

New Threats and Challenges to Federalism: In Pakistan (A Socio-Political Scenario)

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Abstract

Pakistan is one of the 28 democratic countries across the world practicing federalism. It has the chequered constitutional history. The unconstitutional steps by the political heads resulted in instability in political system causing the state a great loss nationally and internationally. Over centralization has resulted in largest province seceding from the federation. Though other provinces were rejuvenated, conversely they were deprived of their cultural, economic, and political rights, resulting polarization between federation and provinces. Thus this paper will examine the history of Pakistan's experiments with system of state governance and will argue, why Pakistan has failed to establish an effective federal covenant between its constitutional units? The main challenges that have led Pakistan to what may be called a "failed state" includes firstly; inequality and insecurity. The federal structure of Pakistan is severely threatened by provincial independence movements fueled by ethnic tensions, fiscal/economic exploitation & feudalism. Secondly; linguistic movements, lawlessness, cross borders conflicts, military dictatorships, invasion of international groups and superpowers on state's sovereignty played a vital role in deconstructing federalism. Social legitimacy of corruption, intolerance, & unequal benefits of citizenship also served as an instrument of marginalization. Thus Federalism based on realistic provincial and local autonomy must be vital component of reconstruction of State's institutions in order to combat social and political fractures.

Key Words: Federalism, State Sovereignty, Equality, Federalism

Federalism Introduction

This dissertation will analyze the history of Pakistan's trialing with the structures of state governance to comprehend Pakistan's various federal arrangements and their input over time. In doing so we will resolve why Pakistan has failed to establish an effectual federal covenant between its Constituent Units despite of some challenging incremental movements towards regional sovereignty and decentralization. In an attempt to stead fasten the issues of federalism of which the Muslims of sub-continent dreamed of, the failure on the part of political heads and legislatures to create a workable national covenant has led Pakistan to what may be called a 'failing society'.

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Secondly, it will review the concepts and history of federalism in Pakistan as entrenched indifferent Acts and constitutions together with the amendments. It will be determined that; Has the democratic regime in Pakistan, with the 18th amendment succeeded to rectify the damages done to the constitution and federal structure? Whether it should be considered enough and satisfactory? Whether these amendments brought true democratic system the Pakistan needed, so that the voices of the excluded sectors of society are heard and mainstreamed in the political associations? (Ahmad, 2010) Lastly this paper will examine the major challenging/threats to the federalism, the recommendations, policies, and their way to implement such recommendations by examining the issues involved therein.

Concept of Federalism

Ronald Watts defines federation as

“(Ahmad, 2010) A compound policy combining constituent units and a general government, each possessing powers delegated to it by the people through a constitution, each empowered to deal directly with the citizens in the exercise of a significant portion of its legislative, administrative, and taxing powers, and each directly elected by its citizens”.

Daniel Elazar (Elazar, 2014) Defines Federalism as

“The prevalence of a covenant of partnership between the general government and its sub-units”

According to him federalism was originally derived from the Latin word “foedus”.

In Dicey’s opinion

Acceptable distribution of powers between the centre and units is indispensable trait of the federalism those are settled through a constitution. (Elazar, 2014) There are always some common perils and fiscal interests that escort federating units to form a federation; moreover, the ecological enormity of the state direct towards decentralization which ultimately results in formation of federation. (Khalid, 2013) Basically, federalism denotes to advocate practical balancing of citizen’s preferences for

- a) Combined and cooperative action for common purpose, and
 - b) Self-governance of the constituent entities for other purposes.
- (Ahmad, 2010)

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It is concerned to develop a manageable organism of governance, which could practically ensure that the regional and general governments coordinate with each other while remaining independent.

Modes of Federation

There are two modes of federation.

- i. Dual Federation
- ii. Cooperative Federation

Dual Federalism

In the dual federation two independent and separate levels of government are created through the constitution, the areas of responsibilities are demarcated and their relationships and jurisdictions are defined with their respective responsibilities.

Cooperative Federalism

Under this mode of federalism a single government system is formed by various parts of government, to carry its responsibilities by the cooperation of various levels of government. In this way each level of the government is characterized by its responsibilities and carries its functions with the cooperation of other, without any conflict and competition. (Abbasi, 2010)

Evolution of the Concept of Federalism

The common dangers and economic interests direct federating units to form a federation where sovereignty in federal politics stratum is not centralized constitutionally in which citizens actively perform their political obligations. This is the way that led U.S Switzerland Australia and other European Federations came into existence. It emerged as an important instep of state building after the collapse of European colonial empires in WWII, which resulted many colonial multi ethnic countries of Asia and Africa to opt federalism, which though failed in their infancy, but because of excessive demand of separate state sovereignty the issue of federalism arose again and again.

