistic groups, federalism has been considered an important means to secure political harmony in the country. Since the partition of Pakistan to the present, the question of federalism has occupied an important position in all the constitutional debates. Federalism emerged on the political scene as a leading demand by all federal units as a device to safeguard their interests against the central government by having adequate constitutional leverage in running their administrative and economic affairs.³

This paper is an attempt to analyze the constitutional foundations of federalism in Pakistan. It will focus on the major constitutional developments made in Pakistan for the promotion of federalism, by examining the issues and adjustments involved.

The Pre-Partition Historical Background

Demands were made for the promotion of federalism by the Muslim League, Indian National Congress, Pakhtoon's Khudai Khidmatgar Movement, and other political groups during all the constitutional debates in British India. The Muslim League worked jointly with the Indian National Congress and independently for the promotion of federation in India. The 1909 Constitutional reforms, better known as Minto-Morley Reforms, were based on the demand raised by the Muslim League for separate electorates for the Muslims in order to safeguard their interests—a demand for federalism at the embryonic stage.

A few years later, the joint mobilization of the All India Muslim League and Congress, for more share in the Central Legislature and separate electorates, resulted in the famous Lucknow Pact of 1916. The Montagu-Chelmsford Reforms in 1919 were the result of the collective demand by both the political groups for a federal system of government.⁴

Although adequate measures were not taken by the British government in India for the fulfillment of the demands of the people, seeds were sown for more provincial autonomy. Five years later, in the annual session of the All India Muslim League in May 1924, the League

pressed for full provincial autonomy to each province. The Quaid-I – Azam proposed that constitutional arrangement be made for granting the residuary powers to the provinces by determining the excessive jurisdiction of the central government in the provinces.⁵ The Quaid's important 14 Points in response to the Nehru Report in 1928, reiterated the demand for federalism by seeking the maximum autonomy and residuary powers for the provinces. He asked for abolishing Diarchy in the provinces.

Allama Muhammad Iqbal's Address in 1930 at Allahabad echoed the Muslim League's aspiration for a federal system. A voice was raised that the territories for the Punjab, Sindh, Balochistan, NWFP and Kashmir should be unified into a separate/autonomous state(s).

The 1935 Government of India Act, carrying the recommendations of the Simon Commission and the Round Table Conferences held in 1930 and 1931, adopted the principles of federalism. Three lists of powers were established, the Central, Provincial and Concurrent. Powers were divided separately except the Concurrent list, over which both the Centre and Provinces could exercise powers, and the right of the central Legislature was to prevail in the case of a conflict. A large number of residuary powers were vested with the Governor General. He could authorize at his discretion, either the Federal Legislative Council or a Provincial Assembly to enact on a subject not enumerated in the three lists. The Government of India Act 1935, later on to serve as the important constitutional document, tended towards the centralization of powers in favour of the central government. But in fact it was not fully implemented. Section 5 of the act of 1935, which provided for the setting up of what is called a "Federation of India" was never implemented, as "the requirement of the accession of a specified number of princely states" was not met. Thus, the central government in India continued to operate under Act of 1919 right up till power was transferred in 1947 to India and Pakistan on independence.⁶

Constitutionalism and Federalism in Pakistan

Federalism was provided as one of the promises for the establishment of Pakistan. Federalism and Provincial autonomy have been political catchwords from the beginning of Pakistan. No constitutional matter has bred such a controversy as did the central units relationship.⁷ But the principles of federalism have been undermined

since 1947. As dismissal of Dr Khan's Ministry in N.W.F.P. and emergence of Jagto front in Bengal created dissention between centripetal and centrifugal forces over the autonomy issue. A large Number of provincial leaders hoped from the new nation that entrenched role of the central government would decrease after independence. However, to their dismay, it was the reverse. The central government's role increased.⁸ The constitutional crisis developed soon after the first Constituent Assembly started to function as it voiced political differences over the issues of federalism. The balance of federal structure, which was in favour of the centre as provided, in the 1935 Act, was continued as an integral part of the new country's political system. If the central government had wished it could have allowed the provinces in actual practice and effect a substantial measure of autonomy between 1947 to 1956 even before a constitution was framed, as it was capable of altering the interim constitution.⁹

