

# **Inter-Governmental Relations in the Federal System of Pakistan: An Analysis of the Constitutional and Political Aspects**

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## **Abstract**

Pakistan is one of those 28 countries of the world who have adopted the federal form of government. A federal system has various dimensions – theoretical, political, constitutional, functional, etc. No matter how a federal arrangement is conceived and incorporated in the constitution, it is the political and the operational aspects which determine the final nature of the federal system. The functional side of federalism is largely determined by the inter-governmental relations and the way in which the stipulated provisions of the constitution regarding these actually work while being operationalized. The article discusses the nature of the inter-governmental relations in Pakistan after the adoption of the 18<sup>th</sup> constitutional amendment, which brought about a paradigm shift in Pakistan's federalism changing it from organic to cooperative federalism.

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## **Introduction**

Political systems operate and develop, mainly, through the institutions they create. The more these institutions reflect the interests and aspirations of the people, who vest their trust in them, the more successful they become. Similarly, the more these institutions cooperate with each other where their cooperation is required, the more they ensure their legitimacy as a distinct body. This is all the more true insofar as a federal society and a federal political system are concerned. It is so because in the federal context, the political edifice is built in response to the recognition of the diversity of the society as well as the urge to have cooperation between the diverse segments of the society. Cooperation of institutions coming from diverse backgrounds, hence, holds the key to the success of a federal arrangement. In a federal system, there operate

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two types of governments, central and the regional. Both of these rightly claim to be the representative of the people and aspire to carry out policies which they think would fulfill their obligations to the people. How do they do it in cooperation with each other while also keeping their identity and autonomy intact, provides an interesting theme for enquiry and discussion. A lot of federal literature revolves around this debate. The present paper deals with the theme in the context of Pakistan. Given the recent induction of the Eighteenth Amendment in the constitution of Pakistan, this subject has attained additional importance. The amendment has brought a paradigm shift in Pakistan's federal system. It has also opened up new opportunities and has also thrown fresh challenges for the provinces.

The first part of the article refers to some of the theoretical aspects of the subject. It is followed by a very brief account of Pakistan's uneven constitutional journey. In the last section constitutional provisions related to inter-governmental relations are taken up and have been commented upon. It also refers to the political dimensions of the inter-governmental relations.

## I

The inter-governmental relations play important role in determining the nature and character of a federal system. One can also regard the inter-governmental relations as one of the six major criteria along which the substance and worth of a federal system can be scrutinized. The five other criteria may include the supremacy of constitution, the system of division of powers, judicial review, a bi-cameral legislature and the nature of the provisions regarding emergency. Therefore, while discussing the inter-governmental relations in a federal arrangement, one can not lose sight of other features which, too, impact these relations in multifarious ways.

Essential to the federal principle is the idea of dividing the governance of a country in different levels of governments. At least two levels of governments, the general and regional are inevitable in order to construct a federal edifice. K.C. Wheare, one of the most important sources on federalism, defines federal principle along these two sets of governments. He observes:

By the federal principle I mean the method of dividing powers, so that the general and regional governments are each, within a sphere, co-ordinate and independent.<sup>1</sup>

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<sup>1</sup> K.C.Wheare, *Federal Government* (London: Oxford University Press, 1963), p.10.

In a federal system the people are governed by two sets of laws made by two 'co-ordinate' and 'independent' governments. Explaining this, Wheare further says, 'what is necessary for the federal principle is not merely that the general government, like the regional government, should operate directly upon the people, but further, that each government should be limited to its own sphere and within that sphere should be independent of the other.'<sup>2</sup> While K.C. Wheare defines the two sets of governments through the elements of their coordination and independence, and also highlights their respective ability to operate directly upon the people, the *Report of the Royal Commission on the Australian Constitution* (1929) carried the definition of federalism given by Sir Robert Garran, who took it even further and held that federalism is:

...a form of government in which sovereignty or political power is divided between the central and the local governments, so that each of them within its own sphere is independent of the other.<sup>3</sup>

Garran's definition quite aptly highlights the significance of attributing sovereignty to both of them. This can be seen as a benchmark for a federal system which, if it lags behind in assuring a part of or a share in, sovereignty, to either of the two levels of government, should in fact strive to do so in order to become a genuine federal system. In that respect, different federal models can be compared with each other with respect to their response to the above described federal principle.

