

Federalism/Demarcation of Roles for Units in Pakistan

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"Foundations of your state have been laid and it now for you to build and build as quickly as well as you can." Quaid-e-Azam
August 1948

Introduction

The demarcation of roles between the federal, provincial and local governments has been an important issue in Pakistan politics since its inception. The demand for provincial autonomy is a reflection of the uneven division between these three sets of governments under a poor federal system based on the principles of allotted roles for the three sets of governments.¹ It is believed that due to the longer role of army rule as a ruling elite, lack of an established representative system where constitutional boundaries are defined, and over-dominance of Punjab with a lion's share in power-structure, there are growing concerns over the issues of provincial autonomy in Pakistan. There is a growing voice as well as necessity for the promotion of state interaction between the federal, provincial and local governments under a good established federalism. Since the partition of Pakistan to the present, the question of this relationship has been entailed as an essential element in all the constitutional debates at the cost of the separation of East Pakistan.

This paper is an attempt to highlight the importance of

Federalism or the state of interaction between the federal, provincial and local governments in the theoretical, historical, political and current contexts.

What is a Good Federalism and Why Needed?

Majority of the nation-states in the world with good representative governments have a federal form of government. Even England which was a leading example of unitary system is drifting rapidly towards a federal setup. The adoption of the Federal system as a leading form of government by the majority of nation-states is a witness to the fact that it is more appropriate for heterogeneous societies in nature than other forms of government such as the unitary or confederation. A considerable number of nation-states are composed of different ethnic, cultural and linguistic groups, and if the diversity of these groups is not united by a viable political system, the integration of a state may be at stake.² A good federal system provides three divisible sets of subjects for the governance of a society. They are Federal List, State/Provincial List and Current List. The role of Local government is defined usually in the constitution under the State/Provincial list or under a separate chapter dealing with the Local Government as in the USA, Turkey and Belgium. The Concurrent List is from where both Federal and Provinces can exercise but in case of dispute the Federal Government's right will prevail. Federalism is considered as an important means of achieving political harmony in a country because the three units of center, provinces and local government can interact for the promotion of a good and representative governance³.

Federal-Provinces Relations in Constitutional/ Historical Perspective

The adoption of federal form of government for the better

1 Mansoor Akbar Kundi "Federalism in Pakistan" in Asian and African Studies, Vol 11/2002 p. 37 to 48

2. Wheare, K. C. Modern Constitutions, New York: Oxford University Press, 1966 p. 24

3. Ibid p. 25

interaction of federal, provincial and local government was deemed necessary for the establishment of Pakistan which unfortunately has failed to take place.⁴ They were on the very agenda of the Muslim League for its struggle for the self-rule of India, and later for the demand of Pakistan.⁵ The constitutional crisis developed soon after the First Constituent Assembly started functioning and political differences were voiced over the issues of federalism. The balance of the federal structure, which was in favor of the Center, as provided in the 1935 Act, was continued as an integral part of the new country's political system. The central government was competent to allow the provinces a substantial measure of autonomy. The central government, by all means, was capable of altering the interim constitution.

The Basic Principles Committee strongly recommended the adoption of the principles of federalism; nonetheless, they were largely ignored. The 1956 Constitution provided a very strong federal form of government but with a stronger role of the central government against provinces under a One-Unit System adapted in 1954. There was no local bodies government. Pakistan was divided into two zones: East and West Pakistan. Under the Parity Formula, the National Assembly comprised 310 members. 150 were elected by popular vote from each unit, and 10 seats were reserved for women to be elected indirectly. The purpose was to deprive East Pakistanis with 55% population majority.⁶ The political crisis and instability of the constitutional government during the two years of the existence of the 1956 Constitution dimmed the credibility of a healthy center-provinces relationship.

The 1962 constitution, a brain-child of President Ayub Khan,

4 . Craig Baxter, "Constitution Making: The Development of Federalism in Pakistan" in Asian Survey, Dec 1974, 14:12 pp.1145

5. Keith Callard, Pakistan, A Political Study, Oxford: Allen & Unwin, 1968, p. 194

6 . Tariq Ali, Can Pakistan Survive? London: Penguin 1983, p. 16

was designed to seek legitimacy of rule under a political structure whose support largely came from the federal institutions: the army and civil bureaucracy. The recommendations of the Constitution Commission appointed by Ayub Khan on 17 February, 1960 under the chairmanship of Justice Shahabuddin to probe the future of parliamentary government in Pakistan, were largely ignored. The commission had strongly recommended for the division of powers between the center and provinces. However, they were ignored in the framing of the 1962 Constitution.

