

## **Issues and Adjustment in Pakistan's Federation**

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### **Abstract**

*Pakistan has been a federation since independence. The leader of the nation demanded for federation in the United India, but the un-cooperative behavior of Congress nudge the leadership to fight for a sovereign independent country working on the principles of federation for the achievement of distributive power between center and provinces. As the system was dreamt for the realization of, accommodating various factors of cooperation in, federation turned out to be encountered by the negative developments. Those various negative developments murdered the sole purpose of federation and consequently resulted in the hammering on ethnic and lingual identities. The research paper includes two most significant variables which are highly needed to evaluate the phenomena of federation. After the evaluation of the emerged and emerging negative factors in the progress of federation, this becomes evident to suggest the solution for the necessary adjustments in the workable federation.*

**Key Words:** Federalism, elections, constitution, Identities, center-province relations, Provincial autonomy, eighteen amendment

### **Introduction**

Federalism is implemented to organize and administer relationship between federating units and the center. It is a method to harmonize the sentiments of autonomy without affecting the unity of the state. National affairs are managed by the center while local interests are looked after by the provincial government. However, these arrangements are reconciled through a constitution. As far as origin of the federation is concerned it is result of centripetal and centrifugal tendencies. There are common dangers and economic interests that led federating units towards a federation. This is the way that led to the US, Switzerland and Australian federation came into being. Secondly this is geographical enormity of the state that leads towards decentralization and federation.

America is probably the first state to experience federation. This method of administration of the state became popular in the 20<sup>th</sup> century when several other states adopted it due several compelling reasons after Second World War. This method was adopted as the substitute of Empire system as it allows the control of the center with the prescribed limit of autonomy. The significant

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factor is that the authority is exercising through a written constitution. A federation can survive and emerge under certain conditions. There must be geographical contiguity. This factor tends to provide better communication and defense apparatus. It was mainly because the absence of this factor that British Empire could turn into federation while it was easy for America to emerge as federation. Pakistan also faced problems due to the absence of this geographical contiguity. There must a strong desire of unity among the federating units. Generally these are security concerns and economic gains that bring the units together into a federation. Usually in the presence of strong neighbor weaker states tends to create a federation. Again, initial thirteen states of US felt themselves weaker than British Empire and they joined in a federation with the purpose of a strong defense against the common enemy. With this common interest, federating units also maintain their local autonomy. They surrender only a partial sovereignty to the center and keep control of their local affairs secure with them. Along with cultural and economic interests it is essential that there must be a complete equality among the component units. In the absence of this factor a successful federation can never operate. Dominance of Prussia is the historical example in the downfall of German Empire. It was the same sense of inequality and disparity that brought about debacle of East Pakistan. As federalism is a delicate compromise between unity and autonomy, there require a mature political ability and legalism for the continuity and success of this system. There must be a deep regard for the constitution of the state among the polity and there must a willingness to accept the decisions of the parliament and judiciary. Without consent of the masses and the element of legitimacy federal system can never exist and operate in its true essence.

Adoption of a constitution is the most historic event in the history of nations. Pakistan was aimed at opting for federal form of government with parliamentary blend to incorporate the ethnic and lingual identities. This was the constitutionalism of Muslim League to adjust with the federal system. "A constitutional charter is a document of past struggles, achievement issues, arguments and compromises which have been crystalized and purified. It is at the same time a practical machinery of government, a code of conduct for the statesman of the present."(Kundi, and Jahangir, p. 23) Federal form of government has the division of power between center and provinces allocated and protected by the supreme law of the land, Constitution. Federal form of government is the most suitable form of government to heterogeneous societies. In the globalized world, most of the societies are composed of multiple ethnic, linguistic and cultural groups. A federal political system provides two sets of subjects, federal and provincial. There is also a third list known as concurrent list which is exercised by both federal and provincial governments, but in case of any conflict the powers of federal government

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dominates the provincial government. In Pakistan, the provinces associated their identity with cultural, linguistic and ethnic group. To deal with the ethnic pluralism, the dynamics of federalist politics aimed at successive constitutional arrangement in Pakistan. According to Dr. M. Waseem(2010, p. 4), the politics of center-province relations impacted the political, administrative and financial fields of public policy. In a general view, the long journey of Pakistani federation has entered into the age of development with political, economic and judicial outcome after 18<sup>th</sup> constitutional amendment.

