

Provincial Autonomy under Stress in Pakistan

A. Q. Sial

The Islamia University of Bahawalpur

ABSTRACT

This article contemplates issues of provincial autonomy in Pakistan. It describes historical background and rationale of federal character of the state. The nature of Indian Administrative Acts founding basis of provincial settings in the Sub-continent has been reviewed. The revision further examines articulation and expansion of the subject matter in constitutional documents of the country. Centralization of the state political system by dictators and consequent demolition of constitutional guarantees for federating units form part of the study. The study keeping in view the observant findings of state judiciary proposes resolution of the issues for strengthening federal framework of the state.

Background

Pakistan under the Constitution of 1973 is a federal state, comprising of four provinces. Constitution of the country although contains provisions of federal character but provinces have a lot of grievances mostly against federal government regarding incorporation and implementation of constitutional obligation. Provincial autonomy is a very important feature of federal political system. The demand of provincial autonomy by federating units of Pakistan is an accepted phenomenon. It has a protracted background. Federal system in the country may also be considered an outcome of conscious understanding of national and provincial leaders and also originating from a common religion, ethnic and cultural dissimilarities. Federal form at the earliest stage was approved in recognition of existence of plural society and was subsequently retained in all the constitutions of Pakistan. The state political system experienced many twists as it firstly consumed a lot of time to formulate its Constitution of 1956. When the Constitution was framed it lacked essential federal characteristics. The President illegitimately abrogated the Constitution in 1958. The abrogation produced fatal consequences in the years to come. The provinces remained dissatisfied with the languish situation and federation is facing reaction of the provinces on issues of provincial autonomy.

Lahore/ Pakistan Resolution 1940 & Objectives Resolution 1949

Besides geographical and cultural background the 'Lahore Resolution' and 'Objective Resolution' furnished initiatives for adoption of federal system of government in the country. History equally played role for this unification because during British rule Muslims of India had demanded provincial autonomy to form their own government in those provinces where they constituted a majority. Lahore Resolution provided that the area in which Muslims were numerically in majority as in the North Western and Eastern Zones of India, should be united to constitute independent states in which the constituent units would be autonomous and sovereign (Allana, 1968: 228).

State is a living organism, which must adapt itself to its environment, and its success will depend upon the ease with which that adaptation can be made (The Law Quarterly Review, 1920:163). After independence government of Pakistan worked within the parameters of federal scheme of Government of India Act 1935 as a provisional system. When the Constituent Assembly of Pakistan adopted the 'Objectives Resolution of Constitution of 1956, it had in its contents the basis of federal system for the society of Pakistan. In the course of constitution making process members of the Constituent Assembly demanded more powers for the provinces by asserting that Lahore Resolution guaranteed provincial autonomy (Constituent Assembly Debates, 1954). In post independence era the adoption of Objectives Resolution is a significant development. It is a document of historical importance. In the objectives resolution it was held that:

“Wherein the territories now included in or in accession with Pakistan and such other territories as may hereafter be included in or accede to Pakistan shall form a Federation wherein the units will be autonomous with such boundaries and limitations on their powers and authority as may be prescribed:

Now, therefore, we, the people of Pakistan; conscious of our responsibility before Almighty Allah and men; cognizant of sacrifices made by the people in the cause of Pakistan; Faithful to the declaration made by founder of Pakistan, *Quaid-e-Azam* Muhammad Ali Jinnah, that Pakistan, would be a democratic state based on Islamic principles of social justice; dedicated to the preservation of democracy achieved by the unremitting struggle of the people against oppression and tyranny;

Inspired by the resolve to protect our national and political unity and solidarity by creating an egalitarian society through a new order; do hereby, through our representatives in the National Assembly, adopt, enact and give to ourselves, this constitution.”

Federal political system maintains peculiar features. The system is designed under a political compulsion and is not a preferred choice. No entity would have a federal constitution if it could possibly avoid it (Jennings, 1953: 55). It is a system

of partnership among political entities desirous of joining a system of government meeting reciprocal demands. Its spirit lies in the co-ordinate status of both federal and provincial governments as well as independence of both in their own spheres. In this system of political organization no level of government is accepted with unilateral right of performing acts like to change the constitutional provision on division of respective powers assigned under the constitution. Division of power between federal and provincial units on equitable basis is a fundamental principle of federalism. No government is deemed wholly dependent on the other unit. In the system central and local authorities are united in a mutually interdependent political relationship. Balance of powers is maintained under the system so that neither government becomes dominant to the extent that it can dictate the decisions of its own choice to the other partner. But each can influence, bargain with, and persuade the other in a co-ordinated manner as designed or agreed otherwise by mutual consent.

Background in Indian Acts

British Government introduced a highly centralized federal system in the sub-continent to deal administrative functions of United India. In the prevailing forces of unity and diversity, federation appeared feasible mechanism in binding together different cultural groups under one government. The system of 1935 grew through implementation of various Indian administrative Acts in a large span of time. Indian Act gradually developed rudimentary basis of federal structural system. The Indian Council Act 1892 allowed Legislatures of the provinces to repeal and amend the Laws of the province (The Indian Council Act, 1982, Section No. 5). The Indian Council Act 1909 provided re-composition of the Provincial Legislative Councils. It was laid down that there would be no official majority in the Provincial Legislative Councils but such majority was retained in the central legislative body.

