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FEDERALISM IN PAKISTAN

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ABSTRACT

This research evaluates the structure of federalism in the three constitutions i.e. 1956, 1962 and 1973 of Pakistan. The research adopted historical and analytical method to describe and analyses the federal structure in Pakistan. Almost all of the political parties of India were demanding for federal form of government before Independence. Thus the Act of 1935 provided a defective structure of federation. After independence the same Act was adopted by Pakistan as Interim constitution. Later on, Pakistan in its own constitutions adopted federal form of government but all these carry out the less criteria of federalism and it operates most like a unitary system of government. The 18th amendment to the constitution of 1973 could be regarded as step towards inclusive and democratic federalism in Pakistan. The federal issues in Pakistan stem from a complex interplay of centralization tendencies, economic disparities, specific regional demands, and inter-provincial disputes. Resolving these issues will require concerted efforts from the central government to address provincial concerns, promote equitable development, and strengthen the institutions meant to facilitate federal cooperation.

Keyword:

Federalism, Elections, Constitution, Centre, Relations, Provincial Autonomy, 18th Amendment.

Introduction

Federalism is a system of governance where authority is shared between the central government overseeing the entire country and regional governments, referred to as federal units. This governance structure is a commonly occurring type of government. It is particularly effective in societies that are diverse in nature. Many societies globally consist of various ethnic, cultural, and linguistic communities. If the diversity of these groups is not brought together through a functional political system, the very existence of the society could be endangered. A Federal State is characterized by a distribution of supreme powers between a central government and the governments of the federating units, as established by the constitution, allowing each government to hold supreme authority within its own area of powers. A federation consists of a

dual governmental system, where two sets of governments operate, each possessing supreme and original authority within its designated area of powers as specified by the constitution. The government of each federating unit operates independently of the central government and is not subordinated to it. Both governments maintain supremacy in their defined spheres of power, as outlined and differentiated by the constitution. (Haq, 2009).

Federation serves as a mechanism to balance the requirement for local self-governance with the importance of maintaining the nation's cohesion. This necessitates having a central government to manage national matters, alongside local governments that address the specific needs and interests of their regions, ensuring that both levels of government hold authority within their respective domains. (Rabbani, 2012). The establishment of a federation as a type of governance is inherently linked to the rise of the modern nation-state. As the geographic limits of these modern states expanded, two fundamental principles began to shape political organization. First, various political entities decided to unite voluntarily into larger political structures. Second, the rise of territorial nationalism facilitated the creation of broader unions. Nevertheless, wars and conquests also contributed to this process. The federal system is a relatively recent occurrence in contemporary society, emerging as a result of increased political awareness and the advancement of political institutions. Following factors can be pointed out as played an effective role in the formation of federation.

1. Such independent states can amalgamate into a federal union as share common values, face similar type of problems and have common interest, but at the same time have divergent problems of regional nature which hamper the way of complete unity. These political entities can preserve autonomy in internal matters while cooperate mutually on concurrent affairs and establish a central authority. Every unit of the new union gets proper representation in the central setup. It is to be noted, that this feeling for cooperation develop gradually in people. At the initial stages this process got the form of treaties and agreements and later by passing through such stages as the formation of confederation, ultimately culminated into the establishment of a federal union. (Hussain, 1973).
2. Deliberate and conscious political efforts play a more important role in the formation of federation, at present. The federal union of Pakistan, India, Canada, Brazil and Mexico are the outcome of conscious efforts based on constitutionalism. These states had unitary system prior to the formation of

federation, but later the powers of regional governments and that of the central government were demarcated in the constitution.

3. In certain cases, federal system was granted to a dependency by some colonial power. Under 1935 Act of India, for example, the British government granted a Federal Constitution to India. (Hussain, 1973).

Federation provides an effective union and a common stage to small provincial governments that can protect their mutual interests. The component units can equally use their resources, collaborate in different areas, while preserving at the same time their autonomy in local affairs. In fact, federation offers an opportunity to such States to unite as are not willing to depart from their sovereign position. The clear example is that of the formation of American federal union, where some states submitted their sovereignty in favour of a strong federation. The independent sovereign states would never submit their sovereignty happily in favour of a unitary system as it would diminish their separate identity. The structure of a federation is a combination of unity and diversity. This provides an active check on the autocratic developments of the Central Government and the division of powers also decreases the burden of administration on the central government. (Mahmood, 2000).

