

The Federalism in Pakistan within Constitutional Frameworks

DOI: <https://doi.org/10.36755/khaldunia.v3i1.77>



eISSN: 2957-840X
pISSN: 2957-8396

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ABSTRACT

This article explores the application of federalism in Pakistan, following its development from the initial provisional constitution to the current one. It examines the legislative, executive, and monetary authority bestowed upon the federal and provincial governments of Pakistan under the country's three constitutions. The article concludes that the history of federalism in Pakistan highlights the significance of putting it into practice in accordance with its genuine spirit, embracing an interpretivist paradigm with a qualitative approach.

KEYWORDS

Federalism, Provincial Autonomy, Constitution, 18th Amendment, Legislature, Executive, NFC Award

Introduction to Federalism in Pakistan

Since its inception in 1947, Pakistan has grappled with the complexities of federalism. Initially divided into East and West Pakistan, each with considerable autonomy, centralization increased over time due to military rule, leading to the eventual disintegration of East Pakistan in 1971 and Bangladesh came into being (Adeney, 2007).

The 1973 Constitution established Pakistan as a federal and a parliamentary republic, with power distributed among the federal government (Islamabad) and the four federating units which are Sindh, Khyber Pakhtunkhwa, Punjab and Balochistan, along with the federal capital, Islamabad. The Council of Common Interest (CCI) was

established in order to resolve disputed issues between the central government and provincial governments (Waseem D. M., 2010).

The implementation of federalism in Pakistan has been marked by contention, with accusations against the central government of encroaching on provincial powers and constitutional rights, particularly in finance and administration (Ahmed, Mustafa, & Khalid, 2007). In response, provinces have consistently advocated for greater autonomy and a more substantial share of resources.

In 2010, the 18th amendment to the constitution addressed these demands, significantly augmenting the powers granted to provinces. The amendment facilitated increased control over natural resources and expanded influence in education and healthcare. Additionally, the role of the Council of Common Interest (CCI) was more strengthened and empowered it that the decisions made by CCI shall become binding on all parties (Report, 2010).

Despite these reforms, federalism remains a critical and debated issue in Pakistan, centering around power structures and the delicate balance between the federal government and provinces. Divergent opinions persist, with some advocating for decentralization to foster regional development and address longstanding grievances, while others argue for a robust central government to maintain national unity and stability. Uneven resource distribution among provinces, with Punjab receiving a disproportionately larger share, continues to be a significant challenge, prompting resentment and demands from other provinces (Ahmed, Mustafa, & Khalid, 2007, pp. 12, 19, 8).

The provincial empowerment and autonomy issue are further complicated by linguistic and ethnic tensions, particularly in Sindh and Balochistan. These provinces harbor deep-seated grievances related to economic and political marginalization, resulting in the emergence of separatist groups demanding either greater autonomy or outright independence (Halepoto, 2010).

The military's role in Pakistan adds another layer of complexity to federalism. Military interventions were justified by the imperative in order to maintain national stability and unity, have been criticized for undermining democratic institutions and exacerbating tensions between the federal government and provinces (Linz, 1997).

Federalism continues to be an essential part of Pakistan's political structure in spite of these significant obstacles. The goal of ongoing endeavors is to fortify the nation's federal system. There have been proposals in recent years for a more significant decentralization of resources and power, as well as more representation for smaller provinces in the federal government. It is anticipated that these discussions would continue as Pakistan negotiates its complex political environment and deals with problems

pertaining to national cohesion, ethnic conflicts, and regional development.

Federalism

The term "federalism" has its roots in the Late Latin word 'foedus,' signifying a formal agreement, treaty, or contract, which itself is derived from the older Latin word 'fides,' meaning trust (Formation, 2012). In the realm of political science, federalism describes a system of governance in modern states where powers are distributed between the central government and provincial governments. This system is particularly relevant in heterogeneous societies (Tabssum, Mustafa, Niaz, Mahmood, & Shabbir, 2023).

Mazhar ul Haq the author of Political Science: Theory and Practice defines federalism as a system in which the federal government holds supreme power within the state, with the constitution delineating the division of powers between the federal and provincial governments. In this arrangement, federating units wield supreme powers within their respective territories. Professor Dicy characterizes federalism as a political unity focused on reconciling national unity for the purpose of maintaining the rights of the state. Similarly, Hamilton defines it as an association of states forming a federation (Haq, 2021).

In the spectrum of modern state systems, there are three types prevail: the system of unitary state, the federal state system, and the system totalitarian state. While in modern states system the first two systems are predominant and practiced, the totalitarian system held power until World War II. On the other side the monarchical system of state still exists, it is important to know that the monarchical system of state is not considered as a part of the modern state system in political science (Haq, 2021).

