

Prospects of Federalism in Pakistan

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Abstract *Federalism is created by a state having heterogeneous population with a desire to have provisions for adequate distribution of economic resources within a democratic form of government. The economic interaction is usually guaranteed by the constitutional arrangement of the land. The desire for the creation of a federation may be the economic interaction, interdependence on each other by the Centre and federating units. Proper distribution of powers between the Centre and Federating Units flourish when the residuary powers are vested in the federating units. The 18th Constitutional Amendment made a landmark in the history of Pakistan as it introduced a paradigm shift in the democratic set-up of the country. This shift had long been cherished by most of the mainstream political parties as it gives an opportunity to the ruling parties to complete the tenure of the government.*

Key Words:

Federalism,
Units,
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Common
Interest

Introduction

Federalism has been adopted by countries as political system with huge population and territory. Such countries usually tend to be diverse in their population. Homogenous population may not need to require a federal system of government as compared to the heterogeneous one. This diversity of population usually spread over a vast territory which facilitates a political system that caters to the stated needs of each segment of the society (Ahmad, 2014). Since these segments of the society pertain to a specific territory, there emerges regional units, states or provinces which need to be harmonized under a unified forum through legal and political arrangements enunciated in the constitution. Federalism operates between two levels of governments, i.e. the Centre and the Federating Units. The Federating Units may be termed as Units, States or Provinces. It establishes two sets of governments in the country, one at the

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Central level which operates over the whole of the country and the other at the provincial level as in the case of Pakistan, at states level in the case of the United States and India and at units- level in the case of Canada.

Federalism is considered to be one of the best forms of government workable in most of the huge democratic countries of the world such as the United States, India and Canada. Constitution guarantees the proper distribution of powers between the central government and the provincial units. The distribution of powers are drawn on such lines that the former and the latter work within different spheres of functions and coordinate for the sake of national interest. There has been no ideal formula for the distribution of powers between the Centre and Federating Units (Rizvi, 2006). Normally the distribution of residuary powers is done in three ways (Haq, 1985). The first method is by enumerating the powers of the central government and leaves the residuary powers to the provinces. This aims at strengthening the positions of the federating units *vis. a vis.* the federal government and is prevalent in the United States of America. The second method is by defining specifically the powers and subjects of the federating units or provinces and leaves the residuary powers to the federal government. This aims at establishing a strong Central government. The Canadian Constitution is based on this pattern. The third method is by enumerating the powers in three separate lists of central, provincial and coexisting legislative lists. The charter of 1956 of Pakistan, Government of India Act 1935 and Indian Constitution followed this doctrine. People in a federation have to conform to two sets of laws; the general laws of the central government and those of the provincial governments. The respective laws of the two sets of governments should be clearly enumerated by the constitution so as to avoid interference or encroachment by one upon the domain of the other. The basic logic behind the constitution is to establish the supremacy of law of the land the guarantee which it serves to establish a covenant between the two governments.

Presently 28 countries of the world with 40% population of the world are functioning as federations in the world systems. Their *Modus Oprandi* differs in terms of centripetal and centrifugal systems which suits their political atmosphere and culture. The former relates to a strong Centre with residuary powers vested in the Centre while the latter relates to weak Centre *Vis a Vis* strong provinces or units. In the United States, the decentralization system prevails where more powers have been vested in the states while in Canada the system has favored centralization of powers with residuary powers vested in the Centre. Such was the case in Pakistan as it was based on the concept of centralization of powers but the passing of the 18th Constitutional amendment bill to the Constitution of the 1973 has devolved powers to the provinces resulting in a shift of powers from centralization to decentralization.

Federalism in Pakistan

The form of government had been a great issue in Pakistan since it appeared on the landscape of the world. This gained great momentum particularly after the demise of Quaid-e Azam where certain voices raised objections against the federal form of government and suggested that a unitary form of government would be best suited to Pakistan as it aims at a strong Centre. But majority of the political elites believed that only federalism can integrate the country with diverse population (Ahmad, 2014). At that time three factors attributed as to why federalism was adopted in Pakistan. Firstly, the demand of provincial autonomy had been a long-cherished by the Muslim League during the pre-partition era. Secondly, the modalities which were utilized to divide India by carving out a separate federation for the Muslims majority provinces also laid down the federal system to be utilized by the new country. Thirdly, the nature of Pakistani society was the most dominating factor as it was based upon diverse cultures, different languages, different ethnic identities and different social norms (Ahmad, 2014).