Origin of Federal State

There is a lack of consistency in how federal states are formed. Some individuals believe that federal unions emerge from two opposing forces: the centripetal and centrifugal dynamics of the states involved. Thus, a federation can result from either a process of integration or a process of decentralization. In cases of integration, several sovereign nations willingly choose to join together to form a single federal state, often in response to a common external threat or for the shared benefit of economic opportunities arising from their union. This type of union is driven by centripetal forces. The federations of the USA, Switzerland, and Australia were established through this method. This kind of state frequently had a great deal of linguistic, cultural, traditional, and local interest diversity, all of which the independent local governments could adequately handle. The former unitary state must become a federal union in order to comply with these centrifugal forces. In this manner, the federation of India, Pakistan, and the Soviet Union was established. (Mahmood, 1994).

Pakistan has been a federation since its independence, in part as British India's constitutional inheritance, in part as the product of sheer necessity between 1947 and 1971 when it included two non-contiguous territorial sectors and in part because the provinces had acquired ethnic and linguistic identities of their own as independent nations. In 1901, NWFP born after Punjab as province, in the Sindh it was part of Bombay but rose as new province in 1937, yet Balochistan turned into complete

Governor's province in 1970 after advancing from Chief Commissioner's province to being included into One Unit in 1955.

There exist four groups in indirect British control;

1. Princely states of Bahawalpur in Punjab, Khairpur in Sindh and Kharan, Makran, Lasbela and Kalat in Balochistan, which were merged into their respective Provinces shortly after partition, and Swat, Dir and Chitral, which were merged in NWFP in 1970.
2. Federally Administered Tribal Areas (FATA) and Provincially Administered Tribal Areas (PATA) and the border with Afghanistan.
3. Azad Jammu and Kashmir (AJK), which was constituted as a legal-administrative state, with its own constitution, legislature and Supreme Court, until the Kashmir issue is resolved with India.
4. Gilgit-Baltistan, a secessionist territory of Jammu and Kashmir from 1936 onwards, which was not represented in the legislature of Azad Jammu & Kashmir and Pakistan since 1947. (Waseem, 2010: 4).

This article is an attempt to analyze federalism in Pakistan. It focuses on the condition of federalism in Pakistan during the constitutions of 1956, 1962 and 1973 and what changes are made for the progress of the federalism in the country.

Federalism before the partition of India

Before partition, All India Muslim League had asked for federalism, Indian National Congress, Khudai Khidmatgar Movement, and other political parties in all the constitutional advancements also asked for federalism in British India. The Muslim League cooperated with the Indian National Congress and individually for the encouragement of federation in India. The 1909 Constitutional reforms, also referred to as Minto-Morley Reforms, were founded upon the demand placed by All India Muslim League for separate electorates for the Indian Muslims to protect their interests. Thus, this demand was a first federal call at that time. Following this, Lucknow Pact of 1916 was also a federalism demand where both of them demanded more representation in Central Executive Council and also demanded Central Executive Council shall not interfere into the affairs of provincial Governments but will only look after their activity. Montague-Chelmsford Reforms in 1919 were the outcome of the joint demand by both the political parties for a federal form of government. (Sayeed,2009). People were asking for greater provincial autonomy at that time, in the May 1924 annual session of the All India Muslim League, the Muslim League called for full provincial autonomy to provinces. The Quaid-e-Azam's 14 Points in reply to the Nehru Report in 1928, was a call for federalism by asking for the maximum autonomy and residuary powers for the provinces. He demanded to abolish Diarchy in the provinces.(Pirzada,1986). Allama Muhammad Iqbal's Speech in 1930 at Allahabad

