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A Comparative Study of Federalism in Pakistan after 18th Amendment and USA

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Abstract

Federalism approaches a significant transformation in Pakistan in the repercussion of 18th amendment. The amendment produces a facet of loose federalism which is relevant with United States of America (USA) federal model. The paper examines the features of federalism in Pakistan and USA in comparative perspectives in post 18th amendment paradigm and find out its various features. The research concludes that, to accelerate a balanced federalism which is a feature of USA, constitutional transition and democracy will play a vital role in Pakistan.

Keywords: Balanced Federalism; 18th Amendment; Pakistan; USA; Constitutional Transition

I. Introduction

Federalism is a system of government where *sovereignty* is shared (at equal peculiarity) between a central government and its federating units (Adeney, 2007, p. 6). Usually, it is a characteristic of multiethnic states. The concept describes the constitutional consensus to establish the system of governance in a state. The consensus shows a social and legal consent of different segments, political groups, political parties and the political elites of a society who desires to living by coinciding of adjoining territories and geographical units (Faisal, 2010, p. 9). The fiction of federalism unifying the new nation-states in post-Westphalia treaty encountered an assortment, such as the intricacy of reconciling a traditional hierarchical society with the need of fundamental social equality of *power-sharing* characteristics.

The inconsistency on sub-regional autonomy, the regime centralization, problems of executive leadership and succession which were not resolved until American federalists invented the elected presidency in late 18th century. The concept travels a long journey since many centuries. In state paradigm, federalism utilized into its present meaning dating back in 12th century in Switzerland while in the constitutional structure, United States of America integrated its first model which is termed as balanced model of federalism. Presently, there are almost 25 states which have federal form of governance. The states have different connotations to maintain the modalities of federalism. The list of these states is described as under:

Table. 1: Federal States having federal form of government

Argentina, Australia, Austria, Belgium, Bosnia and Herzegovina, Brazil, Canada, Comoros, Ethiopia, Germany, India, Malaysia, Mexico, Micronesia, Nepal, Nigeria, Pakistan, Russia, South Africa, St. Kitts and Nevis, Spain, Switzerland, United Arab Emirates, United States of America and Venezuela. *Countries in federal transition:* Iraq and Sudan.

Source: www.forumfed.org

All these states at least possess a constitutional structure in their polities which differs from one state to another. In accordance with the present lattice of federalism, George Anderson proposes two pre-requisites for this system; a written constitution and the existence of democracy in a state (Anderson, 2008, p. 4). The present study encircles the comparative federal perspective between Pakistan and USA in the post 18th amendment regime with their institutional implications and democratic capacity.

The two states have some similarities such as; constitutionalism, associative and workable system of federalism, multifaceted and multiethnic/multinational trends, multipronged state of governance, multilingualism, an institutional hierarchy and bargaining system of policy making in the present period with its varying circumstances. It is more durable, appropriate, transparent, balanced, mature, negotiated, demos-friendly and stable in USA unlike in Pakistan, the state which has travelled a transitional juncture since its inception from centralization to decentralization and from democracy to authoritarianism and back to democracy (Bukhari and Kamran, 2013a, p. 1187). This transitional tendency in Pakistan has created some certain institutional challenges which was remained at the provocative level and did not proclaim the fullest jeopardy of kinship culture and traditional political trends.

In US policy making stance and issue, it is always the structural debate about the federalism (and the intergovernmental capacity) which plays a vital position (O'Toole Jr., 1985, p. 64). The structural approach towards party politics is deliberately developed there. That is why; it is more workable and state friendly system in USA. All decision-making outcomes are approached at the constitutional outcomes there. The governance in Pakistan is proceeding towards these trends in the present circumstance which need a strong political stance from main stream political parties. The present manuscript deals with the comparative study and the development of federalism in Pakistan and USA in the aftermath of 18th amendment, by focusing on various aspects ranging from constitutional, intergovernmental, institutional, administrative, economic to political one. The study constitutes an analytical paradigm and contains the research material by finding the primitive structure of comparative federalism. The study is important as it find out the instructional and workable paradigm between the systems of federalism of two states.

