

FEDERALISM IN ASIA AND BEYOND

Christian J. Hegemer, Hanns Bühler (Hrsg.)

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## FEDERALISM IN ASIA AND BEYOND The Wildbad Kreuth Federalism Days 2012

Models, Best Practices and New Challenges



Christian J. Hegemer / Hanns Bühler (Hrsg.)

## **Federalism in Asia and beyond**

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## Foreword

*Gabriele Stauner*

For Bavarians, federalism is not just an abstract constitutional principle, but is also a part of the practicalities of life and an attitude to political and social challenges that is deeply anchored in our awareness. In Germany, federalism has strong roots that reach far back into the past. Its origins can be traced to the origins of our state organisation more than a millennium ago. Looking back beyond the historical hiatus brought about by National Socialism and the Second World War, we find a system of government in Bavaria that has been around for an exceptionally long time. Whereas it was only after the War that other German federal states were pieced together from various territories (the so-called *Bindestrich-Länder*, which used a hyphen to indicate that they were made up of more than one territory), the territory of Bavaria has existed almost unchanged in its current form for almost two centuries. This is why we in Bavaria have a great sense of history and self-assurance and why we regard federalism as an especially valuable part of our own tradition.

Franz Josef Strauß, statesman and former minister-president of Bavaria, once said: “Bavaria is our home, Germany is our fatherland and Europe is our future”. This formulation gets to the core of federal thinking. In other words, we love our traditions and are proud of our history, we are loyal and true in our association with the other *Länder* of the Federal Republic of Germany and we are doing everything in our power to contribute to a Europe of peace, of law and justice, of prosperity and of cultural wealth.

For us, federalism is an answer to globalisation and its tendency towards standardisation in all areas of life. Against this we set regional diversity and respect for differences. To master the challenges of the future better, people need a firm basis to give them strength and self-confidence. With us, they will find this basis in the regional environment, in their traditions and customs and in their commitment to the community – in other words, in their home country.

Federalism for us means competing for the best ideas and solutions. Comparing ourselves to other states and regions gives us an incentive to position our home country even better: in industry, in the system of education, in expanding infrastructure, in internal security and in many other political fields of action. This applies within Germany, but for us competition of this kind is also a model for shaping Europe.

Federalism for us, however, also means solidarity. As a strong state, Bavaria is helping others to fulfil their tasks and is making a decisive contribution to the present system of financial equalisation among Germany’s federal states, the so-called *Länderfinanzausgleich*. In 2011, Bavaria’s contribution amounted to 3.9 billion euros: more than half the

entire amount. Our aim, however, is to correct this system of redistribution, which in recent years has become out of balance. After the system has been reorganised, the aim will again be to help others to help themselves and especially to provide a stronger incentive for competition among the *Länder*.

One important basic idea for us is the principle of subsidiarity. Every problem should be solved at the lowest political level possible. Only when joint solutions appear sensible and necessary at a higher level should the appropriate course of action be taken at that level. This applies not only to the relationship between the local authorities and the *Länder* but also to the relationship between the *Länder* and the Federal Republic, as well as the European Union.

Subsidiarity leads to a strengthening of democracy. Democracy means getting involved in *one's own* affairs. What more sensible way could there be of accomplishing this, than in a graduated federal system? Federalism thus leads to decisions being taken that are as citizen-friendly as possible and therefore more transparent and convincing for each individual person. Thus federalism also leads to a policy of short distances.

Bavaria lays claim to the right to regulate its own affairs, but is also prepared to use its economic power and political influence in the Federal Republic of Germany and in Europe to take on the burden of responsibility. One of the main contributory factors is its role in the making of federal policies in the *Bundesrat*, the second chamber of the German parliament, as regulated by the Constitution. Nor must we forget the Committee of the Regions in the EU. In Brussels we are playing an

active and acknowledged role, because among other things we are involved in the European early warning system for subsidiarity control and are contributing our entire experience and expertise in order to help the EU to bring its decisions in line with practical experience and to shape them so that they are as close as possible to the citizens.

Bavaria sees itself as the driving force behind federalism in Germany and Europe. I am very pleased that this attitude and our federal state system are attracting a lively interest abroad. The 1st Kreuth Federalism Days provided an opportunity for us to present our experiences, to compare them with developments in other regions of the world, especially in South and Southeast Asia, and in the process to discuss intensively the future prospects of this state model. The aim of this collected volume of talks and lectures is to make the results of the conference in Kreuth accessible to those who did not have the opportunity to attend it. I should like to thank all those who contributed and hope that it will find many interested readers.



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## Preface

*Hans Zehetmair*

Democracy, parliamentarism, rule of law and federalism are the main elements of the political system in Germany and the foundation for a peaceful existence of nations in Europe since World War II. The Free State of Bavaria, one of the sixteen states (Länder) of the Federal Republic of Germany, sets an example for successful federal politics over many decades. Despite repeatedly being subject to discussion, federalism has remained a stabilising factor in German politics for almost seventy years.

The Free State of Bavaria, the Christian Social Union (CSU) and the Hanns Seidel Foundation are unique examples for the ability of a federal system to successfully accommodate national and sub-national interests and identities. In Bavaria we associate our sovereignty with loyalty to the German federation and the European Union. We are passionate federalists by conviction. Strong Länder mean a strong Germany. And Germany gets the strength for solidarity in Europe from its unity in diversity.

Federalism is more than a tool of governance. It is a principle of state organisation, which accumulates in constitutional as well as societal arrangements. Federalism goes hand in hand with Democracy and the other elements of good governance. In many countries conflicts arise because minorities do not feel represented in the right way. Federalism is an important factor to ensure political stability in societies which are ethnically, culturally or religiously diverse by acknowledging and accommodating local interest and identity. But of course, pros and cons must always be weighed up against each other. Ultimately arguments in favour of federalism prove to be advantages for each individual citizen.

Hence, it comes as no surprise that Hanns Seidel Foundation promotes federal and decentralised structures within Germany and in more than 60 countries worldwide, executing more than 100 projects. It is also against this backdrop the Hanns Seidel Foundation launched the “Wildbad Kreuther Federalism Days” for the first time in November 2012. This conference series will be executed annually with a geographic focus on Europe and Asia and will flank our activities in our partner countries there.

In South and South East Asia, past and ongoing events and developments are paving the way for political transformation and participation. Passing the 18<sup>th</sup> Constitutional Amendment, the political leadership of Pakistan achieved major changes which might, in the mid-term, lead from a largely centralized system to a federal state, as envisaged in its constitution of 1973. The year 2011 marked major developments in the political set-up of Myanmar, which is home to a multi-ethnic society, comprising more than 100 officially recognized ethnic groups. Sustainable peace and development only seems to be

possible, if regions striving for autonomy receive more competencies from the central government. I, as a convinced advocate of federalism, am delighted about the fact that this topic is not considered an attack on national unity in Myanmar anymore as highlighted recently by the Speaker of the lower House U Shwe Mann. The implemented reforms and discussion in regards to federalism in the country are delighting and deserve great respect. India, neighbour country of Pakistan and Myanmar, is the biggest federation in the world. A “third wave” of federalism is – after 1950 and 1977 – taking place at present, implying major adjustments to the repartition of state territory and to the cooperation between the third tier and national and state level.

Federalism is nothing that can be invented on a drawing board. Federalism is a process of adaptation and change that never comes to an end. There is no blueprint and there is no perfect federal system. Federalism is – more than any other political system – a permanent construction site, a perpetual give and take, negotiating and refining. It has to grow bottom up and has to respect national contexts, traditions and the national balance of powers.

The 1<sup>st</sup> Wildbad Kreuther Federalism Days brought together politicians, senior civil servants and scholars from Germany, India, Pakistan, Vietnam, and various countries from Europe to discuss and share experiences how to organize and establish federal structures in Asia and Europe. Through regular exchange, some can benefit from sustained experience and best practices from countries with established federalism such as India or Germany. Vice versa, they benefit from lessons learned from nations where federalism is still in its infancy.

The publication at hand features a selection of valuable contributions during the 1<sup>st</sup> Wildbad Kreuther Federalism Days. It provides an in-depth analysis on the standing of federalism in South-Asia and gives practical recommendations on how cooperation between national and sub-national levels of government can be established.





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# Federalism in South Asia and beyond

An introduction to models, best practices and new challenges

*Lukas Rudolph*

## 1 Federalism as a New Paradigm?

Be it cultural or ethnic cleavages, new governance challenges or questions of governance efficiency and local democratic ownership: Federalism has received renewed attention as a potential tool for improving politics, polity, and policy (Watts 1998). Even the long-time model case of a unitary state – the United Kingdom – is developing quasi-federal structures (Bogdanor 2005). Federal institutions thus seem to become a new paradigm of government effectiveness and efficiency as well as democratic accountability.

It is against this backdrop that on invitation of Hanns Seidel Foundation the conference “Federalism in South Asia and beyond” brought together scholars and practitioners in late 2012. In the course of the conference, potential models and best practices as well as concrete challenges of federal institutions were reviewed. The conference put a special focus

on recent events and developments in the three South Asian countries of India, Pakistan and Myanmar, aiming at a comprehensive analysis of contemporary issues of federalism in these countries.

It became clear that the interaction of institutional design and local context is pivotal for understanding the effects of federalism. The discussions therefore link directly with the broader scholarly debate on the impact of federalism, which is very much unclear: Some provide evidence that federal governments seem to be outperforming their unitary counterparts on economic and political dimensions (e.g. Imman 2007) – under the condition that they are flanked by democratic institutions. Others argue that a relationship between federal organization and political performance per se, in this case corruption, does not seem to be evident. As Treisman (2007) e.g. outlines, although democratic institutions are significantly and strongly associated with measures of good governance, there is no robust case that federalism (i.e. political or fiscal decentralization) makes a difference beyond the effect of democracy.

While the evidence on this new paradigm of federalism and decentralization is unclear one preliminary conclusion can be drawn: The question of effects of federalism should be refocused on the question whether it strengthens democracy and its institutions in the cases at hand – a question similarly contested in the literature and dependent on the actual institutional settings and the divide between constitutional set-up and practice on the ground (Lane and Ersson 2007). To understand the linkage between federalism and democracy, the question arises why federal institutions are set up in the first place.

In following Hooghe and Marks (2009), three aspects tend to lead to the adoption or non-adoption of federal institutions:

First of all, group identities and ethnic fractionalization are a major driver of federal movements around the globe, as numerous examples in the developed and developing world show (Whatts 1998). Of course, this argumentational link focuses on a calming of ethnic conflicts through increased regional self-determination.

Secondly, distributional factors at the national level are one prominent explanation for the non-adoption of federal institutions: A unitary government structure provides for centralized rent-seeking opportunities which generally favour powerful state actors. This is one reason why relatively few federal dictatorships exist past and present (Imman 2007).

Both these aspects are well reflected in the chapters of this book: distributional factors lead to the gap between federal constitutional provisions and unitary practice in Pakistan before 1971, induced by the struggle for resources between East and West Pakistan; questions of ethnic and religious identity are influencing the working and design of federal institutions in both India and Pakistan till today.

A third potential explanation for the development of federal institutions outlined by Hooghe and Marks (2009) goes beyond theories of multilevel governance: This explanation works gradually, but should be kept in mind for a better understanding of the economic processes involved: The authors show that decentralized state structures are one determinant of efficient governance. This efficiency plus influences the choice of government structures and thus benefits the gradual adoption

of federal institutions as long as increased efficiency in public goods provision is in the focus of the respective polity.

These reflections can help in structuring our understanding of why federal institutions are evolving the way they are in the cases of India and Pakistan or even being introduced in the case of Myanmar.

Still, one has to keep in mind that institutions are highly dependent on historical junctures and past developments. This is especially true for post-colonial states, where it has been shown that the origins of today's institutions are still very relevant in shaping these countries' development outcomes to date (Acemoglu et al. 2001). Subsequently it is important to have on the one hand a good understanding of potential choices in modelling federal institutions – e.g. the crucial division between a cooperative or competitive set-up of federalism – and on the other hand the local contexts that influence what is possible on the ground.

The question, which is at the bottom of the first section of this volume, is how to model federal institutions for optimal political and economic outcomes and a strengthening of democratic quality in the countries at hand. The contributions of Roland Sturm, Felix Knüpling and Thomas Pfisterer report on possible choices: They outline the general working of a federal system as well as mutual learnings and best practices in the field of comparative federalism. The second, third and fourth part of this volume then take a closer look at specific case studies, with topic as diverse as fiscal decentralization or questions of identity: Contributions of Jami Chandio, Sayed Wiqar Ali Shah and Zafarullah Khan focus on Pakistan, Indian federalism is in the focus of Sucha Singh Gill, Rashpal

Malhotra and Subratra Mitra and last but not least debates on federalism in Myanmar are picked up by Achim Munz and Michael Siegner.

What becomes especially clear in these case studies is the context dependency of institutional settings, including their path dependence in light of specific historic decisions, as well as the identity and ethnic debates at the root of the developing of federal institutions on the ground.

## **2 Modelling Choices and Best Practices of Federalism**

In the beginning of the first part of this volume, Roland Sturm outlines central organizing principles of federal states, with a special focus on financial relations between national and regional level – oftentimes a core point of conflict and subsequently a primary challenge for a sound institutional set-up. He enriches his depiction by numerous examples from the OECD world and succeeds in excerpting the underlying institutional choices different federal countries draw upon.

First of all, all models of federalism try to make best use of what Sturm calls the pillars of federalism: subsidiarity and solidarity. But as both can work in opposite directions, challenges to the political system are not always solvable in a consensual fashion.

Secondly, modes for peaceful conflict resolution, both informal and formal, are pivotal for the endurance of a federal system.

Thirdly, two central federal models can be made: On the one hand, systems such as Canada or Belgium with a decentralization of competences in order to allow separate preference formation at the regional level and, consequently, dual taxation or even tax autonomy

systems. On the other hand, federal systems based on joint decision making between the tiers of government in company with joint financing of federal and regional level through a unitary taxation strategy, such as in Germany. But Sturm as well examines the preconditions necessary for this second organizing principle: The ethnic homogeneity and the national consensus on 'equal living conditions' in Germany is e.g. naturally furthering this type of federal organization.

Though, one must add, the interrelationship between ethnic identities and federal organization is not a one-way street. A common federal institutional set-up might fell further a national identity in its own right. It is not for nothing that Shah, within this volume, calls for common national-level material and immaterial institutions in Pakistan in order to overcome an increasing fractionalization of regional and sub-regional identities.

This aspect – the role of regional identities and ethnic homo-/heterogeneity – is a central unifying theme of this volume, reflected as well in the contribution of Felix Knüpling in the following chapter. He provides for a general mapping of federal principles and institutions around the world, structuring in great detail which differences in institutional designs are embraced in the term federalism.

This mapping allows a distinct overview over federal systems, especially the two dominant, though in practice oftentimes overlapping, strategies of 'empowering' versus 'integrating' sub-national identities. These strategies centre around the question how to deal with diversity: Should distinct sub-national identities be furthered and recognized within political institutions or national identity and common citizenship be emphasized?

In relation to the design of federal institutions – and in anticipating possible points of conflict – Knüpling refers to four central recommendations: Proper participation of all ethnic minorities in core institutions must be *de facto* possible; if not, it should be enforced. Minority protection on all tiers of government is pivotal for the functioning of the federation. A national identity must be furthered, e.g. by referring to a *citoyen* (national symbols, rights, etc.) or through material benefits (common market, health care, etc.).

Lastly, Knüpling details the, as he terms it, ‘governance of diversity’, including power sharing and participation arrangements, policy space and autonomy regulation, in entities differing along ethnic, geographic and/or linguistic lines.

Subsequently, Thomas Pfisterer argues that although there does not exist a single ideal model of federalism, one can still focus on common challenges of federal systems today and provide suggestions for their solution. Subsequently, he outlines possible best practices founded on these mutual challenges – the ‘Guidelines’ developed by Pfisterer and his co-authors centred around the Forum of Federations. These ‘Guidelines’ encompass suggestions in the fields of distribution of powers, fiscal relations and inter-governmental relations within the state, local governance and foreign policy. In each of these areas his contribution details policy-making options in order to arrive at a federal system with functional institutional set-up, reaching from guiding principles of subsidiarity or fiscal sustainability to participation requirements for the different tiers of government in different policy fields.

This mapping of federal best practices around the world and the implied trade-offs and choices in institutional design lie at the heart of the Wildbad Kreuth Federalism days. Practitioners and theorists alike profit from gaining a thorough understanding which institutional decisions have been tried, under which contexts and with which effects. But of course, this mapping has to be brought together with the realities on the ground: The existing settings of India and Pakistan – and the needs of entities such as Myanmar, for which federalism is an option in their democratization process.

### **3 The Case Study of Federalism in Pakistan**

The second part of this volume is subsequently centred on the case study of federalism in Pakistan, with its diverse conflicts along ethnic and linguistic cleavages and shifts between unitary and more federal institutional settings. All three contributions take a closer look at the 18<sup>th</sup> Constitutional Amendment of 2010 and its consequences, though from very different points of view.

Jami Chandio starts the second part by putting forward his hypothesis of a “denial of federalism” (p. 123) for current Pakistani politics. He outlines and evaluates the constitutional history of Pakistan and analyzes in great depth the recent 18<sup>th</sup> Constitutional Amendment, which for him constitutes a shift in constitutional paradigms.

Additionally, Chandio summarizes the state of fiscal decentralization in Pakistan – where resources are distributed primarily based on population figures, a system leading to gross injustices, as he outlines: Especially the province of Punjab is profiting above the ordinary from this distribution rule. In the following, Chandio elaborates further on

details of this mechanism, especially revenue creation – this plays a marginal part (5%) in financial distribution among provinces, according to him, although revenue creation is primarily centred on the oil and gas industry of the province of Sindh. One could add that distorted incentives on the side of the provinces are a likely consequence as well. But Chandio mentions as well a major reform implemented with the 18<sup>th</sup> Constitutional Amendment: No longer 11.5%, but 50% of natural resource royalties are to be shifted to the provincial level, a small change that could lead to major shifts in the development of the natural resource rich provinces Balochistan and Sindh.

Last but not least, Chandio analyzes specific policy fields of special interest to the future development of Pakistani federalism (especially water distribution, a very conflictual field). Here, he sheds light on the gap between lived practice and formal rights of federal institutions in Pakistan, a gap that can be destructive for the functioning of a political system. As already discussed by Sturm in Chapter 1, new conflict regulation mechanisms need to be put in place, especially taking into account the unbalanced power of federal states in Pakistan. This is what Chandio calls for with his recommendation that the “federation of Pakistan needs a new social contract between the federation and the provinces and among the provinces” (p. 156). Otherwise, Chandio fears that a “subjugation of the smaller provinces to the ruling Punjab-Urdu speaking nexus” (p. 125), might be the continuing outcome.

Sayed Wiqar Ali Shah outlines in his chapter past and present challenges of federalism in Pakistan. While the country was constituted as a federal entity, especially with reference to its ethnic and geographic dispersion, there exists a decade old conflict between ‘autonomists’ aiming at

increased independence from the, as Shah calls it, 'Centre' and 'nationalists' aiming at strong oversight vis-à-vis weak sub-national units. For the 'autonomists', federalism is deemed as potential solution to strong ethnic and linguistic cleavages in Pakistan, while 'nationalists' fear a potential dissolution of the state.

Shah analyzes these arguments and points to an intrinsic paradox in transferring powers to sub-national units:

As soon as demands for autonomy to sub-national units are 'given in', separation movements are potentially strengthened, demanding for even more autonomy, which in turn leads to a potentially slow erosion of national unity in the long term.

At the same time, a suppression of autonomous demands is running counter one principle argument for federalism: To enable fragmented, often conflict-prone societies to remain at peace. In light of suppression, an eruption of violence and a bloody separation is becoming more likely.

Shah exemplifies both sides of this paradox: For the latter he refers to the war between East- and West-Pakistan in 1971 where calls for autonomy were neglected exactly for the reason of fears of an increasing loss of influence by 'Centre' politics on sub-national policy. For the former, Shah draws on the ongoing debate in Pakistan about ethnic identities and provincial autonomy. In great detail, he displays the struggle of ethnic minorities – majorities in their respective entities – both for due respect from the national level and for autonomous decision making competencies. Here, he displays an interesting chain of events: The granting of autonomous decision making can equally lead to conflict and violence. Ethnic movements in Pakistan (especially the

Pashtoons) have, as argued by Shah, been successful in achieving some of their demands with the recent 18<sup>th</sup> Amendment to the Constitution of Pakistan – but only at the cost of subsequently unleashed latent violence by ethnic minorities both inside and outside the ethnic Pashtoon settlement regions to demand equal consideration, e.g. through the creation of additional provinces.

Shah concludes his chapter by focusing on core lessons learnt, principles of federal entities with special respect to the Pakistani context: Especially noteworthy are his remarks that a functioning of federalism, including the acceptance of boundaries and decision-making competencies, can only work as long as democratic institutions both on the national and sub-national level allow for a balancing of interests between all tiers of government, a recommendation which is well reflected in the first part of this volume.

Zafarullah Khan in his contribution as well takes up the question of Pakistani federalism and its future prospects in the light of the recent reforms cumulating in the 18<sup>th</sup> Constitutional Amendment.

Revisiting the amendment as “a paradigmatic shift to reclaim the inherent federal soul and spirit of Pakistan” (p. 199) he analyses the changes of this amendment on legislative, executive and judiciary of Pakistan with a special focus on federal-provincial relations. In this, he shows how these reforms have emerged from lessons learnt from numerous military coups in the conflictual Pakistani history – in which federalism was nearly abolished in the 1950s due to the so-called ‘One Unit’ program by then West Pakistani elites, which set a united western Pakistani province to ‘balance’ the then one-provincial East Pakistan.

Additionally, he outlines how safeguards have been established against future unilateral military action, although these have of course not yet been put to a 'litmus test', as Khan notes.

Finally, his detailed analysis of federal-provincial relations focuses especially on the institutional solutions now put in place to improve the working of federalism in practice: special commissions have been established to enable due participation of Pakistani provinces, accompanied by a devolution of competences from the 'Centre'. Still, this process is not yet completed – only consequent is Khan's call upon the major stakeholders in Pakistan to put the new legal framework of the 18<sup>th</sup> Amendment now fully into practice.

#### **4 The Case Study of Federalism in India**

In the third part of this volume, a special focus is put on the federal system of India. The federal setting of India is seen as crucial in maintaining the largest democracy of the world, highlighted as a central element of what is partially even seen as a consociational democratic setting (Lijphardt 1996).

But India is undergoing rapid economic changes with large impacts on the functioning of its political system, as Sucha Singh Gill depicts in the first chapter of the third part. Gill analyzes Indian federalism from the point of view of fiscal relations between national and regional level and reviews the impact of external economic changes on the functioning of federalism in India.

Already in the first part of this volume, it is noted that disputes on finances are a central source of conflict in federal systems: Sturm e.g. displays how federal systems can rely on vertical (transfers between

union and regional level) or horizontal (transfers between regions at the sub-national level) means to achieve an adequate balancing in economic capacity among the national and different regional governments, for the long-term stability of the federal system and an expression of the solidarity principle of federalism. As a comparison of the US (block grants) and German (conditional grants) example show, different vertical transfer mechanisms imply different consequences: Block grants, while increasing efficiency in spending, give the center few options to influence spending priorities. Simultaneously, conditional grants are likely to be distorting preferences on the spending side but aid in ensuring a comparability of living conditions within the country.

Gill transfers these arguments to the Indian context, where an external change in the structure of the economy shifted the balance between the national and sub-national resource base, as state governments primarily rely on taxation of the primary sector.

He refers especially to an interesting institutional design feature in the allocation of vertical transfers: Union transfers are distributed among states amongst others in relation to their relative fiscal performance in the past. This 'fiscal discipline'-parameter is influencing up to 17.5% of transfer allocation by mixing aspects of block grant and conditional grant design features. Additionally, transfer decisions are decided by expert commissions, thus taken out of the day-to-day policy cycle.

Still, as Gill outlines, expert commission do not guarantee political support for implementation as his review of the reform proposals of the 2007 Commission on Centre-State Relations shows.

Finally, he summarizes how federalism in India is complicated by a differing prevalence of sub-national identities in different parts of the country – which makes both the working of federal institutions and the analysis of institutional solutions very context specific even within India. At the same time, this hinders reforms and, as Gill argues, only if the costs of the current system are growing to an extent that sub-national actors ‘join hands’ will the pressure on the central government grow large enough for a reform.

In the following Chapter, Rashpal Malhotra analyzes the role of a recent wave of decentralization to a third tier of government beyond the national and regional level: The *Panchayati Raj*, local self-governance through elected village councils. He especially reviews the impact of the reforms of the 73<sup>rd</sup> and 74<sup>th</sup> Constitutional Amendments on the Indian Constitution since the 1990s.

These amendments strengthened a ‘democratic decentralization’, building on the idea of village self-governance as foundation of the Indian democracy. For this, Malhotra gives a detailed overview on institutions of local self-governance in India and traces their roots from 300 B.C. to the debates on whether the post-independent India should develop a decentralized or hierarchical institutional set-up.

Malhotra in the following relates the discussions on the merits of decentralization to the poverty-orientation of governance and makes a strong case that governance improved through decentralization.

Remarkable provisions in these amendments are especially noted, such as the reservations of seats for Scheduled Castes and Scheduled Tribes as well as women – the positive effects of these provisions in terms of

equitable preference formation at the village level have been noted prominently already (Chattopadhyay and Duflo 2004).

Finally, Subrata Mitra illuminates in his original research article the relationship between citizenship and sustained democracy in the federal setting of India. A short look at ethnic, religious and sub-national violence in India's vicinity turns the headlights on the question how this multi-ethnic, multi-lingual entity has evolved into a stable democracy.

Federalism does its part in buffering cleavages along ethnic lines, due to subsidiarity in decision making and an allowance of heterogeneity in rules and regulations. Still, Indian federalism is not without its challenges, as Khan brings up in his contribution in this volume: the weak economic condition of Indian states makes the federal decision-making structure remain partially only on paper.

Mitra therefore depicts the great unifying force in Indian federalism, a strong feeling of shared national citizenship. In this, he makes clear that traditional Western notions of citizenship have to be revised to incorporate both new developments such as globalization as well as the experiences of the non-Western world. The Indian example serves him as a blueprint to develop a conceptualization of citizenship "both as a 'product' and a 'process'" (p. 273), both top-down and bottom-up.

But how can this notion be operationalized? Mitra suggests to merge both indicators of state actions and definitions of citizenship (which are in India, due to its history, very inclusive) and of the perceived identification of the respective societal actors as 'citizens'. The latter is assessed during standardized interviews with questions on perceived affiliation, perceived exclusion criteria and the perceived level of

capacities and empowerment. Mitra then creates an index of citizenship from these variables and investigates the state of citizenship in a representative survey of Indian citizens. From a multivariate model he identifies associations of structural variables such as religion, caste, geography or individual level variables.

Importantly, but not surprisingly, citizenship appears to be significantly weaker in the peripheral states of Tripura and Kashmir, although a general impact of the federal structure of India on citizenship could not be tested with this model. Still, Mitra's contribution highlights the importance of a common identity, a common notion of citizenship, for the stability of a heterogeneous nation like the Indian state and thus holds lessons for further inquiry along these lines.

## **5 The Case Study of Federalism in Myanmar**

Last but not least, the final part of this volume focuses on Myanmar. When the first free elections in 20 years were held in the country in 2010, it was said that the military government was seeking legitimacy due to the lack of economic success and the ethnic tension which was threatening to tear the country apart. Indeed, these first steps are insufficient for establishing a democracy, especially in the face of the restrictions imposed by the military. Using national emergency clauses in the constitution, the executive authority almost completely controls the opening and reform process. Yet even unfree elections have the potential to establish institutions which could guide the troubled

country towards a democratic reconciliation. The question whether to introduce a genuine federal structure in the country is now on the table.<sup>1</sup>

Myanmar thus provides for a case in point, as Achim Munz and Michael Siegner outline in Chapter 11. The military, the ruling elite, national opposition parties and ethnic minorities are struggling for the future institutional setting and their share of the power. Munz and Siegner outline the current political system of Myanmar with the strong veto power of the military, e.g. via reserved seats in parliaments both at national and regional level.

In the following they detail the positions of the major actors in Myanmar on the question of federalism. They outline, how crucial autonomous decision making is for the concentrated ethnic minorities of the countries and how building trust between all actors is the greatest challenge for an inclusive, peaceful and democratic reform process in the country.

Thus, the fragile but still steady institutional reform process offers both insights into the mediating and distributional role federal institutions play – proponents of federal institutions in Myanmar argue that ethnic conflicts could be reconciled while this could imply at the same time a fragmentation of the country and leads to stark distributional consequences for the centre.

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<sup>1</sup> This passage is taken from Rudolph (2012:50).

## 6 Conclusion

Overall, the contributions in this volume provide an analysis of models and practices of federalism useful beyond the current settings in which they are employed. As a case in point the example of Myanmar shows how mutual learning and the sharing of experiences can potentially lead to institutional solutions that imply efficient post-authoritarian governance in a multi-ethnic setting and a strengthening of democracy at the same time. But these relationships are unclear – it is just as unclear whether federalism is strengthening democracy (Lane and Ersson 2007) as it is unclear whether federalism is leading to or calming secessionist tendencies (Cameron 2009).

Concerning the relationship between federalism and democracy, Chrysochoou (1998) argues to consider federal arrangements of being more or less in a definitional relationship to democracy. This would imply to focus on the aspects that make out federal arrangements as these are at the heart of a democratic setting as well – subsidiarity and pluralism are certainly central in this respect. The debate thus should focus on the policy implications of institutional settings and challenges to their implementation. Practitioners thus must be open to deviations from potential optimal models. It is futile to try to single out federalism as the best of all models (as tried before, see e.g. Breton 2000). Here, it has to be noted that any practical debate on the nature of federalism and/or democracy is complicated by a mixture of institutional and ideological points of views which make a thorough understanding of the issue even more complicated (Chrysochoou 1998).

Concerning the relationship between federalism and secessionist tendencies, Roeder (2009) makes a strong point in claiming that ethno-

federal arrangements are possibly structuring politics in a way detrimental to peaceful conflict regulation. At the same time, one has to keep in mind that institutions and political culture are related in an endogenous way: The design of institutions influences the development of political ideas just as much as political culture is influencing institutional design (Cameron 2009). Concluding with Cameron (2009: 319),

“[f]ederalism is unlikely to hold an unjust regime together; but, equally, it is unlikely to pull a just regime apart. Justice – rather than a glorified governing instrument – is surely closer to the heart of the matter than federalism.”

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# **How to Organize National and Regional Cooperation in Federal States?**

*Roland Sturm*

## **1 Introduction<sup>2</sup>**

Federal states are characterized by multi-level politics. National governments do not give up their right to determine the direction of politics, but when they govern they take the interests of the regional level of politics into account. A pre-condition for a functioning federalism is the respect of the centre for a certain degree of regional autonomy. The right to regional autonomy and the need for efficient and

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<sup>2</sup> For the arguments made here see for example: Roland Sturm: Föderalismus, 2nd edition, Baden-Baden 2010.

effective governance imply that rules must be found to organize a fruitful co-operation of the national and regional level of government. Otherwise political decision-making will become clumsy, and there is a permanent danger of open conflict between the centre and the regions. Therefore the organization of co-operation in multi-level political systems should guarantee an adequate level of representation for both the national and the regional governments, a level of representation which is of common interest and is respected by both levels of government. A fair model for the representation of national and regional interests is, however, not enough to hold a federal state together. A formula for representation is only convincing, when it yields positive results. Efficiency is therefore another key element with regard to co-operation in federalism. And last but not least one needs to mention transparency as a pre-condition, especially for gaining popular support of federal arrangements. Only when voters understand the nature of co-operation between their regions and the centre, they will be able to support the kind of political decision-making which is connected with this arrangement. And only then can voters at election time express their wish either to continue with a certain mode of decision-making in a policy field or to change course.

Federalism is nothing that can be invented on a drawing board. It has to grow bottom up and has to respect national contexts, traditions and the national balance of powers. It is not surprising that in ethnically-divided states compromises on the contents of politics as well as compromises on decision-making procedures and the organization of cooperation between the regions and the centre are more difficult to find than in ethnically more homogeneous societies. The predominance of ethnic divides tends to transform controversies over issues into zero-sum

games, a point of view which is anathema to a functioning and permanent form of co-operation in political life. In other words, when we discuss concrete results of cooperation between the centre and the regions in a given state, the federal arrangement itself should no longer be a topic. Federations need to work in a framework which is based on general support in a society. Without a consensus on power-sharing and its consequences models of cooperation we can find in many states of the world will not work.

In the following we will look into three fields of co-operation in federal systems, and we will discuss some examples to illustrate the argument made. These areas are ‘competences’, ‘public finance’ and ‘conflict resolution’. In all these areas the special conditions of federal states, their history, their constitution, their ideas about solidarity and subsidiarity – the two pillars of federalism – and their position on the relevance of the rule of law determine national preferences for one or the other type of co-operative arrangement.

## **2 Co-operation with regard to competences**

Who is responsible for which policy, the federal or the subnational level? There is no blueprint. But we can certainly identify tendencies. In federal states we can expect that subnational governments are responsible for education, policing (though not always exclusively), health (again with important exceptions, for example Germany), housing, leisure, transport (especially local and regional). In Germany the responsibility for the media is also regional. Many federal states have decentralized some aspects of social policies. But the welfare state is costly and therefore the centre usually still has a big say in this field and co-finances social policies. Federal governments, as a rule, control

the economy (here a level playing-field is expected across the country, and for EU members even for the whole territory of 27 member states), and they are responsible for defense and foreign policies. Some inroads into the national competence for foreign policy have been made, however. In Belgium (and also on a smaller scale in Spain) international aid policies are also a responsibility of the regions. In Germany the regions (Länder) traditionally have their own neighbourhood policies where they co-operate with partner regions in other countries (cross-border or inter-regional forms of co-operation). Table 1 gives an impression of financial burden-sharing in federal states with regard to some important policy fields. This mirrors, of course, the allocation of competences as laid down in national constitutions.

*Table 1: Public expenditures on selected policies (Centre/Regions in %)*

<b>Country</b>	<b>Police</b>	<b>Defence</b>	<b>Education</b>	<b>Health</b>
Australia	15/85	100/0	28/72	51/49
Canada	0/100	100/0	8/92	17/83
Germany	0/100	100/0	5/95	71/29
Switzerland	0/100	84/16	10/90	43/57
USA	16/84	100/0	6/94	55/45

<b>Country</b>	<b>Social policies</b>	<b>Housing</b>	<b>Leisure</b>	<b>Transport &amp; Communication</b>
Australia	91/9	32/68	29/71	22/78
Canada	66/34	19/81	16/84	31/69
Germany	77/23	5/95	4/96	50/50
Switzerland	82/18	8/92	7/93	37/63
USA	73/27	67/33	16/84	29/71

*Source: OECD: Economic Surveys Canada, Paris 2001, p. 174.*

With regard to the organizing principle for the empowerment of the regions in multi-level governance, we can distinguish between two models: joint decision-making and decentralization<sup>3</sup>. We find joint decision-making of the regions and the federal governments in political systems with a strong centre and a weak form of financial autonomy on the regional level. Joint decision-making should not be interpreted as a political victory for the regions. They do not get access to federal politics in this way – on the contrary – they lack sufficient autonomy to

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<sup>3</sup> For a more sophisticated framework see Nicole Bolleyer/Lori Thorlakson: Beyond Decentralization – The Comparative Study of Interdependence in Federal Systems, in: Publius: The Journal of Federalism, Vol. 42, No. 4, 2012, pp. 566-591. The authors distinguish between centralization and decentralization as well as between autonomy and interdependence in federal systems. Whereas decentralization without autonomy is a plausible scenario (as an alternative to decentralization with autonomy), centralization with autonomy (as an alternative to centralization without autonomy) seems a much less plausible alternative.

control their own affairs. The financial power of the centre remains a constant temptation for the regions to trade their legal powers for financial support.

The German case fits into this pattern only to some degree. German federalism works most of the time with a system of joint decision-making for four reasons. The first is the wording of the federal constitution. The federal constitution does not only share out tasks to different levels of government, it also gives most tasks of public administration to the regions (*Länder*). In that way policy implementation has become with only few exceptions the responsibility of the *Länder*. Because policy-making without policy implementation makes no sense, it is necessary that the federal level which initiates and passes most of the laws co-operates permanently with the *Länder*. Germany's federalism is a functional co-operative federalism with almost no federal administrative presence in the *Länder*, i.e. it reserves the 'function' of legislation to a great extent to the federal level and the 'function' of administration to the regional level.

A second element which strengthens Germany's co-operative federalism has to do with special kinds of legislative arrangements. One of these is concurrent legislation. The German constitution mentions a number of policy fields which are *Länder* responsibilities, but only as long as the federal government does not legislate in these fields. In practice the federal government has taken over wherever it could, and the *Länder* now have the role of co-decision makers in these fields. Since the reform of German federalism in 2006 they have – for a few policy fields (universities, environmental legislation) – won the right to ignore federal legislation when a Land produces its own legislation. This did

not change, however, German co-operative federalism in principle. A second legislative arrangement of German federalism, which is important in this context, is the co-operation of the federal government and the *Länder* in the framework of 'shared tasks'. With regard to regional development politics, agriculture and the environmental protection of the German coast line (the shared tasks), Germany has planning committees in which the federal government and the *Länder* are represented in equal strength. They prepare decisions on these policy fields which are co-financed at the rate of 50 per cent by the federal and 50 per cent by the sub-national level.

A third strong incentive for the German preference for co-operative federalism is a political consensus that Germans everywhere in Germany should find comparable living conditions. This, of course, sounds more like a recipe for a unitary state. The consensus finds its justifications more in the welfare state preferences of individuals than in their views on federalism. For the German voter a model of asymmetrical federalism, which gives privileges to the citizens of one *Land* which citizens in another *Land* do not have, is hard to stomach. Still, federalism is in principle about diversity. Co-operative federalism in Germany finds one of its justifications surprisingly in a defence against too much diversity. This is a paradox, which can survive more easily only in states which have no relevant ethnic divides.

A fourth factor which contributes to joint-decision making in Germany is the role of political parties. They exert informal influence because parties connect the *Länder* via their party organizations to the federal level. Political compromises between different levels of government can be made here before conflicts enter the parliamentary arena. For parties

the political competition with other parties is more important than the neat distinction between levels of decision-making in federalism, as can be seen for example in education policies. Although the federal government has almost no competences in education policies, it has an education minister and plays an important role in the national discourse on reforms of the education system. With regard to the national influence on the Länder via the party system, the Bavarian CSU is a special case, because it only competes for votes in Bavaria. This makes it easier for the CSU to keep her distance to the sister party on the federal level, the CDU, and to steer an independent political course.

The model of decentralization of competences in a federal state can, for example, be found in Canada or Belgium. Canada has no federal ministry of education, and has like Belgium devolved almost all responsibilities for domestic affairs to its provinces (regions in the case of Belgium). In both countries – though for different reasons – the political centre is weak and federalism is decentralized. In Belgium as in Canada decentralization was the only alternative to keep the country together. Unlike Germany both countries are ethnically divided with one group (the Québécois in Canada and the Flemish in Belgium) feeling disadvantaged and demanding greater autonomy to have a say in their own affairs. One can, of course, never be sure that a decentralization of competences will lead to political stability. And for both countries, Belgium and Canada, decentralized federalism may not be the end of the story. But for the moment decentralization was the best compromise possible. ‘Living together apart’ is a model which reduces the number of potential conflicts and makes full use of the opportunities federalism provides to protect diversity. This includes in the case of Canada political asymmetries between provinces and their opt outs of federal

legislation. In Canada the notwithstanding clause of the Charter of Rights and Freedoms which is part of the Canadian constitution (but was not signed by Québec) allows every province to enact laws overriding Charter provisions. Both in Canada and in Belgium, but also in Spain, for example, we witness that the politically most active regions/nations which tend to be successful in gaining new competences set the example for all other regions. The acceptance of asymmetries of competences tends to accelerate the decentralization of further competences to the regions.

There are, in addition, informal and formal mechanisms which support the decentralization of competences. The most important informal influence is party politics; the most important formal influence is dual federalism, i.e. a parallel set of political institutions both on the national and on the regional level of politics. The decentralization of competences gains credibility if two-level decision-making is the rule in a federal state. Institutional autonomy of the two levels of government is signaled by a full set of powers (legislative, executive and judicial) on the federal and on the regional level of government. Decentralized federations also tend to have a very visible two-tier organization of their political parties. The weaker nation-wide parties on the subnational level are, the lower is the danger that they will use their powerful position at the centre to transform regional autonomy into the direction of joint-decision making. In Canada, for example, party organizations and party policies in the provinces are fairly separate from national party organizations and policies. Prime ministers of Canadian provinces do not see themselves as future prime ministers of Canada. The separation of the logic of party competition of the federal and the provincial level of Canadian politics may be an extreme case of a

decentralized party system, but it is in principle typical for a political model which favours the decentralization of competences.

Demands of regional/national parties (Scottish National Party, Plaid Cymru in Wales, CiU in Catalonia or PNV in the Basque country, Südtiroler Volkspartei in Italy etc.) which concentrate on defending regional competences and have a preference for the transfer of additional competences to the regions exert pressure on the regional branches of state-wide parties. This forces the latter to move their political aspirations closer to those of the 'decentralist camp' in order to cope with the electoral challenge on the regional level. 'Ethnic' parties are a strong influence on the balance found for the allocation of competences. In extreme cases, such as Belgium, there is no state-wide party left. Belgian federalism has moved the relevant domestic decision-making processes to the regions.

### **3 Co-operation with regard to finances**

The most important areas of financial co-operation in federal states are taxation and fiscal equalization. The right to tax (or at least to influence levels of taxation) gives regions control over their income. This is a crucial precondition for political autonomy. Regions which depend on federal financial largesse find it difficult to oppose policy initiatives which come from central government. Without their own resources, regions are forced to co-operate in almost every matter with the central state. Even if there is a fixed formula for regional income, such as the Barnett formula in Britain, and therefore regions can plan with expected income, there always remains the possibility that in times of crises cut-backs of the central state affect regional priorities disproportionately.

We can distinguish four models of taxation policies in federal states. (1) joint taxation. Joint taxation is the rule (with very few exceptions) in Germany. In Germany the federal level has a near monopoly with regard to tax raising powers. Tax laws are only made at the federal level. The Länder are involved in the process of federal legislation taxes via the Bundesrat, the institution which represents Länder interests on the federal level (quasi Second Chamber). Tax receipts are distributed to the federal, the Land and the local level on the basis of fixed formulas and sometimes exclusively to one of the levels of German federalism. The revenues created by the three most important sources of tax income, which make up more than 70 per cent of all tax income (sales tax, personal income tax, and corporate income tax), are shared between the levels of government. Joint taxation models, such as the German one, limit diversity in federal political systems and strengthen the political centre.