resonated the Muslim League's desire for a federal structure. A voice was heard that the provinces for the Punjab, Sindh, Balochistan, NWFP and Kashmir should be combined into a separate/autonomous state(s). The 1935 Government of India Act, with the Simon Commission and the 1930 and 1931 Round Table Conferences bearing the recommendations, adopted ideas of federalism. The 1935 Act envisaged establishing All India Federation with the British Indian Provinces and the Indian states. The Federal Scheme and the establishment of Provincial Autonomy required the right division of subjects between the provinces and the center. The division had already been made in the Act of 1919 but it was revised now. There existed merely two lists of topics under the Act of 1919 such as Central list and Provincial list. The Act of 1935 partitioned the topics into three lists, Federal, State and Concurrent lists. (Pirzada, 1986). The Act of 1935, abolished Dyarchy at the Provincial level and introduced it at the Center. The federal system under the 1935 Act, was defective in many ways. It neither could provide a workable dominion status to India, nor could give the due status to the provinces. So resultantly many states refused to join the federation. The Federal part of the Act could not be enforced because the requirement of the accession of a specified number of princely states was not met, while the provincial part of the Act was enforced on 1st April 1937. The Congress and Muslim League half-heartedly by accepted the provincial part of the act. There was no way out for except to accept it. So both accepted it and participated in 1937 elections. (Choudhury, 2007).

Federalism and Pakistan

Pakistan adopted the Government of India Act of 1935 with slight alterations. It functioned as the first interim constitution. It is important to mention here that British Government established a federal system but it was entirely planned to deliver the targets of the British government and in this act the authority's incline was more towards center than the federating units. In power and authority, the federating units were given a share but the actual power remains with the center. The powers of federating units were limited. There were hopes that a constitution shall be adopted in short period of time but it had taken almost a decade to frame a constitution. (Khalid, 2013).

One of the promises made for the creation of Pakistan was federalism. Since Pakistan's founding, the political catchphrases of federalism and provincial autonomy have been prevalent. The link between the core components has generated more discussion than any other constitutional issue. (Kundi,2002). However, after 1947, federalism's tenets have been compromised. Dissension between centrifugal and centripetal forces over the autonomy issue was brought about by the removal of Dr. Khan's Ministry in the NWFP and the rise of the Jagto front in Bengal. Many regional leaders thought that after the country gained independence, the central government's long-standing

involvement would diminish. But to their horror, it was the other way around. The role of the central government expanded. Shortly after the first Constituent Assembly began to operate, political disagreements over federalism gave rise to the constitutional crisis. The 1935 Act's federal structure balance, which favored the center, persisted as a crucial component of the new nation's political structure. If the federal government had so desired it could have permitted the provinces in practice and effect a significant degree of autonomy between 1947 and 1956 even prior to the framing of a constitution, as it could change the interim constitution. (Kundi, 2002). It is the fact that the individuals had gained sufficient political orientation during freedom movement and they had established Islam-based national identity and they had strong expectations of implementing these two factors effectively for resolution of the political and strategic challenges of the newly established state but the result was opposite to their expectations. The constitution making process raise such matters and problems which were out of the reach of the leadership and political elites. These matters provided hindrance in the path of the effective operation of the concept of federalism.(Khalid, 2013). The foremost issues were;

- Representation issue at the center as well as at units
- Powers and degree of autonomy granted to federating units
- National language issue
- Problem of the elections pattern

The vice-regal system was continued as per the 1935Act and huge powers remained with the centre and Governor General. Numerous efforts were also made to link the parliamentary system but the system can not co-exist in the vice-regal system. Thus a gap left by this space which was automatically filled up by military and bureaucracy.(Ahmed,2009). That element had a significant influence on the ensuing political and constitutional evolution of the Pakistan. It is realized that in Pakistan ethnic mobilization and political instability result from inconsistency within the theory and practical application of federal arrangements. Nevertheless, the federation of Pakistan fulfill the less requirements of federalism and it works most like a unitary system of government.

