

Making Sense of Federalism in Pakistan

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Abstract:

The nature of center-province relationship or federalism has been an issue which has persisted ever since the creation of Pakistan and has caused a host of very challenging problems to the state of Pakistan. Some of such issues are language issue, One Unit formation, sacking of different provincial governments at the behest of federal government, military governments' special emphasis to grow democracy at the grass root level etc. The authors argue that the main cause of these problems is that the form of the state structure of Pakistan is federal however the substance is unitary. Constitutionally Pakistan has a federal form, yet the structures of the government, its orientation, and the thinking of the bureaucracies are unitary in nature, which was a colonial heritage. Provinces have demanded autonomy, due share in resources and freedom in decision making, however, centralist bureaucratic state structure trained in colonial traditions have resisted such claims, thus causing above mentioned problems.

Key Words: federalism, provincial autonomy, neo-colonialism, sense making

Introduction:

Pakistan has a troubled history characterized by wars, military operations, federation-province estrangement, political conflicts, identity crisis etc. Though myriad of factors can be attributed to have played a role in the occurrence of these issues, however one factor which – structural in nature – has perennial impact on the history of Pakistan i.e. the federal political order or federalism. Federalism is here taken to be “the genus of political organization that is marked by the combination of shared rule and self-rule” (Watts 1998, p.120) In other words, it basically is an arrangement under which sharing of the powers between federal and federating units is addressed. It determines what powers and in which areas of life will be held by the federal and state/provincial governments respectively. The same issue has been discussed under the name of provincial autonomy as well (see e.g. Khan, 2009; Sial, 2008).

The effects of the indecision or the confusion about the power sharing between federal and provincial governments are to be found throughout the history of Pakistan. What else can be a more authentic proof than the separation of East Pakistan in 1971, the foundations of which were laid on the grievances of the East Pakistanis against the establishment in West Pakistan which was seen by them as repressive and neocolonialist in nature. In the same pattern, operations against governments of various provinces were undertaken who voiced their genuine demands. Plentiful instances are to be found where political governments – both federal and provincial – were sacked by the President or its appointee i.e. provincial governors. According to Sial (2008), political systems including federal ones are the result of deliberate deliberations of national and provincial leadership to come up with a viable system. This article first attempts to present the kinds of effects that federalism had and will continue to have on state and society in Pakistan and then makes sense of the phenomenon of federalism in the backdrop of its politico-historic background.

Federalism is deeply embedded in the European history where calls for freedom, autonomy, self-rule etc. were raised in the backdrop of tyrannical collusion between nobility and clergy. Johannes Althusius (1557–1630) is generally considered as the father of modern federalist thought. In his book *Politica Methodice Digesta* (1603), he

reasoned for autonomy of his city Emden. Hume (1752) suggested a federal arrangement for debate on laws which might include both member and central legislatures. In a critique of Saint-Pierre's proposal, Rousseau (1712–1778, presented a list of numerous conditions e.g. that all main powers ought to be members, that the joint legislation must be obligatory, that the combined forces must be greater than that of any solitary state, and that separation in any case be illegal. In US, despite the fears of anti-federalists that a stronger center might encroach upon individual states, federalist demanded a powerful center which was likely to reduce the risk of domination by zealous majorities in larger states and where member states having common interest could and would counter each other (Stanford Encyclopedia of Philosophy).

John Stuart Mill (1861) offered three indispensable conditions for a federation 1) adequate mutual sympathy “of race, language, religion, and, above all, of political institutions, as conducing most to a feeling of identity of political interest”; 2) individual state should not be strong enough to thwart any external threat on their own or tempt to think of dissolving federation; 3) there should not be a “marked inequality of strength among” different member states, such that it could dominate other states even if they get united against it (p. 298-9).

The option of federation is often conceived as an alternative either to secede from an already established federation or to remain a unitary state. Different reasons have been presented by various contributors for either of these two cases. As far the case of staying with the federation in place of seceding from it is concerned, it is argued that the federation may help prevent wars, both within state or with external ones; can promote economic growth either through mutual trade or by becoming a unified economic force; can protect weaker smaller states from the excesses of bigger members; may increase political stature of previously independent states; and may promote cooperation, justice among member states. Some of the reasons for opting for a federal order against a unitary state are that freedom of minority states is more likely to be protected under federal arrangement where any attempt by some powerful element may be thwarted collectively; that its culture, language or religion may be preserved; chances for citizen involvement in public decision making are increased; local needs may be satisfied efficiently through public participation which will reduce the load of federal state; divergent cultures can co-exist as majority preference are not allowed to overwhelm minority ones; clustering of individuals and groups with alike preference may get promoted (Stanford Encyclopedia of Philosophy).