Evolution of Federalism in Pakistan

Federalism has been a serious issue in the constitutional history of Pakistan. Since the provinces that became the part of Pakistan after 1947 had less

experienced constitutional and federal norms because of British biasness, which seriously influenced the course of democracy and norms of constitution of Pakistan after the independence. (Khalid, 2013)'

Constitutional Foundation of Federalism in Pakistan

In the era of pre partition British establishment recognized the authorities of Baluchistan and Pakhtun tribes and were controlled through the Center, with intent to provide defense shield against any incursion. Baluchistan was never given the status of province even demanded by All India Muslim League in 1927, while in Punjab to make the land owners and rich class at government side, they were more facilitated by various Acts like 1900 Punjab Alienation Of Land Act, under which free alienation of land within the agricultural tribes was legalized, so the Hindu and Sikh land owners and money lenders remained with government authorities, where as other government blessed supported British policies had never let All India Muslim League and congress to establish roots in that provinces too. These were the coercive trends which never let Pakistan political parties to set a successful federalism, even after many years of independence. (Khalid, 2013) Likewise Khyber Pakhtunkhwa (NWFP) was kept under political agent, and British took the settled areas like Mardan, Hazara and Kohatetc, under its own administration so automatically federal norms were never established there. Sindh though was the part of Bombay residency but because of land owner and agricultural class it never experienced development and constitutional norms even after it got separated, while on the other hand East Pakistan (Bengal) experienced many political and strategic incidents and had gone through the political training which was totally adverse from rest of the provinces and thus unfavorable against the interests of Pakistan's expectations. (Waseem, 2010)

Threats and Challenges to the Federalism of Pakistan Constitutional History and Federalism in Pakistan

Federalism was provided as one of the promises for the establishment of Pakistan, thus it is persistent feature of Pakistan politics. It is very distressing that even after sixty five years of independence Pakistan continues to grapple with the problems of federalism. The unsettled issues of federalism have brought the problems of governance and strains in the nation building process. (Nazir, 2014). Federalism and Provincial autonomy have been the slogans from the beginning of independence. No constitutional issue has raised such a controversy as did the central units relationship. (Baxter, 2011)

Constitutional Statutes of Pakistan and Federalism

The constitutional crisis raised soon after the first constituent assembly started functioning as it articulated political differences over the issue of federalism. The balance of federal structure which favored the Center in 1935 Act was continued as prerequisites of new political system. The Basic Principle Committee strongly recommended principles of federalism; which were ignored in large. The very first constitution of Pakistan of 1956 provided a federal form of government, with a strong role of Central Government. Geological severance of thousand miles between East and West Pakistan provoked the problems of power sharing between both the wings while India sitting between caused further complications. Thus under the One Unit System Pakistan was divided into 2 zones i.e. East and West Pakistan, which created more crises between the two zones to form their legislative assemblies and the emphasis on being Sindhi, Baluchi, Pathan, Punjabi, and Bengali increased in the political discourse, (Baxter, 2011) which led to instability in society too. The abrogation of the 1956 Constitution by Coup D'état in 1958 was a setback for federalism in Pakistan, after which 1962 constitution was designed by the military dictator Ayub Khan to seek legitimacy of rule under political structure. The 1962, constitution, like the previous one, contained three lists of legislative powers: Central, Provincial, and concurrent to be exercised by the Centre and provinces, providing full protection and power to the president, as the head of the state as well as head of government enjoying executive powers. The previous One-Unit system was thus continued in the constitution, containing one-house legislature known as the National Assembly. The Provincial governments were headed by the Governors, who also got benefited from enormous authorities.

The political unsteadiness, lack of constitutional direction, the remote controlled military democracy, and the like socio-political events followed the proclamation of the martial law again in 1969. The first general elections held by President Yahya Khan led to the incident of separation of East wing from the West Pakistan, thus emergence of Bangladesh on the world map escorted the question of federalism in Pakistan.

1973 constitution was framed by the civilian chief martial law administrator Zulfikar Ali Bhutto. This Constitution retained a federal system, but for the first time, a bicameral legislature was provided to accommodate the federating units i.e. to invite the equal representation from all the federation units while residuary powers vesting with the provincial Assembly..In this constitution for the first time Baluchistan was given the provincial status.