The 1962, constitution, like the 1956 constitution, contained three lists of legislative powers: Center, Provinces and Concurrent. The Concurrent list of powers was to be exercised by the Center and provinces. The constitution provided a strong role for the President, both as the head of the state and government. The One-Unit system was continued under the constitution. There was a one-house legislature known as the National Assembly. The National Assembly was elected for five years. According to article 20 of the constitution, the members of the National Assembly were elected on the parity formula, half from East and half from West Pakistan. The constitution defined only the Central List with 49 items, from which the federal legislature could legislate. The items mentioned in the Provincial and Concurrent list were not specified. The residual powers left to the provinces were a total deviation from the principles of federalism.

The 1973 constitution contained a new power arrangement to redefine the principles of federalism under the term "Maximum Provincial Autonomy". The 1973 Constitution was the first document in Pakistan's constitutional history which addressed the problems of federal-provinces relationship with possible arrangements⁷. The residuary powers were vested in the Provincial Assemblies. For the

7 . Hamid Khan,

first time, a bicameral legislature was elected. The Senate was elected for four years on parity bases. The provinces were to elect 14 members each for four years. Half of the members retired after two years. The 1973 constitution contained two lists: Federal and Concurrent. The Federal list comprised two parts. Part I contained items over which only the Parliament could legislate. The Federal list contained 67 subjects. The Federal and Provincial governments could legislate over the Concurrent List; however, in case of conflict over the exercise of power, the central government's right prevailed (article 143).

The prospects for federalism were further dimmed after the military, under General Zia-ul-Haq, seized power and suspended the constitution for another 8 years. The power setup from 1977 to 1985 was crudely in the hands of a military junta which controlled the political structure almost in a unitary manner. A number of Presidential Orders, later on to be covered by the 8th Amendment in the 1973 Constitution, were proclaimed one after another to run the government. The 8th Amendment was the first major amendment that Gen Zia-ul-Haq introduced to revive the 1973 constitution, by protecting a large number of the President's Orders and Ordinances issued between 1977 and 1985, during the period when the constitution was held in abeyance. The 8th Amendment did not greatly change the federal nature of the constitution. It, however, enhanced the legislative powers of the upper house: the Senate. The amendment increased the number of Senators of each province from 14 to 19, and the tenure of a Senator from four to six years. The powers of the Senate to amend the constitution were also increased. According to article 239 of the 1973 Constitution, (before the amendment), the initiation of an amendment bill could occur only in the National Assembly. Once passed by a two-thirds majority, the bill was to be presented in the Senate to pass with a simple majority. After the amendment a bill not only requires a two-thirds majority in

the Senate, it can also be initiated in either house. Requirement of two-thirds majority in the Senate raised the legislative role of small provinces to stem any legislation against the interests of the province.

Center-Provinces Relationship: Major Issues and Adjustment

Dicey, a leading expert on the federal-units relationship says that an acceptable distribution of powers between the Center and its units is an essential feature of federalism.⁸ Federalism as a popular and practical form of government between the Center and units is largely supported by an edge of the Center over the units, but units (provinces and local bodies) get their share and are duly safeguarded in the constitution. The federal government may have maintained a supremacy of legislative powers over the units regarding issues of national importance. However, the units are allotted adequate powers under the system on the basis of population and area.

In Pakistan, the Center has maintained a dominant role over the provinces right from the beginning. The dismissal of Khan Shaib Ministry in NWFP on 22 August 1947, M. A. Khuhro on April 20, 1948 in Sindh, Mammoth's on January 25, 1949, and Fazal-ul-Haq's in 1954 in East Pakistan (under section 92-A of 1935 Act), despite the fact that each government enjoyed a majority in the Assemblies, was a reflection of the federal principles the country was created on. They were not only regarded as undemocratic norms, but created a precedent which later on led the central government to restore their reserve powers to dismiss provincial ministries.⁹

Two factors are largely responsible for the stronger role of the Center in Pakistan. First, Pakistan has been run for very long without any constitutional setup due to military rule during which

8 . A.V. Dicey, An Intoduction to the Study of the Law of the Constitution, London: Macmillan, 1973, p.151

9. Mansoor Akbar Kundi "Why Past Assemblies were dissolved" in Encounter The Dawn, Dec. 14, 2002

the political system was virtually turned into a unitary system. Second, if a constitutional setup remained, the balance of power has been overwhelmingly tilted in favor of the central government where Punjab has maintained a threshold. Punjab, being the largest province in population has a larger representation in the army and bureaucracy, the two important institutions of the state hierarchy.