With reference to the constitutional and institutional design, Watts (1998) and Norman (2006) have identified three key issues which are composition, distribution of power and power sharing. Composition refers to identifying geographical, ethnic and cultural boundaries, secession or joining etc. Distribution of power covers issues like apportionment of legal, executive, judicial and constitution amending power between members and the center. And power sharing includes the kind of influence members have in the federal decision making and the institutions which deal with such issues (Stanford Encyclopedia of Philosophy).

Sense making is a very useful technique which is used to understand the most plausible meaning of a phenomenon. The objective is achieved by fully explaining the natural and specific context and then seeing the phenomenon in its lens. Weick (1995) elaborates on the process of sense making in these words, “sense making starts with three elements: a frame, a cue and a connection...frames and cues can be thought of as vocabularies in which words that are more abstract (frames) include and point to other less abstract words (cues) that become sensible in the context created by the more inclusive words. Meaning within the vocabularies is relational. A cue in a frame is what makes sense not the cue alone or the frame alone” (p 110). Schwandt (2005) explicates this phenomenon “process that includes the use of prior knowledge to assign meaning to new information...It is not simply the interpretation of information; rather, the continuous interaction with information allows meaning to emerge” (p. 182)

Autonomy Issues:

1. Declaring Pakistan a federal state

The autonomy related issues were very much under debate, before partition, in the political circles of sub-continent due to its ethnic variety and British's deliberate attempt to highlight and reify it (Khan, 2004) e.g. “during British rule Muslims of India had demanded provincial autonomy to form their own government in those provinces where they constituted a majority” (Sial, 2008, p.2). The same Act was termed as “thoroughly rotten, fundamentally bad and totally unacceptable” by none other than Mohammad Ali Jinnah (Sial, 2008, p. 5) because under this Act, provincial autonomy was rendered an unrealizable dream since “Central Legislature had the powers to make Laws for all British India” (Sial, 2008, p. 3). After the partition, Pakistan adopted Government of India (GOI) Act, 1935 (re-labeled as Indian Independence Act of 1947). The GOI act was developed as a federal recipe by the British though it could not be applied due to “the refusal of the princely states to participate” (Adeney, 2007, p.104).

As an ideal federal state, the state of Pakistan should have kept only defense, foreign affairs, currency etc. with it and the rest of the subjects should have been delegated to the provinces. But the meaning of federal was unique here and deeply embedded in the history of the British colonialism. Both Sial (2008) and Khan (2009) term this federalism as 'highly centralized federal system'. This is more of a centralized than federal system because even the provinces which were deemed to be autonomous were under the strong control of Governors.

Referring back to the pre-requisites that Mill (1861) presented for a country to adopt a federal system, the state of Pakistan did not qualify even a single condition out of three. The first condition demanded mutual sympathy for race, language etc. but one finds that Urdu language was declared as an official language despite strong agitation from people of Eastern Wing whose language was 'Bangla'. In the same vein, abundant literature is available which indicate that officers in both civil and military bureaucracy hailing from Western Wing considered Bengalese an inferior race (e.g. see Rabbani, 2008). With reference to second condition, though no state was strong enough to be able to defend itself on its own, still the Province of Punjab was the strongest of all as most of the officers in civil and military bureaucracy were from Punjab. It was not that the people of Punjab wanted to hegemonize other provinces rather it was the federal establishment consisting of civil and military officials who, in line with British colonial traditions wanted to keep strong control over other provinces against their will. And the third condition could also not be qualified as due to the same reason given in condition two that there was a 'marked inequality' between Punjab and the rest of the provinces. All these facts point to the conclusion that the federal system as suggested in GOI Act 1935 did not suit Pakistan.

So despite these clear violations of the conditions for federalism, the readymade recipe of the British was embraced after partition. The cause, i.e. the issue of autonomy which could not be solved in the pre-partition scenario got carried forward, and its symptomatic occurrences kept on popping up at various points in time in the following years. Some of these issues include language problem, One Unit proposition, use of emergency powers by the federal state against provincial governments, role of military, disputes on the distribution of resources and royalties, and asymmetric development in certain parts of the country.

