

The Experiment of Federalism in Pakistan: An Analytical Study

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Abstract

This paper aims at presenting an analysis of the history and practices of federalism in Pakistan. It discusses the nature and trend of the provincial autonomy with reference to the 18th Amendment and shows that how the practice of federalism despite overwhelming support from the smaller provinces could not take firm roots. The paper argues that after its creation, Pakistan encountered with multiple problems ranging from nation building, establishing and consolidation of institutions and the settlement of millions of refugees. The paper brings forth certain efforts which were made to strengthen the federalism. The centripetal forces resisted the essence and process of federalism, which believed in diametrical opposition to the unity and integrity of the state. On the other hand, the centrifugal forces strived hard for federalism that trusted the federal form of government as panacea to administrative and political odds of the country.

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Introduction

In a typical federation, the constitution delineates the authorities between federal and provincial governments. Both tiers of the government exercise certain degree of autonomy within their scope of influence. Hence, for any form of government the division of power that is delineated by the constitution is essential. The United States of America, Canada, and Russia having heterogeneous societies are best examples for the federal form of the government. The fundamental elements of a federal form of government are distribution of power; mandated by the constitution, the judiciary is supreme, equal representation for the provinces in the upper house of parliament that is as powerful as the lower house of parliament just to ensure the parity among the federating units and equal citizenship for all. In any federation, in particular, the equality of status or in other words equal citizenship is a key element for nation building.

In order to form federation the willingness of federating units to be the part of federation is imperative, where the provinces can maintain their internal autonomy. Without it the governance structure would be a unitary one. Besides this, the scholars assert that for successful functioning of a federation some other conditions need to be fulfilled.¹

According to Ahmed, federalism "is a very loosely and independently used term which in its general sense represents association of provinces or states etc. formed for certain common interests, without losing their original independence."² For federal form of government, it is not only enough to have a general government or the regional governments that may operate directly on the principle of "by the people, of the people and for the people". It is worthwhile to note that federalism as a system of governance and political structure is relevant, or more assertively, imperative

1 Wallace E. Oates, *Fiscal Federalism* (New York: Harcourt Brace Jovanovich, 1972).

2 Syed Jaffer Ahmed, *Federalism in Pakistan: A Constitutional Study* (Karachi: Pakistan Study Center, The University of Karachi, 1990).

for countries with distinct social, cultural, ethnic and economic characteristic features. In other words, federalism as political system is more effective for societies having cultural pluralism and ethnic and regional diversity as stated by Ahmed.³

Confederation in sharp contrast to federal form of government is a loosely knitted union of countries with their distinct and independent sovereignty. The confederation is made as an alliance or contract by the member countries that should have specific economic, political or strategic reasons behind, and the independence of the member countries is retained thereof. Thus, the confederation may be defined as an association of union of two or more independent countries that have given up or sacrificed a part of their respective national liberty in order to gain some specific objectives, and such objectives may include regional defence, transit trade or ideological identity. It is important to note that in terms of strength the confederation is more viable than a simple alliance among the states, however, it is much weaker than the federation. For instance, a federation does not allow the federating units to exercise their respective sovereignty. Nevertheless, confederation on the contrary does not require the member countries or confederated states to put an end to their sovereignty. That is because, as Haque argues, a confederation simply is 'union of states' instead of a 'united states', as a federation.⁴

Theoretically, Pakistan adopted federalism form of government given its geographical, ethnic and linguistic characteristics. In practice, the country has faced a severe deficit of federalism and decentralization of power. Against the wishes of smaller provinces of the West Pakistan and erstwhile East Pakistan, the country tilted towards more centralization, which may be explained by the need for a strong and unified state to face any real or perceived external threats. However, despite this tendency, an

3 Ahmed, *Federalism in Pakistan*.

4 MazharulHaque, *Political Science: Theory and Practice*(Lahore: Caravan Press, 1990), 324.

overwhelming majority of Pakistan aspired for federalism and democratization. Hence, the odyssey of federalism has not been smooth in Pakistan. The paper will show that why federalism was adopted as a form of government in Pakistan, and why, despite its desire especially by the smaller provinces, it failed to take root. The paper will suggest that if the practices of federalism are followed in true spirit, Pakistan would be a viable and sustainable country, as the nature of its society and economy is best suited for federal form of governance with three tiers of government i.e. the federal, provincial and local governments respectively.