The Government of India Act 1919 (part (ii), Art. 17) set-up a bicameral legislature at the center against the Imperial Council of one chamber. One House was named as Central Legislative Assembly and the other the Council of States. The Central Legislature had the powers to make Laws for all British India. The Act provided two lists of subjects for legislation, which were called central and provincial lists. The peculiar system of administration (diarchy) was introduced in provincial management. This was a system of governance in which the subjects to be dealt with by the Provincial Government were partitioned i.e. transferred and reserved. The reserved subjects were to be conducted with the help of the executive council and the Governor had to deal with the transferred subjects through ministers (The Government of India Act, 1919, part (ii), Art. 17).

The Government of India Act 1919 affirmed the policy of British Parliament to provide increasing association of Indians in every branch of civil

administration. It provided for the development of self-governing institutions with progressive realization of responsible government in British India. It was also provided that with gradual development of self-governing institutions in the provinces it had become expedient to introduce limited provincial autonomy. In the provincial affairs as much independence of government was given as was compatible with due discharge by later of its own responsibilities. The Act however, did not endow with requirement and expectations of the people of India. The basic demand of fully responsible government at all level still seemed far away. The system of diarchy was unfair, faulty and in opposition to political theory and practice therefore against federal principles.

As described earlier that important enactment containing rudimentary form of provincial autonomy is Act of 1935. Around 1933-35 the British Government realized the need of extensive political reforms. Simon Commission developed practical proposals in the light of demands of political parties. Report of the Commission was published in May 1930. Deliberations on issues were made in Round Table Conferences (1930-31) held in London. In April 1933, a Joint Select Committee consisting of 16 members each from the House of Commons and the House of Lords was appointed to examine and report on the Government proposals on constitutional reforms. The report of the Joint Select Committee was submitted to the government on 22nd November, 1934. A Bill was accordingly introduced in the House of Commons on 5th February, 1935. The House of Commons passed the Bill on 4th June, 1935. The Bill was then introduced in the House of Lords on 6th June, 1935, which was passed in July 1935. The Bill received the Royal Assent on 2nd August, 1935 and brought into being the famous constitutional document 'The Government of India Act 1935.' On introduction the Act was criticized mainly because of its spoiled federal features. Nevertheless it founded the base for constitutional structure of the Dominions in future. British India got self-rule under the shadow of controversial Act. Pakistan although attained sovereign status. People of Pakistan have yet to get freedom from the fabrics of Imperial Act 1935.

The Government of India Act 1935 (Section 5) provided 'All India Federation' and a bicameral Federal Legislature with division of legislative functions between Federal and Provincial governments. The bicameral Federal Legislature was to be consisting of the King, Federal Assembly and the Council of states. The act provided three lists for legislation 1; federal list 2; provincial list, 3; concurrent lists. The Act outlining basis of provincial autonomy for the provinces established diarchy at the center under which the administrative functions with respect to defense; foreign relations etc were to be performed by the Governor General at his discretion with the assistance of his councilors. All other executive functions were to be performed with the help and advice of the council of ministers subject to the exercise of special powers and responsibilities for which the Governor General was to appoint advisors. The Governor General and the Governors of the Provinces could subject to certain limitations direct the

legislatures not to proceed or stop proceeding on any matter pending or coming for their actions (The Government of India Act, 1935, Section 5).

The Government of India Act 1935 was the multipurpose encyclopedic document enforced to appease Indian population with fully sustaining the colonial arrangement. Pattern of modern monarchism was introduced through the statute, which had 321 sections and 2 schedules. Mohammad Ali Jinnah observed the scheme of the Government of India Act 1935 “thoroughly rotten, fundamentally bad and totally unacceptable.” Dr. Keith observed the Act introducing ‘bastard federalism.’

After the freedom in 1947 it was observed that unsystematic scheme of governance under the Indian Acts did not facilitate smooth working of the state system. Central governments tried to dictate its policies over provincial affairs. Powers were usurped through enforcement of emergencies in the provinces. Emergency provisions most of the times were used to obstruct regular political course. State machinery was used to materialize undue interest of people in power not otherwise maintainable by conventional means. In order to pursue such policies Constituent Assembly made amendments in Section 102 of the Government of India Act 1935 in 1947, 1948, and 1950. The draft constitution proposed by first Constituent Assembly contained provisions on different types of emergencies. First Constituent Assembly was criticized for enacting controversial emergency provisions. Curiously enough, the second Constituent Assembly in which those political groups had opportunity to redraft the Constitution retained all these emergency provisions in Part IX (Articles 191–196) making them even stronger in some respects (Choudhury, 1995:112).

Critical Issues

Misuse of constitutional provisions by federal governments against the provinces badly affected provincial autonomy. Use of emergency provisions in provincial affairs on excuse of breakdown of constitutional machinery is uncharacteristic. Its origin may be found in the Government of India Act, 1935, which had provisions on emergency due to failure of constitutional machinery, both at the center and in provinces (The Government of India Act 1935, Section 5). But there was notably no provision in the 1956 constitution relating to the breakdown of constitutional machinery at the center. It however retained provisions to meet constitutional crisis in the provinces (Choudhury, 1995: 114).

Constitutional history shows gloomy picture of federation versus province relationship of early stage in the country. The Federation using emergency powers against the provinces unilaterally and repeatedly intervened in provincial affairs. Following are more than enough example of these occasions.