Constitution of 1956 and Federalism in Pakistan

The 1956 constitution was promulgated on 23 March 1956. Attribute three of the 1956 Constitution is its federal arrangement. The Constitution created a federation in Pakistan, which at that time consisted of two provinces called East and West Pakistan along with certain regions directly governed by the federal authority. Its provisions coupled with other attributes in a federation; a written document of Constitution, a bi-constitutional structure, division of authority among the center and the provinces, and the presence of a Supreme Court. It promised the greatest decentralization of powers

to meet the requirements of regional self-governance. However, it also provided sufficient measures to guarantee the performance of obligations and responsibilities by the national government concerning the exercise of authority, there were three lists for the division of power;

(i) Federal (ii) Provincial (iii) Concurrent

This principle of dividing subjects into three categories was taken from the 1st Interim Constitution and the Government of India Act 1935. But the distinction was that the subjects had three lists. The Central Government was given 30 subjects among which were foreign affairs, defence, currency, citizenship, foreign and inter provincial trade and commerce, insurance, industries, posts, telecommunication, mineral oil and gas. The provincial list had ninety four items such as public order, administration of justice, police, land, agriculture, local government, education, public health, sanitation, as well as industries, factories, mines, forests, electricity, and other subjects that were considered to be local. Nineteen items were considered to be in the concurrent list which was the smallest and was defended on the assumption that there are certain matters which, in normal circumstances, would be dealt with by the provinces, but there are occasions when it becomes desirable and, indeed, necessary to deal with these matters on a national level.(Khan, 2001).

The remaining powers rest with the provinces whose legislatures were to have powers to legislate on subjects not covered by the federal, provincial, or concurrent lists. It is the Chief Justice of Pakistan who has had a role in solving these disputes by setting up a tribunal to resolve the conflict. The Chief Justice also had to resolve other disputes between the provinces and the center. There was a provision of an interprovincial council which the President of Pakistan could constitute to consider and discuss matters of mutual interest involving the federation and one or more provinces. This constitution also provided for a parliamentary system of government at the district and central levels. The President was the head of the federation. (Khan, 2001) A national monetary council and a finance commission were formed. The council was constructed to advise the state on the development of monetary policy, and it was the duty of the income designation and granting expenses council to oversee the dividable taxes and loan issuing. The constitution mandated a single house legislature, while most federal states in the world adopted a bicameral legislature.

The 1956 constitution was quickly terminated and Ayub Khan's Martial Law in October 7, 1958, led to its abrogation. This constitution failed because of the absence of elections or unnecessary president blocking interferences alongside the lack of governance, change of ministers, governance and political party leaders, educational systems, and rampant corruption across the country which saw incredible growth over time. Thus, the 1956 Constitution was repealed with Ayub Khan's 1962 constitution.

Constitution of 1962 and Federalism in Pakistan

The Constitution of 1962 introduced the presidential system of government. The President alone held all executive power, meaning that his responsibility bisected the central government wholly. Additionally, he had the power to approve or reject laws made by the legislature, return them to the National Assembly, as well as conduct foreign relations and warfare. His power also extended to military and legislative decisions, along with the judicial powers of granting pardons or reprieves. The Constitution places divided sovereignty among the states, as Pakistan was a unitary state alongside autonomy within the provinces so Pakistan could achieve its best interest as a whole. Pakistan was to be a federation with provincial autonomy, and the territories both within and outside the borders of Pakistan are to be included. Pakistan had two capitals; Islamabad for the Central Executive Government and Dhaka as the main seat of the Central Legislature.(Choudhury, 2007).

There was a division of powers between the central and provincial governments. There was a single list of central government, which included the subjects such as defense, external affairs, currency etc and the residuary powers were vested with provinces. The central government was not only strong in its own rights, but could lay down policy even in matters, which had been allotted to the provinces. The provinces were expected to as mere administrative agencies of the central government. The Governors were directly elected by the President. In the matters of appointment of ministers and in their relationship with their provincial assemblies, they had to function under the instructions of the President. The Constitution provided that central legislature was consisted of President and National Assembly. The National Assembly might frame its rules of procedure and of validity of any proceedings might not be challenged in any court of law. (Ahmed, 2009)

Each province had a provincial Assembly, which was organized on the lines of National Assembly. Their relationship to the provincial governors were the same as the National Assembly's relation with President. The Constitution had transferred several responsibilities to the provincial governments. Agriculture, water and power development, health, social welfare and industrial growth were among these. But in practice, the Central Government or its representatives used to exercise these powers. By induction of an amendment, the judiciary had full power to pass judgement over the views of legislature. The Constitution also maintained the judicial control over the executive. The courts had the power of "Judicial Review" of executive actions. (Ahmed, 2009). The constitution of 1962 did not last long. Various factors led to its failure. One of the important factors was the growing autocracy of President Ayub Khan. Shaikh Mujib-ur- Rahman demanded greater provincial autonomy and Zulfikar Ali Bhutto launched a movement against Ayub Khan. So Ayub Khan resigned and handed over

the government to Army Chief Yahya Khan. He abrogated the 1962 Constitution and declared Martial Law in the country.

