

Institutional Imbalances, Type of Regime and Prospects of Public Policy under Democratic Federalism in Pakistan

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Abstract

In contemporary federal literature, federalism is viewed as a political system established on democratic rules, practices and institutions. This leads to the sharing of powers between central and provincial governments with a conflict resolution approach especially in multi-linguistic and ethnically diverse states. The constitution of a federal state institutes the structure and intents of federal political system however it is the type of regime, ruling a state which primarily manifests the politics of federalism and mechanism for public policy. The study predominantly pronounces that due to repeated political shocks and breakdown, an acute centralization of political power and authoritarianism persisted in Pakistan which largely led to provincial autonomy and federal notion under a persistent stress. Owing to intervals of military led politics, federal and political institutions remained less successful to devise viable public policy framework and federal solutions in response to the conflicts stemming out of ethnic and regional discrepancies in Pakistan. The research explicates that institutional imbalance during the civilian decade of 1988-1999 and extended role of military in politics from 1999-2008 augmented the federal challenges in Pakistan.

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This study identifies that problems of federalism are less associated with federal design rather mostly exist at operational level in terms of policy making. This research mainly focuses on type of regimes which existed in Pakistan and their relevance with their approach towards public policy.

Keywords: Federalism, Public Policy, Regime, Civil-military Relations, Democracy

Introduction

Federation is not a static entity. It is largely designed to respond and evolve in association with emergent needs of power sharing between federal governments and federating units in order to formulate sound policies. Federalism as a political system primarily persists in those states where aspiration of unity is constitutionally managed with cultural, ethnic and linguistic diversity. Despite all constitutional challenges and ethnic disagreements, federalism remained as a legitimate attribute of the political system which led to declare Pakistan as a federation under all constitutional schemes. In 1947, as a part of the British colonial legacies, Pakistan inherited centralized federalism by adopting Government Act of India, 1935 as its Interim constitution with certain modifications. This constitutional scheme lasted in Pakistan for approximately nine years without addressing the emergent issues of power sharing and public policies to manage discrepancies between East and West Pakistan. The constitutions of 1956 and 1962 included 'Directive Principles of Policies'* but ruling elite did not assure implementation of these policy principles.

The Constitution of 1973 as a result of a broader federal consensus advanced provincial autonomy in a reasonable manner. In the terms of the federal design, viable policy arrangements, institutional integrity, ability to provide political solutions and supremacy of the parliament, respective constitution is more federal as compared to the preceding constitutional schemes in Pakistan.¹ However federal problems persisted primarily at operational level. Absence of continuity in democratic rule, lack of proper policy structures and the role of military in politics have been significant factors which augmented the federal problems in Pakistan. Furthermore, some of the constitutional amendments were incorporated to provide legitimacy to military regimes however these did not alter the primary aspect of the federal design of state.

* Some of these principles dealt with Islamic teachings, eradication of poverty and provisions of equal facilities to all alike for welfare purpose, protection of the rights of minorities, elimination of illiteracy, uplift of life standard etc.

Nevertheless, institutional imbalances reinforced by constitutional engineering under military regimes severely affected the federal progression up to an extent that Constitution of 1973 was largely deprived of its federal essence. The theoretical paradigms of federalism do not manifest democracy as a prerequisite of a federation however at operational level; smooth working of federalism needs favorable conditions for public policy which are largely possible under a democratic order. In case of Pakistan, due to absence of institutionalization of democratic norms, even the most popular era of parliamentary democracy under Z. A. Bhutto (1973-1977)* * was not immune from the authoritarian mode of governance. The elected leader did not consider the popular ends and preferred means of public policies.

Research Objectives

This study proceeds with following research objectives;

- To identify the key factors, responsible for institutional imbalances in Pakistan during 1988-2008.
- To assess the type of regimes or governments and their implications for public policy process.