II. Literature Survey

The writes such as Howard (1993); Moreno (2008); Brown (n.d); Thomas (2013); Elazar (1995); Peterson & Nadler (2011); Ryan (2011); Kelly & Witko (2012); Agranoff

& McGuire (2001); Baicker *et.al* (2010); Gostin (2005); Dahl (2001); O'Toole Jr. (1985); Pious (1986); Lees (1985); Ingersoll & O'Connor (1986); and Rockwell & Woll (2011) have examined different perspective of federalism in the context of US model. The considerable aspects US federalism in their writing are; constitutional development, the political and negotiated trends, the institutional bargaining trends, the fiscal policing, intergovernmental coordination, theoretical power resource structure, administrative degree and possession and the most import is the democratic velocity.

The comparative tendency and study about the federal model in Pakistan has captured a weak scrutiny due to the existence of its possession of authoritarian and weak democratic culture (Adeney, 2012, p. 1). There are number of national and international researchers who have utilized their painstaking studies in the milieu of Pakistani federalism. The list includes; Jalal (1994); Ali (1996); Ziring (1980); Shafqat (1997); Sayeed (1968, 1980); Laporte (1975); Baxter (1988) and Amin (1988) who encircle the historical context of federalism in Pakistan into different aspects. While Talbot (2009); Mustafa (2011); Khan (2010); Khan (2013); Faisal (2010); Bukhari & Kamran (2013a, 2013b); Ahmed (2011); Adeney (2007, 2012); Waseem (2010); and Rizvi (2008) overview the post 18th amendment scenario in varied paradigms which includes; coalitional, institutional bargaining, consociational, intergovernmental, fiscal, administrative, decentralized, decision making, elites accommodation, political and ethnic heterogeneity and ethnicity. Each of the study writes down the structural analysis of federalism in the aftermath of 18th amendment. These studies relatively found the provocative arena for the development of institutional federalism in Pakistan.

III. An Outline of Federalism

The management of federalism is directly associated with the mode and structure f governance in a state. The states having potential of stable political regimes also have their deep rooted structure of federalism and portray a significant culture of transparent delivery of services to its citizens in the realm of constitutional, political, institutional, economic, intergovernmental and decentralized paradigms. George Anderson (2008) rightly states that; the significant culture of constitution (al) governance, the existence of democratic (polity) and the widening structure of division of powers between a central government and its federating units are the hall mark of (balanced) federalism (Anderson, 2008, pp. 4-5). Anderson examines these features in his work on federalism which was published by Oxford University Press in 2008.

Moreover, Elazar considers Federalism as comprehensive political system from the existing system of governance to maintain political integrity among the federating units by giving them (constitutional) privileges to accelerate their independent integrity. The writer has defined seven principles for the establishment and contextualizes the institutional character of a federal state. The principles are; (full phase of) democracy, decentralization, balance of power, open bargaining in institutional paradigm, constitutional, fixed units and territorial and non-territorial agreements ((Elazar, 1995, pp. 1-17). Muller confines the conceptual of federalism to the paradoxical tendencies by focusing on the inner structure of a particular state and defines it in the *national* aspect. He regularizes the feature of constitutionalism as an important character to each level and for each institution in a federal state (Mueller, n.d, pp. 1-4).

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Ryan empirically characterizes that a federation has the tendency of negotiation to the policies and issues being faced at any level; at national, sub-national or at the local level (Ryan, 2011, p. 19). This is an important feature of US system of governance which proposes an institutional pace for the development of federalism from the last two centuries. Baicker terms *tieabout* (Individual tendency in the jurisdiction phenomenon) fiscalization as the unique trend of a decentralized federal state in the ambit of statefederal relationship (Baicker, 2010, p. 1). The principle is being adopted by many states possessing multinational character such as USA, Switzerland, Mexico and Argentina. These are the tendencies of a developed model of federalism which are very important and relative to understand the conceptual paradigm of the present study by codifying its implications on Pakistan.

