

**Historical perspectives, disputes and possible resolution: - international and regional models of meaningful resolution of such issues.**

**by Syed Fakhar Imam**

According to the 1973 constitution Pakistan is a federal state with powers clearly enunciated between the federal and Provincial Governments.

Historically British India functioned as a unitary form of Government. The provinces being the units of administration and the entire executive power was vested in the viceroy and the Governor General. By adopting the 1935 Government of India Act which envisaged a merger of the princely states for the first time conceived India to be a federation.

In the independence act, 1947 Pakistan was envisaged as a federal state with provinces of east Bengal, Punjab, Sind N.W.F.P princely states such as Bahawalpur, Kallat, Khairpur, Swat etc., Tribal areas and federally administered areas.

In 1955, the one unit was formed merging all provinces of West Pakistan into one province called West Pakistan and east Bengal plus other territories became east Pakistan This administrative adjustment was to bring about parity between east and west Pakistan even though East Pakistan had 54 % population of the whole of Pakistan.

The 1956 constitution adopted the principle of parity in which the numbers of seats were to be shared on a 50:50 basis. This was a political concession made by political leaders of East Pakistan in favor of west Pakistan. However general elections which were scheduled to be held in March 1959 could not be held as Martial Law was imposed in October, 7 1958.

Politically, the East Pakistanis felt alienated as under Military rule, their participation was not there as General Ayub Khan was a dictator and belonged to Hazara District of west Pakistan.

Ayub Khan's military rule lasted from 1958 to 1962 directly and from 1962-69 indirectly with the edifice built on the basic democracy system.

When F.M Ayub Khan was removed by Gen. Mohammad Yahya Khan in March, 1969 after prolonged street agitation spread over six months, Martial Law was re-enforced. Gen. Yahya Khan announced his Legal Framework Order (LFO), under which the general elections were held in December 1970. In the L.F.O, adult franchise was re-introduced instead of the B.D system, the one unit was disbanded and the provinces of Punjab, Sind, N.W.F.P and Balochistan re-created. The principle of parity was dispensed within L.F.O.

Awami League swept the polls in East Pakistan in the 1970 General Election by capturing 164 out of 166 seats of the province. The total seats of the Assembly were 300.

Mr. Zulfiqar Ali Bhutto's PPP captured 82 out of 134 seats in different provinces of West Pakistan; 62 seats in Punjab; 18 seats in Sindh and 2 seats in N.W.F.P. and no seats in Balochistan.

After the debacle in East Pakistan, the PPP formed the Government in West Pakistan (now Pakistan), PPP also formed Governments in Punjab and Sindh. In NWFP and Balochistan, National Awami Party and Jamiatul Ulema Islam formed provincial governments.

In 1973, PPP Federal Government dismissed the Balochistan Government and the N.W.F.P government resigned in protest.

Governments in these two provinces were set up which were more in tune with the federal government. Provincial Autonomy was under great stress during these years as Army action was launched in Balochistan. At the request of the Federal Government Hyderabad conspiracy case was instituted against the leading political leaders of NAP. Martial Law was re-imposed for the third time by Gen. Zia ul Haq on July 5, 1977 after mass agitation continued for four month on account of electoral rigging in the general elections. From 1977 -1985 Gen. Zia-ul-Haq ran the federal government a Chief Martial Law Administrator and local elections were held in 1979 and 1983.

In 1985, non party elections were held at the federal and provincial levels. The only upsetting factor was the election of speaker Fakhar Imam. Prime Minister Junejo was nominated and subsequently was endorsed by the Parliament. The speaker Fakhar Imam was removed for giving the rulings that upheld the constitution and the law. In May 1988 Mr. Junejo's Government was dismissed.

In 1988 Benazir Bhutto formed Government at the center. In the Punjab and Balochistan governments were formed that were opposed to Benazir Bhutto's Government. There was political tussle between the center and these provincial governments. The opposition moved a vote of no confidence against Bhutto's government which failed.

The President removed Benazir's government under Article 58-2(b). This dissolution order was upheld by the supreme court of Pakistan and general elections were held in 1990.