Federalism in Pakistan

In 1947, Pakistan adopted the federal form of government given its geographical, ethnic, linguistic and historical diversity. During the course of struggle for Pakistan, the All India Muslim League (AIML) leadership envisaged federalism as a form of government for the country, given the sheer geographical differences between East and West wings of Pakistan, separated by thousand miles and linguistic, ethnic and cultural distinctions in the western wing. Thus, federalism became the most suitable and appropriate form of government to put the provinces and regions in unison effectively. Soon after the independence the country confronted with multiple problems ranging from establishing an economy to the settlement of the enduring refugees migrated from other side of the boarder.

Alisays that “federalism in Pakistan was a product of the conflicting pressures of unity and diversity”⁵ because after the partition of India, for Pakistan the best structure to adopt was federalism. In addition to this, geographical factors also played an important role in the adoption of federalism. The geographical remoteness of the two wings and the societal diversity of the people of Pakistan, coupled with other factors such as the perceived military threat from India, historical familiarities of Indian Muslims with federation in the

5 Mehrunnisa Ali, *Politics of Federalism in Pakistan* (Karachi: Royal Book Company, 1996).

subcontinent under British Raj and the common religion, persuaded the Muslims of Pakistan to live under one general and common government. Where, they could order their lives according to their cultural and historical principles.⁶

The question is why did Pakistan choose to adopt federalism, given that it was a failure of the federal vision for united India that led to the demand and creation of Pakistan? There is not any simple answer to this question. Nevertheless, different explanations can be given in this regard. Firstly, the post-colonial phenomenon forced the political leadership of various nationalities to establish a federation in order to keep the diverse nations as a single whole to avoid the establishment of small and weak international entities. It is important to know that the British Government did not allow the local masses a free choice. All nationalities were therefore bound to join either India or Pakistan as per the Third June Plan of 1947. Secondly, many scholars like Ali⁷, Waseem⁸, Shah⁹ and others argue that federalism is the name of diversity and hold that pluralism (a plural society) is one of the basic requirements for federalism. Shah for instance argues that plural society (composed of various ethnic, cultural, and linguistic groups) made up of various ethno-nationalities is better suited to have a federal polity.¹⁰ Pakistan, being a plural society, is comprised of various ethnic groups such as Punjabi, Sindhi, Pashtun, Saraiki, and Baloch, where each group has its own separate language, culture, history and a definite territorial geography; thus fulfilling the requirement of becoming a federation. Therefore, it can be argued that the diverse characteristics of the Pakistani society plus the distinct identity vis-à-vis language and ethnicity, compelled the

6 Ali, *Politics of Federalism in Pakistan*.

7 Ali, *Politics of Federalism in Pakistan*.

8 Mohammad Waseem, "Pakistan: A Majority-Constraining Federalism", *India Quarterly: A Journal of International Affairs*, 67, no. 3(2011): 213-28.

9 Syed Mujawar Hussain Shah, *Federalism in Pakistan: Theory and Practice* (Islamabad: National Institute of Pakistan Studies, 1994).