1. Proclamation by the Governor General on 24th January, 1949 under section 92-A of the Government of India Act, 1935, assuming powers in

the Province of Punjab (Constitutional Documents of Pakistan, Ministry of Law and Parliamentary Affairs, Law Division, Volume IV B, Orders and Proclamations, p. 1823).

2. Proclamation by the Governor-General dated 29th December, 1951, under section 92-A of the Government of India Act, 1935, assuming powers in the Province of Sindh (Ibid, p.1827).
3. Proclamation by the Governor-General on 14th March, 1954, under section 92A of the Government of India Act, 1935, assuming powers in East Bengal (Ibid, p.1831).
4. Proclamation by the Governor-General, 29th May, 1954, under section 92A of the Government of India Act, 1935 assuming powers in East Bengal (Ibid, p.1834).
5. Proclamation by the President, 26th May, 1956, under Art. 193 of the Constitution assuming powers in East Pakistan (Ibid, p.1839).
6. Proclamation by the President, 31st August, 1956, under Art. 193 of the 1956 Constitution assuming powers in East Pakistan (Ibid, p.1843).
7. Proclamation by the President, 21st March, 1957, under Art. 193 of the 1956 Constitution assuming powers in East Pakistan (Ibid, p.1847).
8. Proclamation by the President, 25th June, 1958 under Art. 193 of the 1956 Constitution assuming powers in East Pakistan (Ibid, p.1854).

The above instances are glaring examples of federal versus provincial controversies at the earliest stage of independence. These emergencies were imposed prior to or close to promulgation of the first Constitution of Pakistan 1956.

Autonomy under 1956 Constitution, Controversies on Constitutional Proposals

During the course of constitution making, mode and extent of provincial autonomy for the units remained central issue before the Constituent Assembly. Prior to adoption of 1956 Constitution text of the 'Objectives Resolution' had enough inspiration for the nation on fundamental principles. The provisional system under the Act of 1935 had contents for gratifying aspirations for provincial autonomy. Differences between provinces became prominent on presentation of first constitutional proposals compiled by Basic Principles Committee. The Basic Principles Committee presented its interim report to the Constituent Assembly in September, 1950. The report had recommended a bicameral federal legislature with equality of power for both the Houses. The upper house was to be known as House of Units consisting of equal number of members from all units, whereas the Lower House was expected to give representation on population basis (Mehmud, 1990). Subjects of representation in Legislature, quantum of authority between center and provinces were at the top (Maluka, 1995: 4-5). The proposal made by the government of Liaquat Ali Khan brought controversy. Khawaja Nazimuddin presented the consolidated report of Basic Principles Committee on 22 December,

1952. In the recommendations, central legislature was proposed to consist of two Houses; the House of units and House of people. Former was consisting of 120 members and the later 400 members. Both Houses had to provide equal representation to two wings of the country with equal powers except on money matters.

The prime minister had proposed a compromised formula of parity as basis for resolving the conflict of representation between East and West Pakistan. Parity formula was seen as violation of the principle of universal franchise. Political parties in East Bengal criticized its undemocratic character. Four per cent majority of East Pakistan was being utilized to arouse provincial animosities and rivalries. Position of East Pakistan in central legislature was brought parallel to number of seats with combined strength of all the units and areas comprising West Pakistan. It was provided that in the House of people there should be 200 members from east and 200 from nine units of East Pakistan. Regarding the house of units the proposal provided that there should be 60 from the west and 60 from the other units of the West Pakistan. This position was equal to partition the country in two parts by de-recognizing the principles of federal system.

Delay in constitution making further complicated the nature of constitutional issues inclusive of issue of provincial autonomy. The state authorities failed to resolve reciprocal conflicts. Provincial governments and assemblies suffered instability. In early days of independence when unjustified pattern for dismissal of provincial governments was adopted the provincial administration stood destabilized. Provincial elections in 1953 also failed to root out the controversies. In the province of Sindh Chief Minister Pirzada Abdus Sattar's government had to go out simply because he was not fully cooperating with central government. The Assembly of Bahawalpur was dissolved along with dismissal of its ministry in November 1954. The ruler of Bahawalpur State in its overwhelming love for Pakistan announced cession of his state coupled with the gift of huge amount in cash to support the dying economy of Pakistan. This was the act of generosity at a critical moment of independence. Outcome to people of the state for this love was denial of their constitutional rights and deprivation of their autonomous status in the Federation. The state had held the status throughout the period of imperial rule and retained that until amalgamation of West Pakistan. State population had to launch movement for its restoration but failed to attain its previous status as an autonomous component of federation. The Province of Sindh also faced crises when the ministry of Pirzada Abdul Sattar was routed out. Both the ministries were reluctant to be integrated into 'One Unit'. In May 1955 the same act was repeated for Noon ministry in the Punjab. Two months later the ministry of Abdul Rashid in North Western Frontier Province was targeted. Governor's rule was repeatedly imposed in the provinces without any justification under the constitution (Hammood Rehman Commission Report declassified by government, published by Vanguard Books, p. 37).

The decision of Dacca High Court regarding dismissal of Chief Minister Abu Hussain Sarkar, by Governor Hamid Ali, just few minutes after his becoming Governor of East Pakistan, substantiated the fact that tenure of office of a provincial chief minister under the 1956 constitution was no safer than under the Interim Constitution. Stability of cabinet governments and sanctity of parliamentary system depends not on wording of the constitution but on growth of democratic conventions and parliamentary spirit existing in the society.