Research Questions

The underlying study addresses the following research questions;

- Why did institutional imbalance exist in Pakistan and reinforce during 1988-2008?
- What was the type of government and regime at the federal level, relevant with federal practices and policy framework in Pakistan?

Institutional Imbalances in the Federation of Pakistan during 1988-2008

The institutional imbalance in the federation of Pakistan is one of the key causes of failure of democratic consolidation and lack of constitutionalism. The institutional imbalance emerges when state institutions do not act within their constitutional limits and supremacy of the constitution is not respected as a fundamental principle either for vested interests of individuals or institutions. When a state institution endeavors to enlarge its institutional sphere at the cost of other institutions or attempts to control them, it certainly causes institutional imbalance. The prime political belief to balance institutions is constitutionally endorsed by separation of power, without which a functional democracy is hard to exist and sustain. Moreover,

** See for detail; Rafi, R. *Zulfikar Ali Bhutto & Pakistan: 1967-1977*. Karachi: Oxford University Press, 1997.

supremacy of representative institutions like federal parliament, provincial assemblies through their constitutional powers is value of a federal democracy.

Pakistan inherited institutional imbalances by default. There was a weak civilian ruling class at the time of inception of Pakistan primarily comprised of feudal lords, Muslim traders, capitalists, former officials of princely states and ex-civil servants. On contrary, military as an institution and civil bureaucracy as professional service group united by their organizational interests were comparatively well trained, disciplined and experienced.² Under British rule in Sub-Continent, these two institutions were trained exclusively to assist British administration rather than training them for serving the indigenous population which inevitably led these state institutions to inherit a colonial mind-set. The ruling class was largely detached from public due to their class differentiation and did not view electoral process as a mean to claim political power and legitimacy of their rule. These practices hindered the suitable environment for consultation, formulation and implementation of public policies. This led to shape the alliance of alienated and insecure ruling class with informal group of influential serving men from bureaucracy and military generally identified as 'Establishment'.

This incorporated two significant traits of political system of Pakistan. First, political class was viewed as incompetent and dependent on establishment for advancing their political power* and implementing policies. There were also other explanations regarding the significant causes of military intervention into the politics of Pakistan. It has been provided that colonial legacies and later authoritarian practices in pre-1971 united Pakistan were severed as 'Path Dependence' to set the political milieu, taking inspirations from the past practices for embracing contemporary choices.³ Military in Pakistan is also likely to take over the reins of government when their corporate and institutional interests are not safeguarded.⁴ Military also viewed politics from their own spectrum of command and control rather than through the scale of political bargain and power sharing as a federal strategy. The military's superiority complex had been one of the dynamics for asserting their role as power breakers even when they were

*For a detailed account of Military's views of politics and political class in Pakistan. See Anatol, L. *Part Two Chapter 5 In Pakistan: A Hard country*. London: Penguin Books.

not directly in power.* * Second, repeated abolishment of constitutions by military regimes or putting these in abeyance not only distressed the notion of constitutionalism but also undermined the constitutional supremacy of federal parliament.

With the passage of time, judiciary emerged as new power player which initially remained submissive to military coups as it sided with military for most times whenever there was matter of adjudicating on the constitutional question of validity of a military coup or dissolution of national and provincial assemblies. However, during Musharraf period and onwards, by expanding its domain of authority, judiciary through judicial activism tried to address the political questions which largely constrained elected executive and federal parliament. The Judiciary in Pakistan has been a 'reactionary and an imaginatively over acting institution' which contributed very little to strengthen the federal practices and advancement of civil rights.⁵

By judicial invoking of 'Doctrine of State Necessity' and upholding the dissolution orders of national and provincial assemblies by strong presidents and military dictators led to reinforce the unitary state discourse of identity and left fewer prospects for ethnic pluralism and constitutional management of multi-nationalism in Pakistan. Judiciary's assertions of constitutional stances under Musharraf regime were largely personalized and were more of a product of self-mechanism to resist the attack on the integrity of the institution and contributed a little to the inclusive public policy in later period. After passing through an unsteady civilian-democratic decade (1988-1999) featuring three judicial validations of dissolutions of national and provincial assemblies (except the dissolution of 1993), 'Doctrine of State Necessity' was again called upon by Judiciary in Zafar Ali Shah case in 2000 following the precedents of validating the military coups in Pakistan when Gen. Pervez Musharraf ousted an elected Prime