Political power is more balanced in a system of separate (and sometimes dual) taxation (2), which we find in the United States and Canada, where the states or provinces have their own taxation powers and can add their regional taxes to the federal ones (especially sales taxes). The competition between regions, especially for national and foreign investment limits, however, the ability of regional governments to raise direct taxes (income taxes). Another limitation of tax raising powers may come from tax referenda in the states, which can be used by voters to influence the kind and level of regional taxation. In California this even created a budget crisis. At the last federal election in the United States (2012), a referendum in California has restored to the state government more leeway in state taxation policies.

(3) In federal systems also taxation *à la carte* is possible. The precondition for such an arrangement is the acceptance of asymmetries in federalism. Where we find this kind of acceptance an arrangement is politically feasible, which makes it possible that regions do not pay into the federal budget. They monopolize regional tax income, but in exchange they then have to pay for services provided by the centre. The tax system for the Basque Country and Navarra in Spain and the tax system for South Tyrol in Italy, for example, are tailored to this model. Tax autonomy only seems to be an attractive alternative for economically successful regions, which can do without federal subsidies. Poorer regions can live with an arrangement which gives them no or insignificant taxation powers as long as they are guaranteed full subsidization of regional needs by the centre. This is the logic of the British Barnett formula, for example, which does not even distinguish between regions with and without a political identity (government, parliament etc.). In the context of subsidization there is always a temptation for those regional governments which want more autonomy to play ‘blame games’, i.e. to argue that the financial restrictions the central government imposes on them keeps them from better governing. This could be remedied, so the argument goes, by more competences for the region in question or – in extreme cases – greater political autonomy/independence.

Fiscal equalization arrangements are necessary in all federal states. The justifications we find for them may differ, their aim is the same: support for the poorer regions by means of re-distribution of tax income. In Germany the idea that all Germans should find comparable living conditions wherever they live has become a yardstick for policy-makers even to the extent that Germany is in danger of turning into a federal

system without diversity. Austria is a similar case. But apart from these extremes even in decentralized and very diverse federal systems demand for fiscal equalization policies exists. In Canada the argument was made that the very uneven distribution of natural-resource wealth (large concentration of oil and gas in Alberta) and federal tax preferences for the resource sector provoke fiscal equalization policies. The Canadian constitution requires the provision of comparable levels of services at reasonably comparable levels of taxation in the various provinces. Therefore in 2006 a special federal equalization system was established to address this issue.<sup>4</sup>

The easiest solution for the problem of diversity in regional tax income is the redistribution of federal tax income to the regions – ‘vertical equalization’ (a model we find, for example, in Austria, Australia or Spain). This is certainly an efficient solution, because the number of political levels involved in decision-making on the allocation of resources is limited, and regions with often conflicting preferences are not involved. Hand-outs of federal governments to subnational entities are, however, in principle not different from hand-outs of unitary governments. Both lack regional participation and reduce the role of regional governments in decision-making processes on their funding to lobbying.

This observation is even more adequate for the grants systems we find in almost every federal country. Regions ask national governments for

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<sup>4</sup> OECD Economic Surveys: Canada, Paris 2008, p. 87.

support when they believe they cannot cope financially with a certain responsibility they have taken on. Central governments have a choice. They may either agree to co-finance tasks which fall into the competence of sub-national governments (conditional grants) or opt for block grants. Conditional grants are not without problems, because the financial needs identified here can be demand-driven, i.e. subnational governments are unwilling to make a decision which would limit the budgetary impact of a certain policy, because they want to avoid the electoral consequences. To give an example, for Canada the OECD observed the following:

“In recent years, federal transfers to provinces have increased much more than initially planned, partly because provinces have successfully put pressure on federal politicians to solve a perceived vertical fiscal imbalance. A case in point: from 1997 to 2005, federal budgets repeatedly announced plans for stable or even declining transfers under the Canada Health and Social Transfer [...] over the medium term, only to have those commitments overturned and replaced by higher spending tracks in the next fiscal update or budget [...]. Frequently transfer increases have been the result of negotiations among the premiers and the prime minister at their annual meetings – as was notably the case in 2000, 2003, and 2004. The result is a transfer system with unpredictable federal spending commitments, one where provinces are able to extract transfers from the federal government by manufacturing political crises, for instance around waiting times in hospitals.”<sup>5</sup>

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<sup>5</sup> OECD Economic Surveys: Canada, Paris 2010, p. 84.

In Germany the controversies regarding conditional grants were different. For decades it has been discussed that conditional grants may limit political choice on the regional level and may lead to preferences of regional governments which are inadequate. The reason is that regional governments are more interested in federal co-funding than in regional priorities. When the centre offers money, regional governments try to get as much as possible, even if this means that they have to use their own resources for co-financing projects which are foremost national and not regional preferences. In Germany the national government is and was able to steer regional politics via financial incentives (conditional grants).

**Table 2: How much of the regional income in federal states was made up of conditional grants (2000-2004) in %?**

Mexico	48.8	Malaysia	12,0
Spain	41.9	South Africa	11.0
Austria	37.4	Germany	9.8
USA	25.6	Brazil	7.5
India	18.7	Belgium	4.8
		(communities)	
Australia	18.6	Canada	3.7
Switzerland	17.0	Belgium (regions)	3.5
Canada	14.1	Russia	2.5

*Source: Christian Leuprecht: Reforming fiscal federalism and equalization: Lessons from the Canadian experience, in: Baus, Ralf/ Eppler, Annegret/ Wintermann, Ole (eds): Zur Reform der föderalen Finanzverfassung in Deutschland, Baden-Baden: Nomos 2008, p. 261.*

The alternative to the conditional grant is the block grant. For regional governments block grants have the advantage that they come with no strings attached. For central governments they provide an exit strategy, especially to decouple spending on programmes from regional demand. Once a certain sum of money has been allocated to the regions for one of their responsibilities, this for the national government is the end of the story. No further transfers are necessary or can be expected by the regions. For the national government this is a convenient way to gain more security when planning its budget. Block grants were, for example, a central element of Ronald Reagan's New Federalism in the United States and have been continued since the 1980s. Ronald Reagan's aim to use block grants as a halfway house for the withdrawal of federal

funds to the states was, however, not achieved. Still, the effort made was impressive:

“Originally the president proposed consolidating more than eighty programs into seven block grants in the fields of education, health, social services, and community development. In elementary and secondary education, he proposed consolidating forty-three programs into two: a local education block grant, composed of major programs for disadvantaged, handicapped, and special needs students, and a state block grant, composed of thirty-three mostly small programs for purposes like metric and environmental education and desegregation assistance [...]. Two block grants also were proposed in public health: a preventive health care block grant that was to replace ten programs ranging from family planning to rat control, and a health services block grant consolidating seventeen categoricals like community health centers and maternal and child health grants. The social services proposal merged twelve programs, including [...] most community action programs, and child welfare and adoption services. An emergency assistance block grant combined only two grants – low income energy assistance and emergency welfare assistance.”<sup>6</sup>

A different kind of fiscal equalization is ‘horizontal equalization’. Here the idea of federal solidarity is pre-eminent. Members of a federation should support each other, the rich should help the poor – not indefinitely, but until they are able to look after themselves. Horizontal equalization is therefore only at first sight a financial transfer system, it is meant to be temporary assistance for self-help. This implies, however,

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<sup>6</sup> Timothy Conlan: From New Federalism to Devolution. Twenty-five Years of Intergovernmental Reform, Washington, D.C.: Brookings 1998, p. 154.

that both the rich and the poor states have an incentive to co-operate properly. The system of horizontal equalization does not work well in the German case, where equalization guarantees regional governments which underperform more or less the same financial status as the best performers, and where the poorer regions can block every meaningful reform.

In Germany horizontal equalization is only one step in the process of fiscal equalization. Germany combines a redistribution of income from a sales tax between the federal government and the Länder in order to raise the income levels of the poorest regions with horizontal equalization (a second step) and vertical equalization (a third step) to take care of special needs of the Länder. This system has to be revised in the coming years, because it ends in 2019, and also because we expect in Germany new rulings of the Constitutional Court. At the end of the day there will be no encompassing reform. One should expect not more than (minor) adjustments of the size of financial transfers between the Länder. The three-step-process of the German system of financial equalization (redistribution of income from sales tax/ Land solidarity/ federal funding) will not be changed. After reform this system will still lack transparency, and will still be based on a compromise between all levels of government involved which finds its expression in a complicated mathematical formula.

Switzerland has also introduced a system of horizontal equalization which in contrast to the German model is not oriented towards automatic equality of all regions. Fiscal equalization is based on the potential resources of a Kanton (region). Regions are expected to make the full and best use of their economic potentials. Only then can poorer

regions expect aid from the richer regions. This support is – different from Germany – not permanent, but the demands of the poorer regions are tested every four years. Fiscal equalization in Switzerland is therefore flexible and provides no incentive for free-riding. The federal government supports regions which are disadvantaged because their economy is based in mountainous areas or because they are home of agglomerations (vertical equalization).

In principle financial equalization policies in federalism are motivated by the two pillars of federalism: subsidiarity and solidarity. Support by other regions or the federal level is supposed to help those who help themselves always keeping in mind that the economic underdevelopment of a region should not be a permanent status.

#### **4 Conflict resolution**

Conflict resolution in federal states either uses institutionalized procedures or relies on informal practices which are rooted in cultural and traditional routines to bring about consensus. Informal practices may make use of institutional instruments. The most efficient informal mechanism for the resolution of conflicts between national and regional governments is an inclusive party organization. Parties which in themselves are less federal than centralized even in federal states successfully centralize decision-making processes. This is even true for ethnically divided federations.<sup>7</sup> Unfortunately state-wide parties (SWPs)

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<sup>7</sup> See Andreas Heinemann-Grüder: Föderalismus als Konfliktregelung. Russland, Indien, Nigeria und Spanien im Vergleich, Leverkusen: Barbara Budrich 2011.

are not always available in ethnically divided federations. The Belgian example has already been mentioned above. In such a case alternative ways for making political compromises have to be found. A less radical alternative to the dichotomy of SWPs and regional parties is the federalization of SWPs, a political development which has been observed in the last two decades in a number of European countries (for example in the UK, Italy, and Spain).

If negotiations between the centre and the regions have led to an impasse, an informal mechanism to find a solution can be to call on experts, policy specialists who see their field in the light of the demands originating from good governance (no matter which level of government takes responsibility). Expert advice may not be neutral, but the political arena connected with the epistemic community always is. Additionally, there are the parliamentary instruments of 'royal commissions' and 'white papers'. For conflict resolution it is important that such instruments always buy time, whether they are successful or not. More time increases the opportunities for the conflicting interests to find common ground.

Central to the institutionalized approaches of conflict resolution in federal states is the Second Chamber of Parliaments. These involve regional representatives and interests in peaceful national decision-making processes. Most of the second chambers have, however, lost this role because their proceedings are now dominated by party politics. The German Bundesrat is a fairly unique institution worldwide, because it is able to represent regional interests although party politics play a role when the Bundesrat decides. The key to the exceptional role of the Bundesrat is that it is an institution made up of regional governments,

which all have to win their regional elections to stay in the Bundesrat. The members of the Bundesrat have no free vote. They need to answer to their respective regional governments and the regional voters, but not only to their party. If parties have a monopoly in this respect, this prevents a decoupling of regional interests from party politics as we see in the second chambers of Austria, Canada or the United States. In the US, governors can only approach Congress as one of the many interests group there (National Governors Association).

Whether absolute majorities in second chambers are necessary when the regions take their position with regard to federal legislation can be disputed, because this may in the end prevent the regions from finding common ground. Second chambers can also have the role of guardians of federalism if their consent is needed to change the national constitution or institutions of federalism. For this role we find a number of examples in Europe: Switzerland, Austria, Belgium and Germany.

Where second chambers do not work like the German Bundesrat, institutions have been created which function as the voice of regional governments – although these then oftentimes only have a weak constitutional legitimacy. So, for example, in Austria and Canada, regional prime ministers have initiated their own relatively regular meetings, the Landeshauptleutekonferenzen<sup>8</sup> (Austria) and the Council of the Federation (Canada, since 2003). The Council of the Federation is

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<sup>8</sup> See Peter Bußjäger: Die Landeshauptleutekonferenz: Vom Schatten in die Sonne?, in: Europäisches Zentrum für Föderalismus-Forschung Tübingen (ed.): Jahrbuch des Föderalismus 2012, Baden-Baden: Nomos 2012, pp. 310-319.

a permanent institution with its own secretariat in Ottawa. Obviously there is a need in federations for getting the relevant partners (the regional executives) to the negotiation table with the federal government. In Canada the term federal-provincial diplomacy was coined for this kind of process. In addition to separate meetings of regional first ministers and departmental ministers, it is also possible that they regularly get together with their federal counterparts on an informal base. This is a smooth way of detecting possible conflicts early and to find an informal consensus between the federal and the regional level of government.

In many federal constitutions conflict resolution in national-regional confrontations is a task given to supreme courts (Germany, Spain, USA and UK, for example). The neutrality of the judges is supposed to secure internal peace. Judges may be neutral, but they are bound by the constitution which reduces the room to maneuver for political compromises which are derived from their rulings. In addition, judges are not free from subjective preferences with regard to the kind of federalism they prefer. For the United States it has been shown that federalism rulings may either strengthen state rights or the federal government depending on the contemporary majorities in the Supreme Court.<sup>9</sup>

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<sup>9</sup> For examples see Roland Sturm: Föderalismus in Deutschland und den USA: Tendenzen der Angleichung?, in: Zeitschrift für Parlamentsfragen, Vol. 28, No.2, 1997, S. 335-345.

It is, of course, possible that conflicts in federal states cannot be solved in the current constitutional framework. Two alternatives for a peaceful solution of conflict still remain. When loyalty dwindles, the options of 'voice' and 'exit' still remain.<sup>10</sup> The voice option has often been used in India, but also in Switzerland for example, giving unaccommodated regional interest their own subnational unit (state). Whether this can and should be done *ad infinitum* is an open question. Most German Länder are a kind of compromise between efficient size and the representation of more than one regional culture. What the best yardstick for a reorganization of the Länder may be, regional identity or economic viability, is controversial. If conflicts cannot be brought to a conclusion, there is always the exit option as threat (in negotiations) or as first choice. The exit option has been debated in Belgium and it seems to be a preference of the Catalans in Spain and the Scottish government. The South Tyroleans have not forgotten their Austrian past and some political parties there would prefer a future outside Italy. The same is true for the nationalists in Northern Ireland who prefer a united Ireland.

## 5 Conclusion

The organization of co-operation between the federal and the regional levels of government is crucial for the stability of federalism. It is, however, impossible to avoid conflicts of interest. If such conflicts arise, the major question is not, who is powerful enough to win the

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<sup>10</sup> Albert O. Hirschman: *Exit, Voice, Loyalty. Responses to Decline in Firms, Organizations, and States*, Cambridge (Mass.): Harvard UP 1970.

unavoidable battle. The major question is, how to organize procedures which lead to results that can guarantee a long-term stability of federations. Even in ethnically divided states regional autonomy and co-operation are no enemies. The respect for regional autonomy does not exclude a duty for the subnational unit(s) to accept limits and to be prepared to work for political compromises. This is the minimal consensus necessary to make co-operation arrangements work.

The more institutional routines are established the easier will it become to argue that all levels of government and all interests are in the same boat. There is no federation in the world which does not rely on a system of shared competences, shared finances and support for the poorer regions. National traditions, the multi-ethnicity of states and previous experiences with decentralization need to be taken into account whenever new federal institutions are devised. The range of options is wide. Intergovernmental relations are in constitutional terms often a by-product of federalism. As a result they have sometimes been given only secondary or no attention when federal systems are compared. In day-to-day political practice their importance is much higher. A flexible combination of the options which constitution-makers have when they think about co-operation in federalism is probably the best way to secure a maximum of efficiency and effectiveness in intergovernmental relations.

**Table 3: How to organize national and regional co-operation – an overview of options**

Competences	Finances		Conflict resolution	
Joint decision-making	Joint taxation	Vertical fiscal equalization	Informal SWPs	Formal Second Chamber
Decentralization of competences	Dual taxation	Horizontal fiscal equalization	coalitions	Forum of regional governments
	Tax autonomy	Grants (block or conditional)	Epistemic communities	Supreme Court
				Voice (new region)
				Exit

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# Unity in Diversity: Learning From Each Other

*Felix Knüpling*

## 1 Introduction

In the contemporary world, federalism as a political idea has become increasingly important as a way of peacefully reconciling unity and diversity within political systems. Federalism has grown in importance, in part because the process of globalization has contributed to simultaneous needs for both larger and smaller political units.<sup>11</sup> Thus, there have developed two distinct and often actually opposed motives for creating federations: First, there is the desire to build dynamic, efficient, and modern nation states (e.g. India and the United States) or supranational political systems (e.g. the European Union) for economic

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<sup>11</sup> See Arnold Koller, "The Renaissance of Federalism?" in Ralf Baus et al. *Competition versus Cooperation: German Federalism in Need of Reform*, Baden Baden 2007, pp. 42-47.

progress and / or for security. Second, there is the desire to express distinctive identities through smaller, directly accountable self-governing political units able to give expression to historical, social, linguistic or cultural diversity.

In such a context, federal solutions have had an increasingly widespread appeal.<sup>12</sup> They enable a combination of shared governance in a large political unit for certain common purposes, and autonomous self-governance for the various diverse groups in smaller constituent units of government directly and democratically responsible to their own electorates. By combining elements of shared rule in larger units and self-rule in smaller regional units, federal political systems provide a blueprint for an institutional design that can be adapted to the complex multicultural and multidimensional economic, social and political reality of the contemporary world.<sup>13</sup>

Deep societal diversity is also the reason why in several unitary countries that have been experiencing violent conflicts, such as Ethiopia, Sudan, Iraq, and Nepal, a reluctant consensus in favour of federalism as the only workable political solution is gradually emerging.<sup>14</sup> Diversity, then, is a political liability and poses perhaps the single most formidable ‘problem’ to be ‘managed’ in modern polities. At

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<sup>12</sup> Ibid.

<sup>13</sup> For an overview of federal countries see Griffiths, Ann L. (eds.), *Handbook of Federal Countries*, 2005. – Montréal: McGill-Queen’s University Press, 2005.

<sup>14</sup> See Richard Simeon, “Managing Conflicts of Diversity”, in Rupak Chattopadhyay and Ron Watts (eds.) *Building on and Accommodating Diversities*, Forum of Federations, 2008, pp. 54-70.

the same time, however, it is an asset, both in terms of societal flourishing as well as a testament to political and democratic maturity. In heterogeneous federal systems, diversity has actually proven a source of great resilience and strength, to the point where it becomes a hallmark of national identity and pride. As an Indian government representative put it during the 4<sup>th</sup> International Conference on Federalism in 2007 in New Delhi:

“The phenomenon of human racial and cultural diversity carries different meanings for different societies across the planet. Some fear it and would seek to homogenize it, at times through violent means. Some accept and tolerate it. Some seek to manage and regulate it. Some are bold enough to respect it, accommodate it and maybe adapt to it. I believe we in India are possibly the only ones who celebrate it as our defining, even determining characteristic. Diversity is our DNA.”<sup>15</sup>

Not only India, but also other federations, such as Canada, Ethiopia, Nigeria, or Switzerland employ an approach to promoting unity which involves the embrace of diversity.

This paper builds primarily on work on diversity in federal countries that has been produced by the Forum of Federations.<sup>16</sup> It attempts to discern

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<sup>15</sup> Quote taken from Amitabha Pande, “Unity and Diversity – An Indian Paradox”, in *Unity in Diversity – Learning from Each Other. 4<sup>th</sup> International Conference on Federalism, Conference Reader*, p. 4.

<sup>16</sup> The Forum of Federations is an international non-governmental organization based in Ottawa, Canada. It is a networking and knowledge sharing organization concerned with federalism. It ran two big projects specifically devoted to the theme of managing diversity: A) “Global Dialogue on Federalism: Diversity and

some lessons that can be drawn from international comparison particularly with a view as to how diversity can be ‘governed’.

## **2 Diversity in Diversity**

Diversity is seen here primarily as qualitative collective characteristics based on language, religion, ethnicity, nationality, culture, and race. Obviously, not all federal countries reflect the same degree and type of diversity. Some are relatively homogenous and citizens share a strong and dominant sense of a national identity. In these federations, unity is not a major issue and the social forces in the federation often create pressures for further centralization. Examples are Australia, Austria, Germany and the United States.

Others are very diverse and citizens identify with very distinct groups, which have conflicting views or objectives. In some cases, members of a particular group may see their identity as incompatible with the national identity, thus creating tensions around national unity. This is especially true where such a distinct population is regionally concentrated, as it is for example in Canada or Spain.

However, the configuration of diversity is also diverse in itself. A review of the twelve cases covered in Theme 7 of the Forum of Federation’s

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Unity in Federal Countries”. The Global Dialogue project covers Australia, Belgium, Brazil, Canada, Ethiopia, Germany, India, Nigeria, Russia, Spain, Switzerland, United States (see also footnote 6). B) In cooperation with the Government of India the Forum of Federations held the 4<sup>th</sup> International Conference on Federalism – “Unity in Diversity – Learning from Each Other”, on 5-7 November 2007 in New Delhi, India.

*Global Dialogue on Federalism* project<sup>17</sup> show the shortcomings of the usual differentiations between homogeneous and heterogeneous federations. The picture is one of diversity in diversity, which defies easy categorization. This notwithstanding, it seems useful to group several configurations of diversities in separate categories that may indicate an increasing degree of challenge for institutional design, stability and legitimacy. We may identify four distinct groups, using language as the decisive fact (knowing that there are many other ways of describing diversity):

1. Monolingual Federations with indigenous populations and what we can call ‘old’ and ‘new’ or recent immigrant groups (e.g. USA, Australia, Brazil) or with only new groups of immigrants (e.g. Germany).<sup>18</sup> Political parties are predominantly nation-wide and diversities are not territorially concentrated
2. Bi- or Multilingual federations with no national *lingua franca* with strong local identities (e.g. Belgium, Canada, Switzerland). Local identities are to a varying degree compatible with a nation-wide identity. There are weak or non-existent nation-wide parties and there is increasing new multi-ethnic diversity within the constituent units due to new immigration.

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<sup>17</sup> See César Collino and Luis Moreno (eds.): *Dialogues on Diversity and Unity in Federal Countries – A Global Dialogue on Federalism Volume 7*. Montreal: McGill-Queen’s University Press, 2010.

<sup>18</sup> In this context, “old immigration” refers to immigration before World War II and “new immigration” to the period after World War II.

3. Multilingual federations with a dominant lingua franca and national identity but with several mobilized minority national groups (e.g. Spain, which has strong nation-wide parties but also strong sub-national parties ruling some constituent units, especially in Catalonia and the Basque Country).
4. Multiethnic, multilingual and multi-religious federations (e.g. Ethiopia, India, Nigeria, Russia). These federations have multiple constituent units which are designed mainly along ethnic or linguistic lines (although there may be one *lingua franca*). There are different configurations of party systems, strong socioeconomic disparities and large internal migration flows.

### **3 The Governance of Diversity**

In response to the various configurations of diversity and in order to preserve unity and manage diversity, different institutional responses and strategies can be observed in the federal countries the Forum of Federations works in. There are two main strategies: one emphasizes the autonomy of minorities (we can call them ‘empowering strategies’ or ‘building out’), the other one emphasizes inclusion and responsiveness to diversity (we can call them ‘integrationist strategies’ or ‘building in’). The former promotes citizens’ equality before the law and generally opposes the institutional recognition of group identities, although accepting and respecting cultural or other diversity in private realms (US, Germany, Spain). The latter advocates the representation of groups

and minorities as such, with full institutional recognition of differences (Ethiopia, Nigeria, Switzerland).<sup>19</sup>

Some federations use these two approaches in combination (India, Canada, Australia) and in reality, there is no clear-cut distinction between the two, they often overlap or you will find elements of both in diverse federations. Thus, not surprisingly, the various approaches to address diversity in the countries surveyed in the *Global Dialogue* project vary. Subsequently, seven approaches will be presented that are not mutually exclusive, and they do not necessarily present a comprehensive list.

### **3.1 Self Government and Autonomy Arrangements**

Some federations have dealt with diversity trying to defuse conflict by increasing the number of constituent units and thus seeking more homogeneity in them. In some cases they have done that to avoid the concentration of ethnic or religious cleavages in specific constituent units. In other cases they have increased the number of units to allow for specific groups to be majorities in a certain unit. Several federal constitutions (India, Ethiopia) have flexible procedures for reorganising the internal boundaries of the federation. In some cases federations have remained with two or three units reflecting mainly bi-communal cleavages (Belgium).

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<sup>19</sup> See Richard Simeon, "Managing Conflicts of Diversity".

In India there were several splits that carved out homogeneous states of existing heterogeneous ones. In Switzerland, and drawing on the creation of the Jura canton out of a bigger one, the 1999 Constitution lays down procedural rules for the redrawing of internal boundaries. Article 53 requires the consent of the local population and the cantons involved, as well as the approval of the federal parliament (in case of changes in territory) or the federal constituent power (in case of a change concerning the number of federal units).

The number and size of constituent units forming the federation is of the foremost importance. Where the number of units is relatively large, for instance 89 in the Russian federation or 50 in the United States, the relative political power and leverage of individual constituent units is likely to be lesser than in federations of six units (such as Australia) or of ten provinces (such as Canada). Furthermore, those composed of only two units (such as Pakistan and Czechoslovakia before splitting) or even three units (such as Belgium and Iraq) seem to generate sharp polarizing tendencies that often result in instability. Where there are substantial disparities in area and population among constituent units these may become sources of dissension over the relative influence of particular regions in federal policy-making.

Creating or empowering regionally defined constituent units to respond to the demands of a territorially concentrated population is at the heart of what above was labelled as the 'building out' strategy. However, there are practical issues: Within an established federation, it can be difficult to create new units; regional boundaries rarely enclose a very homogenous population, so there can be significant minorities within regions; there may be a limit to how many regional units can

realistically be created; some populations with a strong sense of distinct identity may be geographically dispersed; and strongly asymmetric arrangements can be hard to sustain.

### **3.2 Distribution of Competencies and Asymmetry**

Self-government is not only a matter of creating political entities within one political system. It is also a question of the distribution of powers and how the combination between shared-rule and self-rule within one political system plays out. The specific form and allocation of the distribution of powers varies relating to the underlying conditions of common interest in diversity within any particular federation. Two issues stand out that seems to be important in diverse federations: first, the separation and exclusivity of powers and own sources of revenue for the constituent units. This is the case particular in Switzerland and Canada where the cantons, respectively the provinces, have a large degree of tax autonomy. Second, federal countries like Belgium, Canada, Germany and Spain decentralize powers for cultural or nation-building policies to lower levels of government which can also help to address diversity.

Some federations know the principle of asymmetrical distribution of competencies or powers. Generally speaking, some form of asymmetry exists in every federation.<sup>20</sup> One can distinguish between two forms of asymmetry – political and constitutional asymmetry. Political

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<sup>20</sup> See Ronald Watts, *Comparing Federal Systems*, Institute of Intergovernmental Relations, Kingston 1999/2008, p. 35.

asymmetry arises from cultural, economic, social and political conditions affecting the relative power and influence of different constituent units. For example, in all federations there are constituent units that are economically more powerful than other units which can be translated into political power. This chapter is more concerned with constitutional asymmetry which relates to the degree to which competencies are assigned to constituent units by the constitution and are not uniform across the federation.

Constitutional asymmetry refers specifically to differences in the status or legislative powers assigned by the constitution to different constituent units. In most federations the formal constitutional distribution of legislative and executive jurisdiction and of financial resources applies symmetrically. The long-established federations all allocate the same legislative powers to their individual constituent units. Asymmetrical distributions of power between constituent units in a federation are unusual because they can make the management of a federation more difficult. If some constituent units are granted special powers, others are likely to claim the same.

However, flexibility of this kind can address demands coming from a particular region for a decentralization of a power or powers which the constituent units elsewhere may not consider a priority. In some federations, the constitution is formally symmetrical, but includes provisions that permit constituent units in certain cases to 'opt in' or 'opt out' of these assignments.

In Canada, for example, Quebec has a number of non-constitutional arrangements with the federal government different from those of the other provinces (this is in the area of pensions, taxes, and social

programs). Of the newer federations, Malaysia provides the Borneo states special powers over native laws, communications, fisheries, forestry and immigration. India has similar provisions for Kashmir and some of the small states. Spain also engaged in bilateral arrangements, notably in giving special powers to the autonomous communities that had historic nationalities; the differences have greatly diminished over time, with the exception of ancient historic fiscal rights for the Basque country and Navarre.

Clearly, constitutional asymmetry introduces complexity.<sup>21</sup> Nevertheless, some federations have found that the only way to accommodate the varying pressures for regional autonomy has been to incorporate asymmetry.

### **3.3 Participation at the federal (central) institutions**

One in general common structural characteristics of a federation is that there is a provision for the designated representation of distinct regional views within the federal policy-making institutions, usually including the representation of regional representatives in a federal second legislative chamber. The principle of bicameralism has been incorporated into the federal legislatures of most federations. There is, however, enormous variation among them in the method of selection of

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<sup>21</sup> See Akhtar Majeed, "Distribution of Powers and Responsibilities", in Akhtar Majeed et al, *Distribution of Powers and Responsibilities – Global Dialogue Volume 2*, Montreal: McGill-Queen's University Press, 2006, pp. 3-8.

members, the composition, and the powers of the second chamber, and consequently its role.

In some federations, members of second chambers are appointed (by either the federal government, as for example in Canada, or by the governments of the constituent units, as in Germany). In others, they are either directly (Australia, USA) or indirectly (India) elected. In most federations, there is some effort to weight representation in favour of smaller constituent units or significant minorities. Where there is a separation of powers between the executive and the legislature, as in the USA and Switzerland, normally the two federal legislative houses have equal powers. In parliamentary federal democracies, the house that controls the executive inevitably has more power.

Second chambers may directly represent constituent units at the federal level. In others they are designed to give voice or some veto powers to certain minorities. In Nigeria, for example, the Senate, the second chamber of the bicameral National Assembly, represents a powerful mechanism for restraining the hegemony of the federal executive and for tempering majoritarian rule. In Germany, representatives of all *Länder* governments sit in a quasi-second chamber, the *Bundesrat*, and act as the voice of their *Land* government. A special case is the so-called House of the Federation in Ethiopia which is constitutionally granted the power to ‘interpret’ the Constitution, to solve disputes among the regions, and decide on joint taxes.

In the US, the Senate originally was meant to give the states a voice in federal decision making. But since long the Senators vote according to party lines and not primarily according to what the (perceived) needs and political preferences of the states are where they are elected.

### **3.4 Power Sharing Arrangements/Consociationalism**

Also for integration or participation purposes there are several power sharing or consociational mechanisms and devices that may be formally entrenched or work informally as political conventions. “Consociationalism” describes arrangements in which a political structure makes provisions to include members of various ethnic or national groups in the central government, political party system, civil service, etc. Experts often use the term “ elite accommodation” to characterize these sorts of measures. This means that the leaders of the groups negotiate arrangements to guarantee all a share of power, jobs, educational opportunities and the like. These are often informal. For instance, in some countries that experts describe as consociational, positions in the central government executive are, by custom, guaranteed to various national or ethnic communities. In other cases, the arrangements are legal or constitutional.

For example, Belgium requires that the principle of majority rule be mitigated through consociational techniques in those spheres where the two linguistic communities must come together, i.e. the federal sphere and the Brussels-Capital Region. Switzerland also displays a proportional representation of the various political, linguistic and religious communities in all federal institutions. The Federal Assembly, for instance, has to aim at a fair representation of regional and linguistic groups within the Federal Council. Also, the convention applies that the French and Italian speaking minorities hold at least two and often three governmental seats.

Also, in many federations there is a form of either formal or informal representation of all groups or territories in the federal cabinet. In

Ethiopia the federal executive consists of the ceremonial president and a powerful Prime Minister along with his cabinet who is elected from among members of House of Peoples Representatives and both as a result of constitutional principle and practice, the executive composition seeks to reflect the country's diversity. In Nigeria, under the 'federal character' principle enshrined in the Constitution, a candidate for president or governor is expected to exercise his or her 'powers of appointment' with due 'regard to the federal character of Nigeria,' or 'the diversity of people within the state' and the need to promote national unity. The president is specifically required to 'appoint at least one minister from each state, who shall be an indigene of such state.' In Switzerland the composition of the Federal Council has mirrored the representation of the four major political parties in the federal parliament none of which holds a majority. In Spain specific portfolios are often reserved to ministers from certain autonomous communities.

### **3.5 Language Policy**

One of the great advantages of federalism in linguistically diverse countries is that it permits different languages to predominate in different areas, but it must also address the language concerns of minorities at the national and constituent-unit levels.<sup>22</sup> Many countries provide publicly funded schools and some access to government services in minority languages. Some also provide broadcasting

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<sup>22</sup> See Daniel Thürer, "How Important is Language Policy as a Tool for Conflict Resolution?" in: Rupak Chattopadhyay/Ron Watts (eds.) Building on and Accommodating Diversities, Forum of Federations, 2008, pp. 97-102.

facilities, and support cultural and community institutions for minority cultural groups. Minority rights could include education in whole, or in part, in the minority language; access to some government forms in the minority languages (such as tax or census forms;) the right to interpretation in court proceedings, and, in some cases, some territorial recognition of the minority language in local areas where it is widely used. In many countries that provide for minority rights, these rights are legally and/or constitutionally guaranteed. In some cases, minority rights guarantees are reinforced by treaties between countries that provide for equal treatment of each other's peoples.

In practice, language policy is often highly complex with many special arrangements. In some federations (India, Nigeria, Malaysia, Ethiopia), in addition to provisions for local languages, a non-indigenous language might be adopted as a major link language because it is seen as more neutral (English, for example, also has the advantage of being a major international language).

Majorities can be resentful of the need to accommodate minority languages, just as minorities can be insistent on accommodation. Each country must find its own equilibrium. Often, some language rights at both the central and constituent-unit levels are protected in the federal constitution (Canada, India, Switzerland, Ethiopia). In other cases, they are primarily matters of law or practice and are left to each order of government. The philosophy underlying language policies differs across federations: some emphasize the rights of individuals wherever they

are; others tie language rights to particular locations (or to tiers of government). Here are some examples:<sup>23</sup>

- **Canada** is officially bilingual federally and in New Brunswick, with other provinces providing various rights for minorities: rights to federal services in the language of choice exist ‘where numbers warrant’. Canadian law includes language requirements for labeling packages sold in commerce.
- **Ethiopia** has two major indigenous languages, as well as 11 minor and many tribal ones: there is no official language and all enjoy equal recognition in principle. English is also used in education and government. Amharic is the working language of the federal government and a working language of some state governments; each state chooses its language(s) of work.
- **India** has 40 languages with more than one million speakers and 18 constitutional languages: Hindi (mother tongue of 18 per cent and spoken by over 40 per cent) is the leading indigenous language; English is important as a link language. States may choose which constitutional language is official and provide services in official or other languages.
- **Nigeria** has three important indigenous languages that are official, but at least 450 others; English is the principal language of government and education, though local languages

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<sup>23</sup> Adapted from George Anderson, *Federalism: An Introduction*, Oxford University Press, 2008, p. 76-77.

can be used; some rights of citizens, e.g. in the courts, are based on a language that is understood, not preferred.

- **South Africa** has two European languages and nine significant indigenous languages (none of which is spoken by more than a quarter of the population). English is the dominant language, though local languages are encouraged for oral use in the local administration and in some teaching.
- **Switzerland** has three official languages and one national language at the federal level, with 19 unilingual and three bilingual cantons and one trilingual canton: In unilingual cantons all public services and education are in the local language only.

### 3.6 Multicultural and Immigration Policies

‘New’ diversity brought about by individual migrants in the last decades is generally dealt with through traditional mechanisms of minority rights – which may be constitutionally protected – and by citizenship regulations. In some cases different levels of government may grant citizenship status to immigrants, as is the case in Switzerland where a sort of ‘layered citizenship’ (municipality, canton and federal) exists. The three levels of citizenship have an important symbolic function. They exemplify the composed nature of the Swiss nationhood, based on three complementary identities and loyalties.

To respond to the new diversity created by immigration and the related incorporation/integration demands, some federations or constituent units within them have actively implemented policies of a multiculturalist nature. These policies aim at guaranteeing that individual inclusion and group recognition of cultural differences can be

simultaneously achieved. Such policies go beyond mere non-discrimination and seek: (a) to extend anti-racism policies; (b) to reform educational curricula to incorporate the inputs and contributions of immigrant groups; (c) to fund publicly the cultural practices of immigrant groups.

In Canada, for example, the policy of multiculturalism was entrenched in the 1982 Constitution Act, which includes a clause requiring that the Charter of Rights and Freedoms be interpreted in light of the multicultural character of Canada, as well as in the Multiculturalism Act of 1988 that defines multiculturalism as fundamental to Canadian identity.<sup>24</sup> With respect to social integration, these policies have helped to forge a Canadian identity based on a multiplicity of cultures. The policy of multiculturalism has been controversial in Quebec, as it was viewed by some Quebec nationalists as reducing Quebec and French Canadians to the status of just another minority group within the country they had co-founded.<sup>25</sup>

In some instances, constituent governments have required migrants to learn their local regional languages even if a common language exists in the federation. Some constituent units such as Quebec or Catalonia have been active in using their self-government powers to secure the incorporation and integration of immigrants by means of implementing

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<sup>24</sup> See John Biles et al. (eds) *Immigration and Integration in Canada*, McGill-Queen's University Press, 2008.

<sup>25</sup> See George Anderson, *Quebec's Model, Myths and Mood*, Conference Paper, Forum of Federations, 2007.

their own education, labour and language policies vis-à-vis their national frameworks (Canada, Spain, Belgium). Along these lines, governments of constituent units have often been keen in requiring migrants to learn their predominant language, as for example in Quebec.

#### **4 The Issue of Secession**

In some countries, challenges related to unity can take the form of separatist movements. Thus, one cannot speak about unity in federal countries without touching on the issue of secession. The alternative scenario to keeping the unity of the country is its break-up. There is no standard constitutional approach to dealing with the possibility of secession.<sup>26</sup> Many federations have constitutional provisions asserting the eternal unity of the country or precluding the possibility of secession. The United States (an ‘indestructible union’), Mexico, Brazil, Nigeria, India, and Spain are such examples. (Spain also prohibits autonomous communities from holding referendums on secession.)

In other cases, such as Australia, Germany and Switzerland, the constitution is silent on the issue. Ethiopia’s new constitution is unusual in providing a formal right to secession, though this remains controversial and untested. Sudan had provided for the possibility of a referendum on the independence of South Sudan after the ten year interim period of the peace agreement – and as we know South Sudan has opted for independence.

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<sup>26</sup> See Miodrag Jovanovic, *Constitutionalizing Secession in Federalized States: A Procedural Approach*, Ashgate Publishing, 2006.

International law sees the right of secession as legitimate only in cases of severe abuse of the human rights of a population and of decolonization.<sup>27</sup> The international community is normally hostile to secession because it can destabilize international relations. In Africa, where political boundaries cut across so many ethnicities, a right to secession could undermine the whole state structure of the continent. Despite this, there have been cases of secession or dissolution of countries in the last decades – including the USSR, Yugoslavia, Czechoslovakia, Pakistan, Malaysia (with the expulsion of Singapore) and recently Sudan.

The right to secession poses a dilemma for democratic federations.<sup>28</sup> Such a right can lead to its own tensions in that it questions the solidarity of the national community and can risk regional blackmail. Federations are based on the notion that citizens belong both to the national and to their regional (constituent-unit) communities. Over time, many decisions, commitments and compromises can be made that give all parts of the country a moral investment in its continuance.

Against this, if a clear majority in one part of the country feels deeply alienated, there is a sense in which they have a moral claim to separation. After the two referenda on independence in Quebec (1980 and 1995), Canada's Supreme Court ruled that a *clear majority* in a province voting on a *clear question* in favour of secession gave a *right to*

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<sup>27</sup> See *Secession And International Law: Conflict Avoidance-regional Appraisals*, United Nations, 2006.

<sup>28</sup> See Watts, *Comparing Federal Systems*, p. 107-9.

*negotiate* secession, but within a context of federalism, constitutionalism and the rule of law, democracy and minority rights. This is something less than a right to secede since these guidelines leave the ultimate outcome uncertain.<sup>29</sup> Montenegro in 2006 seceded from Yugoslavia having met the required threshold of a 55 per cent vote in favour.

## **5 Conclusion**

Federalism is a response to a variety of conditions, of which ethnocultural or national diversity is one. The introduction of multi-level systems of government whether devolved or federal can provide a fair and effective means for diverse countries to accommodate the needs of minorities. Although the question of how to deal with diversity presents challenges for every country, it should be emphasized that most federal countries have proven that diversity is not a threat to their survival and prosperity. Comparative experience show that more often than not are the recognition, accommodation and integration of ethnic, linguistic or religious minorities compatible with legitimacy, national unity and social cohesion. Such a course of action implies that democratic federal polities ought to provide a common public space leaving room for diverse cultural practices and identities to exist and develop. Federal countries also seek to guarantee the conciliation of the rights of the

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<sup>29</sup> See Marc-Antoine Adam and Martin Fournier, Constitutional Change in Canada after Charlottetown, in Arthur Benz and Felix Knüpling (eds.) *Changing Federal Constitutions*, Barbara Budricjh (Opladen/Toronto) 2012, pp. 351-374.

individuals - no matter where they live - and the recognition of minorities as groups.

Some federal countries are quite ethnically and linguistically homogeneous. Others that may be home to a variety of ethnic groups (such as the United States and Brazil) are not structured in such a way as to give autonomy and power to distinct peoples or national groups. Such countries may choose to use other instruments, such as those described above, to deal with the challenge of diversity. Their federal systems were not designed for that purpose.

A number of federal countries are designed to reflect and give political expressions to their diverse population groups. Among these are: India, Spain, Ethiopia, South Africa, Belgium, Nigeria, Malaysia, Canada, and Switzerland. The combined experiences of those countries could be of interest to people wrestling with the challenge of constructing governance arrangements in situations of significant diversity.

Multiethnic societies who have experienced violent conflicts and go through a process of post-conflict institution building are often confronted with a double challenge: they have to democratize the state and simultaneously bring about reconciliation between ethnic groups with a recent history of mutual antagonisms. This requires the protection of minority rights on both territorial and non-territorial basis.

However, we need to be aware that federalism is not the solution to everything. No single model is without significant flaws. That is one reason why it's helpful to examine a variety of models. As well, it is extremely unlikely that federalism as practiced in any given country will provide a perfect fit for any other country. „There is no universal single

set of 'best practices' for institutional design in divided societies," notes Richard Simeon.<sup>30</sup> Federalism is always designed with specific, local conditions in mind. No two federal countries are exactly identical, though there are a number of general principles and practices that apply to most. Even where government is structured on the federal principle (of shared and self rule, and divided authority) that is not the only way a country is likely to assure that the rights of all groups are respected.

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<sup>30</sup> Richard Simeon, "Managing Conflicts of Diversity", p. 54.