Amalgamation of Provinces in One Unit

The most unpopular event against the federal norms happened in the history of Pakistan in 1955. The Second Constituent Assembly of Pakistan on 30 September passed a most highly controversial Act Establishment of West Pakistan Act 1955 (PLD, 1955, Central Acts and Notification 273) amalgamating all federating units of the country. The newly composed territory of West Pakistan formerly comprising of three Governors' provinces, one Chief Commissioners' province, a number of states and large tribal areas were now stuffed in one unit. There were made many claims by the executive in favor of anti-autonomous act of the Assembly but it was obtained to resolve federal constitutional issues against prevailing realities. The states and provinces opposed the move. The motive behind the Act was to deny the provinces power sharing in federal structure under the new constitution. Reaction of the units was severe due to many reasons. First of all it was implemented by executive order 'Establishment of council for administration of West Pakistan Order 1954 (PLD, 1955, Central Acts and Notification 5). Moving further the executive authority initiated to create new province of West Pakistan. But the unpopular scheme was blocked by the decision of Federal Court (Usif Patel v Crown. PLD 1955, F.C. 387). The federal government dismissed three provincial ministries who opposed the move. In preparation of that Bahawalpur State suffered the worse when its ministry was dismissed and legislature dissolved in 1954. Amid mix reaction from different states of the country on the issue the executive managed to merge them for obtaining a compromised constitution.

The Constitution of 1956 was one of the lengthiest constitutions of world at the time of its promulgation. Greater part of the 1956 Constitution consisted of provisions similar to those contained in the Government of India Act 1935. Unlike other federal constitutions it provided unicameral parliament to the country and did not provide any second chamber. Structure of the constitution of 1956 was federal but allied principles of federation had no sound place in its provisions. It empowered the federal government certain functions such as emergency powers and powers of directing provincial government on certain issues. Central government had jurisdiction to appoint the provincial governors to head the provincial administration. The Governor should hold office during the pleasure of the President. In case of emergency, internal disturbance or constitutional deadlock, governor at the discretion of the president might assume all powers of

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the provincial government. These functions reduced the autonomy of provinces. The scope of provincial autonomy introduced under the Act of 1935 to some extent stood reduced. The Constitution revealed general pattern of center province relations as was in the Government of India Act, 1935. The 1956 Constitution was therefore not a perfect federal Constitution. Therefore political system failed to initiate structural development for promotion of federal democratic polity in the country.

Adoption of sound federal parliamentary system of democracy in Pakistan may have been an exalting experience provided necessities of the system as earlier noted had been owned in good faith for practice. The nation had deep historical mutual commitments. People of united Pakistan were composed of different customs, cultures, languages, environments and even on practice of religion. Although people deeply united on national level remained equally divided on provincial levels for maintaining their conventional wisdom. Geographical composition of the state required development of federal system and state units had to be combined in the federation. This was right of the units to claim provincial autonomy in federal system. Limited autonomy was experienced in colonial system the increase in which had been an expected endowment in the constitution to be framed. Provincial autonomy is as much relevant character of federal state as sovereignty for independence of the state. Right of autonomy must be available to federating units in a federal state in such a manner as sovereignty of the federal state over the units of state. Consent of units brings into being federal state. Subsistence of federal state is dependent upon comprising of composing units. It is created under mutual trust. Circumstances in Pakistan twirled and trustee (the Federation) turned out beneficiary against ideological commitments. Mohammad Ali Jinnah and Muslim League had predicted what Pakistan would stand for on the subject of provincial autonomy or federal structure of the state. Commitment on provincial autonomy for the federating units was evident. On November 8, 1945, Mohammad Ali Jinnah, while explaining the 'theory of Pakistan' said that it guarantees that the federated units of the national government would have all the autonomy that you will find in the Constitutions of the United States of America, Canada, and Australia. But certain vital powers will remain vested in the central government such as the monetary system, national defense and other federal responsibilities (Ahmed, 2005).

In historical perspectives there was harmony among the people of India on the issue even before the constitutional reforms of 1919. They wanted federal form of government in India. From Muslim League's point of view, it was argued that full provincial autonomy was in the interest of the Muslims. Moreover, the demand for more Muslim provinces in the country was also due to the expectation amongst Indian Muslims that they would have majority share in government and law making in these provinces (Ahmed, 1990: 24).

Centralization under Dictatorial Regimes

The Constitution of 1962 a dictatorial formula, further centralized the state system. The scheme introduced under the autocratic constitution was neither parliamentary nor presidential. An individual along with his marionettes for their arbitrary actions squeezed the state functions. Under the 1962 Constitution there was only one legislative list, namely the federal list. This was over-centralization of the system under Ayub Khan that transformed the semi-federal system in to unitary form of Government. It failed to maintain existing federal character rather reduced it beyond Government of India Act 1935. Political leadership emphasizing provincial autonomy was termed by the government as traitors. The Government promoting the strong centre argued that in view of threat from India due to considerable distance between the two wings, a strong centre was necessary. When political parties demanded provincial autonomy from Ayub Government, his Law Minister warned the people that calling for greater provincial autonomy would be considered a treasonous act and the central characters to be crushed and destroyed. Centralism was declared eminent to hold the country together and to ensure uniform economic development. The argument however proved counter-productive as East Pakistan separated from Pakistan largely because the ruling elite was not prepared to base the political structure of the country on generous provincial autonomy (Ali, 1992: 66).

