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UNDERSTANDING PAKISTAN

Volume II

Democratic Governance

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SPO DISCUSSION PAPER SERIES

Pakistan: The Question of Identity

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PAKISTAN: THE QUESTION OF IDENTITY

Introduction

Pakistan entered the new millennium with an unresolved question of national identity. The search for identity has remained a recurrent theme throughout the country's 55-year history. The authoritarian rule and successive martial laws from the early years, protracted suspension of fundamental rights of the people, inability of the political and economic institutions to deliver, and slow progress in social sector development increased the alienation of Pakistan's citizens from their state.

This trembling light, this night-bitten dawn
This is not the Dawn we waited for so long
This is not the Dawn whose birth was sired
By so many lives, so much blood.

(From 'An Elusive Dawn' by Faiz Ahmed Faiz, quoted in Lamb, 1991)

Carved out in 1947 from British India on the basis of Muslim nationhood, Pakistan itself was divided in 1971 when, after a bloody war, the biggest ethnic group chose to secede and formed a nation-state of its own. The rest of Pakistan was also home to many unique linguistic and cultural identities whose rights were continuously denied by the state for a long time in the name of national integration.

Different ethnic groups—Sindhi, Punjabi, Seraiki, Balochi, Pakhtoon—have reasserted their identities since 1971 after Zulfikar Ali Bhutto assumed power followed by General Zia's martial law. The last development in this respect was the emergence of a 'Mohajir' identity defined in ethnic terms. 'Mohajir' was the term used for the Muslim immigrants from India from the early years of Pakistan but their representative political party chiefly consists of those who were born in Pakistan after 1947.

The first section of this paper, entitled 'Identity', provides a theoretical framework to discuss and understand Pakistan's identity crisis and the new politics of ethnicity. The second section, 'Pakistani Identity', presents and analyses the historical development of the identity debate in Pakistan. It begins with the creation of Pakistan and concludes with the question of ethnic identities today. It also offers a summary of the problem statement and hints at the future course the Pakistani state may consider for the economic and social well-being of its people in relation to its identity.

Identity - The Framework

The Concept of Identity

The word 'identity' is defined in dictionaries as 'who or what somebody/something is'. According to Manuel Castells (1997),¹ the search for collective or individual identity is people's source of meaning and experience. This search becomes the fundamental source of social meaning in the face of global flows of wealth, power and images. Castells explains the process of construction of meaning on the basis of cultural characteristics, which he considers more important than other sources of meaning. Identities are sources of meaning for the social actors, individuals or groups. Identities can emerge from dominant institutions of state and society but they can only become identities in the true sense if social actors internalise them and construct their meanings around this internalisation.

Castells maintains that, from a sociological perspective, all identities are constructed but he emphasises that the real issue is how, from what, by whom and for what purpose any identity is constructed. Moreover, since the social construction of any identity always takes place in a context marked by power

¹ See, in particular, Vol. 1: pp. 1-13 and Vol. 2: pp. 1-12, 27-67 and 469-477 for a detailed discussion on the concept of identity, with special reference to ethnic identity.

relationships, he proposes three different forms and origins of identity building, namely, (i) *legitimising identity*, (ii) *resistance identity* and (iii) *project identity*.

Legitimising identity is introduced by the dominant institutions of society to extend and rationalise their domination vis-a-vis social actors, collective or individual. Resistance identity is produced by those social actors whose position in society is undennined by the dominant institutions or stigmatised by the logic of domination. Resistance identity survives on the basis of principles different from, or opposed to, those on which institutions of society are established. Project identity is created when social actors, on the basis of whichever cultural materials, traditional or modern, are available to them, build a new identity. This identity attempts to redefine their position in society and also aspire for the transformation of the overall social structure. These three different forms of identity building will be referred to in the discussion of Pakistani identity in the second section of this paper.

Ethnic Identity

The concept of ‘ethnicity’ came about as an attempt to understand the changing post-colonial world politics and the increase in ethnic minority rights movements in industrialised countries. Since then the term ‘ethnicity’ is increasingly used as a tool to explain race relations, nation building, identity formation of communities, etc. Solovski and Tishkov, quoting from Despres and Cohen, state that the intellectual history of the term only goes back to the mid-1970s. Before then, it was neither mentioned in any anthropological literature nor defined in textbooks (Solovski and Tishkov, 1996:190). Allen and Eade are of the view that, although the term was being used by some scholars since the 1940s, it gained wider currency in the 1970s. Meanwhile, during the 1960s, the association between ‘ethnic’ and ‘racial’ and, likewise, ‘ethnicity’ and ‘race’ had become more and more problematic to deal with (Allen and Eade, 1996-97: 219-222). To look at the widely held contemporary definitions of these terms, we can start with some of the Oxford dictionary definitions for the words ‘ethnic’, ‘nation’, ‘nationality’, ‘race’, and ‘tribe’ (Oxford University Press, 1998). They are:

ethnic: (1) of or invoking a nation, race, or tribe that has a common cultural tradition; (2) (of a person) belonging to the specified country or area by birth or family history rather than by NATIONALITY [*caps in original*]

nation: a large community of people, usually sharing a common history, culture and language, and living in particular territory under one government;

nationality: (1) membership of a particular nation; (2) a national group forming part of a political nation

race: (1) any of the groups into which humans can be divided according to their physical characteristics, e.g., colour of skin, colour and type of hair, shape of eyes and nose; (2) a group of people who have the same culture, history, language, etc. (3) any of the main species, breeds or types of animals or plants, (4) family origins; ancestry

tribe: (1) a group of people of the same race and sharing the same language, religion, customs, etc., often led by a chief; (2) a group or class of people; (3) a large number of people; (4) a group of related animals or plants

These dictionary definitions, at the very least, make evident the overlap and multiple usage of each term if not confusion in the concepts they represent. In order to understand the modern conception behind ‘ethnicity’, the terms ‘nation’ and ‘nationality’ need to be reasoned out simultaneously. Anderson observes that nation, nationality, and nationalism all have proved notoriously difficult to define, let alone to analyse. In contrast to the immense influence that nationalism has exerted on the modern

world, plausible theory about it is conspicuously meagre. Anderson quotes Hugh Seton-Watson whom he considers the author of by far the most comprehensive text on nationalism in the English language and heir to a vast tradition of liberal historiography and social science. Seton-Watson says, 'Thus I am driven to the conclusion that no "scientific definition" of the term nation can be devised; yet the phenomenon has existed and exists.' Anderson thinks of 'nation' as an imagined political community - and imagined as both inherently limited and sovereign (Anderson, 1996:3-6). Erich Hobsbawm (1995) quotes Stalin's definition of a nation from his

seminal work *Marxism and the National and Colonial Question* according to which, 'A nation is a historically evolved, stable community of language, territory, economic life and psychological make-up manifested in a community of culture.' The Leninist theory of national question defines 'nation' as the highest type of ethnic community (Allen and Eade, 1996-97: 225). Nevertheless, the question, on a theoretical plane, remains that how, and to what extent, does a 'nationality', i.e., a national group forming part of a political nation, or an 'ethnic group', differ from being a 'nation'. Hobsbawm (1995) writes,

What of ethnicity? In ordinary usage this is almost always connected in some unspecified way with common origin and descent, from which the common characteristics of the members of an ethnic group are allegedly derived.

A significant publication by the United Nations Research Institute for Social Development (UNRISD) on the subject admits that the characteristics defining an 'ethnic group' are various and may include language, religion, race, territory and culture. In its own words, 'They are far from clear-cut.' (UNRISD, 1995: 95-109)

Recognising the difficulty of producing exact definitions of the concepts involved, theoreticians, practitioners and academia holding various points of view largely engage one of three sets of approaches to the understanding of ethnicity. These approaches to a large extent also reflect the ongoing debate about the concepts and definitions. The approaches are:

- (i) Primordialist Essentialism,
- (ii) Materialist Instrumentalism and
- (iii) Relationalism/Constructivism/Situationalism.

Essentialist Approaches

The view that an ethnic identity emanates from certain primary traits or characteristics of a population determined by genetic or geographical factors represents the primordialist position on explaining ethnicity. Biological anthropologists draw on the theories put forward by sociobiologists, especially the 'inclusive fitness theory'. The theory propounds that 'genes will spread if their carriers act to increase not only their own fitness or reproductive success but also that of other individuals carrying copies of the same genes'. Pierre van den Berghe (1981) has explored the use of sociobiology in understanding ethnicity. He and some other sociobiologists and biological anthropologists maintain that there is a genetic basis for group affiliation. In sociobiology, altruism and the propensity for warfare are genetic traits. Therefore, ethnicity is a primordial instinctive impulse. Allen and Eade observe that sociobiology has had a considerable impact on popular imagination (Allen and Eade, 1996-97: 223-227).

In the former Soviet Union, as early as in 1923, S.M. Shirokogorov defined 'ethnos' as a group of people having a common language, admitting common origin, characterised by a set of customs and a lifestyle that are preserved and sanctified by tradition, which distinguish it from others of the same kind. In the late 1960s, Yulian Bromley, the director of the Institute of Ethnography in USSR, defined 'ethnos' as

a historically formed community of people having common cultural features, distinctive cultural traits and a consciousness of their unity as distinguished from other similar communities (Allen and Eade, 1996-97: 225-227). L.N. Gumilev (1989) took the idea forward and defined an 'ethnos' as a 'biosocial organism', a combined effect of cosmic energies and landscapes. He also brings in the importance of time cycles in the history of an 'ethnos' and compares one 'ethnos' from another on that basis.²

Instrumentalist Approaches

Based in utilitarian values and sociological functionalism, the instrumentalist approaches see ethnicity as a tool used by individuals or groups of cultural elite to enhance the cohesion of a population and then manipulate its cultural forms, practices and values to achieve more benefits and power for themselves. Hence, ethnicity is created in the dynamics of elite competition within the boundaries determined by political and economic realities (Brass, 1985). This explanation is the exact opposite of the essentialist viewpoint.

Worth mentioning here is the work of Glazer and Moyruhan, who take the case of New York in their famous book, *Beyond the Melting Pot: The Negroes, Puerto Ricans, Jews, Italians and Irish of New York City* (1963, revised 1970), to explain why people in New York continue to assert their separate ethnic identities even when none of them live like their ancestors did. Recognising the ties of family and friendship, they contend that ethnic groups in New York are also interest groups and this, perhaps, is the single most important fact about them.

Relationalist Approaches

Seeing ethnicity as a phenomenon that may have utilitarian aspects but is by no means a product of conscious thought can be termed as the relationalist understanding of the concept. Allen and Eade explain that it is neither an essentialist 'given' nor an instrumentalist 'tool', but an aspect of social relations linked to the maintenance of boundaries (Allen and Eade, 1996-97:230). Fredrik Barth and his colleagues, who produced the pioneering work on the said approach, *Ethnic Groups and Boundaries* (1969), understand ethnicity as a continuing ascription that defines a person by origin and background, as well as a form of social organisation maintained by inter-group boundary mechanisms based on manipulation of identities and their situational character. Barth claims that their diacritic markers, such as language, dress and value orientations, classify ethnic groups. Nevertheless, the crucial issue is the ethnic boundary. Ethnic groups exist in relation to one another.