# Report on the principles of federalism

## Guidelines on Good Federal Practices – a Swiss Contribution

*Thomas Pfisterer*

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## **1 Background of the Guidelines**

### **1.1 Initiative 2007/2008**

The Forum of Federations held its 4<sup>th</sup> International Conference on Federalism in New Delhi in 2007. After this conference, a group of Swiss experts led by Arnold Koller, then Chairman of the Forum of Federations, began to “... develop ‘Principles of Federalism’ in the sense of good practices that each federation should for its own benefit consider as guidelines for governance”. The first proposal was discussed at the 5<sup>th</sup> International Conference on Federalism in Addis Ababa in 2010. Based on the discussions, the proposal has been revised and is now presented to the public<sup>31</sup>.

### **1.2 Forum of Federations**

The Forum of Federations (<http://www.forumfed.org>, accessed on April 13<sup>th</sup> 2013) is an international governance organization. Its ten members

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<sup>31</sup> Arnold Koller/Daniel Thürer/Bernard Dafflon/Bernhard Ehrenzeller/Thomas Pfisterer/ Bernhard Waldmann, PRINCIPLES of FEDERALISM, GUIDELINES for Good Federal Practices - a Swiss Contribution, Dike Zurich/St. Gall 2012

are Australia, Brazil, Canada, Ethiopia, Germany, India, Mexico, Nigeria, Pakistan and Switzerland.

The Forum of Federations provides expertise that bridges the worlds of academic research and the practice. It is concerned with the contributions that multi-level government can make,

- firstly, towards federalist and democratic consolidation among existing federations (for instance in Germany on improving public service delivery, in Brazil on implementing a value added tax, in India on fiscal equalization and green federalism, in Australia on metropolitan governance, in Switzerland on designing an immigration and integration policy) and,
- secondly, towards federalist and democratic nation building among federalizing countries and in post-conflict situations (such as in Ethiopia, Iraq, Myanmar, Nepal, Sudan and Sri Lanka).

The Forums core principle is “Learning from Each Other”.

### **1.3 Objectives of the Guidelines**

The Guidelines make use of the knowledge that has been gained in the comparative studies of the Forum of Federations and its many publications<sup>32</sup> and the experiences of the Guidelines’ authors, several of whom have worked for the Swiss Confederation.

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<sup>32</sup> The publications are (<http://www.forumfed.org/en/products/index.php>): The

The idea behind the Guidelines is to draw up principles for the future on the just, equitable and effective governance of federations. The Guidelines should help framers of constitutions to discuss, reassess and to reform political systems.

The Guidelines are based on the following premises:

- There is no ideal model of federalism. Its conditions vary by country and over time.
- The Guidelines reflect a stage in the evolution of federalism, which is a changing form of governance.
- The essential issues arising in federal systems today are, however, the same.
- The Guidelines accordingly describe what should be considered in policy-making in the hope that “good” practice will lead to an appropriate, functional outcome.

#### **1.4 Some conditions for a federal system**

Federalism has at least proven itself to be a successful practical device if certain conditions are met:

1) A federal system must be embedded in a constitutional order and rule of law.

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Global Dialogue Series, The thematic Books, Occasional Paper Series, Reports, Learning Guides / Introductory Books, Publications in other languages, Forum Newsletter and Federations Magazine

- 2) Federalism must not only be conceived as a means of “coping with” diversity and minority. It is a means of supporting individual freedoms, promoting social identities and of enriching life.
- 3) Federalism must be based on a culture of mutual trust and respect, experience in consensus building and a fondness for experimentation and political engineering.
- 4) Federalism must be based on democracy. Enlarging the democratic rights of citizens and creating space for their political engagement on different levels are essential.
- 5) Good federal practice is characterized by pragmatism as well as by imagination, innovation and mutual learning. It represents an attempt to keep governance current with ideas and needs in a time of rapidly-changing values and conditions.

## **2 A Swiss contribution to a global discussion**

In drawing up these Guidelines, the working group has attempted to initiate a dialogue on good federal practices. Readers may perceive the authors' Swiss background in many of the guidelines. The authors do not want to teach anybody how to shape their version of federalism. The Guidelines are – only - a Swiss contribution to the development of a universal instrument.

The authors hope that federal practitioners and thinkers from non-Swiss backgrounds will contribute their own suggestions in order to develop a universal set of Guidelines for Good Federal Practices.

### 3 Survey of the Guidelines

The document has two parts. They cover five interrelated concerns that are fundamental to federal systems. In the first part, the chapters start with an introduction and each principle is annotated. The second part lists the principles alone.

The Guidelines are based on a definition of federalism, and the generally accepted list of federalism's elements and functions<sup>33</sup>. The federal state is a "compound republic"<sup>34</sup>, committed to its common welfare, to unity and diversity.

"Federal", "federal government" and "federation" are used here when referring to the government at national level, and "constituent units" for the sub-national governments, which elsewhere might be called states or provinces (India, Australia, USA, Pakistan, Canada).

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<sup>33</sup> General literature in English language: Alexander Hamilton/James Madison/John Jay, *The Federalist Papers*, in: A Mentor book, published by the American Library of World Literature, New York and Toronto 1961, 33pp.; Kenneth Clinton Wheare, *Federal Government*, 4th edition, Oxford University Press, London/New York/Toronto 1963, 35pp., 53pp.; Daniel J. Elazar, *Exploring Federalism*, The University of Alabama Press 2009, 1pp., 154pp., 198pp.; Thomas o. Hueglin/Alan Fenna, *Comparative Federalism. A Systematic Inquiry*, broadview press 2006, 31pp.; Ronald L. Watts, *Comparing Federal Systems*, 3rd edition, Institute of Intergovernmental Relations, McGill-Queen`s University Press, Montreal & Kingston/London/Ithaca 2008, 71pp.; for Switzerland: Walter Haller, *The Swiss Constitution in a Comparative Context*, Zurich/St. Gall 2009, 41pp.; Hanspeter Kriesi/Alexander Trechsel, *The Politics of Switzerland. Continuity and Change in a Consensus Democracy*, Cambridge University Press, reprinted 2010, 34pp.

<sup>34</sup> In the famous terminology of Madison, *The Federalist*, No. 51.

## **4 Summary of the five Guidelines**

### **4.1 Distribution of Powers**

Distributing powers involves respecting diversity, a need for partnerships, solidarity and cohesion, sharing and controlling the exercise of governmental authority and ensuring both cooperation and competition among the different levels of government. Authority must be exercised in a more moderate and balanced way. This allows citizens and minority groups to participate in public affairs, while at the same time legitimizing and stabilizing the political system. The assignment and fulfillment of powers should observe the principle of subsidiarity.

Federalism can be a promising answer to globalization, provided federations take the opportunity to rebalance the distribution of powers.

Any federal constitution should make visible and clear the principle of distribution of powers between the two levels of government for the same People in the same country, and attribute the two levels the necessary authority and capacity to act. As a rule the federal law should take precedence over the law of constituent units.

### **4.2 Fiscal Federalism**

Together with the assignment of tasks, an appropriate allocation of financial resources must be made to each level of government. Resources are assigned to the level of government that is most likely to supply the service best to the residents.

The constituent units should be given full responsibility for a substantial number of services within their budget autonomy. They should have enough resources of their own. They should have the power to raise

taxes or be allocated transferred resources. If financial transfers are made, the constituent units' autonomy must still be preserved. This may entail fiscal competition, but there must be coordination and cooperation as much as possible.

Fiscal decentralization implies disparities in needs and costs and revenue sources. There should be an equalization system. It should only compensate disparities that are not under the control of the constituent units.

The constituent units must follow a sustainable fiscal policy and respect budget discipline. They have a responsibility to future generations. Vertical transfers should exclude bailouts through ex post financial transfers from the higher, federal government. Goods and services must be provided according to available resources.

### **4.3 Intergovernmental Relations**

The specific provisions of federal law are often not enough: the machinery of the legal and political institutions needs a “drop of oil”<sup>35</sup> in the form of friendly civic common sense to keep the federal system in action and functioning well. The intergovernmental relations concern the measures, institutions and processes used for performing the functions and achieving the aims of a federation. The federation should even have interactions that go beyond institutions but not beyond the rule of law and democracy.

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<sup>35</sup> This picture is used by Walther Burckhardt, *Kommentar der schweizerischen Bundesverfassung vom 29. Mai 1874*, 3. Auflage, Bern 1931, Art. 3 BV, 17.

The various levels of government are partners whose limited functions must be performed together on behalf of the same people and within the same country. There must be cooperation among the different levels of government in every federation.

#### **4.4 Local Government**

Local government is essential for the good functioning of a federation, its public functions and democracy. In many federations, a large part of the population lives in metropolitan areas. But measures to strengthen local government should not, however, endanger the federal balance.

Local political institutions and structures must be based on law and explicitly incorporated in the federal system of government. Local governments need autonomy to make sense. In order for municipalities to perform their democratic and integrative functions in a federation, municipalities should be equipped with real powers to organize their public affairs and to fulfil their assigned tasks.

Local governments should be allowed to participate in forming the federal political decision-making process regarding projects that have a significant impact on the municipalities.

#### **4.5 Foreign Relations**

Internationalization, multilateralism and globalization have given a new impetus to foreign relations within federations. Constituent units have also become players on the international stage specified by law.

One challenge for a federal state is to find an effective balance. On the one hand, a federal political system should maintain diversity, and recognize the importance of its constituent units. On the other hand,

federalism cannot be allowed to hamper the ability of its levels of government, especially the federal government, to act internationally.

Constituent units must be given the opportunity to participate in federal policy-making on foreign matters that concern them. As regards foreign policy matters that lie within the federal government's competences but which affect the interests of the constituent units; the constituent units' views should be taken into consideration in the federal government's policy-making.

When participating in the federal government's foreign policy, constituent units should respect the interests of the federation. Responsibilities for implementing international legal norms should be allocated in keeping with the constitutional division of competences among government orders. Constituent units must support the federal government by providing capacity appropriate for the intergovernmental consultation and cooperation.

Constituent units should be allowed to establish, shape and conduct foreign relations of their own as regards matters that lie within their competences. Constituent units' foreign relations must neither be contrary to the federal government's interests nor its competences and laws, nor should they be contrary to the laws of constituent units that are not party to the relations. Constituent units' foreign relations must not endanger the federation's cohesion. Moreover, the power to engage in foreign relations does not imply a right to secession.

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## **6 Appendix**

### **Excerpt of the Guidelines**

#### **A Distribution of Powers**

##### **1 Distribution of powers as constitutional principle**

- The principle of distribution of powers should be made visible and clear.
- The principle of distribution of powers should be anchored in the federal constitution as well as in any constituent unit constitutions.
- How powers are distributed between the federal government and constituent units should be specified in the federal constitution.
- In constitutional and statutory law, the legislature and the executive should be conceived as government branches that deliberate and decide according to own procedures.
- The legislature's and the executive's status, rights and duties should be constitutionally clarified.
- The courts must be independent and entitled to self-administration. In their activities judges shall only be bound by law.

##### **2 Principle of subsidiarity as guideline**

- The principle of subsidiarity should be observed in the assignment and fulfillment of government powers.
- Powers vested exclusively with the federal government or constituent units should be specified and enumerated.
- In policy fields in which both the federal government and constituent units may legislate and the federal government does not do so, constituent units should be entitled to act autonomously (principle of concurrent competences as general guideline).
- If legislative powers are left undefined and not assigned to a government order, constituent units should in principle retain the residual power (subsidiary general clause).
- The federal government shall only undertake tasks that require uniform regulation or that constituent units are incapable of fulfilling. In all cases, the different orders of government shall support each other in carrying out their duties, being mutually considerate and respectful of diversity.

### **3 Necessary authority of the different orders of the federation**

- Each order of government must enjoy sufficient power to fulfill the tasks assigned to it.
- The federal government should dispose of the constitutionally-based authority necessary to act for the general good of the federation.
- The law of the federal government shall in principle take precedence over the law of constituent units, unless an exception is foreseen in the federal constitution. It must be ensured that constituent units' law complies with federal constitutional law.

- The federal government should be allowed to make use of implied or inherent powers if there is a need to fulfil an assigned federal task properly and effectively.
- Recourse to the federal government's emergency law competences, which allow it to deviate from assigned constitutional powers, should only be admissible in exceptional circumstances. These competences are to be specified by constitutional law and must always be limited in time.
- The authority of constituent units needs to be respected and protected by the federal government. Constituent units shall equally enjoy the authority necessary to fulfil their tasks autonomously or in cooperation with other constituent units, unless the federal constitution provides otherwise.

#### **4 Constituent units' autonomy**

- Constituent units should enjoy substantial autonomy over those powers assigned to them within the framework of the federal constitution. On conditions they should accept differences in the extent of their autonomy.
- Constituent units are entitled to assert their rights and essential interests within the federal decision-making process.
- When enacting own law, constituent units' legislatures should enjoy large discretion.
- In federations where constituent units implement federal legislation, they should be entitled to a certain discretion.
- The federal government may expect that constituent units take into account the federation's interests in exercising their autonomy.

## **5 Dispute resolution in the federation**

- Mechanisms for the resolution of disputes in the federation should be provided for.
- Intergovernmental disputes shall to the extent possible be resolved through negotiation and mediation.
- In the case of legal (non-constitutional) disputes between government institutions, access to the ordinary courts should be guaranteed to all orders of the federation.
- In the case of constitutional disputes between the federal government and constituent units, a federal system of constitutional review should be available.

## **B Fiscal Federalism**

### **1 Assignment of functions**

- Each public service should be provided by the order of government that is most likely to supply the service best to residents.
- In addition to the functions belonging to them de jure, subnational orders of government should be devolved full responsibility for a substantial number of services within their budget autonomy.
- Constituent units should have sufficient sources of revenue in order to finance devolved tasks. Reciprocally they should assume the tax burden resulting from their spending choices.
- When tasks are delegated from a higher to a lower order of government, its discretion must be as broad as possible and its particularities considered. The lower order of government

should also be provided with enough revenue raising authority or transferred resources to fulfil the delegated tasks.

- Reassignment of responsibility to the next higher order of government is acceptable only if the lower is no longer capable of providing the related service.

## **2 Allocating taxes**

- The federal government should provide constituent units and municipalities with access, within national economic policy, to substantial financial resources of their own to finance a significant share of their tasks.
- Subnational governments' own resources shall derive in substantial part from diversified and resilient sources of revenue.
- Within statutory limits, subnational governments must be able to determine tax rates for their own sources of revenue.
- Although partial tax sovereignty entails fiscal competition, the federal government and sub-national governments must coordinate and cooperate as much as possible in tax matters.
- User charges must be applied appropriately by all orders of government.
- Revenues from natural resources must be adequately distributed between the federal government and the constituent units in which the resources are exploited. Costs arising there from exploitation must be fully compensated.

### **3 Financial transfers**

- Transfers from the federal government to sub-national governments must contribute to filling budget gaps between their functions and revenues. Financial transfers should not, however, substitute for sub-national taxation.
- Financial transfers must be transparent and based on clear criteria that cannot be manipulated. A common-pool formula must be avoided.
- Financial transfers must be stable, predictable and paid in a timely manner.
- Financial transfers must preserve sub-national governments' budget autonomy. Statutory limits implied by a higher order of government's priorities must be specified.

### **4 Fiscal equalization**

- With fiscal decentralization, sub-national governments face disparities in needs and costs of providing public services as well as in the territorial distribution of potential revenue sources. These disparities call for equalization.
- Tasks within the sub-national governments' scope of decision-making and fiscal management should not be taken into consideration in equalization.
- Revenue equalization should partly compensate for unevenly distributed tax bases.
- Needs/expenditure equalization compensates for disparities in the costs of providing services that are not under the control of sub-national authorities.

- Equalization procedures and measures shall not diminish sub-national authorities' discretion within their own sphere of responsibility.

## **5 Fiscal sustainability**

- Within their financial autonomy, constituent units must follow sustainable fiscal policy and respect budget discipline.
- Current budgets of constituent units must be in equilibrium.
- Borrowing is acceptable for capital investment only, subject to pay-as-you-use amortization.
- Vertical financial transfers should exclude bailouts.
- Budget restraint and debt limitation should be enforced for all orders of government and not just for constituent units.

## **C Intergovernmental Relations**

### **1 General role of intergovernmental relations**

- Intergovernmental relations should be considered “the drop of oil” that smoothes the operation of the federal system.
- Intergovernmental relations are best understood as a network of interrelated and interdependent actors. They should be shaped according to the specific federation. They should be responsive to changes in the society and federation.
- Constituent units should have sufficient autonomy as regards their tasks and finances. At the same time, the federal government should be able to promote the federation's unity.
- Intergovernmental relations have to deal with the implementation of federal tasks and federal law. They are

especially important when the tasks, powers and capacities of the federal government and constituent units overlap and cooperation is needed.

- Intergovernmental relations should assume a management role. They can include mechanisms of task assignment, delegation, coordination, consultation and control.
- Intergovernmental relations should encompass all the formal and informal channels and influences between legislative and executive branches of the different orders of government.
- Intergovernmental relations should address the participation of constituent units in the federal government, i.e. their power to co-decide and to advise on amending the federal constitution and possibly legislation.

## **2 Coordination and cooperation among constituent units and with the federal government**

- Cooperation should be important to all federations. This need should be met primarily through intergovernmental relations.
- Intergovernmental relations should help to coordinate the federal government's and constituent units' activities.
- Constituent units should be given autonomy also for the benefit of democracy, competition and the federal government.
- Coordination can be reached by either competition or cooperation. Cooperation should be the core of intergovernmental relations.

- Cooperation depends principally on the awareness of orders of government of their general responsibility for the federation. Cooperation is realized mainly through partnership.
- There are many acceptable forms of intergovernmental cooperation: e.g. agreements with all orders concerned and informal cooperation without agreements. If agreements are broadly permissible, intergovernmental relations play a bigger role. Sometimes there can be special interaction among the legislative branches too.
- Although intergovernmental relations sometimes include duties to cooperate, cooperation cannot be ordered or achieved through hierarchy and coercion alone.

### **3 Intergovernmental relations within the rule of law and democracy**

- The federation should have interactions beyond institutions but not beyond the rule of law and democracy.
- Intergovernmental relations need not be based on an explicit legal mandate. However, informal intergovernmental relations should supplement the formal ones and the legal framework.
- Intergovernmental relations that reach beyond institutions may further democracy, but they may also bypass it.

## **D Local Government**

### **1 Role of local government in federal systems**

- Local government is essential for the good functioning of a federation.
- Municipal authorities are indispensable for an effective and public-minded performance of public functions and for the democratisation of state structures.
- There is a strong public interest in having strong local authorities. Measures to strengthen the local government should not, however, endanger the federal balance. A balance must also be found between different types of local authorities.
- Municipal authorities should dispose of democratically elected decision-making bodies that have extensive autonomy and the financial means to fulfil their responsibilities.

### **2 Constitutional and legal recognition**

- Local political institutions and structures must be based on law and incorporated in the federal system of government.
- The federal constitution is to determine the number of orders of government and whether or not municipalities depend on constitutional or statutory recognition by constituent units.
- If the federal constitution considers municipalities to be the third order of government, their status must be embedded in the constituent units' order.
- The federal constitution can alternatively make the local government dependent on constitutional or statutory recognition by constituent units. When municipalities exist de facto, it should not remain “municipality-blind” but should

point to their constitutive role in the federation and should legitimize them.

- The federal constitution should also stipulate the role of megacities in the federal system and if necessary, create special rules for them in intergovernmental relations.

### **3 Status and autonomy**

- Local governments must be constituted as bearers of autonomy and must be able to determine their own structures of administration.
- Autonomy concerns not only fields of self-administration but also authority and competences in legislation (self-government).
- In delimiting competences constituent units have to consider the principle of subsidiarity.
- The actual extent and content of the autonomy of municipalities are derived primarily from the constitutional and statutory law of constituent units.
- In determining the autonomy of municipalities, constituent units have to orient themselves according to the municipalities' particularities.
- An asymmetric approach may be taken. Municipalities with certain dimensions may be vested with different powers.
- Municipalities should be equipped not only with the legal right but also with the actual capacity to organize their public affairs and to fulfil their assigned tasks.

#### **4 Intergovernmental relations**

- Constituent units and the federal government regulate cooperation among municipal authorities. These regulations should aim to promote or if required, enforce cooperation, while safeguarding the federal balance and citizens' democratic participation.
- The federal government, constituent units and municipalities should cooperate closely with one another, particularly in fields of activity concerning all orders of government.
- The formal relationship between municipalities and constituent unit should be defined by the constituent unit's constitutional and legal framework, while their informal relationship should be based on partnership.
- Direct influence by the federal government on municipalities or vice versa requires a constitutional and statutory basis. The federal balance and constituent units' constitutionally-guaranteed sovereign power and autonomy may not be thereby disturbed.
- Local governments should be allowed to participate in forming the federal political will regarding projects having a significant impact on the federation and municipalities as well as regarding measures affecting their particular interests.
- Disputes between local governments and the federal government or constituent units should be resolved through negotiation or mediation. Local authorities should be able to appeal to an independent body in order to enforce their constitutional and legislative rights.

## **E Foreign Relations**

### **1 Role of the federal government in foreign relations**

- The federal government is primarily responsible for establishing, shaping and conducting foreign relations. Its pre-eminence is, however, qualified in order to preserve and foster federalism in the federation.
- The federal government is the leading actor in the federation as regards foreign relations.
- As regards foreign policy matters that lie within its exclusive competences, the federal government is the federation's sole representative vis-à-vis the wider world.
- In undertaking foreign relations, the federal government must respect the federal make-up of the country's political system.
- The federal government shall inform constituent units about foreign policy matters comprehensively and in due time. It shall consult them as appropriate.

### **2 Participation of constituent units in foreign policy of the federal government**

- Constituent units must be given the opportunity to participate in federal policy-making on foreign policy matters concerning them.
- As regards foreign policy matters that lie within their competences, constituent units' positions should be given particular weight in the federal government's policy-making.
- As regards foreign policy matters that lie within the federal government's exclusive competences but that affect their

essential interests, constituent units' positions should be taken into consideration in the federal government's policy-making.

- Constituent units may participate in federal foreign policy-making in various ways.
- When participating in the federal government's foreign policy, constituent units should respect the interests of the federation and of the state community.

### **3 Implementation of international legal norms in the federation**

- Adequate arrangements must be made for domestic implementation of international legal norms.
- International legal norms are binding on the federation as a whole.
- Responsibility for implementation of international legal norms should be allocated in keeping with the constitutional division of competences among government orders.
- The federal government is ultimately responsible for supervising the implementation of international legal norms by all orders of government.
- Constituent units must support the federal government by providing capacity appropriate for the intergovernmental consultation and cooperation.

#### **4 Foreign relations of constituent units**

- Constituent units are allowed to establish, shape and conduct foreign relations as regards matters that lie within their competences.
- Constituent units may undertake foreign relations of their own. However, they may do so only as regards matters that lie within their competences. These foreign relations may be undertaken in various ways.
- Constituent units shall inform the federal government about their foreign relations comprehensively and in due time.
- Constituent units' foreign relations must not be contrary to the federal government's interests as well as its competences and laws or be contrary to the laws of constituent units not party to the relations.
- Constituent units' foreign relations must not endanger the federation's cohesion. Moreover, the power to undertake foreign relations does not imply a right to secession.
- Municipalities should on conditions be allowed to undertake foreign relations. Constituent units and the federal government should take into consideration the consequences of their foreign relations for municipalities.





# **Crisis of Federalism in Pakistan: Issues and Challenges**

*Jami Chandio*

## **1 Introduction**

Since its inception in 1947, Pakistan has been faced with a crisis of federalism. Early decisions to centralize power deprived smaller provinces of their most pressing demands for joining the new state: increased national/provincial autonomy and the devolution of power. For six decades, the promise of federalism has eroded under the weight of unfettered military rule, imbalanced and undemocratic state structures, and the domination of all federal institutions by the Punjab. With outside attention trained on the Islamic insurgency, observers are missing the most crucial dynamic in Pakistani politics, that of declining inter-provincial harmony. The specter of separatist movements once again haunts Pakistan, which has been on the verge of becoming a failed state. To survive these existing crisis, Pakistan must adopt further transformative constitutional reforms that limit the reach of the center

to the fields of defense, foreign policy, currency and other inter-provincial matters. By restoring a balance of power both between the executive and legislative branches and between the center and the provinces, Pakistan can move a pivotal step closer to substantive democracy, participatory federalism and sustainable political stability.

This paper explores the issues and consequences of the denial of federalism for current Pakistan politics. The federal center had acquired immense control over all working of government and economic policy, shortchanging the provinces and indigenous peoples whose interests are not being represented. Not only does one province dominate decision-making processes, military and bureaucratic appointments, and the state coffers, but smaller provinces have suffered destructive cultural, linguistic, and economic policies. National identity and linguistic diversity is denied, provincial assemblies had witnessed a receding of authority to the districts, and resources are disproportionately exploited without commensurate compensation for their places of origin. Conflicts have arisen throughout the country: between the center and provinces, between larger and smaller provinces, and between the provinces and the districts. Pakistan is truly in a state of flux and uncertainty.

This exploration is undertaken before the background of a complex history of federalism in Pakistan: Several decades before the India-Pakistan partition, the issue of provincial autonomy was one of the key motivating factors in Muslim-majority provinces seeking independence. This view stands in contrast to the widely accepted notion that religious differences and communalism drove these provinces out of the new Indian federation. Once partition was completed, however, the initial promises of autonomy and devolution of power went unfulfilled by

Pakistan's ruling elite. Critical decisions taken by the center concerning the ratification of constitutions and governing documents, the elevation of Urdu language, and the amalgamation of the provinces of west Pakistan into the One-Unit scheme in 1955 deprived the provinces of the authority and position in the federation they expected upon joining the union. Federalism was bankrupted purposively, culminating in the 'liberation' of East Pakistan and the subjugation of the smaller provinces to the ruling Punjab-Urdu speaking nexus.

Inclusive federalism offers the most democratic system to govern Pakistan's diverse array of nationalities and communities. The institution of genuine devolution of power in a federalist manner could provide for the democratic resolution of these intra-state conflicts and the promotion of inter-provincial harmony as well as help to protect language and cultural rights of all nationalities and communities. Governance could be improved across the country as provinces are more aware and responsive to the needs of their citizens, not just from developmentally, but also culturally and linguistically. The integrity of the Pakistani state must be achieved through equality and justice.

Pakistan's state related multidimensional crisis is no more a secret now. In a global perspective Pakistan is considered a malfunctioning state and not considered as a reliable country. The catastrophe of religious extremism is not only hovering over Khyber Pakhtunkhwa (KPK) but the whole country, which has virtually exposed the capacity of state institutions; despite expending a major share of public recourses on defense for more than last six decades the state has failed to protect its citizens. The situation in Baluchistan is so adverse that the national anthem cannot be played in the government schools.

In Pakistan, not a single day passes without noticing target killings in Karachi, protests, hunger strikes and acts of violence in other parts of the provinces. There is no check over the breach of law and order. The rising severe poverty and alarming unemployment has deprived the common people of their fundamental right to live. The energy crisis coupled with mismanagement has dragged the very system to doldrums. The pertinent issues of the federation and its constituent units, i.e. the implementation of 18<sup>th</sup> constitutional amendment in letter and spirit, fiscal awards, a fair distribution of water, the complete ownership of the provinces over their natural resources, a substantial parliamentary democracy and the supremacy of parliament in all affairs of the states and above all provincial autonomy remain the key challenges to the federation of Pakistan.

Leaving apart the new generation, even those who made this country are totally disappointed over Pakistan's future as a better, democratic, and secular country based on principles of democratic federalism and unity in diversity. Despite that all the optimistic and prudent people seem to be united over a stunt that in spite of all these complications and disappointments the only ray of hope of the survival and continuance of this country lies in a shift of paradigms to run this federation successfully.

## **2        Constitutions of Pakistan and Provincial Autonomy**

The constitutional history of Pakistan is not different from its overall bleak political history. Rather the history of constitutional processes should be seen in the context of nature of the state, the overall balance of power and also in the light of injured democratic practices. From its early days, Pakistan did not follow the path of constitutional federalism

through substantial democracy. The Objective Resolution which was proposed by Liaqat Ali Khan and adapted by the Constituent Assembly on 12<sup>th</sup> March 1949 became the basis for the future constitution of Pakistan, or a *grundnorm* of Pakistan. On the same day, a Basic Principles Committee was formed, comprised of 24 members to prepare the draft of the constitution. The seriousness of the committee could be seen, as the final draft of the Constitution was prepared in 1954. By that time not only the mover of Objective Resolution Liaqat Ali Khan was assassinated, but his successor Khuawaja Nazimuddin was also ousted and Mohammad Ali Bogra had taken over as Prime Minister.

The first decade of Pakistan's political history verifies the perception that the then ruling establishment didn't want constitutional democracy and federalism in Pakistan, in order to maintain their extra constitutional powers and their de-facto control of the country through a unitary pattern of governance.

“At the time of independence, Pakistan adopted the Government of India Act 1935 with minor changes to be its first interim constitution. Having failed to frame a constitution for almost a decade, the inherited vice-regal system continued to be the governance document. During this period (1947-56) attempts were made to plug in the parliamentary system within the confines of an imperial order. The structural tensions led to the tripping of the parliamentary democracy, which is a misnomer. Parliamentary working could not co-exist within the vice-

regal system. Inevitably, the civil and military bureaucracy became dominant players in the body-politics of Pakistan.”<sup>36</sup>

## **2.1 1956 Constitution**

The Second Constituent Assembly of Pakistan, which created One-Unit in West Pakistan, gave the first constitution to the country on March 23<sup>rd</sup>, 1956 (on the eve of sixteenth anniversary of 1940 Lahore Resolution). Sikander Mirza, the presiding Governor General was inaugurated as the first president of Pakistan. This meant that on the one hand the country remained deprived of having its own constitution developed and passed through a democratic process, as the colonial 1935 Indian Act had been adopted as an interim constitution of Pakistan under the 1947 Independence Act and had not been amended fundamentally despite the provision that the Governor General had the authority to do so. On the other hand when the country was given its first constitution it was based on plundering One-Unit.

“The first constitution of Pakistan was drafted by Ch. Mohammad Ali, a civil bureaucrat turned politician. The first article of the constitution referred to Pakistan as a Federal Republic. The preamble of the constitution stressed federalism and several other provisions dealt with various aspects of federalism and Provincial autonomy. The 1956 Constitution, like the interim constitution divided powers into three categories; Central, Provincial and Concurrent. The federal government

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<sup>36</sup> Naseer, Sajjad. “Federalism and Constitutional Development in Pakistan.” Paper presented at an international seminar on “Constitutionalism and Diversity in Nepal” organized by the Centre for Nepal and Asian Studies, Kathmandu, Nepal, August 22-24, 2007, 7.

was assigned 30 items as against 61 in the interim constitution. The Provincial subject list increased to 94 subjects as against 55 and the concurrent list had 19 items. The Government of India Act 1935 was diluted somewhat in terms of allocation of subjects. Before the 1956 constitution could be implemented by holding general election, Ayub Khan Imposed Martial Law in October 1958.”<sup>37</sup>

“The 1956 Constitution did not commit on this issue and instead provided for the parliament to ascertain the views of provincial assemblies, and then by Act provide whether elections to the National Assembly and provincial assemblies shall be held on the principle of joint electorate or separate electorate. Finally, the division of functions between the Center and Provinces remained a hotbed of controversy between the advocates of maximum provincial autonomy, especially those from East Pakistan and smaller Provinces, and the proponents of a strong Center, led by the Punjabi politicians, bureaucrats and military officers.”<sup>38</sup>

The 1956 Constitution provided a parliamentary form of government under which the parliament was unicameral. As compared to 1962 and 1973 constitutions, it gave more autonomy to the provinces but because of the One-Unit neither was it acceptable to Bengal nor did it benefit Sindh, Baluchistan and the North-West Frontier Province (NWFP).

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<sup>37</sup> Ibid.

<sup>38</sup> Waseem, Mohammad. *Politics and the State in Pakistan*. Islamabad: National Institute of Historical and Cultural Research, 2007, 126.

## **2.2 1962 Constitution**

On October 27<sup>th</sup>, 1958, General Ayub Khan took over as the second president of Pakistan, also the first military dictator of country. On February 17<sup>th</sup>, 1960, he appointed a commission which was apparently supposed to submit proposals for the new constitution of the country based on ‘basic democracy’ and ‘Islamic principles of justice’.

“Again, the second constitution was framed by a military bureaucrat, Ayub Khan. This constitution did not refer to the federal system as mentioned in Article 1, which officially described the name of the state. The preamble, however, mentioned the federal system, delineating the relationship between federal government and the constituent units of the federation. The 1962 Constitutions excluded the Provincial list of subjects and mentioned the Central List of 49 items and a Concurrent List. It created a powerful centre with concentration of power in the office of the President and an impotent unicameral legislature. The Provincial governments were headed by the Governors, who as nominees of the President also enjoyed enormous powers. A lip service was paid to federalism but in reality a more powerful and centralized system was put in place.”<sup>39</sup>

The 1962 Constitution envisaged Pakistan as a ‘Federal State’ and introduced a presidential form of government where the legislatures both at the center and in the provinces remained unicameral. The 1962 Constitution is known in Pakistan as the constitution of the dictator, by the dictator and for the dictator.

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<sup>39</sup> Naseer, Sajjad. “Federalism and Constitutional Development in Pakistan”, 7.

### **2.3 1973 Constitution**

Despite all its shortcomings, the 1973 constitution was the first ever constitution of Pakistan which was formed and passed through a democratic parliamentary process; however it was unacceptable to the nationalist parties and leaders of oppressed nations. Some of them in the parliament even boycotted the assembly, including former chairman of the Baluch Student Organization (BSO), Dr. Abdul Hayee Baloch, and others.

“In Article one of the 1973 Constitution, Pakistan is mentioned as Federal Republic to be known as the Islamic Republic of Pakistan. The preamble also recognizes federalism as the organizing principles of the state. The 1973 Constitution is characterized by the absence of a Provincial List of subjects and provides for a Federal List of 59 subjects and a Concurrent List of 47 subjects, where the centre will prevail in case of conflict. The sixth and seventh schedules of the 1973 Constitution place additional restrictions on the powers of the Provincial Assemblies. For the first time, a bicameral legislature was provided to accommodate the federating units. The upper House called the Senate, has limited power and has no effective role in the passage of the budget. Pakistan has the unique distinction of passing the budget in the same way as provided in The Government of India Act 1935. The budget is divided into charged and non-charged categories. The charged items include the Defense, President, Governors and debt receiving expenditure which is mentioned as one liner statement and cannot be debated on the floor of the house. The center picks up 90 % of the revenue. These bodies have failed to perform and in the case of Council of Common Interests have remained dormant and inactive for years. The National Finance Commission did not do any better as for the last four years; the President of Pakistan has decided the distribution of revenues among the federating units. The issues of

water distribution and royalty of natural gas continue to embitter relations between the centre and the provinces. The overwhelming role of the centre continues to dominate the decision-making of the country.”<sup>40</sup>

As compared to the 1956 Constitution, the 1973 Constitution gave less autonomy to the provinces but promised that within ten years, the concurrent list would be abolished. Unfortunately all successive governments including PPP’s own governments in 1988 and 1993 did not abolish the list, which continues to be in effect to this day. Secondly, unlike the 1956 and 1962 Constitutions, it offered a bicameral legislature in the parliamentary form of government where the executive authority of the state lies with the Prime Minister and the president is at the top, securing the unity of the state, but rendering the upper legislative chamber powerless. From the perspective of provincial autonomy, the 1973 Constitution can be termed a constitution of centralist unitary federalism. Secondly, it has been continuously maligned through undemocratic and extra constitutional amendments. It is believed that even if it were restored to its original form, the situation has changed so much that it could only work as an interim constitution. The real solution for the federation would be to make a new constitution through a new constituent assembly based on the principles and spirit of the 1940 Lahore Resolution.

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<sup>40</sup> Ibid, 8.

## **2.4 Federation of Pakistan after 18<sup>th</sup> constitutional amendment**

Continuous amendments (i.e. the 8<sup>th</sup> and 17<sup>th</sup> amendments through arbitrary powers by two military dictators General Zia ul Haq and General Pervez Musharaf) caused fatal damage to the constitutional structure of the country. Those despotic amendments badly changed the federal structure and parliamentary character of the polity and shifted key powers to presidency leaving parliament deprived of its constitutional rights. Keeping in view the dire need for substantial constitutional reforms both leaders of two major federal parties in Pakistan, Ms. Benazeer Bhutto and Miyan Mohammad Nawaz Shareef, signed an agreement in 2006 popularly known as *Charter of Democracy*. The 18<sup>th</sup> Constitutional Amendment passed in April 2010 by both the houses of parliament was basically an act of endorsement of the *Charter of Democracy*, which restored the parliamentary and federal character of the 1973 Constitution. It went even beyond the 1973 Constitution and laid foundations of a Constitutional paradigm shift in Pakistan.

The 1973 Constitution of Pakistan consists of 12 parts, 27 chapters, 280 articles and 5 schedules; whereas the 18<sup>th</sup> Constitutional amendment thoroughly reviewed 102 articles. Out of those, 69 articles were amended, 20 were substituted, 7 new articles were inserted, 3 were omitted, and one (17<sup>th</sup> amendment) was repealed; the sixth and seventh schedules were also omitted. In addition to that, 11 recommendations were also enunciated that fall within the executive authority of the Government. In the following are some key features of the 18<sup>th</sup> Constitutional amendment regarding significant efforts to make Pakistan a *Participatory Federation*.

- “The first and the foremost intended outcome of the 18<sup>th</sup> Amendment is to create an enabling environment for *participatory federalism* in Pakistan. The Amendment, in this context, has taken major historic decisions where Centre-provinces dynamics would substantially change for the good and betterment of the people. The delegation of much-demanded autonomy to the provinces in legislative, executive, fiscal and administrative spheres is meant to bring a climate of healthy competition and cooperation between Provinces leading to strengthen the essence of the Federation of Pakistan.
- With the policies, planning and programming related to service delivery in social sector decentralized to the provinces, Federal planning bodies can no more design and plan a development project without taking into account the National Economic Council, Planning Commission). The same is desired from the provinces in relation to districts, only then top-down paradigm of development could be replaced with the bottom-up- down paradigm of Accountability and representation are two key features of devolution which need to be incorporated at every tier and sub-tier of development planning management and execution. This would usher in a new era of development through devolution in Pakistan.
- Dictatorial disruptions have not allowed democracy to take roots in the Country. The 18<sup>th</sup> Amendment has provided an elaborate mechanism which would lead to a broadening and deepening democracy in Pakistan. By correcting the distortions in the assignment of executive authority at the Federal and Provincial level, the 18<sup>th</sup> Amendment has also provided for the grassroots elections for Local Government jurisdictions, as it is popularly believed that local governments (by the respective Provincial governments) will deepen the democratic process at the lowest tiers of the governance.
- In the aftermath of the 18<sup>th</sup> Amendment, a sizeable number of subjects, functions and institutions have been relocated at

the Federal and devolved at the Provincial levels. It is, therefore, important to develop a comprehensive policy and operational framework to:

- Reorient and build the institutional capacities of the ministries, Divisions and Departments at federal and provincial levels;
- Promote the culture of inter-provincial coordination by restructuring and expanding the representations and outreach of Federally relocated and retained institutions;
- Develop a mechanism of providing technical support and specialized services to the provinces as requisite for policy making, transition management, devolution management and effective implementation of the 18<sup>th</sup> Amendment;
- Develop information, communication and coordination *vectors* targeting federal and provincial divisions and departments for efficient sharing of policy information, sectoral statistics, standards, guidelines, protocols and coordination with international best practices; and
- Propose a requisite legislation to clarify the administrative and legislative status of Islamabad Capital Territory. Though the Capital Administration and Development Division (CADD) has been created, yet there are a number of legislative, representational and administrative issues to be sorted out, which need a special attention of the federal legislature.
- Provincial administrations are expected to enhance their capacity to embrace autonomy, authority and responsibility assigned to them through democratic devolution. Therefore, civil service and administrative reforms are essential to achieve responsive and citizen-oriented governance, which is rightly claimed as a larger goal of the 18<sup>th</sup> Amendment. The devolution of powers in 2011 faces two major dilemmas. First, the provinces are currently operating as over-centralized bureaucratic apparatuses with little or no powers and accountabilities at the local level. Second, and perhaps far more important, the provinces have to re-build their

- technical and political capacities to handle efficiently the new powers and functions.
- There are three major tiers of governance which remain the entry points of fiscal equalization in Pakistan i.e. Federation, Provinces and Districts. Recently, the process of fiscal equalization beginning at federal level with the approval of the 7th NFC [National Finance Commission] Award could only be enhanced and optimized meaningfully by instituting provincial and district finance commissions within provincial jurisdictions. Provinces would have to devise an equitable formula of fiscal transfer which could subsequently reverse the structure of disparities and inequities at sub-regional, district, Tehsil and union council levels.
  - The broader principles of policy for grassroots fiscal equalization may include: (a) fiscal needs of respective areas and communities; (b) fiscal capacity of respective areas of communities; (c) sectoral performance of respective tiers of governance at local level; (d) potentials for public-private partnership; and (e) degree of community participation.
  - the 18th Constitutional Amendment opens up five key areas for much desired structural re-engineering at provincial level through: (a) legislative innovations (b) institutional/administrative re-ordering (c) re-directing sectoral policy, planning, and programming (d) harnessing new fiscal opportunities and (e) optimizing provincial autonomy through pro-active engagement with forums of joint control and shared responsibilities i.e. CCI [Council of Common Interests], NEC [National Economic Council], NFC.
  - Indeed, the 18th Amendment has re-written the relationship between Federation and the Provinces, however, the relationship between common people, the Constitution and democracy could only be re-written, strengthened and furthered by the Provinces. Therefore, it requires a set of follow-up affirmative actions by the Provincial governments to undertake corresponding reforms at the appropriate tiers to allow the dividends of vertical devolution roll down to the

grassroots level through horizontal devolution. By creating more spaces for people to participate in the process of planning and decision making at grassroots level would cultivate an enduring democracy in Pakistan. Only then, the spirit and objective of the 18th Amendment could be realized in letter and spirit.”<sup>41</sup>

Mr. Zafarullah Khan, an Islamabad based researcher and political expert, believes that the overall impact of the 18<sup>th</sup> Constitutional Amendment could be analyzed in three distinct categories.

“First in the transfer of power, authority and reallocation of various subjects and functions. By and large this as happened with some remaining contentious issues like non-transfer of assets and certain institutions. These issues need to be addressed on an urgent basis. In this regard the role of the Special Committee of the Senate on Devolution is important. An assertive role of the Parliament is required to vanguard the Constitution and to accomplish the devolution process in its true spirit. Any bid to roll back the devolution process or the half-baked devolution would have serious consequences for the federation. The Ministry of Inter Provincial Coordination (IPC) that also serves as the secretariat for the Council of Common Interest must come forward with a solution to the reservations being expressed by the provinces. The role of the Council of Common Interests (CCI) and National Economic Council (NEC) are of paramount importance.