### **Case Study of Pakistan**

Federalism has been a serious issue in the constitutional history of Pakistan. Pakistan appears at the globe as country of diverse geography with the distance of more than 1000 mile between its two wings. Apart from this there were several other factors which contributed later on in the issue of federalism. Hence, these factors have their trace in the British era.

### **British Legacy**

Pakistan was initially comprised of Punjab, Sindh, NWFP, Baluchistan and Bengal. Each of these provinces was kept under a separate administrative setting by the British authorities. British authorities had taken all measures in order to consolidate their rule and to keep local authorities under control. Incidentally the provinces became part of Pakistan had less experienced federal and constitutional norms. This legacy seriously affected the course of democracy and constitution in later period of post independence.

As a part of policy British authorities recognized the authority of Balochi and Pakhtun tribal chiefs under the Sandeman treaty which is also called 'forward policy'. This area had never been under constitutional apparatus. It was controlled from the center and the purpose of this province was to provide defense shield against the invasion from the North. Even this province was not given the status of a province which was demanded by All India Muslim League in 1927. After independence this legacy has been visible at all stages of constitution making. As far as Punjab is concerned, its Western part had totally different arrangement than that of the rest of the province. In Western Punjab land owning class was given total protected and in 1900 Punjab Alienation of Land act was promulgated to facilitate the land owners with the free transfer of land within the agricultural tribes. These land owner Muslims, money lender Hindu Jatts and Sikh community remained at the side of government authorities at all times. In the rest of Punjab, government blessed Unionist Party supported the British policies and never let both All India

Muslim League and Congress to establish their roots in the province. These coercive and dominant trends kept on rise even after independence. Moreover the predominant of Punjabi soldiers and officers in the British army made the position of this province even more authoritative.

NWFP, now KPK was the area that was kept under the political agent. The settled areas of the province like Hazara, Mardan, Peshawar, Kohat, Banu and Dera Ismael were later on became part of British administrative system. Consequently federal and constitutional norms were not well establish in them as well. Although Sindh was separated from the Bombay Residency but it was an area that has not experience the vibration of development like rest of Bombay province. The land owning class could not learn constitutional norms even after 11 years of getting the status of a separate province. East Bengal on the other hand had a totally different scenario. This part of the British India had experienced many political and strategic incidents. The level political training of this province was totally diverse from that of NWFP, Baluchistan and Punjab. This entire diverse and difficult legacy had its implication on the process of constitution making and federalism in the post independence era.

As discussed earlier that no area came under Pakistan's administration has fully experienced the constitutional norm due to varied reasons and requirement of the British rule. There were multiple geographic, economic and demographic variations that demanded special apparatus of management. As security, economy and identity were the common goals of all units; federal system was the most suitable answer to these issues and demands.

Pakistan adopted the Government of India Act of 1935 with minor changes. It served as the first interim constitution. It worth noticing that British Government created a federal system but it was exclusively designed to serve the British purposes and the tilt of authority in this act was more towards center than the federating units. The federating units were given a share in governance but the real authority rest with the center. The powers of federating units were limited. There were hopes that a constitution shall be adopted in short period of time but it had taken almost a decade to frame a constitution.