2. Language Issue:

The first of these issues i.e. language problem emerged in the initial years of the life of Pakistan. The new country uniquely comprised of two geographically inconiguous wings, both situated at the opposite ends of the Sub-continent. East wing was a homogenous whole from the point of view of language where 'Bangla' was the lingua franca. Contrary to this, West wing was linguistically heterogeneous, where Urdu was spoken by a tiny minority of 3.24% (Adeney, 2007). M. A. Jinnah, the 1st Governor General of the country, announced in 1948 in Dacca the adoption of Urdu as the sole language of the state. This caused the eruption of riots during the address of the Governor General and the subsequent killing of a few protestors. The seeds of dissent had been sown by violating the principle of autonomy, and these seeds watered heavily in ensuing years by similar actions of the establishment, became thick trees of distrust, mutual hatred and divide. According to Rabbani (2008):

Governor General on his visit to East Pakistan in March 1948, without taking the East Wing leaders in to confidence, declared Urdu the language of just two percent of the population, as the national language... Other considerations aside, impositions of Urdu as the national language on the majority of the population of the country which they could not read, write or speak, alienated the people of the Eastern Wing that comprised 54% of the total population of Pakistan. Bengalis perceived this move as suppression of their language and culture and considered it and rightly so, as a denial of their rights, whereas being in majority they claimed quite logically that Bengali should have been declared as the lingua Franca of Pakistan. They revolted in the meeting and later there were clashes where three students were killed. Incidentally it was the first time that they publicly raised voices against the decision of the Quaid-e-Azam (p. 18).

And Adeney (2007) also says that "the Pakistani state did not adopt 'neutrality . . . with regard to different ethnic groups'. Neither the national language law nor the creation of the One Unit Plan was ethnically neutral" (p. 108). Perhaps all this was in continuation of colonial traditions where rulers never felt responsible to the public and the only motive behind this move was considered to be 'national integrity' which was very dear to the colonial administration.

3. Formation of One Unit:

The other symptom deriding the norms of federalism came to light in the shape of the formation of One-Unit. "The Second Constituent Assembly of Pakistan on 30 September passed a most highly controversial Act i.e. Establishment of West Pakistan Act 1955 (PLD, 1955, Central Acts and Notification 273) amalgamating all federating units of the country" (Sial, 2008, p.8). This act, ostensibly, was directed at denying "provinces power sharing in federal structure under the new constitution" (Sial, 2008, p.8). More specifically, it was aimed at

equalizing and neutralizing the 54% majority of the East Pakistan in the unicameral parliament of the country which was proposed in constitution of 1956.

It has been a federalist tradition, followed in the US governance structure as well, that in order to accommodate minority states/provinces and to neutralize the undue hegemonic impact of the majority states, bicameral legislature are instituted where the seats in upper house are shared equally among the states; and the seats in the lower house are allocated to the states on the basis of relative percentage of their populations. Thus smaller states are awarded equal representation in upper house, and states with larger size of population get compensated with representation equal to their percentage in population (Khan, 2009). This tradition was blatantly violated in the constitution of 1956 by opting for a unicameral legislature. This anomaly of One Unit persisted in Ayub's era as well, where under the Basic Democrats (BD) scheme, despite difference in the size of the population; both wings were equally allocated 40,000 seats of BDs. This scheme was eventually done away with in 1970 by Gen. Yehya's government before the next general elections.

Adeney (2007) believes that "the motivation of the elites behind its creation was to perpetuate authoritarian structures" (p. 112). The 54% majority of Eastern Wing afforded a clear advantage against the Western Wing which was split into "three governor's provinces, one Chief Commissioner Province, a number of states which had acceded to Pakistan, and the tribal area" (Khan, 2009, p. 124). The titles of these provinces show that even the nomenclature remained the same. A number of provincial assemblies including Punjab, NWFP and Sindh objected to this; however they were dismissed using emergency powers. All these action show the kind of attitude that establishment had towards, people, their representative and their interests. All this was the continuation of the past colonial traditions which never faced even a semblance of metamorphosis at the eve of independence in 1947.

