

## **Federalism in Pakistan: Analyzing Sixty-Seven Years of Democratic Efforts**

By

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### **Abstract:**

*This study seeks to investigate “Federalism” and its historical perspective in Pakistan. Federalism refers “to a form of government where power is distributed between the center and provinces federating units”. The paper further traces the trajectory of three constitutions of Pakistan, 1956, 1962 and 1973 to explore federalism and changes in its structure in each constitution. Besides, this study highlights two modes of federalism which are dual federalism and cooperative federalism which has put the basis of this government into practice. The findings of the study indicate that The Government Act 1935 provided enormous powers to Governor-General, 1956 constitution provided powers to president like imposing emergency in country and dissolution of assemblies which challenged the spirit of federation in the country. The 1962 constitution changed the very nature of the federal structure. The suspension of Constitution in 1977 & 1999 brought the military domination and shifting of powers to Centre which again violated the spirit of federalism and provincial autonomy. In post 18th amendment, the Centre still violates the federal structure and ignores the spirit of federalism in the country. The non-implementation of Article*

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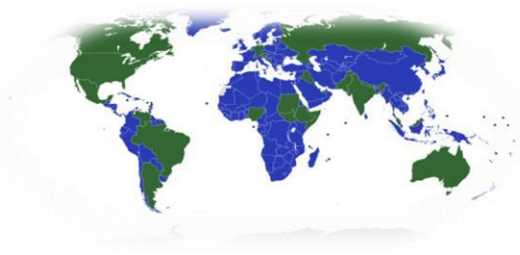
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*158 and 161 (2) are the vivid example of Centre dominating and violating the spirit of federation and constitution.*

**Keywords:** Federalism, Pakistan, Constitutions, historical perspective

**Introduction:**

Federalism is the amalgamation of two form of government, general<sup>1</sup> and regional<sup>2</sup>, into one national government. In a federation all the national affairs are administered by the center and regional ones are exercised by the federating units. The both government tiers, center and provinces, put into effect certain amount of autonomy within their reach of influence. The federation in Pakistan has a loose center only exercising four objectives: communication, defense, foreign policy and economy; and the provinces working autonomously in the absence of the four powers exercised by the center. America is certainly the glorious example for the modern federations which adopted this form of government under the Constitution of 1789. Later, this method of government for a state was adopted by many states in the decolonization era, post-world war II period, to be the best form of government due to their heterogeneous population Federalism is basically building up an idea with a convenient system of government thus establishing a suitable form of government among the units and center. The bona fide taste of federation is in the accumulation and establishment of a manageable system among national and regional governments both collaborating with each other. Ariyo has argued that it is basically the division of power in an organized way. Best examples of Federation are Switzerland, Argentina, Australia, United States, Germany, Brazil and India.



**The countries in green are of Federation States and the countries in blue are of Unitary States.**

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<sup>1</sup> Center or federal government

<sup>2</sup> Provincial, state, cantonal, or sub-unit governments

### **Types of Federalism:**

There are mainly two modes of federalism which are *dual federalism* and *cooperative federalism* which put this form of government into practice<sup>1</sup>. The first and foremost form is dual federation. It has two separate governments. Each one has its own responsibility. Like national and state. The second form is cooperative federation. It is the amalgamation of various parts of government into one as single. This form of federation works with cooperation among the different tiers of government.

### **Basic Power Structure of Federalism:**

There are three main basic power structure of federalism which is Federation<sup>2</sup>, confederation, and devolution<sup>3</sup>.

- **Confederation:**

It is the form of government where the center derives its power from the states. The power is yielded by the independent federating units<sup>4</sup>. European Union (EU) is an example of Confederation.

- **Devolution:**

It is the distribution of power to territorial who want more power for their own affairs. It is a form of administrative decentralization. The crucial difference between a federal system and devolved system is that in federal system the constitution guarantees federation while in devolved system the constitution doesn't.