There is another tendency of federalism as a model for multiethnic and heterogeneous states. This is due shared in the consociational, centralized intuitionalism and centre-peripheral occupation. The writers such as Lijphart (1977), O'Flynn (2006) and Guelke (2012) termed their relevant models in these concerns by focusing on the consociational (Lijphart, 1977, pp. 1-2), institutional (O'Flynn, p. 2) and centralization (Guelke, 2012, p. 4) characters of the multiethnic states. The power-sharing formula is extremely relevant according to these writers. However, the additional agents such as, economic and social elements also play their elevate role in the bargaining process of federalization. These are the multiplication of multiethnic and heterogeneous states such as Pakistan, India, Nepal, India and South Africa.

By applying the two theoretical phases on the historical background in Pakistan and USA, we find certain perspectives of federalism in the two states each defining their separate development phases. These are described as dissimilarities in their basic structure of federalism which distinguishes them from each other. These are tabulated as under:

Table. 2: Federal Dissimilarities in Pakistan and US Model	
Federalism in Pakistan	Federalism in USA
Asymmetric Federalism, Multiethnic	Symmetric Federalism, Multinational
Federalism	Federalism
Singular Federalism, Imbalanced	Dual Federalism, Balanced Federalism,
Federalism	Demos-constraining federalism,
Quasi-democratic Federalism, Colonial	Constitutional/Historical Legacy
Legacy	Phased History, Institutional, Centralized
Transitional History, Quasi-institutional	Hierarchy
Quasi-centralized Hierarchy, Coalitional	Non-coalitional Governance, Two Party
Governance	System
Multi Party System, Weak Party System	Competitive Party System, Class
Kinship/Patronage Orientation, Ethno-	Orientation
federal Character, Third Tier Government	Holding Together Character, Third Tier
(Phase Start)	exist
Source: (Anderson, 2008; Adeney, 2007; Bukhari and Kamran, 2013; Lieven, 2011; O'Toole,	

Source: (Anderson, 2008; Adeney, 2007; Bukhari and Kamran, 2013; Lieven, 2011; O'Toole, 1985; Pious, 1986; Stepan, 1999; Elazar, 1995)

By capturing focus on these characteristics; we can easily analyze the developing models and the historical tendencies of federalism in Pakistan and USA in comparative perspectives. Historically, the configuration of federalism in Pakistan is considered as ashes of colonial legacy (Jalal, 1994, p. 2) under India Act of 1935 whereas in USA, it is an historical legacy of the federating units called states on arriving at the mutual lines via constitutional pact of 1787. The earlier state usually has transitional nature of federalism spanning around centralization/decentralization and military authoritarianism to quasidemocratic transitions. The constitutional breakdown was deadly present in case of Pakistan while the United States of America found a phased tendency of balanced and negotiated structure of federalism with the decentralized reformation (Pious, 1986, p. 67; Lees, 1975, p. 49).

Both states are relevant at the constitutional lines after the adaptation of 18th amendment by Pakistan in its constitution. Now the two states are following formal tendency in the structure of federalism with slight difference in the mode of institutionalism and the division of constitutional powers at different levels. In case of Pakistan, it exist a parliamentary form of government with hybrid regime dominating by elite's role in the policy making having one single subject list of the federal government. The political governance and decision under the centralized role of president having an institutionalized pattern on decentralized principles is the existence of American federalism. The following part concentrates on the development of federalism in Pakistan in post 18th amendment period while contextualizing the US model.