The relationalist or constructivist approach has been further refined by some more recent anthropologists and social scientists who have tried to take into account Abner Cohen's and Peter Worsley's largely instrumentalist critiques of Barth (Allen and Eade, 1996-97: 233-235). They maintain that political and economic explanations are important but do not suffice alone.

The New Politics of Ethnic Identity

The last decade of the twentieth century witnessed the collapse of the Soviet Union and the breaking up of its constituent republics, and an uprising in some federating units of the Russian Federation on nationalistic and ethnic grounds. We have also seen the bloodbath and ethnic cleansing in former Yugoslavia, genocide in Rwanda and ethnic strife in many places all across the globe. Scheff argues that a sense of alienation and exclusion from political, economic or social processes give rise to ethnically based nationalism (Castells, 1997, Vol. II: 9). Allen endorses this view, pointing out that economic exclusion played a part in creating the conditions of impoverishment in areas that proved to be the hot beds of ethnic violence (Allen, 1999). Moynihan sees the new politics of identity and ethnic violence as a result of the global decline of state institutions (quoted in Allen, 1999). Whereas, Samuel Huntington

2 Interview with L.N. Gumilev, *Soviet Literature*, Moscow, 1989. USSR Academy of Literature.

says, 'People use politics not just to advance their interests but also to define their identity.' Allen (1999) criticises the views of Moynihan and Huntington, calling them overgeneralised and ahistorical interpretations of identity politics and ethnic conflicts. He further adds,

Ethnic distinctions do not always relate to long-standing social divisions, and even where they do, locally negotiated conceptions of ethnicity are likely to take on new forms once the boundaries of particular social groups begin to be emphasised.

Manuel Castells establishes the notion that the age of globalisation is the age of nationalist resurgence (Castells, 1997). This resurgence sometimes challenges the established nation-states and expresses itself in the widespread construction or reconstruction of identity on the basis of nationality or ethnicity, always affirmed against the other. He argues that in the network society that we

live in now, if project identity develops at all, it grows from communal resistance. And this is the actual meaning of the occurrence and primacy of identity politics in today's network society. However, Castells admits, ethnicity *per se* does not suffice to build nations. It is the shared experience that does. He gives the examples of Japan and the United States, one homogenous and the other extremely heterogeneous. What has made them successful is the success of their projects of building state identity. Both countries have an abundance of resources and the richest economies.

Castells also questions Hobsbawm's and Anderson's way of seeing nationalism as a source of identity emanating from a particular period of history or exclusive workings of the modern nation-state (1997, Vol. II: 28-32). Such a viewpoint does not explain the rise of nationalist and ethnic movements in post-modern societies where the state has weakened. He further says that centralised nation-states resisting nationalist movements and trying to assimilate the nation in the state should learn from the break up of the state of Pakistan and the creation of Bangladesh.

Pakistani Identity

Having looked at the theory and historical usage of the concepts and terms discussed in the previous section, we can now look at the case in point—the Pakistani identity.

Creation of Pakistan³

Pakistan was formed as an independent state in 1947 with the partition of India and the end of British colonial rule. It was seen as a realisation of the Indian Muslim's right to self-determination on the basis of a 'two-nation theory' propounded and fought for by the All India Muslim League, which described Hindus and Muslims as two different nations living in India. The Muslim League represented the political and economic interests, fears and aspirations of the Indian Muslim elite and middle classes and, later, was also successful in rallying the Muslim peasantry in its support. Although present in large numbers, Muslims were a minority in British India and had also felt threatened by the hostility of Hindu revivalist movements in the early twentieth century.

The causes and reasons for the growth of Muslim separatist sentiments in British India are multifarious and require a much deeper analysis. However, the fluidity of the concept of 'nation' is confirmed when people with different languages, diverse cultural traits and living in different provinces of British India perceive themselves as one single nation. Wilfred Cantwell Smith argues that Indian Muslims wanted Pakistan in order to prove that they are a nation, rather than vice versa (Smith, 1946: 289).

The creation of Pakistan meant carving out a state comprising of Muslim majority areas from the Indian subcontinent. It also meant huge transfers of Hindu, Sikh and Muslim populations from provinces

3 For reference, see Jalal (1985), Azad (1959), Smith (1946) and Government of Pakistan (1989).

where were in minority to the areas where they constituted a clear majority. Hindus and Sikhs, from what is now Pakistan, and Muslims, from the areas now comprising India, moved across the newly formed borders in millions, either voluntarily or involuntarily.

A complete transfer of population, however, could never take place nor was it intended. Therefore, with the creation of the Pakistani nation-state, the Muslims who stayed back in India became Indians by default, challenging the whole premise of Indian Muslim nationhood from the very outset.

W.H. Auden captured the irony of the situation and the sordid indifference of the British in his poem 'Partition', which is about the Radcliffe boundary commission set up to define the territorial boundaries of the two newly formed nation-states.

Unbiased at least he was when he arrived on his mission,
Having never set eyes on this land he was called to partition
Between two peoples fanatically at odds,
With their different diets and incompatible gods.
'Time,' they had briefed him in London, 'is short. It's too late
For mutual reconciliation or rational debate:
The only solution now lies in separation.
The Viceroy thinks, as you will see from his letter.
That the less you are seen in his company the better,
So we have arranged to *provide* you with other accommodation.
We can give you four judges, two Moslem and two Hindu,
To consult with, but the final decision must rest with you.
Shut up in a lonely mansion, with police night and day
Patrolling the gardens to keep assassins away,
He got down to work, to the task of settling the fate
Of millions. The maps at his disposal were out of date
And the Census Returns almost certainly incorrect.
But there was no time to check them, no time to inspect
Contested areas. The weather was frightfully hot,
And a bout of dysentery kept him constantly on the trot.
But in seven weeks it was done, the frontiers derided,
A continent for better or worse divided.
The next day he sailed for England, where he quickly forgot
The case as a good lawyer must. Return he would not
Afraid, as he told his Club, that he might get shot.
(Quoted in Bose and Jalai, 1996:189)

Islamic Identity

A nation-state belonging to a people who share a common religion was the bedrock of Pakistan's ideology. The All India Muslim League was a rather secular political party asking for Pakistan on the basis of Muslim nationalism rather than Islamic fundamentalism. But the 'two-nation theory' had profoundly impacted the thinking of a sizeable population of Indian Muslims and won their vigorous assent to the policies of the Muslim League (Smith, 1946: 288). The question of whether Pakistan can be a secular state where Muslims, in any case, constitute a clear majority has been raised by the Pakistani liberals and left-wing politicians all along. They base their premise in the liberal outlook of the founder of Pakistan, M.A. Jinnah, and some of his speeches, where he expressed his desire that Pakistan should be a modern secular state. Akbar S. Ahmed observes that the crisis of identity in Pakistan, whether it should be secular or Islamic, has remained severe. He situates this quest for identity in the larger debate

taking place in the Muslim world from Morocco to Malaysia (Ahmed, A.S., 1997). Smith (1951: 96), looked at the problem very sophisticatedly, saying that the concept of ‘secular democracy’ in both Pakistan and India is a contradiction in terms. He writes,

Such countries may be secular, but in that case cannot be democratic, in which case they cannot be secular. Obviously, a state can be both secular and democratic only if a majority of its inhabitants wish it to be secular.

Islamic identity, henceforth, has remained the legitimising identity for the state of Pakistan since the beginning, undermining all other identities. It was further stressed during the last martial law from 1977 to 1988, when General Zia-ul-Haq implemented an Islamisation policy grossly affecting the legal system and social fabric of the country (Jalal, 1985 and Hussain, I., 1997). Therefore, we see a constant tension between an Islamic identity—the legitimising identity of dominant institutions —and ethnic (resistance) identities throughout the history of Pakistan.

Bangladesh

Pakistan, itself, was actually reborn in 1971 after the majority of its population chose to secede from their once cherished homeland. It was a secession from an ideology, a political entity and a concept of identity. The two wings of Pakistan, West (now Pakistan) and East (now Bangladesh) are geographically separated by more than a thousand miles with India in the middle. The creation of Pakistan in such a fashion and, then its division, are among the most peculiar events in modern history. East Pakistan was economically, politically and culturally oppressed and exploited by the West Pakistani ruling classes since the very beginning (Documentation, relevant statistics and analysis can be found in Ahmed, 1998:12-40).

After a Bengali rights movement and an indiscriminate and brutal military action by the Pakistan Army compounded with India’s military intervention and manipulation of the situation, East Pakistan seceded from the rest of Pakistan. Bengalis were an ethnic group within the nation-state of Pakistan until 1971. The formation of the Bangladeshi nation-state transformed the Bengali ethnic identity into a national identity. The resistance identity within the state of Pakistan became the legitimising identity for the Bangladeshi nation-state. At the same time, the notions of Indian Muslim nationhood at large and the two-nation theory proved to be extremely short-lived. In the words of David Loshak (1971: 123),

Pakistan began in Jinnah’s poignant phrase, ‘mutilated, moth-eaten and truncated’. It has ended in the same way. It hardly stood a chance, with its frail economic base, tattered social fabric, gimcrack political superstructure, absurd geography and, most debilitating of all, its synthetic nationhood based on the chimeral premise that **Islam** was enough.

Indus Identity

Aitzaz Ahsan, one of the foremost lawyers and politicians in Pakistan, published a book, *The Indus Saga and the Making of Pakistan*, in 1996. If not the first, it is certainly the most recent and best-known elaborations of the idea that the north-west of the Indian subcontinent, i.e., the valley of River Indus and its tributaries, has remained distinct and separated from India for almost five and a half of the last six thousand years. In the first part of his book’s introduction, entitled ‘Search for the Pakistani identity?’, Ahsan argues that Pakistan preceded the advent of Islam in the subcontinent and the reuniting of Punjab, Sindh, Kashmir, Balochistan and the North West Frontier Province (NWFP) in a federation in 1947 was a reassertion of a primordial identity, the Indus identity. He uses the words Indus and Pakistan interchangeably in his book. He writes, ‘Indus (Pakistan) has a rich and glorious cultural heritage of its own. This is a distinct heritage, of a distinct and separate nation’ (Ahsan, 1996: 8). Ahsan thus rejects

the two-nation theory and tries to explain the secession of East Pakistan on the basis of inherent cultural distinctiveness of Indus from the Bengalis, although he condemns the exploitation of East Pakistan by the Indus elite and holds that East Pakistani bourgeoisie was more sensitive, politically conscious and mature (p. 346). According to Ahsan, the immigrants from India, Mohajirs, who reverted to the Indus in 1947 and thereafter, were the sons and daughters rejoining to the mother (p. 8). He also attempts to distinguish a typical Indus personality from the others by defining an Indus person as being family-oriented and taking little influence from societies that have been predominantly tribal, patriarchal and nomadic (Ahsan, 1990: 346).