* * Former chief of ISI (1987-1989) Gen. (Retd) Hamid Gul in an interview with Dawn Correspondent expounded that politicians in the country were corrupt, and at the same time he admitted the responsibility for creating the IJI, a political alliance that was allegedly created to prevent Benazir Bhutto's PPP from winning. The former ISI chief pronounced that politicians are crooks and that if they continue the path they are on, then the army will continue to intervene in the state's affairs. The alleged political cell of intelligence agency ISI was suspected to distribute 140 million among the selective politicians during 1988 elections to weaken the political position of PPP. See for the further details; October 30, 2012 <http://www.dawn.com/news/760219>

Minister Mian Nawaz Sharif. Military regime under Musharraf introduced fundamental legal and constitutional alterations which significantly affected the federal process and practices which were following;

- National assembly and provincial assemblies were dissolved which hampered the federal practices as these national and provincial legislatures provide the prospects of federal-provincial and inter provincial consensus and harmony and symbolize the parliamentary democracy. The Judiciary by validating dissolutions of federal and provincial assemblies not only deprived these federal and provincial legislatures of their public policy agendas, but also ran into controversy by stepping into the realm of elected and representative state institutions.
- The Judiciary not only validated unlawful attempt of military, but also undermined the federal parliament by authorizing a military General to extend his stay in power which was the right of federal and provincial legislations in any case. The Judiciary also exceeded its constitutional limits by providing a mandate to either individual or regime to extend their rule which was the right of people of Pakistan by electing their representatives. By proclamation of emergency, the Constitution of 1973 was put in abeyance and Provincial Constitutional Order (PCO) was incorporated as transitory governing framework.
- The judgment of Zafar Ali Shah case and LFO made all political and federal institutions of state inferior and docile to the will of the military leadership. Gen. Musharraf assumed the powers to amend the constitution based on the judgment of SCP in Zafar Ali Shah case. He promulgated LFO in 2002 which through drastic alterations changed the course and structure of Constitution of 1973. As a result of these modifications, Federal parliamentary system was changed into a presidential system at operational level.⁶

The Type of Government and Regime at the Federal Level, relevant with Federal Practices and Policy Framework in Pakistan

The core element of any federation is its constitutional framework which largely provides the

directions of federal practices with emphasis on policies for the welfare of the people. Under a military regime when constitution is either in abeyance or suspended, earlier federal consensus of that given society becomes uncertain while principle of supremacy of federal parliament and right of provincial legislatures to represent different ethnic and regional identities in policy framework tends to decline. The politics of civilian-democratic decade of 1990s was outlined by the impulses of national consolidation through centralization of powers which led to develop institutional imbalance between strong presidents and elected prime ministers and between the civilian and military elite. In the post-Zia period, parliamentary democracy was reinstated in Pakistan and four general elections were held in 1988, 1990, 1993, and 1997. The democratization initiated in late 1980s in Pakistan was often viewed as the part of 'third wave which was commenced in 1970s in Europe and later extended to the regions of Latin America and Asia.