The Basic principles Committee strongly recommended principles of federalism, nonetheless, they were ignored in large. The 1956 constitution provided a federal form of government, with a strong role for the central government. Under the one-Unit system, Pakistan was divided into two zones : East and West Pakistan. Under the Parity Formula, the National Assembly comprised 310 members. 150 were elected by popular vote from each unit, and 10 seats were reserved for women to be elected indirectly. However it is pertinent to note that the parity formula was not adopted in western unit amongst the Punjabi, Sindhi, Pashtoon, and Balochs, as the seats were allocated to the above mentioned communities on population bases, instead of parity formula. Legislative powers were divided into three lists : Federal (30 items), provincial (94 items) and Concurrent (19). In the case of a clash of interests over legislation over the Concurrent list, the right of the central government Prevailed. The political crisis and instability of the constitutional government during the two years of the existence of 1956 constitution dimmed the credibility of a healthy centre-provinces relationship. The abrogation of the 1956 constitution by a military – cum – presidential coup in 1958, was a real setback for federalism in Pakistan, particularly at the great cost of East-West Pakistan relationship. From 1958 to 1962, there was no constitution, and the political structure of the country was run under a crude unitary system where command ultimate lay with Ayub Khan and his like-minded generals.

The 1962 constitution, a brain – child of president Ayub Khan, was designed to seek legitimacy of rule under a political structure whose support largely came from the federal institutions: army and civil bureaucracy. The recommendations of the constitution commission Ayub Khan appointed on 17 February, 1960, under the chairmanship of Justice Shahabuddin to probe the future of parliamentary government in Pakistan, were largely ignored. The commission had strongly recommended a federal form of government with the maximum autonomy to units/provinces.

The 1962, constitution, like the 1956 constitution, contained three lists of legislative powers: Centre. Provinces and Concurrent to be exercised by the centre and provinces. The constitution provided a strong role for the president, both as the head of the state and government. The one-Unit system envisaged in 1955 was continued in the constitution. There was a one-house legislature known as the National Assembly. The National Assembly was elected for five years. According to article 20 of the constitution, the members of the National Assembly were elected on the parity formula, half from the East and half from the West Pakistan. The constitution defined only the central list with 49 items, from which the federal legislature could legislate. The items mentioned in the provincial and concurrent list were not specified. The residual powers left to the provinces were a total deviation from the principles of federalism.¹⁰

The balance of power under the 1962 constitution was heavily tilted in favour of the federal government. The jurisdiction of the federal legislature was totally dominant over the provincial legislature. The provincial Assemblies had items of little importance to legislate on. The political events following the proclamation of the martial law in 1969, and the announcement of the first general elections in Pakistan by President Yahya Khan leading to the emergence of Bangladesh on the world map, entailed the question of federalism in Pakistan. The Awami League's stunning elections victory, securing 160 in East seats Pakistan, was fully supported by the Six points formula of Mujeeb-ur-Rahman, actually devised in 1966 as the Awami League stunt for parity in administrative economic and development matters. According to it the important residuary powers were to be left only to provinces, by giving with the federal government only defense and foreign affairs¹¹. The seeds of dissatisfaction and discontent

actually sown during the constitutional debates/crisis (1947 to 1954), bread into a civil war after Yahya Khan postponed the session of the National Assembly on March 1, 1971 to put pressure on Mujeeb for a compromise over his Six points. The die had been cast after troops rolled into the streets of East Pakistan, to tame the sporadic uprising against Islamabad. The image of an united country faded into disintegration over the centre provinces relationship as the verdict of majority bengali people was not honoured.