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<sup>41</sup> Bhatti, Amjad “Operational Manual, Transition Management of Democratic Devolution in Pakistan”, Center for Civic Education Pakistan, Islamabad, December, 2011.

Second is the transition that is on-going with its teething problems. This phase requires extensive communication among all stakeholders to grasp the character and spirit of the Amendment and redesign institutions, improve policy and planning and reforms laws. In order to address their fiscal concerns and extended responsibilities, the provinces shall start preparing their cases and convincing arguments for the 8<sup>th</sup> National Finance Commission Award due in 2014-15. Extensive training of civil servants in their new roles and responsibilities is necessary to make these changes work. Citizens, civil society organizations, academia and media must read and comprehend the post-18<sup>th</sup> Amendment Constitution and play a catalyzing role to expand its understanding and interpretations. Presently there is a paucity of such efforts and initiatives.

Third are the long-term and continuing efforts to completely transform Pakistan's federation by making the framework's functions, articulated by the 18<sup>th</sup> Amendment for good and responsive governance, meet citizens' expectations. While the provinces are at the centre of these political and fiscal changes, this calls for a proactive provincial role to convert Pakistan into a participatory federation. The provinces also need to understand and make effective use of new federal institutional spaces. The provinces must take the spirit of devolution down to districts, *Tehsils* and union councils to improve delivery of vital services."<sup>42</sup>

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<sup>42</sup> Khan, Zafarullah. "Post 18<sup>th</sup> Amendment of the Constitution of Pakistan-A Critical Appraisal". March 2013. SPO, Islamabad. Compare also his contribution in this volume.

### **3 Issues of Fiscal Federalism in Pakistan**

Fiscal decentralization is also a basic principle and requisite for democratic federalism. The distribution of financial resources among the constituent units of federation has basic significance in multinational or multi-state federal systems all over the world which is also termed fiscal federalism or financial decentralization. In such democratic federations the constituent units or provinces possess the right to collectively decide the extent to which resources are provided to the centre to run its business because the federation is the name of an agreement and administrative system of which the states or provinces are the units. Contrary, Pakistan has been a unitary federation where the matters run in the reverse direction and even after the lapse of six decades and passage of the 18th Constitutional Amendment, Pakistan's federal structure has continued to remain centralist.

From the very beginning, the National Financial Award has remained disputed and subjugated to the interests of Punjab. When East Pakistan was part of the federation and its population exceeded not only that of each of the other provinces of Pakistan, but that of all provinces of West Pakistan taken together, the basis of the NFC award was not the population but revenue and inverse population density, because that was the way Punjab could ransack the financial resources of the country. But after the separation of East Pakistan, when Punjab came into the position of the most populated province, population was made the sole basis for the distribution of the NFC award instead of the previous criteria of revenue and land in the 1974 NFC award, a practice which was prevalent till the 6th NFC award. There is no such federal system among any of the twenty seven federal states of the world where the

financial distribution among the provinces is made solely on the basis and yard stick of population figures. After the separation of East Pakistan, six NFC awards from 1974 to 2006 were done solely on the basis of population.

Under the present 7th NFC award, first of all 44% is directly taken away by the centre, which is termed as vertical distribution. Out of the remaining 56% Punjab, Sindh, Baluchistan and Khyber Pakhtunkhwa get 57.36%, 23.71%, 5.11% and 13.82% respectively; this is termed the divisible pool. There is no such unjustified mode of distribution in any genuine federal system anywhere in the world. It means that under this formula Punjab takes away the lion share of the financial resources from both sides whereas Sindh contributes about 70% share in the total financial income of the country. If the assessment were made on the basis of the revenue share, Punjab would come to 23.04% and Sindh would get 69.02%. As a result, the distribution of financial resources has always remained the bone of contention between the centre and the provinces as well as among the provinces.

Pakistan People's Party lead Government announced the country's 7th NFC award on 10.12.2009, according to which the share of centre and the provinces was fixed as 44% and 56 % respectively which according to the principle that was practiced before 1996 Award should have been 20% and 80%. The distribution according to the new award this time has apparently been based on multiple criteria, but unfortunately still 82% share of the distribution among the provinces is kept on population basis, whereas the share for poverty and backwardness, production and collection of revenue, as well as the inverse population density has been kept at 10.3%, 5% and 2.7% respectively. From this, it is clear that

Punjab is still definitely getting the lion share. On the whole, according to the seventh National Financial Award, Punjab, Sindh, Khyber Pakhtunkhwa and Baluchistan will now get 51.74%, 24.55%, 14.62% and 9.09% respectively, which reflects that just distribution of financial resources is yet a dream of the smaller provinces. According to the 18th Constitutional amendment, the share of the provinces could be increased but cannot be decreased from the share fixed in 7th NFC award. A just and equitable distribution of financial resources in Pakistan based on inclusive federal principles is yet to be achieved through consensus in which other parameters like human development index and revenue generation could get significant importance.

**Table 1: Inter-Provincial Distribution of Financial Resources under various NFC Awards (in %)<sup>43</sup>**

Year	Federal/ Provinci al	Punja b	Sindh	Khyber Pukhtoonkhaw ah	Balochista n	Total
1974	20.80	60.25	22.50	13.39	3.86	100
1979	20.80	57.97	23.34	13.39	5.30	100
1985	Interim Award	Interi m Award	Interi m Award	Interim Award	Interim Award	Interi m Award
1990	20.80	57.87	23.29	13.54	5.30	100
1996	62.5:37.5	57.88	23.28	13.54	5.30	100
2000 (Not Impleme nted)	Interim Award	Interi m Award	Interi m Award	Interim Award	Interim Award	Interi m Award
2006 (Estimated)	45.55	56.07	25.67	13.14	5.13	100

<sup>43</sup> Promised to increase 1% every year to meet 50% share for provinces. PIDE Working Papers 2007: 33, Islamabad.

**Table 2: Distribution of Financial Resources according 7<sup>th</sup> NFC Award<sup>44</sup>**

Distribution between Federal Level and Provinces

Federal	2010-11	2010-15	Provinces	2010-11	2010-15
	57.50 %	56 %		42.50 %	44%

Distribution Among Provinces

Province	7 <sup>th</sup> NFC Award	6 <sup>th</sup> NFC Award
Punjab	51.74%	53.1%
Sindh	24.55%	24.94 %
Pukhtoonkhawah	≈14.62%	14.88 %
Balochistan	9.09 %	7.17 %

Multi Criterion Percentage of Distribution

Population	82 %
Poverty/ Backwardness	10.3 %
Revenue Generation/ Collection	5.0 %
Geographical Area/ Inverse Population Density	2.7 %

<sup>44</sup> Jami Chandio, "Crisis of Federalism and Prospects for Provincial Autonomy in Pakistan", 2009, Chapter 3.  
([http://www.cpcs.org.pk/docs/bookshelf/Jamhoori%20Wafaqat%20\(Urdu\).pdf](http://www.cpcs.org.pk/docs/bookshelf/Jamhoori%20Wafaqat%20(Urdu).pdf))

#### **4 Ownership of Natural Resources and Royalty Distribution**

Most of the natural resources are developed after an extremely long natural process and by passing through different stages which continue for millions of years, which is considered as a blessing by nature to the people living in that environment. But in the modern neo-colonial rule they have become an emblem of misfortune and economic exploitation for the people who happen to be heir to those natural resources.

In Pakistan, Baluchistan and Sindh became the prey of the worst economic prowling due to their owning of natural resources and such pillaging has been continuing for the last six decades. For example, Sindh produces 71% of the total production of gas in Pakistan whereas the share of Balochistan, Punjab and KPK is 22%, 5% and 2% respectively. The share of Sindh, Baluchistan, Punjab and KPK in the oil production is 56%, 25%, 1% and 18% respectively. Still, the centre has been taking right away 88.5% of the royalty on natural resources before the 18<sup>th</sup> Constitutional Amendment. The provinces used to get only 11.5%, which too falls prey to bureaucracy's and government's corruption. The oil, gas and coal producing districts and provinces, specifically Sindh and Balochistan, thus have been deprived of having ownership rights over their natural resources. Mr. Naseer Memon a technocrat and writer rightly says

“Sindh is the largest oil producing province of Pakistan; Sindh is the largest gas producing province of Pakistan; Sindh and Balochistan together contribute more than 93 percent of the national gas production and therefore can be considered energy basket of Pakistan. The same data source however reveals that Sindh and Balochistan consume only a small portion of their production. According to statistics, Sindh

consumed only 46 percent of its production whereas Balochistan consumed just 29 percent of the gas it produced. Punjab utilized a staggering 852 percent against its production in the national output of gas. Higher consumption of energy is considered as major indicator of higher development. One can safely conclude that much of the development is centered in one province that consumes natural resources produced by other provinces.”<sup>45</sup>

**Table 3: Province-wise Annual Gas Production: 2008-09<sup>46</sup>**

Province	Non-Associated Gas (MMCF)	Associated Gas (MMCF)	Total (MMCF)	%
Sindh	1,032,198	15,475	1,047,673	71.72
Punjab	66,728	9,560	76,287	5.22
NWFP	28,677	2,682	31,359	2.14
Balochistan	305,359	0	305,359	20.9
Pakistan	1,432,962	27,717	1,460,678	100%

*Source: Pakistan Energy Yearbook 2009, Ministry of Petroleum and Natural Resources, GOP*

<sup>45</sup> Memon, Naseer. “Discriminatory Development Paradigm of Pakistan”, p 71-72, CPCS, 2012

<sup>46</sup> Memon, Naseer. “Discriminatory Development Paradigm of Pakistan”, p 71, CPCS, 2012

**Table 4: Sector-wise Consumption Trend of Gas in Provinces, 2007-08<sup>47</sup>**

Type of Consumption	Province-wise Number of Consumers				
	Sindh	Punjab	Pakhtunkhwa	Balochistan	Total
Domestic	1,866,585	2,760,238	375,325	179,372	5,181,520
	36%	53%	7%	3%	100
Commercial	20,671	41,111	8,065	1,887	71,734
	29%	57%	11%	3%	100
Industrial	3,515	4,792	650	46	9,003
	39%	53%	7%	1%	100
Total	1,890,771	2,806,141	384,040	181,305	5,262,257
	36%	53%	7%	3%	100

*Source: Pakistan Energy Yearbook 2008, Ministry of Petroleum and Natural Resources, GOP<sup>48</sup>*

<sup>47</sup> Memon, Naseer. "Discriminatory Development Paradigm of Pakistan", p 73, CPCS, 2012

<sup>48</sup> Memon, Naseer. "Discriminatory Development Paradigm of Pakistan", p 71, CPCS, 2012

**Table 5: Province-wise Oil Production in Pakistan, 2007-08<sup>49</sup>**

Province	Oil Production (Million Barrels)	Percentage
Sindh	14.37	<b>56.13</b>
Punjab	6.51	25.46
NWFP	4.68	18.32
Balochistan	0.024	0.1
Pakistan	25.60	100%

*Source: Pakistan Energy Yearbook 2008, Ministry of Petroleum and Natural Resources, GOP*

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<sup>49</sup> Memon, Naseer. "Discriminatory Development Paradigm of Pakistan", p 71, CPCS, 2012

While discussing the state of Human Development in oil and gas producing areas Memon argues that the

“[e]stimated value of oil produced from Sindh at the rate of US\$ 50/Barrel comes around 55.5 billion rupees per year. In spite of that, the larger part of rural Sindh which produces this wealth of resources is far behind in development indicators. Practically the federal government has all controls over the oil and gas fields located in provinces. The Federal Government doles out 12.5 percent royalty to provinces based on the well head price. The amount becomes part of provincial income in the annual accounts. There is no policy which may ensure that the oil and gas producing talukas/districts should also get a certain part from that royalty. That’s why oil and gas producing talukas/districts of Sindh and Balochistan are conspicuous by poor indicators of human development. Major oil and gas producing areas of Sindh such as Badin, Nara taluka in Khairpur, Saleh Pat in Sukkur, Sehwan and Thano Bola Khan tlaukas in Jamshoro and Johi taluka in Dadu are mostly under developed and communities surrounding the oil and gas field live in primitive ages. Data on the state of human development shows that the major oil and gas producing districts of Sindh are suffering from the worst state of human development.

According to the Human Development Report of UNDP (2003), Badin, the major oil producing district, ranked 60th out of 91 districts in the country. Under the same ranking only 3 districts of Sindh (including Karachi and Hyderabad) found place in top thirty districts of country on the Human Development Index. The same report placed Rural Sindh lowest among all urban and rural areas of all provinces ranked on Human Development Index. The report also shows a similar trend for Balochistan. According to the

report, Balochistan has 12 districts among the last 30 districts ranked in the country. Whereas the top 30 districts on the HD-Index included only 3 from Balochistan. Ironically Dera Bugti was the last on Human Development Index in the country. Dera Bugti is home to the largest natural gas field 'Sui' of the country.

The Millennium Development Goals Report 2006 of the Government of Pakistan also indicates a similar trend of human development in the hydro carbon producing districts of Sindh.”<sup>50</sup>

Though in the 18<sup>th</sup> Constitutional Amendment, the subject of natural resources is shifted to the provinces and the share of royalty on the natural resources is increased from 11.5% to 50%, it still merits proper implementation and a tangible trickledown effect not only to the provinces but mainly the local communities of those areas which produce natural resources.

## **5 Water conflict in Pakistan**

Distribution of water has been the reason and stimulant of unending dispute in Pakistan in general and between Sindh and Punjab in particular, which has caused fatal damage to the spirit of federalism in Pakistan. In fact the dispute over the distribution of water between Sindh and Punjab is not new, it is continuing since 1859 right from the British colonial rule in India. It commenced at the moment undivided Punjab initiated preparing illegal irrigation schemes over river Indus.

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<sup>50</sup> Memon, Naseer. “Discriminatory Development Paradigm of Pakistan”, p 73-74, CPCS, 2012

The distribution of water has remained a sensitive issue and a source of conflict all over the world; consequently the relevant rules have remained rigid at the global level, too. The universally accepted principle prevalent all over the world over is that the final and significant right over the rivers pertain to the tail users and the head users have no right to construct dams, draw water or make an irrigation plan without the consent or agreement of the lower riparian. Still, Punjab has been making a breach of universally admitted principles right from the days of British rule.

It is also a fact of the history that Sindh used to receive a relatively proper share of water under British rule; in comparison, while today's Pakistan and Sindh are the shareholders of the lower riparian of Sindh Indus basin rivers, namely Indus, Jehlum, Chanab, Ravi, Satluj, the Punjab authorities are taking advantage of their privileged position and unjustifiably started constructing dams and canals over the Indus basin system. Proof of which are Sarhand canal, the Lower Chanab canal, and the lower Jehlum canal, constructed from 1855 to 1901 during the British rule. Similarly, the Paharpur canal and Upper Swat canal were constructed in 1908 and 1917, respectively, all of which happened to be illegal and unjustified.

In the year 1915, the Punjab authorities started three canal projects, under which the Jehlum canal, Chanab canal and Lower Bari canal were unlawfully constructed. But when, crossing all the limits of reverence for joint rights, the illegal construction of eleven canals and four other irrigation projects was started in 1919, only then the British government took notice of it. That way, such an outcry travelled to the central government, that the *Cotton Commission* was constituted by the

government which rejected the decisions of Punjab on the grounds that Punjab cannot construct any dam or canal over the Indus basin without the consent of the lower riparian Sindh. When disdainfulness from the side of the Punjab did not cease, once again a commission, namely the Anderson Commission, was constituted, in which Punjab's objection that Sindh has no authority to construct Sukkur barrage was also included. The committee issued its report on 30<sup>th</sup> March 1935 on the basis of which the final report was issued by the government on 30<sup>th</sup> March 1937 and decisions were declared. Punjab did not seize its activities for a single day and continued making its unfair irrigation plans.

British colonial government was relatively fair and just in comparison to Pakistani rulers, which despite the privileged state of the Punjab had laid emphasis over the judicious distribution of water and always restricted it from the contravention. One of such examples is *Indus Basin Treaty* of 1945; such agreement was made under the leadership of Chief Justice Roi (in whose name the *Roi Commission* was constituted) of Calcutta high court, who was appointed by the central government of India, because in 1939 Sindh had once again lodged a complaint with the British government that Punjab wants to steal water of Sindh through the Bhakra dam. The Roi commission completely rejected such stunt of the Punjab about having any authority regarding the preparation of any irrigation plans without the consent of lower riparian party of the shared water (i.e. Sindh). The Sindh-Punjab Water Agreement of 1945 came into force on the basis of the recommendations and decisions of the *Roi Commission*, signed by the Sindh and Punjab authorities; it is a tragedy that even after that Punjab did not stop the practice of pillaging the water and continued its haughtiness, obstinacy and prowling through various irrigation plans.

After the creation of Pakistan, there was one moment of unity in the country when Pakistan made an agreement (namely the *Indus Basin Treaty*) with India. But the smaller provinces of West Pakistan were deprived of even the position of a provinces let alone the national status of constituent units of federation in the process. Sindh was excluded from all the stages and matters of the so called agreement and Pakistan sold three rivers containing jointly owned waters over to India, to which the legal right of Sindh had been admitted and confirmed since British rule. This is what happened in the cases of Tarbela and Mangla dams, too. Not only that Sindh could never get the required share from these, but Sindh's agriculture coastal forests and life existing in the riverine tract suffered a huge shock.

Thus, the dispute over water between Sindh and Punjab is quite old, simple proof of which is that six commissions have been constituted in this respect up to the 1991 water accord, which formulated their recommendations. Still, the dispute is existing till today and is on the rise day by day. The *Anderson Commission* was constituted in 1935; the *Indus Rao Commission* in 1941, the *Akhtar Hussain Commission* in 1968, the *Fazal e Akbar Commission* in 1970, the *Anwarulhaq Commission* in 1981 and the *Haleeman Commission* in 1983. But the water dispute among the provinces of Pakistan and specifically between Sindh and Punjab could not be resolved. That is why the *Indus River System Authority* (IRSA) was formed as a result of 1991 *Water Accord* with the objective that this authority will play an effective role in the settlement of the water dispute by ensuring a fair distribution of water in accordance with the water accord and international norms. But in contradiction to this it not only failed to distribute the water in the

justifiable manner but had been and still continues to play in the hands of Punjab Government.<sup>51</sup>

These days, it is said that the 1991 agreement should be put into practice but the truth of the matter is that even the 1991 water agreement was imposed over Sindh during the non-representative government of Jam Sadiq Ali. Intellectuals, general public and civil society opposed this accord with tooth and nail, of which the record is still available, but now the Punjab government as well as the federation are reluctant even to implement it. For example, according to the 1991 water accord, no project relating to the distribution of Indus water can be planned until the matter regarding the release of water downstream of the city of Kotri is finalized. But despite that, neither a study has been conducted with respect to the discharge of water downstream of Kotri as envisaged in the 1991 accord nor has water been released as per agreement. As a result of this and the rising the sea levels major parts of two districts of Sindh, i.e. Thatta and Badin, have almost been destroyed and not only tens of thousands of acres of cultivable land have become brackish and rendered unfit for cultivation, but concerns for environmental pollution have to be voiced as well. Additionally, 2.900.000 acres of riverine land are being destroyed. The existence of these lands, forests and grazing grounds has been dependent on the flooding by the river Indus and the flood water usually stays there for three months, namely July, August and September. In case of a shortage

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<sup>51</sup> Comp. Palijo, Rasul Bux. *Sindh-Punjab Water Dispute 1859-2003*. Hyderabad: Center for Peace and Human Development, 2003.

of water, these areas do not get the required moisture and fertility needed for the germination and nourishment of the crops. It is worthwhile to mention that this area is very important from the economic point of view due to its yield of wood, vegetables and ensuring the livelihood of about 1.3 million people.

Last but not least, even the *Avicenna* species in the mangrove forests located in the Indus delta is endangered. According to IUCN and some other environmental agencies these was the world's sixth largest contiguous mangrove forest, which covered an area of 650,000 acres till 1990. A study report was released by IUCN in this respect in the year 1991, in which it was stated that the safety and development of the Indus delta is inevitable for the environment, economy and development of Sindh. These mangrove forests are continually being destroyed due to the non-release of water downstream of Kotri, and if this situation persists, the sixth largest contiguous mangrove forest of the world will be completely destroyed within a few years.

At the place where the river water enters into the sea, there was dense mangrove forest spread over 650,000 acres which has shrunk to 100,000 acres. The environmental and economic value of this forest is enormous because it serves as the nursery of Jheengo (Prawn) and Palo fish. Besides it is a fertile grazing ground for the animals of southern Sindh, particularly the camels. It also provides large resources of fuel for the local people. The source of living of approximately two million people residing in the entire area depends on these sea and sweet water fish, wood, domestic animals and fuel wood. All these precious resources are getting destroyed now due to scarcity of water.

Water dispute is a persistence danger for the federation and a major source of conflict among the provinces which could be resolved on basis of federal principles and international laws regarding water sharing. Since IRSA has virtually failed to ensure fair water distribution among the provinces, CCI can play a significant role after the passage of 18<sup>th</sup> Constitutional Amendment.<sup>52</sup>

## **6 Conclusion**

The federation of Pakistan has become mired in crisis. Theories abound of where Pakistan's future lies. Pakistan is described alternately as a 'failed state', 'a nursery and asylum for terrorists', or a 'satellite state' governed and exploited by world powers pursuing their own selfish interests. A variety of conflicts between the people and the state are raising at an alarming pace, fueled by anger over bad governance, lack of basic service provision, and a growing radicalization in Pakistan. Even with the relatively empowered parliament, independent judiciary, free media and vibrant civil society, Pakistan has yet to fully right itself on the path to substantial democracy and democratic federalism based on a complete autonomy for the constituent federating units. Democratic changes, while deceptively attractive, are merely a superficial façade painted over fractured rule. Little doubt remains on the sheer ineptness and ineffectiveness of democratic institutions. The pendulum of public

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<sup>52</sup> Comp. Davis, Ralph K. Report for 2003AR57B: Analysis of Water Conflicts in Pakistan and the Middle East - A Comparative Study. U.S. Geological Survey. 2003. Comp. as well Ul Haq, Dr. Noor (ed.). "The Indus Waters Treaty (Abridged) September 19, 1960." In *Water Issue in Perspective*. Islamabad Policy Research Institute (<http://ipripak.org/factfiles/ff45.shtml>).

opinion once again may have swung back in favor of a civilian government (conforming to the historical cycles of civil-military relations), but the military and security services refuse to cease their unlawful intervention in power politics.

The consequences of a unitary federalism continue to devour at the foundations of the state. External observers have failed to analyze one of the most pressing dynamics in Pakistani politics, that of internal tensions surrounding provincial autonomy and the distribution of authority among the provinces and the federal government. Whatever remained of the hollowing out of federalist structures was badly damaged by the Musharraf regime; substantial democratic federalism in Pakistan remained a dream. Smaller provinces are infuriated by the denial of diversity, the status of indigenous languages of federating units, the construction of the unconstitutional greater Thal Canal, unjust NFC awards, the unequal distribution of royalties from natural resources, the continuous military operation in Baluchistan and above all the lack of a new social contract between people and state and among the federating units. Many fear that the conflicts among the provinces and among various sections of society have now left the phase of peaceful opposition and entered into strong, possibly violent, resistance.

Even the most destabilizing situation in Pakistan's short history of independence, the split of Bangladesh, pales in comparison to the challenges the current administration faces. Each rift in the state's flimsy fabric – regional, ethnic, linguistic, and religious – adds another complex dimension to the ongoing crisis. Citizens have matured politically, departing from Islamist and fiercely anti-Indian ideologies in

favor of democratic and positively moderate platforms. Perfunctory promises of reform and renewal no longer placate growing unrest; people across the country readily fill the streets in protest of the failed leadership. Further limited in policy options, the civilian governments, irrespective of their leadership, must adopt an approach that eases the inter-provincial conflicts that lies at the heart of Pakistan's struggle. Without urgent action, the existential noose around the state's feeble institutions, tightened by mistrust, isolation, and an indefatigable insurgency, will completely strangle Pakistan's hopes for democracy and an inclusive and prosperous future.

## **7 What should be done?**

The analysis provided in this paper merits the question of what should be done. Rarely in history do opportunities present themselves to reverse the crimes, erroneous decisions, and short-sightedness of an oppressive class. When instances do arise, strong leaders, including in Pakistan, can change the political course of a country by persisting in their drive for democratic institutions. We must return Pakistan to the state promised and outlined in the 1940 Lahore Resolution. The exploitation, manipulation, and autocratic enslavement of the people must end. This is the time to draw a line. The people of Pakistan, especially from the smaller provinces and oppressed nationalities, strongly believe that genuine federalism and real provincial autonomy can only be achieved by honoring the following recommendations:

- The federation of Pakistan needs a new social contract between the federation and the provinces and among the provinces. The 1973 constitution could work for an interim period leading to a new constitution based on the spirit of the 1940 resolution and best

inclusive federal practices through a new elected constituent assembly. The new constitution will work as a new social contract among the people and constituent federating units of Pakistan.

- 18<sup>th</sup> Constitutional Amendment should be fully implemented in letter and spirit
- A Constitutional Court should be established at federal level to protect the integrity of the new Constitution and adjudicate over inter-provincial/federal relations.
- The military should have no role and stake in politics and public life. The armed forces should be downsized and should have equal representation from all the respective provinces.
- Pakistan's defense budget is not transparently made and spent; therefore it should be put before the upper and lower houses of parliament for open discussion and final approval as well as presented before all four provincial assemblies.
- FATA and FANA should become part of Khyber Pashtunkhwa
- Pakistan has become a structurally imbalanced federation after the separation of East Pakistan. One province dominates all the state institutions and enjoys an absolute majority in the parliament over the other three provinces. This concentration of power in the executive branch has emerged as a major source of conflict in Pakistan. The viable solution could be to empower the senate, ensuring that the provinces have equal numerical representation and relative influence.
  - Senators should be directly elected by the populace.
  - The Senate must have the power to pass or veto budget, defense and monetary bills as well as to approve treaties with foreign states.
  - All federal appointments must be confirmed by Senate committees – including Supreme Court judges, the chief election commissioner, members and chairman of federal public service commissions, ambassadors, heads of

- autonomous bodies and corporations, governors, and the chiefs of the armed forces.
- Citizen of one province should not have the constitutional right to become member of Senate from other provinces, because the Senate is essentially a territorial chamber of parliament.
  - The unfinished agenda of land reforms must be completed with special reference to the distribution of army lands to poor tenants and women.
  - All the indigenous languages of Pakistan - Punjabi, Sindhi, Pushto, Balochi, Siraiki, Hindko and others - should be given the status of national languages.
    - Urdu and English should remain the official languages of inter-provincial communication.
    - Provincial governments should be able to devise and implement education and language policies according to their own preferences.
  - The present arrangement, whereby the National Finance Commission award is distributed mainly on the basis of population figures, should be reformed with the 8<sup>th</sup> NFC award. The allocation of the NFC awards should be instead decided through an index of the following mix of criteria:
    1. Population
    2. Revenue generation capacity
    3. Disparities in development as measured by the Human Development Index (HDI), inequality (GINI coefficient), and incidence of poverty in the provinces
    4. Level of per capita income in comparison to the other provinces
  - Water conflict has become a key source of conflict in Pakistan. Sindh is the lower riparian of River Indus and all its tributaries. The constitution of Pakistan and international law confers inalienable rights to the lower riparian. The Province of Sindh along with KPK and Baluchistan has opposed further cuts on the Indus River and its

tributaries through dams, canals and barrages that divert water without the consent of the lower riparian areas. All controversial mega projects such as large dams and canals to be built upstream on the Indus River should be shelved.

- An equitable distribution of irrigation water among all provinces should be instituted. At present, Punjab forcibly appropriates a major and disproportionate share according to the formula of 1994, while ignoring the 1991 Water Accord and the 1945 Agreement negotiated at the time of British Raj.

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# **Federalism, Ethnicity and Sub-National Identity in Pakistan**

*Sayed Wiqar Ali Shah*

## **1 Introduction**

I will be focusing on federalism<sup>53</sup>, ethnicity and sub-national identities in Pakistan. To refurbish the 1973 Constitution, recently some major

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<sup>53</sup> Federalism has been conceived by Raza Rabbani as a compact or agreement. 'In a federal form of government', according to him, 'different political units are bound together, with power distributed between the central government and the Provinces. Of all governmental systems, federalism is best suited to modern society. It ensures national unity while preserving the diversity and distinctiveness of provincial entities. Through sharing of power and resources, the responsibilities and benefits of democracy are made available to all'. He further stated that 'Federalism has thus far been poorly understood in Pakistan. It is a system that respects diversity, promotes pluralism, and balances national with state powers. Federal governments promote stronger institutions and better laws, and they re-

clauses were incorporated in the Constitution of Pakistan. This has been regarded as an appropriate step moving in the right direction to achieve stability in the political system and overall Pakistani society. However, despite proving it beneficial for the major ethnic communities in Pakistan, some quarters showed their indignation over its adoption and initiated a campaign for new provinces on ethnic and geographic basis. In the present research I will be providing details of the various experiences of federalism, the ethnic issues which are inter-related with the centre-province relations and also will discuss some of the sub-national movements and the role of their leaders who are unhappy over the passage of these constitutional amendments and try to sabotage it on various pretexts. For the convenience of the participants/readers I have divided my presentation into three sections. Firstly, I will provide a brief historical account of centre-province relations in Pakistan, of course within the context of federalism. I will critically analyse the factors responsible for the 'failure' of the centre to create harmony between the different federating units and its repercussions on the country. In the second part I will focus on the current situation in Pakistan where recently federalism was implemented in its true form and spirit giving importance to ethnic issues while taking into consideration the ground realities and the resurgence of sub-national identities. This has changed the whole scenario of the centre-province

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sult in viable economies. In order to function properly, this form of governance relies upon checks and balances in administrative structures, as well as within the body politic', which he inter-twined with 'nurturing a truly democratic political culture'. Mian Raza Rabbani, *A Biography of Pakistani Federalism Unity in Diversity* (Islamabad, Leo Books, 2012), pp. 14-15.

relations and invited mixed reaction at various levels. In the present paper, I will also elaborate upon the latest centre-province relations with its far reaching positive impact upon the Pakistani society bringing it at par with other South Asian neighbours who are practicing it successfully since decades. In the third part I will be giving some recommendations which, if adopted, would recuperate the federalism in Pakistan thus bring stability to the political system in the country and will resolve the issues pertaining to sub-national identities in Pakistan.

Before discussing the historical background of the centre-province relations in Pakistan, let me clarify that it is difficult to comprehend that while discussing the federalism in South Asia, why the scholars are always comparing the European models of federalism with Pakistan. There are stark differences between the European models and the situations in Pakistan. There are no military dictatorships and frequent martial laws in Europe to disrupt the system as being witnessed in Pakistan. Moreover, the political leadership of Pakistan also played havoc with the democratic institutions thus blocking the true spirit of federalism in the country.

## **2 Historical Background**

The All-India Muslim League struggled for the creation of Pakistan and achieved independence in August 1947. On assuming authority after the predicament of the Partition (August 1947) they showed their determination to rule Pakistan single-handedly and this created problems and dissent. The ethnic diversity in Pakistan was ignored. Pakistan was comprised of five distinct ethnic communities. They included the Bengalis (55%), the Punjabis (27%), Pashtoons (7%), Sindhis (6%), and Baloch (1.2%). Instead of considering this ethnic

diversity as strength for Pakistan it was taken otherwise. It was decided that a strong centre was necessary for this ethnically and geographically fragmented society. The Muslim League leadership tried to make it a 'one party state'. They believed in 'one nation, one religion, one country and one party'. The state and government, two different things, were intentionally mixed together. In their opinion, opposition to the government was tantamount to opposition to the state, which obviously was difficult to tolerate. They put forward the argument that various ethnic/provincial leaders opposed the creation of Pakistan. Now after independence, how could they be trusted to be true Pakistanis and how could power and responsibility be shared with them. On the contrary, the majority of the leaders who opposed Pakistan tried to persuade the League leadership to forget the past and concentrate on the future. They believed that what's gone is gone and tried to convince the people that for the betterment of Pakistan they should work together in peace and harmony and should trust each other. But no one paid any heed to these voices and the mutual relations remained strained for many years to come. When these leaders tried to form a genuine opposition to check the League hegemony in the country, they were not allowed to do that. The Leaguers opposed them to an extent that the opposition was not even allowed to form a single political party.

Fact is that a strong centre in a federation could only be tolerated if accompanied by democracy. In Pakistan, during the initial years, unfortunately the true spirit of democracy was missing; this created political vacuum which invited non-democratic forces who played their ugly role in destabilising the democratic institutions. Ignoring the ethnic issue further aggravated the already tense situation which alienated many ethnic communities who came out openly demanding their rights

from the centre. Instead of giving any attention to their demands, they were dubbed as traitors to the country and were accused of patronising the parochialism. The centre tried to enforce its 'Pakistaniat' upon the federating units but they resisted it with resilience and termed it as 'draconian measures' of the centre, aimed at sowing discord and dissent amongst various federating units of the country. They condemned all such measures of the centre and remained firm in demanding full provincial autonomy on the basis of the Lahore Resolution<sup>54</sup>.

Some scholars regarded the death of M. A. Jinnah, the founder of the country, as a setback for the national unity. According to them, after his death provincialism made its headway. "Geographical, cultural and linguistic differences", opined Mehrunnisa Ali, "became dominant as was apparent from the constitutional controversies over the problems of language, representation and division of power."<sup>55</sup> Jinnah was also opposed to provincialism. He condemned it on many occasions and warned people that if they follow provincialism, it would surely play havoc with the unity of Pakistan. According to Jinnah, after their failure in preventing the establishment of Pakistan, its frustrated enemies

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<sup>54</sup> The All-India Muslim League in its Lahore session, held on 22-24 March 1940, adopted the famous Pakistan Resolution which clearly stated that 'geographically contiguous units...should be so constituted with territorial readjustments' so that areas in which 'Muslims are numerically in a majority should be grouped to constitute into independent states in which the constituents units are autonomous and independent'. Ayesha Jalal (edt), *The Oxford Companion of Pakistani History* (Karachi, Oxford University Press, 2012), p. 308.

<sup>55</sup> Mehrunnisa Ali, *Politics of Federalism in Pakistan* (Karachi, Royal Book Company, 1996), p. 126.

“have now turned their attention to disrupt the State by creating a split amongst the Muslims of Pakistan. These attempts have taken the shape principally of encouraging provincialism.

As long as you do not throw off this poison in our body politics, you will never be able to weld yourself, mould yourself, galvanize yourself into a real true nation. What we want is not to talk about Bengali, Punjabi, Sindhi, Baluchi, Pathan and so on. They are of course units. But I ask you: have you forgotten the lesson that was taught to us thirteen hundred years ago? If I may point out, you are all outsiders here. Who were the original inhabitants of Bengal — not those who are now living. So what is the use of saying ‘we are Bengalis, or Sindhis, or Pathans, or Punjabis’. No we are Muslims.

Islam has taught us this, and I think you will agree with me that whatever else you may be and whatever you are, you are a Muslim. You belong to a Nation now; you have now carved out a territory, vast territory, it is all yours; it does not belong to a Punjabi, or a Sindhi, or a Pathan, or a Bengali; it is yours. You have got your Central Government where several units are represented. Therefore, if you want to build up yourself into a Nation, for God’s sake give up this provincialism. Provincialism has been one of the curses; and so is sectionalism — Shia, Sunni etc.”<sup>56</sup>

Apart from many other grievances, including the distribution of a share in services, the provision of adequate jobs, the shifting of naval

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<sup>56</sup> *Quaid-i-Azam Mohammad Ali Jinnah: Speeches and Statements 1947-48* (Islamabad, Directorate of Films & Publications, Ministry of Information & Broadcasting, Government of Pakistan, 1989), p. 181.

headquarters to East Pakistan and a share in the armed forces of Pakistan, the Bengalis were particularly indignant over making Urdu as the State language in Pakistan. Keeping in view their population ratio and the rich heritage of their language, they demanded from M. A. Jinnah to declare Bengali as the official language of Pakistan. The Centre did not accept this demand and Jinnah during his official visit of East Pakistan in March 1948 made it clear that the “State Language of Pakistan is going to be Urdu and no other language.” He further stated that “[w]ithout one State language, no nation can remain tied up solidly together and function.”<sup>57</sup> Three days later he reiterated it again on the occasion of the Convocation at the Dhaka University that there would

“be only one *lingua franca* that is, the language for inter-communication between the various provinces of the State, and that language should be Urdu and cannot be any other. The State language, therefore, must obviously be Urdu, a language that has been nurtured by a hundred million Muslims of this sub-continent, a language understood throughout the length and breadth of Pakistan and above all, a language which, more than any other provincial language, embodies the best that is in Islamic culture and Muslim tradition and is nearest to the language used in other Islamic countries.”<sup>58</sup>

On the demand that both Bengali and Urdu should be the State Languages of Pakistan, he declared “[m]ake no mistake about it. There

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<sup>57</sup> Speech at a public meeting at Dhaka on 21 March 1948, *ibid.* p.183.

<sup>58</sup> *Ibid.*, p.194.

can be only one State language, if the component parts of this State are to march forward in unison, and that language, in my opinion, can only be Urdu.”<sup>59</sup>

The non-acceptance of the demand of the Bengalis to adopt Bengali as the official language in Pakistan led to further polarisation. Probably at this stage the majority people in East Pakistan felt themselves marginalised and alienated. The pestered Bengalis accused their fellow countrymen in West Pakistan of showing indifference and apathy towards them. They started devising other ways and means to achieve their objective and organised student community to press for the demand of recognition of Bengali as a State language and finally their abhorrence culminated in the gruesome language riots of February 1952, taking many lives at Dhaka University.<sup>60</sup> The language issue further aggravated the existing grievances of the Bengalis against West Pakistanis and it finally culminated in the dismemberment of Pakistan in December 1971.

### **3 ‘One Unit’ and its repercussions on Pakistan**

Before analysing the various Constitutions of Pakistan and their addressing the issue of federalism in the country, let me very quickly elaborate upon ‘One Unit’ and its repercussions on Pakistan keeping in view its relevance to the Centre-Province relations. It caused a sense of

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<sup>59</sup> Ibid.

<sup>60</sup> For further details see Tariq Rahman, *Language and Politics in Pakistan* (Karachi, Oxford University Press, 1997), pp. 77-102.

deprivation among the smaller provinces of Pakistan and they felt that to please the Punjab, they were denied their basic rights and were kept apart from the power sharing process. It created hatred against Lahore, the provincial capital, which was taken as a new symbol of dictatorship by the smaller provinces. The unity of Pakistan was torn asunder by enforcing it against the will of the smaller provinces.

'One Unit' was the popular phrase used to describe the proposed integration of all areas in the western wing into one province of West Pakistan. The roots of the 'One Unit' scheme were traced into the ill-founded fear of the Bengali domination, which did not have a wide margin of numerical majority, were economically weak, and without control over any important levers of the state power. The scheme was seriously taken up by the Governor-General Ghulam Mohammad, the Interior Minister and later acting Governor-General Iskander Mirza and the then Commander-in-Chief (C-in-C) of the Armed Forces, General Mohammad Ayub Khan. They implemented it with the co-operation of some politicians from Punjab, using 'draconian' measures against the resistance of a large number of politicians from the smaller provinces, particularly the North-West Frontier Province (N-WFP), renamed as Khyber-Pashtoonkhwa and Sindh, opening a dark chapter in the political history of Pakistan. Instead of achieving national integration, its avowed objectives, the scheme sowed the seeds of alienation and discord between the Punjab and the smaller provinces. The scheme, according to some political scientists, also contributed largely to the imposition of the first martial law in Pakistan because the president and the C-in-C were afraid of the resumption of the political process, particularly the general elections in Pakistan. In the wake of the elections they saw the restoration of the provincial autonomy, although on a very small scale,

but it did not fit into ‘their’ concept of the strong Centre, they wanted in Pakistan.

The tradition of the strong Centre established from the early years of Pakistan continued unabated and found its place in the three Constitutions of 1956, 1962 and 1973 respectively. According to Jaffar, “[t]he Constitutions of 1956 and 1962 did not reflect the desires of all regions while the Constitution of 1973, despite being accepted by a wide segment of national and regional leadership, failed to ensure provincial autonomy and promote national integration”.<sup>61</sup> As a result, Mehrunnisa opined, “regionalism flourished causing federal imbalance in subsequent years.”<sup>62</sup> The trend of more powers to the Centre was given a boost by the Ayub Khan Regime. He believed that “a strong centre and rapid economic development could hold together the two geographically distant and culturally diverse provinces.”<sup>63</sup> However, the subsequent events proved the contrary. Despite his reliance upon the strong Centre, he did not succeed in redressing the grievances of the majority of the people in East Pakistan who expressed their solidarity with Shaikh Mujeeb ur Rehman’s Six Points demanding full provincial autonomy from the Centre for the federal units. Mujeeb ur Rehman was arrested, accused of destabilising the country and sentenced in the Agartala Conspiracy Case. The arrest of Mujeeb saw a recrudescence of

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<sup>61</sup> Syed Jaffar Ahmad, *Federalism in Pakistan A Constitutional Study* (Karachi, Pakistan Study Centre, University of Karachi, 1990), p.42.

<sup>62</sup> Mehrunnisa Ali, *Politics of Federalism in Pakistan*, p. 178.

<sup>63</sup> Ibid. p.131.

demonstrations against the Ayub Government which soon engulfed other parts of Pakistan and eventually resulted in Ayub's ouster from power.

Let me take a pause here: above, I have argued that the military alone should not be made responsible for acting against democratic processes and that civilians/politicians also should be castigated for their playing a negative role in the whole scenario. Mehrunnisa also supports this view and argues that the Z. A. Bhutto regime (1971-1977) favoured central ascendancy and executive despotism. The author, however, appreciates the role of politicians in furthering a consensus document in the shape of 1973 Constitution, wherein the future relations between Centre and the provinces were given a new look. The residuary powers were granted to the provinces. To move further towards more provincial autonomy it was also decided that there would be an equitable sharing of resources between the Centre and provinces, an act appreciated by many. Despite high hopes from many quarters the fact remained that it lacked a mechanism for guarantees against the federal violations. Still the centralist trend of strengthening the executive against the other State institutions was seen. As was evident from the later years, the Prime Minister's office became the most powerful office in the country and the president was reduced to a rubber stamp, a fact also confirmed by other political scientists. According to Mehrunnisa, the

“Prime Minister's ascendancy vis-a-vis the President and the National Assembly was ensured by the Prime Minister's power of countersigning the latter's orders and by the limitations imposed on the Assembly's power of vote of no confidence against the cabinet. Not content with the constitutional provisions and his Party's majority in the Assembly, Bhutto consolidated his hold by amendments to the Constitution, thereby further impairing the position of the Assembly and the

Judiciary. The amendments restraining the power of Judiciary, continuation of emergency, retention of the Defence of Pakistan Rules and a number of ordinances curtailing civil liberty and freedom, and the power to dissolve political parties, all speak of his authoritarian style. Being an elected leader with a considerable majority in the Assembly, Bhutto could have survived without resorting to much harsh measures if he had tolerated the voice of dissent. Like Ayub Khan, he too believed that political stability and national unity could be achieved by a strong Centre.”<sup>64</sup>

For this reason the Centre was given a free hand in the interference of provincial matters and the “provisions concerning regional autonomy were violated, evaded or not fully implemented in the latter.”<sup>65</sup> Interestingly, the same document (i.e. the 1973 Constitution) has been amended in the recent past and provisions regarding the provincial autonomy being implemented in its true spirit thus bringing a positive change in the Centre-province relations which will be further discussed later on.

