



RESEARCH PAPER

Balancing Central Authority and Regional Autonomy: A Comparative Study of Federalism in Pakistan and Malaysia

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ABSTRACT

The main objective of this study is to measure the degree of autonomy in Pakistan and Malaysia to their regional governments in the capacity of federal States. The society where there diverse ethnic, cultural and linguistic groups are surviving definitely the rise of two opposite forces like Unity and Diversity is unavoidable. The federalism is system consciously adopted as a means of solving such problems to retain the distinct identity in a diverse society. This research also explored the historical perspective behind the establishment of federations, the Pakistan and the Malaysia by adopting qualitative and exploratory method of research. The data was collected by the various sources of research. The basic source was used for data collection is the constitutions of both the countries. The constitution is a living document and used as a primary source. The collected data has been analyzed through the comparative methodology and resultantly concluded that the federating units of Pakistan are more autonomous as compare to the federating units of Malaysia except Sabah and Sarawak. Despite it the autonomy of federating units of Pakistan varies from time to time. Malaysian federation is more centralized federation and Pakistan is less centralized federation. The study recommended that Malaysia should consider bringing the amendment in the constitution for elected head of State and a few of articles regarding the autonomy of federating units.

KEYWORDS Autonomy, Federal, Malaysia, Pakistan, Power

Introduction

The two Muslim States in Asia, Malaysia and Pakistan are federal States, based on division of power between central government and the regional governments of their units. The constitutions of both countries granted provincial autonomy to the units. Both the States are running under parliamentary form of government also. Pakistan and Malaysia both remained the colonies of the British Empire. Pakistan got independence in 1947 and Malaysia in 1957. After the partition of British India in 1947, the newly established sovereign State namely Pakistan adopted the Indian Act 1935 as an interim constitution with some changes and Pakistan declared as a federal State as per this act. This act had two attractive features, one the creation of federal system in British India and another that authority was more to the Centre means, through this act there was federation with strong Centre. The balance of federal structure which was in favor of Centre, as provided in the 1935 Act, was continued as an integral part of the new country's political system (Kundi, 2002). At present political system of Pakistan, that based on 1973 constitution which was implemented by ZA Bhutto and it is continued with 25 amendments yet. According to this constitution Pakistan declared as a Federal State and provided the parliament of Pakistan as bicameral legislature having two houses, the upper house the Senate represents the all provinces equally and the other is lower house the National Assembly the house of representatives. Before this 1956 and 1962 constitutions were also mentioned federal by their founding fathers.

British introduced the federal system in Malay states 1895. The federation of that time was not focusing on sovereignty of federating units. In 1946 the unitary form was introduced in colony of Malaysian states, but it was not accepted by the people of Malaya. British decided to form federation of Malaya under the agreement of 1948. Malaysia got independence in 1957 ten years later than Pakistan. The constitution of newly independent State was introduced as a federal constitution. The subsequent constitution of 1963 was imposed and according to that the autonomy of regions was enhanced and more powers were given to federated units like Sabah, Sarawak and Singapore. The name was changed from federation of Malaya to federation of Malaysia (Omar, 2012).

Literature Review

Abdul Rahim Anuar in his research that published in 2000 in Hitotsubashi Journal of Economics, researcher focused on the Fiscal Decentralization in Malaysia and the system of revenue and power balance between federal government and the governments of federating units. He described that, the Malaysian Federalism is highly centralized in terms of revenue powers, expenditure responsibilities, and borrowing powers. A.R Anuar narrated that FMS was the first step towards the development of the Federation of Malaya in 1948 and 1957, and the Federation of Malaysia in 1963. Since then, Malaysia is a federation of 13 States, and consists of three levels of government: (i) federal government, (ii) state government, and (iii) local government. Consistent with the concept of Federalism, there is a division of authority between the Federal and the state government

In the book titled 'Making Federation Work: Federalism in Pakistan after the 18th Amendment', Faiz 2015 highlighted the Pakistan's federal framework, particularly after the 18th constitutional Amendment. This amendment was passed in 2010, significantly reshaped the country's federal structure by granting substantial autonomy to provinces, altering the balance of power between the central and provincial governments. Faiz analyzes that the 18th Amendment is an important step toward strengthening federalism in Pakistan. By devolving more responsibilities to provinces, it addresses long-lasting demands for provincial rights and aims to raise a more comprehensive, equitable political environment.