The 1973 constitution contained a new power arrangement to redefine the principles of federalism under the term "maximum provincial autonomy" The residuary powers were vested in the Provincial Assemblies¹². The one Unit system abolished by Yahya Khan was followed by an ordinance which raised Balochistan to the provincial status in 1970. For the first time, a bicameral legislature was elected. The Senate was elected for four years on parity bases. The provinces namely, Punjab, Sindh, N.W.F.P. and Balochistan have to elect 14 members each for four years. Half of the members retired after two years. The 1973 constitution contained two lists : Federal and Concurrent. The Federal list comprised two parts. Part I contained items over which only the Parliament could legislate. The Federal list contained 67 subjects. The Federal and Provincial governments could legislate over the Concurrent List; however, in case of conflict over the exercise of power, the central government's right prevailed (article 143).

The constitutional period of the Bhutto government was marked with a strong role of the central government, resulting in discontent in two provinces, the NWFP and Balochistan. Even before the 1973 constitution could function, Z.A. Bhutto, under the interim constitution, as the interim President, dissolved the Balochistan's majority coalition government of Attaullah Mengal on February 15, 1973. In protest to the dissolution of the Balochistan government, the NAP-Jul coalition under Mufti Mahmood resigned in the NWFP. Later on, the NAP was banned in February 1975 and its leaders were arrested under the charges of conspiracy against the state. They remained behind the bars until 1977. Political disruption in the two governments was a blow to federalism. The voice of opposition in the National Assembly was lowered. The promotion of federalism was marred by the military coup in 1977, after General Zia-ul-Haq seized power and suspended the constitution for another 8 years. The power setup from

1977 to 1985 was crudely in the hands of a military junta which controlled the political structure, all in an unitary manner. A number of presidential Orders, later on to be covered by 8th Amendment to the 1973, constitution, were issued to run the system of government.

The 8th Amendment was the first major amendment that Gen Zia-ul-Haq introduced to revive the 1973 constitution, by protecting a large number of the President's Orders and Ordinances issued between 1977 to 1985, during the period when the constitution was held in abeyance. The 8th Amendment did not change the federal nature of the constitution in large. It, however, enhanced the legislative powers of the upper house: Senate. The amendment increased the number of Senators of each province from 14 to 19, and the tenure of a Senator from four to six year. The Senate's power of amendment in constitution were increased. Article 239, before the amendment, actually vested the initiation of an amendment bill only in the national Assembly first, and after it was approved by a two-thirds, majority, it was to be presented in the Senate to pass it with a simple majority. After the amendment, it not only requires a two thirds majority in the senate but can also be initiated in either house. The requirement of two-thirds majority in the Senate raised the legislative role of small provinces to stem any legislation against the interests of the province.¹³

Major Issues and Adjustment

Dacey said that acceptable distribution of powers between the centre and units is an essential feature of the federalism.¹⁴ Federalism being a popular and practical form of government between the centre and units all over the world, is supported by an edge of the centre over the units. No where in the world does federalism give the units an equal share in power distribution. The federal government may have maintained a supremacy of legislative power over the units regarding issues of national importance, however, the units are allotted adequate powers the system of federalism. In Pakistan, the centre has maintained a dominant role over the provinces right from the beginning. The dismissal of Khan Shaib Ministry in NWFP on 22 August, 1947, M.A. Khuhro on April 20, 1948 in Sindh, Mamdoth,s on January 25, 1949, and Fazal-ul-Haq's in 1954 in East Pakistan (under section 92-A of 1935 Act), despite the majority they held in the Assemblies, was a reflection of the federal principles the country was created on. They were not only regarded as the undemocratic dimension, but created a

precedent which later on led the central government to restore their reserve powers to dismiss provincial ministries.¹⁵