Although advancements of democratic transition remained limited in Pakistan due to the fact that state power was largely in the hands of non-elected state institution of presidency and military. The indirect role of the military in politics of Pakistan during this period was reinforced by Gen. Zia's legacy of Eighth Constitutional Amendment.⁷ This gave birth to a ruling 'Troika* where powers of federation were largely exercised by its key members. The civilian democratic era is described as the 'Period of Diarchy' where presidential overriding powers originated from the Eighth amendment of Constitution of 1973 which largely constrained federal development in Pakistan. The successive Presidents Ghulam Ishaq Khan and Farooq Ahmed Khan Leghari during this period while dismissing federal governments also dissolved legislatures which left less room for federal practices to be existed. Gulam Ishaq Khan after becoming an elected president for five-years on December 12, 1988 largely ignored his expected role of a neutral arbitrator as an executive of the federation.⁹

It is imperative to note that federal notion at operational level in Pakistan often faded when military elite largely asserted their influence through presidential decree to sack elected prime ministers and to dissolve federal parliament. After the dismissal of each elected government by presidential decree, backed by military also brought consequent fall of

* Troika was consisted of three key members; first and most influential was the commanding officers of the army staff, second was a President who has no constituency; apparently an army's man in civilian setup during 1990s. The third one and least among equals was the Prime Minister, leader of majority party in lower house; NA.

provincial legislatures and hampered the policy process in Pakistan. This identified a significant problem of democracy and public policy in Pakistan. Federal and provincial legislatures were not allowed to work as per their electoral mandate and parliamentary principles.¹⁰ Public policy deviated from democratic procedure. The stakeholders were seldom consulted. Since the inception of Pakistan the top-down centralized approach of policy making was being practiced. However, change appeared in the form of 'Devolution Plan' (new system of local bodies) under Musharraf regime but the bottom-up approach was not assured.

The federal problems in 1990s were result of multiple challenges of politics though most significant of these factors was the distorting influence and role of military generals as power brokers. The 'Military- Bureaucratic Establishment' was allegedly responsible for the suspension of four elected federal governments from 1988-1999. The ousting of elected Prime Ministers; Benazir Bhutto and Mian Mohammad Nawaz Sharif twice from the office was mainly due to the fact that both were unable to maintain cordial relations with the top military commanders and largely did not succeed to win the confidence of the army.¹¹ It has been noted that due to military's influence in politics through indirect means, specifically from 1988-1999, the Prime Minister ship became a 'hazardous occupation' in Pakistan.* The role of military in politics of civilian democratic decade was apparent when all through the twenty

* Former chief of ISI (1987-1989) Gen. (Retd) Hamid Gul in an interview with Dawn Correspondent expounded that politicians in the country were corrupt, and at the same time he admitted the responsibility for creating the IJI, a political alliance that was allegedly created to prevent Benazir Bhutto's PPP from winning. The former ISI chief pronounced that politicians are crooks and that if they continue the path they are on, then the army will continue to intervene in the state's affairs. The alleged political cell of intelligence agency ISI was suspected to distribute 140 million among the selective politicians during 1988 elections to weaken the political position of PPP. See for the further details; October 30, 2012 <http://www.dawn.com/news/760219>

** During the proceeding in the Apex Court under the HRC/19 (A petition filed by Air Marshal (Retd.) Asghar Khan against Gen. Aslam Beg which was taken under the Human Rights Case No 19 of 1996) in 2012, it is proved & recognized that ISI distributed money & played a significant role in electoral politics of 1990. In its short order on October 19, 2012, Apex Court ordered the federal government to take appropriate action against Gen (Retd.) Aslam Beg & Lt-Gen (Retd.) (Asad Durrani for facilitating the group of politicians against their electoral rivals in general elections of 1990. See for the instance; November 9, 2012, "Detailed Judgment in Asghar Khan Case Issued" <https://www.dawn.com/news/762723/detailed-judgment-in-asghar-khan-case-issued> It was revealed during the case that approximately 15 core rupees were distributed among politicians & money was drawn from Mehran Bank through DG ISI Asad Durrani. General Babur presented the names of politicians who were on the pay roll of ISI to form an anti-PPP bloc. The names of beneficiaries included, Jatoi, Nawaz Sharif, Junejo & Altaf Hussain of MQM. The detail amount provided to the politicians was also published in Jang, June 12, 1996. Also see "Foreign Democracy", The Herald, April 2000, PP.27-28.