Federalism serves the interests of the nation as a whole and distributes powers in a systematic way. It creates harmony and cohesion between the center and provinces by lay down certain principles for the smooth functioning of the government. A sort of confidence building and efficiency is the main aim of this convent (Mazzone, 2001). Federalism, according to Watts (1998), is a composite government which serves to bring together the two sets of governments; the center and the provinces, each independent in its sphere of exercising governmental powers. The spheres of powers are guaranteed by the constitution such as legislation, administration, taxation and power of election. Federalism acts as a covenant between the contracting units and the central government and implies affinity between the two covenanting parties while complying with some set of compulsion (Rodden, 2005). By its very definition, federalism opines that for the sake of subset of decisions or activities by the central government, it is mandatory to get the consent of the contracting units (Rodden, 2005).

Brief Sketch of Federalism in Pakistan

Looking at the pre-partition history of the Indo-Pak sub-continent, it is pertinent to mention here that the British regime had also envisaged federalism for the Sub-continent for the sake of expediting administrative necessity as this could prolong their regime in the region with a steady allocation of powers to the central and provincial units of India from 1919 in the aftermath of Montague-Chelmsford Reforms (K, 2007). With the passage of time, the British Government, with gradual instrumentalism brought in the Government of India Act 1935 which was based on federalism. It was incorporated at a time of great tension between the British government and the colonized people as a

consequence of British experimentalism with constitutional outlines and reaction of Indians to it. The Act was a manuscript of limited self-governance for the undivided India which was suited to the verbal communication and the institutions of India but at the same time envisaged British parliamentary control over India in case of any emergency and untoward circumstances (Newberg, 1995). In the British system though Unitary form of government prevails and is best suited to its environment yet it preferred a federal form of government for the undivided India which, according to them would best serve the interests of the region inhabited by diverse cultures, traditions and populations.

Federalism in Pakistan was threatened by the issues of bilingualism and the geographical separation of the two Wings of the country in the Post Bengal cessation period (Choudhry). Federalism has been operational in Pakistan since the very emergence of it on the map of the world. The framers of the first constitution of Pakistan in 1956 under Chaudhry Muhammad Ali as Prime Minister adopted the parity formula between the two wings of the country by allocating One Hundred and Fifty seats to each wing, which was a Unicameral legislative House. This resulted in the formation of two pollard federal system which was likely to fail in the face of deadlock over many issues and other resources between the Centre and Provinces (Adeney, 2007). Unlike the norms of federation in multi-ethnic society, the geographical territories were not revised to accommodate the linguistically ethnic communities as is usually done under such a federal system. Besides this, the provinces were barred from adopting languages of their choices in the usual routine of their transaction as the East wing was in majority while Urdu was spoken by only a small sect of the country and was given the status of an official language (Adeney, 2007, pp 106-107). Thus the first experiment of the country being a federal state suffered failure as it failed to bring about any gap-bridging in reaching out any consensus between the two wings of the country. However, prior to any elections that could be held under this strong centralized form of federal government, the bureaucracy and martial forces of the governmental machinery usurped power in 1958 by abrogating the constitution of the country and establishing an even stronger centralized political and administrative structure that centred round an executive constitution of the 1962 under General Ayub Khan (Ahmad, 2010).

The second Constitution of 1962 also came into existence as a result of the marriage between the military and bureaucracy but could not envisage the federal structure of the state. This constitution brought only two lists, federal list for the central government and concurrent list for both the Centre and provinces, thus giving opportunity to both the Centre and provinces for legislation while it totally ignored the provincial list. Ignoring the provincial list explicitly meant the negation of provincial autonomy and a sense of deprivation got developed in the smaller provinces. This created a sense of deprivation among the Bengalis who were already feeling deprived in most of the governmental affairs (Muhammad,

1995). Another important lacunae of it was that it concentrated powers in the hands of the President with a Unicameral legislature (Ahmad, 2010). Provincial governments were to be represented by the governors which were to be selected by the head of the state. Excluding the provincial list in the constitutional arrangement was looked upon as a flaw in the constitution by majority of the political analysts. Thus, the centralized forms of constitutional arrangements in 1956 and 1962 coupled with Punjabi-domination in most of the governmental spheres, with no response to the ethnic and cultural diversification between the two wings brought about the cessation of the East Bengal in 1971 (Ahmad R. , 2010, p 20). Thus, the hitherto two constitutions of Pakistan had made recommendations for Pakistan to be a federal state while catering for provincial autonomy (Kundi & Jehangir, 2002). It is also a fact that General Ayub Khan believed in a strong central government which itself favoured the element of nationalism (Chaudhry, 2005).