The two levels of governments can be named variously, like 'general and regional governments' (Wheare<sup>4</sup> and Watts<sup>5</sup>), 'central government and local government' (Garran<sup>6</sup>), and 'central government and the governments of the individual territorial sub-divisions' (Garner<sup>7</sup>). But the essential fact is whether or not they are the carriers of a significant degree of sovereignty. The idea of sovereignty is not an abstract idea. It, in fact, owes itself to the real competence of different levels of governments in economic, political and social spheres. In other

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<sup>2</sup> *Ibid.*, p.14.

<sup>3</sup> Sir Robert Garran, *The Report of the Royal Commission on the Australian Constitution* (1929), p.230, quoted in *ibid.*

<sup>4</sup> K.C. Wheare, *ibid.*

<sup>5</sup> R.L. Watts, *New Federation: Experiments in the Commonwealth* (Oxford: Oxford University Press, 1966), p.13.

<sup>6</sup> Sir Robert Garran, *op.cit.*

<sup>7</sup> J.W. Garner, referred to in Eddy Assirvatham, *Political Theory* (Lucknow: The Upper India Publishing Ltd., 1964), p.357.

words, the two levels of governments should demonstrate their autonomy in these spheres in order to be characterized as part of a federal system.

The two levels of governments, as has been mentioned, are not just independent of each other, they also need to interact with each other. This interaction can take different shapes. According to G.F. Sawyer, after having imbibed the federal spirit through the incorporation of the federal principle, the federal models can take three forms with respect to the nature of relationship between the federal and unit governments. He identifies these models as co-ordinate, cooperative and organic federalisms. The coordinate federalism, according to Sawyer, involves the notion of equality between the units, and between the centre and a unit government. This notion implies the absence of a formal subordination of the units to one another. Sawyer says that though the notion is easy to apply to the relations of regions with each other, it is difficult to apply it to the relations of the centre and a region. The reason of this is that:

Quite apart from the actual wealth, military strength, prestige, influence, etc., of a Centre, there is a qualitative difference between the position of the Centre and that of a Region, because the Centre represents within its areas of competence both the people of the particular Region and those of all other regions.<sup>8</sup>

He further says that, normally it is central laws ‘which prevail, and so far as the country appears as a unity in the international field, it is the Centre, which expresses that unity’.<sup>9</sup> By cooperative federalism, Sawyer<sup>10</sup> implies an interaction between two levels of governments, which ensures facilitation of each other and a joint authority aimed at improving the lot of the citizens. Though in cases, the cooperative relationship may pose challenges, yet the regions always have a bargaining capacity which keeps the equilibrium between them and the centre.

The third form, that is organic federalism, according to Sawyer, is one ‘in which the Centre has such extensive powers, and gives such a strong lead to Regions in the most important areas of their individual as well as their cooperative activities, that the political taxonomists may hesitate to describe the results as federal at all’.<sup>11</sup> Comparing organic federalism with the cooperative federalism, it would be appropriate to

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<sup>8</sup> G.F. Sawyer, *Modern Federalism* (London: C.A. Watts & Co. Ltd. 1969), p.117.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*, pp.122-23.

<sup>11</sup> *Ibid.*, p.125.

‘say that the organic stage begins to develop as the Regions lose any substantial bargaining capacity in relation to the Centre’.<sup>12</sup>

The above discussion may help in understanding the inter-governmental relations in the context of the federal principle, particularly with respect to the sharing of sovereignty between the two levels of governments and their competence with respect to their decision-making in the economic, political and social spheres. This can also help in placing a given federal model in one of the three categories of federalism – co-ordinate, co-operative, or organic.

The inter-governmental relations can be evaluated at two levels. First, they can be studied in the formal and structural context. It is the domain of constitution which sets the roles for both the governments – central and regional. A great deal of the inter-governmental relations can be understood through relevant constitutional provisions. But the constitutional edifice is not the sole determinant of how the two sets of governments operate and what constitute the actual dynamics of their relationship. Therefore, an enquiry into their relationship goes beyond formal and structural elements and seeks to look into its operational aspects as well. Here the political facts of a given federal case – political parties, the strength of political process and traditions, the balance between the political and administrative organs of the state, the socio-political consciousness of the people, and the leadership, also have a role which should be taken into account while discussing the federal system of a country.