The research article written by Mansoor Akbar Kundi and Arbar Muhammad Jahangir titled 'Federalism in Pakistan: Issues and Adjustment' in Asian Affairs published in 2002, this research explored the historical perspective of federalism and highlighted the important factors for the growth of National edifice, and expansion of nations not only through political and fiscal means but also through progressive cultural dynamism. The authors also described the powers of central government in the context of economic matters, developmental issues, national security and inter- provincial coordination.

This research studied Federal Constitution of Malaysia published in 2010 by the parliament of Malaysia and the constitution of Islamic Republic of Pakistan, 1973 published by A-Qanoon Publishers published in 2016, particularly focused on relations between Federation and the states mentioned in the Part-IV Chapter-I in Malaysian constitution and the relations between federal and provinces in the Part-V in Pakistan constitution in the Chapter-I, distribution of legislative powers specially the extent, subject matters and inconsistency between federal and provincial laws.

Professor Iram Khalid in her research 'Politics of Federalism in Pakistan: Problems and Prospects', is a work published in a Research Journal of South Asian Studies in 2013. This study narrates regarding the constitutional development and history of federalism in Pakistan the research also addresses the demography, geographical and economic variations in Pakistan and their issues of identity, culture, and resources that are essential priorities in any federal state.

A research paper titled 'Malaysian Federalism and Equal Wealth Distribution: A Case Study on the state Kelantan' written by Musa, Nawi and Alias published in 2014. In their research paper, they discussed the concept, structure and a historical background of federalism in Malaysia the research addresses the legal framework of the Federal Constitution of Malaysia, which shapes the distribution of legislative, administrative, and fiscal powers with special political context to the state of Kelantan and analyzed the specific policies or federal decisions affecting Kelantan's economic growth and financial autonomy.

Gordon P. Means wrote an essay published in 2005 in edited book with title 'A Hand Book of Federal Countries, Forum of Federations', in this essay author explained the structure and relations of states and federal government in Malaysia. The contribution of this work is dynamic in the context of centralization and decentralization that touches the balance or imbalance between centralized authority and state autonomy. Means outlining the reliance of state governments on federal grants and allocations.

In 2020 Misrina Binti Misban wrote a research paper on the relation and powers of both central and state governments of Malaysia which was published in proceeding of International seminar on Regional politics , Administration and Development in this paper research scholar's overview of federal –state relations on the constitutional base, described the special status of Sabah and Sarawak. Misban discusses specific provisions in the Malaysia Agreement 1963 (MA63) that grant Sabah and Sarawak greater autonomy compared to other states, such as control over immigration and other areas of governance. Researcher also highlighted the impact of these special rights on federal-state relations, particularly in how they influence political and economic dynamics.

Results and Discussion

On 14 August, the third constitution of Pakistan was promulgated and since that the Pakistan has been governing according to 1973 constitution. There is a great importance of this constitution in the journey of federal system in Pakistan.

This constitution was presented, parliamentary, democratic and federal in its nature. Its federal nature recommended the bicameral legislature with upper chamber of parliament for the equal representation of provinces. The division of subjects between the central government and the governments of provinces are provided in Article 70 (4) of 1973 constitution (kundi and Jahangir, 2002).

"Article 70 clause (4) 'In this Article and the succeeding provisions of the Constitution, 'Federal Legislative List' and 'Concurrent Legislative List' mean respectively the Federal Legislative List and the Concurrent Legislative List in the Fourth schedule (Constitution of Pakistan).

There were 59 subjects in the first part and 8 in the second part of the federal legislative list on which the central government had power to legislate and the list of concurrent legislative list having the subjects, on which both the governments, the central government and governments of provinces had given the power to legislate, but in case of conflict arisen between the governments of provinces and Centre that time the constitution gave preference to the central government.

The democratic features of the constitution were of British model of democracy. Although it introduced democratic system but the procedure of passing budget was exactly like that of the Government of India Act of 1935 (Khalid,2013).Regarding the parliamentary feature of the constitution, there was still need of some amendments. Although the various constitutional amendments were passed by the governments of different political parties up to the 17th amendment Act in 2003 but the question of

provincial autonomy was still remained raised, the 18th amendment brought important changes in the federal political structure of Pakistan. The 18th Amendment has reversed the powers of the elected Prime Minister and the Parliament and it also enhanced the powers of provinces. The demand of the provincial autonomy has been fulfilled. Bukhari said that "In 2010 18th amendment was brought big revolution in federal system of Pakistan and he also called it the third and a big social contract to 18th amendment, under this amendment the provincial autonomy was given to constituent units of Pakistan through dissolution of concurrent list and a big number of subjects are given to provinces to legislate. The 18th amendment also was supported and passed unanimously by all the political parties in parliament (Bukhari, 2021).