This is a classic example of building a project identity. Here, on the basis of available cultural material, legend, folklore, poetry, social and religious norms, Ahsan attempts to redefine the state of Pakistan and seek the transformation of overall social structure. But the problems are many. It was not just the Indus that did not remain a part of India for more than five hundred in the last six thousand years; other parts of the Indian subcontinent also had different identities and varying histories. Nevertheless, most of the subcontinent had cultural, economic and religious linkages. Modern India as a nation-state was itself born in 1947. If the Mohajirs who reverted to the Indus from India were the sons and the daughters returning to the mother, what about the identity of Indian Muslims today who outnumber the total population of Pakistan? When Ahsan says that a typical Indus person takes little influence from tribal, patriarchal and nomadic societies, besides giving latitude to many on the Indus left-bank, he blatantly overlooks the customs and traditions of the Pathans and the Balochis inhabiting the right-bank of the Indus. Moreover, it is difficult to say whether an average Punjabi lower middle-class person from Lahore has more in common, culturally, with his counterpart from Delhi, India, than someone from Quetta in the western Pakistani province of Balochistan. In certain ways, the shared political experience of recent years and the respective media images do bring a person from Lahore closer to one from Quetta than one from Delhi. However, this phenomenon does not go back six thousand years.

The Question of Nationalities and Ethnic Identities Today

Pakistan comprises four provinces, namely, Punjab, Sindh, NWFP and Balochistan, federally administered tribal areas (FATA) and federally administered northern areas (FANA), the federal capital area (Islamabad) and a part of the disputed territory of Kashmir, the state of Azad Jammu and Kashmir. With a population of more than 140 million,⁴ Pakistan is a multilingual and multicultural society. Sindhi, Seraiki, Punjabi, Pashto, Hindko, Balochi, Brahvi and Urdu are among the major languages. There are many others, like Shina, Brushiski, Wakhi, Gujarati and Dhatki. Rahman observes that in the construction of different ethnic identities the use of language as a symbol of mobilisation has remained predominantly instrumental and rational (1996: 252). In addition, territory has also played an important role. However, all four of Pakistan's provinces have been home to a culturally and linguistically hybrid population, including the largest province of Punjab, where Seraiki speakers dominate the southern part. Jalal argues that this intra-regional diversity has been manipulated by the Pakistani state to deprive entire provinces of their political and economic rights (Jalal, 1995, p. 183-198).

The differences among the various ethnic groups inhabiting Pakistan, termed as nationalities in Pakistani ethnic discourse, surfaced soon after Independence in 1947. The state tried hard to impose unity upon a diverse people on the premise of building national integration, creating a state-nation rather than a nation-state. After the loss of the Bengali majority in 1971, Punjabis constituted nearly 60 percent of the population of Pakistan. The command of Punjabis over the central bureaucracy was well established by that time, with Mohajirs acting as their junior partners. Since then, Pakistan has witnessed Sindhi, Pushtoon, Baloch, Seraiki and Mohajir ethnic rights movements, and also a frail Punjabi language rights movement that was subdued by the state. As a result, Punjabi has become a language oppressed by its own elite (Ahmed, F., 1999)

⁴ According to the 1998 Population Census conducted by the Census department of the Government of Pakistan, the population is 138 million.

After 1971, Punjab gradually became the sole custodian of the ideology of Pakistan, fearing that NWFP, Sindh and Balochistan may also follow the precedent set by East Pakistanis. For writing a book that needed interviews from senior military officers, Asaf Hussain mentions two factors that proved helpful in his work (1979:14). He writes,

Two factors helped me to establish a rapport with the officers interviewed. One was the direct permission of the Chief (the popular name for the Chief of Staff at the GHQ) and the other was my Punjabi ethnicity which created a certain degree of trust.

Of the perceptions held by various ethnic groups forging resistance identities against the Punjabi-dominated nation-state of Pakistan, some are true but others might not have enough ground in reality. The groups' own elite are sharing power and privileges. Nevertheless, in politics, popular perceptions sometimes become more important than empirical data and statistics (Ahmed, F., 1999). Although, there is no formidable secessionist movement in Pakistan today, the economic disparity and clash of interests among different groups and provinces pose a viable threat. The manipulation of these differences by the privileged classes and the fact that the central state apparatus turns a deaf ear towards the people's grievances remain causes for concern.

The Identity of a People

Taking stock of the situation, learning from past experiences, accepting responsibility for what went wrong during the last 55 years, the Pakistani state has to live up to the expectations of the more than 140 million people it defines. People from outside can lament a country termed as a 'fragmenting palimpsest and insufficiently imagined' by Rushdie. But those who live in Pakistan have to go beyond lamentation and take on the challenges coming their way. They have to define themselves.

With a fragile economy and dismal human development indicators, Pakistan faces internal and external threats of religious fundamentalism and ethnic conflicts. Due to the country's unique circumstances and history, Pakistan's ruling elite, intelligentsia, and wide segments of its population fear fragmentation and further divisions on ethnic lines. Also, there are people who want disintegration of the country to take place, considering it the only panacea to its variegated problems, and some want to see it reintegrated into India. Threats are not but many of such fears are illusive and ideas about geographical reorganisation in South Asia look farfetched at the moment. Bloodshed and internecine warfare has to be avoided at any cost. We have seen recently the unbelievable human suffering in countries and regions of Asia, Europe and Africa in the name of ethnicity. Besides, it cannot be ignored that Pakistan has achieved a great deal of demographic, cultural, economic and political integration. The electoral process and political alliances have increased ethnic and regional interdependence. Economic activity and modern communication networks are integrative of the capital markets and labour. The trend of linguistic assimilation is such that three quarters of the literate population of Pakistan is literate only in Urdu (Ahmed, F., 1999).

Nevertheless, the process of integration through natural economic and social means and state-led political means can always halt and fall apart if there is an unjust distribution or scarcity of resources. After an age-old cultural and linguistic struggle, Quebec chose to remain a part of Canada, although by a marginal difference, while the Soviet Union and former Yugoslavia disintegrated and experienced extreme forms of violence and destruction. The Pakistani state needs to not just recognise but make efforts to realise the cultural, economic and linguistic rights of its diverse citizens. Many workable solutions can be sought if there is enough political will.

At this juncture in history, Pakistan—the state and the society—needs a new project identity that endeavours to transform the overall social structure of the country, its foreign relations and its military expenditure. This collective identity can only be fulfilling if it redefines the state of Pakistan and is able

to negotiate the interests of this third-world country in an age of globalisation and the emergence of the network society. If it is a modern democratic state, built around the economic and social well-being of its citizens with some affirmative action for the downtrodden, Pakistan is as artificial or natural as most other states in the world. It is the teething problems that are not yet over. But the fragility could be fatal unless the citizens—who have long been denied their inalienable economic, social, cultural, civil and political rights—are treated alike by the institutions of the state and provided equal opportunities irrespective of their religion, province, ethnic and class origin.

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**Challenges and Opportunities in the Post TRIPS Era
for Pakistan -- An Overview of Amended Patents
Ordinance 2002**

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WTO AND SUSTAINABLE DEVELOPMENT

The Atlantic Charter adopted by the US president and the British prime minister in 1941 laid the foundations for a new world order. 'Economic liberalization to be promoted through free trade rules and intellectual property obligations'¹ was one of its basic fundamentals. In line with this agenda, the Bretton Woods Agreements laid the foundations of World Bank and International Monetary Fund where as the General Agreement on Trade and Tariffs (GATT) adopted in 1947 followed in order 'to remove barriers to international trade in goods'. However, due to lack of 'any formal institutional structures [the agenda] was left to a third organization called International Trade Organization (ITO)'² created in 1948 but it failed due to US opposition because its economic interests at that time dictated otherwise. In the 1990s, the effort to liberalize trade and protect intellectual property at last resulted in the creation of World Trade Organization (WTO) because finally US economic interest was in its favour.

The WTO was another extension of the globalization phenomenon which 'has [been] depicted as a "stretching process", in which connections are made between different social contexts and regions, which then become networked across the earth as a whole".³ However, it also resulted into a feeling of disempowerment as "citizens feel they have had no role in the development of new international rules that disempower them".⁴ These worrisome features of economical and social consequences of globalization are equally visible in WTO but all the more devastating under Trade Related Aspects of Intellectual Property (TRIPS), which is one of the most important components of WTO.

World trade organization (WTO) is an integrated multilateral trading system encompassing three broad areas of trade i.e. goods, services and intellectual property. Its preamble recognizes that the 'relations in the field of trade and economic endeavor' should allow 'for the optimal use of the world's resources in accordance with the objective of sustainable development' with 'a view to rais[e] standards of living, full employment and steadily growing volume of real income'.⁵ However, since its inception, this free trade regime with Agreement on Trade Related Aspects of Intellectual Property (TRIPS) as a pivot, is at odds with its preamble due to its lop sided distributive consequences and failure to 'promote the integration of the three components of sustainable development-economic development, social development and environmental protection-as interdependent and mutually reinforcing pillars'.⁶

TRIPS now poses a daunting challenge for the poor countries of the world due to its effects on health, agriculture and environment and has become a serious impediment in achieving sustainable development for countries like Pakistan. Its effects also cast shadow on the claim of 'sustainable development link' espoused in the WTO preamble; however the negotiating history of TRIPS provides a clear negation of its intention.

Negotiation of TRIPS

'During the Uruguay round negotiations, developing countries agreed to accept the TRIPS Agreement as [a] part of a package deal whereby protection of intellectual property rights was a trade-off for concessions on agricultural products and textiles'.⁷

1 Philippe Sands, *Lawless World: Making and Breaking Global Rule* (Penguin books, London 2005) [Chapter 1: International Law: A Short and Recent History, p-9]

2 'ibid 12'

3 'ibid 15'

4 'ibid 16'

5 'Uruguay Round Agreement. Marrakesh Agreement Establishing the World Trade Organization' <http://www.wto.org/english/docs_e/legal_e/04-wto_e.htm#articleI> accessed 1 April 2007

6 'Johannesburg Plan of Implementation' <http://www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/POIChapter1.htm> accessed 1 April 2007

7 Duncan Matthews, *Globalizing Intellectual Property Rights-The TRIPS Agreement* (Routledge, London 2002). [Chapter 5: Impact of the TRIPS Agreement on Developing Countries, p-109]

It was not a ‘democratic bargaining’ process between sovereign states as the ‘three conditions’ i.e. ‘the condition of representation, the condition of full information and the condition of non-domination’⁸ were never fulfilled. Similarly, ‘not all developing states participated in the TRIPS negotiations’⁹, however, ‘the deeper problem [was with] the process [as] it involved a strategy in which a non-representational inner circle of consensus was expanded to create larger circles until the goals of those in the inner circle had been met’.¹⁰ The use of these circles of consensus [made] TRIPS [as a] hierarchical [management process instead of [a] democratic [one]]’¹¹ and ‘this green room process [was] profoundly shaped by the consensus-building exercise that the private sector had undertaken outside the green room’.¹² ‘Th[is] basic framework (which later became generally known as ‘white book’ proposals) was presented to the GATT secretariat as representing the coordinated views of the US, European and Japanese business communities’.¹³ On the other hand ‘the group of ten developing countries denounced the basic framework in general and its patent provisions in particular’¹⁴ but the ‘demands of industry representatives made in the white book proposal were clearly reflected in the final TRIPS Agreement’.¹⁵ ‘[Likewise] “the quad”, led by the United States, strong-armed developing countries into accepting TRIPS by threatening to sanction recalcitrant countries and/or eliminate their generalized system of preferences (GSP) status’.¹⁶ This negotiation process makes it clear that the agreement on TRIPS was ‘arguably the most blatantly unfair feature of the international trading regime enshrined by the WTO’¹⁷ in order to protect the interests of the multi national corporations (MNC) of the North.