months of Ms. Bhutto' first federal government, whenever journalists met COAS General Mirza Aslam Beg, most frequent question asked was 'When did army anticipate to move in?'¹². The role of ISI in establishing IJI and backing it against ruling federal government are those facts which clearly reflect the role of institutional imbalance in the political system.* *

When military directly comes into the power, it largely allows the process of political participation at certain stages of its rule. This limited political participation under a military regime primarily consists of its political co-option with selective political elite to obtain legitimization. The federal mechanisms at the operational level while involving all political and ethnic stakeholders through consensus become irrelevant as the military does not view ethnic identities and their political claims to power as a positive instance of the process of national integration. The Musharraf regime and its approach to address federal challenges were not at all different from the previous military regimes of Pakistan as it also attempted to resolve its legitimacy issues through a process of decentralization and initiation of local government reforms of 2002. These local government reforms provided the decline of provincial powers without any significant devolution of powers from centre to the federating units. Apparently, these reforms were designed to provide a mechanism for sound public policy process but practically they provided a network of patronage to the military regime and its political partner PML-Q for securing electoral success in the coming general elections of 2002.

Despite the fact that a constitutional government was formed as a result of the general election of 2002, however the challenges of political discontent from Balochistan were not dealt by parliamentary means. The decision of responding to the political unrest in Balochistan through a military operation was neither discussed in parliament nor in the provincial legislature of Balochistan. The parliamentary committee on Balochistan directly submitted the recommendations to the President Musharraf instead of parliament. There was a number of fallout of Musharraf regime on federalism in Pakistan.

In fact, military-bureaucratic alliance significantly shaped the discourse of Pakistan as an authoritarian state. The challenges of national stability were attempted to resolve through

coercion with an assumption that there was a consistent war on Pakistan primarily existentialist in nature. This endorsed the military perception as an organized and institutionalized power bank, which could diffuse all challenges and demands on ethnic and linguistic bases. The institutional imbalance strengthened over the time due to some of the external and internal threats to Pakistan. The conceptualization of National Security State has been deeply rooted in military's institutional perception of grave threat by its next-door neighbors. This led them to view political opinions divergent to military's perceived security discernment largely perfidious to Pakistan.¹³ There were threat perceptions of looming India and political instability but antagonistic Afghanistan transformed a federally inspired state into a 'National Security State' in no time.

Military's role in politics was extensively amplified as powers of President were reinstated and National Security Council (NSC)* was established on October 17, 1999 while institutionalizing it by passage of a law in 2004. By creating NSC, Gen. Musharraf co-opted with other serving Generals of military to get support for his political scheme which gradually led to the expansion of economic power of military and subsequent concentration of political power under military control. For this purpose, NSC was headed by the Chief Executive Gen. Musharraf and initially consisted of six members including the Chiefs of Navy, Air staff and four advisers. The NSC also administered a council of ministers which included the non-

* In the period prior to Musharraf regime, Gen. Mirza Aslam Baig (COAS), Lieutenant General (Retd) Asad Durrani, Lieutenant General (Retd) Ashraf Qazi (Heads of ISI) and Brigadier (Retd) Yasub Ali Dogar (ISI Director of Foreign Affairs) illustrated Pakistan as National Security State (Ahmed, 2015:21). The idea of NSC was originally taken from Gen. Musharraf's predecessor, Gen. Karamat's speech on October 6, 1998 before the NSCL. Ayesha Siddiqi identified that military has evolved into an independent class that assured its share in the state and its decision making through creating institutional processes. It also ensured that it became an equal partner in decision making to guarantee the stability of the central state. Under Musharraf regime, it turned into the 'parent-guardian type' and ensured its control of the state and society through institutional methods like passing the NSC Act in 2004 and providing the military a permanent role decision making and governance. Military's economic interests and its subsequent effects to enlarge its political control over state and society in Pakistan are beyond the scope of this study. See for the further details, Siddiqi, Ayesha, Chapter 6 'Expansion of Milbus' in "Military INC. Inside Pakistan Military Economy" PP.139-173, 2007, Oxford University press, Karachi, also see Jalal, Ayesha, "The State of Martial Rule: The origins of Pakistan's political economy of defense", 1999, Sang-e-Mel Publications, Lahore.