#### **4 Pashtoonistan Issue**

While taking into consideration the ethnic issues in Pakistan which are closely linked with the federalism, one must not forget that the Pashtoons as a major ethnic community are divided into three<sup>66</sup> main

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<sup>64</sup> Mehrunnisa, *Politics of Federalism in Pakistan*, p. 132

<sup>65</sup> *Ibid.* p. 134

<sup>66</sup> In November 1893 the Durand Agreement was signed between the British India and Afghanistan. By this agreement, the spheres of influence were determined between British India and Afghanistan. Giving no heed to the national interest,

divisions. Around ten million Pashtoons live in Afghanistan, about eight million Pashtoons live in the settled areas of Khyber-Pashtoonkhwa and Balochistan, more than two millions in Karachi, and about four millions are the permanent residents of Federally Administered Tribal Areas (FATA). Their vital national, economic, cultural and political interests are inter-woven to the extent that it has become proverbial that peace and tranquillity of Kabul is linked with the stability in Peshawar. These people are knitted together by their common language Pashto. In addition to the same language, they are having the same religion and shared the same customs throughout the long period of history.

Keeping in view certain limitations of time and space I will not indulge myself further in discussion over their glorious past but will elaborate upon the second half of the twentieth century, when they were confronted with the major ethnic issues which posed a direct threat to their 'distinct' identity in Pakistan and which is relevant to our present discussion on ethnicity and sub-national identity in Pakistan.

Pashtoonistan has been variously described by different people relative to their respective political agenda: as an independent sovereign state, a province of Afghanistan or an autonomous province within Pakistan.

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integrity or oneness of the Pashtoons they were divided into three separate political and national entities. One became part of the British Indian Empire, one was kept under the Amir of Afghanistan and the third part was declared as 'Yaghistan' or no-man land which eventually became the independent tribal territory. The line separating these parts is known as the Durand Line. Since then it has received the de facto recognition as an international frontier between Pakistan and Afghanistan.

Only the last one gives the real truth. Although no one can predict when the real objective of the Pashtoons will be fulfilled and their dream of an autonomous province within Pakistan having full provincial autonomy be realised, at least the major demand of re-naming the province as Pashtoonkhwa and the education to the children in their own language, Pashto, has been granted with the implementation of the 18<sup>th</sup> Amendment to the Federal Constitution recently. The two other definitions of Pashtoonistan (i.e. Azad Pashtoonistan and Pashtoonistan as a province within Afghanistan) seem totally absurd and irrelevant. No one gave any serious consideration to these two options. As a social scientist, after careful analysis of the historical data and facts, and going into the whole imbroglio, I can say with pertinacity that the Afghan authorities exploited the sentiments of the Pashtoons on both sides of the Durand Line on this issue and were not sincere in its actual implementation. To put extra pressure on Pakistan, which aligned itself with the USA during the Cold War era (1950s and 1960s), against the Soviet Union, they orchestrated their support for Azad Pashtoonistan. Even then the territorial boundaries of the so-called independent Pashtoon state were not clearly demarcated. No one knew exactly whether the intended free Pashtoon state would include the areas inhabited by Pashtoons in Pakistan plus the tribal areas or additionally the Pashtoon belt of Afghanistan.

As is evident from the many speeches and statements of the Pashtoon nationalist leaders, none of them talked about secession from Pakistan. They have been insisting from the very beginning that they should be

given equal rights because they wanted to live at par with the other people living in Pakistan.<sup>67</sup> It is a pity that they were branded as traitors and were accused of being friends of India and Afghanistan who wanted to destabilise Pakistan. The demands of full provincial autonomy and their democratic rights of self-determination, the development of their culture and language and their demand for the removal of disparity were linked with their previous record of opposing the creation of Pakistan. They were time and again dubbed as disruptionists and disloyal to Pakistan. The centrifugal forces at centre remained alert of the 'nefarious designs' of the provincial leaders and missed no opportunity to suppress the demands of provincial autonomy on various pretexts. For decades Pakistan was under martial law regimes, which were least interested in granting provincial autonomy to the federating units.

## **5 The 18<sup>th</sup> Amendment of April 19, 2010**

The 1973 Constitution came into effect on the August 14, 1973. The Constitution is federal and parliamentary in character. The preamble of the 1973 Constitution states:

“[T]he territories now included in or in accession with Pakistan and such other territories as may hereafter be included in or accede to Pakistan shall form a Federation wherein the units will be autonomous

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<sup>67</sup> Mohammad Said Khan quotes famous Pashto poet and nationalist leader Abdul Akbar Khan Akbar's words that we want 'the reflection of the Pukhtoon entity in the country's constitution, the province where we live to be named Pukhtoonistan (the land of the Pukhtoons) and good education for our children in our language Pushto.' Mohammad Said Khan, *The Voice of the Pukhtoons* (Lahore, Ferzsons Limited, 1972), pp. 18-19.

with such boundaries and limitations on their powers and authority as may be prescribed.”<sup>68</sup>

It became a consensus document and despite certain reservations, the leaders of even the opposition political parties supported it. The emergency provision, in the Constitution, however, gave Z. A. Bhutto an upper hand. Bhutto, in spite of his being a charismatic leader, was as much a ‘centralizer’ as previous Pakistani rulers. He misused his authority, exploited the emergency powers against his political opponents. National Awami Party (NAP), which represented the aspirations of the people of Balochistan and the former N-WFP became the main target of his high-handedness. The leaders of the party were accused of preaching secessionism. The NAP provincial Government of Balochistan, was dismissed on flimsy charges and their demand of more provincial autonomy was interpreted as destabilising Pakistan. As a protest the NAP and Jamiat ul Ulama coalition Government of the Frontier also resigned and this triggered off another political crisis in Pakistan. To suppress the resistance movement, termed as ‘insurgency’ by the Centre, army was sent to Balochistan, one of the most backward areas of Pakistan. The army, which had been severely weekend in the aftermath of the 1971 crisis, once again was placed at the central stage, to the chagrin of many, this time by a ‘populist’ civilian ruler. The conflict in Balochistan where the army was sent further alienated the Baloch who suffered enormously during the next few years. According to a careful observation it has been estimated that “it was not a war aimed

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<sup>68</sup> Rabbani, A Biography of Pakistani Federalism, p. 95.

to create a separatist Baluchi state, it was merely an attempt to hold the centre to a commitment on federalism.”<sup>69</sup>

Further discussion upon these amendments are out of the purview of the present research. Therefore, I will restrain myself to the relevant clauses of 18<sup>th</sup> Amendment of the 1973 Constitution. The constitution was many times amended by both Parliament and military dictators and its true spirit has been changed/perverted. The latest amendment (i.e. the 18<sup>th</sup> Amendment) is an effort to “cleanse the supreme national legislative instrument of the distortions and unlawful conversion of a parliamentary form of government into a quasi presidential one and that, too, by concentrating maximum power and discretion in a few constitutional offices.”<sup>70</sup> Major changes were made in the Constitution under the 18<sup>th</sup> Amendment. The concurrent legislative list was discarded. Eighteen Federal Ministries have been deleted from the federal list and handed over into provincial control. The provinces, following the true spirit of a genuine federalism, have been empowered to control and benefit from their own resources (i.e. hydro-electric power, thermal power, natural gas, oil and minerals).<sup>71</sup> In the following, I will confine myself to its relevance to ethnicity and sub-national identities in Pakistan.

One of the most remarkable achievements of the 18<sup>th</sup> Amendment, besides the granting of provincial autonomy is the renaming of the

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<sup>69</sup> Katharine Adeney, ‘Democracy and federalism in Pakistan’, in Baogang He, Brian Galligan and Takashi Inoguchi (eds), *Federalism in Asia* (Cheltenham, Edward Elgar Publishing Limited, 2007), p. 114.

<sup>70</sup> Rabbani, *A Biography of Pakistani Federalism*, p. 137.

<sup>71</sup> For full details see Rabbani, *ibid.* pp. 137-276.

North-West Frontier Province as Khyber-Pakhtunkhwa. As discussed earlier, the Pashtoon nationalist perspicuously demanded the grant of full provincial autonomy to the federating units within Pakistan. Instead of conceding their demand, they were labelled as 'fifth column', recreants and traitors to the country, who, on the behest of India and Afghanistan wanted to create discord and disharmony amongst the people of Pakistan. The authorities at the Centre missed no opportunity to tarnish their image in Pakistan. Even their role in the freedom movement of South Asia against colonialism was intentionally not included in the history/curriculum books, written immediately after the creation of Pakistan. Their ordeal did not end here: they were incarcerated and imprisoned. The Muslim League leaders, both at the centre and provincial levels, abhorred them, and tried their utmost best to prove their alleged secret links with the enemies of Pakistan. Since they were portrayed as enemies of Pakistan, their suppression was considered to be a sacred duty of the Pakistani authorities. However, despite this pungent attitude and poisonous propaganda, leaders from the smaller provinces in Pakistan remained adamant in their demand of full provincial autonomy.

In the N-WFP, a new demand was added to the previous list: re-naming of the province. The main argument for the change of name was that after 1947 all the five provinces of the then Pakistan were frontier provinces, bordering various countries. After the dismemberment of Pakistan in December 1971 the situation remained the same. The name N-WFP in itself, the Frontier nationalists argued, does not represent the true aspirations of the people who live here nor does it explain the ethnic identity of the local population. In their polemics, they simply termed it as geographical name given by the colonial masters in 1901

when it was genuinely a Frontier province. It was then the North-West Frontier Province of the British Empire. But after gaining independence the Pakistani authorities still stuck to the old colonial legacy. The other three provinces in today's Pakistan, they further argued, clearly represent the people and nationalities of the local population (i.e. the Punjabis live in the Punjab, Sindhis in Sindh and Baloch in Balochistan). But then why the Pashtoons were denied a name identical with their ethnic composition? Why was the government not taking interest in changing the old geographical name of the Pashtoon region? In the present Pakistan, they stated, all are frontier provinces. The Pashtoon area is bordering Afghanistan, the Punjab and Sindh are sharing their borders with India, Balochistan is sharing its border even with two countries, Afghanistan and Iran. So if one province is known as the North-West, the others should be called North-East or South-West in the same way. Otherwise, they demanded, give the Pashtoons their true identity in Pakistan. Since the word 'Pashtoonistan' was negatively used by the successive regimes in Pakistan to persecute the nationalists, and was linked with the riddles of Pak-Afghan relations, the Frontier people demanded that their province should be re-named as Pashtoonkhwa, a historical name of the region. While democratic forces in Pakistan supported the idea of renaming the province to dispel the impressions of being harsh towards the smaller provinces, it became an eye sore to many in the establishment. To sabotage the very idea moved by the Awami National Party, it was time and again argued by these people that names do not matter. Will it enable the jobless to get their employment? Will the poor people get their earning and sufficient livelihood if the ANP demand of renaming the province fulfilled? The anti-Pashtoon lobby unleashed their opposition and reminded the Pakistanis of the previous record of the fore-fathers of the ANP leadership who opposed the

creation of Pakistan and now once again wanted to destabilise it. But the nationalist in the Frontier province under the umbrella of the ANP who championed the cause of the re-naming of the province remained adamant to their demand and showed their resilience in getting a proper identity for themselves. Interestingly, this time apart from others, the Pakistan Muslim League (Nawaz Group) also indicated that they will not oppose the Bill. The provincial leadership took a sigh of relief on learning that Nawaz Sharif will lend his support because previously, in 1997, this became the major reason for the 'parting of ways' when they were coalition partners for a brief period. Since the last general elections (2008) the ANP was in a commanding position in the Provincial Legislature and the fifth largest party in the National Assembly. It mustered support for the re-naming of the province and was ready to place it for approval of the Parliament and President after its passage in the provincial assembly. However, after the passage of the resolution of re-naming the province in the Provincial Legislature, when it was ready for further action, Nawaz Sharif demanded the insertion of his favourite name for the province. The ANP leadership and the Frontier nationalist were shocked to learn that at the eleventh hour Nawaz Sharif, the leader of one of the biggest parties in Pakistan with a sizable number of legislators in the National Assembly, wanted to insert his option. As a coalition partner, the Pakistan People's Party, now in power, pledged their full support on the re-naming issue. Negotiations started which eventually resulted agreeing to one of the three suggested names (i.e. Pakhtunkhwa, Afghania and Abasin). The ANP leadership tried to develop consensus on Pashtoonkhwa, the historical name for the region. Eventually, a consensus has been formed on Khyber-Pakhtunkhwa. Nawaz Sharif insisted on the prefix of Khyber, to the surprise of many. Till day it remains a mystery why he insisted upon the

prefix of 'Khyber' because the famous Khyber Pass is also located in the Pashtoon region. Some suggests that probably he wanted to satisfy his electorates in Hazara who criticised him of bowing to the demands of ANP. After developing consensus on the new name, Khyber-Pakhtunkhwa, the ANP legislators moved the resolution to the National Assembly. There, it was adopted on March 31, 2010. After its passage in the National Assembly, it was sent to the Upper House, the Senate for approval which gave its formal approval on 15 April 2010 and after the final accent of the President of Pakistan, the former 'North-West Frontier Province' became 'Khyber-Pakhtoonkhwa'.

## **6 Sooba Hazara Movement**

The Pashtoons generally were overwhelmed and exuberant because of the re-naming of the province as Khyber-Pakhtunkhwa because the long cherished desire of getting an identity similar to the other ethnic communities of Pakistan living in other province being fulfilled causing a feeling of confidence because they had been recognised officially as having their particular ethnic identity. Some local leaders in Hazara vehemently opposed the re-naming of the province as Khyber-Pakhtunkhwa. Haider Zaman, former City Nazim of Abbottabad allured and organised people in the name of *Sooba* Hazara. A call of general strike was called on April 12, 2010. The mob showed their indignation on the re-naming of the province and demanded *Sooba* Hazara, a separate province for the people of Hazara. The refractory mob, the majority being pettish and young people, became violent and out of control. They moved towards a police station, obviously for ransacking it. To avoid being overpowered by the violent mob the police fired at the mob and killed seven people. This triggered more agitation for *Sooba*

Hazara. Before further discussion on the details of the Hazara movement and its leadership, it is pertinent to note the basis of their demands.

Hazara was the only cis-Indus district included in the North-West Frontier Province at the time of its formation as a separate province in 1901. It was argued by the British authorities that ethnic consideration was taken heed of before taking this decision. Apart from the Pashtoons, the other ethnic communities of Hazara are the Awans, Gujars, Jats, Tanaolis, Mughals and Dalazak. Besides Pashto, Hindko is the other main language spoken in Hazara. Interestingly many Pashtoon tribes like the Swatis are bi-lingual. During the last phase of the colonial rule, the majority of the people in Hazara, unlike other inhabitants of the province supported the policies of the All-India Muslim League and the demand of Pakistan. The Muslim League always found Hazara at the centre of League politics in the N-WFP. With Pakistan's independence, the people of Hazara were seen almost in every field of life. In 1976, Hazara was made a Division, comprised of the important towns of Haripur, Abbottabad, Mansehra, and Kohistan. Later on Battagram and Torghar were also added to the Hazara division. Important industrial and other income generating units in Hazara include the Tarbela Dam (a very big water reservoir with a huge capacity of power generation), the Hattar Industrial Area, the TIP (Telephone Industry of Pakistan), the Karakoram Highway (linking Pakistan with China) and the Pakistan Military Academy, Kakul. Out of a total of 24 districts of Pakhtunkhwa, six are in Hazara (namely Haripur, Abbottabad, Mansehra, Battagram, Torghar and Kohistan). The Hindko-speaking population dominates Abbottabad, Haripur and Mansehra while Battagram, Torghar and Kohistan are Pashtoon dominated areas.

After the tragic incident of April 12, 2010, the stalwarts of the Pakistan Muslim League (Quaid e Azam Group) supported Haider Zaman in championing the cause of *Sooba* Hazara. Other leaders who joined the protests – which by now were not only confined to Abbottabad but spread to Manshera and the adjoining areas – included Sardar Mohammad Yousaf, Sardar Shah Jahan, Gohar Ayub, Sardar Mohammad Yaqub and Ali Asghar Khan. The provincial government did not use further force to disperse the demonstrators in the hope that with the passage of time the sentiments of the agitators would cool down. They made it clear that while no one would be allowed to take the law in their own hands and to play havoc with the lives and property of innocent citizens, the people of Hazara have the right to peacefully struggle for Sooba Hazara. The provincial leadership of the ANP gave their own example by stating that they struggled peacefully, presented their case in a perspicuous manner for more than sixty years and eventually succeeded in getting their desired goal (i.e. re-naming the province as Pakhtunkhwa). They promised that the authorities will definitely give a sympathetic hearing to their legitimate demand, if made. They admonished the leaders of *Sooba* Hazara that they should not mislead the people and disturb the law and order situation and that they should rather muster support first in the provincial assembly and after its passage in the provincial assembly follow up with further necessary action. If the people of Hazara do not want to live in Pakhtunkhwa, they stated, it is their legitimate right to opt for their separate entity but only by following the democratic way. They conveyed a clear message to the leadership of *Sooba* Hazara that since the local authorities are already engaged and are struggling hard against the menace of fundamentalism and militancy posed by the presence of a large number of Taliban, al Qaida and their supporters in the region, they would not afford a surge

in violent protests at any cost. Therefore, the leadership in Hazara should follow altruism and not disturb the already volatile situation any further. To contain the movement to the Hindko-speaking areas of Hazara, on June 18, 2011, on 'popular public demand', the provincial government announced the formation of Abasin Division consisting of Battagram, Kohistan and Torghar districts. This was a severe setback to the *Sooba* Hazara movement because the population of the new division demanded that they should not be treated as part/supporters of the *Sooba* Hazara movement. They expressed their confidence and satisfaction with the present provincial setup, and showed their solidarity with the rest of the population of Pakhtunkhwa. Soon cracks appeared in the leadership at the top level and the leaders recriminated Haider Zaman of his solo flight for his own popularity and political gains without caring for his friends and well wishers. The proponents of the movement showed their resentment the way Haider Zaman was leading the people of Hazara. Probably disturbed by the latest developments when his leadership was challenged by other stake-holders of the Hazara movement, Zaman approached Muhajir Qaumi Movement (MQM) for their support. MQM immediately responded to the call of Haider Zaman and demanded the division of Pashtoonkhwa according to the wishes of Haider Zaman. Altaf Hussain, the leader of MQM gave statements in support of *Sooba* Hazara. On his directives, on January 2, 2012, the MQM legislators submitted a motion/resolution for the 20<sup>th</sup> Constitutional Amendment demanding the creation of *Sooba* Hazara. Haider Zaman appreciated the endeavours of the MQM and termed it as

a 'patriotic party'.<sup>72</sup> For political observers MQM did this for two reasons: firstly, to settle scores with the ANP who has challenges the MQM hold in Karachi and penetrated into its spheres of influence and which has been now understood as a potential threat to the MQM hegemony in Karachi; and secondly, the MQM wanted to win over the sympathies of Hazarwals, who constitute a sizable number of the population in Karachi.

With respect to the support for *Sooba* Hazara under the leadership of Haider Zaman and his associates, their movements are unlikely to succeed in the near future. There are no prospects for the division of Pakhtunkhwa on these lines because out of a total of twenty four districts, only three are desirous of getting out of Pakhtunkhwa and are demanding their own identity. The number of their legislators in the provincial assembly is not sufficient to change or approve a resolution in the House without the support of other legislators. This requires a sound home work and definitely needs both time and patience which unfortunately is missing with the present leadership of the *Sooba* Hazara.

## **7 Seraiki Sooba Movement**

In the Seraiki *Sooba* movement, Seraiki language plays a significant role. It has been taken as a symbol of a separate identity. Interestingly,

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<sup>72</sup> "I used to treat MQM as anti-State Party in the past", remarked Haider Zaman, "but when it stood by the people of Hazara over the Hazara Province demand, I changed my mind. Now, I consider MQM a patriotic party" (*Dawn*, Islamabad, November 16, 2012).

the main emphasis is upon a revival of culture which has been chosen as a unifying factor. The Seraikis are indignant over the poor treatment meted out to Seraiki language which was not given due recognition it deserved and unfortunately relegated to the status of a dialect of the Punjabi language. Since the 1960s leaders of the movement are creating awareness on the ethno-linguistic lines and are focusing on the Seraiki identity. The leaders are playing with the sentiments of a local population of more than 27 million spread out over 12 districts,<sup>73</sup> referring to accounts of alleged exploitation of South Punjab. Their case in point is the diversion of all developmental projects and funds to Central Punjab. The leadership at Lahore particularly has been portrayed as real villains because, according to Seraiki leaders, they feel satisfaction in the persecution of innocent people of South Punjab.

Recently the demand for a separate identity of the Seraikis got momentum. The recent leadership of the Pakistan Peoples Party (PPP) has been accused of playing with the sentiments of the people on this issue. Yusuf Raza Gilani, the former Prime Minister of Pakistan, is championing the cause of a Seraiki *Sooba*. He is pleading for Multan to be the future capital of a Seraiki province. However, a parallel campaign started to declare Bahawalpur as the capital of Seraiki province. On public demand, the Seraiki Commission, headed by Senator Farhatullah Babur, was formed, though not recognised by the Punjab Government, the major stake-holder in the matter. The Pakistan Muslim League

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<sup>73</sup> The districts are: Bahawalnagar, Bahawalpur, Bhakkar, D G Khan, Jhang, Khanewal, Lyyah, Lodhran, Multan, Muzaffargarh, Rahim Yar Khan, Rajanpur and Vehari.

(Nawaz) leadership has made it clear that they are opposed to the division of the Punjab on a linguistic and ethnic basis. However, they showed their willingness for the division of Punjab on an administrative basis. They are also pretty sure that the division of the Punjab in this way is not possible because before the presentation of a bill for the creation of new provinces in the Parliament, a two-third majority is required, which in this particular case will surely oppose the division. Unless the PML (N) supports the Bill there is no question that it would get through the Punjab assembly. The Muslim League leaders regarded it as a political gimmick of the PPP to befool the people of South Punjab and get their support in the forthcoming general elections. The PML (N) showed their resolve that they would oppose all such bills in the legislature because they are opposed to the division of the province on the PPP behest. The local leaders who were propagating/advocating the Seraiki cause for decades like Taj Mohammad Langah etc went into the background because now the issue has been taken by the major political parties and surely will be used as an electioneering symbol in the forthcoming general elections.

## **8 Recommendations**

Before concluding my paper, I would like to put forward some recommendations which I deem essential for the successful and smooth functioning of federalism in Pakistan:

- To clearly state the limits of authority of the federal government and the degree of provincial autonomy to avoid complications in the future.
- Some mechanism should be worked out to check the 'high-handedness' of federal government, if any, on provincial autonomy. The failure of such a mechanism in the past has given dictatorial powers to the

Centre which exploited its authority and threatened the smooth functioning of provincial government.

- Not to disturb the present allocation of seats in the Senate of Pakistan; bicameralism should continue in its present state.
- To give financial powers to the Senate which currently does not have any.
- To help continue the democratic process and to resist un-constitutional moves in this regard.
- To educate the people (through various channels) to demand and struggle for their rights in a constitutional way and not to resort to violence and disrupt the smooth functioning of the government by organising violent protest rallies etc. Pakistan is currently facing huge security problems – including the resurgence of militancy – and before this background the attention of the government should not be diverted from concentrated efforts to end the insurgency in the region.
- To implement political reforms in the Federally Administered Tribal Areas in their real shape and not to bow down to the pressure of the few corrupt, so-called representatives of the tribal people.
- To merge the FATA with the respective districts of Pashtoonkhwa.
- Equitable distribution of economic resources between the Centre and provinces should be made.
- The divergent ethnic groups should be educated about co-existence and tolerance, essential for the smooth running of federalism.
- To protect the 18<sup>th</sup> Amendment from being rolled back because recently concerns were shown by some parliamentarians that ‘invisible forces’ are out to sabotage the efforts of the democratic loving people of Pakistan and are busy in disrupting the whole gains of the 18<sup>th</sup> Amendment.
- To give special attention to the problems of Balochistan; to prefer dialogue and negotiations over using force and draconian authority in the violence hit province of Pakistan. A political solution of the whole scenario should be worked out by expressing confidence upon political

leadership and political parties, irrespective of certain reservation about the ability of these politicians to deliver.

## **9 Conclusion**

Federalism requires the distribution of authority between central, provincial and regional governments. In Pakistan, unfortunately, a genuine spirit behind federalism was missing for decades which eventually resulted in hatred against the strong Centre and the smaller units (i.e. the provinces). A strong Centre in a federation could be tolerated only if it is accompanied by a genuine democracy. The ethnic diversity in Pakistan was ignored and no one bothered to consider this diversity as a strength and not a weakness in Pakistan. It was contented that a strong centre is necessary for an ethnically and geographically fragmented society: Hence followed a negative attitude of League leaders towards the provincial leadership.

The strong-Centre phenomenon eventually led to the downfall of Muslim League in East Pakistan where it was reduced to a non-entity in provincial politics. The strong-Centre tendencies further paved the way for martial laws and non-democratic governments. It is a pity that the Constitutions of 1956, 1962 and 1973 pleaded for a strong Centre, although in the 1973 Constitution, smaller provinces were given representation equal to the bigger provinces (in the Senate) but without financial powers. Z. A. Bhutto, the first elected Prime Minister of Pakistan, who took pride in the presentation of a consensus document also believed in a strong Centre. This caused ruptures between the Centre and the provinces who demanded provincial autonomy based on the historic Lahore Resolution (1940), wherein autonomy was

guaranteed to all federating units of Pakistan, irrespective of their ethnic composition.

Divergent political views were not tolerated by Z. A. Bhutto, who dismissed the provincial assembly of Balochistan on an 'alleged conspiracy' against Pakistan, resultantly the provincial government in the N-WFP, led by the same party (i.e. the National Awami Party), resigned in protest. The movement for the granting of provincial autonomy was termed as secession movement and was regarded as 'insurgency' against Pakistan. Military was utilised to crush the opposition voices emerging from the smaller provinces on various pretexts. This was a serious setback to the true spirit of federalism and at the same time 'unleashing' forces against the process of democratization. Bhutto paid the price: his government was dismissed and he himself was assassinated.

Once against the brutal forces at the Centre played havoc with both the federal and the other democratic institutions. This added to the sense of deprivation among the smaller provinces who were struggling hard to achieve provincial autonomy. As noted, their voices were silenced by accusing them of being proponents of Azad Pashtoonistan, Sindhu Desh and Greater Balochistan. In the general elections of 2008, the people's representatives formed governments at various levels, both at Centre and in the provinces. To 'recompense' the democratic forces and institutions, the long outstanding demand of full provincial autonomy to the federating units was reconsidered. Hence followed the passage of the 18<sup>th</sup> Amendment which gave more confidence to smaller provinces who started considering themselves as partners and shareholders in the country. To provide more impetus to the demands for provincial

autonomy, the much discussed demand of the Frontier nationalists was granted and their province was re-named as Khyber-Pakhtunkhwa.

One of the immediate effects of the re-naming of N-WFP as Khyber-Pakhtunkhwa was the demand for the creation of Hazara province but there seems to be a long way to achieve this goal. In the Punjab, the Seraiki movement based upon ethno-linguistic basis, got a boost with the passage of 18<sup>th</sup> Amendment. Interestingly, the ruling PPP and its incumbent Prime Minister showed his whole-hearted support to the new Seraiki province while the PML (N) has opposed the division of Punjab on these lines and expressed their resolve to tackle it in the provincial legislature whenever it comes for approval. In the wake of the current scenario, when the general elections are fast approaching and surely will be a catalyst for change, the creation of Seraiki *Sooba* will be a test for the major political forces in Pakistan. The PPP has shown its determination for the creation of Seraiki *Sooba* while the PML (N) is opposing it at all levels. Which group will succeed in the end is a matter of time but some recent statements of the parliamentarians involved in the framing of the 18<sup>th</sup> Amendment show apprehensions that undemocratic forces want to roll it back, which really is a matter of great concern. The need of the hour is to protect the 18<sup>th</sup> Amendment and not to succumb to the un-constitutional politics of *dharnas*, recently witnessed in Islamabad, thus helping the democratic processes to continue, which is essential for the smooth running of federalism.

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# **Constitutional Reforms in Pakistan: federalism after the 18<sup>th</sup> amendment**

*Zafarullah Khan*

## **1 Introduction:**

Ideally, the constitution of a country epitomizes hopes and aspirations of the nation and serves as a social contract between the citizens and the state. The Constitution could be regarded as a “user manual for statecraft” (Nizamani: 2012). Authored in the spirit of history, culture, political experience and character of a populace, the constitution of a nation is the product of a design based on privileged political choices. Upon its adoption the constitution converts a regime to a republic and elevates the populace from being mere subjects to full-fledged citizens with substantive fundamental rights. It delineates jurisdiction and core competences of compositional units of the country. The constitution is also regarded as a living and organic documents as it can be amended through due process to accommodate ever changing political, social and economic context in the society.

## **2 Quest for the Constitution**

Developing an argument for the Constitution and constitutionality in a society like Pakistan that has spent sixty percent of its national life under either the military or hybrid regimes mentored by the powerful army is a difficult task. This is because as a nation Pakistan failed to cobble up a viable constitution during the first decade of its existence from 1947-1956. Later it experienced a high mortality rate of constitutions. The constitution of 1956, despite embedding many artificial stimulators like the Objectives Resolution (1949), the One Unit (1955) and Parity Formula (1956) failed to address core political concerns between then East and West Pakistan. The 1956 constitution died in a military coup in 1958 that pushed the nation in to a quagmire of crises. Later the 1962 Constitution centralized the federal dream of Pakistan. In 1969, it also perished along with its authoritarian author and its denial of legitimate constitutional rights, especially the originally promised provincial autonomy, and representative democratic parliamentary institutions. The failure to enact a viable constitution along with the continuing rejection of cultural diversity, besides other contributing factors, resulted in the dismemberment of the country in 1971.

In 1973, a new constitution was adopted unanimously, following a consensus among major political protagonists in the remaining Pakistan. It was a post-conflict constitutional arrangement written in the idiom of 'Islamic socialism' that endeavored to reclaim the federal parliamentary character of the state. But two military dictatorships in 1977-88 and 1999-2007 during its 40-year life either suspended it or put it in abeyance. This diluted its original soul and spirit and hampered an

evolution of culture of constitutionality. Both dictators perpetuated hybrid military-civilian regimes, neglecting democratic ideals. The Constitution of 1973 has an Article 6 that makes its abrogation an act of high treason, but the returns of democracy in 1988 and 2008 failed to hold the adventurers accountable for suspending the Constitution. Amid these odd facts of real-politick cynicism, the constitution is a weak instrument and remains irrelevant for most of the ordinary citizens gripped the popular imagination. The provinces, especially the Balochistan and Sindh, consider themselves as victims of so-called engineered and mutated constitutionalism in Pakistan. The 1956 and 1962 constitutions deprived them of their historic identity and name through the One Unit Schema. The provinces also complain that centralized federalism usurped their natural resources and killed their potential to grow as a vibrant governance unit to serve their people better.

The 18<sup>th</sup> Constitutional Amendment is definitely not a panacea to all ills that Pakistan suffers due to its long denial of democracy and its paying a deaf ear to persistent calls for provincial autonomy. Nevertheless it could be described as a paradigmatic shift to reclaim the inherent federal soul and spirit of Pakistan. The unanimous adoption of the 18<sup>th</sup> Amendment and its sequels, the 19<sup>th</sup> and 20<sup>th</sup> constitutional amendments, reflect the maturity of the political class. These changes have brought about many monumental changes in the country's federal architecture by delineating new division of powers between the federal and provincial governments, making representative institutions repositories of numerous powers and expanding the scope of fundamental rights.

The 18<sup>th</sup> Constitutional Amendment, as a sort of a “negotiated legislative revolution” (Rabbani: 2011), has changed more than 36 percent (102 Articles) of the contents of the Constitution. This may not be an ideal bargain but it is the first ever home-grown initiative to reform the rot. It could be described as a second Grand National political consensus after the adoption of the 1973 Constitution.

### **3 Foundational federal dream**

Pre- and post-partition politics on the sub-continent have revolved around the critical and core question of rights of the provinces. Federalism, as a democratic concept of constitutionally divided powers between the federal governing authority and constituent units, had been a promise for the establishment of Pakistan. The founding father of Pakistan in an interview with the Associated Press of America on 8<sup>th</sup> November 1945 had explicitly elaborated that

“[t]he theory of Pakistan guarantees that federated units of the national government would have all the autonomy that you will find in the constitutions of the United States of America, Canada and Australia. But certain vital powers will remain vested in the Central Government such as the monetary system, national defence and other federal responsibilities.”

A similar vision is embedded in all major political documents, declarations and positions taken by the leadership that struggled for the creation of Pakistan. The provinces were to be at the heart of these arrangements. The aspiration for provincial autonomy figures prominently in the fourteen points of Quaid-i-Azam when he demanded that the “form of the future constitution should be federal with residuary

powers vested in the provinces.” A similar vision was enshrined in the Pakistan Resolution of 1940.

However, the adoption of the Government of India Act of 1935 as the provisional constitution at the time of independence undermined this original federal vision for the country. Later on, the constitutional journey of Pakistan remained uneven. The “majority constraining” (Waseem: 2011) approaches resulted in the introduction of the parity formula and the creation of the One Unit (1955), the program aiming at a merger of the provinces and princely states of then West Pakistan, further frustrating the federal dream. The Constitution of 1956 created a cosmetic federal republic, abrogated already in 1958. The 1962 Constitution given by a military regime centralized the governance structure and opted to privilege the term ‘central’ over ‘federal’ in its contents. The result of these distortions was the dismemberment of Pakistan in 1971.

The idea of federalism bounced back after this tragedy and the Constitution of 1973 offered a federal structure with bi-cameral legislature. The Senate of Pakistan was established as a house of federation besides the population chamber (i.e. the National Assembly) and the State defined as being constituted of three tiers of governance in Article 7 (i.e. local, provincial and federal). The nascent Constitution was put in abeyance in 1977 by General Zia who later, through the 8<sup>th</sup> Amendment in 1985, changed its spirit. Once again in 1999 General Musharraf put it in ‘abeyance’ and in 2003 gave it a quasi-presidential outlook via the 17<sup>th</sup> Amendment.

Almost all political responses against the centralizing tendencies of the military rulers were orchestrated around the democratic federalism

claim with increased provincial autonomy. The 21-points of the United Front (*Jugto Front*) in 1954, the 6-points of the Awami League in 1966, the Declaration of Provincial Autonomy (1986) by the Movement for the Restoration of Democracy and the Charter of Democracy (2006) were all written in the idiom of provincial autonomy.

Among the family of 28 federally organized countries in the world, Pakistan falls in the category of a 'coming together federation' because the constituent units either joined it through legislative vote (as in Sindh, Punjab and Bengal) or through public referendums (as in Sylhet and the then NWFP, now Khyber Pakhtunkhwa). Over a dozen princely states, including Bahawalpur, Kalat, Makran, Kharan, Lasbela, Khairpur, Swat, Amb, Dir, Chitral etc also became part of the new state. This compositional diversity was replaced by artificial unity through One Unit in 1955 nullifying the demographic and electoral advantage that more populous East Pakistan had in the united Pakistan.

The military regime of General Yahya Khan abolished the One Unit on July 1, 1970 but clubbed together the princely state of Bahawalpur and Punjab as well as the Balochistan States Union and the former Chief Commissioner's Province of Balochistan. The Constitution of 1973 is the first democratic document that formally recognized the original names of the four provinces. The 18<sup>th</sup> Amendment renamed the former NWFP as Khyber Pakhtunkhwa to settle the lingering quest for identity of its majority population. After the 18<sup>th</sup> Amendment this aspect has given birth to demands for the creation of more provinces for secondary communities, namely the Hazarawal in Khyber Pakhtunkhwa and the Seraikis in Punjab.

Even today, Pakistan is ostensibly a federal governance structure but practically there are six distinct governance zones. The system of governance in the FATA (Federally Administered Tribal Areas), the PATA (Provincially Administered Tribal Areas), in Gilgat-Baltistan, the Federal Capital Islamabad and in 43 cantonments is different from the rest of Pakistan. This exposes the myths of equality of citizenship and the underlying questions of identity in Pakistan.

#### **4 Examining the impact of the 18<sup>th</sup> Amendment**

The structural reforms introduced by the 18<sup>th</sup> Amendment have impacted almost all pillars of the State, namely the Legislature, the Executive and the Judiciary and have expanded the scope of constitutionally guaranteed fundamental rights. The amendment has redefined federal-provincial political and fiscal relations and legislative competences. It has also introduced an innovative concept of institutional power through the Parliament, provincial assemblies and federal forums like the Council of Common Interests (CCI) and the National Economic Council (NEC). In order to make sense of these changes, an indicative dissection of the contents of the 18<sup>th</sup> Amendment structured after the three pillars of the state is following.

##### **4.1 The Legislature**

According to the constitutional scheme the Parliament and the provincial assemblies are supposed to be the centre stage of Pakistan's democratic aspirations. The Constituent Assembly authors and approves the Constitution of a nation. After its adoption, its supremacy is ensured and enforced by Parliament as the vanguard of the Constitution with a right to amend it through given due procedure.

The Constitution of 1973 envisages Pakistan to be a federal republic with representative parliamentary institutions. The Objectives Resolution adopted in March 1949 also acknowledges that delegated sovereignty shall be exercised through the chosen representatives of the people.

It is in this context that the 18<sup>th</sup> Constitutional Amendment offers an opportunity to convert Pakistan in to a ‘genuine cooperative federation’ with a strengthened parliamentary role in running the affairs of State and government with democratic checks and balances. The amendment has introduced the concept of ‘shared responsibilities’ through a reformed Council of Common Interests (CCI) for subjects enlisted in the Federal Legislative List II. The CCI has been made responsible to and is required to submit its annual report to both Houses of Parliament. The Parliament may also in a joint sitting from time to time by resolution issue directions through the Federal Government to the Council – to take action generally or in a particular matter – as the Parliament may deem just and proper. Such Parliamentary directions shall be binding on the Council. Similarly, if the Federal Government or a Provincial Government is dissatisfied with a decision of the Council, it may refer the matter to Parliament in a joint sitting whose decision in this behalf shall be final.

The reorganized National Economic Council (NEC) has been entrusted to review the overall conditions of the country and to advise the Federal Government and the provincial governments to formulate plans in respect to financial, commercial, social and economic policies. Besides other mandates it is supposed to ensure a balanced development and regional equity. The NEC has been made responsible to the Parliament and is supposed to submit its annual report to both Houses of

Parliament. Similarly, after the 18<sup>th</sup> amendment the annual report on the implementation of Principles of Policy will also be laid before the Senate along with the National Assembly. Last but not least, the provinces are also supposed to submit their own reports.

With their expanded role and mandate these two vital constitutional forums offer new avenues of federal-provincial coordination and cooperation. Additionally, through the 18<sup>th</sup> Amendment, Parliament has been assigned a role in the appointment of judges of both Supreme Court and the high courts. The appointments of the Chief Election Commissioner and provincial members of the Election Commission of Pakistan are also carried out by Parliament. The 18<sup>th</sup> Amendment delineated the concept of caretaker governments at the federal and provincial levels during election periods. Later on, the 20<sup>th</sup> amendment further refined and explicitly defined the role of Parliament and provincial assemblies in this regard.

Additionally, the role of Parliament and the respective Provincial Assembly has been enhanced in case of an imposition of emergency in the country or in any one or more provinces. There are many other articles in the Constitution that make the Pakistani Parliament and provincial assemblies real repositories of power. The amendment has restored the spirit of a parliamentary system in the country and transferred key presidential powers to Parliament. Now the Prime Minister along with the cabinet has been made collectively responsible to both Houses of Parliament (the National Assembly and the Senate). Earlier, such responsibility was only against the National Assembly. The prime minister in the federation and the chief ministers in the provinces have been made the chief executives. The concept of run-off elections

has been introduced for the office of the prime minister and the chief ministers and restriction on the number of terms for these offices have been lifted.

The Constitution has specified that after a general election the National Assembly and the provincial assemblies have to be summoned within 21 days and elect their speakers, deputy speakers and leaders of the houses. This is a democratic fence against potential manipulations that had been witnessed during the military regimes. The amendment discourages legislation through ordinances. Any ordinance could be promulgated only once and one-time extension can be given by a resolution of the National Assembly or the Senate or the respective provincial assembly. The assemblies have been given a power to disapprove any ordinance. In case of differences of opinion on any legislative bill the Joint Sitting of the Parliament has been empowered to pass it by a vote of majority.

Although the amendment has failed to entrust financial powers to the Senate, the number of its working days have been increased from 90 to 100 and the number of days to make recommendations on the money bill have been increased from 7 to 14. Four seats for religious minorities, one from each province, have been added to the Senate, raising its strength to 104 from 100 seats.

The discretionary presidential powers to dissolve the National Assembly through the notorious Article 58(2)b and to refer a question to a referendum have been removed. In Article 48(6) the contested passage “by order of the President” has been omitted to make the call for a referendum a prerogative of the Prime Minister. Now the said Article reads if “at any time the Prime Minister considers it necessary to hold a

referendum on any matter of national importance, he may refer the matter to a joint sitting of the Majlis-e-Shoora (Parliament) and if it is approved in a joint sitting, the Prime Minister may cause such matter to be referred to a referendum in the form of a question that is capable of being answered by either ‘yes’ or ‘no’”. Similarly, Article 48(7) empowers Parliament to lay down the procedure for the holding of a referendum as well as the compiling and consolidation of its results through an Act of the Parliament. These changes appear to be a parliamentary fence against referendums held by military dictators in 1984 and 2002 to prolong their regimes.

In order to internalize all these changes the National Assembly, the Senate of Pakistan and the provincial assemblies have to amend their Rules of Procedure and Conduct of Business. The National Assembly and the Senate have done this on 24<sup>th</sup> December 2010 and 8<sup>th</sup> March 2012 respectively.

### **Box 1: Expanded fundamental rights**

#### *Citizens’ space*

The 18<sup>th</sup> Amendment expanded the scope of fundamental human rights. The amendment affirmed three new rights, namely: the Right to Fair Trial and Due Process; the Right to Information; and the Right to Education. The amendment slightly modified three other fundamental rights. In Article 17 (Freedom of Association) provisions on the intra party election conditions have been deleted. Similarly, provisions related to sectarian, ethnic and regional hatred and militant party wings have been eliminated. These had been added by the Legal Framework Order of 2002 and were retained by the 17<sup>th</sup> Amendment (2003). In Article 25, pertaining to the Equality of Citizens, the word ‘alone’ from

‘no discrimination on the basis of sex alone’ has been dropped. In Article 27 (Safeguard against Discrimination in Service), the following has been added: “Provided also that under-representation of any class or area in the service of Pakistan may be redressed in such manner as may be determined by an act of Majlis-e-Shoora (Parliament).”

