

## **History of Federalism in Pakistan(1947 to 2010):From Centralization towards Provincial Autonomy**

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### **Abstract**

*Federalism is the that type of government System that guarantee the constitutional division of powers among the central government and its units in such a manner that these two sets of government functions to achieve common goals. Federalism is better for a heterogeneous society with a huge area, because it ensures a great deal of sovereignty of the federating units. Thus, ethnic and cultural identities get safeguard and prosperity through self-government. Pakistani federal structures have been controversial since independence. After its independence Pakistan adopted a very centralized federal system under the amended 1935 Act as interim constitution. The various constitutions promulgated in the country, namely, constitution of 1956 and 1962 have also established a centralized system of government with a strong focus on the authorities of the centre. The four military governments that have half of the country's life have aggravated the problem of central government. The result was poor governance and many catastrophe and conflicts. The succeeding central government always tried to resolve these issues & conflicts through unconstitutional means such as the use of power. These attempts have complicated the situation & led to complex crises. As a result, the country was disbanded in 1971. Learning from history, and to avoid such accidents the 1973 constitution was framed by all political parties consent within the parliament. The constitution of 1973, promised a self-governing federal parliamentary system in the provinces guaranteeing basic rights and independence of the judiciary. Unfortunately, the 1973 Constitution was never implemented in its real sense, and moreover the military dictators later became*

*more centralized. To address this imbalance in the federal structure and to establish federalism in its true spirit the 18th constitutional amendment was introduced in 2010.*

**Key words:** *Federalism, Constitution, Provincial autonomy, Pakistan*

## **1. Introduction**

Federalism regulates and manages the affairs between the centre and its provincial units. It is a mechanism to coordinate the feelings of independence without harming harmony of the country. The center handles national affairs while the provincial government runs local interests. In the view of Desi "a political compromise aimed at reconciling national unity and the preservation of the rights of the state." These arrangements are reconciled through the Constitution. Generally, security concerns and economic gains bring the federating units in union. They give up only partial sovereignty over the center and control their safe local affairs with them. In addition to cultural and economic interests, there is a need for full equality between constituent units. In the absence of this factor, a successful union will never work. It was the same sense of inequality and inequality that led to the defeat of East Pakistan in 1971 (Ahmad 1990). The 1973 Constitution envisages a federal system with more financial and administrative powers but it was never adopted in its true sense. Beside that federal system was disturbed by the martial law dictators, Gen. Zia ulHaq in 1977 and General Musharraf in 1999, by imposing martial law which led to more centralization. To address this imbalance in the federal structure and to establish federalism in its true spirit was the introduction of the 18th constitutional amendment in 2010. This amendment introduced significant changes to the federal system agreed upon by the consensus. Research work is an attempt to analyze the history of federalism in Pakistan from 1947 to 2010.

### **1.1 Concept of Federalism**

Federalism is that form of government which divides authorities between the central government and its federal units. This system is more suited to those countries which have heterogeneous society. The majority of countries in the world are composed of different ethnic, cultural and linguistic groups, which require federal System for the unity of their societies. The federal system provides two levels of governments. One is the central government operating in the whole country, and other is the provincial government governing the provinces concerned. Both governments governed by single federal constitution (Ahmad, 1990). Federalism is a mutual derivative charter by federal federations with multi-ethnic orientations that wish to organize a system of government under the auspices of the central government. The Union is administered in a comprehensive political system through the transfer of important materials such as communications, currency, defense, foreign affairs, foreign trade, etc. to the central government by processing the remaining functions of constituent units under the auspices of a written constitution (Kapur&Kapur, 1980).