Constitutional Amendments and Federalism

A number of presidential Orders; afterwards were issued through 8th Amendment to run the system of government. The 8th Amendment was actually an attempt to revitalize the 1973 constitution, by protecting a large number of the President's Orders issued during the martial law.

Thirteenth Amendment introduced by Nawaz Sharif administration was the reversal of previous amendment as it restored the original federal parliamentary character of the constitution restricting the powers of the president, bounding him to act on the advice of the Prime Minister. (Khalid, 2013)

After the down fall of Nawaz Sharif Government by imposition of Martial Law and abrogation of the operational constitution of the time, the 8th amendment was revived through LFO 2002 because of which federal character was again deeply distorted by its clauses of centralization of powers and incorporating them in the office of the President. (Khalid, 2013)

Formation of New Federalism & 18th Amendment

The previous constitutional amendments while attacking the spirit of federalism changed the Parliamentary and federal features of the constitution and twisted the balance of power in favor of the president. In a parliamentary democracy Prime Minister reserves the actual powers as the representative of people while President is the apparent head as representative of the federation of the state. 18th amendments again changed the situation and exerted to restore the original spirit of the constitution, (Khalid, 2013) as the president willingly signed a document, paring its powers, wherein he could not unilaterally impose emergency in the provinces or appoint the Chief Election Commissioner. This amendment increased the judicial independence by which appointment of judges in Supreme Court could be done through a judicial commission. This was the milestone in the constitutional history of Pakistan.

New Threats and Challenges to the Federalism of Pakistan Why Pakistan Failed As a Federal State

Two aspects played a vital role for undue involvement of Centre and for the failure of federalism in Pakistan as uncertainties and confusion surrounded since the independence.

New Threats and Challenges to Federalism

Firstly, Pakistan ran for very long without any constitutional setup from the very start till the period the political system was virtually turned into a unitary system.

Secondly, while setting up the constitution, the balance of power was tremendously shifted in favor of the central government. Pakistan faced lack of a democratic representation and remained under the non-democratic military rule for a long period. So, under such political setup, the Centre's role became dominant over the affairs of the units, and the principles of federalism were discouraged.

Pakistan's failure to develop an organic federal covenant is based on a number of interrelated variables which are detailed below.

Political and Social Exclusion

So far, Pakistan has neither proved to be a federal state in a true sense. There is a large gap between how the bureaucrats and elite see the country and how common man of remote areas sees and feels the country. Elections do held in Pakistan but true freedoms that are part and parcel of democracy continue to remain absent. The bureaucracy though it be the military or civil, along with the elite class feels that it is they who know how run the affairs of the state and that they have every right to rule. Access to political and economic power now remains the privilege of the urban upper-middle class. Society, ethnicity, and religion also continue to serve as instruments of marginalization, from which depleted economic strength of religious and ethnic minorities as well as the lower-ranked hereditary occupational groups suffer. (Ahmad, 2010) This exclusion creates grievances that provoke people to violence. This is clearly the case in Pakistan, where exclusion is determined on the basis of regional, ethnic, sectarian, and class identities. For example, in Balochistan and the Federally Administered Tribal Areas (FATA), grievances about regional exclusion are a major driver of insurgency and rebellion. Similarly, exclusion based on ethnicity and religion fuels violence in Karachi, Southern Punjab, Hazara and Gilgit Baltistan. Interestingly, studies show that there is no correspondence between individual's socio-economic circumstances and involvement in militancy, validating the point that high levels of exclusion, the elite, and unaccountable governance is the major cause of Pakistan's fragility. The political, social, and economic exclusion faced by landless people, religious minorities, and many women makes it difficult for such groups to mobilize, make demands, or claim their rights and even to take account of the corruption of the ruling society. Similarly, the multiple forms of exclusion experienced by the population of FATA and remote

Sindh prevent them from participating in political activities and thus lead to derailing the morals of society and state.