However the amendment failed to address gray ideological areas like Federal *Shariat* Courts and other articles that undermine the equality of citizenship in Pakistan. However it was able to bring back the word ‘freely’ for religious minorities in the text of the Objectives Resolution that was deleted in 1985 during the military regime.

Pakistan has signed and ratified many international treaties on human rights like the International Covenant on Economic, Social and Cultural Rights (ICESR) and the International Covenant on Civil and Political Rights (ICCPR) as well as Convention Against Torture (CAT) in April 2008 and is already a party to the International Convention on the Elimination of Racial Discrimination (CERD), the International Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the core ILO Conventions. But all these obligations do not figure prominently in the reformed Fundamental Rights chapter and the federal and provincial governments have not taken tangible steps to practically enforce many of these rights.

## **4.2 The Judiciary**

The role of the apex judiciary vis-à-vis the democratic development in Pakistan has always been quite controversial. Since the dissolution of the first Constituent Assembly in 1955 (Federation of Pakistan versus Maulvi Tamizuddin, PLD 1955 Federal Court 240) till the last military

intervention by General Pervez Musharraf in 1999 (Zafar Ali Shah versus General Pervez Musharraf, PLD 2000 SC 869) the courts endorsed disruptions of democracy by invoking a 'doctrine of necessity.' In absence of the constitution the judges had to take oaths of allegiance on Provisional Constitutional Orders (PCO) and legitimize the usurpers in uniform.

In order to put a full stop on such practices the 18<sup>th</sup> Amendment changed the mechanism of appointment of judges for the superior judiciary. According to a newly inserted Article 175-A, now a multi stakeholder Judicial Commission of Pakistan headed by the Chief Justice by majority decision nominates to the Parliamentary Committee on Judicial appointments one name for each vacancy. This committee includes the four most senior judges of the Supreme Court, one former chief justice/judge, the Federal Law Minister, the Attorney General and a member nominated by the Pakistan Bar Council for appointments in the Supreme Court. For appointments to a High Court, the Commission also includes the Chief Justice of the respective High Court, the most senior judge of that High Court, the Provincial Law Minister and a nominee of concerned Bar Council. The Article has separate clauses for appointments in the Islamabad High Court, established through the 18<sup>th</sup> Amendment, and the Federal *Shariat* Court.

The eight-member Parliamentary Committee with equal membership from the Senate and the National Assembly and with 50 percent representation from the opposition parties confirms the nominees by majority of its total membership within fourteen days and could reject the nomination by three-fourth majority with recorded reasons.

After the passage of the 18<sup>th</sup> Amendment this Article along with many others were challenged by 21 petitioners and on October 21, 2010, the 17-member full bench of the Supreme Court through a short order referred the Article 175-A back to Parliament for revision. In order to avert any institutional clash the Parliament adopted the 19<sup>th</sup> Constitutional amendment in December 2010 and addressed the concerns of the Supreme Court.

It is interesting to observe that this article was the first one that had become operational on November 6, 2010 when the Judicial Commission adopted its rules and in the same month the Parliamentary Committee for Judicial Appointments (PCJA) became functional. Since then all appointments in the superior judiciary have been made through the new mechanism. As of today the Supreme Court has overruled all decisions taken by the PCJA that rejected the Judicial Commission nominations. Nevertheless, the process of appointment of judges has been democratized a little bit.

The 18<sup>th</sup> Amendment has also added some new clauses in Article 6 that makes subversion, suspension, putting in abeyance or abrogation of the Constitution an act of high treason. The aiding, abetting or collaboration in such an act has also been made a high treason. The said article specifically asks the Supreme Court and a High Court not to validate an act of high treason. In this way the 18<sup>th</sup> Amendment makes the role of judiciary of vital importance for sustaining the nation's democratic dreams and being in the vanguard of defense of the Constitution. The Supreme Court on July 30, 2009, declared already ousted General Pervez Musharraf's second coup of November 3, 2007, as unconstitutional and came up with safeguards against future military interventions. These

changes inspire confidence in the democratic future of Pakistan, but they have to pass the litmus test as the country had to experience at least four military coups in its 65 year existence.

Equally important is the role of the superior judiciary to make Pakistani federalism work as outlined in Article 184 of the Constitution, while elaborating on the original jurisdiction of the Supreme Court, and assigns to it a role to pronounce declaratory judgments in any dispute between any two or more governments.

### **4.3 The Executive**

The concept of a separation of power entails that the executive branch of the state enjoys the authority and responsibility to conduct day to day affairs and the administration of the state. The constitutional framework and laws made by the legislature are implemented by the executive branch.

According to the Rules of Business of 1973 of the Government of Pakistan, policy formulation and the undertaking of policy decisions is the mandate of the executive. The rules designate the secretary (civil servant) as the official head of a division/ministry and as principal accounting officer. Besides assisting the minister-in-charge of a division/ministry, the secretary also executes the sanctioned policies through a team comprised of civil servants.

Article 41 of the constitution outlines that the President of Pakistan is Head of State and represents the unity of the Republic, while Article 50 makes him part of Parliament. In absence of the Parliament from 1977-1985 and 1999-2002 (i.e. the spells of military rulers), the presidents in uniform became the chief executives.

The 18<sup>th</sup> Amendment has restored the original vision of the framers of the 1973 Constitution and made the Prime Minister the chief executive of the federation, to be elected from the National Assembly. His/her team (i.e. the Cabinet) comes from the National assembly (75 percent or more) and the Senate (maximum 25 percent) with a provision of maximum five advisors. The 18<sup>th</sup> Amendment has fixed the size of the Cabinet after the 2013 election to a maximum of 11 percent of the total membership of the Parliament and the respective provincial assemblies, with a modest premium of a fixed ceiling of 15 ministers for two smaller provinces, namely Balochistan and Khyber-Pakhtunkhwa. The amendment also makes the chief ministers the executive heads in the provinces.

In this way we can say that only a small but driving part of the executive comes from the legislature and the federal and provincial civil servants remain the consistent thread in this scheme. The Constitution specifies these services and entrusts the Federal Public Service Commission and the provincial public service commission to recruit them.

The Parliamentary Committee on Constitutional Reforms recorded its commitment in this context by recommending that the federation and the provinces will require a different set of skills to make post-18<sup>th</sup> Amendment federalism work. The committee recommended that “[i]n view of a major devolution of powers and responsibilities to the Provinces in the constitutional reforms package, it is imperative that the extent of and modalities for distribution of work between the Federal Public Service Commission, Provincial Public Service Commissions and the respective services be reworked and the services reorganized as to ensure provincial autonomy and good governance. It is also

recommended that adequate indigenization of the services should take place as part of this reform.” As of November 2012 no tangible progress has been made in this regard.

## **5 Impact on federal-provincial relationship**

The 18<sup>th</sup> Amendment has introduced important steps towards the devolution of authority and enhancing provincial autonomy. It scraped the Concurrent Legislative List that was a bone of contention between the federation and the provinces. In addition to all subjects in the Concurrent List, except boiler (shifted to Federal List-I) and electricity (shifted to Federal List-II), four subjects from the Federal list including state lotteries, duties in respect of succession of property, estate duty on property and sales tax on services have gone to the provinces.

Part V and VI of the Constitution (Articles 141-174) specifically deal with relations between the federation and provinces. Out of these thirty-four articles, seventeen have been amended. The major amendments included: redefining legislative competence of the Parliament and provincial assemblies after the abolition of the concurrent list, mandatory consultations with concerned provincial governments prior to a decision to construct hydro-electric power stations, and the provincial power to raise domestic or international loans within the prescribed limits by the NEC. Furthermore, there is a provision for joint and equal ownership of natural resources like oil and gas.

The amendment has empowered the provinces to exercise joint control with the federal government over 18 subjects of Federal Legislative List-II including some key subjects like sea ports, all regulatory authorities, national planning and national economic coordination, supervision and

management of public debt, census and natural resources through the Council of Common Interests (CCI). The CCI has been made a powerful constitutional body comprising the Prime Minister as chairman, three representatives of federation and all the four provincial chief ministers. The new constitutional scheme envisages the Council to become an effective dispute resolution, economic planning and development forum with a sense of joint responsibility. It has been mandated to meet once every quarter and the provinces have been empowered to requisition its meeting.

The National Economic Council (NEC) has been reformed with an advisory role to review the overall economic condition of the country and to advise the federal and provincial governments to formulate plans in this regard. Another significant step forward is the consent of the concerned Provincial Assembly for the imposition of emergency rule in any province. Similarly the distribution of national revenues through National Finance Commission have been protected under this amendment that provinces' share cannot be reduced beyond that decided in the previous Award.

In this way the changes introduced by the 18<sup>th</sup> Amendment could be described as the largest structural reforms introduced in Pakistan since 1947. The amendment envisaged an Implementation Commission to transfer powers to the provinces after the abolition of the Concurrent List within a specified deadline of June 30, 2011. For the first time, a constitutional deadline was met and seventeen ministries that fell under the abolished concurrent list had been transferred to the provinces. Some functions of six other ministries were also devolved and the Pakistanis celebrated a Day of Provincial Autonomy on July 1, 2011.

The 18<sup>th</sup> Amendment did not create a new institutional architecture. Rather it reallocated powers between the Parliament, federal government and the provinces. The amendment proposed to create only three new institutions with specific objectives and mandate: first the Implementation Commission to transfer ministries and subjects of the abolished Concurrent List with a sunset clause; second, the permanent secretariat of the Council of Common Interests with due provincial representation; and third, the High Court of the Islamabad Capital Territory. During the process of implementation, one new ministry (i.e. the Capital Administration and Development Division (CADD)) was created to take care of the devolved subjects and functions for the Federal Capital.

## **6 The way forward: what needs to be done?**

The overall impact of the 18<sup>th</sup> Amendment can be analyzed in three distinct categories. First is the transfer of power, authority and the reallocation of various subjects and functions. By and large this has happened with some remaining contentious issues like the non-transfer of assets and certain institutions. These issues need to be addressed on an urgent basis. In this regard, the role of the Special Committee of the Senate on Devolution is important. An assertive role of the Parliament is required to vanguard the Constitution and to accomplish the devolution process in true spirit. Any bid to roll-back the devolution process or the half-baked devolution would have serious consequences for the federation. The Ministry of Inter Provincial Coordination (IPC) that also serves as the secretariat for the Council of Common Interests must come forward with a solution to the reservations being expressed by the

provinces. The role of the Council of Common Interests (CCI) and the National Economic Council (NEC) is of paramount importance.

Second is the transition that is on-going with its attendant teething problems. This phase requires extensive communication among all stakeholders to grasp the soul and spirit of the amendment and redesign institutions, improve policy and planning and reform laws. In order to address their fiscal concerns and their extended responsibilities the provinces shall start preparing their cases and convincing arguments for the 8<sup>th</sup> National Finance Commission Award due in 2014-15. Extensive training of civil servants in their new roles and responsibilities is necessary to make these changes work. Citizens, civil society organizations, academia and media must read and comprehend the post-18<sup>th</sup> Amendment Constitution and play a catalyzing role to expand its understanding and interpretation. Presently there is a paucity of such efforts and initiatives.

Third is the long-term and continuing effort to fully transform the Pakistani federation by functionalizing the framework articulated by the 18<sup>th</sup> Amendment for good and responsive governance to meet citizens' expectations. While the provinces are at the centre of these political and fiscal changes, this calls for a proactive provincial role to convert Pakistan into a participatory federation. The provinces also need to understand and make best use of new federal institutional spaces. The provinces must take the spirit of devolution down to districts, tehsils and union councils to improve the delivery of vital services.

## **7 Conclusion**

The architects of the 18<sup>th</sup> Amendment have strived to rewrite the social contract between the citizens and the state under the umbrella of democracy. In broader terms the amendment has tried to harmonize the institutional balance and redefine institutional boundaries within the ambit of parliamentary democracy and federalism. Today in terms of constitutional framework, Pakistan stands high among 28 eight federally organized countries in the world. In black letter law the provinces of Pakistan perhaps enjoy much more autonomy and control over resources and policy spaces than the federating units in many other federations.

However, the virus of a centralized mindset has badly clogged our software. Responsible provinces do not exist in the popular imagination of control freaks in Islamabad. Centralist narratives also promote skepticism about the patriotism of provinces and fear the emergence of centrifugal tendencies. This does not help the gradual evolution of a federal culture and a federal mindset in Pakistan.

One can't deny the fact that every policy requires corresponding structures and systems to effectively perpetuate it. Unfortunately there are very few efforts to urgently address existing deficits by introducing well thought out reforms in the civil services at federal and provincial levels.

Constitution is not carved out of stone – rather it is organic and could be amended through due process. The 19<sup>th</sup> Amendment was introduced in the light of short order by the Supreme Court regarding Article 175-A (i.e. about the appointments in superior judiciary). The 20<sup>th</sup> Amendment has established a democratic framework for a neutral caretaker setup for

free and fair elections, adopted to address the gaps and deficits of the 18<sup>th</sup> Amendment. These amendments amply testify that democracy is not a rigid proposition and federalism is always a work in progress.

The 18<sup>th</sup> Amendment and its implementation is one of the most well documented processes in Pakistan. The reports of the Parliamentary Committee on Constitutional Reforms and the Implementation Commission are public documents. Of course one can't read on someone else behalf and internalize the soul and spirit of this historic development. The media also either ignored this major story of contemporary Pakistan or preferred to trivialize its gray areas. There is a dire need to dissect and disseminate various aspects of the amendment.

The complete absence of any hand holding mechanism after June 30, 2011 (the deadline for the transfer of ministries) has impacted the process adversely. Since then the federal provincial communication vectors are either weak or simply nonexistent. Now the Special Committee of the Senate can bridge this gap. Creative utilization of inter-provincial coordination mechanisms can also yield meaningful communication and cooperation. The performance of a revitalized Council of Common Interests (CCI) also inspires confidence and can serve as an effective forum for inter-governmental relations.

It is time to heal the wounds of the provinces, inflicted by a denial of autonomy and control over their resources. By holding their hands in an environment of trust and meaningful facilitation we can rectify the mistakes of the past and reclaim the federal vision of our founding fathers and framers of the Constitution of 1973.

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# Economy and Federalism in India

*Sucha Singh Gill*

## 1 Introduction

The foundation of federalism in India is embedded in the Constitution adopted in 1950. India is described therein as a 'Union of States'. For a functioning of this federal outline, smooth relations between the Union and the States are required. The Constitution of India ensures this by clearly defining both authority and functions of Union and State Governments. The Seventh Schedule of the Constitution has divided government matters in three lists: List I ('Union List') includes all matters with exclusive power for the Union Government, while List II ('State List') enumerates the matters with exclusive power for the States. List III is referred to as 'Concurrent List' where laws can be made both by Parliament and State Legislatures but in case of conflict Union laws will prevail. At the same time, residual power for legislation has been given to the national Parliament for matters not included in the State List and the Concurrent List. The Constitution under Article 249

also describes the conditions under which Parliament has the power to legislate on matters in the State List in the national interest: This is possible “if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting” for such specific matters.

When these three lists defining powers and their division between the Union and States were prepared, they reflected the understanding of reality in 1950. But the founders of the Indian Constitution visualized upcoming changes in political realities and included a provision for amending the Constitution including the shifting of subject matters from the State List to the Concurrent List. Acquisition and requisitioning of property (1956), trade and commerce (1956), weights and measures (1976), archeological sites and remains (1977), education (1977) and forests (1977) were shifted by these procedures from the State List to the Concurrent List. There has never been a movement of shifting of a matter from the Union List to the State List or from the Concurrent List to the State List. This is described as process of centralization or shrinking of the autonomy of the Indian States. There have been voices of dissent on this issue from different quarters. Some political parties in the north (Punjab and Jammu & Kashmir), south (Tamil Nadu), east (West Bengal) and north-east (hill states) of the country have organized protests at different points of times against this process of centralization. On some of the occasions these protests have been prolonged and violent, reflecting problems in the functioning of Indian federalism. The purpose of this paper is to explain some of the underlying economic factors affecting the functioning of this federalism. Here, the attempt is made to explain why there is a tendency towards centralization encroaching

upon the subject matters of the State List? Also effort is made to explain why different states oppose this tendency.

## 2 Indian Economy

Indian economy has undergone a structural change over the period of time, as evident from Table 1.

**Table 1: Gross Domestic Product by Sectors (Percentage Share)**

Sr.No	Sector	1950-51	1970-71	1980-81	1990-91	2001-01	2009-10
1	Primary	57.7	46.3	39.7	32.2	23.9	14.6
1.1	Agriculture	50.2	41.0	35.8	29.5	21.9	12.3
1.2	Forestry Logging	6.7	4.4	3.0	1.7	1.1	1.5
1.3	Fishing	0.9	1.0	1.0	1.0	1.0	0.8
2.	Services	1.5	1.8	2.1	2.7	2.3	2.3
3.	Manufacturing	8.9	12.6	13.8	16.6	17.2	15.9
4.	Electricity, Gas and water supply	0.3	1.2	1.7	2.3	2.5	2.0
5.	Construction	4.1	6.1	6.1	5.5	5.2	7.9
6.	<b>Total Services</b>	<b>28.0</b>	<b>32.2</b>	<b>36.6</b>	<b>40.6</b>	<b>48.9</b>	<b>60.4</b>
	<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

*Note: Figures up to 2000-01 are at 1993-94 prices and figures for 2009-10 are at 2004-2005 prices, CSA (2011) and EPW (2004).*

The Indian economy of today is quite different from that in the 1950s in terms of its nature and its level of development. In 1951 more than 82 per cent of the population lived in rural areas and 70 per cent were directly dependent on agriculture. The agricultural sector contributed more than 50 per cent of the total income of the country. At present

(2009-10) 53 per cent of the total workforce of India is engaged in agriculture but the share of agriculture in GDP has fallen to 15 per cent in. Still slightly less than 69 per cent of the population live in rural areas and mainly depend on agriculture. Of the rural workforce, 32 per cent (2009-10) depend on non-agricultural activities. Rural income constitutes 48 per cent of GDP, of which the share of agriculture is about 32 per cent and the remaining 68 per cent accrue to persons engaged in non-agricultural activities but working in rural areas.

The second change in the structure of income lies in its sectoral distribution. The share of the primary sector in GDP was 57.7 per cent in 1950-51 and agriculture alone contributed 50.7 per cent of GDP. The share of the primary sector has fallen to 17.8 per cent in the GDP in 2009-10. In 2012, the share of agriculture alone has fallen to 15.3 per cent of the GDP. The share of the secondary sector in GDP has increased from 13.1 per cent in 1950-51 to 24.8 per cent in 2008-09. The share of the service sector has increased from 28.0 per cent to 55.1 per cent during this period. The combined share of the secondary and tertiary sectors has increased from 41.0 per cent in 1950-51 to 79.9 per cent of the GDP in 2009-10.

This structural change has two serious implications for federalism and its working in India: First, the share of GDP, which can be taxed by the States has fallen from more than 50.7 per cent in 1950-51 to just 15.3 per cent in 2009-10. Thus, the proportion of taxes collected out of income are likely to fall for State Governments. Second, the workforce (population) engaged in agriculture has fallen from 70 per cent in 1951 to 53.2 per cent in 2009-10 whereas share of GDP has declined from 50.7 per cent in 1950-51 to 15.3 per cent in 2009-10. The proportion of

the population engaged in non-agriculture activity has increased from 30.0 per cent in 1951 to 46.8 per cent in 2009-10 and the share in income has increased from 49.3 per cent in 1950-51 to 84.7 per cent in 2009-10. Thus, on average, the population engaged in agriculture is having a lower per person income compared to the population engaged in non-agricultural activities.

It is evident that the sources of taxes distributed in 1950 in the Constitution between the Union and State Governments are growing differently. The part of income activities allocated to the Union Government for taxation (i.e. non-agricultural income) has been growing faster than the part of income activities allocated to the State Governments (i.e. agriculture and related activities). Thus, the share of the Union Government in the total tax revenue of the country is likely to increase and that of the State Governments is likely to fall. The relative strength of revenue determines the capacity of the respective level of the government to promote the class interest that level of government represents. It also determines its capacity to distribute patronage to expand its support base among different types of classes, communities and sub-nationalities.

Thus, the dynamism of the economy has changed during the last 62 years, causing change in balance of the federal structure of the economy. The declining weight of agriculture and related activities has weakened the revenue base of State Governments, making them dependent on revenue transfers from the Union Government. This began to be felt very seriously by State Governments since the 1980s. Most of the State Governments have become highly dependent on borrowing and many among them have become involved in debt traps.

The States serious constraints of lacking resources made them call upon the Union Government for special packages. During the last two years, the States of Punjab, West Bengal and Bihar have e.g. been approaching the Union Government for this. But the Union Government has not obliged any one of them.

### **3 The Financial Transfers System in Indian Federalism**

The issue of federalism can be examined from an institutional perspective involving a design of power sharing of functions and finances on three levels: between the central, national and sub-national, state governments; between public and private sector (for efficient delivery system and market failure); and between different government units.

For the first issue of sharing power between central/national government and sub-national governments, the functioning of institutions/organizations for enforcement of rules and their monitoring are of critical importance. These organizations must have the power to adjudicate, provide incentives or penalize behavior when necessary (Rao and Singh, 2005: 7-8).

The second perspective is that of different classes in position of dominant power or authority at national and sub-national levels of the government. This is reinforced in the Indian context with several differences on cultural and social level between national and sub-national governments. The multiplicity of diversity in India is very important for understanding and analyzing the working of federalism in India. These diversities make the working of federalism very sensitive to different communities or sub-nationalities living in different parts of the

countries. At the same time, a lack of transparency in the federal systems including the balancing resource transfers lead to raising objections in States affected especially adverse.

Thus, it is useful to examine the working of financial transfers between the Union Government and the State Governments in India. The Constitution of India has distributed responsibilities and financial power between Union and State Governments in such a way that at present States are dependent on the Union Government for meeting their expenditure. At present, states raise about 34.6 to 39.2 per cent of the combined revenue of India but account for 54.0 to 56.0 per cent of aggregate government expenditure. On the other hand, the Union Government raises 62.5 to 63.5 per cent of the combined revenue and account for 43 to 45 per cent of the combined expenditure (compare Table 2 and Table 3).

**Table 2: Share of the Centre and States in Combined Revenue Receipts before Transfers**

<b>Commission</b>	<b>Share of the Centre</b>	<b>Share of the States</b>	<b>Total</b>
FC-VIII	65.4	34.6	100.0
FC-IX	62.8	37.2	100.0
FC-X	60.8	39.2	100.0
FC-XI	58.5	41.5	100.0
FC-XII	62.6	37.4	100.0
2005-06	61.9	38.1	100.0
2006-07	62.5	37.5	100.0
2007-08	63.5	36.5	100.0

*Source: Thirteenth finance commission, P.61*

**Table 3: Relative Shares of Centre and States in Revenue and Total Expenditures**

Average for Finance Commission Periods	Relative Shares	
	Total Expenditure	
	Centre	State
FC-I	43.83	56.17
FC-II	49.47	50.53
FC-III	50.51	49.49
FC-IV	47.69	52.31
FC-V	43.14	56.86
FC-VI	47.35	52.65
FC-VII	44.79	55.21
FC-VIII	47.86	52.14
FC-IX	45.58	54.42
FC-X	43.35	56.65
FC-XI	43.77	56.23
FC-XII	43.74	56.26
<b>Overall Average</b>	<b>45.92</b>	<b>54.08</b>

*Source: Basic data from Indian public Finance Statistics (various years)*

This has led to chronic dependence of States on the Union Government (Rao and Shah, 2009). The changing nature of the economy cemented this trend over time. There are two channels of resource transfers from the Union Government to the States. One is the statutory channel, established under the Constitution via the institution of the Finance Commission (appointed every five years for this purpose). The Finance Commission fixes the proportion of the revenue of the Union Government to be transferred to the states. Secondly, the Finance Commission also decides on the formula of sharing these transfers to the states. This includes at present four variables with different weight (see Table 4).

**Table 4: Variables determining the state share in relevant union transfers**

S.No	Variable	Weight in Percentage
1	Population	25
2.	Area	10
3.	Fiscal Capacity Distance	47.5
4.	Fiscal Discipline	17.5

*Source: Thirteen Finance Commission Report, Vol 1*

These weights favour some states while others feel disfavoured. Lately, fiscal discipline and fiscal capacity distance have been made important factors in the sharing of the central taxes. Those states which are unable to comply with fiscal discipline and are reluctant to increase efforts for tax collection due to historical factors or structural reasons are likely to complain against this formula.

In the earlier Finance Commission reports, more emphasis was given to poverty and population rather than fiscal efficiency and discipline. Secondly, for fiscal transfers through the statutory Finance Commission or the non-statutory Planning Commission, states have been divided into two categories, general and special category states. The special category states include three from north India (Jammu and Kashmir, Himachal Pradesh and Uttarakhand) and all states from north-east India except Assam. These states are given a special, favourable treatment in the allocation of central funds, given with 90 per cent as grant and only 10 per cent as loans. In case of the general category states this distribution is 30 per cent (grants) to 70 per cent (loans).

Some of the states in the general category which may be facing specific problems make efforts to join this list or seek special packages. The surplus revenue of the Union Government over and above its

expenditure make it possible to play the game of giving some special help to some States while denying it to others or distribute that help unequally. Thus, the Bihar State is demanding a special package or its inclusion in the Special Category States (Rajaraman, 2012); West Bengal is demanding a special package being involved in heavy debt over the period of time; Punjab is demanding a special package for restructuring its agriculture sector due to its contribution to ensure national food security. The allocation of transfers to the States indicate that West Bengal, Maharashtra, Kerala, Karnataka, Tamil Nadu has been loser over time, while backward states like U.P., Bihar, Madhya Pradesh and special category states have been gaining (see Table 5 in the Appendix).

#### **4 Debate on Constitutional Review**

In view of the changing situation and emerging problems, a debate has been started in the country for a review of the constitution regarding readjustments of Centre-State relations. In the wake of political turmoil in Punjab, which started in 1978 and led to the Operation Blue Star in 1984, a Commission on Centre-State Relations was set up in 1983 under the chairmanship of Justice R.S. Sarkaria. The Commission submitted its report in 1987 and made a number of recommendations for restructuring these relations. But most of them remain neglected, especially those related to more financial autonomy of the States. The NDA Government headed by A.B. Vajpayee appointed a National Commission to Review Working of the Constitution in 2000, headed by Justice M.N. Venkatachaliah. The Commission submitted its report on March 31, 2002 and made a large number of recommendations for, amongst others, reforming parliamentary, federal, electoral system. Again, none

of the recommendations requiring constitutional amendments and legislation have been implemented.

Finally, the UPA Government under Dr. Manmohan Singh appointed a Commission on Centre-State Relations (CCSR) headed by Justice M.M. Punchhi in 2007. The Commission submitted its report in 2010. It discussed Centre-State financial relations at length covering resource sharing, expenditure reforms, Finance Commission, Planning Commission and other related matters. The Punchhi Commission recounted the developments since the Sarkaria Commission, such as the economic reforms adopted in India in 1991, changes in tax sharing, the introduction of tax on services, the 73<sup>rd</sup> and 74<sup>th</sup> Constitutional Amendments, the tax reform on VAT and GST, fiscal responsibility legislation, changing borrowing patterns by states and changing patterns of plan assistance to states. The five issues of changes in tax sharing, the 73<sup>rd</sup> and 74<sup>th</sup> constitutional amendments, fiscal responsibility legislation and changing borrowing patterns by States are important for Centre-State financial relations and need more attention:

(1) Originally, the divisible pool of central taxes shareable with states included only income tax and excise duties of the Union. But following the recommendations of Tenth Finance Commission, Article 270 was amended in 2000 (80<sup>th</sup> amendment) to provide for a sharing of net proceeds of all Union taxes and duties, except those referred to in Article 268 and 269 as well as the cesses and surcharges referred to Article 271. This has enabled States to have a share in the overall buoyancy of central taxes. Now the grievance of the states is restricted to the percentage share devolved to them.

(2) The 73<sup>rd</sup> and 74<sup>th</sup> amendments of the Constitution have conferred mandatory status to PRIs (Panchayati Raj Institutions) and ULBs (Urban Local Bodies). These amendments mandate the appointment of State Election Commissions and State Finance Commissions. The State Finance Commissions were to be appointed within one year of the amendment and thereafter at the expiry of every five year. The State Finance Commissions review every five years the finances of the local bodies and makes recommendation on the principles of distribution of net proceeds of taxes between the State and local bodies and the principles governing grant in aid to local bodies. The amendment in Article 280 mandated the Central Finance Commission to make recommendation for enhancement of the share of the States from the Central pool of taxes.

(3) The enactment of the Fiscal Responsibility and Budget Management Act (FRBMA) in 2003 introduced a rule based management of public finances. The enactment of FRBMA by the States was made a pre-condition to profit of the Debt Consolidation and Relief Facility (DRRF) at the level of 2004-05. This made 21 States enact FRBMA by 2005-06. The other states (except West Bengal and Sikkim till 2010) followed suit.

(4) Following the recommendation of the Twelfth Finance Commission, the Centre has terminated lending to the States from 2005-06 on account of Central Plan Assistance. Earlier the Centre was dispensing normal plan assistance in a grant–loan ratio of 30:70 for general category states and in a 90:10 ratio for special category states. States are now allocated additional market borrowing in lieu of the loan component of normal central assistance. This has reduced the interest

burden on the States. In the small savings collected, the share of the States as loan was increased from two thirds in 1987 to 75 per cent and to further 80 per cent in 2000 and from 2002 to 2007 the entire amount was being invested in securities issued by the State Governments. Since 2007-2008 the States have been given the option to borrow 100 per cent of the net small savings collections but these are no longer treated as loans from the Centre. The Finance Commissions have been excluding small saving loans from the relief offered on the outstanding Central loans. With these changes, the grant component of the State's borrowing in small savings is gone.

(5) Plan assistance to the States budgetary support has been reduced from 58 per cent (actual 66 per cent) at the time of formulation of the Tenth Five Year Plan (2002) to 23 per cent for the Eleventh Five Year Plan (2007-12). At the same times, the share of Central assistance to States is increasingly shifted to special plan assistance for sectors like health, education and rural development. This limits the autonomy of States to use the funds available under central assistance. These fund transfers have been made tied in nature (CCSR, 2010: Vol. 3. 19-25).

In view of these recent changes in the mechanisms of transfers of funds from the Centre to States, the Punchhi Commission recommended a comprehensive review of all the transfers aiming at minimizing the component of discretionary transfers, particularly those channeled through CSS (Centrally Sponsored Schemes). Other recommendations include a higher central share for backward states, an improved credit-deposit ratio of banks in poor States, a clearly defined State share in food security and the implementation of the Right to Education Act with full compensation to the States in view of enhanced liabilities arising

out of the implementation of revised pay scales of employees following the central Pay Commission revisions. It also recommended State specific targets under the FRBM Acts and relief on interest under the National Small Savings Fund Loans (CSSR, 2010: Vol. 3: 101-111)

## **5 Summing Up**

The division of financial resources and administrative responsibilities between Union Government and States in India was made in 1950 in light of the structure of the economy. The economy and its nature has changed during the last sixty-two years. This is reflected in the growing demand of the States to change and review the whole mechanism of the Centre-State relations in the country. There have been several amendments in the Constitution its adoption. Six subjects have been shifted from the State list to the Concurrent list and several line departments (29) are to be shifted to the third tier from the State List. This has led to a shrinking of the area of operations of State level administration in the country. This reduces the capacity of the State Governments to extend patronage and support to sub-nationalities in the territories under their rule and expresses a tendency towards centralization on the one hand and the attitude of the Centre to state autonomy on the other.

The working of the Centre-State relations and the changing nature of the economy show vertical imbalances in these relations. The States have become chronically dependent upon the Union Government for resource transfers to meet their constitutional responsibilities. The Union Government collects revenue substantially higher than its expenditure while the States collect revenue substantially lower than their expenditure. Consequently, the States are always looking to the Union

Government for transfer of the resources. They prepare their budgets after the budget of the Union Government is presented because the States know this determines how much Central resources will be available to them. This vertical imbalance needs to be corrected.

The recent changes, especially after the economic reforms, have brought fast changes in the rate of economic growth and the structure of the economy. This is also accompanied by many changes in tax sharing, fiscal responsibility legislation, borrowing patterns of the States and patterns of plan assistance to them. This has increased the dependence of the States on short term market borrowing to meet budget deficits, at the same time depriving them of debt relief measures and soft central loans with maturity period of 25 years. This has put all States in high debt burdens, some bordering on a debt trap – especially those lacking initiatives to increase their own tax due to changes in the pattern of plan transfers, especially the centrally sponsored schemes. Thus, the autonomy of states to determine their development strategy at sub-national/state level is affected.

These changes indicate a tendency towards centralisation of the governance pattern in the country. This suits corporate capital, preferring to deal with the Central Government rather than a large number of State Governments. The earlier amendments in the Constitution, shifting some subjects from the State list to the Concurrent List are additional changes in this direction. The 73rd and 74th Constitutional amendments lead to a statutory creation of a third tier of government, eroding the area of operation of the States further, especially while it was not touching any subject in the Union list.

This brings out a paradox: Since 1991 the dependence of the Union Government on the regional political parties has increased and the country has entered the era of coalitions at the national level – yet a tendency of a shrinking area of operation of the State Governments and a weakening of their financial position has gained strength. This may be explained by the division of regional parties between Congress and BJP led alliances. The lack of co-ordination between the regional parties on the issue of State autonomy is too obvious. But the issue of State autonomy – or assertion of sub-nationalism – can crop up in the future on account of two factors: First, all the State Governments are facing financial difficulties and are highly dependent on the Union Government. They feel alienated when they are not sharing power at national level. Even when they share power at the national level, they continue to raise issues related to autonomy in financial matters. The appointment of three commissions during the last three decades to look into the Centre-State relations provides evidence of the significance of this issue and the country is waiting for changes yet to be delivered. Secondly, the working of the economic system at the national level in relation to issues of land acquisition for development – which is affecting the livelihood of people in rural areas, especially the forest dwellers and those living in mining and big project areas – have stirred and sensitized people at various sub-national levels. Recently, voices are being raised against the position of the Union Government on issues like water, forest and mines. It is well known that the West Bengal Government did not allow the Union Government to sign the Teesta River Treaty with Bangladesh.

The working of federalism is pressurized by the changing nature of the economy and the way Centre-State financial relations are being

managed especially during the last three decades associated with liberalization and globalization. The Union Government has signed some international treaties, like its accession to the WTO, and continues to decide on some international issues with bearing to the areas in the State List without consulting the States. There is rising opposition to this which has led to the set-up of various commissions to review the working of federalism in the country. But most of the recommendations of these commissions remain unimplemented. This points to an ongoing need for reforming federalism to end imbalances in its institutional set-up. But this can only happen if various sub-national actors join hands to change the current setting in direction of a more balanced working of Indian federalism.

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## 7 Appendix

**Table 5: State-wise percentage share of total transfers (tax devolution and grants) as recommended by different FC**

State	I	II	III	IV	V	VI	VII	VIII	IX (1)	IX (2)	X	XI	XII	mean
Andhra Pradesh	4.16 (-3.21)	8.58 (1.21)	9.31 (1.95)	8.05 (0.68)	7.77 (0.4)	8.08 (0.71)	7.30 (-0.07)	7.34 (-0.03)	6.60 (-0.77)	6.83 (-0.54)	7.98 (0.61)	7.13 (-0.24)	6.66 (-0.71)	7.37
Arunachal Pradesh									1.11 (0.37)	0.79 (0.05)	0.78 (0.05)	0.53 (-0.2)	0.47 (-0.27)	0.73
Assam	4.60 (0.67)	4.33 (0.4)	4.47 (0.55)	5.04 (1.12)	3.65 (-0.27)	4.58 (0.65)	2.49 (-1.44)	4.07 (0.15)	4.12 (0.19)	3.73 (-0.19)	3.67 (-0.25)	3.05 (-0.87)	3.22 (-0.71)	3.92
Bihar	11.78 (1.51)	9.09 (-1.18)	7.83 (-2.44)	6.91 (-3.36)	9.57 (-0.7)	8.79 (-1.48)	10.62 (0.35)	10.70 (0.43)	10.65 (0.38)	10.54 (0.27)	10.88 (0.61)	13.04 (2.77)	13.14 (2.87)	10.27
Chhattisgarh													2.42	
Goa									0.34 (0.04)	0.48 (0.18)	0.27 (-0.03)	0.19 (-0.11)	0.23 (-0.07)	0.30
Gujarat		3.41 (-)	6.50 (2.54)	4.23 (0.27)	4.34 (0.39)	3.84 (-)	4.62 (0.67)	3.77 (-)	3.19 (-)	3.50 (0.45)	3.92 (-)	2.76 (-1.2)	3.39 (-)	3.96

			0.54)			0.12)		0.18)	0.76)		0.04)		0.57)	
Haryana			1.19	1.42	1.26	1.48	1.11	1.21	1.13	1.23	0.97	1.06	1.21	
			(-0.01)	(0.21)	(0.05)	(0.28)	(-0.09)	(0)	(-0.08)	(0.03)	(-0.24)	(-0.14)		
Himachal Pradesh			0.94	2.12	1.56	1.96	1.86	1.75	2.10	1.72	1.91	1.77		
			(-0.83)	(0.35)	(-0.21)	(0.19)	(0.19)	(-0.02)	(0.33)	(-0.06)	(0.14)			
Jammu & Kashmir	2.34	1.66	2.27	2.17	2.42	1.81	2.84	3.48	3.17	3.23	3.78	2.76	2.66	
	(0.32)	(-1)	(-0.39)	(-0.49)	(-0.24)	(-0.85)	(0.18)	(0.82)	(0.51)	(0.57)	(1.12)	(0.1)		
Jharkhand											0.00	3.13		
Karnataka	1.42	7.01	6.19	7.48	4.65	3.99	4.82	4.38	4.22	3.83	4.64	4.53	4.16	4.72
	(-3.3)	(2.29)	(1.48)	(2.77)	(-0.07)	(-0.72)	(0.1)	(-0.34)	(-0.5)	(-0.89)	(-0.08)	(-0.19)	(-0.56)	
Kerala	0.85	3.62	5.23	6.51	4.38	4.99	3.70	3.27	3.01	3.25	3.41	2.83	2.59	3.66
	(-2.81)	(-0.04)	(1.56)	(2.85)	(0.71)	(1.33)	(0.03)	(-0.4)	(-0.66)	(-0.41)	(-0.26)	(-0.83)	(-1.07)	
Madhya Pradesh	5.84	6.81	6.62	5.60	6.45	5.66	7.66	7.50	6.99	7.40	7.10	8.05	8.55	6.94
	(-1.1)	(-0.13)	(-0.32)	(-1.34)	(-0.49)	(-1.28)	(0.72)	(0.56)	(0.04)	(0.46)	(0.16)	(1.11)	(1.61)	

Maharashtra	16.35	10.47	9.12	9.01	9.16	7.40	8.22	6.68	6.71	5.85	6.05	4.47	4.79	8.02
	(8.33)	(2.45)	(1.1)	(0.99)	(1.14)	(-0.62)	(0.02)	(-1.34)	(-1.31)	(-2.17)	(-1.97)	(-3.56)	(-3.23)	
Manipur					0.50	1.33	0.93	1.19	1.09	1.02	0.94	0.74	0.91	0.96
					(-0.46)	(0.37)	(-0.03)	(0.23)	(0.13)	(0.06)	(-0.2)	(-0.22)	(-0.05)	
Meghalaya					0.35	0.91	0.64	0.97	0.82	0.78	0.83	0.68	0.58	0.73
					(-0.38)	(0.18)	(-0.09)	(0.24)	(0.09)	(0.05)	(0.1)	(-0.05)	(0.15)	
Mizoram									1.25	0.96	0.80	0.58	0.62	0.84
									(0.41)	(0.12)	(-0.05)	(-0.26)	(-0.22)	
Nagaland			0.05	2.01	1.53	1.41	1.15	1.34	1.25	1.17	1.23	1.02	0.99	1.20
			(-1.14)	(0.81)	(0.34)	(0.21)	(-0.04)	(0.14)	(0.06)	(-0.02)	(0.04)	(-0.17)	(-0.21)	
Orissa	5.06	4.51	7.72	8.03	5.41	6.01	4.72	4.84	4.53	5.21	4.28	4.77	4.89	5.38
	(-0.32)	(-0.87)	(2.34)	(2.65)	(0.02)	(0.62)	(-0.66)	(-0.54)	(-0.85)	(-0.17)	(-1.1)	(-0.61)	(-0.49)	
Punjab	5.09	4.95	4.50	2.22	2.13	1.76	2.01	1.64	2.04	1.58	1.58	1.25	1.70	2.50
	(2.59)	(2.45)	(2)	(-0.27)	(-0.37)	(-0.74)	(-0.48)	(-0.86)	(-0.46)	(-0.92)	(-0.91)	(-1.25)	(-0.79)	
Rajasthan	5.35	4.57	5.36	4.52	4.99	5.87	4.33	4.25	4.77	6.15	5.03	5.42	5.17	5.06

	(0.29)	(- 0.48)	(0.3)	(- 0.54)	(- 0.07)	(0.81)	(- 0.73)	(- 0.81)	(- 0.29)	(1.09)	(- 0.03)	(0.36)	(0.11)	
Sikkim							0.18	0.26	0.23	0.24	0.31	0.38	0.24	0.26
							(- 0.09)	(0)	(- 0.03)	(- 0.02)	(0.05)	(0.11)	(- 0.02)	
Tamil Nadu	9.87	6.95	7.00	7.17	6.98	5.60	7.21	6.25	6.38	5.85	5.89	4.97	4.85	6.54
	(3.33)	(0.41)	(0.47)	(0.63)	(0.44)	(- 0.93)	(0.68)	(- 0.29)	(- 0.15)	(- 0.69)	(- 0.64)	(- 1.57)	(- 1.68)	
Tripura					0.63	1.38	0.96	1.42	1.34	1.35	1.27	1.00	1.11	1.16
					(- 0.53)	(0.21)	(-0.2)	(0.26)	(0.18)	(0.19)	(0.1)	(- 0.16)	(- 0.05)	
Uttar Pradesh	16.30	13.51	11.29	12.96	14.53	14.04	15.90	15.47	15.83	16.46	15.95	18.05	19.27	15.35
	(0.94)	(- 1.85)	(- 4.06)	(- 2.39)	(- 0.82)	(- 1.31)	(0.55)	(0.12)	(0.48)	(1.1)	(0.6)	(2.7)	(3.92)	
Uttarakhand														1.61
West Bengal	13.55	9.85	7.15	6.78	8.44	8.57	7.66	8.74	6.99	6.99	6.61	8.10	6.73	8.15
	(5.2)	(1.69)	(-1)	(- 1.37)	(0.29)	(0.41)	(- 0.49)	(0.59)	(- 1.16)	(- 1.16)	(- 1.54)	(- 0.05)	(- 1.42)	

**Note:** Figures in parentheses indicate deviation from the mean across commissions.

The FC-XII figures of UP, MP and MP and Bihar are the undivided state (i.e., it includes respectively figures of Uttarakhand, Chhattisgarh and Jharkhand) Source: Thirteenth Finance Commission, 2009, pp. 28-29





# Democratic Decentralization: The Indian Experience

*Rashpal Malhotra*

## 1 Introduction

Democratic decentralization in India has gone through many phases prior to and after attaining independence from British Rule in 1947. From the adoption of the Indian Constitution in January 1950 and till the enactment of the 73<sup>rd</sup> and 74<sup>th</sup> amendments to the Indian Constitution in 1993, many committees and commissions had been appointed to streamline the nature of the Constitution, its functions and the devolution of power and accountability of the institutions of urban local self-government and Panchayati Raj<sup>74</sup> for democratic decentralization. The last phase of democratic decentralization was enacted through the

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<sup>74</sup> Assembly of five elders who adjudicated village affairs

73<sup>rd</sup> and 74<sup>th</sup> amendments to the Indian Constitution in 1992 and implemented a year later in 1993. These constitutional amendments were a landmark in the history of democratic decentralization in India in making the country the largest grassroots democracy. Although a lot of literature has been published on this internationally important subject, yet there is a lot to be done in carrying forward the process of democratic decentralization in achieving the objects which are reproduced below from the statements of 'Objects and Reasons' as enumerated in the 73<sup>rd</sup> and 74<sup>th</sup> amendments to the Indian Constitution.