The Constitution of 1973 and Federalism in Pakistan

The 1973 Constitution was promulgated on August 14, 1973. The Constitution begins with the definition of Islam. It declares that Pakistan is a Federal Republic to be known as Islamic Republic of Pakistan will consist of the following territories,

- a) The provinces of Baluchistan, the North-West Frontier, Punjab and Sindh.
- b) The Islamabad Capital Territory.
- c) The Federally administrated tribal areas.
- d) Such states and territories as are or may be included in Pakistan whether by accession or otherwise.

It announces that Pakistan will be a federation, where within the units there will be independent with such boundary and limit as to their powers and authority as may be enunciated. There are two lists, Federal Legislative List is one and the other is Concurrent Legislative List and residuary powers and vested upon Provincial Governments. The Parliament has the sole authority to enact law in respect of any subject not included in either Federal Legislative List or the Concurrent Legislature List. In respect of the Concurrent Legislative List, the Federal Law shall override the provincial law, in case of inconsistency and conflict, whether enacted prior to or subsequent to the Act of Provincial Assembly. With regard to the national interest of Pakistan, with reference to its defence, economic and financial stability, planning and coordination and consistency of laws, Parliament is competent to enact law on any matter not falling under the Federal Legislative List or the Concurrent Legislative List. A provincial Assembly is limited to the residuary powers. (Rizvi, 1992)

The 1973 constitution had a new power structure to redefine the concepts of federalism under the concept "maximum provincial autonomy" The residuary powers were given to the Provincial Assemblies. The Constitution established Bicameral Legislature, National Assembly as lower house and Senate as upper house. The restored Constitution of 1973 has introduced a semi-parliamentary or semi-cabinet system. It states that there shall be a cabinet of ministers headed by a Prime Minister. The President shall act on the advice of the Prime Minister or cabinet but the President may request the Prime Minister or cabinet to reconsider such advice. The President is the head of State and Prime Minister is the head of Government. Prime Minister and cabinet support the President in operating the administration. He embodies the unity of the state. (Rizvi, 1992)

Relations between Federation and Provinces in 1973 Constitution

The Federal system of government is based on division of powers between the Federation and Provinces. In 1973 Constitution, two lists have been prepared; Federal

Legislative List and Concurrent Legislative List. The Federal Parliament holds the power to legislate on the Federal List and according to the Article 142, the Parliament and Provincial Assemblies both have the power to legislate on the matters enumerated in the Concurrent Legislative List. However, on those matters which are not enumerated in either list, only the Provincial Assemblies can legislate. Besides, legislation in respect of those territories which do not form part of any province, is the authority of the Parliament only.

To strengthen the position of the Federation, it has been clarified in the Constitution, in Article 143 that in case of a contradiction between the federal and provincial law, the federal law will be superior and the provincial law shall stand void to the extent of its contradiction. This situation shall be effective regardless of the fact that the federal law has been enacted later or already exists. If two or more Provincial Assemblies, through a resolution demand the Parliament to regularize by law such a matter which is not enumerated in either list, the Parliament shall have the power to legislate on the matter. However, the Provincial Assembly of the concerned province may amend or repeal the law according to its requirements. (Mahmood, 1994:92)

Under Article 146, the Federal Government, with the agreement of the Provincial Government, may delegate to its officer's functions in respect of any matter. By an Act, the Parliament can grant powers to a province or officers of a province in respect of a matter to which a Provincial Assembly is not empowered to enact laws. In that event the Federation will pay to the province such amounts as may be agreed. If there is no agreement, an arbitrator appointed by the Chief Justice of Pakistan will have the authority to pass an order. The Provincial Government shall also, with the agreement of the Federation, assign such responsibilities to its officers which are within the executive jurisdiction of the Provincial Government. According to Article 148, the executive power of each province shall be exercised with a view to obtaining obedience of Federal legislation which extends to such province. In the exercise of the executive power of the Federation, due regard shall be had to the interests of the concerned province. It is the responsibility of the Federation to defend all provinces from external aggression and internal unrest and to make sure that the Provincial Governments are conducted in accordance with the Constitution. As per Article 149, the executive power of each province shall be so exercised as not to obstruct or prejudice the executive power of the Federation. For this reason the Federal Government can issue specific instructions to the province. The Federal Government can also provide instructions to the province for the implementation of a federal law. (Mahmood, 1994:154).