This relationship is strengthened more concretely in democracy and finds its pace of decentralization while it tends to be highly politicized in authoritarian federal countries. It is proud of the federal units to share political sovereignty in their local affairs on the basis of collective participation with decentralized themes. The structure of federalism is more important to moderate multi-ethnic states with regional and political

autonomy that include political, economic and ethnic trends in groups living in state-on-line The system reflects political intrigues and politicization in solving the problem of the principle of elite participation, combining two technical objectives in this way; reducing the level of power and instigating compromise on political levels. The mechanics are to accelerate the unity of citizens of a state living at the ends of its members divided in the state. Among divided ethnic groups, unification is established within the institution's infrastructure. In other words, federalism is the political unification of opposing forces under one central government (Ali, 1996). In this interpretation, this concept is more concerned with the authorities recognized mutually from the federal government and those of the federal units. In other words, federalism is a method of political organization to choose to integrate separate identities into a comprehensive political structure. We can say that federalism is a political process to create equal relations between the Center and regional governments on the principle of institutional mechanics to merge the endless conflicting objectives in one step and between the federal units [oceanic to ocean] in the other step under a written decree in a decentralized base. It highlights the procedural political action of multi-ethnic groups under the auspices of democratic institutions by proposing great powers to the component units (Faisal, 2010).

By analyzing the history of federalism, it is calculated that from the late 18th century to the present day. Federalism has made progress in the democracy agenda, and for this reason we are keen that federalism is more dedicated to democracies with a decentralized political system rather than to aristocratic regimes (Faisal, 2010).

### **1.2 History of Federalism in Pakistan**

“The theory of Pakistan ensures that the federal units of the national government will have all the independence they will find in the Constitution of the United States of America, Canada and Australia. But some vital forces will remain in the central government such as the monetary system, national defense and federal responsibilities” (Quid-e Azzam), November 1945

### **1.3 Central Federal System (1947-1971)**

After independence Pakistan adopted a system of federalism on an equal footing under India's Repealed Act of 1935. Pakistan federal structure has faced problems from the very start because of the demographic dominance of East Pakistan with 55% of the population. In 1952, the report of the Basic Principles Committee drafted a constitution based on the principles of equal representation in the Senate, but left the composition of the House of Representatives unclear. The Bengalis considered this deplorable, being the majority of Pakistan. The Bengalis demand that they have a majority in both Houses that are equally acceptable to the West Wing provinces, which feared losing their economic and political influence to the East Wing in such situation. Formed by bureaucrat Chaudhry Mohamed Ali, the first constitution (a hopeless delay) of 1956, "solved" this problem by adopting parity principle between Pakistan's two wings, with 150 seats each in a single-chamber national legislature. Thus, a bipolar union is unstable, and it has been observed that its progenitors are more likely to fail (Adeny, 2007).

Unlike the rule in multi-ethnic unions, the boundaries of federal units have not been revised to accommodate regionally concentrated language communities. In addition, there was a refusal to recognize "regional languages", which prevented provinces from adopting languages of their choice (Adeny, 2007). Pakistan's early constitutional

experiences were a breach of the federal era and failure to build compromise. However, even before the elections were held under this central constitutional arrangement, the bureaucratic and military weapons of the state conspired to seize power in 1958 and to create a more centralized political and administrative structure, reflecting the full-fledged executive constitution of 1962. All power in the center, which deprived the provinces of any involvement in government affairs, which generated the birth of hatred and mistrust. The second constitution, once again drafted by a bureaucratic military oligarchy, did not refer to the federal system in its description of the name of the state. The Constitution completely excluded the list of provinces from the topics and prepared a centralized list of 49 items, along with a simultaneous list. Thus, the power of the President and the unicameral Legislative Council has been retained. Provincial governments will be presided over by presidents appointed by the president with enormous power and influence. The most important was the centralization imposed by the Constitution. The two constitutions provided for a system of division of power that preserves all important subjects of the Center. Even for the subjects given to the provinces, policy-making was largely within the central sphere. Moreover, federalism was too centralized, making the provinces dependent on the central government. The central organization of the state of the 1956 and 1962 constitution, which dominated the Punjabi hegemony, the backward and powerful bureaucratic bureaucracy, and the insensitivity to ethnic differences, led to the disastrous disintegration of the country in 1971 (Nasir, 2007).