IV. Eighteenth Amendment and its Aftermath

The concentration of power in the centre has been remained a federal dilemma under all constitutional pacts of Pakistan including the constitution of 1973. The constitutional powers to the provinces and civil institutions did not utilized in their proper means. That is why the supremacy of federal government was remained there at all levels of governance including the in the provinces at peak tendency of bargaining (Waseem, 2010, p. 5). The concerns and issues of provincial autonomy, supremacy of the constitution and the institutions, the promulgation of decentralized economic structure and the rendezvous about local governance had shown their roots from the earlier period of structural hierarchy of traditional politics, statist military and bureaucracy and weak political parties. The political string of federalism was remained at the rooted edge of centralism in Pakistan (Ziring, 1980, p. 123).

In May 2006, the key political elites from Pakistan People's party (PPP) and Pakistan Muslim League Nawaz (PMLN) signed a *Charter of Democracy* (CoD) to oblige the process of decentralized system of federalism on the principles of balanced structure of governance in Pakistan (Friday Times, May 16, 2006). The CoD is considered a unique political pact which has fulfilled the constitutional promises until now. In accordance with this pact, the two parties with the existing parliamentary political parties joined with one another to find out the constitutional method to approach these demands. After a span of two years since 2008 general elections, 18th amendment was unanimously promulgated to craft the balanced structure of federalism in Pakistan. The significant features of the amendment are described as under:

- i. Concurrent list was abolished and more institutional space was given to the provinces.
- ii. The constitutional monarchy of federal government was revised with the decentralized governance by introducing the local structure at grassroots level.
- iii. The centre-peripheral paradigm was created on the institutional principles.

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- iv. The Council of Common Interests is now regularized in more institutional way.
- v. The principal of economic decentralization which was discovered under 7th NFC Award implemented under 18th amendment.

The amendment precisely have restructured the previous system and federalized it in the new description of balanced federalism which is compatible with the US federal model. The present study deals with this concept in the aftermath of eighteenth amendment to contextualize the governance of Pakistan. The similarities which are present in the present mode of federalism in Pakistan with its compatibility with the USA have been analyzed as under:

Constitutional Aspect

The US constitution is a charter of politics which achieve the process of homogeneity of American people in 1787 Philadelphia convention. It distributed the powers of lawmaking and the administrative work on the uniform basis between the centre and the states. The two levels become coordinated and negotiated with each other. Hence the US constitution is dialogue oriented (Howard, 1993, p. 391; Moreno, 2008; Ryan, 2011, p. 128). The basis of the social contract in American constitution is derived from the privilege of citizens as the document clearly starts with the dimension that *'sovereignty belongs to the people of the United States'*.

The constitutional aspect in the Pakistani federalism is undermined as changing under transitional phases. The provision of constitutional autonomy to the provinces was kept under the jaws of a federal government from the very beginning (Sayeed, 1968, p. 150). The constitutional monarchy always accessed from the federal government either under the military or civilian rule (Jalal, 1994, pp. 100-121; Ali, 1996, p. 110). This is an all-embracing feature of federalism in Pakistan. However, the circumstance has significantly changed after 18th amendment as the political elites from political parties finally decided to *loose* the centralized rule by pacing more powers to provinces (Bukhari and Kamran, 2013a, p. 1193). It is the regime of new social contract to replace the previous structure of centralized federal model.

Centre-Periphery Aspect

The centre-periphery paradigm in USA has transmitted a wave from centralization to decentralization from its inception period. The powers of two levels have comprehensibly explained in the constitution. However, several political decisions and pronouncement of statesmen from Republican and Democrats parties define various aspects centre vis-à-vis states and states vis-à-vis local governance system. The historical study of these two parties shows that Republicans incline more towards the limits of decentralization than the Democrats. Their policies are described in the context of statesociety paradigm and conceptualize the socio-economic aspects (Lees, 1975, pp. 311-320).

The post 18th amendment period in Pakistan illustrate the decentralized tendency in the relationship between centre and the provinces. The constitutional phase is over but the institutional implementation is yet in process (Khan, 2013, p. 5). There are two significant developments in this concern that are very important to describe here;

a. The abolition of the concurrent list

b. The reformation and restructuring of Council of Common Interests.