Under the constitution of 1957 Malaysia is a parliamentary federation. The Parliament of Malaysia /the national legislature of Malaysia is a bicameral legislature consists of two houses, the Dewan Rakyat House of Representatives and the Dewan Negara known as the Senate).

Malayan federation, in Malay Peninsula had been operating under the federation of Malaya Agreement 1948 for eight years, i-e 1948 to 1956. Still there were questions raised in the minds of people regarding the policies. In 1956 the Reid Commission" was appointed by her Majesty the Queen of England and their Highnesses the Rulers (Musa, Nawi, Alias, 2014). The main question was of distribution of power between Central government and its federating Units. While drafting the constitution the Reid Commission had given one reference regarding the division of Powers that "to make recommendations for a federal form of constitution, which would include provisions for" (ibid). The establishment of strong central government with the states and settlements enjoying the measures of autonomy and with the machinery for consultation between the central government and the states and settlement certain financial matters to be specified in constitution (Paragraph, 3 of Reid Commission Report). The Malaysian Constitution of 1957 previously consisted of three lists of legislative namely. The Federal List, the State List, and the Concurrent List (Musa , Nawi Aliyas, 2014; Kausar, et. al., 2019)), when Sabah and Sarawak became the part Malaysian federation , the two other legislative lists, the list II-A, supplement to state list and the list III-A, supplement to concurrent list for Sabah and Sarawak (Ibid) were added to Malaysian Constitution. The federal list includes the powers of 27 areas; the main areas are health and finance, foreign affairs, internal security, citizenship, administration of justice and education. The state list contains 12 areas of power; main are local government, Islamic family law, agriculture land and forestry.

The concurrent list is comprised of shared powers between federal and state governments. The concurrent list includes the powers of 9, matters, including town and country planning, culture, social welfare, public health, scholarships, sports, and housing etc. In 1896, when the federation was introduced to four Malay states, Selangor, Perak, Pahang and Negeri Sembilan, before this setup of federal system, the states were used to enjoy the powers of all the administration areas included in federal, states and concurrent lists. The federal system, as established in 1948, had centralized legislative powers but decentralized administrative responsibility to the states (MEANS, 2005). According to Musa Nawi and Alias with the introduction of federal system, it seems that states are losing most of their powers and ended up by being highly dependent upon the federal government (Musa, Nawi, and Alias,2014) that From a positive point of view, federal government has power on general matters and where the interest in them involves more than one state such matter may require uniformity across the country, on the other hand ,the states hold power over matters that are regional or restricted to a particular state, but the power was given to both, the state governments and the federal government that they can delegate their powers to each other by the agreements which will be commence through an executive action, because of this feature the federal system in Malaysia became more flexible and it also enhanced the authority of federal government. In 1963 the federation Of Malaya expended to include the state of Singapore, Sarawak, and Sabah

formerly (North Borneo), which had been under British Rule and were now facing independence (Ibid). The Malaysian federation combines the federal principle and the system of parliamentary democracy with constitutional monarchy. The Federal Constitution of Malaysia also provides for a monarch and elected leaders at Federal and State levels. (Anur,2000) The federal principles guaranteed all the federating units for equal treatment. Malaysian federation government treated unequally to the states, particularly towards the oil producing states specific example of Kelantan. Although there is guarantee of equal treatment through the constitutional provisions. Article 8 of federal constitution of Malaysia says:

Article 8.

(1) All persons are equal before the law and entitled to the equal protection of the law.

(2) Except as expressly authorized by this Constitution, there shall be no discrimination against citizens on the ground only of religion, race, descent, place of birth or gender in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.

(3) There shall be no discrimination in favor of any person on the ground that he is a subject of the Ruler of any State.

(4) No public authority shall discriminate against any person on the ground that he is resident or carrying on business in any part of the Federation outside the jurisdiction of the authority (F.C.Malaysia)

Comparative analysis between Pakistan and Malaysia and Findings:

Pakistan and Malaysia both are constitutionally federal States. The constitutional features of both the States are similar in nature like both the constitutions are parliamentary, democratic, rigid, written and federal also. Still there are a few of most important differentiating provisions regarding the autonomy of federating units.