Trends of centralization introduced by the regime of Ayub Khan damaged basis of federation. Curious element in the demand of provincial autonomy was that demand came from East Pakistan, which had largest population strength. This demand was unusual because people of East Pakistan should not have any fear of dominance of rest of the units. But East Pakistan had justification of this demand as no balance of power existed between the centre and provinces. Reservations were mainly economical as East Pakistan continued to be a neglected area. The first five-year plan published by the central government in May 1956 admitted the fact in a policy statement (Chaudhry, n.d). Provincial autonomy was not an unusual claim of East Pakistan. The Indian Act 1935 had already incorporated it by giving governors of the provinces the required autonomy. Government of India Act 1935 conferred provincial autonomy under its part III that came into force on 1st April, 1937. Governor's Provinces were created as autonomous units. The Governor had the same authority as the Governor-General had at the centre (Baz, 1995: 1). Contrarily post independence era boosted centralization process and deprived a large portion of the nation from its political legacy.

Denial of federal constitutional rights to the people of eastern wing who initiated the process of independence movement was injustice. Post-partition period supports the fact that leaders of East Pakistan with moderate political approach continued to accept and cooperate with the central governments. Some leaders of Eastern wing suffered the loss of public confidence for the sake of their approach of reconciliation. Deterioration in political process originally started due to non-appreciation of federal parliamentary standards. Twenty-two years long compromise of population of East Pakistan over fundamental principles harmed

the option of federal harmony. There appeared reflection of revolt in 'six points of Awami League' which were reaction of Eastern wing over policies of central government. Sheikh Mujib-ur-Rehman had raised the impression that standard federal code from political order of the state had disappeared.

Autonomy under 1973 Constitution/ Dissolution of Provincial Assemblies/ Emergencies

Constitution of 1973 in its original form was believed to be a promising symbol for resolution of the issue. It although had the provisions contrary to federal scheme of governance. Yet the provinces wanted further steps for enlargement of the autonomy. Provincial structure under the constitution has no required autonomy. Governor of the province is appointed to execute federal policies as subservient federal agent and monitor the interest of federation in provincial affairs. Provincial representative assemblies are dissolved along with National Assembly. Provincial governments are also dismissed when federal government is dismissed unconstitutionally. The roots of most of the ills are found in frequent enforcement of provisional constitutional orders by suppressing regular legal system in the country.

There are several outstanding issues relating to legislative functions between federation and provinces. The most prominent issue is subjects of legislation in three lists. Federal system has certain intrinsic limitations that spring from the division of powers between federal and composing units (Dicey, 1964: 125). Pakistan has failed to resolve such an important issue which has prevented necessary legislative requirement of the provinces. A Bill seeking reforms regarding controversies over legislative lists was moved in the Senate in 2004. The senator who introduced the Bill deplored that in the 1956 Constitution the federal legislative list contained 30 subjects while 19 were included in the concurrent list. He regretted that in the 1973 Constitution there were 47 subjects in the Concurrent Legislative list and 67 in the Federal Legislative list. He said that non-transfer of these subjects to the provinces was causing disharmony among the federating units. He lamented that instead of giving autonomy to the provinces the ruling party had put a larger number of subjects in the Schedule six of the Legal Framework Order 2002 on which even the federal government could not legislate without consent of the president. He said that more than 150 subjects were included in the federal legislative list and the hands of the provinces had further been tied. The senator argued that presently provinces were looking toward the centre for legislation on some important issue like '*Karo-kari*' (a heinous social crime). He said the time had come to fulfill the promise made years ago with the people of Pakistan. Opposing the bill, the State Minister for parliamentary affairs said the Constitution granted equal rights to provinces and there was no need to amend it. This state of affairs reflects lack of interest of political parties in general

and ignorance of people in power in particular on outstanding constitutional issues of Pakistan which need immediate resolution.

The Constitution of 1973 contains provisions of emergency more or less on pattern similar to earlier constitutions. Article 234 deals with subject of emergency and has been in recurrent use for purposes other than those contemplated therein. Provincial governments have been frequent victims of the emergency provisions. Lahore High Court in a constitutional petition painstakingly examined backdrop of emergency. The court in the case in which the Federation unnecessarily used provisions of emergency fixed useful direction. The Court taking note of the abuse of such provisions observed that the division of powers between federation and its units must yield to supreme interest of unity and solidarity of federation. In the event of emergency or calamity like constitutional breakdown federation must possess necessary power to intervene in provincial affairs. But this power, besides being drastic, constitutes an inroad into the provincial autonomy and if not properly used, can destroy the equilibrium between federation and federating units. Besides leading to serious repercussions, it also causes sense of deprivation in the units, which is not healthy sign for a federation. When a proclamation of emergency is enforced, the federal character of polity gets transformed into unitary form and the national government becomes the paramount authority within the country (Manzoor Ahmad Watoo vs Federation, Lahore, PLD, 1997, p. 60).