The Constitution of 1973 is the only consensus-based constitution in the entire history of the country as it represented all political strata of the country. This gave many concessions to the provinces including language, cultural and centrifugal nature to the provinces *vis a vis* the Centre. But still the dominance of the Punjab province overpowered other provinces on account of its huge representation in the National Assembly. Besides establishing a parliamentary form of government with bicameralism, it also dwelt upon two lists of Subjects, the federal one and the concurrent one. The plus point of this constitution was that it was consensus-based though it also drew two lists of subjects and the provincial list was again not incorporated in it. The federal list comprised 59 lists while the concurrent list comprised 47 lists on which both the central government as well as the provincial governments could legislate but even here in case of any deadlock between the two, the former would have an upper hand. Though provincial list was also ignored in this constitution but the creation of Council of Common Interests (CCI) and National Finance Commission (NFC) aimed at resolving any inter-provincial disputes while creating an atmosphere of democracy in the state. Before the passage of the 18th Constitutional Amendment Bill, certain issues confronted Pakistan (Rizvi, 2006). Firstly, the poor quality of arrangements for complying with the minimum requirements of federalism. Secondly, the disruption in the natural growth of federalism and provincial autonomy as envisioned in the constitution of 1973. Thirdly, non-availability of powers to the federating units that the constitution has assigned. Fourthly, the lack of fiscal autonomy and unjust distribution of natural resources.

As compared to the previous two constitutions, this constitution stands unique for having created Senate by giving equal representations to all provinces including the smaller ones in order that no deprivation may accrue to the smaller provinces. The Senate also created the system of checks and balances in the country as it served as a check upon the powers of the National Assembly (Khan,

2010). The issues of ethnicity and language were dealt with without any consociationalism as a result of which Punjab captured complete preponderance in the seats of the National Assembly with Urdu becoming the national language although in Sindh it was replaced with Sindhi by the government (Adeney, 2009). This constitution had created only two lists; one at the federal level having 67 subjects while the other was the concurrent list having 47 subjects over which both the central government as well as the provincial governments had powers to legislate. Concurrent List empowered the provinces to make laws relating to them but in case of any dispute between the centre and provinces article 143 of the constitution strengthened the hands of the former by giving preponderance to the former over the latter in any matter (Kundi & Jehangir, 2002).

Council of Common Interest

Creation of the Council of Common Interest (CCI) under the Constitution of 1973 is a unique feature which is to be selected by the head of the state and represented by the Chief Minister of each province and equal numbers of federal ministers. The council has exclusive jurisdiction over water issues among the provinces, issues relating to railways, electricity, oil and gas and industrial development (Chaudhury, 2005). It has been a very effective body for the cooperation in a federal form of government so as to facilitate cordial relations between the Provinces and the Centre. Amendments have been made in Article 153 and Article 154 of the constitution respectively wherein the number of federal government nominees should be three and not four in the CCI and the council has been asked to have a permanent secretariat and must meet at least once in three months but provinces can request more meetings in case of any untoward situation. Article 157 dealing with electricity has also been amended where prior permission from the provincial government is mandatory in case any hydro-power project is to be made. In the face of any disagreement between the central and provinces, the matter will be referred to the CCI for timely resolution (Abbasi, 2010). Notwithstanding this, other important matters such as major ports, census, national planning and national economic coordination, institutions for Higher Education and Research have been placed under part- two of the constitution where advise from the Council of Common Interest is required. Thus important departments were devolved to the provinces which is a great step towards provincial autonomy as envisioned in the Lahore Resolution of 1940 under the presidency of Quaid-e-Azam. By giving the CCI more powers over matters pertaining to Part-two is the actual devolution of powers to provinces and is a great step towards provincial autonomy. This has strengthened the hands of provinces as against the Centre as it could easily veto the right of any province which was against the interest of the central government. This has also placed a check on the hegemonic powers of Punjab province since it had a predominant

position over all the provinces in any issue. This may best serve the purpose of provinces where no sense of deprivation can develop between the provinces as we have bitter experience in the case of East Pakistan that got separated from us in 1971.

The Council of Common Interest has been constituted and reconstituted many a time prior to the passing of the 18th Constitutional Amendment in April 2010. These amendments were made by the ruling parties in order to increase their share and representation in the CCI. Individual qualities also played due role in the selection of the chairman of the CCI. The CCI has been headed by the Prime Minister or Chief Martial Law Administrator (CMLA) 13 times out of 17 times while on the four times it was headed by the federal minister. Between 1973 and 2010 the CCI met only eleven times and did not prove to be a functioning institution of the country (Zahid, 2013).