Federalism is a system of governance which can be defined as in which supreme but few powers, as designated by the constitution, are given to the federal government to govern the entire country including all territories. Simultaneously, general but numerous powers are bestowed upon provinces or states of federating units to govern its territory.

Federalism can be defined as a form of government where the constitution gives the national government ultimate but restricted authority to rule the entire nation. Concurrently, federating entities (provinces, states, and counties) are given broad yet numerous competences to administer particular regions of the nation.

Three key elements make up this definition. First off, as the head of state for the entire nation, the central government has ultimate authority within certain bounds. It can use its absolute power in times of emergency, but in theory it can only deal with matters pertaining to foreign policy, defense, and money. Second, federating units within a federal state have a wide range of powers inside their borders, including financial, administrative, and legislative authority. Thirdly, the federal state system is based on the supremacy of the

constitution. The written, inflexible constitution is the fundamental element that binds the federal state together.

The choice between a federal or unitary form of government for a state is determined by the societal composition of that state. If the society is homogeneous in terms of language, creed, caste, color, culture, custom, and religion, then it is considered that the unitary state system is appropriate. Conversely, if the state is heterogeneous, with variations in the aforementioned components, then the federal system is considered suitable (Haq, 2021, pp. 310-24).

The rational of Federalism in Pakistan

Pakistan's federal form of government was adopted because of the country's great diversity in terms of caste, creed, language, customs, and culture. Several justifications support this decision:

Founder's Vision: Quaid e Azam Muhammad Ali Jinnah, the founder of Pakistan, and the All India Muslim League consistently advocated for a federal form of government in the subcontinent. Jinnah's famous fourteen points included a demand for a federal system of government for India, emphasizing his commitment to this governance structure (Tabssum, Mustafa, Niaz, Mahmood, & Shabbir, 2023).

Historical Precedents: The historical context of the subcontinent also contributed to the preference for a federal form of government. Instruments like the India Act of 1935 provided a framework for federal governance. Additionally, significant plans such as the Cripps Mission Plan of 1942, the Cabinet Mission Plan of 1946, and the separation plan of India in 1947 all outlined provisions for a federal system of government, both in India and the newly formed state of Pakistan. The demand for federalism was echoed by various Indian communities (Tabssum, Mustafa, Niaz, Mahmood, & Shabbir, 2023).

Ethnic Diversity: The multi-ethnic nature of Pakistan, encompassing Balochi, Bengali, Sindhi, Punjabi, and Pakhtoon ethnic groups, necessitated the adoption of a federal form of government. The country's diverse ethnic composition called for a governance structure that could accommodate and address the interests and autonomy of these varied groups. The inclusion of all provinces in Pakistan came with the understanding of semi-autonomy, acknowledging the distinct identities within the new nation (Ahmad, 2014).

Pakistan's federal system of governance essentially arose in reaction to the country's intricate sociocultural environment, historical requirements, and the need to accommodate the various ethnic groups that make up the country.

Implementation of Federalism in Pakistan under Constitutional

Frameworks

Pakistan's federalist system has developed over time, influenced by many constitutional frameworks. The three main facets of the power-sharing arrangement between the federal government and the provinces are examined in this article: financial, administrative, and legislative authority.

Interim Constitution of 1947

- The journey of federalism in Pakistan commenced with the adoption of the interim constitution, rooted in the India Act of 1935. Although amended for Pakistan, this interim constitution predominantly vested legislative, administrative, and financial powers in the central government.
- In terms of legislative powers, the central government held sway over 59 subjects, compared to the provincial government's 55 subjects. The existence of a Concurrent List with 36 subjects allowed the central government to exert significant influence over legislation at both levels, undermining the spirit of federalism (Hamid, 2010), (Kanwal, Ali, & Abid, 2012).
- The central government, through the governor as its agent, possessed absolute administrative powers. The governor could declare emergencies in three conditions: during severe law and order situations, natural calamities or disasters in the province, and times of war. The governor also held the power of amendment, requiring provincial laws to receive assent, and enjoyed residuary powers not explicitly outlined in the interim constitution.
- Financial matters were also dominated by the central government, which had the authority to collect different types of taxes like general tax, sales tax, excise and duties, and even the tax collected from salt and jute (Kanwal, Ali, & Abid, 2012).

Constitution of 1956 and Distribution of power

- First constitution of Pakistan was enacted after nine years of independence in 1956. The Objective Resolution laid the groundwork for this constitution, with the Basic Principle Committee presenting multiple reports. The Muhammad Ali Bogra report of 1953 gained acceptance.
- The introduction of the One Unit Scheme in 1955 aimed to create a unified structure. The first Constitution of Pakistan, implemented on March 23, 1956, sought to establish a better framework than the interim constitution of 1947. However, it faced a short-lived existence, being dissolved after two and a half years with the imposition of martial law by Ayub Khan.
- In terms of legislative powers, provincial governments were allocated 94 subjects, whereas the central government had 30 subjects, with 19 subjects listed in the

Concurrent List. The powers of the governor were conditioned by consultation with the chief minister, although the governor retained a powerful position. The central government continued to wield extensive financial powers, including those previously held and further the addition of nine more subjects (Hamid, 2010, p. 16), (Abbasi, 2010).