The Federal executive authority may give directions to a province for construction and maintenance of communications which are of national or strategic importance. The Federation can also direct the province for the prevention of threat to peace or

economic life. According to Article 150 full faith and credit shall be given throughout the country to public acts and records, and judicial proceedings of provinces. Inter-provincial trade freely carried out unless the Parliament imposes any restriction, which is its executive power and the provinces do not hold any power to impose restriction on the export from or import into the province. The province has no power to impose a tax which discriminates between the products manufactured in the province or manufactured in another province. An act of a Provincial Assembly imposing reasonable restriction in the interest of public health, public order or morality or for protecting animals or plants, shall not be invalid if it was made with the consent of the President. The Federation may acquire land situated in a province for any purpose connected with a matter with respect to which the Parliament has power to make laws. The Federal Government may also direct the provincial government to acquire the land on its behalf. These matter shall be settled down by mutual agreement and in case of any default of agreement, the arbitrator appointed by the Chief Justice of Pakistan shall make a final decision. (Mahmood, 1994:155)

Council of Common Interests

Before the abrogation of One Unit there was no issue of dividing the government institutions and departments among the provinces. When West Pakistan was divided into four provinces, the problem of dividing such departments became complicated which were made on the basis of a single province of West Pakistan. These departments were railways, irrigation, power and natural gas. It was very tough task to divide them on the basis of new provinces. So the Council of Common Interests was established for making policies on these departments and taking equal care of common interests of four provinces. The important duty of this council is to not let any differences arise between the Federal and Provincial policies. According to the Article 153, the President of Pakistan will appoint the Council and the Council shall be answerable to the Parliament and its decision will be made on the basis of majority opinion. Council comprises on the provincial Chief Ministers and equal number of members from the Federal Government and nominated by the Prime Minister of Pakistan. If the Federal or a Provincial Government is not satisfied with the decision of the Council, it may send the matter to the Parliament and the Parliament decision will be final. (Rizvi, 1992: 166).

National Economic Council

In Article 156, the President will make a National Economic Council and its Chairman will be Prime Minister and other members will be chosen by the President including one member from each province. The main task of the Council is to review economic conditions of the country and will make plans for financial, commercial and economic policies in the light of Principles of Policy of the Constitution. (Rizvi, 1992: 170).

National Finance Commission

In Article 160, President will make National Finance Commission which will be consists of the Federal Minister of Finance, Provincial Finance Ministers and other members in consultation with the Governors of Provinces. The duty of National Finance Commission to make recommendations to the President on given issues:

- i) The distribution between the Federation and the Provinces of the net proceeds of taxes, like income tax, corporation tax, sales tax, export duties, excise duty and any other taxes specified by the President of Pakistan.
- ii) The making of grants-aid by the Federal Government to the Provinces.
- iii) The exercise of the borrowing powers conferred by the Constitution on the Federal and Provincial Governments.
- iv) All other matters relating to finance referred to the Commission by the President.

On receiving the recommendations of Commission, the President specifies the share of revenues for each province. The Commission's recommendations and details laid before the Parliament and Provincial Assemblies. The President holds the power to make grants-in-aid to a Province if required. According to Article 161 of the Constitution, the income from the natural gas shall be paid to the province in which the well-head of the gas is situated. The net profit from the generation of power from hydro-electric stations shall be paid to the provinces where the power stations are situated. No Bill or amendment relating to the net proceeds paid to the provinces shall be laid before the Parliament without the prior sanction of the President.(Mahmood, 1994:157-158).