However, the inter-governmental relations in different federations may differ with each other with respect to the degree of importance, each of these systems attaches to the formal and informal mechanisms. ‘The patterns of relations between federal partners’, observe Poirier and Saunders, ‘range from legal principles and institutions, embedded in Constitutions or legislations, to a range of informal, largely opaque but essential connections across jurisdictional border’.<sup>13</sup>

In the above discussion focus has been on the two levels of governments, the federal level and the regional or units’ level. But there may exist a third tier too, which is the local level of government. The third tier is quite important because its meaningful and effective presence

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<sup>12</sup> *Ibid.*, p.125.

<sup>13</sup> John Poirier and Cheryl Saunders, ‘Cooperative Mechanisms and Intergovernmental Relations in Federal Regimes’, in Rupak Chattopadhyay and Karl Nerenberg (eds.) *Intergovernmental Relations in Federal Systems* (Canada: Forum of Federations, 2010), p.4.

is essential for the completion of the process of devolution or decentralization. However, in the discourse on federalism the focus remains on the earlier two tiers because the constitutional division of powers is decided between them. Regarding the local government the federal constitutions generally confine themselves to provide provisions for their establishment but do not allocate powers and functions to them which is generally done by the second tier of government, that is, the regional or unit's government. Thus writing about Canada, Meekison observes:

In Canada, discussion and analysis of intergovernmental relations are generally limited to federal-provincial and interprovincial relationships. The federal-municipal and the provincial-municipal dimensions, for the most part, do not usually attract the same degree of analysis in the study of Canadian federalism as to the federal-provincial or the interprovincial perspectives. The Canadian provinces have strongly discouraged federal-municipal relationships.... That said, it should be realized that in a number of other federations local governments are given far more recognition and weight in the overall sphere of intergovernmental relations.<sup>14</sup>

Here it is also quite important to recognize that even if the constitution of a federation succeeds in creating 'co-operative federalism', the nature of inter-governmental relations may not automatically become smooth and harmonious. Thus, Meekison observes that 'while intergovernmental relations are a fact of life in federations, the nature of these relationships varies considerably and ranges from harmonious to strained to antagonistic. While the term 'co-operative federalism' conveys an image of tranquility and harmony, the reality of the intergovernmental relationships may be far different.<sup>15</sup>

Meekison goes further to identify, though in the context of Canadian federalism, ten areas which, in his view, have produced the majority of intergovernmental conflicts there. Even a cursory glance of these ten areas would be sufficient to suggest that they may be found operating in any federation, and, therefore, they may be referred to here. These are: '(1) disputes over constitutional jurisdiction; (2) disputes over revenue-sharing or the issue of vertical fiscal imbalance; (3) disputes

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<sup>14</sup> J. Peter Meekison, 'Introduction', in his (ed.), *Intergovernmental Relations in Federal Countries, A Series of Essays on the Practice of Federal Governance* (Canada: The Forum of Federations, 2007), p.3.

<sup>15</sup> *Ibid.*

arising from horizontal fiscal imbalance; (4) disputes over the exercise of the federal spending power; (5) disputes over regional development policies and the question of which provinces benefit most from federal spending; (6) disputes over the control of natural resources; (7) disputes arising from cultural, linguistic or religious differences; (8) conflicting ideologies between political parties; (9) clash of personalities; and (10) the lack of intergovernmental consultation and the resulting unilateral action by either order of government'.<sup>16</sup>

## II

A discussion on the nature of inter-governmental relations in Pakistan may usefully be carried out if it is contextualised in the background of the rationale of federalism in Pakistan. Without getting involved in a detailed discussion on the theme of the rationale, which may well be done separately, one may identify three basic and fundamental factors which may explain it in the context of Pakistan. First, with its diverse cultures, languages, dialects, literatures, and historical experiences of its component units, Pakistani society can rightly be described as a 'federal society'. This characterisation is reinforced by W.S. Livingston's observation in his influential 'Note on the Nature of Federalism' wherein he says that federalism should be understood as a 'Sociological Phenomenon', which is 'a function not of constitutions but of societies'.<sup>17</sup> A great deal of literature explains the characteristics and norms of a federal society which, almost as a rule, aspires to preserve and assert its diverse identities. The diverse cultures also aspire to connect with each other for common good, realizing unity amidst strong diversities. In federal societies, the political institutions also need to be federal in character if the state wishes to respond favourably to the needs and the demands of the society. Pakistan being a federal society could not do without a federal system.