#### **1.4 Federalism: Constitution of 1956**

The 1956 constitution was federal in nature, but centered in a spirit that deliberately undermined ethnic divisions, unity of unity i.e. creation of one unit Called "West Pakistan". The Constitution attempted to mitigate the central impact of the Government of India Act of 1935 as under Article 106 (1), the Federal List was shortened by thirty-one items and sixty-one items earlier, and the list of provinces contained 94 items. While the simultaneous list was also reduced to 19 items, there were views that centralization of the administrative and economic development system by the Central Government. The central government was powerful in economic matters, development, national security and inter-provincial coordination (Kundi and Jhangir, 2002). The National Assembly had to elect 310 members, in which 150 members were to be elected directly from each wing. However, 150 seats of the western wing were divided on the basis of the resident population of Punjab, NWFP (now Khyber-Pakhtunkhwa), Balochistan, and Sindh. While, 10 seats were reserved for women, However, Legislative Assembly was dissolved in 1958 before the holding of national elections and later the commander-in-chief Ayub Khan, took power in his hands who ruled the country under martial law 1958-1962 without any constitutional apparatus. The dissolution of the Assembly has created serious difficulties in the country & has had a long-term impact on the functioning of its federal system. In 1962, however, a new constitution was established based on "basic democracies" while maintaining the unity (Kundi & Jhangir, 2002).

#### **1.5 Federalism under 1962 Constitution**

Ayub Khan was able to gain support for his continued rule from the army and civilian bureaucracy. Ayub Khan ignored the recommendations of the Constitution Committee established in 1960 (Syed, 1980). Ayub Khan Concern was to have a strong

central government with an appeal to Pakistani nationalism. In 1962, Ayub Khan introduced a new constitution. The Constitution adopted the one-unit system, in which one council, the National Assembly, was supposed to serve for five years and was occupied by an equal number of members from east & west wings of Pakistan. In support of the military and civilian bureaucracy, the Constitution tends to balance the power towards the central government and the federal legislature, with provincial legislation virtually devoid of legislation (Kundi&Jhangir, 2002). After seven years the 1962 constitution was abrogated by another martial law. While thinking about the ability to get the parliament suspended so that the military junta can have a crucial role to play, Yahya Khan, who succeeded Ayub Khan by imposing martial law in 1969, and abolished one unit. He announced for elections. The results of free and fair elections were surprising. The Awami League won two seats from eastern Pakistan, but the central government authorities in western Pakistan did not hold the National Assembly. The Central Government has decided to launch the Churchlite Restoration of Law and Order in the eastern wing. A situation originating primarily from Islamabad, that delay the formation of the central government of the Awami League. This resulted in violent conflicts, the deaths of hundreds of thousands of Bengalis and the creation of 10 million refugees, culminating in the break-up of East Pakistan into Bangladesh. The idea of a federal system leaning towards one type of unique arrangement failed to unite federal units, while the majority rule was unambiguously suspicious (Kundi and Jahangir, 2002).

#### **1.6 The 1973 constitution & Federalism in Pakistan**

The debacle of east Pakistan created a new thinking about federalism as Punjab had now become a dominate province 58 percent of the population. The smaller provinces were committed to constrain the majority of one province in the parliament. The elites of Sindh, NWFP and Balochistan pushed for some kind of majority-constraining federalism. Prime Minister Z.A. Bhutto, himself from Sindh, wanted a bicameral parliament consisting of an lower house and an upper house. The constitution recognized Provincial languages. However, only Sindhi was adopted provincial language in 1972 when Sindhi was given the status of official language. Urdu was, by default, recognized as a language of Sindh. Its negative fallout on mohajirs led to language riots, followed by decades of ethnic strife between the two communities (Adeney, 2007). Like the 1956 Constitution which was preceded by the Murree Accord between the Bengali and Punjabi groups, the 1973 Constitution was preceded by the agreement of 1972 between PPP and ANP-JUI combined. The 1973 Constitution ensure a National Assembly where majority belonged to Punjab and the Senate where all the four provinces enjoyed equal representation at 19 member each, with 8 seats for FATA and for Islamabad.