### **Development of Federalism in Pakistan:**

Federalism narration in Pakistan is the case of the proverb 'taking two steps ahead and making one step toward the backs'<sup>5</sup>. Federalism in Pakistan is not a new phenomenon; it was adopted from the British heritage. To study

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<sup>1</sup> Ibid, p.3.

<sup>2</sup> Which has been discussed above

<sup>3</sup> Coercive, Cooperative, and Collaborative Federalism in Context of Intergovernmental Relations; PA 542, Summer 2013 publication.

<sup>4</sup> Ibid, p. 8.

<sup>5</sup> Features on Federalism by Zafarullah Khan, Adnan Rehmat, and Shiza Malik; p.5

the development of federalism in Pakistan we have to study the primitive developments from the colonial era.

### **Colonial Heritage:**

In the Sub-Continent, the evolution of Federalism was in the form of the 'Government of Indian Act 1935'. The Act of 1935 formally introduced a federal structure in the region with the accommodation of the diverse local ambitions. All India Muslim League [AIML] avoided it<sup>1</sup> because it did not have power over the provinces of the Muslim majority. The states which today Pakistan constitute were not in the control of the AIML in that period where AIML avoided the formation of federation on the basis of territory. Like, the state of NWFP had never a Muslim League government; it was ruled by Congress. Punjab also didn't have the government of Muslim League. Sindh and Bengal had fragile coalition of governments.

In 1930<sup>2</sup>, Allama Iqbal eloquent the formation of independent federating units of the majority Muslim states; in the meantime, the party was grateful to fulfill the demands of Muslim majority provinces to acquire more support in these provinces for the coming elections. That was the reason why Muslim League in 1940 presented a historical resolution at Lahore that the Muslim majority states (Punjab, Bengal, Sindh and NWFP) would form a federation with federating units autonomous. Later, in 1946 this resolution was substituted by another resolution passed by the Muslim League Legislators.

The Lahore resolution of 1940 lucidly revealed the separatist motto of Muslim League for a State constituting of Muslim majority states. It emphasized the formation of a (con-) federation of Punjab, Sindh, and NWFP to come to a social contract to form a new state, PAKISTAN<sup>3</sup>. However, it is claimed by my scholars that Quaid-i-Azam visualized a confederation for

Pakistan; also that the 'Government of Indian Act 1935' provided no role for the Centre. After the independence, the both countries adopted the Federal form of governments. In the postindependence era, the apparent (con-) federation of Lahore resolution remained inactive while agitating ethno-linguistic diversions.

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<sup>1</sup> Territorial formation of federalism

<sup>2</sup> Allahabad Address of Iqbal

<sup>3</sup> Waseem 1990: 518-22

Pakistan constituted of two wings, East wing, Bengal, and West wing the current Pakistan, with a hostile country, India, dividing the two wings with 1000 miles of territory between them. While considering the fact that, a hostile India between the wings may be a prerequisite threat to the country so the ruling elites pushed the centralization of powers at the hand of Karachi later Islamabad.

The Centre accumulated huge powers under Sections 9 (5), 8 (2), 102 and 92 (A) of the 1947 Independence of India Act<sup>1</sup>. Pakistan was born out in an irregular situation that led it to two approaches:

- i. Adoption of Federalism to be the viable form of government due to its regional diversity, and
- ii. To make it as powerless as viable.

### **Federalism: A Historical Perspective in Pakistan:**

Federalism in Pakistan is divided into two eras: **pre-federation (1947-1971)** and **postfederation (1973-todate)**. It is the first era of federation that led to more power centralization with the crumbling of the federal structure of the country under an absolute center with provinces acquiring their powers in the shadow of an absolute and unquestionable center. The second era, post-1973, had led to the bouncing back of the federal structure; with challenges faced by provinces from the centralist authority of the state.

#### **Pre-Federation (1947-1971):**

As discussed earlier, Pakistan was born to be a Federation due to its linguistic, regional and ethnic diversity. "Government of Indian Act 1935 was adopted in the absence of a constitution with least changes<sup>2</sup>. For almost a decade, the whole system was running under this Act. The Act provided enormous powers to the Governor General in opposition to the assembly and provinces.

