

**THE DIVISION OF FUNCTIONS AMONGST FEDERAL, PROVINCIAL AND LOCAL
GOVERNMENTS UNDER THE CONSTITUTION**

Mr. Hamid Khan

Introduction

Before the Government of India Act in 1979 the system of provincial government in British India was highly centralized. The provincial governments had very little power and the provinces were mainly run by the British civil servants on the direction of Central Government in Delhi or in London. For the first time vide the Government of India Act 1919 provided some autonomy to the provinces. A system of diarchy (dual government) was introduced in the provinces wherein executive of the province was divided into two parts, one responsible for legislature and other responsible to the British Parliament through the Governors and the Governor General. Departments such as Education, local Self Government, Public Health, Public Works, Industries and so on, known as transferred subjects were allocated to the ministers who were elected members of the provincial legislature. Departments such as Police, Administration Finance, Land Revenue, Irrigation and canals described as reserved subject was headed by nominated officials, generally ICS officers who were responsible only to the Governors. The Governor who headed both reserved as well as transferred departments could easily override any decision of a minister or a member of the Executive Council. No principle of cabinet or collective responsibility was introduced in the working of provinces. This system in any case was highly centralized and the Governor who was the nominee of the Governor General and British Government would take instructions from the center or the Secretary of State in London. The relationship between the center and the province was that of superior and subordinate respectively under the Government of India Act 1919.

Government of India Act 1935

Under the Government of India Act 1935, the autonomy of the provinces improved considerably. Nevertheless, the Governors of the Provinces remained powerful. The ultimate powers in the provinces resided in him and he had functions that could be grouped in three heads.

- a) Functions in the discharge of which the Governor was required to act on the advice of the Council of Ministers;
- b) Functions in the discharge of which he was required to exercise his individual judgment; or
- c) Function in respect of which he was required to act at his discretion

The day to day working of the government in a province thus became the responsibility of the Council of Ministers and the Governor did not interfere in any routine matters by exercising his

individual judgment or by acting at his discretion. He could only interfere where the interests of the colonial powers were involved or a direction was given to him by the Governor General or the British Government or where appointment and dismissal of Ministers, determination of their salaries or allocation of business amongst them was involved. Under this act, the elections were held in 1937 and the congress made strong showing in most of the provinces. Congress formed provincial ministries in Madras, Central Provinces, Behar, and united Provinces Bombay, Orrisa and N.W.F.P. These ministries were formed in 1937 and came to an end in October 1939 when they resigned in protest against unilateral declaration of war without the consent of the Indian people

After the second World War, General elections were held. Muslim League made strong showing in these Elections and won landslide victory in the muslim seat in the provinces that had Hindu majority. Muslim League formed ministries in Sindh and Bengal. These elections led to the independence and partition of India with the States of Pakistan and India coming into existence.

Government of India Act 1935 served as the Constitution of Pakistan for the first nine years of its existence. The federal and provincial Ministries were formed according to the provisions of the Government of India Act 1935. In these years there were instance of interference in the working of provincial government by the central government which included the dismissal of the ministries in the provinces.

Constitution of 1956

In the distribution of legislative powers between the centre and the provinces, the framers of the 1956 constitution allowed a greater decentralization under the Government of India Act, 1935. Administrative relations between the center and the provinces, however changed a little. The federal system showed a marked tendency towards unified control and authority.

Although the maintenance of law and order was a provincial subject, the federal government was vested with the ultimate responsibility of ensuring the peace and safety of the country. The federal Government was also entrusted with the task of ensuring that the government of each province was carried on in accordance with the provision of the constitution.

A provincial government was obliged to exercise its executive authority in such a manner as to ensure compliances with the Acts of Parliament and existing laws applying to that province. The central government would make laws in the federal or concurrent list which would apply to the provinces. Although these laws might be administered by the federal authority itself, yet the constitution enjoined upon the provincial authorities the duty of giving due effect to the federal laws prevailing or applying to the provinces and not impinging upon or prejudicing the exercise of the executive authority of the federation.

The 1956 Constitution made very little change regarding the distribution of financial resources between the center and the provinces. The original distribution of the financial resources under the government of India act 1935 tipped heavily in favor of the center and had been changed further to the advantage of Central Government in Pakistan after independence. The result

was that the provinces were left without adequate resources particularly in East Pakistan which suffered greatly and greater financial resources for the province were vigorously demanded in the constituent Assembly by the members from East Pakistan. Notwithstanding this, the major sources of income under 1956 constitution were assigned to the center which was given the power to levy custom duties, export duties, excise duties, corporation tax, and taxes on income other than agricultural land, taxes on goods or passengers and taxes on minerals, oil and natural gas. The principal sources of income of the provinces were taxes on mineral rights, excise on alcohol and drugs, taxes on electricity, taxes on vehicles and advertisements, animals, boats, on professions and trades and on luxuries.

A provincial legislature was given more power to make laws for the province or any part of the province with respect to any matter other than those enumerated in the central list. The central legislature however could legislate on any matter connected with a provincial subject on the grounds of national stability of Pakistan, planning, coordination or the achievement of uniformity in respect of any matters in different parts of Pakistan.

In case of the conflict between the central and provincial laws the latter had to give way to the former to the extent of such repugnancy. Residuary power had been vested in the provincial legislatures which had an undefined residuum of power to make laws with respect to any matters not enumerated in the third schedule. The supporters of provincial autonomy in Pakistan were equally firm in demanding residuary powers for the provinces and ultimately the 1956 constitution vested the residuary power in the provinces. This practice was retained under the 1962 and 1973.