10 Shah, *Federalism in Pakistan*.

leadership of AIML to opt for federalism. Thirdly, it was also promised long before and during the freedom movement that Pakistan would be a federal state with autonomous units though this argument is highly contentious, see for example, Jaffrelot¹¹. Fourthly, scholars such as Burks¹² and Sayeed¹³ argue that the approval of federalism by Pakistan was aimed at tying the diverse society so that each ethnic group co-exist without having to lose its separate identity. In order to keep unity between the two wings of Pakistan there was no better option other than federalism.¹⁴

After the partition, Pakistan and India had to choose federal or unitary form of government to intact their erstwhile nations as a result both adopted federalism. Pakistan is a pluralistic society comprising various nationalities—Punjabi, Sindhi, Bengali, Baloch and Pashtun—with distinct language, history and cultural background, and definite territorial boundaries. The country at the time of inception fulfilled the requirements of adopting federal form of government. Federalism suited the nationalities that constituted Pakistan, as in a federal form of government they could live in coexistence without jeopardizing their separate identity. Furthermore, the geographical disunity of the two wings of Pakistan necessitated the country to adopt federalism. Scholars like Ali and Shah believe that Pakistan adopted federalism in order to accommodate the forces of unity and diversity, which remained the only option to keep the country united, as there were the elements of separation and integration.¹⁵

After the lapse of almost nine years, the first constitution was drafted, approved and implemented in 1956. Although,

11 Christophe Jaffrelot, *The Pakistan Paradox: Instability and Resilience* Random House Group, (London: 2015).

12 Ardath W. Burks, "Constitution-Making in Pakistan", *Political Science Quarterly* 69, no. 4 (1954): 541-64.

13 K.B. Sayeed, "Federalism and Pakistan", *Far Eastern Survey* 23, no. 9 (1954): 139-43.

14 Khan, "Politics of Nationalism, Federalism, and Separatism".

15 Ali, *Politics of Federalism in Pakistan* and Shah, *Federalism in Pakistan*.

this constitution was federal in nature and reflected federalism in essence and contents, due to some wired political expediency the same constitution did not last long and hence gave way to another constitution adopted and implemented in 1962. The 1962 Constitution was diametrically opposed to the federal spirit of Pakistan. It took the country to unitary form of government and declared “One Unit’ scheme just to balance the numeral majority of the eastern wing and maintain the parity between the two wings. Nevertheless, the 1962 constitution was scraped with tragic dismemberment of Pakistan in 1971 when eastern wing of the country drifted away and became Bangladesh.

Following the defeat of the Muslim League in the East Pakistan provincial elections in 1954 the United Front, put forth its demand for autonomy stating that secure all subjects, including residuary powers, except Defense, Foreign affairs and Currency for East Bengal, which shall be fully autonomous and sovereign as envisaged in the historic Lahore Resolution. Such a development was apprehensively perceived as a radical shift towards more centralization. Consequently, a diverse society based on a sense of ideological belonging changed into ethnic and linguistic rivalries and political hatred. This therefore led to have a prolonged Punjabi-Bengali controversy, which was further intensified by the unjust thesis of ‘Parity’ and politically hallow slogans such as, ‘Here we and There you’, of the central government. Hence, further alienation of East Pakistan that was exacerbated by the One Unit Scheme and the usurpation of the numerical majority of East Pakistan, led the latter to revolt, specifically when the political mandate of Awami League, a Bangali nationalist party, was not honoured in 1970 general elections. An uprising was followed by the military operations in East Pakistan and separation of Bangladesh in December 1971.

Nevertheless, certain elements inPakistan never admitted the gross political and administrative mistakes committed through over-centralization of power and ill-designed practices like One Unit Schemes that furtherfuelled

the flame of disintegration. Instead they were constantly in the view that, 'it was not because of one unit that the country was lagging behind in development, but Ahmed¹⁶ understands that it was because of the provinces that the question of political system was not resolved'.

