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**ISSUES OF FEDERATION AND CONSTITUTIONALISM IN
PAKISTAN**

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Abstract:

Pakistan consists of geographically four constituent units and Federal tribal areas. These constituent units comprising the federation are of unequal sizes due to population and land sizes.

1973 constitution is the results of compromises. This constitution introduced bicameral system, legislature in the country. The power of the provinces and the federal government were defined by the constitution and the legislature.

Part (V) Chapter 1 of the constitution, Art 141 to 144 explains the distribution of legislative powers between Federal and Provincial laws.

Chapter 2, Art 145 to 152 explains the Administrative Relations between Federation and the Provinces. These articles also explain the inter-provincial trade and acquisition of land for Federal purposes.

Chapter 3, Special provisions relating to institutions of the council of common interests. Art 153, National Economic Council. Art 156, Electricity. Art 157, Natural Gas. Art 158, Broadcasting and Telecasting. Art 159, Constitutional Amendments 8th, 13th, 17th and the landmark 18th amendment the balance of power in the federation, Parliamentary original nature of the constitution. This amendment empowers the provinces and promotes co-operation and confidence between centre and provincial relations. But due to the current critical situation of Covid-19, change the world relations, economy and terrorist activities against state and communities. Government takes to step up for new administrative units to solve the problems of all the neglected areas and people of the Federation.

Introduction:

Federalism is adopted to organize and administer the relationship between the federating units and the center. Important national affairs controlled by the central government and the other local interests are administered by the provincial government. This is the way to led the US, Switzerland and Australian federation came into existence. This method of state administration became popular in the 20th century when several states adopt it after the World War II. This system was adopted as the alternate of Empire system as it allows the control of center with the prescribed limited autonomy. This significant factor is that the authority is given through the written constitution. A federation can survive and work under certain conditions. This system is successful when all federating units are equal in all matters by economically and culturally but it does not show in the system just like Germany, Russia, USA, colony of British Empire Sub-Continent, East Bengal, East Pakistan, West Pakistan as East and West wing. Pakistan appears at the globe of the world as country of diverse geography with distance of more than 1000 miles between the two wings. These areas faced many problems by birth as language, economy and powers.

Case study of Pakistan according to the Constitution of Pakistan 1973:

By birth Pakistan consist of Punjab, Sindh, NWFP now KPK, Baluchistan and Bengal. Each of these provinces was kept under a separate administrative setting by Taj-e-Bartinia. Taj-e-Bartinia authorities had taken all the measures to control the local authorities by their rule. On the partition of the Sub-Continent these provinces become the part of Pakistan had no and less experience of federal and constitutional standard. By the British policy dealing of the comprised areas of Pakistan and people are different in manners. In the political manner the British authorities gave importance to Unionist Party, All India Muslim League and Congress to establish their roots in the province of Punjab. These coercive and dominant trends kept rise after the independence. Punjabi soldiers and officers in the British army made the position of this province more authoritative and prominent. Sindh, NWFP, Baluchistan and East Bengal, these parts of British India had experienced many political, strategic and constitutional incidents.

Pakistan adopted Government of India Act 1935 with the minor changes as the interim constitution. It creates the federal system but specific authority towards center then the federating units.

In the 1956 constitution there was imbalance between two wings of one unit, state. It was suitable for the East Pakistan. A bicameral legislature of Pakistan but it is not acceptable by the Punjab of West Pakistan. Language problem also creates instability in system. This constitution sanction thirty subjects to the center and ninety four subjects were granted to the federating units.

A federal court was established which was responsible of the interpretation of the constitution. This constitution was abrogated by the Martial Law situation and powers are concentrated in the hand of one man with no constitutional attitude and behavior.

Ayub Khan as military dictator and bureaucrat given the constitution of 1962 as one man power show. This constitution also titled in the favor of strong center with two lists, central list with 49 items and the concurrent list. Unicameral legislature was created with no power to check the office of the President. Same pattern was followed in the province where Governor was present to speak on the behalf of President and nominated by the will of the President. Due to the lingual, cultural, political and imbalance power distribution met with the collapse of the system and powers are taken by the institution of army. This authoritarian rule continued till 1971 when East Pakistan tragedy taken place.

Constitution of 1973 was the result of many compromises as the wounds of East Pakistan were bleeding yet. This constitution introduced bicameral legislature which was a new thing. For the introduction of a new federation position of the Prime Minister was strong and Parliamentary system was adopted in the country. The President was head of the state and representative of all state. This constitution issued two legislative lists, federal list and the concurrent list. This constitution creates great co-operation and power distribution policy between the center and the provinces in this special scenario and provisions of the constitution.

Part (V) Relations between federation and province; Chap 1 Distribution of legislative powers.