Pakistan has faced the absence of a stable representative government and remained under a non-democratic and military rule for a longer period. Under such a political setup, the role of the Center becomes overwhelming over the affairs of the units, and the principles of federalism are discouraged. There was no constitutional representation from 1947 to 1956, and later on, from 1977 to 1985. The Constitutional set up is again dormant after the army took over power in October 1999 by deposing the Nawaz Sharif government. The constitutional crisis which developed during the existence of the first Constituent Assembly strengthened the role of federal institutions against the provinces. The government, based on the 1956 constitution was short lived and handicapped by political chaos. The failure of a constitutional government resulted in a military coup, the repercussions of which seriously undermined the future democratic setup. President Ayub ruled the country with the strong role of the army and bureaucracy from 1957 to 1969. The constitutional setup formed in 1962 strengthened the two institutions to support Ayub Khan's regime. The proclamation of martial law in 1969 and the separation of East Pakistan in 1970 bore the enigma of political development even after a political settlement was reached for a representative government based on 1973 constitution. The July 1977 military coup made the constitution lie dormant for the next 8 years. When with a non-party constitutional setup it was revived, it represented a strong Center where the President enjoyed a very strong role. The 8th Amendment had allowed his office to exercise power independent of any advice from

the Prime Minister and to dissolve a government on the plea of being incompatible with the constitutional government. The exercise of the Presidential right to dissolve the Center government (in 1988, 1990, 1993, 1996) under section 58-B ultimately dismissed all four provincial governments too, including that one which remained in opposition to the Center¹⁰.

Secondly, in all the constitutional frameworks of Pakistan, the concentration of powers tilted towards the Center. In all the three constitutions, the federal list was "the richest in terms of the number of subjects and their importance"¹¹. The promise of provincial supremacy appeared like a dumb slogan when actual distribution of powers began. In the 1956 Constitution, the important list of legislative powers was in the hands of the Center. However, the distribution of powers between the Center and provinces rested on the principles that the Center had exclusive authority to make laws, while the provincial legislatures had the authority to make laws on all other matters. In 1962, the distribution of powers was heavily in favor of the Center. A similar supremacy was established in the 1973 Constitution. Pakistani society, which is ethnically heterogeneous and socio-culturally complex, requires a federal system where provinces have a constitutional power structure to exercise legislative, financial and administrative powers. The Parity formula given in 1956 and 1962, bred hatred and frustration not only between the two wings of East and West Pakistan, but alienated the small provinces within the Western unit from the Center, where Punjab had a big share in the army and bureaucracy.

It is said that the spirit of the Pakistan Resolution 1940 on the basis of which Pakistan was established is ignored. The Pakistan Resolution stood for a loose federation. A demand has been raised by

10 . Syed Mujawar Hussain Shah, Federalism in Pakistan: Theory and Practice, Islamabad, Quaid-i-Azam University Press, 1966, p. 2

11 *ibid* p. 163

the Pakistan Oppressed National Movement or PONM, a political forum comprising 28 small and big ethno-nationalist groups and parties from Balochistan, NWFP, and Sindh,, established in 1998. The forum vowed to protect their provincial and economic rights. It had a three-point manifesto: i) The establishment of a loose federation of autonomous and sovereign Punjabi, Sindhi, Baloch, Pakthoon, Sarieki population; ii) that each of these be labeled as states in the spirit of 1940 Resolution; iii) that the federation be vested with the powers its constituent elements conferred on it by mutual agreement and consent.

A bane of the federal-provinces relationship has been the dissatisfaction shown over the financial arrangements between the Center and the provinces. From the beginning of the Raisman Award in 1951 to the National Finance Commission Award, 1990, the provinces have shown reservation over the distribution of pooled taxes and income from the national resources. The debate was renewed in 1997, and it was decided that by September 1998 a joint committee of the inter-provincial governments and the center was to coordinate the issue, but the 1998 nuclear tests put the issue aside. The central government is believed to have predominated over the provinces in financial matters¹². The trends bred dissatisfaction among the small provinces of the NWFP, Balochistan, and Sindh over the allotment of funds, as compared to the resources that the provinces generated. Regarding a better financial relationship between them, more bilateral and collective discussions are needed between the Center and provinces for the assessment of provincial resources and the funds allotted for development. Keeping in view the development requirements of small provinces, funds may not be allotted only on population basis but on land needing development. Good federalism based on a healthy distribution of Center-units

¹² Mohammad Rafi Anwar, Political Government in Pakistan, Lahore: The Caravan Book House, 1967, p. 93

power relationship is tailored to the desires and needs of a country's geo-political and socio-cultural conditions.