Pakistan approved and promulgated another constitution in 1973, which clearly states Pakistan as a federal republic comprising the four provinces of Pakistan, the Federally Administered Tribal Areas and the Federal Capital Territory. The 1973 Constitution promulgated on August 14, 1973, introduced bicameral legislature enacting the upper house or senate to parliament. The introduction of bicameralism was aimed to accommodate the interest of the smaller provinces and provide them proportionate representations in otherwise disproportionate parliament. In spite of the inclusion of the upper house to the parliament, the dominance of the Punjab province remained unchallenged nonetheless. The overwhelming majority of Punjab in the lower house of the parliament or National Assembly (owing to 56% of population) provides the overriding power to other three provinces combined. Therefore, Waseem may rightly suggest that Pakistani federalism—given the absolute majority of one province—is sort of a majority constraining federalism in which provinces other than Punjab are often strive to restrain the power of the bigger province.¹⁷This situation led to a persistent struggle by the smaller provinces for greater provincial autonomy within the framework of federation in order to have the ownership of their indigenous resources. Thus, Balochistan and Khyber Pakhtunkhwa (KP) demanded for the entitlement of natural resources and electricity respectively.

Federalism and Unresolved Ethnic-Linguistic Issues

The Indian's threat forced the Pakistani leaders to centralize, their political priorities towards a unitary nation-state. The

16 Feroz Ahmed, *Ethnicity and Politics in Pakistan* (Karachi: Oxford University Press, 1998).

17 Waseem, "Pakistan: A Majority-Constraining Federalism", 213-28.

classic example was evident from Jinnah's approach to the language question during his last trip to Dhaka. During his official visit in March, 1948 he declared:

“...let me make very clear to you that the State Language of Pakistan is going to be Urdu and no other language. Anyone who tries to mislead you is really the enemy of Pakistan. Without one State Language, no nation can remain tied up solidly together and function. Look at the history of other countries”.¹⁸

According to M.A. Jinnah, provincialism was a non-existent because instead of federalism he was an ardent supporter of “one country, one people, one religion, one language” where certainly the diverse factors of distinct language, culture and race had to be accommodated. His advocacy for Urdu not only arose from the fact that it was the language of Indian Muslims, living in the cradle of the Mughal Empire had had to defend in the Nineteenth Century; it also stemmed from the idea that this language could not be identified with any province of Pakistan which was good for national integration and had clear affinities with the Middle East where Islam was born.¹⁹

Jaffrelet argues that founding leaders of Pakistan sought to invent a country based on Islam and free from its historical and geographical roots.²⁰ In fact, Pakistan's identity has constantly been nurtured by references to the past—especially the Mughal Empire—and the places—the sacred Muslim geography of Islam. Hence they showed little if any imagination and fell back on the recipes of the unitary nation-state, at the expense of cultural diversity—and at their own expense, eventually, given the resistance put up by the ethnic groups comprising Pakistan. Thus, from the very beginning the project of federalism that although resisted by the founding leaders of Pakistan, was ambitiously fought by

18 M.A. Jinnah, “Farewell Message to East Pakistan”, *Jinnah, Speeches and Statements: 1947-48* (Karachi: Oxford University Press, 2009), 150.

19 Philip Oldenburg, *India, Pakistan and Democracy: Solving the Puzzle of Divergent Path* (London and New York: Rutledge, 2010); Jaffrelot, *The Pakistan Paradox*.

20 Jaffrelot, *The Pakistan Paradox*.

the ensuing political leadership, particularly from the smaller provinces.

The Federal Structure and Provincial Autonomy

Multiple constitutional developments were experimented to provide a federal form of government that could satisfy the diverse and somehow conflicting interests of the federating units in Pakistan 1947. Nevertheless, such attempts failed to produce any tangible and concrete results because of two obvious reasons. Firstly, that the social and economic diversity of various ethnic groups in Pakistan was sought to be resolved through constitutional means without considering the socio-economic and political realities of the country.²¹ Secondly, albeit the constitutional attempts were made to reflect the greater interest of provinces, nonetheless such schemes could not provide legal notion that could be in line with the federalism. It is worth noting that all major constitutions, though different in form were similar in their basic contents. For instance, even during the course of struggle for independence, the AIML in Cabinet Mission accepted four subjects i.e., foreign affairs, currency, communication and defence to the federal government, whereas other subjects would rest in provincial domain. In 1973 Constitutional Bill was presented in the National Assembly, the opposition had sort of disagreement, with what calls it, 'quasi-federal constitution'.²²