IJI emerged as the winning alliance and Nawaz Sharif emerged as Prime Minister.

In 1993, a tussle started between President Ghulam Ishaq Khan and Prime Minister Nawaz Sharif. The President dissolved the assemblies. The supreme court of Pakistan did not uphold the dissolution order. However a power struggle emerged between the Federal Government and the Provincial Governments. Negotiations were held after which assemblies were again dissolved but the president Ghulam Ishaq Khan was also asked to resign. In the 1993 general elections Benazir's PPP and allies formed government at the centre.

Prime Minister Bhutto's government had run into trouble with the judiciary on Judges appointment. Ultimately President Farooq Leghari dismissed the government, a decision upheld by the supreme court of Pakistan. In 1997, Mr. Sharif became the prime minister for

the second time with a heavy mandate. Many constitutional amendments were made to accrue the powers to the Prime Ministers vis-a-vis, the President.

In October 1999 Prime Minister Nawaz Sharif was removed by General Parvez Musharraf and military rule re-imposed for the fourth time. The Supreme Court of Pakistan upheld the dissolution order but stipulated that general elections be held and democracy restored in three years.

General elections were held and Legal Framework Order (LFO) has been promulgated. Constitutional issues still remain to be resolved between Federal government and the opposition as the constitutional deadlock continues.

In Provincial Autonomy one of the key factors other than the political factors is the financial factor. Most of the revenues are raised by the Federal government under the constitution. The four major taxes are 1. Sales tax, 2. Income tax 3. Custom Duty and 4. Excise duty. Provincial government raise taxes through excise duty, motor vehicles tax, property tax etc.

The National Finance Commission constituted under the constitution announces a financial award. The criteria is population for 90 % of resources. 5 % is given to N.W.F.P and Balochistan. Provinces such as Balochistan would like to give weight age to area, Sind for contribution for more taxes, Punjab for contribution of Agriculture product.

**Council Of Common Interests** is an institution to consider, examine and resolve issues regarding distribution of water resources of the Indus Basin.

The Riparian rights of water users has been a very important or vital factor for sharing between countries, between provinces and between users.

After the Indus accord with India in 1959, sharing of waters building of storage Dams (Tasbella, Mangla), construction of canals (Thal Canal) have had major political economic and social repercussions between provinces. The construction of Kalabagh Dam cannot be carried without the political consensus of all provinces. Efforts were made to resolve these issue through the water accords of 1991 and 1994 but still disagreements continue.

#### **Pertaining to the federation and provinces and between the provinces.**

In Pakistan on account of four Martial laws provincial autonomy has been minimal and during political or democratic governments most of the time there has been a power struggle, therefore the concept of the Provincial autonomy has suffered greatly. Unless major political issues are resolved through open debate, discussion and discourse, genuine and effective provincial autonomy will also remain elusive.

As far as the experience of the other countries is concerned. Criteria which are relevant for comparative purpose are 1). Federal Nature of state 2). Parliamentary form of the Government.

Countries with the above criteria are India, Australia and Canada which have also had British colonial rules in the past.

India at the time of independence had 11 provinces and now has 27 provinces. New Provinces have kept on being created mostly on Linguistic basis. They have setup a commission (SAKARIA) to deal with disputes between center and states and between the states themselves.

India has had 13 general elections and through this representatives have evolved political mechanisms to resolve their disputes.

Australia has a very large area with a small population. The functions and powers are well defined in the constitution between the center and the states. They have reasonable financial and administrative autonomy in dealing with their problems.

Australia was a vibrant and successful economy which is now becoming diversified.

CANADA is a country which is one of the success stories. Population is 25 M.

It has a well functioning federal system. Quebec largely a French speaking province has had 2 referendums to decide whether to stay in the federation or become independent. Both times it voted to stay within the federation. The provinces have great political and financial autonomy.

### **Conclusion.**

We need to set up a permanent commission to examine and after hearing the parties concerned to give their award on the disputes between center and provinces and between provinces and provinces. This commission should be setup by the parliament, which should define its terms of reference.