4. Role of Governor:

In the pre-partition federal setup, which necessarily was a colonial set up, the governor was the administrator of the province. Even after granting autonomy to the provinces through various Acts of British Government – which in fact was a ploy to prove to the world that locals were being granted representation in the government – the de facto head of the province was none save the governor. Here comes independence and slowly and gradually, after various elections, provinces are allowed to form governments in the provinces, yet, curiously enough, again one finds the ubiquitous governor again firmly entrenched in the establishment of the provinces. Well, it is quite interesting that the structure of the governance remained unaltered even after independence. Democracy demanded that now the representative of the people – who now were trumpeted to be the rightful owner of the country – be given authority to run the affairs of the provinces. There should have been only one head of the state or province, under the principle of unity of command as is the case in US where the head of the state is the governor – the elected representative of the public, not the appointed federal representative. Planting a federal representative in the provinces who also has the legitimate authority to dislodge the elected government is a mockery of the system of democracy. It is the murder of provincial autonomy and federalism. It is done in the name of safeguarding federalism, yet it is essentially a colonial tradition which was commissioned to ensure complete hegemony on the provincial government.

Sial (2008) further presents a detailed description of how in the name of national interest or 'breakdown of constitutional machinery' a good number of provincial governments were dismissed. According to him only till 1958, seven different provincial governments were dismissed, first on the orders of Governor General and later on that of president. This practice did not stop here and was repeated many times against the various provinces in Bhutto's era and then in so called decade of democracy i.e. 1990s. This highlights the extent of autonomy that provinces enjoy in the state of Pakistan. These imprudent attempts were carried out through the emergency powers granted to them through different constitutions. Sial (2008) traces the origin of emergency powers to the Government of India Act 1935, which were retained in all the subsequent constitutions. These emergency powers grant unchecked clout to the governor who can send packing any provincial government thus burying the autonomy.

Bose and Jalal (2004) observed that:

(s)tates and provinces in both India and Pakistan have been subject to constitutional arrangements borrowed to a great extent from the Government of India Act of 1935. A centrally appointed governor and a cabinet headed by the chief minister might seem to replicate the president and the prime ministerial equation at the centre. But in actual fact the state governor has been for all practical purposes, like the centrally appointed members of the Indian Administrative Services, an active agent of the centre at the state or provincial level. If the Indian centre feels that a state is not being administered according to the constitution, the elected government headed by the chief minister can be dismissed and the state brought under what is euphemistically known as president's rule. The central governments in India and Pakistan have

constitutional sanction to poach on both the legislative and the executive domains of the state (p. 206-7).

5. Military rule and local governance:

Another aspect of the issue of federalism relates to Military. Military surely is one institution which represents the whole country and binds it together because of its function and composition. In almost half of the life of Pakistan, Military has been in power. Different stints of Military's rule have alternated with democratic governments which were riddled with allegation of legendary corruption and misuse of powers. So whenever Military comes in power, it is welcomed and democratic leadership is in defensive mode. It has been observed that whenever an Military government has assumed power in Pakistan, it claims to strengthen the democratic traditions by initiating it at the grass-root level. When Ayub came into power, he introduced the Basic Democracy (BD) system, riding over the unpopularity of the politicians which they earned during the decade of 50s. At the first stage, 40,000 BDs were to be elected from each of the two wings. Apart from performing various local governance functions, they also served as Electoral College for the election of provincial and national assemblies and President. The rationale for planting this system was that the ground realities of the country were not identical to that of other countries where democracy was fully operative. This demanded cultivation of democracy at the lowest level.

Gen. Zia also assumed power amid allegations of corruption and brute use of force by Bhutto regime against opposition. Time was ripe for another attempt to 'grow' democracy at grass root level. First the political activities were banned and later were allowed but only on party-less basis. Local government elections were conducted and powers and resources were delegated at the lowest rung.

Musharraf's martial law also preceded the 'decade of democracy' which was characterized by reckless politics by major parties including PPP and PML (N) aimed at dethroning each other's government, horse trading, and frequent toying with 58 2(b). Musharraf using the same old logic that nation has not learned democratic values and traditions and thus need to be nurtured in such values, introduced the devolution plan. This plan proposed devolving power to the lowest level thus giving people an opportunity to elect their representatives from their neighborhoods, which in turn will become an electoral support base for the national level politics. Moreover most of the resources, initially meant to go to the provincial governments, were channeled directly to the local government representatives.