18th Amendment and Federalism in Pakistan

The 18th Amendment to the Pakistan Constitution was approved by the National Assembly on April 8, 2010, the Senate on April 15, 2010, and the President signed it on April 19, 2010. The amendment abolished the authority of the President to dissolve Parliament. It has been said that the existing modification in the constitution has again put the constitution from semi-presidential to parliamentary form. It was the first in Pakistan's history that a President agreed to sign a document which shortens its powers. (Abbasi, 2010).

Moreover, the amendment has enhanced the judicial autonomy by which appointment of judges in Supreme Court will be made by a judicial commission. The President will not unilaterally declare emergency in the provinces and the President will also not appoint the Chief Election Commissioner. It seems that under the 18th Amendment to the Constitution, a sincere effort has been made to restore the following principles of the 1973 Constitution:

1. Federal system of government - Parliamentary.

2. Chief Executive to be Prime Minister.

3. President as a symbolic head – tied to the advice of the Prime Minister in all situations.

Besides, to the alteration of President's powers and elimination of limitations on individuals to contest polls like becoming Prime Minister for a third time, the title of North Western Frontier Province (NWFP) was altered; it is now Khyber-Pakhtunkhwa. The renaming of the province stirred disturbance in the Hindko-speaking people who resisted the name Pakhtunkhwa on the basis of ethnic and cultural identity. After much political debate among the leading political parties, the name Khyber-Pakhtunkhwa was agreed on. (Abbasi, 2010).

Gilgit-Baltistan Governance Order 2009

In September 2009, the Pakistan People's Party government issued Empowerment and Self-Governance Order 2009 for the Northern Areas of Pakistan and renamed them as Gilgit-Baltistan while providing them province-like status. The Order 2009 provided for a Chief Minister as leader of the Legislative Council, Public Services Commission, Chief Election Commissioner and Auditor General. The Northern Areas are traditionally a part of Kashmir region and endowed with natural resources such as water and the Bhasha-Diamer hydroelectric power project will be located in this region. The religious and ethnic dynamics of Gilgit-Baltistan are fascinating from the federalism point of view and conflicts. Although the state and the rest of the federating units are Sunni-dominated, in the region Shia hold majority. Moreover, the inhabitants of the region have been historically insisting upon equal rights alongside the rest of Pakistan and their aspirations and requirements need to be considered while distribution of resources and opportunities is to be made. For the purposes of effective inclusion in decision-making forums without disregarding unique cultures and languages, a consociational regime will have to be introduced to form political space within a largely majoritarian type of democracy in Pakistan. (Abbasi, 2010, p.25) The Act provided Provincial autonomy. The following articles were either partially or completely changed; 70, 142, 143, 144, 149, 157, 160,161, 167, 172, 232, 233, 234. The matters encompassed production of electricity; National Finance Commission affairs; natural gas; provinces' borrowing; emergency provisions and legislative powers.¹⁸ The most significant change was Article 142(b) and (c) confer right to provincial assemblies to enact laws in relation to criminal law, criminal procedure and evidence. In the same manner, Article 270AA stipulates that all current legislation will continue to operate unless replaced by provincial assemblies through new legislation. (Islam, 2013).

Balance of Powers between the Centre and the Provinces

The passage of historic 18th Constitutional Amendment can be seen as a step in the direction of a negotiated renewal of inclusive and democratic federalism in Pakistan. It

is first an example of 'grand national political consensus' because all major parliamentary-political parties were involved and legitimized this process. The 18th amendment makes significant steps towards devolution of power and strengthening provincial autonomy. It abolishes the Concurrent Legislative List of subjects and strengthens the provinces. The amendment gives powers to the provinces to impose sales tax on services. (Alam, 2023). Powers have been delegated to the provinces to borrow national and international loans, to have joint control with the federal government over 18 matters including some important matters such as sea ports, all regulating authorities, national planning and national economic coordination, oversight and administration of public debt, census and natural resources. The amendment has increased the function of Council of Common Interests (CCI). The CCI will be a strong constitutional forum consisting of members of centre and provincial government to make important decisions. The Council will be an effective forum of dispute resolution, economic planning and development with a sense of shared responsibility. It has been made obligatory to convene once in a quarter. National Economic Council (NEC) has been reformed with advisory function to analyze overall economic situation of the nation and to recommend the Federal and Provincial government to make plans in this respect. The second major move ahead is consent from the concerned Provincial Assembly for the application of emergency rule in a province. National Finance Commission Award: Another significant aspect is the national revenues' distribution that is secured under this amendment and provinces' share cannot decrease below that awarded in the previous National Finance Commission award. (Islam, 2013).