The role of provinces is very important to subjugate the powers to the next tier of government which will further initiate the process of uniform implementation of the decisions at the grassroots levels by injecting good governance, democracy and rule of law.

Institutional Aspect

In America, we find a culture of *separation of power* among the institutions. Each institution such as legislature, executive and judiciary perform their role in their defined constitutional limits. However, each institution is different from one another in the running mechanism. The legislature under federal-states bargaining orientation (Ryan, 2011, p. 128) and executive (representative bureaucracy) are more inclined towards decentralized decision making while judiciary is inclined towards centralization and extend powers to centre under judicial overview. The constitutional amendments in US constitution such as; 11th, 14th, 16th and 26th amendments; in each case, US Supreme Court utilized their constitutional right to review the subjects on the centralized and procentre tendency (Rockwell and Wool, 2001, p. 111).

In Pakistan, it is observed that now the fathom for institutional role of three institutions with their overlapping and inter-institutional challenges has increased. The description is utilized as the problem of governance that is very important to resolve in the constitutional lines. The evolution of separation is seemed in its blurred notion with the overarching role of supreme judiciary (Adeney, 2012). The strong role of political maturity will play a vital role to create the structure of separation of power like the US federal model in Pakistan.

Administrative Aspect

In its capacity, the US administrative system has a uniform hierarchy. The issues of legitimacy and administrative authority are derived from the central command and disperse them to the grassroots level by adopting the principal of *people welfare-ism*. The issues as well as the policies are steeped forward at the expense of the public modalities, demands and interests. The intergovernmental coordination (Pious, 1986, p. 81) is kept under the progress of decentralized wave by empowering more functions to the states.

Pakistan is in the tendency of decentralization after the adaptation of 18th amendment. The administrative hierarchy is more centralized than that of the United States but the utility of quasi-decentralization is existed there. While the local governance has been implemented under the aegis of provincial hierarchy but the role of the central and provincial bureaucracy will remain there until, provinces will not transfer full administrative, political and financial powers to the local government institutions. The administrative reformation is very important to overcome the patronage trends from the political system of Pakistan as his process has politicized every institution of public administration.

Economic Aspect

In a federal state with multiethnic and uneven development scenario, economic decentralization plays a significant role to oblige the progress from the lower *strata*. The economic structure in America is different from Pakistan. It follows decentralized

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tendency and the exploration and utilization of economic resources are diverted to the lower level from centre and states. The US statesmen have extensively utilized their capability in this concern. In America, between 1900 and 1930, there was maximum economic decentralization when almost $\frac{1}{2}$ to $\frac{3}{4}$ resources from the centre and the states budgets were utilized on the local level (Lees, 1975, p. 44). After 1940 and until 1970s, this limited between 40 per cent and 22 per cent. Over the last 30 years it is observed a stable tendency at the centre, states and local levels on the utilization of economic resources (Baicker, 2010, p. 5). The economic mobility in United States of America is relatively diversified by propagating resources to every state under the previously defined economic share.

After the passage of 7th NFC Award, economic decentralization in Pakistan is transferred from centre to the provinces in the broader spectrum unlike the previous centralized economic tendencies. The total share of the provinces and the centre from the divisible pool is balanced at 57.5:42.5 per cent. It is also decided that every next NFC Award will have more share for the provinces from the previous award. It is a blessing for the provinces (Chaudhry, February 10, 2013) However; the economic decentralization from the provinces to the local government is still an awaited process which has to be implemented by the provinces (Khan, 2013, p. 5). This utility will play a vibrant role in the development of economic decentralization the primary levels.

Political Aspect

In USA, bi-party system is present. The political system is mature. Hence, political parties play a pivotal role in the development of federal character. It passes through many critical phases, but the political elites survive the system on the institutional lines. The effective policy choices encourage the progression of political maturization which deliberately is the resulting outcome of survival of the federalism. It recruits the democratic political culture. It reveals the culture of cooperation and deep sightedness to the resolution of inter-institutional and inter-state issues and prerogatives (Elazar, 1995, p. 40). The political tendencies in the US system of governance are relatively accelerated with the accepted and consensual approach from the political parties. This is a unique approach which is existed in US constitution from the very beginning.