If these three attempts to grow democracy at the grass root level are analyzed collectively, one finds certain common features but first a few lines about the nature and psychology of the Military as an institution which might facilitate the reader in making sense of these similar actions undertaken by different military regimes. Military is one of the few institutions which were purposefully raised by British colonial regime to realize their objectives. According to Malik (1997) "(t)he British Indian Army, originally divided into various regional set-ups, was finally integrated into a cohesive unitary and country-wide organization after mutiny of 1857"(p. 76). The primary task assigned to the British Royal Army was to grab more lands, quell any local resistance and to maintain control on the already occupied lands. These functions gave army a centralist outlook, made it overlook the whole area of the state and led it to assume a custodian role. Both the current Indian and Pak Armies are the colonial heritage of British Raj and extension of British Royal Army. They are developed and designed on the same lines.

The laws, rules even the regiment names are the same and the officers still boast about their services under British Raj. One incident narrated by Ahmed (2008) exquisitely captures the finer details of the background of Military. According to him,

'he was attending a gathering in a large ground in Peshawar, organized to commemorate 100-year celebrations of Frontier Corps, as member Senate. The audience was being apprised of the history and achievements of the Frontier Corps Regiment. The parade was underway, led by a contingent of Mohmand Rifles attired in early 20th century knee-long uniform. All of them had one-hand long beards, as per the sunnah of Prophet (PBUH). They were holding 303 Rifle which was the best rifle of the day. We were told that, that was the first contingent of Frontier Corps Regiment. Likewise, other contingents were introduced who proved their mettle in other times. In the post-ceremony tea party, we got the opportunity to meet various aged retired British officers who were invited specially to attend the ceremony and who commanded different contingents of Frontier Corps in their times. I hesitantly inquired some senior officers of Pak Army that against whom this contingent of Mohmand Rifles, whose lofty achievement were being commemorated there, was fighting? They instantly realized what I was referring to, so they tried to avoid giving any clear answer. I then, went on to remind them that they were fighting for the British (colonialist), against the local freedom fighters, led by the great reformer, Haji Sahib Tarangzai. So who should be our heroes, Haji Sahib Tarangzai or this contingent of Mohmand Rifles? They simply said that that was their history!'

Ahmed narrates another incident where he met Governor NWFP, Maj. Gen. (R) Khurshid Ali Khan. He asked 'why Pak Army insists on clinging with the traditions of the British era. The General frankly told that they were taught the history of their Military Unit, and there they study how they followed their 'enemy', what tactics their 'enemy' adopted, how they managed to thwart them. These local freedom fighters were their 'enemy'. This is their traditions and history and they are the custodians of this history'. Ahmed sums up by concluding that 'the Anglo-Saxon System which British Raj established in Sub-continent and through which they ruled over the locals still continues to rule the masses in Pakistan under the command of the establishment – the heirs of British Imperialists i.e. the civil and Military bureaucracy. This establishment is not only the custodians of their traditions and culture; they also safeguard their economic interests.

Thus their centralist/custodian image was reinforced during the nascent years of the country, where military was expected to ensure the safe custody of the migrating millions from Indian territories, to liberate the occupied territories from India and later to defend the homeland against any external threat. During those initial years, Pak Army's image received a newer Islamic-cum-nationalistic touch. In the 1980s, it adopted a supplementary role of being custodian of ideological boundaries of the country (Malik, 1997). This multi-tasking role naturally elevated military's stature, significance in national affairs and share in the national budget.

Now in all three situations, when military took over, it generally was heralded as a savior, a redeemer. Democratic leadership certainly behaved irresponsibly, and got involved in corruption and misuse of power. According to Mukherjee (2010), "(i)t must be admitted that Pakistan's civilian politicians have often acted, in their own interests, as arbitrarily as the military, with more corruption and less concept of real democracy and national unity"(p. 74). All the military regimes took upon themselves the task of planting / replanting democracy in the country, thus cultivating and raising an alternative leadership and in the process undercutting the existing political leadership. Unfortunately, due to the peculiar circumstances, very few leaders could reach the status of national leadership, with the result that whenever existing civilian leadership was sidelined through strengthening of local governments by the military regimes; it was taken as an attack by the provincial level leaders which eventually ignited hatred and disgust against the federal government. The cases of East Pakistan under Ayub regime and current Baluchistan imbroglio under Musharraf regime are presented as an evidence to prove the point. Alternatively, these moves by various military regimes may also be seen as a ploy to gain legitimacy by introducing democracy at basic levels thus avoiding label of being anti-democratic and attaining strength by reducing the threat from provincial leadership.

However, following colonial tradition, the Governor remained the real ruler of the province having legitimate powers, being representative of the federation, to sack the government whenever it suited the government.