political personalities like Razzaq Dawood; an influential businessman, Shaukat Aziz; the former City Bank Manager and a renowned legal professional Sharif Udin Pirzada. It has been noted that most of the times, Crops Commanders meeting commenced before the meetings of the federal cabinet and latter only endorsed the policies of the former.¹⁴

Unlike Musharraf regime, there were some of instances of federal bargain and power sharing by civilian federal rule of 1990s. The political leadership of 1990s resolved some of the federal issues with consensus and devised the political solutions for public welfare through federal institutions and means. The apportionment of Water Accord of 1991 and NFC Award of 1991 were such examples which authenticated the principle argument of underlying research that democratic practices are conducive for the federal practices.

Table 1
Trend Analysis

Time Period	Type of Regime	State of Institutional Balance
2 nd December 1988- 6 th August 1990	Democratic (Benazir Bhutto)	An imbalance relationship between civil-military and judiciary
6 th November 1990-18 th July 1993	Democratic (Nawaz Sharif)	Influence of military in decision-making corridors, Federal bargaining and political solution
18 th October1993-5 th November 1996	Democratic (Benazir Bhutto)	Major role of military in national security and foreign policy decisions
17 th February 1997- 12 th October 1999	Democratic (Nawaz Sharif)	Role and influence of military in the decision-making circle

12 th October 1999- 21 st November 2002	Dictatorial (Pervaiz Musharraf as chief executive of Pakistan)	Direct control of military on federation, Democratic regime was sacked by military elite
20 th June 2001- 18 th August 2008	Controlled Democracy (Pervaiz Musharraf as President of Pakistan)	Direct control of military on the federation through a manipulative controlled parliamentary government

Source: Compiled by researchers.

Concluding Remarks and Possible Recommendations to Address Institutional Imbalances

The Parliament in Pakistan is a subordinate legislature. Here, the executive is, without exception, a pre-eminent player on the national scene. It initiates decisions in party forums, which are translated into law through the legislative procedures, and are then rigidly defined, implemented and controlled by the bureaucracy. Therefore, giving the domination of extra-parliamentary forces over the power structure of Pakistan always created problems for policy-making. Even if real power resides outside the legislature, the power holders need to win legal and moral authority. Not surprisingly, each of the four military governments tried to fill the gap of legitimacy by holding elections in 1962, 1970, 1985 and 2002.

Federation does not democratize necessarily as without strengthening the democratic institutions and participatory political culture, only constitutional framework cannot institutionalize the federal practices. Additionally, popular democracy largely confined to electoral politics does not exclusively assure smooth working of federalism. It is the principle of interlocking and managing political and federal institutions within the limits of the respective constitution which paves grounds for democratic norms and appropriate public policy process. Democratic and participatory practices are conducive to streamline the smooth centre-provincial relations and to address the emergent needs of provincial autonomy while acknowledging multiple identities within a plural society.

The power sharing as an essential element of federal notion largely exists in representative governments where federal conflict management mechanisms are institutionalized through participatory culture and continuity of democratic federal rule. The continuity of civilian democratic rule progressively increases the prospects of improvement

in the approaches of public policy while gradually establishing the norms to alter governments either through parliamentary mean or respecting the electoral mandate or through institutional approach by making federal forums like CCI and NFC more responsive and functional. This research explicates that whether it's an electoral democracy with enhanced military influence over politics (1988-1999) or a constitutional government (2002-2008), largely dominated by an executive in uniform. This exclusively needs transfer of power with regular intervals from one elected government to another and strict adherence to constitutionalism.

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