In the post 18th amendment scenario, the role of political parties in the decision making process has increased in Pakistan. But it is still on the weak tendency of institutional bargaining, because the actual role of political elites is relatively stronger than the institutional paradigm. The political trends in Pakistan are personified while the traditional kinship is stronger than the political forces (Lieven, 2011, p. 255). It is the high node of decision making in Pakistan. However, the political boom has been outlined while concentrating on the consensual approach of decision making in the aftermath of 18th amendment. The challenge may relatively resolve by providing more space to the political parties at the grassroots level.

Pragmatic Tendencies of Federalism in Pakistan

The 18th constitutional amendment has empowered the sub-regional governments on constitutional, economic, political and administrative aspects. This position has also adjusted the need and quest of the democratic process (Bukhari and Kamran, 2013a, p. 1193). This democratic transition has brought up the strengthening position for civil society groups. The civic activities have strengthened the role of consensual and majority-constraining decision making process which is relevant with the US law making process. This process is known for the coalition base cooperation (Rizvi, April 6, 2008) among the political elites in centre and in the federating units.

The free will of the political forces in Pakistan also provides a momentum in restructuring the governance on balanced tendency of federalism. The broader spectrum for institutionalism has also emerged in Pakistan in the aftermath of 18th amendment. The role of different institutions such legislature (parliament), executive and judiciary have find a uniformity and activism (Faisal, 2010, p. 128). It is more likely in the quasi-institutional lines having one step-previous model of US system. There is a saturation of over-burdened relationship between legislature and judiciary, executive and parliament and between judiciary and executive.

It is also of worth important that, there is persistent culture of *staatsvolk* decision making (Bukhari and Kamran, 2013b, p. 1207; Adeney, 2007, p. 20) which is inconsistent with US institutional policy making process. This challenging factor in Pakistan is required to minimize by supporting the participation of the sub-regional entities and by making decentralized process in the socio-political culture of Pakistan which engage in kinship and patronage progression.

The economic decentralization has been observed under the 7th National Commission (NFC) Award which was previously considered under the controlled direction of the federal government. The pronged formula of the economic award indicate a relative travelling of economic resources to the provinces (Mustafa, 2011, pp. 7-8) which is relevant with American financial distribution model of federalism but the federating units in Pakistan are empowered to divide the resources on the nursery level of governance. This phase has not started yet. However, this phase will enhance the structural affinity in the economic decentralization in Pakistan.

V. Conclusion

US governance has a unique and prime feature of balanced and structural federalism. The institutional uniqueness and the hierarchical propensity in this system is culture friendly in the political paradigm. The constitutional elites and the political statesman have always follow the prime rules and principles of balancing the centre-state relationship on the institutional bargaining lines which accelerate the transparency in the policy making and stability in the political regimes. The state has an attractive institutional and constitutional history spreading over two hundred years which travel a phased journey in the development of federalism which cannot be ignored while studying the significant features of American politics.

While approaching the historical position of federalism in Pakistan, we conclude that the state has long period of transitional system of governance overtly dominated with the strong roots of patronage where the political parties was remained weak. The evident process of centralization in the constitutional development and suspension of the democratic regimes are the two features for the underdevelopment of federalism in the institutional paradigm. These inclinations were either sudden and strong or gradual and weak.

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But, the post 18th constitutional amendment is gradually increasing the institutionalized, liberated, decentralized, coordinated and consensus-oriented federalism in Pakistan. It is now travelling from centralized governance to *loose* phase of federalism which relatively has a balance with US model of federalism in the constitutional paradigm. However, it has to focus on comprehensive design with the propensity of transparency and shared culture of policy making between centre and the provinces to the grass root echelon.

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