Critical Analysis

The essence of federalism is that neither level of government is deeply dependent on the other. Rather they are united in a mutually interdependent political relationship (Vile, 1961: 197). In order to balance provincial interests Constitution of 1973 provides institutions, which integrate provincial interests within federal organization. Under Article 153 it provides Council of Common Interests (C.C.I). The Council formulates and regulates policies in relation to matters in Part I/of the Federal Legislative List and, in so far as it is in relation to the affairs of Federation to exercise supervision and control over related institutions. The Council is an important constitutional institution, which irons out differences, problems and irritants between the provinces and provinces and federation in respect of matters specified in Art.154 (Amin Ahmad, Ministry of Production, Government of Pakistan, Islamabad, PLD, 1996, Karachi, 27). But federal governments in due course of time observed no regard to the provisions of the constitution. When President exercised his powers under Article 85 (2) (b) to dismiss federal government in 1993 improper working of CCI was one of the grounds. Although Supreme Court in 1993 did not find it convincing that the performance was not in accordance with the Constitution hence cannot be made a ground for presidential action (Muhammad Nawaz Sharif vs President of Pakistan, PLD, 1993, Supreme Court 473). Supreme Court however explained that Articles 153, 154, 155, 160 and 161 of the Constitution provide in-built self-ad-judicatory and self-executory mechanism in the constitutional set-up. The object seems to generate sense of

participation among the federating units. CCI was to ensure equitable distribution of federal taxes among the federating units and resolving other financial issues (Messrs Gadoon Textile Mills vs WAPDA, 1997, SCMR, 641).

Another controversy frequently disrupting federal system is regarding the working of National Finance Commission. National Finance Commission is constituted under Art. 160. The Government of Benazir Bhutto purposely delayed the reconstitution of National Finance Commission till the budget had been passed. This created tension and confrontation between the centre and provinces of Balochistan and Punjab. The President of Pakistan dismissed the Government of Benazir Bhutto along with dissolution of National and Provincial Assemblies. Governors of the provinces took same action against the provinces. One of the grounds of dissolution was that the National Finance Commission was never called to meet and allowed to function, thus, blocking process of mandatory provision. The dissolution of Sindh Assembly was challenged in Sindh High Court through constitutional petition, which was dismissed. The Court said that the material produced before court fully established that in spite of insistence by the federating units for convening the meeting of these two important constitutional institutions and concern conveyed by the President in this behalf, the government of federation was not only avoiding convening of the meeting of these institutions but showed no respect to the request of provinces for constitutional obligation (Khalid Malik vs Federation of Pakistan, PLD, 1991, Karachi, 1).

Contours of provincial autonomy were although redesigned under the Constitution of 1973 yet, the autonomic status was not furnished the environment to take root. Article 112 of the Constitution of 1973 was arbitrarily amended several times to stretch federal authority over the provinces under imprecise conditions. Therefore provinces have been frequent victims of such discretionary actions sponsored by federal executive. Structure of provinces was repeatedly smashed under the provisions of emergency just for maintaining federal monopoly over the years. Dismissal of the Provincial Government of Balochistan and forced resignation of the Provincial Government in North Western Frontier Province happened very close to promulgation of the Constitution. Besides dismissing the ministries constitutionally entitled to continue or installation of ministries without constitutional mandate, people in power observed clear disregard of mandatory and indispensable obligations under the Constitution. Several episodes may be referred for the assessment of interference of federal government in provincial affairs.

In Balochistan, Jam Ghulam Qadir, a member of Muslim League (Qayyum group) was sworn in as the Chief Minister of the province on 27 April, 1973. Under the Constitution he had to prove his majority in the Provincial Assembly. He claimed that his Government commanded the required majority in the Assembly. To contradict the claim of Chief Minister, *National Awami Party* on the day when Jam Ghulam Qadir was administering oath, held a demonstration in Quetta. *National Awami Party* presented to the audience 11 out of the 21 members

of the Assembly. Undeterred by the complete exposure of its false claims, the Central Government on 29 April, 1973 installed Inayatullah Khan Gandapur as Chief Minister of the North Western Frontier Province (Maluka, 1995: 248).

On 15 December, 1988 Governor dissolved Balochistan Assembly on the advice of Chief Minister who was in fear of losing office on account of vote of no confidence likely to be passed against him. The order of dissolution was challenged in Balochistan High Court. In the constitutional petition it was contended that the Chief Minister could not advice for the dissolution as not being Chief Minister in the meaning of Article 112 of the Constitution of 1973. Full Bench of the High Court accepted the petition holding that until the Chief Minister had obtained vote of confidence under the constitution from majority of total member, could not advice dissolution of the Assembly. It was not an act of ignorance rather initiated by the Chief Minister and passed by the Governor with particular intention to take advantage of constitutional position not specifically provided.

Amir Gulistan Janjua the Governor of North West Frontier Province on 6 August, 1990 dissolved the Provincial Assembly. The Provincial Cabinet consequently, stood dissolved due to dissolution of the Assembly. The Governor had alleged that situation had arisen in the Province in which Government of North West Frontier Province cannot be carried on in accordance with provisions of the Constitution and an appeal to electorate was necessary. Aftab Ahmad Khan Sherpao, the ousted Chief Minister of NWFP, challenged the order of dissolution before the Peshawar High Court. A full Bench of Peshawar High Court, by a majority of four to one, accepted the constitutional petition and declared the impugned order of dissolution of NWFP Assembly and dismissal of provincial cabinet as *ultra vires* of the constitution, without lawful authority and, therefore, of no legal effect. The Court directed restoration of NWFP Assembly along with government of the Province (Aftab Ahmad Khan Sherpao vs The Governor of NWFP, PLD, 1990, Peshawar, 192).

Ghulam Ishaq Khan dismissed at least four federal governments by his proclamation, which resulted in consequent dismissal of provincial governments. His claim using the powers under the Constitution became more apparent when he dissolved the Punjab Assembly within seven minutes of its restoration by Lahore High Court. Without slightest compunction about committing an unlawful act, Ishaq Khan was determined to strangulate the fragile democracy and political order of Pakistan for the sake of defeating the imperatives of the Court's verdict (Maluka, 1995: 292).