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<sup>1</sup> Salamat, 1992: 66, 68

<sup>2</sup> Politics of Federalism in Pakistan: Problems and Prospects by Iram Khalid: *A Research Journal of South Asian Studies Vol. 28, No. 1, January-June 2013, pp.199-212*

This Act weakened the federation from the beginning<sup>1</sup> and made a quasi-federation”<sup>2, 3</sup>.

Referring to the pre-partition developments for a federal government, the post-independence scenario demanded a crystal clear “separation of powers of Centre and the provinces in order to curtail the authority of Centre<sup>17</sup>”.

In the decade long absence of a constitution in the Country, brought it to numerous issues and problems which were far away from the potentiality of the leaders in the nascent state<sup>4</sup>.

“The Act of 1935 inherited viceroy system which was continued in Pakistan. The Viceroy system gave enormous powers to the Center and the Governor General. The vested powers were exercised by Governor General and Center which weakened the parliamentary system and also faded the Federal structure of the country”<sup>17</sup>. The form of government which a Federal structure ensures for a country couldn’t exist along with the viceroy system. A gap was created and was zealously filled by the elite institutions of the country: Military and Bureaucracy.

• **1956 Constitution and Federalism:**

In a decade long history of constitutional development, the first constitution was imposed on 23<sup>rd</sup> March, 1956. At the time, Pakistan constituted of five provinces, four in the western region<sup>56</sup> and one on the eastern region, East Pakistan. There was disparity between all the provinces of the country. East Wing constituted the fifty-five percent of the population of the country and on the other hand the other provinces constituted the forty-five percent of the population but geographically it was larger than the other wing. Due to

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<sup>1</sup> This Act of 1935 provided absolute powers to the Governor General who can impose emergency in the country; and can abolish the national assembly and provincial assemblies also.

<sup>2</sup> Quasi-Federation is that form of Federation which only exists in theory not in practice. The Government of Indian Act 1935 curtailed the powers of provinces and gave absolute powers to Governor General of the country.

<sup>3</sup> Politics of Federalism in Pakistan: Problems and Prospects by Iram Khalid: *A Research Journal of South Asian Studies Vol. 28, No. 1, January-June 2013, pp.199-212*

<sup>4</sup> Ahmed, 2009: p.19-80. Saeed, 1967: p. 60-70. Shafqat, 1989: p.87-97. Wheeler, 1970: p.91-110. Choudhury, 1969: p.67-84. Choudhury, 2007: p. 49-60

<sup>5</sup> Later, the four provinces were amalgamated to form the West Wing under the one-unit formula. <sup>21</sup> Constituting of two Houses, Upper House and Lower House, the Upper house [Senate] will have equal representation from all the provinces and the Lower House representation will be based on population from the respective units.

<sup>6</sup> and 1952 reports of Basic Principle Committee

the disproportion among them, East Wing preferred a bicameral system<sup>21</sup> which was more close to a federal structure. East wing having the majority population wanted to have supremacy on the other wing. Unlikely, the West wing wanted to overcome the disparity among them and to obliterate the majority and leverage of the East wing. This was the reason that the two reports<sup>22</sup> of Basic Principle Committee (BPC) were rejected. Later, in 1953 Mohammad Ali Bogra presented the solution of the problem. He presented the Bogra Formula which promulgated the One Unit Scheme. The scheme created two wings of the country; one East Wing<sup>1</sup> and the other West Wing<sup>2</sup>, merging the all provinces into one. This Scheme created more tensions in the country mainly from the East wing. The 1956 constitution was of a federal structure but more centralized. It was of a unicameral<sup>3</sup>.