The 1973 Constitution, in spite of various anomalies, is federal in content and essence. In this constitution the legislative powers of the Constituent Assembly were enumerated in the Federal and Concurrent Legislative Lists respectively. Parliament can enact laws on the total number of sixty-seven subjects of the Federal Legislative List.²³ Both, national and provincial assemblies can legislate on any

21 Waseem, *Pakistan: A Majority-Constraining Federalism*; Stephen Philip Cohen, *The Idea of Pakistan* (Lahore: Vanguard Books, 2005); Husain Haqqani, *Pakistan between Military and Mosque* (Washington D.C: Carnegie Endowment, 2005).

22 Kenneth C. Wheare, *Federal Government* (USA: Greenwood Press, 1980).

23 The Constitution of the Islamic Republic of Pakistan, 1973.

of the forty-seven subjects mentioned in the Concurrent Legislative List. Subjects other than these are the residuary authorities, which with the provincial domain. It is important to mention that the Federal Legislative List was divided into two parts. Part 1 contained the subjects on which a bill could originate only in the National Assembly; While the Senate was given the power of originating a bill with respect to the subjects mentioned in Part 2 of the Federal Legislative List or the Concurrent Legislative List, the power of originating a bill was not exclusive to the Senate. In fact, a bill pertaining to the above-mentioned subjects could originate in either House and if was passed by one chamber, then it is transferred to the other one.²⁴

The federal government has overwhelming authority on other dimensions as well. For example, virtually the levying of all sorts of taxes and other sources of revenues, productive and non-productive alike, rest with the federal government. Hence, the central government is the principle revenue collecting authority that shares the same with the provinces through a mechanism of National Finance Commission Awards.

Parliament attains the power to legislate for the people of the province exclusively provincial in character. The head of the state can direct governor of the respective provinces to act likewise. Similarly, an emergency may also be imposed if the head of the state or the President consulting the governor of the province is convinced that a situation is arisen in the province that warrants such an emergency to get on. The federal government may therefore take away the limited legislative powers of the province that was given hitherto. Judges consistently maintained that it is for the President and not to judge whether an emergency exists or not. While the governor is the representative of the federal government, expressions such as 'failures machines constitution', 'internal disturbance', 'security', 'threat' and so

24 M.Rafiq Butt, *Article 70, Constitution of the Islamic Republic of Pakistan 1973* (Lahore: Mansoor Book House, 1973), 225-33.

on all are the conditions flexible terms. They can be meant anything depending upon the situation. The only check and balance to the exercise of power is to put it before a joint session of parliament to approve or disprove it. It is thereby important to underline that in such a scenario the federating units, which are at the receiving end of the effect of any act, have no say to the matter. Whilst the President, in consultation with the Prime Minister makes a declaration of emergency, and the party that the Prime Minister can easily pass such a declaration from parliament in a collaborative environment.

The 18th Amendment

The 18th Amendment to the 1973 Constitution is an incredible step towards decentralization or federalism. Besides addressing some historic and long lasting demands of the smaller provinces, the 18th Amendment abolished the contentious Concurrent Legislative list. After the Amendment, the provinces were given certain taxation authorities that hitherto were part of the federal legislative list. Moreover, the Amendment was an attempt in right direction to thwart any possible military *coup d'états* in future, realizing the fact that constitution is the first victim of any military *coup d'état*. It is evident that the 1973 Constitution was effectively changed in terms of federal character during the regimes of General Zia and Pervez Musharraf, and became kind of a unitary one. The suspension of constitution and certain amendments that were enacted into it became key hurdles in smooth functioning of federalism. Therefore, the 18th Amendment was not only instrumental in bringing the constitution to its original shape; it helped reshaping the federalism and federal principles in the country. Through this the Article 6 clauses 1 to 3 were amended that helped stopping any future military takeover.