## **2 Brief History of Local Self Government Institutions in India**

### **2.1 Ancient India**

Dr. Radhakamal Mukherjee writes on the function of the institutions of local self-government in ancient India:

“The culture of the race was served and promoted through the indigenous machinery of appropriate institutions handed down from time immemorial, which embraced the manifold spheres of national life, economic and educational, social and religious. Thus the genius of the race was never in danger of being choked and stifled, for it was never in want of the adequate means of self-expression. Thus Hindu culture and civilization have also been enabled to persist through the ages in spite of adverse political conditions endowed with a singular capacity to survive the effects of alien rule and overcome the incidence

of political environment in general to which so many cultures and civilizations have succumbed in human history”.<sup>75</sup>

The process of decentralization in India dates back to the Vedic Age since the time of Kautilya in India around 300 BC. The period between 600 B.C. to A.D. 600 in India witnessed the rise and fall of republics which produced illustrious reformers and founders of religious order like Mahavira and Buddha and the rise and fall of the great Empires of the Mauryas and the Guptas. The sources of historical material about rural government are fairly extensive and detailed, particularly in the age of the Mauryas and the Guptas. We also have in place the *Arthashastra* of Kautilya, a treatise on political economy, as an outstanding contribution to the principles and practices of Hindu polity, describing the politico-administrative situation of the time. Many *Smirti* writers of the Gupta period have also dealt with the structural aspects of the Hindu State in a fairly elaborate manner, giving a detailed description of the governance at the local levels.

## **2.2 Medieval Period**

With the establishment of Mughal power in India, India ushered to a new political landscape, marked by the disintegration of and clashes among the Hindu Kingdoms. Although the disorder and political instability prevailing during the long period of decay were not conducive to an uninterrupted period of growth, the fundamental principles of

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<sup>75</sup> As cited in Ahuja, B.N. and Chhabra, S.S., History of Panchayati Raj, *Panchayati Raj*, Surjeet Publication (Delhi:1993), Chapter 7, p.63

central-local relationships hardly changed with the changes in Kingdoms.

The Hindu Kings recognized the autonomous rights of the *Srenis* (guilds) which looked towards villages of artisans as well as towns for their membership. The guilds permitted self-government to the people in a wide range of economic and social functions. This along with religious practices and the administration of justice in local panchayats seemed to be one of the important reasons for the remarkable community and vitality of local self-governing institutions in ancient India.

Unfortunately, during Muslim rule in India, self-governing institutions in rural areas were severely damaged at vital points. However, they had withstood the onslaught with remarkable tenacity. Their strength, of course, depended upon the kind of social structure of the villages and the revenue system that prevailed in India at that time. Their vitality was most marked where the village happened to be *Bhaichara* villages in which the inhabitants claimed blood ties with one another, cultivated the land, shared its products and met revenue demands collectively. Here the villagers settled their disputes themselves in the manner of a *bradry*, apportioned revenue demands and joined together for the purpose of village defence and construction work. It was this kind of village composed of Indian Yeomnary that attracted the oft-quoted remarks of Charles Metcalfe:

“The village communities are little republics, having nearly everything they want within themselves, and almost independent to any foreign relations. They seem to last where nothing else lasts. Dynasty after dynasty tumbles down, revolution succeeds revolution. Hindu, Pathan,

Moghal, Maratha, Sikh, English are masters in turn, but the village remains the same”.<sup>76</sup>

### **2.3 Local Self Government Institutions in British Period**

The year 1858 is a watershed year as this year the East India Company rule was taken over by the Crown after the great uprising of 1857. The resolution of 1865 affirmed:

“The people of this country are perfectly capable of administering their local affairs. The municipal feeling is deeply mooted in them. The village communities are the most abiding of Indian Institutions. They maintained the framework of society while successive swarms of invaders swept over the country.”<sup>77</sup>

Commenting on the nature of the resolution, the renowned authors B. N. Ahuja and S. S. Chhabra analyze that

“[t]he resolution, however, was as much animated by reasons of liberalism as by those of expediency. The new policy was to be governed by the principle of well-being of native people as that of security and revenue. This liberalism found expression in the resolution of 1865. However, the measures were equally prompted by the consideration of effecting economies in the administrative charges by transferring the responsibility for maintaining roads, public works and watch and ward services to the newly created local bodies and

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<sup>76</sup> As cited in Ahuja, B.N. and Chhabra, S.S., History of Panchayati Raj—Medieval Period, *Panchayati Raj*, Surjeet Publication (Delhi:1993), Chapter 8, p.81

<sup>77</sup> As cited in Ahuja, B.N. and Chhabra, S.S., Panchayati Raj in the British Period, *Panchayati Raj*, Surjeet Publication (Delhi:1993), Chapter 9, p.81

thus relieve the imperial funds from debt burdens which stood at 98 million pounds in 1858.”<sup>78</sup>

A major breakthrough in the direction of local self-government was achieved with the passage of Lord Ripon’s Resolution of 1882. Throwing light on it, B. N. Ahuja and S. S. Chhabra remark:

“He [Lord Ripon] regarded popular education as the primary function of local government. This was the test by which these institutions were to be judged even though it meant sacrifice of efficiency which was to be regarded as means to an end rather than something to be worshipped for its own sake. He proposed a smaller unit for constituting rural local boards, namely a sub-division, *tehsil* or *taluka*.”<sup>79</sup>

In the year 1918, the process of self-government apparently started taking root with the proclamation of the Government of India Resolution of 1918. The Resolution reads:

“The duties of local bodies cover most of the activities upon which the essential welfare of the country depends. In the development of these interests the self-government of the country will secure a very real and important advance, and it is on the increased experience to be gained in administration of local civic affairs that the country must to a large degree rely for the expansion of its self-dependence on the Central Government.”<sup>80</sup>

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<sup>78</sup> See Ahuja, B.N. and Chhabra, S.S., Panchayati Raj in the British Period, *Panchayati Raj*, Surjeet Publication (Delhi:1993), Chapter 9, p.81

<sup>79</sup> *Ibid*, pp.81-82

<sup>80</sup> *Ibid*, p.85

It further states, “Substantial advance should now be made on the lines laid down”, because, it says, “The presence of an official element has been prolonged up to a point at which it has impeded the growth of initiative and responsibility.”<sup>81</sup> This was a very significant step taken at the level of policy makers in Britain to further self-governance.

Subsequently, again in 1919, self-government was declared as a guiding principle for the future constitutional development in India. The Indian Government Act, 1919 reads:

“Whereas it is the declared policy of [British] Parliament to provide for the increasing association of Indians in every branch of Indian Administration and for the gradual development of self-governing institutions with a view to progressive realization of responsible government in British India as an integral part of the empire.”<sup>82</sup>

In the period beginning from 1937 – 1946,

“the assumption of offices by the popular ministries in the wake of Provincial Autonomy gave a new lease of life to the movement of Rural reconstruction. Local self-government received an additional stimulus as a result of funds made available under the various schemes. However, the deepening shadow of the World War Second, the political deadlock of 1939, and the resignation of popular ministries and the

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<sup>81</sup> *Ibid*

<sup>82</sup> See Government of India Act, 1919, available at <http://sdstate.edu/projectsouthasia/loader.cfm?csModule=security/getfile&PageID=862757> (Accessed on April 23, 2012)

call for 'Quit India Movement' caused a severe setback to the expansion of rural local government."<sup>83</sup>

## **2.4 Democratic Decentralization in Independent India from 1947 to 1993**

India attained its Independence in 1947. The Constitution of India came into effect on January 26, 1950. It adopted the Westminster model of democracy. The subject of decentralization became a matter of debate in and outside the Constituent Assembly. The debate in the Constituent Assembly addressed the issue of giving political power in the newly federal republic of India. There were divergent views in building the new state and the institutions for a newly independent country having adopted parliamentary democracy. The Gandhian approach was in favor of decentralization at the village level. This approach was criticized by others, particularly by Dr. B.R. Ambedkar who was a leading member of the Constituent Assembly. His views are well known and are stated below:

“That they [village communities] have survived through all vicissitudes may be a fact. But mere survival has no value. The question is on what plane they have survived. Surely on a low, on a selfish level. I hold that these village republics have been the ruination of India. I am therefore surprised that those who condemn provincialism and communalism should come forward as champions of the village. What is the village but a sink of localism, a den of ignorance, narrow-mindedness and

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<sup>83</sup> See Ahuja, B.N. and Chhabra, S.S., Panchayati Raj in the British Period, *Panchayati Raj*, Surjeet Publication (Delhi:1993), Chapter 9, p.89

communalism? I am glad that the Draft Constitution has discarded the village and adopted the individual as its unit.”<sup>84</sup>

Although India became a republic in 1950, the federal framework did not transfer powers from the Centre to the States and the sub-state levels. In fact, the unity bias of the Constitution with a federal democracy did not succeed in providing the people the opportunity and rights to participate in the process of planning and decision making. The failure of the centralized system of economic and political governance widened the existing gap between the rich and the poor. Apart from that, the problems of ethnicity, culture, religion, communality and territories also grew in parallel. The centralized system became synonymous with a national political party that was Indian National Congress. Later, the emergence of some regional political parties over a period of time replaced most of the Congress ruled states, signalling the advent of decentralisation at the political level.

In fact, it seems, the centralized system of governance in democratic India has failed to adequately address the problems of poverty and development particularly in rural areas, despite the fact that huge funds have been earmarked for the social sector comprising education, health and poverty alleviation programmes. The analysis of the literature and data shows that around one-third of the India's population of over a

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<sup>84</sup> See Constituent Assembly of India Debates (Proceedings) – Volume VII, Thursday, November 4, 1948, Lok Sabha, available at <http://164.100.47.132/LssNew/constituent/vol7p1.html> (Accessed on April 20, 2012)

billion continues to live below the poverty line. Although there are lots of reasons attributed to this state of affairs, significant among them are the prevalence of rampant corruption, incoherent governing structure and lack of commitment from the leadership at both political as well as administrative levels.

Although the issues of poverty, unemployment and illiteracy still haunt in India, it does not mean that the Government of India has not made any attempt to resolve them. However, at the implementation level, things went wrong. Numerous flagship programmes<sup>85</sup> launched by it to bridge the education, health, employment and infrastructure divides have been partially implemented in some states while in others they are lagging far behind the targets.

The failure at the implementation level caused discontent and disparity among the masses. As a consequence, a plethora of problems and conflicts of different nature surfaced. One of them is Naxalism. The examination of the rise of Naxalism which has spread to more than 200 districts in India clearly indicates the failure of the system which is

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<sup>85</sup> In particular, these are: 1.Sarva Shiksha Abhiyan (SSA); 2. National Rural Health Mission (NHRM); 3. Integrated Child Development Scheme (ICDS); 4. Mid-day Meal (MDM); 5. National Rural Drinking Water Program (NRDWP); 6. Total Sanitation Program (TSP); 7. National Social Assistance Program (NSAP); 8 .Mahatma Gandhi Rural Employment Guarantee Act (MGNREGA); 9. Indira Awas Yojana (IAY); 10.Pradhan Mantri Gram Sadak Yojana (PMGSY); 11. Rajiv Gandhi Gramin Vidyutikaran Yojana (RGGVY); 12. Accelerated Power Development Reform Program (RAPDRP); 13. JLN National Urban Renewal Mission (JNNURM); 14. Accelerated Irrigation Benefit Program (AIBP); 15. Rashtriya Krishi Vikas Yojana (RKVY); 16. National Horticulture Mission (NHM).

unitary biased. It seems that these problems can be solved through the process of decentralisation and devolution of power. This is established by the fact that there has been an unprecedented heavy turnout of voters in the Naxalite districts in the Panchayat elections, which shows the people's growing interest in the process of decentralisation and devolution. The same is true of Jammu & Kashmir which has been facing militant from across the border since India's independence. The turnout of the voters in the Panchayat elections was much higher than expected. These two examples clearly establish the need for democratization of the centralized system and power concentrated in the States' political and administrative institutions to restore confidence of the people at the grassroots levels into the governance. The states where the implementation of the 73<sup>rd</sup> and 74<sup>th</sup> amendments to the Indian Constitution has been carried out are showing comparatively higher growth of GDP and also, growth in terms of other social indicators.

Sketching the embedded politico-administrative significance of the 73rd and 74th amendments to the Indian Constitution, scholars believe that "[t]hese constitutional amendments have provided a concrete framework to redesign the structure of centralized and representative governance which independent India received as a legacy of its colonial past"<sup>86</sup> The enactment of the 73<sup>rd</sup> and 74<sup>th</sup> amendments shifted the status of the Panchayati Raj Institution and Urban Welfare Self-Governments from Directive Principles of States' Policy to Fundamental

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<sup>86</sup> Institute of Social Sciences (ed.): "Re- Imagining India and Other Essays", Orient Black Swan (New Delhi: 2011).

Rights which made the holding of elections to these institutions after every 5 years mandatory.

It has been widely believed that even after 19 years of enactment of the 73<sup>rd</sup> and 74<sup>th</sup> Constitutional amendments, people still have not seen the desired transformation both in the rural as well as urban areas. Primary reasons constitute caste oppression and an unequal delegation and distribution of power, resources and opportunities. This perpetuates poverty, violence and a deprived psyche.

The failure of the centralised system to meet the emerging requirements and aspirations of the people at local levels paved the way for further democratic decentralisation of the Indian polity. This growing decentralisation is commonplace now everywhere. It's not specific to the 'constitutionally declared federations', but also found in the unitary system.<sup>87</sup> On the one hand, the collapse of the USSR further boosted the confidence of the people in favour of decentralisation. On the other hand, the umbrella organisation European Union comprising sovereign nation-states gave impetus to the idea of unity in diversity which supports further decentralisation. In fact, the emerging scenario at the global level and developmental strategies and planning also support the process of decentralisation and devolution. Appeal to the responsive governance and further emphasis on federalism have been key factors in effecting the growing demand for decentralisation. Indisputable, it will

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<sup>87</sup> For the following passage, compare Rao Govinda M. And Singh, Nirvikar, *Political Economy of Federalism in India*, Oxford University Press (New Delhi: 2005), Chapter 1, pp. 5-6.

enhance overall competence, ensure transparency and intensify the people's participation at all the levels of society. Many scholars see the process of decentralisation as check and balance in the governing system of a country. Also, it will reduce, they argue, overall transaction cost and cause improvement in access to information. So far as the objective and purpose behind the idea of federalism is concerned, it is poorly achieved in most of the developing countries if we take into consideration their fiscal federalism situation which is a good indicator of the success and height of federalism in a country. In case of India, scholars suggest, the disappearance of the dominance of one political party and the emergence of various regional parties at the national level as key actors have underlined the need for strengthening the governance of the country to reduce the level of fragility and vulnerability in the governance. They argue that there is a strong need for decentralisation at the decision and policy making level to meet the aspirations of the people.

### **3 Democracy, Decentralization and Development in India:**

Independent India actually adopted the famous Nehruvian model which proposes a centralised structure of governance. It was thought for a long time that this model was in India's long time interest, keeping in view the ethnic, linguistic and regional problems prevailing in the country. However, this system failed to bear fruits on many fronts including these problems. This led to change in mass perception regarding the unitary

way of governance and polarisation in favour of non-government process of thinking and planning took place.<sup>88</sup>

Eventually it was Prime Minister Rajiv Gandhi who took the initiative to introduce the Bill in the Parliament in 1989. While the Lok Sabha passed the Bill, it could not go through in the Rajya Sabha in view of a lacking majority of the Congress Party there. Thereafter it was Prime Minister P.V. Narsimha Rao who acted fast to get the Bill passed in Rajya Sabha which resulted in adding the 73<sup>rd</sup> and 74<sup>th</sup> amendments to the Indian Constitution.

This Act derived its validity from Article 40 of the Indian Constitution, which lays down that “the State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.”<sup>89</sup> The experience of 40 years of governance and its shortcomings compelled the Government of India to amend the Constitution (73<sup>rd</sup> and 74<sup>th</sup> Amendments) to strengthen the Panchayati Raj Institutions in India. Consequently, the Constitution was amended to establish “Panchayats at village and other level or levels”, based on direct elections to all seats in the Panchayats at all the levels.<sup>90</sup>

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<sup>88</sup> For details, see Singh, Satyajeet and Sharma, Pradeep K., *Decentralisation: Institution and Politics in Rural India*, Oxford University Press (New Delhi: 2007), pp. 7-8

<sup>89</sup> See Article 40, The Constitution of India, available at <http://lawmin.nic.in/coi/coiason29july08.pdf> (Accessed on May1, 2012)

<sup>90</sup> For details, see THE CONSTITUTION (SEVENTY-THIRD AMENDMENT) ACT, 1992,

The key features of the 73<sup>rd</sup> Amendment to the Constitution of India can be summarized as follows:<sup>91</sup>

- It makes provisions for reservation to the Scheduled Caste and Scheduled Tribes in proportion to their populations in the Panchayats.
- For women as well, there is provision for reservation not less than one-third of the total seats in a Panchayat.

The tenure of the Panchayat would be of five years. Once Panchayat is suspended or terminates, the election for the same has to take place within the period of six months.

- Now the State is constitutionally obliged to devolve its power and responsibilities as to planning, matters of social justice and implementation of development schemes upon the Panchayats.
- The Panchayats would be financed from the consolidated fund of the State.
- To make things better, the State has the responsibility to set up a Finance Commission every five years to review the financial situation of Panchayats.

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available at <http://indiacode.nic.in/coiweb/amend/amend73.htm> (Accessed on May 2, 2012)

<sup>91</sup> For details, see THE CONSTITUTION (SEVENTY-THIRD AMENDMENT) ACT, 1992, available at <http://indiacode.nic.in/coiweb/amend/amend73.htm> (Accessed on May 2, 2012)

Before dealing with past, present and future experiences of democratic decentralization of Indian democracy, it is necessary and important to additionally have a look at the key features of 74th amendment to the Constitution:<sup>92</sup>

- It is to make clear the division of affairs between the State and the Urban Local Bodies with respect to the functions and taxation powers, and arrangements of revenue sharing.
  - It also ensures regular and timely conduct of elections, providing adequate representation for the weaker sections (STs, SCs and women).
  - It envisages three-layer municipalities—Nagar Panchayat, Municipal Council and Municipal Corporations.
  - The representatives are to be chosen by direct elections.
  - Reservation for STS/SCs will apply in proportion to their population and in case of women; it would be not less than one-third of the total seats.
  - Members to the Municipalities would be elected for five years and reelection would be held within the period of six months. The power and responsibilities of the State as to planning, matters of social justice and implementation of development schemes are to be devolved upon the Municipalities.
  - The Municipalities are to be funded from the Consolidated Fund of the State.
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<sup>92</sup> For details, see THE CONSTITUTION (SEVENTY-FOURTH AMENDMENT) ACT, 1992, available at <http://indiacode.nic.in/coiweb/amend/amend74.htm> (Accessed on April 22, 2012)

- A Finance Commission has to be set up to look after the financial situation of the Municipalities.

#### **4 Conclusion**

The Centre for Research in Rural and Industrial Development (CRRID) has carried out intensive as well as extensive field studies, research and training programmes for the elected representatives of both Panchayati Raj Institutions and Urban Local Self Government ever since the passing of the 73rd and 74th amendments in 1993. In fact, the Institute happens to be the pioneer in northern part of India comprising the states: Punjab, Haryana, Himachal Pradesh, Jammu & Kashmir, Uttarakhand and Rajasthan to carry forward the agenda in need for devolution of powers to local self-government institutions under the guidance of the writer of this article and his colleagues.

It had been our considered view that the process of transition through the local self- government institutions from political, economic, religious and educational towards transformation shall take another ten more years as from now. This view was held by many of my colleagues and me from the very inception of democratic decentralization mandated by the 73<sup>rd</sup> and 74<sup>th</sup> amendment of the Indian Constitution. There is no doubt that there has been steady progress in achieving some of the objects of decentralization particularly with the assured participation of women representatives elected to these institutions. It is, further, established by our research based findings, interactive meetings, seminars and conferences that the withholding of devolution of powers to the local self-government institutions shall create conditions of unrest manifesting in violence as has been witnessed in the Naxalite areas. The story of Jammu & Kashmir needs special

attention where the participation of the people even under the threat of militancy in seeking democratic decentralization has set aside the apprehensions of non-believers in the decentralized system of local self-government institutions. The recent occurrences of incidence of killing of some elected representative of Panchayati Raj Institutions by the militants in J&K prove the fact that decentralized system of democracy is a threat to the militant activities.

At the end, we can firmly state that delaying of devolution of powers; resources and capacity building shall harm the states which are going slow in implementing the most needed devolution of powers, functions in strengthening democratic decentralization in India.





# Democracy, Citizenship and Federalisation in India<sup>93</sup>

*Subrata Mitra*

## 1 Introduction

Why has India, despite the lack of a predominant language, race, ethnicity or religion succeeded more than her neighbours in building a federal state, ensconced in a democratic political community that has held together over the past six decades? While federalisation – the constitutional devolution of power to region and locality that balances a sense of self-rule and shared rule – is a necessary condition of the

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93 This is a revised version of the paper presented at the WBK-Federalism conference, organised by the Hanns-Seidel-Foundation. I am grateful to the Cluster of Excellence, Heidelberg and the HSF for their support and to Hanns Buehler and Lukas Rudolph for their comments on an earlier version.

foundation of a political community, legal frameworks are not by themselves sufficient for a country as diverse as India to hold together. Citizenship, I argue, is the missing link between the state and everyday politics which can act as a binding force that completes our understanding of the Indian puzzle. The reciprocal relationship between citizen-making and federalisation has been one of the most important achievements of the Indian efforts at state formation in a post-colonial context. The institutional arrangements that underpin this great experiment, and the constituents of citizenship are analysed in this chapter conceptually and applied empirically in terms of a survey of the Indian population.

The Indian federation is seen here as an exemplar of post-colonial state-nations. These states are the product not of a revolutionary war based on a shared collective vision of a nation but instead of the *Transfer of Power* that created the legal entity of the state, charged with the responsibility of creating nations and citizens with all the attendant problems of the western equivalent of the process. This is further compounded by the process of globalisation, with its incessant flow of concepts, power, media attention, material and networks, not much of which would have existed in the world in which the western citizens evolved. Empirical in content, the essay considers these general issues as the conceptual 'flow'<sup>94</sup> of citizenship between and within cultures, the

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94 The concept of flow refers in this context to the movement of ideas across time and space. See Ulrike Freitan and Achim von Oppen, "Translocality – An Approach to Connection and Transfer in Area Studies" in Ulrike Freitan (ed.) *Translocality: the Study of Globalising Processes from a Southern Perspective* (Leiden

hybridization<sup>95</sup> of the imported concept of citizenship and its entanglement<sup>96</sup> with indigenous notion of personhood, state policies to promote citizenship and their contestation by ordinary men and women who claim citizenship of the state where they live, or see themselves as excluded from it.

## **2 Turning aliens into citizens: A ‘tool-kit’ for a trans-disciplinary policy analysis**

Citizenship is a cutting-edge issue of our times. In its various shapes and guises, it underpins debates about the modern state, nation, identity, personhood, marginality and empowerment. These debates take place as much in the mainstream media as within political parties, interest groups active on the welfare of immigrants and displaced people, and in committees and bureaucratic circles that are under pressure to generate appropriate and effective policy to turn aliens into citizens. However, despite the ubiquity of citizenship resulting from its

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2010), pp. 1-24. Also see Madeleine Herren, Martin Ruesch and Christiane Sibille, *Transcultural History: Theories, Method, Sources* (Heidelberg 2011).

<sup>95</sup> Hybridisation implies the process of conflation of different concepts, leading to the creation of new ideas. See Subrata Mitra, ‘From comparative politics to cultural flow: the *hybrid* state, and resilience of the political system in India’, forthcoming in Phillip Stockhammer, ed. *Conceptualising Cultural Hybridization: A Trans-disciplinary Approach*, Vol. 1. *Transcultural Research: Heidelberg Studies on Asia and Europe in a Global Context* (Springer Verlag, Heidelberg).

<sup>96</sup> ‘Entanglement’ differs from ‘hybridisation’ in the sense that two (or more) elements when entangled, retain their individual selves rather than fusing into one, new, object or idea. Modernity and tradition get entangled in some post-colonial societies in the sense that people learn to live in different worlds at the same time. See below for the reference to ‘histoire croisée’.

assertion as well as from its contestation of established order, one finds not much conceptual clarity or cohesion in terms of its institutional form. The conceptual ‘messiness’ of citizenship, and its ambiguity and fluidity, need to be considered carefully and critically, before we can move to its empirical measurement.

The challenge of defining citizenship rigorously to the satisfaction of the state as well as all who claim to be citizens is to be found not only in the politics of transitional societies where millions of colonial subjects and homeless people moving across national boundaries find themselves within the territory of new states, but also in the interstices of complex, liberal democratic, post-industrial societies where foreign immigrants live out their precarious lives, too. As we have seen in the previous section, more often than not, in critical situations as these, the concepts and institutions drawn from the liberal theory of citizenship meet the lives of the reluctant and excluded citizens that are at stake. These are the product of a different history and ontology from that of Marshall<sup>97</sup>, not mediated by the European experience that molded Marshall’s *Weltanschauung*. Moreover, the urgency for action in such cases is often of a kind that it makes the distinction between the concept and reality of citizenship untenable, thus putting into question the very feasibility of effective policy.

In face of such theoretical disarray and conceptual complexity, how can one map the state of play with regard to the status of citizenship in a

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<sup>97</sup> See Marshall, Thomas H. And Bottomore, Tom. 1950. *Citizenship and Social Class*. Cambridge: Cambridge University Press.

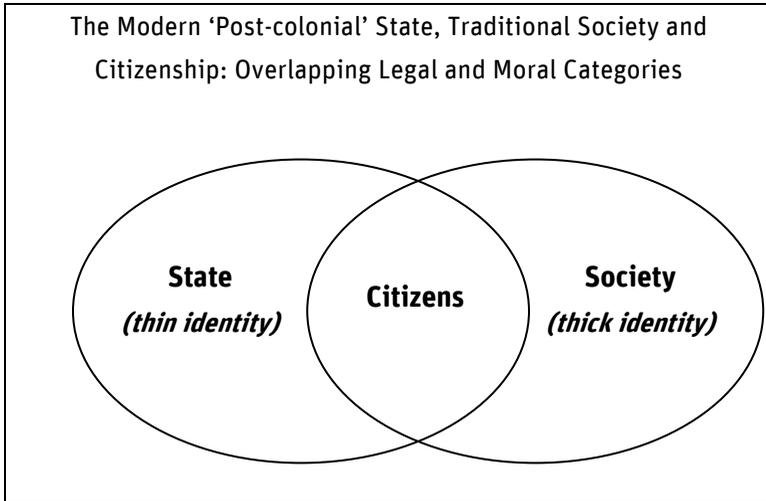
given political context, or for that matter, devise policies to spread this much sought after status? Towards this objective, the following section undertakes a brief survey of the social constructions of citizenship, and, the evolution of the formal category of citizens from antiquity to present day. It considers the inner differentiation of the liberal theory of citizenship to cater to its complex empirical nuances. Finally, it attempts to unite the various strands of citizen-making conjectures in the form of a toolkit. This is done through an analysis of the conceptual basis of citizenship through an inquiry into its philosophical and social construction. This section of the chapter thus sets the stage for the construction of a flow diagram that seeks to unite the dynamic process of citizen-making in terms of its underlying parameters, some of which go beyond the realm of everyday politics.

## **2.1 Citizenship as a ‘third space’: ‘Entangled’ and ‘trans-national’ citizenship**

In the contemporary world, globalization, which was meant to make citizenship and national boundaries increasingly less salient, has in fact revived their importance. The agenda of contemporary international politics is crowded with competing claims of the state and supra-stage agencies on the loyalty of individuals and ethnic groups. In the absence of a global political order with binding character, nation-states, acting in their capacity as the collective voice of their citizens, remain the most important agents of accountability and enforcement. The complex process through which subjects and immigrants become citizens, thus, pitches territoriality and ethnicity as competing norms for the entitlement to citizenship (see Figure 1). Caught in this double bind,

citizenship has become a contested category and a political problem of global importance.

**Figure 1: Overlapping circles of state and society**



In the era of globalization, we are faced with a new context and a new challenge. Ours is a world of nation-states, states without nations, nations without states, and, as often as not, people with history but without nations or states to nail them to. This is a world where citizenship – equal membership of moral and political communities – has steadily emerged as an entitlement. To understand these aspirations and capabilities, one needs to move beyond the frames of references and categories which are specific to the history of the European nation-state.<sup>98</sup>

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<sup>98</sup> Michael Werner and Bénédicte Zimmermann, “Beyond comparison: Histoire Croisée and the challenge of reflexivity”, *History and Theory* 45 (February

## **2.2 The Indian Toolkit: Aliens and subjects into Citizens**

Although language and tribe are not accorded any legitimacy by the Indian state for defining national identity, they are accepted as the bases for politico-administrative units. This results in two basic contradictions. First, it militates against the notion of single citizenship, as domiciliary requirements are often prescribed by these units for availing some of the civil and social citizenship entitlements. Second, such prescriptions often render those who do not share the relevant linguistic and tribal identities as outsiders to these units. Thus, a second category of ethnies emerge – those who are nationals in their respective homeland (e.g. Maharashtrians in Maharashtra and Nagas in Nagaland) – but ethnies elsewhere in the territory of the Indian state. Full citizenship entitlements to all members of the polity irrespective of their spatial locations can partly moderate the tensions and conflicts between nationals and ethnies.

The core idea behind the toolkit of citizenship is to identify concrete levers of action that can transform rebels or the alienated into citizens. With this intention, the design of the toolkit seeks to explore the room to maneuver within the structure of the state. The Indian record of successfully turning subjects into citizens has cross-national significance because, rather than being a unique attribute of Indian culture, it is based on an institutional arrangement containing several important parameters. First of these are the legal sources of citizenship

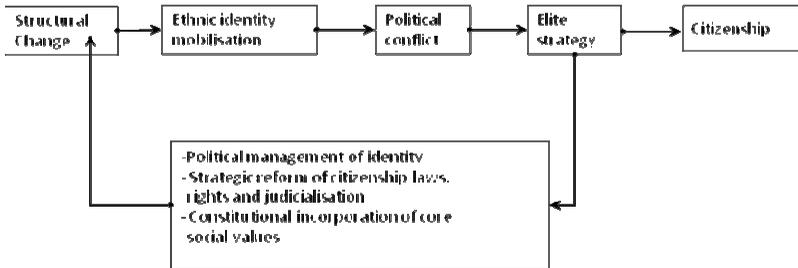
as formulated in the Indian Constitution (Articles 5-11), the *Constituent Assembly Debates* (which provide insights into the controversy surrounding specific articles), and legislation undertaken by the national parliament to enable and amend, depending on the case, the original provisions of the constitution. ‘Judicialisation’ of citizenship is yet another method of synchronizing the provisions of the law and the new demands emerging from society. The assertion of identity and linkage to India has emerged as a supplementary basis of Indian citizenship, in addition to birth and residence. Property and citizenship have constantly been interwoven: who can own property and how much have had fluid answers. In the case of Kashmir, the laws have always had a slightly different tinge due to the special agreement that the Indian Acts would not be normally applicable in Kashmir. In the last decade, case law has tended towards a more flexible and all encompassing understanding of Indian stipulations with relation to property and, of course, the onset of economic liberalization has given wings to even further judicial liberalization of these concepts. Similarly, recent laws allowing NRIs (Non-Resident Indians) and PIOs (Persons of Indian Origin) to own property have already been registered in case law.

The model presented below (see figure 2) weaves together several insights that we gain from the Indian attempt at turning subjects into citizens in a form that can be used as the basis of comparison across countries. The first and foremost of these is the fact that in the Indian discourse and in public policy, citizenship is conceptualized both as a ‘product’ and a ‘process’ – which is tantamount to saying that citizen-making is a primary objective of the constitution, modern institutions and public policy of the state. The three processes, on the other hand, are reinforced by the momentum generated from below, as

people assert their citizen-rights and articulate them through a complex repertoire that effectively combines political participation with strategic protest. Both the state and the *janata* – India’s generic category for politically conscious and articulate participants in everyday politics – draw on categories that are indigenous as well as imported, and the process stretches out into memory of self-hood and rights, of empowerment through a chain of associations that links people in one part of the country to another. One consequence is the emergence of the hybrid citizen – a liminal category that joins the protester and the participant, stretching the accommodating capacity of the political system and blunting the edges of anti-system behavior.

The model of ‘citizen making’ below (see Figure 2) highlights the role of elites and strategies of reform. It also explains India’s attempts at generating differentiated and multi-level citizenship – new conceptual tools with relevance for policy-making – as categories germane to her politics. That makes citizenship a significant case study of ‘conceptual flow’ where practices, notions, institutions of citizenship have been transferred, imported, emulated and adapted to successfully, and unsuccessfully, meet local needs and constraints.

**Figure 2: Culture, context and strategy in turning subjects into citizens: A dynamic neo-institutional model**



### 3 Measuring citizenship through public opinion surveys

To move from a description of the attributes of citizenship to its measurement involves several analytical steps. The most important of these is to juxtapose two images of citizenship in India, namely, that of the observer (the state, the constitution, the government, the immigration authorities), and the actor (society, voters, communities, rebels and insurgents). The insights into the perception of society are derived from open-ended conversations with political thinkers, social elites, experts and people in the context of their everyday lives whereas statute books, government white papers, legislation and court judgments are a source for the former. These opinion, events, memories, legislation, institutions and policies account for the complex landscape of citizenship in India. The main hypothesis here is that the overlap of the two generates the empirical space for citizenship.

The theoretical basis of the concepts of state and society within the empirical context is the second important consideration. Thus, in the Indian case, one needs to understand the ways in which the concepts of the ideal citizen have been formulated by delving into the diversity of

political theories of the state and the citizen. Institutions are the link between political theory and society. As such, the next important step is to understand the institutional arrangement of society and how it evolved historically and took constitutional shape.

### **3.1 Un-congealed memories: Identity and citizenship in India**

Three general approaches – evolution, involution and rational construction – underpin the discourse of citizenship in India.<sup>99</sup> The *evolutionists* see citizenship as an essential part of Indian civilization and heritage, which seamlessly connects India's past and present. For this school, Indian citizenship and territory are overlapping categories in a manner comparable to the *ius solis* of the European discourse on citizenship. One finds the opposite argument in the ethnic construction of citizenship – an approach that resembles the *ius sanguinis* strand of European thinking. According to this approach, *involution* – entanglement of the indigenous moral communities and the imported concept of cultural, economic and political rights – is a more appropriate description of the state of citizenship in India.<sup>100</sup> Straddling

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<sup>99</sup> These approaches are identifiable in the writings of India's political thinkers, and in the elite interviews conducted as part of the fieldwork on citizenship in India. See Subrata Mitra, ed., *Citizenship and the Flow of Ideas in the Era of Globalization: Structure, Agency and Power* (Delhi: Samskriti; 2012)

<sup>100</sup> This concerns the debate between involution and evolution, based on the nature of the relationship between the past and present in India. While both evolutionists and involutionists derive the legitimacy of their concept of the future from their understanding of the past, the former see the present as part of the *evolu-*

both schools is the *rational construction* of citizenship. One finds this strategy of citizen-making in the vision that underpinned the efforts of the constitution of India, adopted in 1950 and still largely intact, to transform a heterogeneous population into the new, hybrid category of the *nagarik* – in Hindi – citizens of the Indian Republic.

The edifice of the post-independence institutional arrangement was not entirely an Indian invention but an adoption of the conceptual flow from Britain to India, in light of growing Indian resistance to foreign rule. The constitution of India and the network of institutions and political practices it has spawned, have deeply affected the evolution of citizenship in India. The direct contributions of the constitution are to be seen in the conflation of the republican, liberal and communitarian traditions of citizenship in the Preamble to the Indian Constitution , the articulation of rights and duties of citizenship in key sections of the constitution, the interplay of individual and group rights, and finally, the specification of cultural and ethnic arenas within which citizenship is expected to flourish.

At the outset, Article 5 clearly reflects Dr. Ambedkars' and other members' reiteration by setting out the purpose of the Articles and the desire to curtail it to the question of citizenship at the commencement on the Constitution. Birth, domicile on Indian territory, or being born to

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*tion* of an unproblematic past to an equally unproblematic future And, in contrast, the involutionists see the present (inclusive of colonial modernity) as a corruption which needs to be expunged in order to produce an authentic, *Indian* future.

Indian parents, are sufficient for a person to get Indian citizenship. The logical sequence is maintained by Article 6, the second Article dealing with citizenship, which deals with migrants from territory of the undivided India, denoting an almost unlimited 'right to return' to those who were born into Indian territory, as defined in the Government of India Act, 1935. The problem of re-migration was tackled in Article 7, which, while stating that no person who migrated to Pakistan was a citizen of India, nevertheless made provision to include those who had re-migrated to India from these territories. These people were required to have a permit of resettlement or permanent return issued by the proper authorities. It is interesting to note that the root of the idea of PIO (Persons of Indian Origin) can be glimpsed in Article 8, which deals with people residing outside India at the time of independence. It gives them the right to apply for citizenship based on origin – again, subject to the provision that the person has registered with a consulate of India in the country of residence. The necessity to demarcate between the citizens of the newly partitioned territories is captured in Article 9, which states that those who have voluntarily acquired citizenship of any foreign State lose Indian citizenship claims. The inclusive character of citizenship in India can be seen in Article 10. This Article makes every effort to include everyone the constituent assembly did not expressly disallowed to be or remain citizens of this country. Questions raised in recent years of stateless citizens in India would probably have to find recourse as best as they can in this Article, since refugees with no proof of identity and expressly disowned by neighboring countries often find themselves in the unenviable position of being stateless. Finally, underlining the republican strain of citizenship in India, the constitution authorizes the parliament to regulate the right of citizenship by law under Article 11.

The constitution confers a full set of individual rights to the freedom of speech, belief, practice, movement, occupation and property, and provides for limitations on them, carefully monitored by the Supreme Court, in public interest. These individual rights are supplemented by group rights – to identity – by the way of constitutional provision for primary education in the mother tongue, and protection for personal law, which governs marriage, divorce, adoption and succession. A set of fundamental duties – to abide by the constitution, to respect the National Flag and the National Anthem, to defend the country when called upon to do so, to protect harmony and to ‘preserve the rich heritage of our composite culture’, to safeguard public property – are provided for under Article 51A.<sup>101</sup>

Finally, comparable to Article 370 which was meant to protect the cultural and ethnic identity of Jammu and Kashmir as a condition of its accession to the Indian Union, several Articles provide for the perpetual protection of a separate cultural, religious, ethnic and linguistic character of political units of the Indian Union. Thus, Article 371A categorically states that “No act of Parliament in respect of religious or social practice of the Nagas, Naga customary law and procedure, administration of civil and criminal justice involving decisions according to Naga customary law and ownership and transfer of land and its resources shall apply to the State of Nagaland unless the Legislative Assembly of Nagaland by a resolution so decides.” Similar provisions

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<sup>101</sup> Inserted to the constitution under the forty-second amendment Act 1976 at the height of the Emergency, the legitimacy of the fundamental duties remains contested.

are there for other States (Assam, Andhra Pradesh, Mizoram, Arunachal Pradesh) or parts of States (the Governor of Nagaland carries personal responsibility for the observation of the equitable distribution of resources that would guarantee a fair share to the Tuensang district, Article 371A 2 (b)). These provisions that balance the principles of self-rule and shared rule, set the precedents for similar demands, most recently in the case of the attempt to create the separate State of Telengana.

The Citizenship Act, 1955 is the core legal instrument that gives the institutional basis to citizenship in India. This has been followed by others such as the Citizenship Rules of 1956, the Dadra and Nagar Haveli (citizenship order) of 1962, the Goa, Daman and Diu (Citizenship) Order of 1962, the Citizenship (Pondicherry) Order of 1962, the 2003 Assam Accord, and so on.

### **3.2 Citizenship in India: Results of a national survey**

The legal provision is undoubtedly an important constituent of citizenship. However, the burden of proof of citizenship lies with the perception of this right, and as such, its construction by the individuals concerned. One may be legally entitled to citizenship but not be aware of it; or, be aware of it but not feel in possession of the rights and capacities that make citizenship meaningful, or one might be disaffected and reject the legal rights of citizenship, driven by some innate force – of loyalty to a different authority than the national state, or by another sentiment. Speaking in the abstract, one can thus differentiate between many different sections of the population. There may be citizens whose right to citizenship is complemented by a corresponding sense of capacity, duty, moral obligation and sentiment. These intuitive notions,

widely shared in the literature on citizenship, form the basis of the survey questions on 'who is a citizen of India', the sense of empowerment, the perception of who are 'non-citizens' and the evaluation of the normative basis of citizenship. Four criteria, namely, self-perception, sense of empowerment, identification of the non-citizen and the sense of citizen duty as enshrined in the constitution are of critical importance to the making of the citizen<sup>102</sup>.

First of all, at the heart of the survey measurement of citizenship is the self-perception of the individual. The respondents are asked this question, in as neutral a manner as possible in the survey context, and in the mother tongue of the respondent: (Question 13) "*Some people think of themselves as Indian citizens, while some others do not think of themselves as citizens of India. Talking about yourself, do you consider yourself a citizen of India?*" The results, show 89% - an immense majority of the respondents – asserting their claim to the citizenship of India. The rest are distributed over those who do not regard themselves as citizens, and those who either do not respond or are undecided.