Judicial Appointments: An independent Judicial Commission will recommend nominees and a special parliamentary committee consisting of government and the opposition will approve them. On the face of it, this was most contentious element of the amendment and had faced numerous road blocks and litigation spread over months. But today, it is one of the first functional element of the 18th Amendment. The Amendment granted ownership and share in policy and management of natural resources, enhanced legislative powers of the provincial assemblies including tax powers. In dissolution, civil society groups, media, politicians and other interest groups have a role to play in managing divergence and developing a home grown federalism based on local polity and providing unity in diversity. (Alam, 2023)

Challenges to Federalism in Pakistan

The current federal issues in Pakistan are multifaceted and have their roots in the dynamics between the central government and provincial governments, as well as economic disparities among regions. Under the 1973 constitution, Pakistan operates as a federation, but there are challenges in its practical implementation.

- **Centralization vs. Provincial Autonomy:** While the 1973 constitution distributes powers between the central and provincial governments, there are tendencies toward centralization. Provinces feel that the central government frequently interferes in their domains, such as education and local government, leading to mistrust.
- **Ineffective Constitutional Institutions:** Key institutions meant to address federal issues, such as the Council of Common Interest and the National Finance Commission, have not been functioning regularly. This exacerbates concerns among provinces.
- **Economic Disparities:** Pakistan's economic policies, including privatization and free enterprise, have resulted in wealth concentration in the hands of a few. Smaller provinces and disadvantaged groups feel left behind, leading to grievances against the central government.
- **National Finance Commission Award Disputes:** The distribution of funds in the federal divisible pool is a contentious issue. Provinces advocate for various distribution criteria, such as population, revenue collection, or special circumstances. The central government's offer of 42.7% provincial share has caused bitterness.
- **Specific Provincial Demands:** Provinces have specific demands, such as NWFP's claim for a larger share of hydro-power profits and Baluchistan's demand for increased gas royalty. These demands reflect regional grievances and disparities.
- **Infrastructure Development Projects:** Projects like the Gawadar port, coastal highway, and mineral extraction projects are managed by the central government, leading to concerns in provinces that these projects primarily benefit outsiders and contribute to the marginalization of locals.
- **Inter-Provincial Disputes:** Provinces like Sindh and Balochistan have disputes over issues like water resources and royalty payments. The Kalabagh Dam construction remained highly controversial.
- **Council of Common Interest Inactivity:** The Council of Common Interest, designed for inter-provincial coordination and conflict resolution, has not convened for an extended period, exacerbating inter-governmental tensions. (Alam, 2023).
- **Ethnic-Based Politics:** Ethnic identity, when used for divisive purposes, can pose a threat. Political parties rooted in ethnic identity may undermine national unity.

- **Weak Political and Democratic Structures:** Parties with weak structures and ideologies can weaken political and democratic institutions. This ultimately affects the strength of the federation. (Adeny, 2007)

Conclusion

In conclusion, this paper highlights the significance of federalism in addressing Pakistan's diverse geographic, economic, and demographic challenges. While the 18th amendment grants power to provinces, it also presents challenges in maintaining both state integrity and provincial autonomy. The paper argues that ethnic mobilization and political instability in Pakistan result from the disparity between federalism theory and practice. Despite meeting the minimum criteria for federalism, Pakistan often operates as a unitary system, leading to insecurity among ethnic and territorial groups. The paper underscores the need for clear operational guidelines to effectively manage ethnic diversity within the country.

In summary, the federal issues in Pakistan stem from a complex interplay of centralization tendencies, economic disparities, specific regional demands, and inter-provincial disputes. Resolving these issues will require concerted efforts from the central government to address provincial concerns, promote equitable development, and strengthen the institutions meant to facilitate federal cooperation. Failure to address these challenges poses a significant threat to Pakistan's federal structure.

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