Council Meetings

Rules for the council meetings are enshrined in Rule 5 of the council with the chairman having the prerogative to call a meeting when and where as deemed fit by him. The meeting of the council has to be arranged at least once in three months and will be attended by its members. It can also be attended by any Federal Minister, or a Provincial Minister or any official unless permitted by the chairman of the council (Abbasi, 2010). Quorum for the meeting is at least four members with at least two Chief Ministers but a matter or issue pertaining to a province cannot be discussed unless it is represented by the respective Chief Minister of that province. Summary of the points in question must be circulated among the members prior to the commencement of the meeting. Any new or out of agenda point can only be discussed through the permission of the chairman. Notice regarding the meeting will have to be communicated to the members at least ten working days in advance while summary of the points to be discussed in the meeting shall reach the desk of the secretary at least 15 days before the commencement of the assembly.

Thus, rules for the meetings of the Council are enshrined by the constitution and the quorum has also been fixed and in its absence no meeting can be arranged unless four members of the council are present including two Chief Ministers. But if the issue pertains to any province then the Chief Minister of that province will be required to have presence in the meeting. No issue or any point can be discussed in the meeting and for the meeting the points to be discussed, the points must be circulated to the members of the council in advance so as to facilitate them in their discussion and reaching at a viable solution to the issues in question.

Manner of Case - Submission

The Council has also determined a procedure for the submission of cases before the panel of the council. All the cases should be submitted in printed form before the council by the Secretary of the Division or the Chief Secretary of the concerned province in the form of a summary in a brief and terse manner. The summary must give the background, facts and points having relevance for discussion with recommending note from the originating part of the government. Summary should not exceed two pages in printed form and may include all the relevant papers as are necessary as annexure. In case any reference is made to any decision of the council that is decided by it, it must be attached as annexure or summary (Abbasi, 2010). If a case is related to more than one Division or Provinces, it cannot be brought before the council unless the concerned Divisions or Provinces have considered it in advance. The disputed points, difference of opinion or points of differences, if any, must be stated in the Summary.

The cases should be submitted to the council in printed form and its length should not exceed two pages. It is also pertinent to mention that all the necessary documents should be attached as annexure at the time of submission of cases before the council. If any issue or matter that is already decided by the council, it must be attached as annexure for reference. The council can also send a matter to the concerned quarters for opinion and expert views.

Circulation and Confirmation of Minutes and Decisions

A facsimile of the proceedings and decisions of the meeting should be circulated to the members of the council by the Secretary of the council within seven working days for perusal of the case by the members. The members will return the same copy to the secretary of the council within fifteen working days of the issue of the copy (Abbasi, 2010). The Secretary of the Division or the Chief Secretary of the Province concerned will also be provided a copy of the decisions and minutes by the secretary for necessary action and perusal of record.

This step of providing a reproduction of the proceedings and decided points taken by the council is a step towards transparency and shared responsibility. It ensures coordinated work through joint ventures by the various quarters of the council. It gives ample time to the members of the council for the discussion of the case.

Implementation of Decisions

Procedure of the decisions taken during the meeting is enshrined in Rule 11 of the Council of Common Interest 2010. Upon the decision of the case by the council regarding the center or provinces, the concerned quarter (center or

province) is required to take timely action for giving effect to the decision, provided it conveys its intention to refer the case to the parliament within fifteen days of its communication. When the Secretary of the Division or the Chief Secretary of the concerned province receives the decision of the council, transmit it to the concerned Division or Department for necessary accomplishment, maintain a record of the decisions received by ensuring that prompt action has been taken regarding the decision and may have coordination with the concerned quarter. Decisions of the council shall be monitored by the secretary of the council and the Secretary of the province or of the Division or the Chief Secretary shall furnish such documents to the Secretary of the Council as may be necessary to follow the case for implementation.

The CCI has become more effective and efficacious after the passage of the 18th Constitutional Amendment Bill by the Assembly since it looks meticulously into the matter and does all the needful for the proper implementation of the decisions taken by the Council. It has determined a time limit for the concerned quarter which shall expedite the case in a speedy way. The 18th Amendment has empowered and strengthened CCI is an important development that most of the political parties had been awaiting since the creation of Pakistan. This has brought about a balance in the Centre-Province relationship by scraping the concurrent legislative list and vesting more powers in the provinces (Khattak, Qamar, & Aziz, 2010). The CCI is a representative body of the federal as well as provincial governments to decide matters of common importance to both the Centre and Provinces according to a specified procedure. In the post-1971 scenario, Pakistan had been viewed by many of the political analysts as a structurally imbalanced federation with one province dominating the entire scene in most of the critical issues. This one province domination had made Punjab to overpower all the institutions of the state machinery and enjoyed an absolute majority in the Parliament at the expense of other provinces. This concentration of legislative and executive power in the hand of a single province has proved to be a source of conflict in Pakistan. It was the 18th Amendment that brought the provinces at par with one another and created a sort of parity among the provinces. Apart from the Council of Common Interest another important milestone of this amendment was strengthening the National Finance Commission (NFC).