### **Evolution of Federation and Pre-Partition Historical Background**

There are three ways through which a federal system takes place. First, it is the transformation from a unitary system to a federal system through the route of constitutional changes. Second, the independent states want to join federation by undermining their external sovereignty under a written constitution. Third, the colonial legacy tries to control the external territories

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through the federal system where local people have to work under the supervision of colonial masters. This colonial federal setup was introduced in United India by the British Government to harmonize the heterogeneity. The major reason for demanding federalism, in Pakistan suggests that to harmonize the ethnic and linguistic groups in heterogeneous society of Pakistan, was to ensure the political harmony. Hence, federation safeguards the interest of federating unit against the authoritative central government. After independence, as Dr. Waseem describes, federation of Pakistan occurred in two phases. First phase, he has named as pre-federalization (1947-71) which holds the characteristics of centralization of authority. Second phase is federalization (1971 - ...) which is moving forward despite the challenges from centralist state authority.

#### **Colonial Legacy: Government of India Act 1935**

Muslim league was demanding for federalism. The massive demand caused the input of Minto Morley Reforms (1909) which was advocating separate electorates for Muslims as well as Provincial autonomy. Joint efforts of congress and Muslim League after the Lucknow Pact of 1916 resulted in the Montague Chelmsford Reforms in 1919. In this collective demand, the federal system was provided. Even in 1924 All India Muslim League asked for the full-fledged provincial autonomy. At the same moment, Jinnah asked for Constitutional arrangements for residuary powers. (Kundi, and Jahangir, p. 25) Allama Iqbal, in his Allahabad's address of 1930 raised the voice that the "Punjab, Sindh, Balochistan, NWFP and Kashmir should be united into a separate / autonomous states. Iqbal also had the vision of federation for Pakistan.

#### ***Government of India Act 1935***

Government of India Act 1935 adopted the federal principles to accommodate the regional aspirations through provincial autonomy. It contained three lists, and residuary powers were given to Governor General. Muslim League did not control the Muslim majority provinces. Punjab was never a Muslim League government. North West Frontier Province (NWFP) was ruled by Congress. Bengal and Sindh had weak coalition governments. To gain the support of Muslim majority provinces, Muslim League raised the demand for autonomous states in the same provinces. Lahore Resolution was then presented publicly with the agenda of separation. It was considered Magna Carta for the various ethno-nationalists. (Waseem, 2010 ,p. 4) Since Independence of Pakistan, two wings were vulnerable and this pushed the ruling elites towards the strong centralization of power in the hand of Karachi. The, then, political situation created two approaches for federation in Pakistan (1) To make federation a

successful form of government (2) to make it as toothless as possible. (Kundi, and Jahangir, p. 6) According to Kundi, Government of India Act 1935 undermined the Section (5) "Federation of India" and tended toward centralization of Power, favoring central government. Same happened in the case of Pakistan. (Kundi, and Jahangir, p. 25)

### **Constitutionalism and Federalism in Pakistan**

Muslim League had promised to incorporate in the establishment of Pakistan. The federal principles were undermined since 1947. The hope for less role of center in the provincial affairs was reversed. Constitutional crisis occurred with the functioning of first Constituent Assembly, because it could not take over the different voices of political issues of federalism. Thus the Government of India Act's (1935) federal structure remained the part of the Pakistan's political system.

### **Post Partition Development**

Despite the strong recommendation of Basic Principles Committee, the principles of federation were largely ignored. Thus the experimentation of federalism in Pakistan begin to took place with its very first constitution that talks about the parity formula and really undermine the federal principles.

### **First Phase: Inter Wing Parity (1947-1971)**

With the demographic inequality, the unbalanced federal structure came into effect. Soon after the independence the elites belonging to the western wing took advantage of the scenario and enjoyed political, administrative and economic power. In this case, representation became major issue and Khawaja Nazimuddin presented bicameral legislation with 60 members in upper house and 200 members in lower house. Later, M. Ali Bogra presented 10 seats in upper house and 165 seats in lower house to East Pakistan; 40 seats in upper house and 135 seats in lower house for West Pakistan. This pushed for opting Parity formula for representation in parliament. In this whole scenario, one unit scheme was introduced to balance the issue of representation. The advantage was taken widely by Punjab to sideline the opposition from Sindh, NWFP, and Balochistan. (Choudhury, 1969)