Intellectual Property and its Justification: Myth and Reality

Contrary to the above point of view ‘there are different ways in which the introduction of intellectual property rights [is] justified’ by others.¹⁸ At the conceptual level ‘essentially four types of benefit for developing countries [are] identified as a result of the TRIPS Agreement’¹⁹ i.e. increase in foreign direct investment, encouragement for transfer of technology, creation of incentives for local inventors and offsetting of bilateral trade tensions.

However, these assertions have not proved correct especially for the developing countries and have been challenged on different grounds. It is now widely accepted that ‘implementation of the TRIPS Agreement [has] largely entrench[ed] import monopolies for multinational companies’²⁰ whereas ‘the majority of patents granted by developing countries are held by foreigners or foreign-owned companies’.²¹

Similarly ‘there is no evidence that intellectual property protection [has] positively influence[d] access to foreign direct investment at all’²² whereas ‘there is also little evidence that intellectual property protection is a key factor in encouraging research and development’.²³

8 Peter Drahos, ‘Negotiating Intellectual Property Rights: Between Coercion and Dialogue’ in Peter Drahos and Ruth Mayne (eds), *Global Intellectual Property Rights-Knowledge, Access and Development* (Basingstoke: Palgrave Macmillan, 2002), p 163-164

9 *ibid*

10 ‘*ibid* 167’

11 ‘*ibid* 168’

12 ‘*ibid* 167’

13 Duncan Matthews, *Globalising Intellectual Property Rights-The TRIPS Agreement* (Routledge, London 2002). [Chapter 1: Origins of the TRIPS Agreement, p-24]

14 *ibid*

15 *ibid*

16 Andrew J. Grotto, ‘Organizing for influence: Developing Countries on Traditional Intellectual Property Rights and the World Intellectual Property Organization’ in Armin Von Bogdandy and Rudiger Wolfrum (eds), *Max Planck Yearbook of United Nations Law* (Martinus Nijhoff Publishers, 2004) Vol. 8, p 368

17 ‘*ibid* 367’

18 P. Cullet, *Intellectual Property Protection and Sustainable Development* (Lexis Nexis Butterworths, New Delhi 2004). [Chapter 1: From Intellectual Property Protection to Sustainable Development, p-11]

19 Duncan Matthews, *Globalising Intellectual Property Rights-The TRIPS Agreement* (Routledge, London 2002). [Chapter 5: Impact of the TRIPS Agreement on developing countries, p-108]

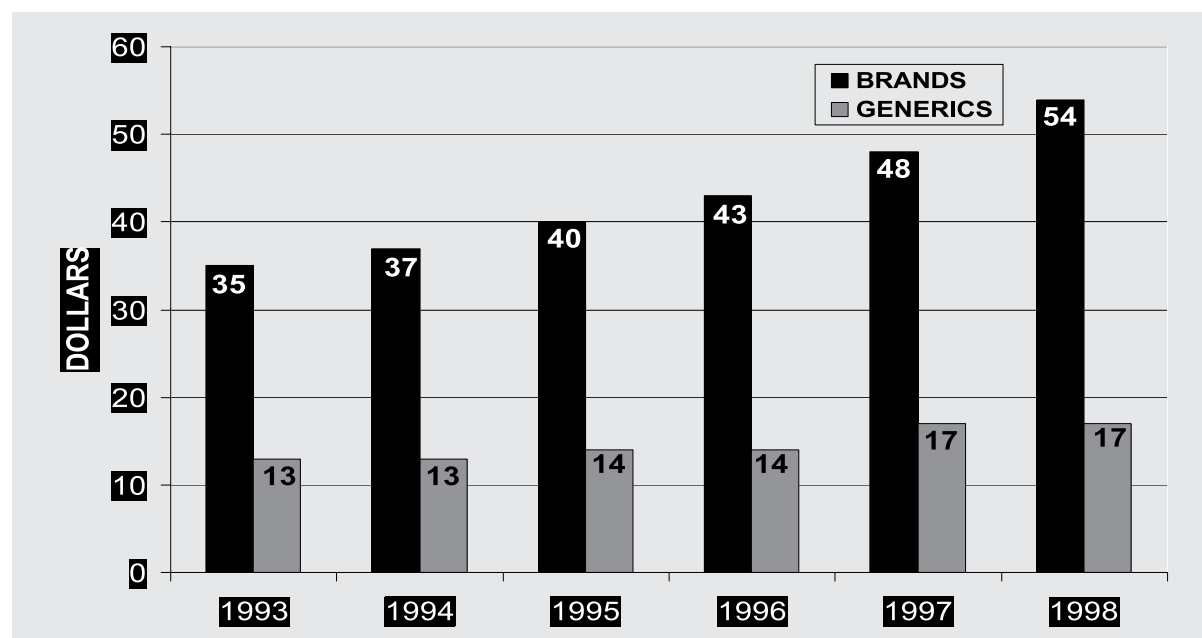
20 ‘*ibid* 110’

21 ‘*ibid* 111’

22 ‘*ibid* 109’

23 *ibid*

It is also established that the compliance of TRIPS by developing countries has led to an increase in the pharmaceutical prices and this surge has a tremendous social cost for access to health care in such countries where the ‘drugs are largest house hold and second largest public expenditure on health’²⁴ due to higher cost of patented drugs and non availability of generic ones. Even in countries like the U.S. ‘the average price per prescription of a brand drug is three times the price of a generic drug’.²⁵



SOURCE: IGPA Conference 2001, 25-27 June 2001, Cannes, France

In Agriculture sector, the introduction of patents on life forms will have serious repercussions on the future of farmers in countries like Pakistan particularly when the price of inputs for agriculture especially seeds is likely to increase manifold. If we look at the current practice of using Transfer Use Agreements (TUA) along with patents production on seeds as being pursued by MNC's like Monsanto in United States, the future of agriculture sector of developing countries and its poor farmers seems very bleak especially when a majority of them is engaged in farming for subsistence. The most dangerous outcome of patents in Agriculture is the likely prohibition of making the saved seed to be sold and replanted without the permission of the company. Besides, it is now widely accepted that the patents in agriculture has not given any impetus to food security as yields have not increased due to patent protection on plant varieties. Similarly the impact of life patenting on future research, bio pollution and use of Terminator technology don't reflect the claim of sustainable development.

Areas Covered under TRIPS

The areas covered by the TRIPS Agreement include patents, copyright and related rights, trademarks including service marks, geographical indicators, industrial designs, layout-designs of integrated circuits and undisclosed information, including trade secrets²⁶ and its implementation requires ‘adoption of appropriate legislation to bring national, judicial and administrative procedures into conformity with the TRIPS Agreement’.²⁷ Article 65 sets down transition periods for the implementation of substantive

24 Zaka-ur-Rehman Muhammad, ‘Compulsory Licensing: Focus on Public Health Sector’ <<http://www.ipo.gov.pk>> accessed 31 December 2007

25 Zaka-ur-Rehman Muhammad, ‘Compulsory Licensing: Focus on Public Health Sector’ <<http://www.ipo.gov.pk>> accessed 31 December 2007

26 ‘Understanding the WTO, the Agreements. Intellectual Property: Protection and Enforcement’ <http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm7_e.htm> accessed 1 April 2007

27 Duncan Matthews, *Globalizing Intellectual Property Rights-The TRIPS Agreement* (Routledge, London 2002). [Chapter 5: Impact of the TRIPS Agreement on developing countries, p-117]

changes to domestic law which are required by TRIPS.²⁸ In this discussion paper the analysis is only limited to the amended patents ordinance 2002 in order to explore the flexibilities available under the TRIPS agreement and to identify relevant linkages concerned with economic and social sectors of Pakistan.

Concept of Flexibility under TRIPS

It is also claimed that ‘the protection of the rights of the patentees, however, is not the sole concern of TRIPS [and it] provides flexibilities for governments to fine tune the protection granted in order to meet social and economic goals’.²⁹ The main flexibilities include provisions related to patentable subject matter, patent rights, exceptions to rights of patents, parallel importation, compulsory licensing and data protection.

How far has it been possible, especially in the light of the fact that any new amendment in the TRIPS supported by developing countries is now impossible due to the interest of developed world and pressure of MNC’s. The example of amendment in South Africa’s medicines and related substances control amendment Act of 1997 due to its HIV/Aids epidemic and the subsequent U.S. threats to impose sanctions on South Africa is a clear reminder of the space available to governments after they undertake TRIPS obligations. All this makes the ‘task of achieving developing country compliance with the provisions of the TRIPS agreement’³⁰ and to use its flexibilities a challenging exercise and so is the case with Pakistan.

Legislation in Pakistan, U.S. Pressure and TRIPS

‘The adoption of TRIPS agreement in Pakistan required massive modifications in the existing rules and laws’³¹ and ‘such modifications were applicable in the fields of patents, copyrights, industrial designs, designs of integrated circuits, and trademarks by January 2000’.³² Pakistan was also required to use the flexibilities provided under TRIPS keeping in view the ‘Article 7 of TRIPS on objectives [that] speaks of the mutual advantage of both producers and users of technological knowledge and stresses the need for a balance of rights and obligations’.³³ The legislation eventually followed and new ordinances were promulgated. The copyrights ordinance 1962 was amended in 2000 and a new trade marks ordinance was issued in 2001. Similarly the patents and designs Act, 1911 was amended in 1997 and was later on repealed by a new registered designs ordinance issued in September 2000 and was followed by a new patents ordinance in December 2000. This patents ordinance 2000 was later on amended in 2002. It is also important to mention that the ‘multinational pharma[ceutical] companies [in Pakistan] expressed their concerns regarding patents amendment ordinance 2002 [and] were of the view that the amendments were not in consonance with intellectual property rights protection in Pakistan’.³⁴ Similarly the United States which had Pakistan on priority watch list in 2005 claimed in its Special

301 report that it is ‘concerned over a 2002 ordinance that seriously undermined WTO-required improvements that Pakistan made to its patent law in 2000’.³⁵ A similar claim was made in 2003 301report when Pakistan was on special watch list and the report mentioned that ‘Pakistan’s 2002

28 Elizabeth Henderson, ‘TRIPS and the third world: The Example of Pharmaceutical Patents in India’ E.I.P.R. 1997, 19(11), 651-663

29 Sudip Chaudhri, ‘TRIPS and Changes in Pharmaceutical Patent Regime in India’ <http://www.who.int/hiv/amds/IDA_India-Patent-amendments-Sudip.pdf> accessed 3 April 2007

30 Duncan Matthews, *Globalizing Intellectual Property Rights-The TRIPS Agreement* (Routledge, London 2002). [Chapter 5: Impact of the TRIPS Agreement on developing countries, p-117]

31 Dr. Mian Sarfraz Ahmad, ‘The IPRs under WTO’ <<http://worldtradereview.com/webpage.asp?wID=1769>> accessed 2 April 2007

32 ibid

33 Sudip Chaudhri, ‘TRIPS and Changes in Pharmaceutical Patent Regime in India’ <http://www.who.int/hiv/amds/IDA_India-Patent-amendments-Sudip.pdf> accessed 3 April 2007