The second factor that rationalizes federalism in the case of Pakistan is the fact that the federal principle was inherent in the evolution of the movement which culminated in the creation of Pakistan. Right from the 1920s, Quaid-i-Azam Muhammad Ali Jinnah, the founder of Pakistan, and the All India Muslim League had started voicing quite forcefully for the realization of maximum provincial autonomy within the context of united India. Another assertion of the Muslim League was to have as many Muslim majority provinces as possible. Having failed in

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<sup>16</sup> *Ibid.*

<sup>17</sup> W.S Livingston, 'Note on the Nature of Federalism', *Political Science Quarterly*, 1952, LXVII, quoted in G.F. Sawyer, *op.cit.*, p.136.

convincing the other major actor of the Indian political scene, that is, the Indian National Congress, Mr. Jinnah and the League were left with no option but to ask for partition of India. In other words, one could say that the failure to get a fairer quantum of autonomy for the Muslim majority provinces in India, paved the way for the creation of a separate federation of the Muslim majority provinces. The country that came into being in this context could not think of any other mechanism for political integration than a federal arrangement.

The third factor which serves as a rationale of federalism in Pakistan has to do with the modalities through which Pakistan was actually realized. It is a historical fact that once it was decided that India would have to be partitioned, it was also decided that the procedure regarding it would involve the decision of the respective Muslim majority provinces who would have to make a choice whether or not they would like to have a federation of their own. Thus, Pakistan was created by the provinces or one may say that it is a federation whose existence owes itself to its federating units. This understanding of the rationale of federalism serves to highlight the severity of any deviation from federal principle in the case of Pakistan.

However, in more than six decades of its history, Pakistan had had a chequered constitutional journey. In this period the country witnessed four military rulers who altogether governed the country for over thirty years. Even when civilian regimes were restored they were not free from extra-political influences, manifested and embodied in the form of what is designated in Pakistan as establishment. The absence of a permanent and autonomous political milieu in the past was both the cause as well as a result of the failure of constitutional governance. There is no dearth of literature that treats the issue and investigates the causes behind this political bewilderment of the country. Here, suffice it to say that both the social backwardness of the country as well as the domestic political and international factors contributed to prolonged military rules and weakened the political forces of the country.

The political instability in the country is evident from the fact that Pakistan experienced at least four constitutions since 1947. First, the Government of India Act 1935 served as the interim constitution for nine years. Then, in 1956, a constitution was promulgated declaring the country to be a republic. However, the republic lasted for about two and half years as, in 1958, Martial Law was imposed in the country. President Field Marshal Ayub Khan gave his constitution in 1962 but while relinquishing power in favour of another military ruler General Yahya Khan in 1969, Ayub abrogated his constitution. After the break-up of Pakistan in 1971, Zulfikar Ali Bhutto was handed over power

during whose rule, the constituent assembly made the first unanimously agreed constitution in 1973. Thereafter, two military regimes (General Zia-ul-Haq in 1977, and General Pervaiz Musharraf in 1999) usurped power. The former 'suspended' the constitution while the latter 'put it in abeyance'. The phrases were selected to avoid the invocation of the constitutional clause, according to which the 'abrogation' of constitution amounted to high treason (Article 6).<sup>18</sup>