### ***The 1956 Constitution***

The 1956 constitution brought in line the federal form of government with the central government's dominating role. Two units were introduced. National Assembly was comprised of 310 seats, 150 seats to be elected from East

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Pakistan and 150 from West Pakistan, while 10 seats were reserved for women. This contained 3 list: federalist with 30 items; provincial list with 94 items; and concurrent list with 19 items. Yet it could not prove well to maintain healthy relationship between center and provinces because of its unstructured framework. Punjabization was so dominant that it captured the interest of other entities. Even the capital of Pakistan was shifted from Karachi to Islamabad which is situated in Punjab.

Pakistan did not sort out the organization / establishment of provinces on the basis of Language. Rather, Pakistan preferred to organize / establish new provinces on the basis of administration because language was unacceptable as a source of identity. India, on the other had preferred to create provinces on the basis of language to maintain the sub-units of politics and ethnic identity. The 1956 constitution was abrogated and military – cum presidential coup was a major set back to federalism. Meanwhile the constitution remained abrogated from 1958 – 1962, the political system worked as a unitary system with all power in the hand of strong center, Ayub Khan. (Jalal, 2007)

#### ***The 1962 Constitution***

The 1962 constitution aimed at the legitimacy for military rule. It also had three lists with very strong role of president. President was head of state and head of government. It consisted of unicameral legislature. The duration for elected representative was for five years. Parity formula says to have half of the representatives from East Pakistan and half from the West Pakistan. The jurisdiction of federal government was dominating provincial government.

In 1966, six points of Awami league redefined federalism and demanded for “adult franchise in a parliamentary framework; two subjects for the center i.e.defense and foreign policy,alongwith communications; two convertible separate currencies or one currency to be handled by two separate reserve banks for the two wings; power of taxation for the provinces; right of provinces to handle foreign exchange and foreign trade; and paramilitary forces for east Pakistan”.(Waseem, 2010 ,p. 8) The constitution of 1962 was so radical to fulfill the aspiration of East Pakistan. “The political events, as Akber Kundi say, following the proclamation of the Martial Law in 1969, and 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. Yahya Khan postponed the session of National Assembly on March 1, 1971 to pressurize Mujeeb -ur- Rehman to compromise six points.” (Kundi and Jahangir,p. 27) But the movement of troops took us to the very next step of disintegration of East Pakistan with West Pakistan, thus federation collapsed violently.

## **The Constitution of 1973**

The political environment needed the new system to run the affairs of the country. The country had gone through a very worst situation of federation and the center was more vigilant to suppress the nationalist elements. The Constitution of 1973 aimed at providing maximum provincial autonomy. The One – Unit was abolished and Balochistan was carved out as a new province. First time, bicameral legislature was selected. The Senate was elected for four years. Punjab, Sindh, Balochistan and NWFP were to elect 14 members for the term of four years. The 1973 constitution contained two lists, federal and concurrent list. Federal List had 67 subjects. Provincial languages were recognized, particularly in Sindh, but their negative outcome on Mohajirs led to language riots and, later, transformed into ethnic friction between the two communities. The ethnic rising also took place in Balochistan where the government was suspended. In the retribution, the government in NWFP resigned from the assembly. (Jalal, 2007). Military operation was carried out in both the mentioned provinces to counter the element of nationalism. In the history of Pakistan, another military coup took place in 1977 and suspended the constitution for 8 years. During the time period of these 8 years, all the political structures were controlled in unitary manner. During the strengthening period of federalism, the avoided communities were becoming ethnic identity. “Ethnic group representing majority communities in provinces, such as Sindhi in Sindh, disenfranchised minority groups. The federal project consolidated the Sindhi identity and within a decade and a half created a Mohajir ethnic identity.” (Waseem, 2010 ,p. 10)