Art 141 – Extent of federal and provincial laws. Subject to the constitution, Majlis-e-Shoora, parliament may make laws for the whole of Pakistan and a provincial assembly may make laws for the province or any part of province.

Art 142 – Subject matter of federal and provincial law. According to the constitution parliament Majlis-e-Shoora have power to make laws in any matter in federal legislative list. Parliament and the provincial assembly also have power to make laws matter in the concurrent legislative list.

Art 143 – Inconsistency between federal and provincial laws.

Art 144 – Power of Majlis-e-Shoora to legislate for two or more provinces by consent.

Chap 2 Administrative relations between federation and provinces.

Art 145 – Power of President to direct Governor to discharge certain functions as his agent.

Art 146 – Power of federation to confer power etc. on provinces in certain cases.

Art 147 – Powers of the provinces to entrust functions to the federation.

Art 148 – Obligation of provinces and federation. Duty of federation to protect any province from internal disturbance and external aggression.

Art 149 – Direction to provinces in certain cases.

Art 150 – Full faith and credit for public acts etc.

Art 151 – Inter provincial trade.

Art 152 – Acquisition of land for federal purposes.

Chap 3 Special provisions of the constitution.

Art 153 – Council of common interests.

Art 154 – Functions and rules of procedure.

Art 155 – Complaints as to interference with water supplies.

Art 156 – National economic council.

Art 157 – Electricity.

Art 158 – Priority of requirements of natural gas.

Art 159 – Broadcasting and telecasting.

These institutions are created by the federation and the provinces for work together and co-operation for the betterment of the people and the country.

Issues of the federalism and constitutional development in different regimes in the shape of amendments of the constitution.

The constitution of 1973 was parliamentary in nature. Bicameral legislature introduced in the country. According to the power distribution 90% of revenue in the hand of center and bodies of council of common interests could not activated. National finance commission is doing better for the consolidation of the federation. It is required to analyze the amendments of the constitution in the different regimes.

The 8th amendment is the most significant document of the constitution and this amendment totally changes the shape of the constitution. This amendment empowers the President to dismiss Prime Minister and dissolve the assemblies. President has powers to appoint the services chiefs and the Governors of the provinces. The concentration of the power in the center and in the hands of President violated and seriously affected the federal character of the constitution.

13th amendment was the reversal of aforesaid amendment. It was introduced by the Nawaz Sharif administration in 1997. This amendment curtailed the powers of the President and now the president was bound to act on the advice of the Prime Minister which was compulsory in nature according to Parliamentary system. Nawaz Sharif government and administration saw a downfall by the army and again abrogated the operational constitution of the state. LFO 2002 was the revival of the 8th amendment by Pervaiz Musharraf.

17th amendment in the regime of Pervaiz Musharraf was introduced on December 31st 2003. Article 11 of the 1973 constitution was amended and empowers the President to seek vote of confidence through the assembly holding without a new elections. This procedure of elections through assembly was also involving the Supreme Court to the doctrine of necessities of time.

18th amendment changed the situation and restored the true nature of the constitution. It restored the federal and parliamentary nature of the constitution. The amendments of General Zia-ul-Haq and General Musharraf have been removed. Provincial autonomy is increased by the effective steps to the devolution of the powers. The scope of council of common interests is increased. Article 6 of this amendment enhanced the definition of the offence of High treason and Supreme Court cannot validate any such act. The number of ministers and minister of state has been limited to 11 % of the total number of Parliament. Local bodies' election shall be held under administration of Election Commission of Pakistan. Islamabad High court has been created and Judges are taken from all the four provinces and territory of Islamabad. Article 58-2b has regenerated the spirit of democracy.

Conclusion:

Pakistan consists of four constituent units and federal tribal areas. These are unequal in sizes due to population and the land area. 1973 constitution is the result of compromises. This constitution introduced bicameral system, legislature in the country. The power of center and provinces were defined in the constitutional provisions in Part (V), Chap 1, Chap 2, Chap 3, Article 141 to 159 explained the relations of the federal government and the provinces. The constitutional amendments in different regimes changed the true nature of the constitution. 8th, 13th, 17th and the landmark 18th amendment, the balance of power in the federation, Parliamentary original spirit of the constitution, promote co-operation and confidence between center and provincial relations.

But the current pandemic situation changes the world's culture, economy, relations of the states, terrorist activities against the states and the specific communities. Government should take steps to create new administrative units to solve the problems of the neglected area and people. Make new policies to settle down the problems concluded by international scholars in online conference held in the Islamia University of Bahawalpur on 25-26 March 2021.

Recommendations:

- i. To unite the federating units.

Distribution of powers among provinces and center in good way.

- i. To improve the provincial autonomy.
- i. Create new administrative units to control poverty.
- i. Arrange conferences. Talks to resolve the problems of federalism, state and society.
- i. Revise the policies of government.

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