Constitutional provisions relating to federalism in Pakistan and Malaysia

Distribution of powers between federation and provinces has been provided by the constitution of Islamic Republic of Pakistan, 1973 and the Federal Constitution of Malaysia in part four and part six of the constitutions respectively.

Pakistan

- Pakistan comprises of four provinces, a federal capital territory and Gilgit Baltistan and Kashmir.
- In Pakistan all the provinces and territories of Pakistan following only one federal constitution of Islamic Republic of Pakistan.
- Each state has its legislative assembly, and executive council, which is responsible to the legislative assembly and headed by a Chief Minister.
- The president is head of State in Islamic Republic of Pakistan.
- The President of Pakistan is being elected through Electoral College which consists of members of senate, national assembly and four provincial assemblies
- The head of Provincial governments in Pakistan is a Governor who is appointed by the president on the advice of Prime minister.

- There is no right to any of Province in Pakistan to have its own flag. Though these all provinces have their emblems of identity.
- After 18th amendment the constitution of Pakistan consisted of two lists of subjects:

(1) Federal List (2) Provincial List

- There are two parts of federal legislative list Federal legislative list part-1. It included 59 subjects on which center can legislate only; they are defense, External affairs, nationality, currency, federal agencies, nuclear energy postal and communication foreign exchange etc.
- Federal legislative part 2 includes 11 subjects on which Centre and province can legislate jointly by (CCI) they are electricity, major ports, national planning and national coordination, interprovincial matters, minerals, oil gas etc.
- 18th amendment abolished the concurrent list.
- Two subjects were transferred to part two of federal legislative list and one subject was transferred to part 1 of federal list. and the remaining forty four subjects automatically devolved to provinces as residual subjects that is called provincial lists. The major subjects are, transfer of property, trade unions, shipping and navigation on inland, waterways, evacuee property, Islamic education, Zakat, Tourism and Auqaf, local government, Health Education and Agriculture were already the part of provinces.

Malaysia

- Malaysia comprises 13 states and 3 federal territories. Kuala Lumpur, Labaun and Putrajaya. .
- In Malaysia there is a federal constitution and for the each state has its own written constitution.
- In Malaysia there is also each state has legislative assembly, and executive council, which is responsible to the legislative assembly and headed by a Chief Minister. Menteri Besar
- In Malaysia head of State is King the Yang di-pertuan Agong (YdPA) because there is constitutional Monarchy in federation of Malaysia.
- The king of Malaysia is being elected by the conference of Rulers comprising of seven hereditary rulers who belong to the states of Kedah, Kelantan, Johar, Perlis ,Pahan ,Selagar and Terengganu. The state of Perak is also hereditary in which the ruler is being elected on rotate from three royal families, and in the state of Negeri Sembilan the ruler is elected by hereditary chief of royal family
- The Head of states governments in Malaysia, in nine states are the hereditary rulers and in four states the Malaca, Penag, Sabah and Sarawak the head of states are governors who are appointed by the King (Yang di Pertaun Agong) .
- Each Malaysian state has got its own flag and each of state also has its emblem of identity.
- Malaysia consisted of three lists of subjects.
(1) Federal List (2) Provincial List (3) Concurrent List.
- The federal list includes the powers of 27 areas, main areas are, the defense external affairs, currency, health, finance foreign affairs, internal security, citizenship, administration of justice and education etc.
- In Malaysia the states list included the 12 areas of powers they are Local Government, Local Public Services, the Islamic Family Law, Agriculture, Land and Forestry, the State work and Water, Muslim and the Custom.

- The main differences in the federal subjects are the health and education which are the part of federal list. but in Pakistan these subjects are included in provincial list

In Pakistan there is no province has any special Position like in Malaysia for the States of Sabah and Sarawak.

The special Position of states of Sabah and Sarawak

- The states of Sabah and Sarawak combined are bigger than west Malaysia.
- Sabah and Sarawak are rich in natural resources like forest, river , and petroleum
- Because of these reasons, Sabah and Sarawak wanted to maintain greater independence and control over the matters and resources in their states and their way of life when they joined Malaysia in 1963.
- The Part VII, of Immigration Act;1959/ 1963 says that “anyone ,who does not belong to Sabah and Sarawak must have valid permit or pass to enter Sabah and Sarawak.
- The constitutions also provide special grants to Sabah and Sarawak for the cost of states services and administration; such status has not been given to other states in Malaysia.
- Sabah and Sarawak are also allowed to charge import and excise duties on petroleum products, export duty on timber and forest produce, sales tax and fees from port and harbor.
- Sabah and Sarawak receive revenue from lands, mines, and forest.
- They also impose/collect duties on entertainment

Fiscal autonomy of federating unit in Pakistan and Malaysia

- The concept of Fiscal Decentralization is an important policy instrument to achieve economic efficiency and ensure effective governance through financial autonomy of provincial government.