Two factors are largely responsible for the strong role of the centre in Pakistan. First, Pakistan has been run for very long without any constitutional setup during the period the political system was virtually turned into an unitary system. Second, in all the constitutional setup, the balance of power has been overwhelmingly tilted in favour of the central government. Pakistan has faced the absence of a stable representative government and remained under a non-democratic and military rule for a long period. Under such a political setup, the role of the centre becomes overwhelming over the affairs of the units, and the principles of federalism are discouraged. There was no constitutional representation from 1947 to 1956. The constitutional crisis which developed during the existence of the first Constituent Assembly, strengthened the role of federal institutions against the provinces. The government, based on the 1956 constitution was short lived and handicapped by political chaos. The failure of a constitutional government resulted in military coup, the repercussions of which seriously undermined the future democratic setup. President Ayub ruled the country with the strong role of the army and bureaucracy from 1957 to 1969. The constitutional setup formed in 1962 strengthened the two institutions to support Ayub Khan's regime. The Proclamation of martial law in 1969 and separation of East Pakistan in 1971, bore the enigma of political development even after a political settlement was reached for a representative government based on the 1973 constitution.

The July 1977 military coup made the constitution to lie dormant for the next 8 years. When with a non-party constitutional setup it was revived. It represented a strong centre where President enjoyed a very strong role. The 8th Amendment had made his office to exercise power independent of any advice from the Prime Minister to dissolve a government on the plea of being incompatible with the constitutional government. The enjoying of the Presidential right to dissolve the centre government (in, 1988, 1990, 1993, 1996) under section 58 (2)-B Knocked even all four provincial governments, including that one which remained in opposition to the centre.¹⁶ However the 13th amendment to the Constitution deleted the discretionary powers of the president entrusted upon him under article 58(2)-B for dissolution of elected governments or assemblies.¹⁷

Secondly, in all the constitutional frameworks of Pakistan, the concentration of powers tilted toward the centre. In all the three constitutions, the federal list was "the richest in terms of the number of subjects and their importance"¹⁸ The promise of provincial supremacy appeared like a dumb slogan when actual distribution of powers began. In 1956 constitution, the important list of legislative powers was in the hands of the centre. However, the distribution of powers between the centre and provinces rested on the principles that the centre had exclusive authority to make laws, while the provincial legislatures had the authority to make laws on all other matters. In 1962, the distribution of powers was heavily in favour of the centre. A similar supremacy was established in 1973 constitution. The Pakistani Society, which is ethnically heterogeneous and socio – culturally complex, requires a federal system where provinces have constitutional power structure to exercise legislative, financial and administrative powers. The Parity formula given in 1956 and 1962, bred hatred and frustration not only between the two wings of East and West Pakistan, but alienated the smaller provinces within the Western unit from the centre, where the Punjab had a big share in the army and bureaucracy.

A bane of the federal – provinces relationship has been the dissatisfaction shown over the financial arrangements between the centre and provinces. From the beginning of Raisman Award in 1951 to the National Finance Commission award, 1990, the provinces have shown reservation over the distribution of pooled taxes and income from the national resources. The central government is believed to have predominated over the provinces in financial matters.¹⁹ The trends bred dissatisfaction among the smaller provinces of the NWFP, Balochistan, and Sindh over the allotment of funds, as compared to the resources that the provinces generated. Regarding a better financial relationship between them, more bilateral and collective discussions are needed between the centre and provinces for the assessment of provincial resources and the funds allotted for development. Keeping in view the development requirements of smaller provinces, funds may not be allotted only on Population basis but on the land needing development. Good federalism based on healthy distribution of centre-units power relationship is tailored to the desires and needs of a country's geo-political and socio-cultural conditions. The centre provinces relationship are based on cooperative federalism. However,

in a number of polities, the principles of federalism are marred by heterogeneity, lack of national integration, absence of a viable party system, and narrow provincialism. Pakistan is no exception to this fact. It is a country in which constituent units are marked by cultural, linguistic, and historical difference. There has been a lack of a viable two-party system at the national level and provincial level. The provinces of the NWFP and Balochistan have gradually been failed to form a coalition – free governments in the past. A number of political parties exist at regional level whose support comes on ethnic and nationalist grounds.