The constitution gave more powers to the President of the country. "This power became a reason of the imposition of Martial Law in the country and the abrogation of the constitution"<sup>23 4 26</sup>. The constitution was abrogated by Iskander Mirza and he appointed Major General Ayoub Khan as the Chief Martial Law Administrator"<sup>26</sup>. The de jure powers which were given to the President like to impose emergency in the country can be traced to the Vice-Regal Powers of the Governor General. Same like powers were given to Mohammad Ali Jinnah and other Governors later him. This act created the institutionalizing of army in the politics of Pakistan for the first time. Later, the army kept intervening in the politics of Pakistan which led to the grappling of the Federation in the country. From the period of 1958 to 1962 the country was running on the Martial Law. Then, in 1962 the second constitution was introduced.

• **1962 Constitution and Federalism:**

In the period of 1958 to 1962, duration of four years, the country was running on the Martial Law. The second constitution was promulgated on March 1, 1962. The constitution was based on the structure of 'Basic Democracies'. The federal structure in the constitution was only reflected only in the name of the country. It gave enormous powers to the Centre<sup>5</sup>. The high concentrate power was vested in one man, Auob Khan, who was

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<sup>1</sup> Constituting the Eastern region of the country

<sup>2</sup> The West Wing consisted of Sindh, Balochistan, NWFP and Punjab.

<sup>3</sup> Consisting of only one House, National Assembly. The reason was that One Unit Scheme was promulgated in 1955 and the country constituted of two wings apparently equal. And a unicameral was form of parliament was ok due to the equality among the both wings. Only partial differences were there.

<sup>4</sup> In 1958.

<sup>5</sup> Basically, this constitution centralized the Centre over the provinces.

the president of the country. “The One Unit Scheme was abrogated in 1970. West Pakistan was resorted to its pre-1955 form in the sense of provinces. Balochistan was for the first time recognized as a province. First general elections were held in his era. He abrogated the One Unit in 1970 and called for general elections”<sup>1</sup>.

**Post-Federation (1973-2010):**

After the debacle of East Pakistan, and the rise of separatist movements in Balochistan and subsequently in Sindh,<sup>2</sup> the elite in the Centre became familiar that the ignorance of the federal structure would create more problems in the coming years for the country. The separation of the East wing brought the dominance of one province, Punjab, in the country. The province<sup>3</sup> hosted the fifty-eight population of the country so it became clear to the other three provinces of the country that the dominance of one province will dominate the political landscapes. The federating units tried to block the dominance of the one province by pushing for the strengthening of the federation. Hence, it was the reason why the constitution of 1973 was bicameral.<sup>45</sup> The two houses: National Assembly (Lower House) based on population and the Senate (Upper House) based on equal representation from all provinces. For the first time, all the regional languages were recognized and Sindi was adopted as regional language of Sindh, in 1972, which was later non-acceptable by the Majoahjirs.

**1973 Constitution and Federalism:**

The third constitution was enacted on 14 August, 1973. This constitution was different from the other two constitutions<sup>33</sup> it for the first time created a bicameral legislature. The two houses, National Assembly constituted members on population bases and the Senate<sup>6</sup> on equal representations from all the provinces. The election of members in National Assembly brought the dominance of one province, Punjab, creating more strains in the face of federalism and also creating sense of alienation among other provinces.

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<sup>1</sup> The real motive for this move was that, the army believed that it was now more difficult to rule the country directly. So, it decided that a huge Parliament will be better for the military to have the decision into play.

<sup>2</sup> Provinces of West Pakistan, which took up arms and resisted the will of Centre on their respective provinces.

<sup>3</sup> Punjab

<sup>4</sup> In the constitution history of Pakistan, for the first time a bicameral parliament was adopted.