Pakistan

- Pakistan is federal State with centralized taxation system. Federal government collect bulk of resources and then redistributes it among the federal, and constituent parts to correct both vertical and horizontal fiscal imbalance
- Under the 1935 Act the sales tax was levied and collected by provincial governments with the name of Niemeyer award. 50 % of Income tax was relocated to the respective provinces where it was collected from. Raisman formula was introduced in December 1947 under this formula the 50% of sales tax was collected by federal government ,
- The system of Fiscal resources is guarded by Law and an autonomous body i-e the National Finance Commission (NFC) as per article (160) Of 1973 constitution.

The vertical resources distribution remained same as of previous award. And the horizontal resources distribution was on the basses of population. The first NFC Award in April 1970; the vertical distribution between federal and provincial were 20:80 percent respectively.

30% of sales tax redistributed among the provinces according collection from respective provinces.

1st NFC Award in 1970 during Bhutto Government.

2nd NFC Award in1979 under Zia ul Haq Government

3rd NFC Award in 1985 and

4th NFC Award in 1990

5th NFC Award in 1996

6th NFC Award in 2000, were of the same nature.

The 7th NFC Award in 2006 more financial autonomy was delegated to the provinces on the demand of smaller provinces that was on the base of multifactor formula beside, population, poverty and under developed revenue.

Malaysia

Malaysian fiscal system operates under the federal structure. Federal government has exclusive powers to levy and collect all taxes and other form of revenue except from the minor resources, which are assigned to states government. Such as; Land sales, revenue from lands, mines, forests.

The special sources of revenue are assigned to Sabah and Sarawak

- Such as import and excise duties on petroleum products and export duty on timber and other forest produce.
- In Malaysia the federal government raises more revenue than the states.
- The State governments are forced to stretch their limited revenue based and rely on to heavily on grants and loans from the federal government.
- State taxes are not related to economic growth such as income tax and trade taxes which are under the federal powers.
- Federal grants are distributed among the states on the basis of origin of collection, population and states Gross Domestic Product (GDP)

The Grant are classified into three major categories:

1. Tax sharing grant
2. General purpose grant
3. Specific- Purpose grants

Tax sharing grants included 10% of export duties on tin, iron and other materials that are extracted in the states.

General purpose grant consists of capitation grants, growth revenue grants, state reserve fund grants and special grants.

Specific purpose grant: It includes road grants, economic development grants, services charge grants and cost reimbursement grant.

The amount of total grant and the distribution to each state are either prescribed in the consolidated or determined by the federal government as formulate on ad-hoc bases.

The Federal government can borrow from domestic as well as foreign sources.

The state government, on other hand can borrow only from the federal government or from the bank or other financial sources approved by the federal government, for a period not exceeding 5 years.

The main duties of National Finance Council (NFC)

- To coordinate important matters of federal and state finance.
- Federal government will consult the NFC in respect of the following matters.
 1. Making of grants by federal to states.
 2. Assignment of any proceeds of any federal tax/fee.
 3. Annual loan requirements of federal and states.

Conclusion

This research concluded that the special rights and the protection to Sabah and Sarawak in Malaysia through constitutional provisions and other states though they are the older parts federation of Malaysia have not been given such protection to their autonomy, that shows the federation of Malaysia is not implementing the fundamental principles of federalism and it has been concluded that the Malaysia is an asymmetrical federation. Like in Pakistan though there was big controversies found in federal system particularly up to 1970 even onward up to 18th amendment passed in 2010 did not gave the complete autonomy to only selected provinces. Whenever any provision regarding provincial autonomy was included in constitution that is being applicable to all constituent units equally, that is as per the fundamental federal principles, and Pakistan is considered a symmetrical federation.

Recommendations

This research suggested that the article 143 in the constitution of Pakistan should be amended to provide provincial autonomy to the provinces as per the spirit of federalism.

The Federation of Malaysia should have to revive a few of articles regarding the autonomy of federating units. Particularly the articles/provisions which provided the special protection to some of states and other are deprived.

The constitutional Monarchy is also the big question in federal system of Malaysia. In this regard Malaysia should consider bringing the amendment in the constitution for elected head of State and same should be bring in all the constituent units also.

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