34 ‘U.S.-Pakistan Business Council: Investment Updates. Government of Pakistan March 9, 2005. Issue of Pharmaceutical Sector discussed’ <http://www.uspakistan.org/Investment_Updates_43_PAK_GOV.html> accessed 3 April 2007

35 ‘2005 Special 301 Report’ <http://www.ustr.gov/assets/Document_Library/Reports_Publications/2005/2005_Special_301/asset_upload_file519_7649.pdf> accessed 3 April 2007

ordinance undermines improvements that the government of Pakistan made to its patent law in 2000 to comply with its TRIPS obligations'.³⁶

The Challenge

Pakistan however faced its challenge as a respondent in WTO long before these changes when in 1996 United States requested consultations with the government of Pakistan 'regarding the absence in Pakistan of either patent protection for pharmaceutical and agricultural chemical products or a system to permit the filing of applications for pharmaceutical and agricultural chemical product patents and a system to grant exclusive marketing rights in such products'.³⁷ It is important to point out that on the same date when consultations were offered under WTO i.e. on April 30, 1996, the USTR [also] self-initiated an investigation under section 302(b)(1) of the Trade act with respect to the same dispute.³⁸ The United States formally [withdrew] this matter under the provisions of the Dispute Settlement Understanding Notification of a mutually-agreed solution on 28 February 1997 when Pakistan President Farooq Ahmad Khan Leghari issued on 4 February 1997 Ordinance No. XXVI of 1997.³⁹

In accordance with the requirement under Article 70.9 of the TRIPS Agreement that marketing rights be exclusive, the Government of Pakistan [agreed] to implement the ordinance so that under no circumstances will exclusive marketing rights be subject to any limitation or exception, including the imposition of a compulsory license. Accordingly, no party will be granted marketing approval for a product that is the subject of exclusive marketing rights without the express consent of the holder of such exclusive marketing rights.⁴⁰

It is important to note that Pakistan agreed to a TRIPS plus commitment in this mutually agreed solution as it accepted that exclusive marketing rights will not be subjected to any limitation or exception instead of taking advantage of the flexibility under TRIPS that provided for various exceptions and limitations. This dispute and the interest of United States by its use of alternate mechanisms like USTR itself highlighted the importance of patents regime under the TRIPS Agreement and its future implications for Pakistan especially when it promulgated its patents ordinance in 2000. These challenges faced by Pakistan in the form of pressure from United States and pharmaceutical multinational companies affected its future patents regime of 2002.

Missed Opportunities and Available Flexibilities

The failure to avail the flexibilities available under TRIPS is clearly evident if we look at the patents ordinance 2000 as well as its amendments carried out in 2002 from a comparative perspective with a south Asian country like India in the light of obligations/minimum standards required under TRIPS. It will also help us to identify the missed opportunities that were available in this regard especially with reference to the objective of sustainable development.

It is also important to mention that 'when Pakistan promulgated its patent ordinance in 2000 the local pharmaceutical industry expressed reservations that [it] did not properly utilize the flexibilities provided under the TRIPS Agreement [and] a special meeting of the economic coordination committee of the cabinet reviewed the patents ordinance 2000 and proposed amendments [that] were promulgated as

36 '2003 Special 301 Report' <http://www.ustr.gov/Document_Library/Reports_Publications/2003/2003_Special_301_Report/Special_301_Watch_List.html> accessed 3 April 2007

37 'Dispute Settlement: Dispute DS36 Pakistan-Patent Protection for Pharmaceutical and Agricultural Chemical Products' <http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds36_e.htm> accessed 2 April 2007

38 'Office of the United States Trade Representative: Monitoring and Enforcement' <http://www.ustr.gov/assets/Trade_Agreements/Monitoring_Enforcement/asset_upload_file985_6885.pdf> accessed 2 April 2007

39 'Dispute Settlement: Dispute DS36 Pakistan-Patent Protection for Pharmaceutical and Agricultural Chemical Products' <http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds36_e.htm> accessed 2 April 2007

40 ibid

patents amendment ordinance 2002'.⁴¹ How far has it achieved success, it can only be analyzed in the light of major amendments that were made in patents ordinance 2002 and are described below.

Amendment in Definition of 'Invention' to Create a Liberal Patent Standards Regime

The definition of 'invention' under Article 2(i) was amended in 2002 to describe it as 'any new and useful product or process, in any field of technology and includes any new and useful improvement of either of them'⁴² where as in patents ordinance 2000, the definition had a wider scope as it also included an 'alleged invention'⁴³ within its meaning. However, this amended definition is still broader than the minimum obligation as required under Article 27 of TRIPS because it omits inventive step from the invention and also replaces 'industrial application' with 'any new and useful improvement of any product or process' unlike Article 2(j) of Indian Patent Act that makes 'an inventive step' and 'industrial applicability' mandatory for any product or process to fall within the definition of 'invention'.⁴⁴ This TRIPS plus commitment is clearly tilted towards multi national corporations (MNC) and will make it easy for them to claim Patents. Developed countries, for example, USA follow [such] liberal patent standards [and] patents are granted not only for new chemical entities (NCEs) involved in the new drugs [but] secondary patents can also be taken for new formulations, new combinations and new uses of existing NCEs'.⁴⁵ According to Sudip Chaudhaery, 'WHO (2001) in fact has warned that if the patentability standards are too broad, so that the terms "new" and "inventive" are defined to include all the new forms of the same NCE, then effectively the patent life can be extended beyond the 20-year period'.⁴⁶

Amendment in Definition of 'Novelty' for Traditional Knowledge Holders

The definition of 'novelty' was also amended in 2002 with the introduction of a new provision (c) in Article 8(2) of patents ordinance. It included 'traditionally developed or existing knowledge available or in possession of a local or indigenous community' within the definition of the state of art and an 'invention [was not] be considered to be new if it does not form part of the state of the art' under Article 8(1) of patents ordinance. This was a good amendment as it does not treat 'traditional and existing knowledge' or 'in possession of a local or indigenous community' to be new for an invention and therefore not a patentable invention. The Article 3(p) of Indian Patents Act goes one step further and besides 'traditional knowledge' it also doesn't consider 'an aggregation or duplication of known properties of traditionally known component or components' as an invention.

Lax Criteria for 'Patentable Inventions' and Ever Greening of Patents

Article 7(4) of patents ordinance 2000 was amended to introduce two new provisions (d) and (e) to declare that a patent shall not be granted for a new or subsequent use of a known product or process; and for a mere change in physical appearance of a chemical product where the chemical formula or process of manufacture remains the same provided that this clause [(e)] shall not apply to an invention fulfilling the criteria of patentability. However, the mere change in physical appearance of a chemical product where the chemical formula or process of manufacture remains the same will satisfy the criteria of patentability very easily according to Article 7(4) (e) of amended patents ordinance, because the definition of novelty, inventive step and industrial application are still very broad e.g. the definition of 'industrial application' under Article 10 of amended patents ordinance only requires a chemical product

41 The News, 'Pharma Sector issue discussed' <<http://www.jang.com.pk/thenews/mar2005-daily/09-03-2005/business/b14.htm>> accessed 3 April 2007

42 'Patents Ordinance 2000 as Amended by Patents (Amendment) Ordinance, 2002' <<http://www.patent.gov.pk/Patent%20Ordinance/Patents%20Ordinance%202000%20Amendments%20final.pdf>> accessed 3 April 2007

43 'Patents Ordinance 2000' <http://www.wipo.int/clea/docs_new/pdf/en/pk/pk001en.pdf> accessed 3 April 2007

44 'The Patents (Amendment Act, 2002 dated 25th June, 2002)' <<http://patentoffice.nic.in/ipr/patent/patentg.pdf>> accessed 3 April 2007

45 Sudip Chaudhri, 'TRIPS and Changes in Pharmaceutical Patent Regime in India' <http://www.who.int/hiv/amds/IDA_India-Patent-amendments-Sudip.pdf> accessed 3 April 2007

46 ibid

to be capable of being manufactured or otherwise industrially used to fall under its definition. Similarly the definition of ‘inventive step’ under Article 9 of amended patents ordinance 2002 is also fairly broad as it only refers to ‘an invention [to] be considered as involving an inventive step if it has not been obvious to a person, prior to the date of application for a patent’ whereas the corresponding definition of ‘inventive step’ under Article 2(ja) of Indian patents act is much strict. It even includes ‘technical advance as compared to the existing knowledge or having economic significance or both’ besides ‘the invention [to be] not obvious to a person skilled in the art’. The addition of the two provisions in patents ordinance 2002 are certainly better than the patents ordinance 2000 but still fall short of the expectations because they are not strongly worded and cannot stop international pharmaceutical companies to evergreen their patents ‘as the NIHCM (2002) study shows [that] most of the new drugs are unnecessary combinations of existing drugs or simple modifications of existing drugs’.⁴⁷ This will have a long term negative effect on generic manufacturers as well as on the consumers in Pakistan. In India, patentability criteria is more strict as compared to Pakistan e.g. Article 3(d) of Indian patent act even don’t consider ‘the mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance or the mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant’ as an invention. Interestingly this ‘part of the law [section 3(d)] was specifically targeted at preventing a common practice used by drug companies of trying to get additional patents on insignificant improvements of drugs already patented’⁴⁸ and ‘it is this part of the law that Novartis is challenging [before Indian Courts], claiming it is in violation of WTO rules’.⁴⁹

Environment and Patents Linkages

The proviso (a) of Article 7(4) of patents ordinance 2000 was also further amended in 2002 to declare that a patent shall not be granted for invention the prevention of commercial exploitation of which would be necessary ‘to protect human, animal or plant life or health or to avoid serious prejudice to the environment’. This amendment was made in the light of Article 27.2 of TRIPS that specifically allows for such exclusion and was previously absent in the patents ordinance of 2000. Similarly the proviso (b) of Article 7(4) of patents ordinance 2000 was further amended in 2002 to declare that a patent shall not be granted other than for non-biological processes which only included microbiological processes previously. This amendment was made in the light of Article 27.3(b) of TRIPS that specifically allows for patentability of non-biological processes.

Genetically Modified Organisms and Patents

Article 13 of patents ordinance 2000 was amended in 2002 to introduce a new proviso (8) to declare that ‘an application for an invention relating to genetically modified organisms shall require clearance from the federal government and shall comply with such requirement as may be prescribed’. This is a very important amendment as it links the patents ordinance with the ‘bio-safety rules of Pakistan’⁵⁰ and ‘national bio- safety guidelines’⁵¹ issued by The Ministry of Environment.

It is important to note that these guidelines were issued in May 2005 three years after the amendments in patents ordinance. The guidelines suggest three tiers for monitoring and implementation i.e.