In addition to this, the 18th Amendment modified the Article 172 of the constitution and therefore provided that “[s]ubject to the existing commitments and obligations, mineral oil and natural gas within the Province or the territorial waters adjacent thereto shall vest jointly and

equally in that Province and the Federal Government". Prior to the 18th Amendment "all lands, minerals and other things of value within the continental shelf ... were vested in the Federal Government."²⁵ Previously, the federating units had no control over resources pertaining to their respective territorial boundaries. Whereas, the transferring of the items enumerated in Part II of the federal legislative list through 18th Amendment was a good step in strengthening federalism in Pakistan, and in particular addressing the decades long grievances of the provinces. Yet, it is far from enough to bring Pakistan at par with other such federations like the USA, India, Germany, Australia, Canada, etc.²⁶

Although, through 18th Amendment, the provinces are empowered to a greater extent, for a vibrant federalism, but they have to have a complete control over mineral and other resources. This is evident from the relentless resentment that still prevails in provinces like Balochistan on the issue of ownership on natural resource; the key economic base of the province. Therefore, it is important to accept that for a smooth functioning of the federation, the spirits of federalism needs to be entrusted not only in theory but also in practice. Even, after certain attempts as 18th Amendment to the constitution and 7th National Finance Commission Awards with greater financial share for provinces, it is believed that the current federal structure is not successful in resolving issues of diverse nationalities. In fact the majoritarian rule is the essence of democratic system, but without further arrangement it may not be viable for a country like Pakistan with diverse and heterogeneous society, as Adeney argues that the majoritarian rule becomes problematic when the citizens of a country are divided in ethnic, linguistic and national lines where their prime identification is based on race, language, regional affiliations, culture and religion.²⁷ If one looks at the

25 Katharine Adeney, *Federalism and Ethnic Conflict Regulation in India and Pakistan* (New York: Palgrave Macmillan, 2007), 11.

26 Ali, *Politics of Federalism in Pakistan*.

27 Adeney, *Federalism and Ethnic Conflict Regulation in India and Pakistan*.

Pakistani federation with heterogeneous in character one may clearly realize that each ethnic and linguistic group that comprises Pakistan thinks first of their narrow regional interest, instead of the greater national one. The 18th Amendment to the 1973 Constitution *albeit* must be taken as a serious step towards constructive federalism.

Conclusion

Currently, there are multiple problems that the country is facing, but it is important to mention that Pakistani state has proved to be a resilient state with the capacity of absorbing and sustaining various kinds of crises, that could be of political, economic or security in nature. It is crucial to assert that in order to develop a strong and prosperous nation of Pakistan on firm basis, regional pride must be defused at the very benefit of national pride not by subduing and usurping the genuine and legitimate rights of the provinces but through regarding the autonomy to provinces, and accepting and accommodating their diversity. It can be done through a true and accommodative federalism where the autonomy of the provinces is respected.

Pakistan is a federation of different ethnic groups, so without honouring the concept of 'unity in diversity' knitting the various ethnicities together through coercive means may not be sustainable and long lasting. It is plausible to emphasize that federation around the world witness smoothing in their system when they affirm to education, equal opportunity for social and economic progress, uniform and legitimate political representation, just, equitable and kind treatment to the law and the provision of social justice to their citizenry irrespective of their belonging to any province/state or region. In Pakistan, indeed, a healthy environment of harmony and trust of brotherhood needs to be developed, where no one feels betrayed and left behind in all opportunities. Federalism though not a panacea to all the prevailing issues of the country, but it should be seen as a first definitive step towards achieving the goal of inclusiveness and coherence.