### ***8<sup>th</sup> Constitutional Amendment***

General Zia -ul- Haq brought 8<sup>th</sup> amendment to revive the constitution. This protected the presidential orders and ordinances. It enhanced the legislative power of Senate. The number of senators were increased from 14 – 19 and tenure was increased from 4 to 6 years. Senate also got the power to amend the Constitution. 8<sup>th</sup> Amendment brought lots of power to president and it seems that he was all in all powerful. President hold the power under 58 (2) (B) to dissolve the assemblies without taking in confidence the opinion of Prime Minister. This clearly states that center was again powerful.(Ahmed, 1990)

### ***18<sup>th</sup> Constitutional Amendment and Federation***

After the 17<sup>th</sup> Amendment in the Constitution of 1973, the framework of political institutions was restructured. It increased the membership of National Assembly to 342. 272 members to be elected directly; 60 seats were reserved



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for women and 10 seats for minority. The size of senate was also expanded to 100; 22 seats for each province; 8 seats for FATA, and 4 seats for Islamabad. Senate also got the authority to see money bills. President got the power under Article 58 (2) (B) to dissolve assemblies. (Sattar, 2012)

The civilian political leadership demanded for Charter of Democracy to undo the constitutional reforms in light with the charter. The Charter of Democracy should be considered as significant as glorious revolution to Britain's democracy. The Charter was signed in London in 2006 between the two major political parties i.e. PML N and PPP. The Charter asked for: end to presidential powers of dissolution of the National Assembly and appointment of Governors, armed services chiefs and the chief justice; abolishing the concurrent list: issuing a new NFC award, expansion of the senate to give representation to minorities; integration of FATA with NWFP; empowerment of Gilgit Baltistan; lifting the ban on assumption of the office of Prime Minister for the Third time; establishing the Truth and Reconciliation Commission and a National Democracy Commission; accountability of ISI, MI and other security agencies to the elected government; removing indemnities introduced by military governments; appointment of the higher Judiciary through a Commission chaired by a Chief Justice who had never taken oath under the Provisional Constitutional Order (PCO); and establishing a federal constitutional court with equal representation for all the federating units in order to resolve the constitutional issues.

There were hundreds of changes which were brought in the constitution under 18<sup>th</sup> Constitutional Amendment. Concurrent list was abolished and residuary powers were given to provinces. Powers of president was surrendered to Parliament. Article 58 (2) (B) was abolished to maintain parliamentary supremacy (not sovereignty). Council of Common Interest was established to look after the affairs of contention between center and provinces. Issuance of presidential ordinances was strictly restricted. Appointment for unbiased election commissioner was set. Judicial commission was established and NWFP was renamed as Khyber Pakhtunkhwa. (Hanif, and Muhammad ,2012)

### **Major Issues and Adjustments**

Dacey said that acceptable distribution of powers between the center and units is an essential feature of federation.(Dicey, 1973, p. 151) Federalism is the most popular and practical form of government to maintain the smooth functioning between the center and the provinces. Federal government always enjoys the lead over the province on the issues of national interest. It has the supremacy / superiority of legislation. In Pakistan, "center has maintained a dominant role over the provinces right from the beginning. The dismissal of

Khan Sahib Ministry in NWFP on 22 August 1947, M. A. Khuro 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 Government of India Act 1935), despite the majority they held in the Assemblies, was a reflection of the federal principles the country was created on."( Kundi and Jahangir, p. 29)

Among the various factors, there are bundle of reasons to strengthen the role of center and creating issues in the long term working of federation. First, Pakistan soon after the Martial Laws, in the absence of constitutional frameworks, functioned as unitary system and strained the relations between the center and provinces. Secondly, in all the constitutional setup the power remained under the central government in a big variety. The center showed its reluctance in sharing powers with the federating Units. Even the consensus based first democratic government under the Constitution of 1973 and leadership of Zulfikar Ali Bhutto took place, but it dissolved the provincial government in Balochistan. Instead to reconcile with the opposition and liberation factors, this act was more violent in damaging federal - province unity. Another reason, in this case of Pakistan is that it remained under Military – Bureaucratic rule for longer time as compared to weak and unstable representative governments. (Ahmad, 2009)