47 Sudip Chaudhri, ‘TRIPS and Changes in Pharmaceutical Patent Regime in India’ <http://www.who.int/hiv/amds/IDA_India-Patent-amendments-Sudip.pdf> accessed 3 April 2007

48 ‘Campaign for Access to Essential Medicines, A key source of affordable medicines is at risk of drying up’ <<http://www.accessmed-msf.org/documents/Novartis%20Briefing.doc>> accessed 3 April 2007

49 ibid

50 Government of Pakistan, ‘Pakistan Bio Safety Rules 2005’ <<http://www.environment.gov.pk/act- rules/Biosftyrules.pdf>> accessed 3 April 2007

51 Government of Pakistan, ‘National Bio safety Guidelines’ <<http://www.environment.gov.pk/act- rules/BiosftyGlines2005.pdf>> accessed 3 April 2007

the institutional bio-safety committee (IBC), a technical advisory committee (TAC) and a national bio-safety committee (NBC). Similarly all regulated works are classified according to level of anticipated risk and safety, into three categories;⁵² a) work bearing minimal risk, b) work bearing low risk and c) work bearing considerable level of risk. Its Article 5.8 stipulates that ‘all works with no prior history of risk assessment and all requests for deregulation and commercial releases of genetically modified organisms and products thereof, will be decided by NBC, on the evaluation/assessment report of TAC’.⁵³ Similarly, the NBC vide Article 5.1.2 (b) and (c) shall ‘consider application(s) for import, export or commercial release of living modified organisms, and on the recommendations of technical advisory committee allow release or reject applications after reviewing the risk assessment carried out in accordance with the bio-safety guidelines’ and ‘can also ban or restrict import, export, sale, purchase or trading of any living modified organism causing or likely to cause risk to public health, safety or environment’ respectively.⁵⁴ It is also important to note that the ‘enforcement of various clauses of the national bio-safety guidelines will be administered by the three monitoring implementation bodies, as per legal authority under clause 7(g) of the Pakistan environment protection act 1997’ which allows the federal agency to ‘enter and inspect and under the authority of a search warrant issued by the environmental court or environmental magistrate, search at any reasonable time, any land, building, premises, vehicle or vessel or other place where or in which there are reasonable grounds to believe that an offence under this Act has been, or is being, committed’.⁵⁵

Similarly under Article 17(2) of the Pakistan Environment Protection Act 1997 ‘whoever contravenes or fails to comply with the provisions of any rule or regulation or conditions of any license, any order or direction, issued by the council or the federal agency or provincial agency, shall be punishable with fine which may extend to one hundred thousand rupees, and in case of continuing contravention or failure with an additional fine which extend to one thousand rupees for every day during which such contravention continues’.⁵⁶ It is important to note that under the bio-safety rules of Pakistan vide its Article 11, there is a prohibition on ‘the import, export, sale, purchase or trade living modified organisms, substances or cells and products thereof for any purposes, without prior obtaining of license’.⁵⁷ However, ‘such licenses [are] for a specified period not exceeding four years at the first instance renewable for two years at a time vide its Article 15 of bio-safety rules and can be revoked if genetically engineered organisms or cells cause such damage to environment, nature of health as could not be envisaged when the approval was given’.⁵⁸ All the above regulations indirectly impose heavy penalties if someone will violate the provision (8) of Article 13 of amended patents ordinance 2000. This provision is a linchpin for making environmental protection mutually reinforcing with the Pakistan patents regime as far as genetically modified organisms are concerned.

Biopiracy, Geographical Origin and Patents

Similarly Article 15(2) of patents ordinance 2000 was amended in 2002 to introduce two new provisions. The Article 15(2) (a) requires that for ‘a chemical product intended for use in medicine or agriculture, the specification shall be specific to one chemical product only describing the physical, chemical, pharmacological and pharmaceutical properties or, as the case may be, the properties related to its use in agriculture and its impact on environment’.⁵⁹

⁵² ‘ibid 9’

⁵³ ‘ibid 30’

⁵⁴ ‘ibid 22’

⁵⁵ Government of Pakistan, ‘Pakistan Environmental Protection Act 1997’ <<http://www.environment.gov.pk/act-rules/envproact1997.pdf>> pp-11> accessed 3 April 2007

⁵⁶ ‘ibid 17’

⁵⁷ Government of Pakistan, ‘Pakistan Bio Safety Rules 2005’ <<http://www.environment.gov.pk/act-rules/Biosftyrules.pdf>> pp-8> accessed 3 April 2007

⁵⁸ ‘ibid 9’

⁵⁹ ‘Patents Ordinance 2000 as amended by Patents (Amendment) Ordinance, 2002’ <<http://www.patent.gov.pk/Patent%20Ordinance/Patents%20Ordinance%202000%20Amendments%20final.pdf>> accessed 3 April 2007

On the other hand the Article 15(2) (b) requires that ‘where a biological material is used, the specification shall disclose the place of origin and source of such biological material and shall also exhibit compliance with the relevant applicable rules on access, export and use of that material and where such a material is obtained from Pakistan for use outside Pakistan, the permission of the federal government shall be necessary as may be prescribed’.⁶⁰ However, relevant rules are yet to be formulated in this regard.

It is also important to note that a similar kind of provision under Section 10(d) (ii) (D) is also present in the Indian patents act which ‘provides that where a patent application relates to biological material, the applicant shall disclose the source and geographical origin of such biological material in the specification’.⁶¹ However,

‘under [its] section 64(1) (p) a patent can [also] be revoked if the complete specification does not disclose or wrongly mentions the source or geographical origin of biological material used for the invention’.⁶² Unfortunately, in case of Pakistan, the relevant provision is fairly weak and only makes an indirect reference to the extent of concealment without any indication of biological material. Its Article 48(2) (b) allows for the revocation where the federal government is of the opinion that ‘a patent has been obtained through concealment or misrepresentation in the application’. As the Article 15(2) (b) relates to the content of specification for making an application for a patent, in fact there is no directly relevant and specific ground available for revocation under the amended patents ordinance for an incomplete specification e.g. Article 47 of patents ordinance allows for revocation by controller only on ‘grounds upon which the grant of the patent could have been opposed’ and there are only five types of grounds available under Section 23 and none relates to an incomplete specification.

This indicates that in order to give a meaningful strength to the Article 15(2) (b) a strongly worded provision is required to allow opposition of a patent in this regard.

Access and Benefit Sharing Regime and Patents Linkage

Pakistan is also required to establish an access and benefit sharing regime for its biological resources because the introduction of Article 15(2) (b) has established a very important link with the Convention on Biological Diversity (CBD) which was ratified by Pakistan in 1994.⁶³ One of the principal obligation for contracting parties under Article 1 of CBD is ‘fair and equitable sharing of benefits arising out of the utilization of genetic resources, whereas its Article 15(6)-(7), 16 and 19(1)-(2) advocate fair and equitable benefit-sharing arrangements between providers and users of relevant resources’.⁶⁴ Similarly ‘any grant of access to these resources must fulfill the conditions of “prior and informed consent of the relevant stakeholders under mutually agreed terms”’.⁶⁵ Till this date only bio-safety rules and guidelines 2005 that regulate ‘the use and application of genetically modified organisms and products thereof’⁶⁶ have been promulgated. According to the third national report on implementation of CBD on Pakistan it was reported that ‘the Ministry of Environment established a separate directorate of biodiversity [only] in June 2005’⁶⁷ and the draft ABS law will be finalized soon after the completion

60 ‘Patents Ordinance 2000 as amended by Patents (Amendment) Ordinance, 2002’ <<http://www.patent.gov.pk/Patent%20Ordinance/Patents%20Ordinance%202000%20Amendments%20final.pdf>> accessed 3 April 2007

61 Rajesh Sagar, ‘Intellectual Property, Benefit Sharing and Traditional Knowledge-How Effective is the Indian Biological Diversity Act, 2002?’ (2005) 8/3 J. World Intell. Prop. 391

62 *ibid*

63 ‘Convention on Biological Diversity. Parties to the Convention on Biological Diversity’ <<http://www.biodiv.org/world/parties.asp>> accessed 3 April 2007

64 Rajesh Sagar, ‘Intellectual Property, Benefit Sharing and Traditional Knowledge-How Effective is the Indian Biological Diversity Act, 2002?’ (2005) 8/3 J. World Intell. Prop. 385

65 *ibid*

66 Government of Pakistan, ‘Pakistan Bio Safety Rules 2005’ <<http://www.environment.gov.pk/act- rules/Biosftyrules.pdf>, pp-1> accessed 3 April 2007

67 ‘The Convention on Biological Diversity Around the World, National Reports’ <<http://www.biodiv.org/doc/world/pk/pk-nr-03-en.pdf>, pp-4> accessed 3 April 2007

of the ongoing consultative process'.⁶⁸ It is interesting to note that the national environment policy of Pakistan 2005 makes no mention of the access and benefit sharing of biological resources at all whereas it is considered 'to provide an overarching framework for achieving the goals of sustainable development through protection, conservation and restoration of Pakistan's environment'.⁶⁹

This link to an access and benefit sharing regime is also important because it can have a positive affect on the intellectual property regime e.g. the Article 6 of the Indian biological diversity Act 2002 'clearly lays down that no person (this includes both Indian nationals and foreigners) shall apply for any intellectual property right in or outside India for any invention based on research or information on biological resources obtained from India without the approval of the National Biodiversity Authority'.⁷⁰

Wide Scope of Rights Conferred by Patents Regime and Issue of Exhaustion

Article 30 of patents ordinance 2000 was amended in 2002 to introduce two new provisions 1(a) and 1(b). Article 30(1)(a) declares that 'where the subject matter of patent is a product, the holder of valid patent may prevent third parties not having the owner's consent from the acts of making, using, offering for sale, selling, or importing for these purposes that product.' Article 30(1) (b) provides same kind of rights in case of a patent on process. However, these rights are limited because Article 30(5) (a) was also amended in 2002 and it declares that the rights under the patent shall not extend to 'acts in respect of articles which have been put on the market anywhere in the world by the owner of the patent or with his consent or by an authorized person or in any other legitimate manner such as compulsory licenses. This provision sets out the principle of exhaustion with reference to Article 6 and Article 28(a) of TRIPS.

Pakistan had the option to choose the principle of national exhaustion or international exhaustion. Most countries prefer national exhaustion 'which implies that parallel trading and absolute territorial restrictions are absolutely legal according to the legislation on intellectual property rights'.⁷¹ 'However absolute territorial restrictions can also have undesirable effects especially when they are put in place by most firms in an industry characterized, like the pharmaceutical industry, by high barriers to entry'.⁷² Due to this reason, 'while the European Commission has consistently ruled against any constraint in parallel trade within Europe, it has generally allowed parallel trade to be impeded between Europe and third countries'.⁷³ Similarly, India vide its Article 107(b) now allows importation of patented products by any person who is duly authorized under the law to produce and sell or distribute the product where as previously in 2002 'importation of patented products by any person was only allowed from a person who [was] duly authorized by the patentee to sell or distribute the product'. Therefore, it does not follow principle of national exhaustion anymore.