Who then are these 89% who claim the status of citizens and who are the non-citizens? The socio-demographic profiles of these two categories of India's population help establish the following: In terms of their self-perception, citizens as well as non-citizens do not have any distinct

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<sup>102</sup> The four questions on citizenship form part of the National Election Study (NES) conducted by Lokniti (CSDS) during July-August 2009. A representative sample of about 8000 men and women were interviewed in their own languages by specially trained investigators.

social profile. The higher educated tend to have a slightly greater tendency to see themselves as citizens (the gap between the non-literate and the college educated is 7%); the oldest age cohort feels its status as citizens a little less keenly than those younger than them (those 56 or above, at 85% are four percent points below the national average) and the very poor, at 83%, are 6% below the national average. Interestingly, with regard to the social categories, nearly all except Muslims are within one percent of the national average. As for Muslims, at 85%, they are barely four percent points below the national average with regard to their self-definition as Indian citizens.

If, in terms of social characteristics, there is not a clear social profile that would radically distinguish the self perception as citizens from that of non-citizens, then one should look at the State averages, in order to see how important the role of context is. Clearly, context matters, for in Jammu and Kashmir, at 19.6%, the average of non-citizens is almost three times that of the national average. In Tripura it climbs even higher, reaching an astounding 27%.

We next turn to the issue of capacities and empowerment. Here, we follow the conventional measures such as the perception of equality (equal rights), the right to free expression, a sense of political efficacy (the right to change a government that one does not like) and the fulfillment of basic necessities like food, clothing and shelter. The question is worded in a manner where the individual does not have to have a precise notion of the society at large – who except the professionals of the census would have the confidence to take a position on the larger multitude – but on people such as themselves. By adding up these individual perceptions one gets a sense of the collective. The

question asked for this purpose has four specific themes to it (question 12; see Table 1).

*“Now I will read out few statements about the state of things in India for people like you. Please tell me whether you agree or disagree with each one of them.”*

**Table 1: Perception of empowerment, and social and material capacity**

<b>Statements</b>	<b>Fully agree</b>	<b>Somewhat agree</b>	<b>Somewhat disagree</b>	<b>Fully disagree</b>	<b>No opinion</b>
Everyone enjoys equal rights	44.7	21.2	11	11.3	11.9
People are free to speak their minds without fear	38.7	23.7	15.7	8.9	13
People have the power to change the government they do not like	45.5	18.9	10.5	8.2	16.8
Most people have basic necessities like food, clothing and shelter	33.4	21.4	16.4	16.2	12.6

This is followed by a question on a category of people whom Simon Schama, in his celebrated book *Citizens*, based on the aftermath of the French Revolution of 1789, described as ‘un-citizens’. The category is important in the sense that the definition of the other sometimes helps

define oneself more sharply. (Question 14) *“And who in your opinion are not citizens of India? (read out answer categories 0 to 5) “*

From the responses (see Table 2) one can see that the constitutionally stipulated criterion of exclusion, namely, those not born in India or to Indian citizens, get 28% support which is higher than the others. But it is important to note here that the large majority of respondents have chosen as criteria of exclusion from Indian citizenship those items that do not have a basis in law, but in entirely ‘constructed’ categories, reflecting the current state of affairs and sentiments in the country.

**Table 2: The ‘un-citizens’, as perceived by the respondents**

Category	Statements	%
1	Those who do not take part in elections and other affairs of the country	9.4
2	Those not born in India, or to Indian parents, including illegal immigrants	28.3
3	Terrorists/ separatists or those who help them	25.2
4	Those with loyalties other than towards India	11.1
5	Those who do not have respect for the flag, or unity of India	12.2
6	NRIs, PIO card holders	3.7
7	Others	7
8	Don't know	3.1

Finally, we ask the respondents to record their positions on some issues that have been held to be essential to citizenship, namely, citizen duties, a variation of which is incorporated in the Constitution of India (Art. 51). The following question was asked: (Question 16) *“Now I will read out few statements. Please tell me whether you agree or disagree*

*with each of them? (probe further whether ‘fully’ or ‘somewhat’ agrees or disagrees.”)* The responses (see Table 3) show a substantial amount of support for the Indian variations on the classic themes of citizen duties, such as regular voting and participation in public activities, respect for the national flag and other core symbols such as the National Anthem, and the territory of India.

**Table 3: Citizen duties and their evaluation by respondents**

<b>Statements (citizens of India should....)</b>	<b>Fully agree</b>	<b>Somewh at agree</b>	<b>Somewh at disagree</b>	<b>Fully disagree</b>	<b>No opinion</b>
vote regularly	79.5	10	1.7	1.4	7.3
respect national symbols like the flag, the national anthem and the integrity of the Indian territory.	77	9.8	2.1	0.9	10.1
send children to school	80.8	8.7	2.2	1.1	7.2
Promote harmonious relationship between all religions	73	12.3	2.8	1.5	10.4
Safeguard public property like roads, trains, buses, government buildings	73.3	12.1	2.4	1.6	10.6

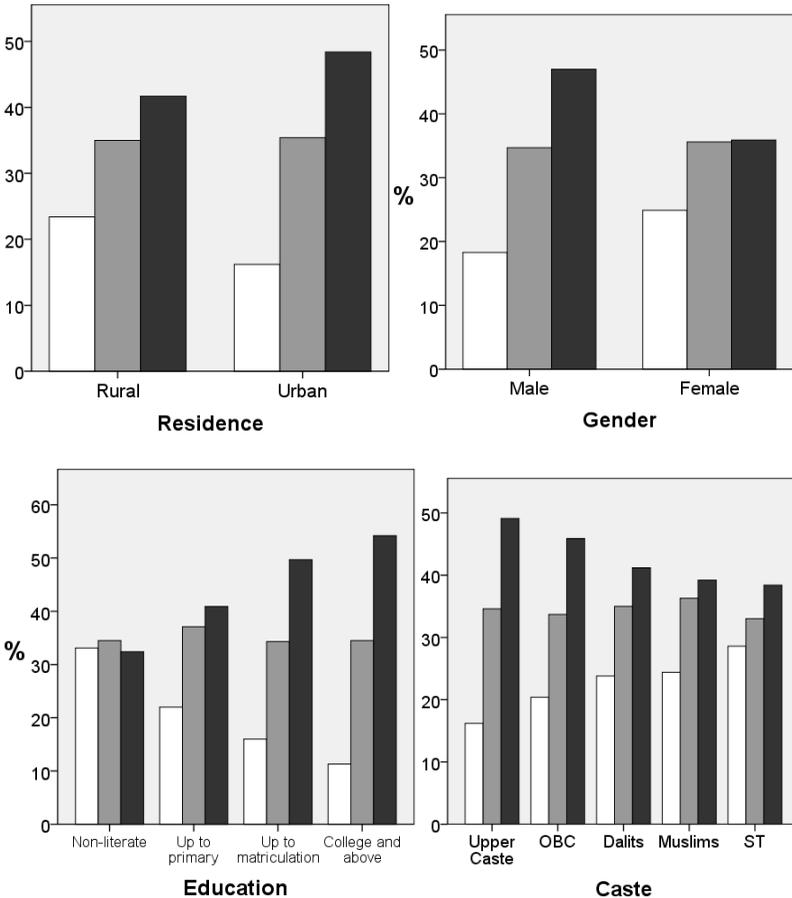
### **3.3 A cumulative index of citizenship: Diversity in unity**

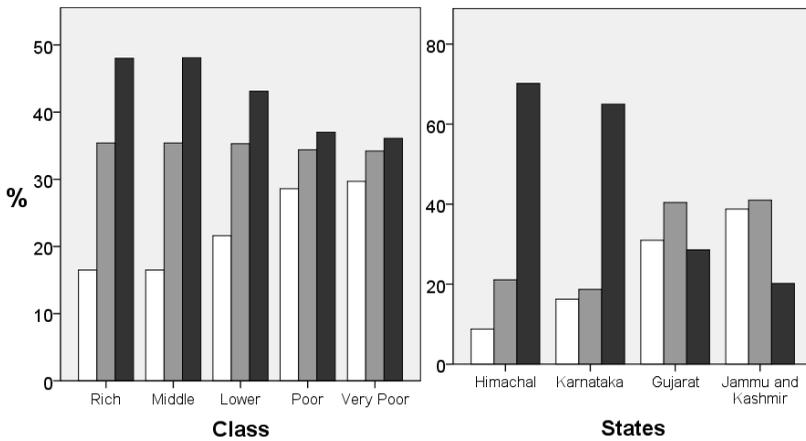
On the basis of the convergence of the three attributes of citizenship, namely self-definition, a sense of empowerment and positive evaluation of citizen duties that we have witnessed above, a scale was created, first merging individual items within questions 12 and 16 to produce composite indices, and then combining both with self definition. For the sake of simplicity, all three components of citizenship were given equal weight. The sum of the three specific scales produced a general index of citizenship which was then divided into three levels: low citizenship (21.3%), medium citizenship (35.1%) and high citizenship (43.6%).

The profile of those at different levels of the general index and the strength of the correlation of each with the socio-demographic variables is presented in Figures 3-8. One finds here enough evidence of a large core of 'strong citizens' in every possible social group. But this main finding must be tempered with the observation that 'citizen-ness' is also affected by the routes to social power such as status, education, gender and wealth. Men and urban dwellers are more likely to be strong citizens than women and rural residents respectively. Economic class is stronger as a predictor of citizenship. Equally significant is the gap between the upper caste on the one hand and Scheduled Tribes and Muslims on the other. Another interesting feature of the cumulating of the routes to citizenship are the surprises at the State level. Jammu and Kashmir still remains low, with 20.2% strong citizens and 39% weak citizens compared to 43% strong and 21% weak for the country as a whole. However, a surprise companion to Jammu and Kashmir in this context is Gujarat with a less than national level of strong citizenship and more than national level of weak citizenship. At the top end are two further

surprises: Himachal Pradesh and Karnataka grace the highest level in the national ranking of States in terms of the cumulative index.

**Figures 3 – 8: The Construction of Citizenship (Index) and its socio-demographic correlates**





The final step in this set of statistical investigations is to examine the causal linkages of the various socio-demographic characteristics in terms of their cumulative effect. Multiple regression helps identify the contribution of specific underlying factors when the effect of other causal variables is taken into account, ‘controlling’ for any ‘spurious’ effects. Thus, in the earlier analysis we have noticed that education and class both contribute positively to citizenship. However, we also know that the upper classes tend to get more education. Does this mean that all along it is class which is the real underlying route to citizenship, and that the contribution of education is merely an artefact of class?

For this particular analysis, we have generated a number of new variables by dichotomizing social status. Thus, new variables like upper caste, Other Backward Classes (OBC), Scheduled Tribes (ST), Muslim, help track down the independent contribution of the factors to citizenship. Similarly, States such as Tripura and Jammu and Kashmir help identify the contribution of the context to the strength of citizenship. For this analysis the quantitative variables like education,

class and age have been left as they are, in the sense that they can be thought of as a continuous scale that underpins each of the others. The gender and rural-urban divide are specified without further modification.

We notice in Table 4 that indeed, both education and class make independent contributions to citizenship, with strong, significant beta coefficients. Gender emerges as important, with a negative and significant coefficient for women. Upper caste emerges as positive and significant; both residence in Jammu and Kashmir and Tripura come across as strongly negative contributors to citizenship of India – suggesting underlying contextual factors that need deeper investigation. Another finding that merits deeper investigation is the weakly positive coefficient for Muslims with regard to citizenship. The model as a whole, though it explains only 6% of the variance, is significant. The coefficient of regression not only bears out the relationship that one would expect between education and class: it also confirms the strength of variables of positive discrimination such as *dalit* (formerly untouchable castes) status and OBC status with regard to citizenship. Of particular interest to students of federalism is the fact that while the model as a whole works for the Indian Union, the fact that one is a resident of Kashmir or Tripura lowers the sense of citizenship. These two regions – despite their membership in the Indian federation – have special historical reasons that make their membership in the Indian state weaker – bearing out once again our contention that without a strong sense of citizenship, federal relations do not function efficiently.

**Table 4: Multiple regression analysis of citizenship index with socio-demographic variables**

Model	B	Std. error	Beta	t	Significance
Constant	1.9	0.6		32.9	.000
Age group	-.008	.007	-.014	-1.119	.263
Gender	-.082	.019	-.053	-4.378	.000
Locality	.038	.021	.022	1.775	.076
Education	.118	.010	.172	11.880	.000
Economic class	.027	.008	.042	3.188	.001
Muslim	.066	.035	.027	1.866	.062
Upper caste	.113	.029	.058	3.839	.000
OBC	.089	.027	.053	3.321	.001
Dalit	.060	.033	.027	1.834	.067
ST	.025	.042	.008	.595	.552
Jammu and Kashmir	-.425	.060	-.086	-7.111	.000
Tripura	-.158	.081	-.023	-1.956	.051

*R square .061 F=37.460 Significance of F change .000 df 6926*

#### **4 Conclusion: Citizenship, democracy and federalism in India**

The citizenship discourse in India today reflects a conflation of the two classic routes that have historically defined the trajectory of this concept. The path of 'citizenship from below' has consisted in irate men and women contesting the power and legitimacy of the *ancient regime* under the banner of their common identity as citizens – free and equal agents of their destiny. In the second, new states have sought to design their nation, consisting of citizens whose political and moral persona is defined, and policed, centrally. The Indian landscape is marked by cross-currents of identity, national power and territoriality, leavened by

the countervailing forces of community, collective memory and ethnicity. The conceptual flow of European norms of personhood, and rights of citizens in course of the centuries of interaction between Europe and Asia left a residue in the form of Indian movements for citizenship and identity. These have continued to operate as autonomous, independent purveyors of visions of citizenship and means for their attainment, comparable in many ways to their European predecessors of 'citizenship from below' of the eighteenth and nineteenth centuries. The resultant elements constitute a unique constellation, specific to the Indian context and culture, but share some common parameters with similar discourses in other post-colonial societies with a long history of collective and contested existence.

The 'million mutinies' that the introduction of fundamental rights has induced have surfaced in the form of the conflict of individuals against groups, groups against one another and the state, insurgencies, separatist movements and outright war against the state.<sup>103</sup> While these challenges to the state and public order are common knowledge, the idioms of identity, retrieval of memory and new, hybrid forms of collective action are of particular interest for research on citizenship. The meeting of the traditional and the modern forms of politics have taken different shapes. In some cases, the indigenous form of

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<sup>103</sup> V.S.Naipaul, *India: A Million Mutinies Now* (London: William Heinemann; 1990), p. 517. Quote. Today's Naxalites elicit much more popular sympathy than one would expect from a society in the throes of accelerated entry into the international market economy where each outbreak of insurgency has a direct impact on the much needed Foreign Direct Investment, indispensable to rapid growth.

citizenship has reacted violently against the imposition of the alien. Even when the acceptance of the alien has remained passive, sullen resignation of earlier generations has resurfaced in subsequent generations in unexpected forms of resistance. But this is not the story of an out and out failure. The secret of India's success in federalism has been immensely helped by hybrid forms of identity where the indigenous and the alien have interpenetrated and provided a firm ground under the feet of the new institutional arrangement of the Indian state.

The fact that a sense of common citizenship has evolved – which has penetrated practically all regions and sections of the population of India – shows how India's institutional arrangement has kept the pre-independence consensus together, more successfully than India's neighbors. This is not to argue that a state steeped in ethnic identity has no appeal, or that common citizenship is strong enough to stop inter-community violence. Instead, the co-existence of both common citizenship and inter-community violence only goes to show how and why citizenship is a dynamic process where events at each turn are affected by both general factors and local conditions.

In an age when multi-national corporations and non-state actors vie with national, sovereign states for influence in the international as well as in national arenas, the salience of reconsidering citizenship in light of new realities can hardly be over-emphasized. Though the concept remains an integral part of the political vocabulary of our times, the sentiments and affinities that citizenship connotes have changed radically compared to the European usage prior to World War II. Today, people do not any longer think of themselves in terms of the *asymmetry* that once

described the relationship of citizens of the developed and the developing worlds. The cognitive content of the term itself has changed radically in terms of its scholarly understanding. This leads to a peculiar situation where a universal concept has hybridized into myriad local and regional usages; and the usages of this category across time and space do not any longer connote a merely vernacular translation of a core concept. Citizenship today is a concept and an institution, but its form is not a universal constant. These hybrid structures reflect the relative power of the indigenous ideas germane to the society and the imported concepts, their relative power, and their connectivity to the local structure of power and values. This reciprocal relationship between citizenship, democracy and federalism is a general lesson of the Indian case for post-colonial states with diverse societies.





# **Federalism in Myanmar: Status Quo, Positions and Outlook**

*Achim Munz and Michael Siegner*

## **1 Introduction**

Federalism is a democratic concept where sovereignty is constitutionally shared between a central governing authority and constituent political units. As a form of government where both legislation and institutions are shared between national and state and regional authorities, federalism necessitates the existence and facilitates the creation of local representation and government. It has proven to be an effective form of governance that ensures political stability in societies which are ethnically, culturally and religiously diverse. Myanmar is home to such a multi-ethnic society comprised of 135 officially recognized ethnic

groups. The *Bamar* majority represents 69% of the total population.<sup>104</sup> Sub-national and local governance institutions and stable central-local relations are crucial for the on-going reform process in Myanmar.

After the elections in 2010, President U Thein Sein introduced far-reaching political and economic reforms which have attracted worldwide attention.<sup>105</sup> The new government is moving out of international isolation by embracing deep structural reforms. Due to Myanmar's strategic location and its rich natural resources, the country is becoming a sought-after partner in South East Asia. Despite the progress the country has achieved in the past three years, it still faces many political and institutional challenges. It is still unclear how the representation of ethnic minorities can be institutionally established, a challenge that will serve as a crucial condition for a sound political solution to the on-going ethnic tensions.

For the evolving processes of democratisation, peace building and economic development to further materialise, it will be critical how the Myanmar government deals with questions of power sharing and sub-national governance. A possible avenue is to embrace federalism and to allocate more political rights to the existing seven states and seven regions. This would pave the way for the country's transformation into a

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<sup>104</sup> Steinberg, David I.: *Burma/Myanmar - What everyone needs to know*, New York 2010, Page xxiv.

<sup>105</sup> See Thein Sein: Statement at the General Debate of the sixty-seventh session of the United Nations General Assembly, New York September 27 2012.

decentralised federal system in order to preserve a peaceful and successful development of the country.

Given the importance of federalism and decentralisation to Myanmar's transition, this chapter provides an overview of the status quo of the political system of Myanmar regarding federalism. The first section of the chapter focuses on the current institutional arrangement according to the 2008 constitution, followed by a brief historical analysis of federalism in Myanmar. The second section analyses the various positions of the key protagonists in the current political arena of Myanmar towards federalism. The final section provides an outlook of federalism in the country.

## **2 Status Quo of Federalism and Historical Developments**

### **2.1 A Brief Review of the Administrative Framework in the 2008 Constitution**

The Republic of the Union of Myanmar comprises seven states and seven regions, six self-administered zones and divisions, and one union territory containing the capital Nay Pyi Taw. Historically the term 'state' is referring to parts of the country which are populated by ethnic minorities, whereas the *Bamar* majority areas are called 'regions'. According to the 2008 constitution regions and states hold the same constitutional status. Figure one provides an overview of the different regions, states and self-administered zones in Myanmar.

**Figure 1: States, Regions and Self-Administered Zones in Myanmar**



Source: MIMU: <http://themimuz.info/State-Region/Country%20wide/index.php>

On the national level the legislature, known as the *Pyidaungsu Hluttaw* (Assembly of the Union), is composed of two chambers, the *Pyithu Hluttaw* (House of Representatives) and the *Amyotha Hluttaw* (House of Nationalities). The *Amyotha Hluttaw* consists of elected representatives from regions and states. Both chambers meet as a single chamber for the purpose of electing the Union President, amending the constitution and adopting their annual budgets.<sup>106</sup> The *Pyithu Hluttaw* consists of 440 representatives, of which 330 are elected at township level and 110 are military personnel nominated by the Commander-in-Chief of the Defence Services.<sup>107</sup> The *Amyotha Hluttaw* consists of 224 representatives with 56 military personnel nominated by the Commander-in-Chief of the Defence Services.<sup>108</sup>

The 2008 constitution created a strong executive headed by the Union President who holds powers of appointment and removal, not only of the central government, but also of sub-national governments.<sup>109</sup> The ministerial posts of Defence, Home Affairs, Security, and Border Administration are reserved for active *Tatmadaw* (Myanmar Armed Forces) personnel. Figure 2 provides an overview of the political system on the national level.

The legislative bodies of state and region governments in Myanmar consist of a unicameral *Hluttaw*. Two thirds of the members of the

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<sup>106</sup> Taylor, Robert H.: The State in Myanmar, London 2009, Page 497.

<sup>107</sup> Constitution of the Republic of the Union of Myanmar 2008: Section 109.

<sup>108</sup> Constitution of the Republic of the Union of Myanmar 2008: Section 141.

<sup>109</sup> Taylor, Robert H.: The State in Myanmar, London 2009, Page 497.

regional *Hluttaws* are elected by the voters of the respective state or region. One third of the *Hluttaw* members are appointed by the Commander-in-Chief of the Defense Services. The 2008 constitution lists legislative competences of the regions and states. The sectors over which the regions or states have the right to enact laws are narrow and limited. For example, in the subsection of the constitution on “‘Energy, Electricity, Mining, and Forestry’, responsibilities are limited to power generation that is off the national grid, regulation of salt products, polishing local gems (but not mining gems) and firewood”.<sup>110</sup> It has been argued that despite the constitutional right of the regions and states to enact laws in specific areas, in practice the breadth of Union powers effectively overrules the legislative competences of the sub-national level.<sup>111</sup>

A Chief Minister and a of ministers lead the executive bodies of the states and regions in Myanmar. The Chief Minister is appointed by the President of the Union and is responsible to him.<sup>112</sup> The Union President selects the Chief Minister from the members of the State or Region *Hluttaw*, which is followed by a confirmation of his nomination by the majority of *Hluttaw* members. The Union President can nominate any member of the respective state or regional *Hluttaw* as Chief Minister. This includes military appointees which make up one third of the

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<sup>110</sup> Nixon, Hamish, Cindy Joelene, KyiPyar Chit Saw, Thet Aung Lynn, Matthew Arnold: State and Region Governments in Myanmar, Myanmar Development Resource Institute (MDRI), Yangon 2013, Page 13.

<sup>111</sup> Ghai, Yash: The 2008 Myanmar Constitution: Analysis and Assessment. Unpublished paper, Page 32

<sup>112</sup> Constitution of the Republic of the Union of Myanmar 2008: Section 261b.

state/region *Hluttaw*.<sup>113</sup> The appointment of state/region ministers is in the hands of the Chief Minister.

There are three different ways of appointing ministers at the sub-national level. First, for most of the ministerial posts, the Chief Minister can select any *Hluttaw* representatives but also other suitable candidates, who then need the approval of the Union President. Second, the state/region Minister for Border and Security Affairs is appointed by the Commander-in-Chief of the Defence Services. Generally, the state/region Minister for Border and Security Affairs is a military officer, who does not relinquish his military post. Third, in case there are elected representatives of an ethnic party in the state/region *Hluttaw*, the Minister of Ethnic Affairs is a member of the respective ethnicity.

The judiciary on the regional/state level is represented by a High Court consisting of one Chief Justice and up to seven judges. The state/region Chief Justice is nominated by the Union President. The members of the state/region *Hluttaw* can only impeach judges with the approval of the President or the Chief Minister.<sup>114</sup> Opposition leader Daw Aung San Suu Kyi, who won a seat in the by-elections of April 2011 in the *Pyithu Hluttaw*, identified these procedures and structures as a major obstacle to the rule of law in Myanmar:

“As the advocate general and the chief justice of the union has been appointed by the President, the judiciary pillar is under the executive

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<sup>113</sup>Constitution of the Republic of the Union of Myanmar 2008: Section 161d.

<sup>114</sup> Constitution of the Republic of the Union of Myanmar 2008: Section 311.

pillar. That's why the independence and check and balance situation of these three pillars do not exist".<sup>115</sup>

The sub-national governance environment according to the 2008 constitution is mostly characterised by a centralised administrative state structure. Neither the region/state executives are independent of the influence of the Union President nor is the judicial pillar. Therefore the Union institutions have been described as "parent ministries" with regard to their relationship to the institutions of states and regions.<sup>116</sup>

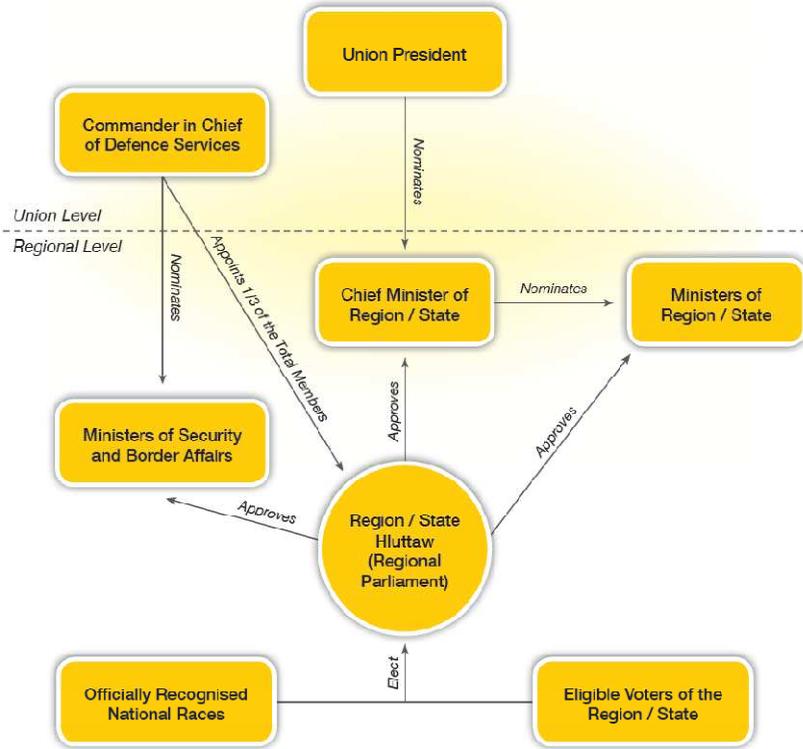
Figure 2 summarises the first section of this chapter. To understand the complex discussions on federalism in Myanmar today, the following section provides a brief historical analysis of the concept of federalism in the country.

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<sup>115</sup> Quoted in Weekly Eleven July 22, 2013: 3.

<sup>116</sup> Nixon, Hamish et al.: State and Region Governments in Myanmar, Myanmar Development Resource Institute (MDRI), Yangon 2013, Page 69.

**Figure 2: Political System of Myanmar on the Regional Level According to the 2008 Constitution**





## **2.2 Historical Context of Federalism in Myanmar**

The postcolonial period marks the beginning of discussing federalism as a form of governance in Myanmar. In 1947, Bogyoke Aung San convened the Panglong Conference, which resulted in an agreement among representatives of ethnic minority groups and the majority ethnic Burmese government to grant significant autonomy to the country's ethnic minorities. The Panglong Agreement was negotiated by Bogyoke Aung San as the leader of the Burmese majority as well as representatives of the Shan, Kachin and Chin ethnic groups. The ethnic group of the Karen only sent observers to the conference, whereas other minorities such as the Mon and Arakanese were absent since their territory was considered part of the Burmese mainland.<sup>117</sup> The signatories agreed on the formation of a 'Union of Burma'. This Union came into being after independence on January 4, 1948. Ever since, February 12, the day the Panglong Agreement was signed, has been celebrated as 'Union Day' in Myanmar.

Today the 'spirit of Panglong' continues to be emphasised by many ethnic groups in the struggle for more autonomy. After a three-day conference on trust-building between the central government and ethnic groups in September 2013, the chairman of the Arakan League for Democracy stated: "When we talk about peace, it comes together with

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<sup>117</sup> Smith, Martin: *Burma, Insurgency and the Politics of Ethnicity*, London 1991, Page 42-43.

ethnic equality and autonomy and the issue of federal union. The Panglong Agreement cannot be left out”.<sup>118</sup>

Especially the financial dimension of autonomy and decentralisation has been stressed by ethnic groups. This builds on one central assurance made by Bogyoke Aung San during the Panglong Conference, when he said to the ethnic representatives: “If Burma receives one kyat, you will also get one kyat.”<sup>119</sup> From this perspective it is not surprising when regions and states today demand 50% of the central government’s total budget.<sup>120</sup>

Shortly after the Panglong Conference General Aung San was assassinated. In 1949, rebellions against the central government in Karen State started and the Panglong Agreement was never enforced. In the period after gaining independence, the Union of Burma was characterised by enormous administrative weaknesses.<sup>121</sup> Under the first Prime Minister after independence U Nu, the issue of federalism “was

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<sup>118</sup> Nyein, Nyein: Ethnic Minorities Stress Trust Building, in: The Irrawaddy Online, September 24, 2013.

<sup>119</sup> Smith, Martin: Burma, Insurgency and the Politics of Ethnicity, London 1991, Page 44.

<sup>120</sup> For example Shan State Minister for Forestry and Mines U Sai Aik Paung proposed to the Speaker of the National Parliament Thura U Shwe Mann that state and region governments receive 50% of the budget in 2014-2015 (see Win Ko Latt: Shwe Mann urges patience on reforms, in: Myanmar Times Online, September 09 2013).

<sup>121</sup> Taylor, Robert H.: The State in Myanmar, London 2009, Page 294.

part of a general critique, [...], of the nature of parliamentary democracy as it had been practised in Burma".<sup>122</sup>

General Ne Win took advantage of this situation and staged a coup d'état in 1962 to "restore order in an increasingly chaotic political scene".<sup>123</sup> Under the administration of Ne Win the "weakness of the postcolonial state was attributed to parliamentary democracy and federalism, and therefore it seemed obvious that their abolition was necessary for the state to reassert itself over other institutions".<sup>124</sup> This perspective on federalism was expressed in a public statement made by General Ne Win, when he deplored federalism as the first step toward secession.<sup>125</sup> Following this line, Ne Win pushed aside the concept of federalism as a tool for ethnic conflict resolution and a period of strengthening of the central government began. In 1968 Ne Win established an *Internal Unity Advisory Board* (IUAB) with the mandate to advise him to achieve greater internal unity and draft policies for potential political changes.<sup>126</sup> This "unexpected move" was seen as a great opportunity by the board which consisted of former Prime Minister U Nu and other political activists.<sup>127</sup> The board recommended to introduce a federalist system and to guarantee ethnic groups greater

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<sup>122</sup> Ibid.

<sup>123</sup> Everton, John: The Ne Win Regime in Burma, in: Asia Autumn 1964, Page 6.

<sup>124</sup> Taylor, Robert H.: The State in Myanmar, London 2009, Page 294.

<sup>125</sup> Steinberg, David I.: Burma/Myanmar - What everyone needs to know, New York 2010, Page 69.

<sup>126</sup> Sai Wansai: Burma's Constitutional Amendment: Federalism under unitary system?, in: Shan Herald Online, November 12, 2012.

<sup>127</sup> Ibid.

autonomy. However, all of their recommendations were rejected. The rejection of federalism was apparent in the military drawn constitution of 1974, which introduced a strongly unitary and presidential political system “with no regards for accommodation of ethnic self-determination”.<sup>128</sup> This unitary and centralised administrative state structure is still in place today.

As pointed out earlier, the political arena according to the 2008 constitution is characterised by a centralised state structure. Historically, federalism was equated with the disintegration of the Union of Burma. The recent political and economic reforms introduced by the Thein Sein administration after the 2010 elections influenced the perception of federalism in Myanmar. Ethnic groups as well as political activists are now able to talk openly about a federal political system. Discussions on constitutional amendments are now focusing on federalism,<sup>129</sup> which is no longer perceived as a “dirty word” in Myanmar.<sup>130</sup>

The next section will focus on the current discussion on a federalist change in the political system in Myanmar with particular focus on the positions on federalism of the relevant political actors.

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<sup>128</sup> Ibid.

<sup>129</sup> Naw Say Phaw Waa: Constitution discussions focus on federalism change, in: Myanmar Times Online, June 17 2013.

<sup>130</sup> Lawi Weng: Federalism: no longer a dirty word, in: The Irrawaddy Online, July 19 2012.

### **3 Positions on Federalism of Current Political Leaders**

The current political arena in Myanmar is comprised of three key protagonists; the Union Government with President U Thein Sein as well as the Speaker of Parliament - Thura U Shwe Mann, the main opposition leader Daw Aung San Suu Kyi, and ethnic groups in the periphery of the country.

President Thein Sein is arguably the most important protagonist in the reform process of Myanmar, although he seems to avoid talking openly about federalism. Instead he refers to the term “devolution”. In his speech at John Hopkins University in May 2013 he told the audience:

“Our goal cannot be less than sustainable peace. It will mean compromise. It will mean the further devolution of power to the state and regional levels. It will mean new agreements on resource sharing”.<sup>131</sup>

Recently he also talked about the need of a political solution to end the armed conflicts in the periphery of the country.<sup>132</sup> However, how such “devolution of power” and “political solution” could be institutionally established remains unclear. Discussions on federalism are usually led by Thura U Shwe Mann. In July 2012 it was reported that Thura U Shwe Mann told members of parliament on the sidelines of a parliamentary

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<sup>131</sup> U Thein Sein: Speech delivered at John Hopkins University, Washington D.C. 20 May 2013.

<sup>132</sup> Aung Ye Maung Maung: Political Solution is the answer to armed conflicts: President U Thein Sein, in: Myanmar Freedom Daily, October 2, 2013, Page 1.

session that a federal union was inevitable in order to have peace in the country.<sup>133</sup>

In the first months of 2013 a discussion in the Myanmar public started about constitutional amendments. Ever since Thura U Shwe Mann is at the government's front line regarding federalism. During a meeting with Shan State representatives in September 2013 he stated "we will have difficulty in achieving peace if we fail to adopt a federal system, the very issue of the country".<sup>134</sup> But he also urged patience on reforms and warned not to make "reckless mistakes".<sup>135</sup> Regarding his view on the appropriate institutional design of a Myanmar political system, he stated: "Federalism means living together unitedly and sharing powers. We should seek and implement the federalism that is appropriate for our nation".<sup>136</sup>

There is scope for interpretation in this perspective. His statement suggests a pragmatic approach and does not refer to specific constitutional amendments. Moreover Thura U Shwe Mann urges to

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<sup>133</sup> Lawi Weng: Federalism: no longer a dirty word, in The Irrawaddy Online, July 19 2012.

<sup>134</sup> Asia Inquirer: Without federal system Myanmar's peace agenda will be difficult, in: Asia Inquirer, September 4 2013.

<sup>135</sup> Win Ko Latt: Shwe Mann urges patience on reforms, in: Myanmar Times Online, September 09 2013.

<sup>136</sup> Aung Ye Maung Maung: Thur aShwe Mann discusses federalism with ethnic groups, in: Myanma Freedom Daily, September 4, 2013, Page 6.

implement federalism within the current constitutional and legal framework.<sup>137</sup>

Thura U Shwe Mann's notion to include federalism within the existing constitutional structures view contradicts the perspective of the parliamentary opposition as well as of the ethnic minorities. Daw Aung San Suu Kyi notes that either the constitution needs to be amended in "every aspect" or it needs to be "redrawn".<sup>138</sup> Considering the position of the Union Government this is going to be a difficult task. During a workshop on Myanmar's constitutional reform in May 2013, Daw Aung San Suu Kyi stated that "the whole process [to amend the constitution] is the most difficult in the world".<sup>139</sup> To change the constitution, more than 75% of the members of parliament need to approve the change and in addition a referendum is needed. Since the military holds 25% of the seats in the *Pyidaungsu Hluttaw*, the constitution can only be changed or amended with the consent of the *Tatmadaw*.

So far Daw Aung San Suu Kyi's party, the National League for Democracy (NLD) has not presented a concept on how to include federalism into a changed constitutional environment. The NLD's main focus lies on the change of the qualifications prescribed for the selection of the President as well as strengthening the rule of law. According to section 59f. of the

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<sup>137</sup> Win Ko Latt: Shwe Mann urges patience on reforms, in: Myanmar Times Online, September 09 2013.

<sup>138</sup> Khant Zin Lin: Few people read 2008 constitution: Daw Aung San Suu Kyi, in: Myanmar Freedom Daily, October 2, 2013, Page 6.

<sup>139</sup> Rosie, Gogan-Keogh: Amending constitution „most difficult in the world“: Suu Kyi, in: Mizzima Magazine Online.

2008 constitution, the President “shall himself, one of the parents, the spouse, one of the legitimate children or their spouses not owe allegiance to a foreign power, not be subject to a foreign power or citizens of a foreign country”.<sup>140</sup> Since Daw Aung San Suu Kyi was married to a British citizen and her sons are British citizens, the NLD considers the present qualifications as “unfair”.<sup>141</sup> Given the fact that the NLD only holds 43 of 664 seats<sup>142</sup> in the national parliament it seems pragmatic to concentrate on the rule of law as well as the election procedure first and tackle the institutional design of the political system after the national elections in 2015.

The third key protagonists within the political arena of Myanmar are the ethnic minority groups. For the armed and unarmed ethnic groups the implementation of federalism is the most pressing issue on the reform agenda. Saw Than Myint, Treasurer of the Shan Nationalities Democratic Party (SNDP) which is the biggest ethnic party in the national parliament, answered the question regarding their main demand with “equality, real federalism, autonomy, and the right to self-determination”.<sup>143</sup> After 60 years of skirmishes between armed ethnic forces and Myanmar’s military, the representatives of ethnic groups want to have political guarantees first before they sign ceasefire agreements. Such political guarantees include compromises on “topics

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<sup>140</sup> Constitution of the Republic of the Union of Myanmar 2008: Section 59f

<sup>141</sup> By Ye Tun: Constitutional Change is in the Air, in: Myanmar Times Online, April 1 2013.

<sup>142</sup> Source: The Parliaments of Myanmar, Yangon 2013.

<sup>143</sup> The Hindu Online, Myanmar ethnic parties demand „real federalism“, April 8 2012.

such as federalism, power-sharing, drawing boundaries and – perhaps most importantly – sharing revenues”.<sup>144</sup>

However, the central government focuses on signing ceasefire agreements first. In the opinion of Colonel Saw Lwin, Joint Secretary of the Kayan New Land Party, “many armed ethnic groups were established because of political problems. That’s why making ceasefire agreements without holding political discussions cannot be successful”.<sup>145</sup> To overcome the differences between the government on the one side and the ethnic groups on the other side, trust needs to be established. That this is possible has for example been shown during a conference on ‘trust-building’ from September 21 and September 23 2013 in the Shan state capital Taunggyi, bringing together 300 participants consisting of ethnic group representatives and government officials. The attendees of the conference released a joint statement which included the “creation of a federal union with equal rights”.<sup>146</sup>

For many ethnic representatives the government’s position that all changes must be conducted within the framework of the current constitution is not acceptable. From their point of view the 2008 constitution is “undemocratic” and “too hard to change from within the *Hluttaw*”.<sup>147</sup> This is the reason why an influential umbrella group called

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<sup>144</sup> Robinson, Jacob: Is the Honeymoon over for Myanmar?, in: Mizzima Business Weekly, Issue 39, Vol.2 September 2013, Page 18.

<sup>145</sup> Kyaw Myo Tun and Myo Zaw Ko: Myanmar Ethnic Groups Call for Federal Union at „Trust Building“ Conference, in Radio Free Asia Online, September 23, 2013.

<sup>146</sup> Ibid.

<sup>147</sup> Nan Tin Htwe: Constitution rewrite push from ethnic groups 'radical', in: Myan-

the United Nationalities Federation Council (UNFC) – which represents 11 leading ethnic organisations – has decided to draft its own version of the constitution. This in turn contradicts the “pragmatic approach” which is indicated by the central government. Even foreign observers of the political developments in Myanmar are criticising the UNFC for this radical push. In a briefing paper on the UNFC’s position, the Euro-Burma Office stated the UNFC had “rejected the government’s offer for talks without seriously offering any practical alternative other than a return to war. It is a dangerous game”.<sup>148</sup>

This section showed that the positions on federalism of the key political protagonists in Myanmar are quite diverse. With regard to their reform agenda, the political leaders of the respective groups focus on different issues. For the central government, signing ceasefire agreements is the highest priority, whereas the ethnic groups focus on a constitutional change which guarantees a federal and decentralised administrative structure. For the main opposition in parliament and Daw Aung San Suu Kyi, the alteration of the qualifications prescribed for the selection of the Union President as well as strengthening the rule of law is the most pressing issue.

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mar Times Online, August 11, 2013.

<sup>148</sup> Euro-Burma Office: Analysis of the UNFC Position, in: EBO Briefing Paper No. 4/2013, Page 3.

#### **4 Outlook on Federalism in Myanmar**

This chapter provided an overview of the status quo of federalism in Myanmar and analysed the positions of the relevant political leaders towards a federal political system. It is remarkable how the perception of federalism within the government changed in the past two years. Before 2010, federalism was equated with the disintegration of the country. However within the current U Thein Sein administration there is a pragmatic approach towards federalism which is expressed by Thura U Shwe Mann's statement that federalism is "the very issue of the country".<sup>149</sup> However, the institutional arrangement stipulated in the 2008 constitution falls short of meeting the political goals and aspirations of the ethnic groups.

The relationship between a federal political system and the prospects for a successful peace process in Myanmar has not been analysed in detail in this chapter, but issues of federalism cannot be addressed without taking full account of their impact on the peace process and vice versa. Without a political system that grants the ethnic states in the periphery of the country a reasonable degree of autonomy, sustainable peace in Myanmar seems not to be possible. Given the history of conflict in Myanmar, building trust is essential for further successful negotiations regarding political and institutionalised conflict resolution. Also pragmatism is needed on all sides. In this regard the push by UNFC

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<sup>149</sup> Asia Inquirer: Without federal system Myanmar's peace agenda will be difficult, in: Asia Inquirer, September 4 2013.

to rewrite the constitution only hardens the positions, as this demand is perceived as unacceptable by the central government.

In addition to trust-building measures between the central government and ethnic groups, an approach to strengthen the administrative capacity on the sub-national level would support the on-going peace process. There is already slow progress visible in this regard. Since mid 2013, the state and region governments are able to directly hire nurses and teachers for hospitals and schools in their territory. To continue on this path the sub-national institutions need sufficient resources, which would require comprehensive fiscal decentralisation. Introducing a fiscal decentralisation process would also relieve some of the pressure on the central government. U Sai Aik Paung, Chairman of the Shan Nationalities Development Party (SNDP) and member of the Shan State *Hluttaw*, stressed this point during a meeting with Thura U Shwe Mann: “if this [fiscal decentralisation] happens, then transportation, education and health problems can be resolved [on the state/regional level] and the Union Government will have less headaches”.<sup>150</sup> If the ethnic groups can convince the central government that both sides can profit from a more decentralised administrative structure and at the same time remain reasonable, there is much potential for the present adversary atmosphere to change into a more co-operative partnership.

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<sup>150</sup> Win Ko Latt: Shwe Mann urges patience on reforms, in: Myanmar Times Online, September 9 2013





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