Social Legitimacy of Corruption

The main issue which is the reason of failure of federalism is corruption because of which Pakistan has constantly ranked poorly. The problem is not the corruption itself, it is the legitimacy granted to corruption by the businessmen politicians and bureaucracy. This trend has been challenged at various forums for its acceptance as a social norm but remain fruitless, as one legislator from the largest party in the parliament even claimed on national television that since everyone else who has governed Pakistan has been corrupt, it is his and his party's 'right' to partake in corruption. (Ahmad, 2010) Another problem with today's corrupt politics and business is the ability to declare bankruptcy after borrowing large sums of money. The damages of these loans are dramatically borne by the public through inflation, higher borrowing costs and reckless economic fluctuations and recessions. Malfeasance has become politically and economically persistent, and now deep-rooted in the nation's psyche. (Ahmad, 2010)

Religious Militancy and Intolerance

The crucial challenge for the federalism of Pakistan today is militant extremism which has left the society terrorized due to consistent suicide attacks and target killings. Earlier Taliban and local militant groups since 2001, that were responsible for such intolerance were mostly based in the tribal belt but now have spread to the settled areas of Pakistan. Various sectarian groups have now also become a part of their network and have led to acts of violence and terrorism. (Javaid, 2012) International agencies like Raw and Mosad in disguise are also playing a crucial role in fueling extremism in the society. Undoubtedly the current situation has challenged the sovereignty of state's federalism with so many groups, organizations joining hands in terrorist activities. Contemporary dispute on the necessity of drone attacks is an example of how Pakistan's future has been fixed with the problem of religious radicalism and terrorism. Before it is too late, effective counter terrorism strategies are needed to be deployed by both the provincial and the federal governments. A consensus is needed by political parties, religious groups, sectarian groups, media, and civil society on the complete rejection to militarism in society. Trivial differences on religious and sectarian basis should be shunned off. Religious tolerance and moderation are the key instruments towards de-radicalization in Pakistani society. (Javaid, 2012)

Linguistic Crises and Challenges

Pakistan has been and is still rich in lingual diversity. Even today, it has more than six major and about fifty-nine small languages. This should provide the state a reliable source of cultural strength with unity, while federation of Pakistan never treated this diversity to increase social capital nor tried to back up national integration. The language controversy in which different organs of the state of West Pakistan tried to make Urdu a vehicular language of Pakistan, invited strong reaction from Awami League of East Pakistan who wanted to make Bengali a provincial language. Since the state favors English and Urdu, regardless of whatever happened in the past, the languages of the government, corporate sector, media, education etc, are English and Urdu. However, this issue has also divided the society in lower, middle and upper classes e.g. “English as the language of the dominants/upper and upper-middle class” and the rest taken as marker of lower status. In the current situation, it appears that the Sindhis, the Pashtuns and the Baloch have resisted elimination of their languages while the Punjabi middle class has completely succumbed to the dominant English and Urdu oriented culture. Baluch and Saraiki on the other hand demand their separate province and to make their languages official as well. However, the question arises is whether we are willfully or unknowingly “slaughtering” our aboriginal languages. We should treat this diversity of languages as cultural assets instead of liabilities.

Ethnic Challenges to the Federalism of Pakistan

There is hardly any state in the world, which is not ethnically plural. Pakistan is also no exception in this regard. In fact, the majoritarian idea system both under democracy and military regimes caused ethno-national mobilization and increased demographic tensions. The elected and non-elected institutions of the state did not respond effectively and sufficiently to manage grievances. In fact, since 1947, the ethno-national movements have been active which challenged the national unity of the state. (Majeed, 2014) Multiple ethnic in Pakistan has operated as a breeding house of demands for creation of new provinces. The absence of rule of law and true democracy are the major issues giving rise to such variances.

The main domains which give rise to ethnic conflicts are as follows:-

- i. On Religious Basis
- ii. On the Basis of Linguistic Diversity
- iii. On the Basis of Provincial Independence
- iv. On the Basis of Caste & Class

Inter-ethnic group conflicts in Pakistan have destabilized the political system and undermine foundations of the state. The inter-tribal conflict in the tribal areas, the Sindhi, and non-Sindhi violent conflicts, Shia-Sunni cruel and regressive activities have become a norm of Pakistani society (Majeed, 2014). Undoubtedly, the decision makers try their level best to control violence, and minimize conflicts, but the policies formulated and implemented in the country fall short of achieving the objectives.

Issue of Water Distribution

Another communal problem pertains to the river water resources. Sindh is the lower occupant of the River Indus and its entire tributary, thus inherited inalienable rights by virtue of international law. The province of Sindh along with Baluchistan has been opposing constructing dams and barrages as they complain that the province does not get their right share of river water because of over use by rest of the provinces. They also claim that these provinces divert water without the consent of the lower riparian areas. (Rizvi, 2014) As a matter of rights, equitable distribution of irrigation water among all provinces should be instituted. Presently, the biggest issue on debate is that Punjab forcibly appropriates a major and disproportionate share. This dispute is a persistence danger for the federation and a major source of conflict among the provinces to build new dams, which should be resolved through federal principles and international laws regarding water sharing.