After the elections of February 2008, the government of Pakistan Peoples Party and its coalition partners undertook to repeal the amendments incorporated in the constitution during the last two military regimes. Earlier, on 14 May 2006, a Charter of Democracy was signed in London between Benazir Bhutto and Nawaz Sharif, the exiled leaders of Pakistan Peoples Party and Muslim League (N) respectively.<sup>19</sup> The charter had committed the restoration of the 1973 constitution as on 12 October 1999, when the military coup took place, along with certain new amendments, the need for which had been realized during the course of time after 1973. Soon before the elections the two leaders returned to Pakistan but Benazir was killed on 27 December 2007 in a terrorist attack. The elections, two months later, brought her party in the assembly as the single largest group which entered into coalition with other political parties and got elected Yousuf Raza Gilani of the PPP as the Prime Minister. In August 2008, PPP's co-chairman and Benzair's husband Asif Zardari replaced General Musharraf as the President of the country. (Benazir's son Bilawal was adopted as party's chairman but he could not take part in active politics as he was still studying abroad.) On 28 March 2009, Zardari, while speaking to the joint session of the parliament, referred to the commitment made by the two major political parties regarding the restoration of the 1973 constitution, and highlighted the need to do so now that a democratic dispensation was in place. He asked the Speaker of the National Assembly to constitute a committee comprising members of both houses so that it could formulate proposals for the amendment in the constitution. The National Assembly passed a resolution for the creation of an all parties special committee on 10 April 2009. The committee was formed with 27 members (later reduced to 26) hailing from the National Assembly and the Senate. The committee held 77 meetings and signed its draft of proposed constitutional amendments on 31 March 2010. The Eighteenth Constitutional Amendment was later

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<sup>18</sup> *The Constitution of the Islamic Republic of Pakistan 1973, as Amended by the Constitution (Eighteenth Amdt.) Act, 2010* (Islamabad: Centre for Civic Education Pakistan, n.d.).

<sup>19</sup> For the text of the charter, see [www.stateofpakistan.org](http://www.stateofpakistan.org).

passed by the parliament. It, in fact, amended 97 articles of the constitution. The overall impact of these significant changes was quite. These brought back some of the major characteristics of the constitution, for example, its parliamentary character. Some new articles corrected the constitutional anomalies while the others made it more democratic and responsive to the provincial urges. Despite the overall corrective attitude of the Eighteenth Amendment, it did not redress some of the discrepancies and biases held by the constitution in the name of religion. Apart from the restoration of parliamentary character and the sovereignty of the parliament, the most noticeable shift in the constitution's character took place in the sphere of federalism. The Eighteenth Amendment decentralized and devolved a number of subjects, recognized the autonomy of the provinces and their right to ownership on their resources. It also enhanced the role of certain institutions having direct bearing on the federal system and the federal bargain between the centre and the provinces. In a nutshell, it would not be wrong to say that the Eighteenth Amendment transformed, at least in theory, Pakistan's system from organic federalism to cooperative federalism.

In the subsequent section constitution's position with respect to inter-governmental relations will be analyzed especially as these relations stand now. This, however, may not be taken as the coverage of the entire federal system as for that one would need to refer to other five characteristics or criteria of a federal system as well, a reference to which was made in the first section. Leaving the themes of the division of powers, judicial review, bi-cameral legislature, etc., the following section will confine itself to the inter-governmental relations only. However, reference to other themes will be made where it is necessary for the elaboration of the subject of inter-governmental relations.

### III

At the outset it must be said that the inter-governmental relations are not the result of the constitutional provisions only. Other factors like the actual functioning of these provisions, the political individuals who operate them and the organizations which undertake to carry out their political programs through elected bodies, all affect the nature of the inter-governmental relations. In the following, these relations will be discussed mainly along the constitutional provisions yet at places reference to other factors would also be made, if necessary.

In the constitution of Pakistan there are institutions and bodies where the two levels of governments, meet, converge, or interact. Parliament is the first such institution. In the upper house, i.e. the Senate, provinces have equal representation, therefore in a house of 104

members there are 14 members from each province. The federal capital has a membership of four while the Federally Administered Tribal Areas (FATA) has a total membership of 8. Moreover, every province sends four women and four technocrats to the Senate. The Eighteenth Amendment has introduced four seats for non-Muslims in the Senate, giving one seat to each province. Senate, therefore, is an adequate house of the units which is elected by the provincial assemblies. There has also been a demand on the part of certain political groups and individuals that Senate should be directly elected by the people. The powers of the Senate have increased over a period of time, but there are areas in which there is room for further extension of these powers.