Poor Limitations on Rights Conferred by Patents and Bolar Exception

Article 30(5) of patents ordinance 2000 was amended in 2002 to introduce two new provisions (e) and (f). Article 30(5) (e) declares that 'the rights under the patent shall not extend to acts, including tests, necessary for the approval of a product for its commercialization after the expiration of the patent'. This is a very important amendment as it introduced Bolar exception into the Patents regime and will help generic manufacturers. Bolar exception 'permits the pre-market testing of generic products during

68 'ibid 34'

69 Government of Pakistan, 'National Environment Policy' <http://www.pakistan.gov.pk/divisions/environment-division/media/National_Environment_Policy_of_Pakistan.pdf, pp-2> accessed 3 April 2007

70 Rajesh Sagar, 'Intellectual Property, Benefit Sharing and Traditional Knowledge-How Effective is the Indian Biological Diversity Act, 2002?' (2005) 8/3 J. World Intell.Prop. 390

71 Alberto Heimler, 'WTO. The Presentations. Section V –Current experience with differential pricing. The Pharmaceutical Industry and Parallel Trade' <http://www.wto.org/English/tratop_e/trips_e/hosbjor_presentations_e/hosbjor_presentations_e.htm>accessed 3 April 2007

72 ibid

73 ibid

the patent term so that they can be marketed immediately upon expiration of the patent'.⁷⁴ 'The amended patents Act in India [also] provides for Bolar exception under Section 107A (a)'.⁷⁵

Similarly, the new provision (f) of Article 30(5) now declares that 'the rights under the patent shall not extend to acts done for teaching purposes in educational or research institutions'. This limitation was absent in the Patents Ordinance 2000. However, the limitations on rights conferred by patents are still very limited.

Limited Grounds for Revocation of Patent

The patents ordinance of Pakistan allows revocation of a patent by its High Court, the controller and the federal government. The High Court vide Article 46 of the patents ordinance can revoke a patent on any one or more of the grounds upon which grant of patent may be refused whereas the controller vide Article 47 can revoke a patent on any one or more of the grounds upon which the grant of the patent could have been opposed on the application of any person interested who did not oppose the grant of the patent.

Article 48 of patents ordinance 2000 that deals with the revocation of a patent by the federal government was amended in 2002 to introduce new provisions. Article 48(b) now declares that 'where the federal government is of the opinion that a patent has been obtained through concealment or misrepresentation in the application; and Article 48(c) that 'where the compulsory license granted to prevent the abuse which might result from the exercise of the exclusive rights conferred by the patent, for example, failure to work or in relation to anticompetitive practices, has not been sufficient, it may, after giving the patentee an opportunity of being heard, make a declaration to that effect in the Official Gazette, and thereupon the patent shall be deemed to have been revoked'.

These are important amendments because previously the flexibilities available under TRIPS were not fully utilized. However, the grounds of revocation are still few and vague as compared to patents act of India that provides seventeen grounds for revocation of a patent vide its Article 64 and its Article 85 that provides for revocation by the controller for non-working.

Poor Compulsory Licensing Regime

Issue of Public Health Crisis

Article 58(1) of patents ordinance 2000 was amended in 2002 to introduce two new provisions (iii) and (iv). Article 58 (iii) declares that 'where the patent holder refuses to grant a license to a third party on reasonable commercial terms and conditions' and according to Article 58 (iv) 'where patent has not been exploited in a manner which contributes to the promotion of technological innovation and to the transfer and dissemination of technology', the 'federal government may, even without the consent of the owner of the patent, decide that a government agency or a third person designated by the federal government may exploit a patented invention'. These were important amendments as the flexibility provided in Article 31 of TRIPS was utilized.

It is also worth mentioning that Article 58(4) (i) (ii) and (iii) of patents ordinance 2000 also provides for the exploitation of a patent as 'a request for the federal government' in cases of 'national emergency or other circumstantial urgency', public non-commercial use; and anti-competitive practices. However, these sub sections are fairly weak and should be strongly worded e.g. the Article 92 of Indian patents act goes a step further in utilizing the available flexibility by making a direct reference to 'public health crisis relating to AIDS, tuberculosis, malaria or other epidemics'. The patents law of Pakistan should

⁷⁴ N.Lalitha, 'Indian Pharmaceutical Industry in WTO Regime' (24 August 2002) 37 Econ. & Pol. Wkly)

⁷⁵ Sudip Chaudhri, 'TRIPS and Changes in Pharmaceutical Patent Regime in India' <http://www.who.int/hiv/amds/IDA_India-Patent-amendments-Sudip.pdf, pp-16> accessed 3 April 2007

also follow such discourse where as it is in severe grip of various epidemics like tuberculosis that constitute public health crisis and ‘is one disease that continues to plague the country, with incidence in Pakistan ranking as sixth highest in the world’.⁷⁶

Issue of Abuse of Patent

Article 59(1) of patents Ordinance 2000 was also amended in 2002 which now declares that ‘controller may issue a non-voluntary license to prevent the abuses which might result from the exercise of the rights conferred by the patent, for example, failure to work’. It implies that any abuse of a right defined under Article 30 besides failure to work can be a ground for issuance of a non-voluntary license. On the other hand previously only two grounds i.e. patented invention [was] not exploited or [was] insufficiently exploited, by working the invention locally or importing in Pakistan’ were available for issuance of a non-voluntary license. The important issue is that whether both these grounds i.e. patented invention not exploited or insufficiently exploited will fall under abuse of a right under Article 30 or not because now the amended Article 59(1) is silent on the types of abuses except one i.e. failure to work which it specifically mentions. Further the Article 44 (2) of patent rules 2003 also make an indirect reference to ‘none or insufficient exploitation of a patent in case of a chemical product intended for use in agriculture or medicines’.⁷⁷ However, the failure to specify different abuses in the patents ordinance will ultimately help the patent holders. In case of India its Article 84 of patents act is more specific as it even allows the ‘unsatisfaction of the reasonable requirements of the public with respect to the patented invention’ as one of the grounds for the grant of a compulsory license and then defines the ‘reasonable requirements’ in its Article 84 subsection (7). Lastly, the Indian patents act vide its Article 92(A) even allows compulsory license for export of patented pharmaceutical products in certain exceptional circumstances where as the Pakistan patents ordinance is silent over this issue.

TRIPS plus Commitments

Relief in Suits for Infringement

It is important to mention that vide Article 30(3) of patents ordinance 2002 ‘the owner of the patent [has] the right to institute court proceedings against any person who infringes the patent by performing, without his agreement any of the acts referred to in subsection 30(2)’ or ‘who performs acts which make it likely that infringement will occur’. This raises the question that whether a suit for infringement vide Article 60 that refers to ‘a suit in a district court during the continuance of a patent acquired by him under this ordinance in respect of an invention, makes, sells or uses the invention without his license, or counterfeits it, or imitates it’ can be brought on the grounds that it is likely that infringement will occur’. According to Hassan Irfan Khan in ‘a recent decision in the case of Merck & Co. Inc. and another v Hilton Pharma (Private) Limited (reported as SBLR 2002 Sindh 1194), in which during the existence of a process patent in relation to a pharmaceutical product, the defendant obtained marketing approval for launching and selling the product covered by the patent. After conducting a detailed hearing on the injunction application, the learned single judge, while rejecting all defenses, held that it is not necessary that the suit should be filed only upon actual infringement of the patent – rather, threatened infringement action is also permissible’.⁷⁸ It is very clear that a suit for likely infringement is a TRIPS plus commitment as it is neither mentioned in Article 28 of TRIPS nor under its Article 44, 45 and 46 relating to injunctions, damages and other remedies respectively. The only reference ‘to prevent an infringement’ regarding provisional measures vide Article 61(2) (a) (i) of patents ordinance 2002 would have been enough.

76 ‘Pakistan Millennium Development Goals Report 2005’ <<http://www.un.org.pk/undp/publication/PMDGR05.pdf>> accessed 3 April 2007

77 ‘The Patents Rules 2003’ <<http://www.patent.gov.pk/Patent%20Ordinance/Patents%20Rules%202003.pdf>> accessed 3 April 2007

78 Hassan Irfan Khan, ‘United Trademark & Patent Services’ <http://www.buildingipvalue.com/05_AP/331_334.htm> accessed 3 April 2007

Article 61(1) of patents ordinance 2000 was amended in 2002 to introduce two new provisions (a) and (b) to replace previously provided ten provisions. The Article 61(1) (a) now allows the court in a 'suit for infringement to grant relief by way of damages, injunctions or accounts provided that, where permitted, effective provisional measure may also be ordered by the court.' This amendment is certainly better than the previous subsections but 'fails to provide the safeguard available within Article 44 of TRIPS, which effectively allows member states to limit remedies on the remuneration that would be available to the patent holder where third parties are authorized by the government, without the authorization of the right holder, to use the patented good rather than issue an injunction'.⁷⁹

Data Protection of Patents and Ethics

'Article 39.3 of TRIPS is being interpreted by the MNCs and some developed countries, particularly USA to mean that WTO member countries are required to grant data exclusivity for a specified period of time'.⁸⁰ However, according to Sudip Chaudhri, scholars like 'Correa ha[ve] argued [that] countries have the discretion to do so not through data exclusivity but by proscribing situations where a competitor obtains the results of testing data through fraud, breach of confidence or other "dishonest" practices and derive a commercial advantage'.⁸¹ 'To get marketing approval for a new drug developed, innovator companies are required to submit test and clinical data relating to safety and efficacy to national health authorities'⁸² and 'if the law of a country provides for data exclusivity, i.e., grants exclusive rights to the innovator company to prevent subsequent applicants from using the data submitted, then generic companies cannot use such data till the data exclusivity period ends'.⁸³

Similarly, it raises 'an ethical question as to whether a population should be subjected to repeated testing'.⁸⁴ On the other hand 'DE would render redundant the use of compulsory licensee, a market exclusivity waiver on patents provided by the TRIPS agreement in the event of a global health emergency'.⁸⁵

Pakistan has also been under pressure from United States since 2003 when its special 301 report stated that 'there is no protection for confidential test data'.⁸⁶ Similarly, in 2005 its special 301 report again stated that it is 'concern[ed] [with] lack of protection against the unfair commercial use of data submitted for marketing approval of pharmaceutical and agricultural chemical product'.⁸⁷ Finally, its special 301 report for 2006 reported that 'the United States is also encouraged that Pakistan has committed to move forward with implementing protection to effectively protect test and other data submitted by pharmaceutical companies seeking marketing approval for their products against unfair commercial use'.⁸⁸ This is a very bad commitment and it has been reported that 'Ministry of Health and Ministry of Commerce [have] agreed to amend the Drugs Act of 1976 for protecting undisclosed data of pharmaceutical companies seeking registration of new generics, which could delay the entry of cheaper brands in the market'.⁸⁹ However, so far there has been no amendment in its Drugs (Licensing, Registering and Advertising Rules) 1976. The relevant provision available is its Article

79 K.M.Gopakumar, Tahir Amin, 'Patents (Amendment) Bill 2005: A Critique' (9 April 2005) 40/15Econ. & Pol. Wkly

80 Sudip Chaudhri, 'TRIPS and Changes in Pharmaceutical Patent Regime in India' <http://www.who.int/hiv/amds/IDA_India-Patent-amendments-Sudip.pdf, pp-19> accessed 3 April 2007

81 ibid

82 'ibid 18'

83 ibid

84 Sarah Hiddleston, 'Drug Policy Data for Leverage' (2006) 23/16 *Frontline* 122

85 ibid

86 'Office of the United States Trade Representative: Monitoring and Enforcement' <http://www.ustr.gov/Document_Library/Reports_Publications/2003/2003_Special_301_Report/Special_301_Watch_List.html> accessed 3 April 2007

87 'Office of the United States Trade Representative: Monitoring and Enforcement' <http://www.ustr.gov/assets/Document_Library/Reports_Publications/2005/2005_Special_301/asset_upload_file519_7649.pdf> accessed 3 April 2007

88 'Office of the United States Trade Representative: Monitoring and Enforcement' <http://www.ustr.gov/assets/Document_Library/Reports_Publications/2006/2006_Special_301_Review/asset_upload_file190_9339.pdf> accessed 3 April 2007

89 Dawn, 'Change in Drugs Act likely to delay entry of cheaper brands' <<http://www.dawn.com/2007/03/16/nat5.htm>> accessed 3 April 2007

30(10) (b) according to which ‘if a clinical information for a drug approved by the Drug Regulatory Authority in any of the said countries, the same clinical information shall be considered approved for drug registration in Pakistan’.⁹⁰

Conclusion

It is evident that the amended patents ordinance has failed to take full advantage of the available flexibilities/opportunities provided under the TRIPS Agreement due to its wider scope of definitions, lax criteria for patentable inventions, poor compulsory licensing regime, relief in suits for likely infringement and its latest commitment to data protection. Moreover, another important flexibility in the form of ‘the transition period which was envisaged according to TRIPS agreement was not properly given to the national [pharmaceutical] industry’⁹¹ of Pakistan. All these failures have serious implications for the sustainable development of the country especially when its effects have a direct bearing on the health, agriculture and environment sectors of Pakistan.