- An analysis of these constitutional frameworks' sheds light on the complex dynamics of Pakistani federalism, which is characterized by changes in the relative authority between the federal and provincial governments throughout time.

Constitution of 1962 and Distribution of power

Federalism in Pakistan faced a significant setback with the imposition of martial law by Ayub Khan. During this period, Abdul Rab Nishtar foresaw the impending disintegration of Pakistan, as the dictatorial regime concentrated powers in a singular authority, contradicting the principles of federalism. The Constitution of 1962 exacerbated this deviation from federalist ideals. Notably, there was no distinct list for provincial governments, and the absence of a Concurrent List meant that the central list comprised all legislative subjects, totaling 49. This list, termed the martial list, consolidated power in the central government, granting the governor extensive administrative powers and the central government comprehensive financial control (Hamid, 2010, p. 16), (Abbasi, 2010, pp. 19-20).

The intense concentration of power led to a sense of deprivation among federating units, particularly in East Pakistan. This sense of deprivation fueled anger, ultimately culminating in the revolt expressed through Sheikh Mujeeb u Rehman's Six Points. This revolt played a pivotal role in the disintegration of Pakistan on December 16, 1971 (Adeney, 2007).

Constitution of 1973 and Distribution of power

On August 14, 1973, Pakistan's third constitution was approved by all major parties. By giving the provinces significant authority, this constitution created a bicameral legislature and parliamentary system in an effort to exemplify federal ideals. But there were also some disadvantages, such as the addition of a Concurrent List.

The 1973 Constitution's creator, Z.A. Bhutto, promised to amend the constitution significantly to do away with the Concurrent List in ten years. Regretfully, this pledge was not kept since General Zia declared martial law in 1977, which made it impossible to carry out these changes. The idea of federalism was further undermined by the eighteenth and seventeenth amendments, which also gave the president and the governors of the four provinces more authority.

The central and concurrent lists were part of the constitution prior to the 18th

amendment. The concurrent list included 47 subjects, but the central government had 67 subjects. With the ratification of the eighteenth amendment, a substantial change occurred. The Concurrent List was eliminated, and 35 subjects were kept by the federal government while 74 subjects were transferred to provincial administrations.

The powers of the governor, as outlined in the constitution of 1973, included the authority to impose emergency and legislative powers. However, the implementation of the eighteenth amendment curtailed these powers. The governor no longer possesses emergency and legislative powers, and any exercise of emergency power requires approval from the provincial assembly (Abbasi, 2010, pp. 20-24).

Despite these changes, the financial powers of the federal government remained robust. The central government retained authority over corporate tax, income tax, sales tax on goods, excise, and export and import duties. The introduction of the seventh National Finance Commission (NFC) award increased the provincial share from 47.5 percent to 57.5 percent, with the central government holding a 42.5 percent share. The eighth NFC award maintained the same distribution of shares (Hamid, 2010)

In order to handle central-provincial and interprovincial concerns, the 1973 constitution also established the Council of Common Interest (CCI), which was later reinforced by the 18th Amendment. The CCI is headed by the prime minister and comprises three federal ministers and the chief ministers of four provinces, which strengthens its capacity to promote collaboration and settle conflicts.

Conclusion

The historical development of federalism in Pakistan highlights the critical significance that its implementation had in determining the power and stability of the country. Considering the development of federalist ideas, a number of constitutional scholars argue that the 1971 dissolution of Pakistan would have been prevented if the eighteenth amendment had been passed on schedule in 1970.

The prudent transfer of authority from the federal government to the provincial authorities is critical to Pakistan's existence and adaptability. The eighteenth amendment serves as an excellent example of the devolution process, which is vital in tackling the complex issues raised by language, ethnic, and regional differences. The true essence of federalism can be achieved by giving provinces more autonomy, resource management capacity, and decision-making authority.

The balance of power between the federal government and the provinces is a topic of constant discussion and debate as Pakistan continues to negotiate its complicated political environment. The continuous efforts to fortify the federal structure are highlighted by calls for more decentralization, more representation for smaller provinces, and efficient

coordination through organizations like the Council of Common Interest (CCI).

To put it simply, Pakistan's road toward implementing federalism is still ongoing, and the country's strength and unity are closely linked to the sincerity of commitment to sustaining the fundamentals of federal governance. Pakistan's prosperity and cohesion are contingent upon its ongoing refinement and devotion to federalist ideas, particularly as it attempts to tackle the issues of regional development, ethnic tensions, and national unity.

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