However, the impact of the enhanced representation of smaller provinces in the Senate has been offset by the asymmetrical policy scope of the two houses. The Senate has no control over money bills. The national budget could be sent for assent of the President after passage through National Assembly, even by passing the other house. The 1973 constitution, however, marked a break in this uninhibited flow of power toward certain interest groups, in that it created a representative parliamentary system offering certain significant concessions to provinces (language, cultural, principal decentralization). However, the preponderance of one province (Punjab

Over the rest remained due to its overwhelming representative majority in the Lower House, among other provisions (such as federal and concurrent lists). Moreover, the provincial list continued to the 1973 constitution, with a federal list of 59 subjects and a concurrent list of 47 subjects. However, implementation of the participatory clauses emerged as weak, within situations such as the Council of Common Interests and the National Finance Commission—created to resolve inter-provincial disputes and provide a platform for democratic discourse functioning without potency and eventually falling into dormancy. Executive authority continued to retain primacy in most matters (Naseer, 2007). However, the 1973 Constitution predominantly followed the previous Constitutions of 1956 and 1962 to the extent that in many instances the language used in many Articles was also retained (Khan, 2010). It retained a federal system, but unlike the previous Constitutions created a bicameral legislature. It had an upper house called Senate having 60 seats and a lower house called National Assembly which had 200 seats. The four units of the federation equally represented in the Senate while the National Assembly seats were divided on population basis. The 1973 Constitution, nevertheless, is distinguishable from the previous ones because it created the Senate having equal representation of all federating units so that smaller provinces like Balochistan are represented and the Senate plays a role in the system of checks and balances (Khan, 2010). The 1973 constitution created the form of federal structure of the state as mentioned earlier and had two Lists; one federal and the other concurrent. In the upper house or Senate, each federating unit contributed 14 members for four year term while half of the members retired after two years. The Federal List having 67 subjects was for the federal government while the Concurrent List provided opportunity for the provincial legislature to draft laws on the subjects. However, in the case of a dispute, according to the Article 143, the rights of the central government must be

Supreme and prevail (Kundi and Jahangir, 2002). In order to strengthen the spirit of federation, a Council of Common Interests (CCI) was created. It was to be appointed by the President and must have Chief Ministers of the provinces with equal members from the Federal Government. The Council had exclusive jurisdiction over the hearing of complaints regarding water supplies from the natural sources such as supply of water from rivers. In addition, the Council was supposed to formulate policies related to railways, electricity, oil and gas, and industrial development (Khan, 2010). While the Constitution entered into force on 14 August 1973, Prime Minister Zulfikar Ali Bhutto delivered an important speech in which he said that the days of coups had ended and that violence in politics must stop (Khan, 2010). The constitutional period of Bhutto's government was also marked by a strong role on the part of the central government, leading to discontent in two provinces, the Iron Forest Party and Balochistan. Even before the 1973 Constitution was able to function, under the Interim Constitution of 1972, as interim President, Bhutto dissolved the coalition government in Baluchistan at Allah Mangal on 15 February 1973. The Governor of the National Action Party of the province and the deputy Bugti refused. Mr. Bugti submitted his resignation on November 11, 1973, but was asked to continue until January 3, 1974. In protest against the dissolution of the Balochistan government, the National Coalition - Joey resigned under Mufti Mahmud's resignation in the northwest. The incidents were later banned after provincial minister Hayat Khan Sherpao died in February 1975 and her leaders were

arrested for conspiring against the state. They remained behind bars and were released after the military coup in July 1977. The political turmoil in both governments was a blow to federalism. The voice of the opposition in the National Assembly was reduced within the National Assembly and acted like the Bonaparte State. The situation was a severe blow to federalism, and what was left was a huddle of the rule of martial law of the Zayat al-Haq, which established the constitution for eight years (Kundi & Jahangir, 2002).

### **1.7 8th Amendment to Constitution of 1973**

The preparation of power from 1977 to 1985 was ruthlessly in the hands of the military junta, which controls the political structure in a semi-uniform manner. A number of presidential orders, which were subsequently addressed in the Eighth Amendment of the 1973 Constitution, were announced one by one for the administration of the Government. The Eighth Amendment was the first major amendment by General Zia al-Haq to revive the 1973 Constitution by protecting a large number of orders and orders issued by the President from 1977 to 1985. The Eighth Amendment did not fundamentally change the federal nature of the constitution. However, the legislative powers of the Senate have strengthened: the Senate. The amendment raised the number of senators in each county from 14 to 19 years, and the senator was sentenced from four to six years. The powers of the Senate to amend the constitution have also been increased. In accordance with article 239 of the 1973 Constitution, and prior to the amendment, the draft amendment law was introduced only in the National Assembly. Once approved by a 2/3 majority, the bill will be submitted to the Senate for passing by a simple majority. After the amendment, a two-thirds majority is required not only in the Senate but also in either chamber. The requirement of a 2/3 majority in the Senate has raised the legislative role of small provinces to stop any legislation that runs counter to the interests of the province (Kundi & Jahangir, 2002).