Conclusion and recommendations

It is distressing to note that even after sixty seven years of independence; Pakistan continues to struggle with the same problems of federalism as it was at the time of independence. Federalism endeavors to create a political union comprising various regions and people on the basis of a mutually agreed constitutional structure. It grows over time if its institutions have the desire to work together in democratic arrangements, for promotion of constitutionalism and socio-economic equity. It accommodates different regional, ethnic, and linguistic identities and interests in a political union and Pakistan was established as a federal sovereign state in August 1947 on the same rational theories. However, despite of broad consensus on the need of creating a federal system, Pakistan faced serious problems in developing a working federal system which could ensure unity to promote harmony among different political Units. The central government emphasized on balancing unity based on Islamic principles among different wings of the state. However, it did not establish participatory political system and failed to address the concerns of the provincial interests.

New Threats and Challenges to Federalism

Thus the Federation needs a new social contract between the State and Provinces. The Constitution will work as a social contract among the people and constituent federating units of Pakistan only if;

- 18th Constitutional Amendment is fully implemented in letter and spirit.
- The military would have no role in politics and public life. The size of armed forces should be reduced and these should have equal representation from all the provinces.
- .All the indigenous languages of Pakistan - Punjabi, Sindhi, Pushto, Balochi, Siraiki, Hindko and others - would be given the status of national languages, while Urdu and English should remain the official languages of inter-provincial communication. However, Provincial governments should be able to implement education and language policies according to their own preferences.
- Major recommendations are needed for promotion of cooperative federation in the country, to respect the spirit of federal parliamentary democratic system for the supremacy of the constitutional requirements in order to run the governmental affairs through participation of all the federating units in the decision making policies related to foreign and internal issues.

End Notes

- Abbasi, Z. F. (n.d.). Federalism, Provincial Autonomy, and Conflict. Retrieved from http://www.cpd-pakistan.org/wp-content/uploads/2013/04/federalism_cpd_11aug11.pdf
- Abbasi, Z. F. (2010). Federalism, Provincial Autonomy, and Conflict. Islamabad: Centre for Peace and Development Initiatives.
- Ahmad, R. (n.d.). The Endemic Crisis of Federalism in Pakistan. The Lahore Journal of Economics .
- Ahmad, R. (2010). The Endemic Crisis of Federalism in Pakistan. The Lahore Journal of Economics.
- Akber, M., & Arbab, K. (n.d.). Federalism in Pakistan: issues and adjustment. Retrieved from <http://www.cdrb.org/journal/2002/3/2.pdf>
- Baxter, C. (2011). Constitution Making: The Development of Federalism in Pakistan. Retrieved from <http://pgil.pk/wp-content/uploads/2014/12/The-Development-of-Federalism-in-Pakistan.pdf>
- Dicey, A. (1973). An introduction to the study of the Law of the Constitution. Londo: Macmillan.
- Elazar, D. J. (2014). Federalism, Federations, and Ethnic Conflict Concepts and Theories. Retrieved from <https://openaccess.leidenuniv.nl/bitstream/handle/1887/13839/chapter%20two.pdf?sequence=13>
- Jalal, A. (2001). Self and Sovereignty: Individual and Community in South Asian Islam since 1850. Lahore: Sang-e-Meel Publication.
- Javaid, U. (2012). Religious Militant Extremism: Repercussion for Pakistan. Retrieved from <http://pu.edu.pk/images/journal/pols/Currentissue-pdf/Religious%20Militant%20Extremism%5B1%5D.pdf>
- Khalid, I. (2013). Politics of Federalism in Pakistan: Problems and Prospects. A Research Journal of South Asian Studies.
- Majeed, G. (2014). Ethnicity and Ethnic Conflict in Pakistan. Journal of Political Studies , 1 (2).
- Nazir, M. (2014). The Problems and Issues of Federalism in Pakistan. Pakistan Vision , 9 (1).
- Rizvi, H. A. (2014). Dynamics of Federalism in Pakistan: Current Challenges and Future Direction. Retrieved from <http://www.pildat.org/Publications/publication/FPLGS/DynamicsofFederalismInPakistanDec2006.pdf>
- Waseem, M. (2010). Federalism in Pakistan. Retrieved from <http://www.forumfed.org/pubs/Waseem-Fed-Overview.pdf>