Major Recommendations

1. Constitutional devices be adopted to safeguard the financial, legislative and administrative interests of provinces without unnecessary interference's of the centre government.
2. The federal units be given the adequate share of revenue out of the income on its resources. The provinces be allowed the power of taxation on important matters, now possessed by the centre.
3. The interference of the affairs of provinces be reduced by the centre. The political history of Pakistan shows that under an elective setup ruling elite at centre are indulged in excessive political manipulations to make centre all powerful. They make federal units more extensions rather than autonomous and coordinating partners.
4. The provincial governments should cooperate with the federal government on major issues. The centre – provinces relationship have also been marred by the centre-provinces confrontation where a regional based party in power defied the centre government being non-cooperative. The centre-province dialogue are needed for the purpose.

Conclusion

Federalism in Pakistan has been a catchword since 1947. The principles of true federalism, which served as the corner stone for the creation of Pakistan in the Lahore Resolution of 1940, have not been promoted to establish a healthy federal state. The role of the central government and federal agencies have dominated the affairs of units

during both constitutional government and military regimes. The distribution of powers between the central and units was a major issue between the East and West Pakistan controversy. The constitutional framework in the country since 1947 has placed the balance of power predominantly in the favour of centre. The control of centre over the legislative, economic and administrative powers have bred discontent among the smaller provinces of Pakistan. The rise of Nationalism in the federating units generated the alarming atmosphere against the economic injustices and denial of provincial autonomy. This caused hatred and ethnic polarisation between Punjab and rest of the three provinces.

Major recommendations needed for promotion of cooperative federation in the country, to respect the spirit of federal parliamentary democratic system for the supremacy of the constitutional requirements in order to run the governmental affairs through participation of all the federating units in the decision making policies related to foreign and internal issues.

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4. Syed Mujawar Hussain Shah, op, cit. P. 34.
5. Syed Sharfidding Pirzada ed. *The Collected works of Quaid-I-Azam Mohammad Ali Jinnah*, Karachi : East & West Publishing Company, 1986, Vol III, p. 319.
6. Craig Baxter "Constitution Making : The Development of Federalism in Pakistan" in *Asian Survey*, December, 1974, 14:12, p. 1075.
7. In Craig Baxter's article, op. Cit. P. 1075.
8. Keith Callard, *Pakistan : A Political Study*, Allen & Unwin, Oxford 1968, P. 159.
9. Keith Callard, op. Cit. 164.
10. Ahmed Hussain, *Politics and People's Representation in Pakistan*, Lahore : Ferozsons, 1974, p. 83.
11. The six Points defined in 1966 were (i) a federal form of government on the basis of Lahore Resolution, (ii) federal powers over defense and foreign affairs only and residuary powers to be vested in the provinces: (iii) two separate freely convertible currencies or one currency with guarantees against the flight of capital from one province to another and separate banking reserve; (iv) unite to have power of taxation and revenue collection; (v) two separate accounts for the foreign exchange earnings of two wings; (v) a separate militia or para-military force for east Pakistan.

12. The article 142(c) said "a provincial assembly shall, and Parliament (Majlis-e-Shoora) Shall not, have power to make laws with respect to any matter not enumerated in either the Federal Legislative List or the Concurrent Legislative List."
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15. Zulfiqar Khalid Maluka, *The Myth of Constitutionalism of Pakistan*, Lahore : Oxford University Press, 1995, 159.

Also see, Khalid Bin Sayeed, *Pakistan : the Formative Phase 1857-1948*, London : Oxford University Press, 1978 edition, p. 27.
16. At the time of dissolution of Benazir Government in 1990 by President Ghulam Ishaq Khan, the provincial governments in Balochistan and Punjab were in opposition to PPP government at centre. It was similar in case of Balochistan in 1996.
17. The frontier post. April 2, 1997.
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