### **1.8 17th Amendment to Constitution of 1973**

On October 12, 1999, Pakistan again fell into a military regime. Certain parts of the constitution were suspended by General Pervez Musharraf. The legal framework of the State Administration was issued with a commitment to operate the government in accordance with the spirit of the Constitution of 1973. General Musharraf in his speech on 13 October 1999 announced a seven-point agenda on "Strengthening the Union by Removing Dissonance Between Governorates and Restoring National Cohesion" (Khan, 2010). In order to continue the power beyond three years, according to the Supreme Court, General Pervez Musharraf held a referendum on April 30, 2002. The result of the referendum went in his favor. After the result of the referendum, the National Reconstruction Office (NRO), headed by a retired lieutenant, began to prepare constitutional amendment packages in a "large secret" (Khan, 2010). The second legal framework law was promulgated on August 21, 2002, which tried to focus the regime, it was said that local governments had already begun to encroach on the territory of provincial governments with the establishment of the central government, and elections had been held in the provinces. In February 2002, and after much political debate and was taken between the military regime and the political parties, particularly the alliance of religious parties, the 17th Amendment was adopted in December 2003. This amendment once again increased the powers of the President, who can now dissolve the

Legislative Assembly. In a fundamental way despite of the introduction of a new form of local government in 2008, Pakistan went to the parliamentary elections and the Pakistan People's Party took power. To achieve the restoration of the 1973 Constitution, the Eighteenth Amendment was enacted.

### **1.9 Eighteenth Amendment and Federalism**

The Amendment to the Constitution of Pakistan was adopted by the National Assembly on April 8, 2010, approved by the Senate on 15 April 2010 and signed by the President on April 19, 2010. The Eighteenth Amendment amended the full structure of the central decree. The old federal government hierarchy was split and the new period of institutions was replaced (Faisal, 2010). This amendment has also led to the development of broader political participation models in Pakistan, unlike previous political systems. Close cooperation between political elites was bound to make the institutional structure of the State through political dialogue. The parliamentary system has been modernized. The institutional structure of political institutions, such as the judicial, executive and legislative branches, has also been implemented. The constitutional role of many governmental institutions such as the legislature and the judiciary has emerged and the provincial executive managers have been able to take their political and administrative decisions (Waseem, 2010).

### **1.10 Promises, Powers And Practices Under The 18<sup>th</sup> Amendment**

In response to the challenges of democracy and federalism the 18th Amendment to the 1973 Constitution on April 19, 2010 was made with the signature of the President of Pakistan. The same amendment shows the strength of democracy in its ability to reach consensus after many rounds of discussions and political conciliation. First, the amendment attempts to correct two orders. The first is to empower Parliament and the Prime Minister's Office and the second is to increase the share of resources from the provinces. The following is a brief discussion:

### **1.11 Identity and Representation**

Article 1 deals the issue of identity in the Pashtun areas. There was a request to change the name of the NWFP. A name expressing the ethnic majority of Khyber-Pakhtunkhwa was agreed upon. However, there had been some incidents of violence in the Hazara region, which is about 20% of the population and 25% of the area. The provincial government can address the ethnic issue within the province by allocating more development funds as well as providing multiple forums to represent different community groups.

### **1.12 Promoting Democracy**

To strengthen democracy and put an end to military intervention, article 6 was amended. This act was added to "cooperate" in sabotaging the Constitution. Such a crime, called "treason", cannot be ratified by any court of law. These are significant measures forward to put some constitutional obstacles against the coup. The extent to which these arrangements are successful remains to be seen because of the severe imbalances in power between elected and non-elected institutions in Pakistan. In addition, the articles selected in Part III of the Constitution dealing with the Federation were amended so as to strengthen the Office of the Prime Minister, as the Chief Executive of the Government. Article 58 on the dissolution of the National Assembly was amended so that the President's discretionary powers would be withdrawn under article 58.2 (b), and the



solution would be essentially the advice of the Prime Minister. With this amendment, under Article 112, the Prime Ministers were also empowered in the same manner. In addition, two new articles had been added, which would have long-term implications for democratic governance. Article 19A establishes the "right to information" as a fundamental right and fundamental principle of public policy after article 19, which supports "freedom of speech". In addition, after article 25, which calls for equality among citizens, article 25A, which requires the right to education, has been added to children between the ages of 5 and 16. It was emphasized that education must be "free and compulsory". It seems that the state was at least able to promise conditions to promote democracy, which provides information and education as the most empowering factors (Adeney, 2012).