In order to seek legitimacy, the military governments kept the role of center really strong in the affairs of Units and the principles of Federation were really discouraged. Among the other reasons, the delay in the constitution making is the major starter of this contention. At the time of independence, this must have been the duty of constitution framers to strengthen the federal - provincial institutions. But, the parity formula and unjust political structures created the air of distrust over both wings, East Pakistan and West Pakistan. Even the government under the 1956 constitution remained in power for a very little time and it was soon hijacked by the political chaos. These were the weaknesses of civilian government that invited the military coup and strained the federal system. When Zia - ul - Haq suspended the constitution and run the system under unitary system, it was also his efforts to hold the seat of absolute power at the center – President's seat. "The 8<sup>th</sup> Amendment had made his (president's) 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 center government (in 1988, 1990, 1993, 1996) under the section 58 (2) (B) knocked even all the provincial governments, including that one which remained in the opposition to the Center." It can be generally observed that among all the constitution a single factor was very common that the federalist was "the richest in terms of the number and subjects and their importance." (Shah, 1994,p. 63) The 1962

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constitution held the distribution of power at center while the constitution of 1973 had the same supremacy associated to center.

“The Pakistan 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 power.” (Kundi and Jahangir, p. 31) The solution lies with provincial autonomy and center has always remained reluctant in sharing power. Particularly, the concern of financial issues such as taxes and funds were exercised by center. Even today Balochistan demands its royalty over the natural gas. But, center is hesitant to share any. There are number of politically organized units where the federal principles are at worst stage cause of narrow provincialism, lack of national integrity, absence of viable party system and heterogeneity. Pakistan federation is also injured by the same issues. But, there are some recommendations to the solution of problem.

#### **Recommendations/ Conclusion**

- Just like 18<sup>th</sup> Amendment, constitutional safeguards should be ensured to the financial, legislative and administrative interest of the provinces without any interference of Center.
- NFC award should be revised and a good deal of share in revenue and expenses should be given to provinces so that the developmental projects could be launched in all the regions simultaneously.
- Through the constitutional framework the interference of center in the affairs of federating units must be reduced so that they may work as autonomous entity.
- Most of the times, provincial governments do not cooperate with center government and constraints the relationship. This should be undone and the body of Council of Common Interest (CCI) should ensure that this does not happen.
- Bilateral and collective discussions should take place to evaluate provincial resources, and funds must be distributed for development with some criteria of poverty, education, medical facilities etc.
- Geo-Political and socio-cultural conditions of provinces should be understood. This will help a lot in developing cooperative center - province relations in the federal setup of Pakistan.
- There has not been any national level political party which consequently has resulted in ethnic nationalist and regional political parties. The political culture of Pakistan also needs to be addressed so that the unity and integration can be achieved as a nation.
- As long as inter province grievances are concerned, they can be eradicated by bringing land reforms. So that the representatives in

Assemblies will not be landed aristocracy rather a true representative of the people will defend the interest of his / her people over his / her personal interests.

Center and federal agencies were always dominating provincial politics. Same happened during the constitutional and military regimes. In the Pakistan, the major issue was somewhat ethnic but the deliverance of power was the major issue. Legislative, economic and administrative powers were never shared as they should be. These powers if shared with justice could resolve more than fifty percent issues of Pakistani federation. Nationalism is not good for the Pakistan's federal body because it brings discontent and polarity between the provinces. Though, 18<sup>th</sup> Constitutional Amendment is a step toward the maturation of federation and parliamentary democracy, but we must keep running it smooth. We, as a nation, must respect the spirit of democracy, federation and parliamentary setup. Constitution's supremacy should be maintained and, most importantly, federating units should be the decision making body concerning foreign and internal issues.

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