In 1993 the affects of the dismissal of Federal Government should have been confined to sphere of federation. The smooth functioning of provincial government would have been encouraged. Contrarily political situation of the Province of Punjab was given desired effects. The President as custodian of the seal of federation and representative of unity of republic had to keep provincial affairs intact and unaffected. Provincial matters should have been free of interference from the President. The President not observing patience assisted

ouster of Chief Minister of Punjab. Desired candidate was installed as substitute chief minister in consequence of the unpopular movement of the President. On restoration of the Government of Nawaz Sharif by Supreme Court the Judgment was not honestly accepted. The Federal Government launched a campaign against the Provincial Government. The Chief Minister on May 29, 1993 tendered advice of dissolution of the Punjab Assembly to Governor of Punjab. At the same time notice of no confidence against the Chief Minister was also put into process. The dispute regarding putting in motion the two mutually conflicting acts of rival parties erupted. The controversy became irresolvable and matter was filed through writ petition before Lahore High Court (Ch. Pervez Elahi vs Province of Punjab, PLD, 1993, Lahore, 595). The judgment of the Court was rendered unsuccessful by misuse of provisions of the constitution. The President bound to ensure compliance as custodian of the seal of federation failed to add strength to provincial autonomy. There was no intention on either side to resolve the issues under the constitution. The constitution was being resolved under the issues by federal authorities of state.

In 1994 coalition government of Pakistan Muslim League (Nawaz) and (ANP) in NWFP was not ally of the Federal Government. Government of the Province although had the required majority in the House. Federal Government tried to win over members of the coalition to establish their own government at every cost. On failing to do so the government tried the constitutional formula under Article 112. The Presidential Proclamation was issued on 25 February, 1994 stating that the situation had arisen in which the Government of the North-West Frontier Province could not be carried on in accordance with the provisions of Constitution. Therefore, in exercise of the powers under Article 234 the Constitution, the President directed the Governor of the North-West Frontier Province to assume functions of government of the province. All powers of the Provincial Assembly were brought under the authority of Parliament. The Chief Minister and provincial ministers ceased to hold office. The Order unless revoked earlier had to remain in force for a period of two months (Presidential Proclamation, 25 February 1994, PLD, S.C., 1994, P. 754). Leader of the House, the outgoing Chief Minister Sabir Shah challenged validity of the Proclamation before Supreme Court of Pakistan under article 184 (3) of the constitution. In response to submissions of the Petitioner Sabir Shah the Court ruled as under.

The Court observed that though Article 234 of the constitution was contained in Part X of the constitution, which relates to emergency provisions, but it cannot be equated with Article 232 which can be invoked when the President is satisfied that a grave emergency exists in which security of the country, or part thereof was threatened by war of external aggression or by internal disturbance beyond the power of the provincial government to control (Sabir Shah vs Federation of Pakistan, PLD, SC, 1994, P. 792). There was nothing in the language of Article 234, which could justify the conclusion that the President while exercising power under this Article can dissolve the provincial assembly or dismiss the provincial

cabinet. The framers of the Constitution having specifically mentioned under Article 112 of the Constitution, the circumstances under which a provincial assembly can be dissolved, Court cannot on any known principle of interpretation read in to Article 234 of the Constitution which does not deal with the dissolution of assembly, the power of the President to dissolve the provincial assembly. As the Proclamation issued by the President under Article 234 was only a temporary measure, which lasted only for the period specified in the Constitution, dismissal of the Provincial Assembly by the President through Proclamation under Article 234 cannot be treated within the scope of incidental and consequential measures contemplated in Article 234(1) (c) of the Constitution.

The Court observed that a reference to the other relevant provisions of the Constitution makes it abundantly clear that sub-clause (c) of clause (1) of Article 234 of the Constitution is not intended and designed to be pressed into service for dismissal of the chief minister and his Cabinet. In the opinion of the Court the actions contemplated under sub-clauses (a) and (b) of Article 234 of the Constitution were of temporary nature. They were to last for a period of two months unless before the expiry of the above period, they were approved by resolution of the joint sitting and extended in terms of clause (3) of the Article. If the orders under sub-clauses (a) and (b) were to operate for a period of two months, the Chief Minister and his Cabinet could have been suspended for the period of two months but they could not have been removed from the office without pressing into service the mechanism provided in the Constitution.

The Court added that where the Proclamation under Art. 234 declared that Chief Minister of the Province and his Cabinet should cease to hold office beyond the period of the Proclamation, such Proclamation being in excess of the powers contained in Art. 234 of the Constitution, Chief Minister of the Province could not be denied relief by the Supreme Court under the Article 184 of the Constitution. The Proclamation under Article 234 of the Constitution could not operate for more than two months in the absence of approval and extension by the joint session of the Parliament in terms of clause (3) of Article 234. Chief Minister and his Cabinet could not have been dismissed nor could have been treated as having ceased beyond the period of two months. The Proclamation to the above extent was beyond the purview of Article 234(1) and, therefore of no legal effect. The part of Proclamation directing the Governor to assume the functions of the Government and declaring that all powers of the Provincial Assembly shall be exercised by or under the authority' of Parliament was clearly in excess of the authority vested in the President under Article 234 of the Constitution and, therefore of no legal effect.