Context:

Sial (2008) opines that "(a)fter independence government of Pakistan worked within the parameters of federal scheme of Government of India Act 1935 as a provisional system"(p.2) and according to Adeney (2007), "(a)fter partition, Pakistan worked under the British Government of India Act 1935 (re-titled the Indian Independence Act of 1947)". Not only that in the initial years of the life of Pakistan, state was run according to the Govt. of India Act 1935, all the constitutions later made in Pakistan were its replicas which, though had some variations but still kept the essence of the Act intact e.g. the classification of 'federal list', 'provincial list' and 'concurrent list' found in the constitution of 1973 are the heritage of GOI Act 1935. These observations point to the fact that the causes of most of the ills discussed above which have plagued Pakistan till today can be traced back to the GOI Act 1935 which was brought to light by the British colonialist regime to achieve their goals. "The Government of India Act 1935 was the multipurpose encyclopedic document enforced to appease Indian population with fully sustaining the colonial arrangement. Pattern of modern monarchism was introduced through the statute, which had 321 sections and 2 schedules"(Sial, 2008, p. 5).

The formation of the Act was the culmination of the process of the constitutional reforms that the colonial administration undertook gradually after the War of independence 1857 to achieve certain specific objectives. Colonization is defined as the "extension of political and economic control over an area by a state whose nationals have occupied the area and usually possess organizational or technological superiority over the native populations"⁴. And Chaudry (2011) expresses his views on the topic with reference to the subcontinent that "(t)he British were here not to promote the cause of India but to further their (British) commercial and other interests and to achieve this end they first set up the East India company and later the ICS" (p. 20). Likewise Mahmood (1990) believes that "(t)he British colonialists desired to extract assets out of their Indian empire, not to deposit their personal wealth in India" (p.13). And finally Egger (1953), a US consultant to Government of Pakistan believes

⁴ (<http://education.yahoo.com/reference/encyclopedia/entry/coloniza>)



“that the colonial government was a law-and-order government, the function of which, except in time of famine, did not extend appreciably beyond internal tranquility and collecting the revenue” (p. 1).

Summary of all these comments is that the British Government occupied sub-continent with force, against the wishes of the people, to achieve economic and political gains. Once in occupation, they needed to extract as much money and resources as they could (which they did), so they developed an efficient bureaucratic structure, named ‘ICS’, also known as the ‘steel frame of Raj’, which carried out this function and kept the law and order situation in control through the instruments of Police and Army. The “vice-regal system...made little or no provision for popular awareness or involvement” (Weinbaum, 1996, pp. 640-41) because it never meant to do that. After all colonization connection is not designed to facilitate and serve the colonized.

Making Sense of Federalism/provincial Autonomy

The above mentioned context explains how and why this whole colonial governance setup was created and evolved till 1947. Interestingly, the event of ‘independence’ did not discontinue the setup rather, according to Newberg (1995), “(t)he vice-regal traditions of colonial India were embedded in the plans for Pakistan’s governance... Pakistan’s leaders devised the rules and institutions to perpetuate the colonial traditions. Its various constitutions created new versions of the vice-regal system. The strong executive tradition continues to dominate Pakistan’s political and administrative structures. Every constitution has given primacy to a central executive power”(as cited in Islam, 2004, p. 318). And commenting on the visions of the leadership in Pakistan, Islam (2004) writes that “Pakistan’s leaders devised the rules and institutions to perpetuate the colonial traditions”(p. 318). Identification of this fact that Pakistan’s political, administrative and constitutional structures are the heritage of its colonial past and the insightful observation of Talbot (1998) that “(p)olitical and institutional inheritances from Raj... continue to exert a profound influence” (p, 53), deciphers the issue of why, in spite of having a federal constitution, center-province relationship has always been sour in Pakistan.

This issue can be seen from another angle. According to Sial (2008), “British Government introduced a *highly centralized federal system* in the sub-continent to deal administrative functions of United India” (p.3) (emphasis added). Now the term ‘*highly centralized federal system*’ is really a paradoxical one. ‘Federal’ in itself means that provinces are to be given maximum autonomy to allow for their local variations and requirements whereas central government is supposedly responsible for just a few essentially federal subjects including defense, currency, foreign affairs etc.; while ‘central’ signifies a system having concentration of powers in the central government. Sial’s observation is not out of place at all as same was observed by Adeney (2007) as well, yet the terms ‘centralized’ and ‘federal system’ are both contradictory in nature and truly expose the design of colonial governance structure.