The Center-provinces relationship are based on cooperative federalism. However, in a number of polities, the principles of federalism are marred by heterogeneity, lack of national integration, absence of a viable party system, and narrow provincialism. Pakistan is no exception to this fact. It is a country in which constituent units are marked by cultural, linguistic, and historical differences. There has been a lack of a viable two-party system at the national level and provincial level. The provinces of the NWFP and Balochistan have gradually failed to form coalition-free governments in the past. A number of political parties exist at the regional level whose support comes on ethnic and nationalist grounds. Some political parties boost their profile by raising criticism against the Center for the allotment of an inadequate administrative and financial share. Since 1990 there have been grievances shown by the three provinces of Sindh, NWFP, and Balochistan, particularly the last two, over the distribution of financial resources from the pool under the National Financial Commission Award (NFC). They have shown bitter resistance to the dominant role of Punjab in the Council of Coordination for Common Interests (CCI). Against the NFC formula that pool had to be divided on the basis of population. Balochistan raised its demand that the allotment of funds on the basis of area may not be ruled out. The CCI is established under the 1973 Constitution to assure the differences of provinces over the distribution of funds/resources. The agreement reached in the NFC Award 1993 has not been implemented due to a change in governments and financial crisis the country was faced with.

Local Government System: Devolution and Issues

Generally, the local government system is a very good system of promoting democracies at micro level by ensuring economic and political development. They can provide a better substitute of the representative system available to most people who do not have

access to higher authorities¹³. The local bodies system can better serve the needs of democratisation in the country than the present political structure. Majority of the population belongs to the lower and middle classes of the society and is rural based. The process of elections for the Provincial and National Assemblies have little room for people belonging to these strata of society. The local bodies institutions can bridge the difference between the represented and those representing. The political system of Pakistan is marked by the crisis of representation, one of the five crises of political development. There is a representation gap. It is due to the Crisis of Representation that at the end of a democratic system by a coup the public distribute sweets on the roads in jubilation. "Representation is a process through which the attitudes, preferences, viewpoints, and desires of the entire citizenry or at least a larger part of them, with their expressed approval, shaped into governmental action by the representative class." The interests of the represented are ignored. The majority of those living in rural areas, or even urban areas, demand micro-level development. The level of their demands/needs may be for a police station or tehsil, sanitation and water supply in the locality, sanctioning of school etc. Moreover, the local bodies institutions can better deal with the day to day problems of rural life. The representatives of these institutions come under the process of accountability, and are more easily accessible than the MNAs and MPAs. People do not need to wait for their representative to return to the locality or hunt for him in Islamabad, or the capital city of the province. Experiences in Pakistan have shown that for a common man, the accessibility to a local bodies representative is fairly easy, and the offices provide a day to day forum for people of the constituencies.

13 . Mansoor Akbar Kundi "Institutions for better Democracy" The News
13 December 1995

Pakistan's half-baked attempts at devolution demonstrate that there is no realization that this country was in need of the system from the very beginning. The local bodies system was introduced in Pakistan by the Ayub Khan regime. Although it was designed to support his presidential system, opportunities were provided to the people to elect candidates of their own choice. The system continued as long as Ayub Khan remained in power. It could have been continued with some reformation but it was discontinued by Z. A. Bhutto who branded the system for breeding corruption and nepotism.

The local bodies system was again established in 1979 by the Zia-ul-Haq regime. He held elections for the local bodies and let the system work at Union, Tehsils, and Districts levels without challenging his regime. The local bodies system, as can be expected under a Third World Country without the roots of representative government, functioned well but soon after the Assemblies were revived in 1985 under the non-party system the funds of local bodies were pared down after huge allotment of individual funds to MNAs/MPAs during the Junejo government. They were further reduced under Benazir and Nawaz Sharif's governments. Elections were held in three provinces, Sindh, Balochistan and Punjab in 1991 (not in NWFP). But soon their functioning was made dormant except in Balochistan. The major resistance and hurdle in the way of the functioning of the local bodies institutions was the allotment of funds and distribution of powers at district levels.