<sup>5</sup> and 1962 constitutions

<sup>6</sup> Senate was formed for the first time in the constitutional history of Pakistan



“The constitution constituted of two lists: federal and concurrent list. Sixty-seven items were given to the federal government in the Federal List and the Concurrent List allowed the provinces to legislate laws according to its subject and the overriding power was given to the Centre. The Centre government had the supreme authority in overriding the provincial law”<sup>29</sup>. This ultimate power to Centre was given in the Article 143 of the constitution. The constitution curtailed the powers of the President and give powers to the Prime Minister making it a Parliamentary system. In the sense of building up the federation, a council was established, Council of Commons Interest (CCI). The council constituted Prime Minister, chief ministers of all provinces and four members to be elected by the Prime minister. CCI was to resolve issues between the provinces and the Centre<sup>1</sup>.

**a) Senate:**

Upper House, Senate, first time formed under the constitution of 1973. Senate ensured equal representation from all the provinces. Each province was given the presentation of nineteen members; FATA (Federally Administered Tribal Areas) was to elect eight members, and Islamabad Capital Territory (ICT) was given three seats. Senate countered the dominance of one ethnic community which dominated the lower house<sup>2</sup>; it was a shield for the smaller federating units against the supremacy of the superior ones and ensured their interests.

**b) Eighth Amendment:**

This Amendment is pivotal to the constitution because it changed the basic feature of the constitution. This amendment added to the seats of the Lower and Upper House. Senate seats increased from fourteen to nineteen for each province making a total of one hundred nine. The tenure of the members was also increased from four to six years. “One of the rudimentary aims of the amendment was to curtail the powers of prime minister and gave power to the President to sack the Prime Minister and can dissolve the Lower House on his will. This amendment increased the powers of the President house and concentrating the powers in the Centre was very disastrous for the federal structure and highly affected the very kind of it”<sup>36</sup>.

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<sup>1</sup> Most of the disputes were gas, water and electricity along with their distribution between them.

<sup>2</sup> Counter of dominance was based on equal representation; Lower House was based on population base and definitely Punjab dominated it.

- **LFO 2002:**

Earlier, in the thirteenth amendment the eighth amendment was reversed giving the powers back to the Prime Minister. But, in 2002 the LFO Order revived the eighth amendment and brought the same powers back to the President. More to add, the President was also given the powers to appoint Joint Chief of Staff Committee Chairman. This order also contained that no prime minister can hold office more than two tenures. This Order gave compelling powers to President than before. Once again, the federal structure was highly obscure by paving the way to the power centralization vested in the hands of President.

- c) **Seventeenth Amendment:**

Same like the eighth amendment, the seventeenth amendment changed the form of government of Parliamentary while giving enormous powers to the President. The amendment was presented in December, 2003 in the constitution. It gave the president the powers to dissolve the National Assembly and adding a section in the Supreme Court arena to have a debate on it.

- d) **Eighteenth Amendment:**

This amendment was a landmark in the constitution of Pakistan. It was passed in April 2010 under the democratic rule of Pakistan Peoples Party (PPP). It finished the president's powers to dissolve the lower house which had changed the form of government a semi-presidential to parliamentary form. The president's powers were curtailed and powers were transferred to the office of prime minister. It brought provincial autonomy and gave the federating units all those rights which were promised in Lahore Resolution. This amendment brought some changes in the constitution.

**Federalism and the "Centre-Province Relations"**

In the federal structure of Pakistan, there has always been continuous alienation among the provinces over the Centre-provincial relations. Federalism in Pakistan has always remained in the smoke screen. The relations between Centre and the provinces has been deteriorated over the years. A voice of provincial autonomy has always remained in the constitutional history of the country. The Centre has always dominated the federating units while agitating more tensions between their relations.

### **Distribution of Powers:**

Distribution of Powers in a federal structure plays an imperative role and it is one of the prerequisite foundational features for federalism. Since the inception, there has been an exceedingly nepotism towards Centre in the distribution of subjects between Centre-provinces. Lists of subjects with demarcated the powers of Centre and province transferred from three<sup>1</sup> in the constitution of 1956 to single list<sup>2</sup> in 1962 constitution and ultimately into two<sup>3</sup> in 1973 constitution. Provinces under a federation are given the powers to assign civil servants, panel of judges for the higher courts, employs, and bureaucrats. After the first year of inception<sup>41</sup>, the federal structure was in fact defied in the process of “bureaucratic” centralization. However, these powers of Centre included the “reassigning, training, posting and promoting of the <sup>41</sup> 1948 officials<sup>42</sup>.” There has been persistent increase in the sense of deprivation and alienation among the administrative units. The smaller provinces are still seething with anger because of the powers distributed to the center. The bias divisions of powers have given birth to provincialism; ethnocentrism and arms struggle in Pakistan.