In the executive domain also the two levels of government interact at different points. The president appoints the governor of the province on the advice of the prime minister. Since the prime minister draws his strength from the parliament, his role in the appointment of the governor helps in harmonizing the centre-province relations and this can also be taken to have strengthened the parliamentary character of the system. This also serves as the convergence of parliamentary and federal systems.

The constitution also provides for the parliament's role with respect to a province. According to Article 144, the parliament is empowered to legislate for one or more provinces by consent on a matter not mentioned in the federal list. But such an act of the parliament would be required to be amended or repealed, by the provincial assembly, later.

The relations between the federal centre and provinces quite significantly depend on the distribution of legislative powers. Historically, Pakistan has lived under highly centralized federal arrangement. The Government of India Act 1935, not only served as the first constitution of the country but its spirit continued to exhibit itself in the subsequent constitutions.<sup>20</sup> During the course of time, the constitutions did alter the former structure of the division of powers but the centralizing tendency remained intact in all these changes.<sup>21</sup> The said act and the 1956 constitution produced three legislative lists (federal, concurrent and provincial), the constitution of 1962 had only one list

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<sup>20</sup> Renowned jurist of Pakistan, Justice (Retd.) Dorab Patel, described it as 'legal fundamentalism'. See his interview, *Viewpoint* (weekly) Lahore, 15 August 1985.

<sup>21</sup> For the comparative analysis of the federal schemes of the different constitutions of Pakistan, see Syed Jaffar Ahmed, *Federalism in Pakistan: A Constitutional Study* (Karachi: Pakistan Study Centre, University of Karachi, 1990); especially see chapter 3: 'Division of Powers', pp. 69-110.

(central), while the 1973 constitution provided two lists (federal and concurrent). Despite these variations, the list system was so manipulated and the subjects therein were so itemized that all important and significant subjects were kept with the central government. Even in areas where concurrency was recognized, it was the central law which was given the right to prevail over the provincial law.

A meaningful and major shift took place in the domain of division of powers by virtue of the Eighteenth Constitutional Amendment. Fulfilling the long-standing demand of the smaller provinces, the Eighteenth Amendment abolished the concurrent list, with the effect that its subjects came to fall in the category of residuary powers which are the exclusive domain of the provinces.<sup>22</sup> Few of the subjects in the concurrent list were shifted to the federal list also but these were the subjects which concerned all the federating units. As the result of the abolition of the concurrent list a number of ministries in the centre came to an end because now they came under the exclusive competence of the provinces. At least seventeen ministries in the centre went away after the introduction of the Eighteenth Amendment. These ministries were devolved to the provinces.

The inter-governmental relations also owe a great deal to the administrative linkages between the two levels of government. According to Article 145, the president can direct a governor to discharge certain functions. Article 146 empowers the federation to confer powers and functions on provinces in relation to matters to which executive authority of the federation extends. Article 147 gives powers to the provinces to entrust functions to the federation on matters to which executive authority of the province extends. The Eighteenth Amendment added to this the condition that the provincial government should get the functions so entrusted to the federation, ratified by the provincial assembly within sixty days.

One article of the constitution lays down the obligations of the provinces in the federation. Accordingly, the executive authority of a province is so exercised as to secure compliance with federal laws which apply in that province (Article 148-i). Moreover, the article also makes it obligatory for the federation to exercise the executive authority in a manner that due regard is given to the interests of the province.

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<sup>22</sup> The issue of the abolition of the concurrent list was debated for a long time before its scrapping down from the constitution. For an insight into the issue see Syed Jaffar Ahmed, 'Provincial Autonomy and the Concurrent List: A Constitutional Overview', *Pakistan Perspectives*, 9:2 (July-December 2004).

In federations the federal bargain is severely affected in case of the imposition of emergency in a province or in the whole country. Often the central governments have used the emergency provisions in order to curtail provincial autonomy. The original constitutional provision regarding emergency had given quite extended powers to the central government with respect to the declaration of emergency in a province. After the Eighteenth Amendment these powers have been trimmed. Now the position is that in case of emergency imposed due to internal disturbances which are beyond the power of the provincial government to control, a resolution from the provincial assembly of that province would be required before the president could enact emergency. In case the president acts on his own, his proclamation in that regard is required to be placed for approval before both houses of the parliament within ten day (Article 232). This condition has given protection to the provinces which cannot be subjected to unilateral decision of the federal government to impose emergency.