CONSTITUTION OF 1962

Both the Government of India Act 1935 and the 1956 Constitution contained detailed provisions relating to the administrative relations between the center and the provinces. This 1962 constitution, however contained hardly any provision in this respect. It was provided that executive authority of the central government extended in all matters with respect to which the central legislature had exclusive power to make laws. The extent of the executive authority of the province was defined to include all matters over which the legislature of the province had power to make laws.

The allocations of the proceeds of the taxes and duties collected and administered by the central government to the provinces were as follow.

- i) 50 per cent of income tax;
- ii) 60 per cent of the sales tax.
- iii) 60 percent of excise duties on tobacco, tea, and betel nuts and;
- iv) 100 per cent of the export duties on jute and cotton.

The President, however was to constitute the National Finance Commission consisting of the Central Finance Minister and provincial Finance minister and such other persons as the President might appoint after consultation with the Governors of the provinces. The

Commission was to make recommendations to the President as to the distribution between the central and the provincial governments of the proceeds of the following taxes;

- i) taxes on income including corporation tax
- ii) taxes on sales and purchases
- iii) export duty on jute and cotton and such other export duties.;
- iv) such excise duties imposed by the central government

The National Economic Council was to be appointed by the president by nominating its members. The National council under the 1956 constitution consisted of four ministers of the federal government, three ministers of each provincial government and the prime Minister who was to be ex-officio chairman of the National Economic Council. The functions of the National Economic Council under the 1962 constitution were to review the overall economic development of Pakistan. It was stressed that in formulating the plans, the National Economic Council was to ensure that disparities between the provinces and per capita should be removed and the resources of Pakistan including resources in foreign exchange be used and allocated in such a manner that disparities should be removed in the shortest possible time

CONSTITUTION OF 1973

Administrative relations between the center and the provinces were on the same lines as provided under the previous Constitutions. The federal system showed a marked tendency towards centralized control and authority. It was the constitutional duty of the federal government to protect each province against external aggression and internal disturbance and to ensure that the government of each province was carried out in accordance with the provisions of the constitution. A provincial government was obliged to exercise its executive authority in such a way as to ensure compliance with the Acts of Parliament and existing laws applying to that province.

There was one important provision in the Constitution which would enable the federal government to delegate power to the provincial governments as its agents. The federal government might with the consent of the provincial government entrust either conditionally or unconditionally to that government or to its officers, functions relating to any matters to which the executive authority of the federation extended. Similarly a provincial government with the consent of the federal government was also empowered to entrust, either conditionally or unconditionally, some of its executive functions to the federal government or to its officers.

The new constitution made no material changes regarding the distribution of financial resources between the center and the provinces. The center was given the power to levy custom duties, export duties, excise duties, corporation tax taxes on income, other than agriculture income, estate and succession duties regarding property other than agriculture land, tax on capital value of the assets exclusive of agriculture land, taxes on goods or passengers and taxes on mineral oil and natural gas. The principal source of income for the provinces were land revenue and tax on agriculture income, the capital value of agricultural

land, taxes on land and buildings, taxes on mineral rights subject to the federal list, excise on alcohol and drugs, taxes on electricity, taxes on vehicles, and advertisement , animals, boats on professions and trades and on luxuries.

At the time when the parliamentary debates leading to the adoption of 1973 constitution were taking place, the break up of Pakistan and secession of East Pakistan was fresh in mind of the parliamentarians in particular and the people of Pakistan in general. There was a general clamor in favor of provincial autonomy and the members of the parliament from the governments of Balochistan and N.W.F.P were particularly keen for adoption of provisions that would lead to provincial autonomy and its strengthening. Therefore, apart from National Economic Council and Natural Finance Commission, the institutions which were already in existence under the previous constitutions, a new provision was also introduced. One of the most important institutions which was to ensure provincial autonomy, was named 'Council of Common Interests'. It was to consist of chief ministers of the provinces and equal number of members from the federal government nominated by the Prime Minister from time to time. The council was to formulate and regulate policies in relation to subjects which are in the provincial legislative list or concurrent legislative list. It was to exercise supervision and control over related institutions. It could make its own rules or procedures. The institution, had it been strengthened could have been instrumental towards ensuring provincial autonomy. However, successive federal governments in Pakistan have tried to undermine this institution. The governments have ensured that either the council of common interest be not constituted or if constituted its meetings are not held. Thus the entire edifice of provincial autonomy based on this council did not come into existence or ever become functional.

Nevertheless, the 1973 constitution made elaborate provisions for disposal of the complaints of the provinces regarding interference with water supply, supply of electricity bills and natural gas and broadcasting and telecasting. The provisions regarding federal duty of excise on natural gas to be paid to the province in which the well head of the natural gas was situated was a step towards strengthening the economy of the province where such natural resources were based. Similar provision was also made for hydro electric power.

The constitution of 1956, 1962, and 1973 did not make any provision for local government. The matter of local government was left to the domain of the provinces. Local bodies have always been a subject of the provincial government. The local governments were never given any constitutional position. In the 1973 constitution there is a provision under the chapter on "Principles of Policy (Article 32) in which it has been stated that local government institutions composed of elected representatives of the areas concerned be encouraged and in such institutions special representation be given to peasants, workers and women. The local government laws were always passed by the provincial legislature and control of local government has always been considered to be an important aspect of provincial autonomy of the provinces.