### **Financial Dimension of Centre-Province Relations in Federalism under NFC:**

Many NFC Awards were produced in military regimes of General Zia-ul-Haq and General Musharraf which were unable to meet a harmony from the federating units<sup>4</sup>. Moreover, in the civilian tenure, Nawaz Sharif, was able to produce the 1991 and 1996 awards while proliferating the revenue from twenty-eight to forty-two percent.

### **Ethnic Movements and Federation:**

A federation helps the diverse communities and nations in ensuring their equal representation under a federal structure. Since 1947, there had been ethnic consciousness among various communities. Major ethnic movements like Bengali nationalism, Baloch separatism, Pakhtun nationalism, Sindhi regionalism, and Mohajir movements in 1980s posing an overt failure of federation in Pakistan. Over the years, Pakistan federation has failed to address their grievances. In recent years, movements like separate provinces for Hazara community from KPK and Siraiki

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<sup>1</sup> Concurrent, provincial and federal list

<sup>2</sup> Federal list

<sup>3</sup> Federal and Concurrent list

<sup>4</sup> In Zia’s era the awards were produced in 1979 and 1985; however, in Musharraf’s era the awards were produced in 2000 and 2006.

province from Punjab are a serious challenge within provinces in the form of ethnic hostility.

Another project of Balochistan, Saindak, where iron, gold, and copper are discovered. The federal government came to agreement with China in 2011 without any dialogue with the Balochistan government. The agreement ensured that China will have seventy-five percent of share, federal will be having twenty-four percent share and Balochistan was given one percent of the share<sup>37 38</sup>. Federal government again violated the provisions and determined the Centre might over the provincial matters neither the 18<sup>th</sup> amendment or CCI ensured the safeguard interests of the province.<sup>38</sup> <http://thebalochistanpoint.com/the-plunder-of-saindaks-cooper-and-gold/> (Website accessed on May 12, 2018).

### **Conclusion:**

Pakistan has a chequered history of federation; the true spirit of federalism has been ignored given in the constitutions. Though federalism has existed in constitution, but a quasi-federation has been practiced. Even though the promise of federalism in pre-partition worked for the independence, but in the post-independence the true spirit of federalism was ignored and the promises were only left in theory. The Government Act 1935 provided enormous powers to Governor-General, 1956 constitution provided powers to president like imposing emergency in country and dissolution of assemblies which challenged the spirit of federation in the country. The 1962 constitution changed the very nature of the federal structure. Since 1947, the distribution of powers has been in the favor of Centre. The Centre, over years, has intervened in the provincial affairs like administrative, legislative, and economic which has raised dissatisfaction among federating units towards the Centre. The unequal power distribution and disparity between Centre and provinces has led different ethnic and separatist movements. The 1973 Constitution provided greater provincial autonomy to the provinces than previous ones. But in the subsequent eras of civilian rule (1971-77, and 1985-1999) the spirit of provincial autonomy was ignored<sup>1</sup>. The suspension of Constitution in 1977 & 1999 brought the military domination and shifting of powers to Centre which again violated the spirit of federalism and provincial autonomy. In post 18<sup>th</sup> amendment, the Centre still violates the federal structure and ignores the spirit federalism in the country. The non-implementation of Article 158 and 161 (2) are the

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<sup>1</sup> The Problems and Issues of Federalism in Pakistan, Journal research by Muntzra Nazir, Published in Pakistan Vision Vol.9, No.1; p.26

vivid example of Centre dominating and violating the spirit of federation and constitution.

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