### **1.13 Strengthen the Federation and the provinces**

In response to the request of the provinces to cancel the synchronized list, the list was canceled and the powers delegated to the provinces will be shifted by the end of June 2011. Some amendments that take away the powers of the head office have been legally clarified. For example, Article 104 now states that the President of the Provincial Council shall be the acting Governor. In this way, the part of the article stating that the other person whom the President may direct is a reserved Governor to take action in the absence of a speaker. The Joint Interest Council is a very large body for the coordination of federal affairs. Some changes have been made to articles dealing with this body. Article 153, which concerns the Council of Common Interests, has been amended so that only three or four members (equal to the number of prime ministers) will be nominated by the federal Government. Under article 154, the Council was requested to maintain a permanent secretariat. Noting the importance of this important body, it must meet at least once in ninety days.

However, the provinces can request more meetings for urgent matters. Article 157 dealing with electricity has been amended and for any hydroelectric project, prior approval forming the provincial government is necessary and in the event of dispute the matter will be referred to the joint decision board. In addition to these many issues such as major ports, census, national planning and national economic coordination, institutions of higher education and research have been developed under Part II, where the Joint Interest Council will provide advice. It seems that with the change in the planning function of the federal government, the planning committee will also be changed to become a secretariat of the Joint Services Council. While constitutional provisions have been put in place to strengthen institutional arrangements for effective coordination among federal and central government units, article 160 has been amended to deal with the National Finance Committee. It was agreed that the provincial share in each award from the National Finance Committee should not be less than the percentage awarded to the regions in the previous award. In addition, the Federal Minister and the provincial finance ministers were requested to monitor implementation twice a year and to report to national and provincial councils. Under article 167, a new provision (4) was added giving the powers of provincial governments to raise domestic and international loans. However, the processes have been subject to the guidelines of the National Economic Council. Some very significant changes have been made in section X, article 232, dealing with the declaration of a state of emergency. The following condition, which limits the presidential powers to interference

and subjecting them to Parliament, has been included,;Provided that the state of emergency is imposed because of internal disturbances that exceed the powers of the provincial government to control, a decision is required from the Provincial Assembly of that province. It also provides that if the President acts alone, the Declaration of Emergency shall be placed before the two chambers of the Consultative Council (Parliament) for approval by each Council within ten days (Adeny,2012).

## 2. Conclusion

History of federalism in Pakistan is nothing but evading federalism principles by avoiding provincial autonomy. While the Constitution of 1973 appeared in the wake of the struggle for provincial autonomy, the challenges of power-sharing using different equations are enormous. The State itself is always in a difficult situation where it needs to balance the distribution aspect of economic development. It is affected by a lack of balance in the population, geographical area and mineral resources while maintaining the interests and identities of the provinces (Khan,2010).There are at least three basic requirements for a federation to work well. The first is the rule of the Constitution, the second is the official division of powers, third is the independent judiciary. In Pakistan, these three important conditions have been permanently disrupted. A large proportion of the State's resources have been wasted in the dilemmas of the Constitution and military coups. Which have damaged the basis of the state by derailing the democratic processes to develop the constitution and the federal structures (Noman,1988). It should be noted that during the period when the army indirectly ruled Pakistan, many state resources had been lost in the settlement of political points, fragmentation and tragedies of minors. However the Amendment 18 tried to correct the damage to the Constitution and federal structure. The Eighteenth Amendment stands well on the basis of democratic consolidation but cannot be considered a panacea for governance constraints in Pakistan because at best it is an incomplete process - its completion is a more fundamental reform guaranteeing a broader public response and a stable political and economic union due to increased efficiency and accountability mechanisms( Waseem, 2010).

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