National Finance Commission

National Finance Commission was constituted under Article 160 (1) of the Constitution of 1973, Islamic Republic of Pakistan and was proposed to meet at the interval of every five year. It is headed by the Federal Finance Minister and comprises the Chief Ministers of the respective provinces and other members as are determined by the President of the Republic after consultation with Provincial

Governors (Khattak, Qamar, & Aziz, 2010). With the passage of the 18th Amendment, the share of each province in every NFC Award can in no case be lesser than the previous award as per Article 160 (3-A). Another landmark of the Amendment pertains to the distribution of national revenues among the Centre and Provinces and the share of a province cannot be reduced beyond that which it had received in the previous award of NFC.

Besides strengthening the Council of Common Interest, the 18th Amendment made some drastic changes in the constitution to carve out a balanced structure of federalism in Pakistan (Bukhari & Faisal, 2013). The abolition of concurrent was hailed by the provinces as it gave them more institutional space and provisions. Earlier the said list was more contentious one between the Centre and Provinces as it empowered both the Centre as well as Provinces to legislate on matters enshrined in Part-two of the constitution but even here the federal government had more powers to over-rule provinces and particularly the smaller provinces.

Pakistan has been faced with the dilemma of federalism and particularly in the distribution of powers between the Centre and Provinces. To this end many constitutional attempts were made to make a federal state but no efficacious results were ever produced. After the cessation of East Bengal in 1971, Pakistan was termed by many analysts as a structurally weak federalism. Moreover the poor quality of constitutional arrangements that were made from time to time also did not comply with the wishes of the nation. The disruption by many forces in the way of natural growth of federalism particularly by the military intervention also crumbled the state institutions. The non-availability of resources and issue of provincial autonomy was another factor responsible for the failure of federalism in Pakistan. The lack of fiscal autonomy and an unjust distribution of resources among the provinces with the dominance of Punjab was another cause of weak federalism in the country. The 18th Constitutional Amendment resolved many issues pertaining to the provinces in terms of autonomy and distribution of resources.

Conclusion

Federation has been viewed as the best form of government by most of the political analysts. It is well suited to the nature of countries that are inhabited by the diverse and multi-ethnic communities of the world. Most of the federated countries of the world such as Canada, United States, India and Pakistan are inhabited by the diverse population and hence federalism is very much according to the nature of these countries. Before the passage of the 18th Constitutional Amendment Bill, Pakistani Federation was modeled on the lines of Canada as it had vested the residuary powers in the hands of the Centre as a result of which the Centre was more powerful but after the passage of the 18th Amendment Bill by the National Assembly of Pakistan, residuary powers have been shifted to the

Provinces as in the case of the United States. So, the 18th Amendment has provided a paradigm shift of residuary powers from the Centre to the Provinces which is a great landmark in the history of Pakistan. An important development of this amendment is the strengthening of the Council of Common Interest, which had hitherto been not as strong as the Centre enjoyed great powers over the provinces in the case of Concurrent Legislative List. This has delegated the powers to the Provinces previously exercised by the Centre. The CCI is now a representative body of the Centre and Provinces and works for the cooperation and coordination of the Centre and Provinces. On account of the CCI, the earlier imbalance between the Centre and Provinces has given place to balance and harmony between the two areas. The scrapping of the Concurrent Legislative List is another important hallmark of the amendment as the Centre had been enjoying vast powers in case of any deadlock with any province. As a result of scrapping of this list, a sort of parity has been established between the Centre and Provinces. In the face of Concurrent List, Pakistan has been viewed as a structurally weak and imbalanced country particularly in the aftermath of cessation of East Bengal. The said amendment through the strengthening of the CCI, which is representative body of the Centre and Provinces, has transformed Pakistan into a structurally balanced and strong country with the provinces more autonomous as compared to the previous period. It has reduced conflict between the Centre and Provinces and also between the Provinces. So, it has served as platform for conflict resolution.

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