President Farooq Khan Laghari issued Proclamation on September 5, 1995 by involving emergency provisions to replay another conspicuous occasion of the same kind. The occasion again described the situation in which the affairs of the Province could not be carried out in accordance with provision of the Constitution. The action was challenged in the Court of law. The Court held that the power granted to the President to issue Proclamation is not uncontrolled but is

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circumscribed by two conditions. The President must be firstly satisfied and secondly the satisfaction must be that the affairs of the province cannot be run in accordance with the Constitution (Manzoor Ahmad Watoo vs Federation, PLD, 1997, Lahore, P. 63). The Court said that record did not show that on account of resignations of the Ministers a constitutional breakdown had occurred. It cannot constitute a situation in which the affairs of the Province cannot be carried on in accordance with the provisions of the Constitution. In law it has no relevance for the purpose of determining whether such situation exists. The Lahore High Court ruled the whole exercise unconstitutional and pointed out the requirements of the enforcement of emergency and termed the act of the President detrimental for the Federation.

The above-sited sequence of events is the gloomy picture of state federal system. Provincial governments were treated as puppets in the hands and for the benefit of the Federation. Whenever establishment targeted federal government the provincial governments were dismissed under punitive actions mostly because of their democratic association with the federal government. The provincial assemblies and their governments were seen from federal perspectives by triangular of the establishment, government and opposition.

The government of General Musaraff tried a fresh approach on local administration system disregarding constraints of provincial autonomy. The proposals and objections of provincial administrations were kept out of sight. Speakers at the seminar organized by Pakistan institute of legislative developments and transparency for members of provincial assemblies and district Nazism assessed the viability of the new system. The speakers of the seminar feared that the new local government system-introduced by military regime was a move towards restoration of one-unit system and encroachment upon provincial autonomy of the provinces of federation ('L B system', 2003).

Strategy for Improvement /Sanctity of Constitution

The federation although needs to do a lot with cooperation of the provinces in the areas of legislation, administration and division of state resources. But that may need further deliberations of each side. The emphasis of the study is on fundamental requirements of federation. As for formation of federal structure it is created under the constitution. The Supremacy of constitution is first requirement of federalism. A law according to Alexander Hamilton, by the very meaning of the term, includes supremacy. It is a rule, which those to whom it is prescribed are bound to observe. If political entities or individuals enter into a status of federal society, the laws of that society must be supreme regulator of their conduct. If a member of political society enters into a larger political society, the laws that the

latter may enact, pursuant to the powers entrusted to it by its constitution must necessarily be supreme over those societies and individuals of whom they are composed (Ahmed, n.d).

There is a certain indispensable body of recognized federal principles, which govern federal structure. A great urge of compliance of obligations relating to federal system amongst the entities is required to make the system a success. Implementation of federal obligations concerning grievances of provinces is the real issue. Constitution reflects aspiration of the composing units and provides for the system of governance not only in the present but also for future. It can be changed but its fundamentals are rarely changed as intended to remain operative for centuries. Constitution as fundamental law of the land establishes the character and style of its government laying basic principles to which its internal life has to be conformed. It organizes state organs and departments by prescribing the extent and manner of exercising the sovereign powers (Black Law dictionary, 4th ed.).

First of all at the stage of formulation of constitution it is supposed that it should contain principles of federalism comprehensively. But it does not happen all the way as presumed by its makers. Constitution, governing the federation must be flexibly made but rigidly followed. There is however deemed a defect inherent in the federal type of constitution, which the peculiar circumstances can unduly exaggerate and intensify. That defect is constitutional rigidity. It is this rigidity, inherent to a greater or lesser degree that every Federal Constitution, as Professor Dicey has pointed out, gives to the system one of its chief defects, the defect of conservatism (Dicey, n.d). But this has certain merits for federalism. Every person or institution exercising executive, legislative or judicial power must derive its authority from the Constitution. It must be set down in writing as clearly and unambiguously as possible, in order that there may be minimum of misunderstanding concerning its terms; and above all, to ensure that the important division between federal and local affairs shall not be left open to easy encroachments (The Law Quarterly Review, 1920).

The procedure of amendment of the Constitution must have specific involvement of federating units. Contrarily in Pakistan the most sacred document holds less deference position. It was amended in a manner that produced detachment between the federation and its components. In certain cases Superior Courts allowed amendment in the constitution. Courts are not empowered to amend the constitution. Even a comma or a semi-colon could not be added or deleted by any court.

Irregular process of amendment in the Constitution of 1973 by military regimes has boosted issues of provincial autonomy. Amendments so made being subjective in nature may be described to have opened the way for further decomposition of the constitution. Such amendments made with spirit and procedure alien to its fundamentals have ruined its essential features of federal principles. Making and amending constitution is prerogative entitlement of the people of state. People of the state exercise these functions through representative parliament truly representing and safeguarding inalienable rights of federating

units. The chief defect is the body of provision introduced in the Constitution of 1973 through irregular amendments that have taken away inalienable rights of the provinces. The amendments have centralized the state political system. These demerits need special attention of presently elected representative parliament to address issue of division of legislative powers, extent of federal governing system in provincial spheres along with equitable distribution of state resources. If representative assemblies address these issues democratically with the assurance that sanctity of the Constitution shall be maintained at all level, it can reinforce the bond of unity between federation and federating units.

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Biographical Note

Dr. A.Q. Sial is Head of the Department of Law at The Islmia University of Bahawalpur.