By just using the term ‘federal’ does not make any constitution a federal one, instead it needs to incorporate the features which represent a federal constitution. Hamid Khan (2009) while discussing the reason of US constitution being a federal one, states that “(t)he argument was that each state was autonomous and was voluntarily joining the federation on the basis of equality” (p. 769). This fundamental feature was just not there in the scheme of Indian federalism. Neither the provinces or states were autonomous nor was the nature of their joining the federation a voluntary one, contrarily, the provinces were under the occupation of the British colonial administration and all the decisions about their structure was the sole prerogative of the British masters. In fact they had their own meaning of the term ‘federal’ quite detached from generally held meaning. What they really wanted was the formation of provincial governments under a seemingly federal system which gave locals and international community an impression that the locals were being delegated the power on gradual basis.

Table 1 showing Immunity to Heads of the state and provinces in various constitutions of Pakistan and India

Constitution	Clause containing details about immunity
Government of India Act, 1935	306
Constitution of Pakistan, 1956	213
Constitution of Pakistan, 1962	116
Constitution of Pakistan, 1973	248
Constitution of India, 1950	361

Sial while further elaborating on some of the features of Govt. of India Act, 1935 writes that “(t)he Government of India Act 1935 (Section 5) provided ‘All India Federation’ and a bicameral Federal Legislature with division of legislative functions between Federal and Provincial governments. The bicameral Federal Legislature was to be consisting of the King, Federal Assembly and the Council of states”(p.4). Now how can one think of the provinces being autonomous when the King was part of the federal legislature? The word ‘King’ itself exudes the feeling of

inequality. So the ruler and the ruled could not be equal in colonial setup and that is why all the high ranking British officials of the colonial administration were given immunity against any criminal charges/allegation. Keeping in line with the spirit and essence of this colonial tradition, all the constitutions of Pakistan and that of India retained the clause of immunity for the head of state and that of provinces – who are not supposedly colonialists and claim to be democratic and equal to their fellow citizens – as is detailed in the table 1.

Sökefeld (2005) believes that the “systems of colonization inscribe their marks so deeply upon the societies of both the colonized and the colonizers that they cannot simply be eradicated by the political act of declaring independence” (p. 939). This is truly depicted in the case of Pakistan where independence was declared without ensuring the existence of its pre-requisites and without bothering if it really emancipated the teeming millions. So Chiriyankandath (2007) believes that “(t)o many it seemed that colonialism was the obvious place to start in explaining why political independence had not resulted in the emancipation” (p. 36). So pervasive has been the impact of colonialism on the erstwhile colonized countries of the world, that not only the “institutional forms (administrative, legal, educational, military, religious)” and “languages (English, French, Portuguese, Spanish, Dutch)” have survived here but also the mentality passed on by the colonial past has pervaded the minds of the people (Chiriyankandath, 2007, 37). Thus both the tangible and intangible parts of the culture are colonial in essence and reinforce each other.

These observations very much hold its water in the case of Pakistan as well where the majority of the institutions including civil and military bureaucracy; legal, educational, justice, railways institutional structure etc. remain largely unchanged. The same is true with reference to the language where ‘English’ remains the language of the elite and also the official language. This practically excludes the majority of the country from the power domain thus maintaining the colonial ruler-ruled equation. And as if this is not enough, the colonial mentality is sustained due to the presence of the ‘tangibles’ of the colonial culture including Governor Houses, Canals and Dams, vast bungalows for British Officers, Institutions of Civil and Military Bureaucracies to name a few. Constitution is the basis of every action in a country, and it has already been established that Govt. of India Act 1935 is the mother of all the constitutions which were developed in Pakistan. So if it sustained, almost every institution of the colonial structure sustained because it not only delineates how difference institutions will function but also that what are the different institutions that are required to carry out various functions of the state.

The following comments of Weinbaum (1996) aptly encapsulate the discussion when he says that:

Pakistan's political culture is naturally a strong product of its past, including its people's earlier history under the British Raj. What Pakistan's leaders knew best from this inheritance was the so-called vice-regal system that made little or no provision for popular awareness or involvement. The system was designed to rule over a subjected population and intended to keep order and collect taxes (pp. 640-41).