Pakistan's constitution also provides some important institutions which facilitate the convergence and cooperation of the two levels of government. The Council of Common Interests is one such institution which has become much more important after the introduction of Eighteenth Amendment which did away with the concurrent list. Since few subjects of the concurrent list were shifted to the federal list the provincial interests with respect to them needed to be negotiated with other provinces or the centre for which some institutional platform was needed. This role was given to the Council of Common Interests, whose composition and competence both have been improved through the Eighteenth Amendment. The council has as its members the prime minister, all the chief ministers and three members from the federal government to be nominated by the prime minister. Prime minister is the chairman of the council, which according to its amended form, makes/formulates and regulates policies in relation to Part II of the federal list in which are enumerated the subjects which are of concern for all the provinces and the centre. The council also supervises and controls the related institutions. An important function of the council is to resolve the issues pertaining to electricity between the federal government and the provincial governments. The council is constituted within thirty days of the election of the prime minister. It has a permanent secretariat, and meets at least once in ninety days.

The position of provinces or their autonomy has been endorsed through a constitutional provision which accepts joint ownership of the centre and the provinces, over the resources in a province. This includes both mineral resources as well as the territorial waters adjacent to the

coastal areas of a province. The issues pertaining to this right and other such rights are to be decided in the Council of Common Interests.

Another institution in which the central and provincial governments interact is the National Economic Council which reviews the overall economic condition of the country, advises the federal and the provincial governments with respect to the formulation of plans in respect of financial, commercial, social and economic policies. It also advises the formulation of such plans which may ensure balanced development and regional equity. The council is headed by the prime minister and its members include the four chief ministers, one member from each province nominated by the chief minister and four members nominated by the prime minister. The council meets at least twice in a year. It is responsible to the parliament and submits an annual report to each house of the parliament (Article 156).

The third important institution which serves the interests of all the provinces and the centre, and also harmonizes these interests, is the National Finance Commission, which is constituted by the president for five years. The commission comprises the ministers of finance of the federal government, the provincial ministers and such other persons as may be appointed by the president in consultation with the governors of the provinces. The commission recommends to the president the formula for the distribution of revenues. It also suggests as to what grants-in-aid be made by the federal government to the provincial governments.

Since 1973, National Finance Commission did not have smooth sailing as for years it remained either non-existent or inapt to give its award. The sixth NFC award was given by President General Pervaiz Musharraf after the failure of the four provincial governments and the central government to reach a consensus formula for the division of revenue resources. The seventh award made after the restoration of democratic regime departed from the earlier awards and adopted multiple criteria for the allocation of resources and revenues to the provinces instead of the previous sole criterion of population. Now the criteria of underdevelopment, territory and revenue generation have also been given due weightage along with the principle of population. As a consequence of it the share of the smaller provinces has considerably increased.

The Eighteenth Constitutional Amendment further strengthens the position of the provinces by laying it down that the share of a province in an NFC award should not be less than its share in the previous award. The NFC has been made more functional and alive by the induction of the clause which makes it binding on the federal and provincial finance ministers to monitor the implementation of its

decisions bi-annually and lay their reports before both houses of parliament and the provincial assembly.

### **The role of political parties**

The dynamics of the inter-governmental relations is not the sole function of the constitutional provisions and the structures provided by it. Even the institutions provided by the constitution are operated by individuals, both political/elected representatives as well as civil servants, who may have their political views, backgrounds, aptitudes and competence. The functions of the institutions, therefore, may vary according to the variance in the type of people who man and run them. Not only this, in democratic dispensations political urges and programs are articulated through organized efforts which take the shape of political parties. In the working of a federal system the role of political parties holds an important place. This can be demonstrated more effectively in the relationship of the two levels of government. Referring to this and discussing the possible scenarios of inter-government relations, George Anderson writes:

The party regime is critical. In federations where the political parties are integrated between the two orders of government, the national party leaders may have great influence over candidates and leaders in the constituent units; alternatively, regional barons, with their power bases in the constituent units; may be king makers for the party at the centre. India and Mexico both once had a single dominant party with strong central control and both have evolved to a multi-party regime with more decentralized parties (even though India is parliamentary and Mexico presidential-congressional) and a weakened executive. South Africa and Ethiopia each have centralized party that effectively dominates constituent-unit politics. German parties at both levels are closely linked because of the role of Lander in the central government and many important intergovernmental issues are worked out within their parties as well as between their governments.<sup>23</sup>