The local bodies were revived with more powers allotted at their tiers after the 1999 military take over by President Musharraf. President Musharraf like his predecessors was in need of the immediate requirement to legitimize his stay. A seven-point agenda was forwarded by his government for the implementation of a number of reforms to address the problems of a doomed society. They were i) to remove the institutional crisis and to advance the "national

reconstruction for rebuilding national confidence and morale, ii) strengthening the federation and removing inter-provincial harmony, iii) reviving and restoring investor's confidence, iv) ensuring loan and order and dispensing speedy justice v) improvement of state institutions, vi) devolving power to the grass roots vii) Ensuring swift and broad accountability¹⁴. For the implementation of the programme, Bureau for National Reconstruction (NRB) was established. Two persons played a steering role in the establishment of local bodies and devolution plan: Gen.(R) Tanveer Naqvi and Omar Ashgar Khan. In Omar Ashgar's words, then the Minister for Local Government "The role of local bodies institutions is being strengthened by giving them adequate powers to generate resources on their own and to spend it in accordance with local development requirements".¹⁵

The elections for the local bodies were held in three phases all over Pakistan in 2001 and 2002. The devolution plan began from August 14, 2001. The centuries-old district administrative system was changed in order to support the new devolution strategies.

Major Challenges to Devolution and Local Bodies Setup

The major challenge to the Devolution Plan and its knit local bodies structure is the local bodies setup challenged by MNAs and MPAs over the allotment of funds and administrative powers which they want to utilize as a strong pitch to strengthen their constituencies. Soon after the revival of the assemblies, legislators, as in the past, put pressure on the government and won their case for 5 million Rs. for each MNA for development work. The allotment of funds was contrary to the promotion of local bodies structure as well as Devolution Plan. The MNAs are in demand of the revival of the Executive Magistracy Powers.

14 . see a detailed review on it [Christian Science Monitor](#), January 3, 2001

15 . [Dawn](#), daily December 5, 2000

Another challenge to the Local bodies structure is the fragile relationship between the Provinces and districts Nazims. The District governments are not functioning according to the rules. For example, decisions of a tier are not made on consensus of all members, and District and Town Committees are not holding regular meetings.

Another challenge is the functioning of the system to be allotted over years. The local bodies system of Turkey, one of the best in the world, is more than 130 years old. The Local bodies system in all expert opinions can function well and promoted provided it is allowed over the years. It has all the potency to function by serving the micro level powers without challenging the legitimacy of military rulers. I mean in case National and Provincial Assemblies are dissolved due to military interference, the local bodies system can continue. Therefore, as NRB formula says, the local bodies and devolution strategies should be allowed and encouraged politically and financially¹⁶.

Conclusion

The foundations for the demand of Pakistan were laid in the Lahore (Pakistan) Resolution 1940 which advocated a kind of maximum autonomy for units in which a healthy interaction between the Centre, Provinces and Local bodies could take place. But soon after the establishment of Pakistan the principles of its demand were betrayed. Unlike India, we failed to settle constitutional arrangements, raise political party culture that a representative government demanded.

A tragedy of the political history of Pakistan which suffered the true interaction between the three units was that during the most of the time of its existence it has been run by the persons or forces who actually themselves entered politics through backdoors or undemocratic means and lacked both legitimacy and sincerity for the promotion of democratic principles. They were neither the outcome of a democratic process nor a popular movement to take up reins of office as the heads of the state. They entered the offices through intricacies, displacement and coups and tried to establish their rules as the Mediaeval reigning Monarchs without allocating a place for the growth of political norms and democratic culture. Pledging their support for the promotion of the ideas of Quaid-e-Azam and his motto where

16. A recommendation of the National Symposium on the Devolution Plan held in 2000 in Islamabad.

only and only Pakistan comes first with a tolerance and promotion for all sects and classes of society, a distrust was shown on their behalf. The existence of the many of our state/societal structural and functional ills such as political instability, a tottering democracy and dependence of judiciary are the heritage of our rulers who believed in strengthening their role without popular support and democratic institutions. How can under such circumstances a true interaction between the three units be promoted.

For the promotion of interaction between the center, provinces and local bodies a representative system at gross root levels is needed with constitutional arrangements safeguarded by an independent judiciary. History shows that a representative system can only develop if it is allowed to survive over time.