The last sentence of the above quote identifies almost all the main ingredients and features of the colonial governance structure. ‘The system is designed to rule’ throws light on the objective and rationale for which this system was created. It was never directed to serve the public or to solve their problems and issues; it’s not people-oriented, it’s in fact designed to rule over the ‘subjected population’, which is still subjugated despite getting ‘freedom’ in 1947. The systems is aimed at collecting revenue through taxes and other means and then maintaining law and order in case of any reaction, retaliation or disobedience from the population takes place. All the institutions, rules, Acts, systems were designed to achieve above mentioned objectives and incidentally they are still in place. The government officials never took the population equal to themselves rather saw them as an inferior lot. That’s why such slogans ‘Indians and dogs are not allowed’ could be commonly seen at the entrance of exclusive places for the British including Lawrence garden, Lahore.

As we have already established that the colonial governance structure has continued even after the independence with all its institutions, laws, rules, systems, one can understand why people have not benefitted from independence; why we find cries from different minority provinces for autonomy? Why despite claiming to be a federal governance structure, provinces still found struggling to get their rights? Why is it that natural gas, found in Sui, Baluchistan, reaches as far as Karachi, Lahore, and Islamabad but could not be supplied to all the people of Baluchistan? Why would Sh. Mujeeb-ur-Rahman, the popular leader representing East Wing of the country smelt ‘jute’ from the roads of Islamabad?

Surely certain changes were introduced in the Act i.e. GOI Act 1935 after the independence including the introduction of Fundamental Human Rights. They were not part of the original Act because it was a colonial Act and colonialists were not here to guarantee basic human rights to the people of India rather they were here to generate revenue which could finance their local industry; and to quell any voice of protest or ‘rebellion’ should it be raised from any quarter. Thus according to Chiriyankandath (2007), “(t)he colonial state was therefore coercive and extractive”(p. 41). And though it is claimed that the ultimate basis of any decision in Pakistan are these human

rights, however, even they are withheld or suspended in the name of 'public order' which was and still remains one of the main guiding principle of the state.

In the same vein, Mahmood (1990) believes, Pakistan is definitely a bureaucratic state — one in which the bureaucracy rules. Bureaucracy was considered the steel frame of Raj thus was the real face of colonial government. These observations of Mahmood were corroborated yet again, in a recent study by Saeed (2012), which attempted to make sense of the process of implementation of Hospital Autonomy Reforms in Pakistan. These reforms were aimed at granting autonomy to the teaching hospitals in the province of the Punjab. In the erstwhile situation, bureaucracy was in complete control of the hospitals and doctors were subservient to them as was the case in other professional organizations. The likely results of the reforms were the shifting of power from bureaucracy to the doctors in the hospitals, however, despite being on the back foot, bureaucracy slowly but gradually reclaimed all the powers which were transferred to the doctors in the hospitals through reforms, thus defeating the reforms.

Conclusion:

Pakistan constitutionally is a federal state - which is supposedly an arrangement where federal/ central government is expected to keep essentially federal subjects with it including defense, foreign policy and currency etc. and the provinces are allowed to make decisions in rest of the areas keeping their peculiar issues and demands in view. However, ever since the creation of Pakistan, one finds such symptoms as the declaring of Urdu, which represented only 3% of the population, as the official language of the whole Pakistan, compressing four provinces located in Western Wing of the country into One Unit, frequent dislodging of provincial governments by the governors on the advice of the federal government, and special emphasis of military government to 'grow' democracy at the local level etc. to name a few. These symptoms are spread across the whole history of the country and have cropped up and keep on cropping up again and again in different parts of the county. Though the symptoms are of varied nature, however, the cause is found to be singular in nature. This paper has attempted to identify that the cause i.e. the nature of federalism is embedded in our colonial past, various constitutions and institutions of the country and the thinking of the ruling junta.

According to Bose and Jalal (2004), "so although federal in form, the Indian and Pakistani state structures have been unitary in substance. Borrowing heavily from the colonial masters in the initial stages, the two state structures over time became increasingly more centralized (p. 206-7). Thus it can be inferred from the above discussion that the incongruity between the form and substance of the state structures is the main cause of why Pakistan has perennially and consistently faced autonomy issues of varying nature throughout its history. These discrepancies are the inheritance of our colonial past which has persisted even after the 'independence' of the country some sixty six years ago. This impact of colonialism is not unique to Pakistan only; instead it has left indelible effects on almost all of the countries which had to undergo the ordeal of being colonized. Some call it neo-colonialism (Chiriyankandath, 2007; Shohat, 1992)

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