The past history of Pakistan suggests that, in cases, where one political party rules, both at the centre and in a province, there exists the likelihood of a smooth working relationship between the two. In Pakistan, this happened on different occasions. During Zulfiqar Ali Bhutto's regime, after 1973, as the centre and provinces were both

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<sup>23</sup> George Anderson, *Federalism: An Introduction* (Ontario: Oxford University Press, 2008), pp.65-6.

governed by Pakistan Peoples Party-led governments, no major centre-province conflict emerged. On the contrary, during the early phase of Bhutto's rule, that is, between his taking-over in December 1971 to February 1973, Peoples Party was in power in the centre and in the provinces of the Punjab and Sindh, while Balochistan and the North West Frontier Province were governed by a coalition of National Awami Party and Jamiat-ul Ulema-e Islam. Though this arrangement was facilitated by the Interim Constitution of 1972, which did not ensure much of provincial autonomy, the very fact of divergence of political parties at the centre and the two provinces of Balochistan and NWFP ignited a political crisis which culminated in the removal of the Balochistan ministry and the subsequent resignation of the NWFP ministry in protest.

Similarly the first government of Benazir Bhutto (1988-1990) had to face a severe crisis given the uncompromising and antagonistic attitude of the provincial government of the Punjab led by Chief Minister Mian Nawaz Sharif. This confrontation eventually became a major source behind the destabilization of the Benazir regime. Mian Nawaz Sharif, in return, faced the same fate when, as Prime Minister, he got into confrontation with his former mentor, President Ghulam Ishaq Khan, who removed his government in 1993. Though Sharif's government was restored by the Supreme Court, yet during the period when the Supreme Court was hearing the case of dissolution of assembly, the president had brought in provincial governments of his choice. These provincial governments, particularly, the one in the Punjab, adopted a policy of non-cooperation with Sharif's central government once it was restored by the court. It was said that Sharif's writ did not extend beyond federal capital, Islamabad. But the same Nawaz Sharif had quite smooth sailing during his second rule (1997-1999) when the central and provincial governments were effectively controlled by his party and its allies. No major federal crisis emerged during this period, though quite a few long-standing issues remained there.

This, however, should not be taken to suggest that the government of the same party at the central and provincial levels is the only means to make a federal system successful. In fact, there can not be a guarantee that elections in a federal – democratic country can ensure the coming into power of a party at both levels of government for an indefinite period. If it is a multi-party system, there is likelihood that successive elections bring about different types of results and, consequently, different political formations, in which one party ruling at the central as well as in all, or most of the federating units, will be just one of the different possibilities.

Moreover, this should also not be taken for granted that the same party's rule at the centre and a province or provinces will definitely have smooth sailing as far as the federal matters are concerned. Though such smooth sailing should be expected in such a case but this may be more assuring where the society is not severely torn by ethnic polarization, where political parties are strong and where the country has strong leadership. In cases where these factors are absent, the rule of the same party at the centre and province / provinces may not ensure a strengthened federal system. Perhaps, a good example of this can also be cited from Pakistan's history which demonstrates how in the first seven years after independence the Muslim League rule at the centre as well as in all the provinces did not prove useful for sowing the seeds of successful federalism in the country.

These examples show that in laying down the actual parameters of inter-governmental relations, the party regimes played a very significant role. This is why democracy and strong political institutions like political parties remain so crucial for the success of a federal system.

### **Conclusion**

Politically and constitutionally Pakistan is passing through a crucial and critical period of its history. While on the one hand, it has put itself back on the democratic path which still faces uncertainties and is confronted with challenges, on the other hand the important decisions it has taken with respect to the constitutional changes require great deal of patience and wisdom, and also the skill to see them through. The inter-governmental relations would remain, in the near future, the focus of an enquiry into the working of its federal system. If the political actors, who are at the helm of affairs, show their resolve and lead the system towards success, it would pave the way for the establishment of a successful federation in Pakistan, a federation Pakistan has longed for, for so long.