There is a pressing need at the moment in Pakistan to take advantage of these opportunities/flexibilities by way of bringing amendments in the patents amended ordinance 2002 by taking into consideration the proposals of all domestic relevant stakeholders instead of relying on a foreign legal transplant. Similarly, subsidiary legislation should also be undertaken at once in order to develop cross linkages with the other sectors in order to develop an effective legal framework to support sustainable development in the country for example Pakistan has yet to fulfill its obligations under Article 27.3(b) of TRIPS that ‘provides for the protection of plant varieties either by patents or by an effective sui generis system or by any combination thereof’. Unfortunately the ‘draft plant breeders rights ordinance 2000’⁹² also favors the MNCs instead of farmers rights and it is reported that Monsanto ‘has been working overtime to get Pakistan to dilute [the] proposed law’⁹³. ‘How biased is the law in favor of foreign multinationals can be seen from the fact that a penalty clause against such companies was dropped in the latest draft although it was a part of the earlier drafts’⁹⁴. There is a good opportunity available for Pakistan that acceded to ‘International Treaty on Plant Genetic Resources for Food and Agriculture’⁹⁵ in 2003 that it should develop a sui generis law on the protection of plant variety keeping in view the rights of farmers and local communities and breeders. However, it should not frame the law on the Union for the Protection of New Plant Varieties (UPOV) model of 1991 as it is heavily tilted towards industrial breeders. A comparative study of the Organization of African Unity, OAU’s Model Law and Protection of Plant Varieties and Farmers’ Rights Act, 2001 of India should also be undertaken in this regard.

Similarly, Pakistan should avail the opportunity of the development of a framework for an access and benefit sharing regime for its biological resources and traditional knowledge. The amended patents ordinance 2002 has made a link with the ‘traditionally developed or existing knowledge available or in possession of a local or indigenous community vide its Article 8(2) (c)’. However, its cross linkage with a benefit sharing regime needs to be established in order to support the local traditional knowledge holders at the earliest in order to effectively integrate the legal frameworks established under the TRIPS.

90 ‘Ministry of Health. Drugs (Licensing, Registering and Advertising Rules), 1976’ <<http://www.dcomoh.gov.pk/regulations/drugrules2.php>> accessed 3 April 2007

91 Zaka-Ur-Rahman Muhammad, ‘Use of Intellectual Property for Development of Pharmaceutical Sector’ <<http://www.ipo.gov.pk/>> accessed 3 April 2007

92 ‘Plant Breeder’s Rights Ordinance, 2000’ <http://www.grain.org/brl_files/pakistan-pbr-2000.pdf> accessed 3 April 2007

93 Mudassir Rizvi, ‘Monsanto Fiddles with Plant Protection Act’ <<http://grain.org/bio-ipr/?id=174>> accessed 3 April 2007

94 ‘Policy Brief. South Asia Watch on Trade, Economics and Environment. WTO Agreements and Farmers Rights in Mountain Areas of Pakistan’ <<http://www.sawtee.org/pdf/publication/policypakistan.pdf>> accessed 3 April 2007

95 ‘International Treaty on Plant Genetic Resources for Food and Agriculture. Signatories and Ratifications’ <<http://www.fao.org/Legal/TREATIES/033s-e.htm>> accessed 3 April 2007

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SPO DISCUSSION PAPER SERIES

**Karachi's Violence:
Duality and Negotiation**

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About the Author

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KARACHI'S VIOLENCE: DUALITY AND NEGOTIATION

Introduction

This paper offers a series of perspectives on political conflict in Karachi based on the analysis of historical data, projections and scenarios. There are many divergent views about the root causes of violence in Karachi as well as possible ways of ending or reducing the violence. This paper attempts to weave a number of pertinent issues – political party rivalry, ethnicity, and duality – into a single narrative about dangers and possibilities in Karachi. It makes extensive use of publicly available secondary data on violence, voting patterns, ethnic demography, development outcomes, and economic opportunity.¹ None of the data analysis provided here is entirely new to seasoned observers of Pakistan, Sindh and its capital Karachi. What might be different here is the peculiar way in which these various elements are made to fit into a bigger story.

In a nutshell, this paper revolves around emergent trends and future scenarios of politics in Karachi, Sindh and Pakistan, in that order. But the political story is shaped here by ethnic demography, class and developmental inequalities, and future economic opportunity. I will begin with the premise that much though not all violence in Karachi is somehow linked to relations between the city's main political parties. However, this is not as bad as it might appear. I will reiterate using available data on voting behaviour that ethnicity remains a marker of political preference to a great degree, and has done so for a long period of time. Political parties have stable support bases among ethnic groups and localities, and this too is not as bad as it might appear.

Secondary data is presented to highlight changing trends and likely scenarios with respect to ethnic demography. These data suggest that Karachi political parties have reason to eye future demographic patterns as threats as well as opportunities, but that threat perceptions need not be as frightening as they may appear at first glance. The city will also continue to provide opportunities to political entrepreneurs because of inequalities based on class and development outcomes across the city's population and communities. Models of urban development that are based on mega projects may not be the only way forward for parties to expand and diversify their support bases.

Karachi has historically been the locus of opportunity for the rest of the country, but its position within Sindh sharpens the economic dualism between urban and rural areas, agriculture and industry, and the two major ethnic groups of Sindh. The city can be an instrument for the development of the rest of Sindh, but also a channel through which Sindh's resources can be exploited while excluding its population from significant benefits. While the future economic scenario for Sindh looks bright on paper, it also demands great foresight on the part of the political and civil society of the province.

Political violence escalates

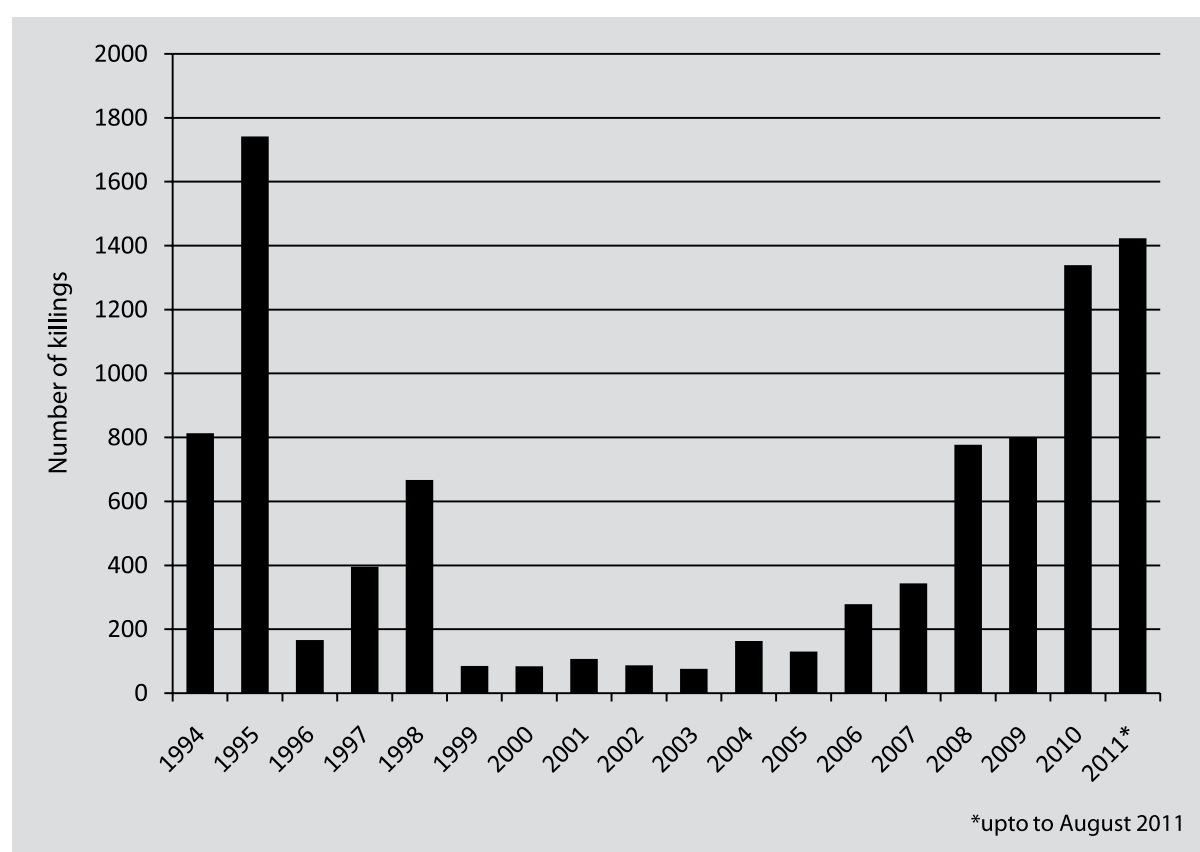
According to data compiled by the Human Rights Commission of Pakistan (HRCP), over 1,100 people were killed in Karachi during the first six months of 2011, of whom 490 fell victim to political conflict.² The Citizen's Police Liaison Committee (CPLC) which is a semi-official body that works with the police force, reported that there had been 1,423 killings in Karachi between January and August 2011, compared with 1,339 such killings in all of 2010 (Figure 1).³ The 2010 figure itself represented a ten-fold increase over a five-year period, with steep rises in every year in between.

1 Population data from various Population Censuses carried out by Government of Pakistan and election data from Dawn Election Data compiled through Election Commission of Pakistan sources

2 The Express Tribune, 6th July 2011. 'HRCP report indicates rise in killings this year' <http://tribune.com.pk/story/203309/hrcp-report-indicates-rise-in-killings-this-year/> [online], accessed on 22nd September 2011

3 Citizens Police Liaison Committee (CPLC), 2011. 'Development of crime patterns', <http://www.cplc.org.pk/content.php?page=26> [online], accessed on 22nd September 2011.

Figure 1: CPLC data on killings in Karachi

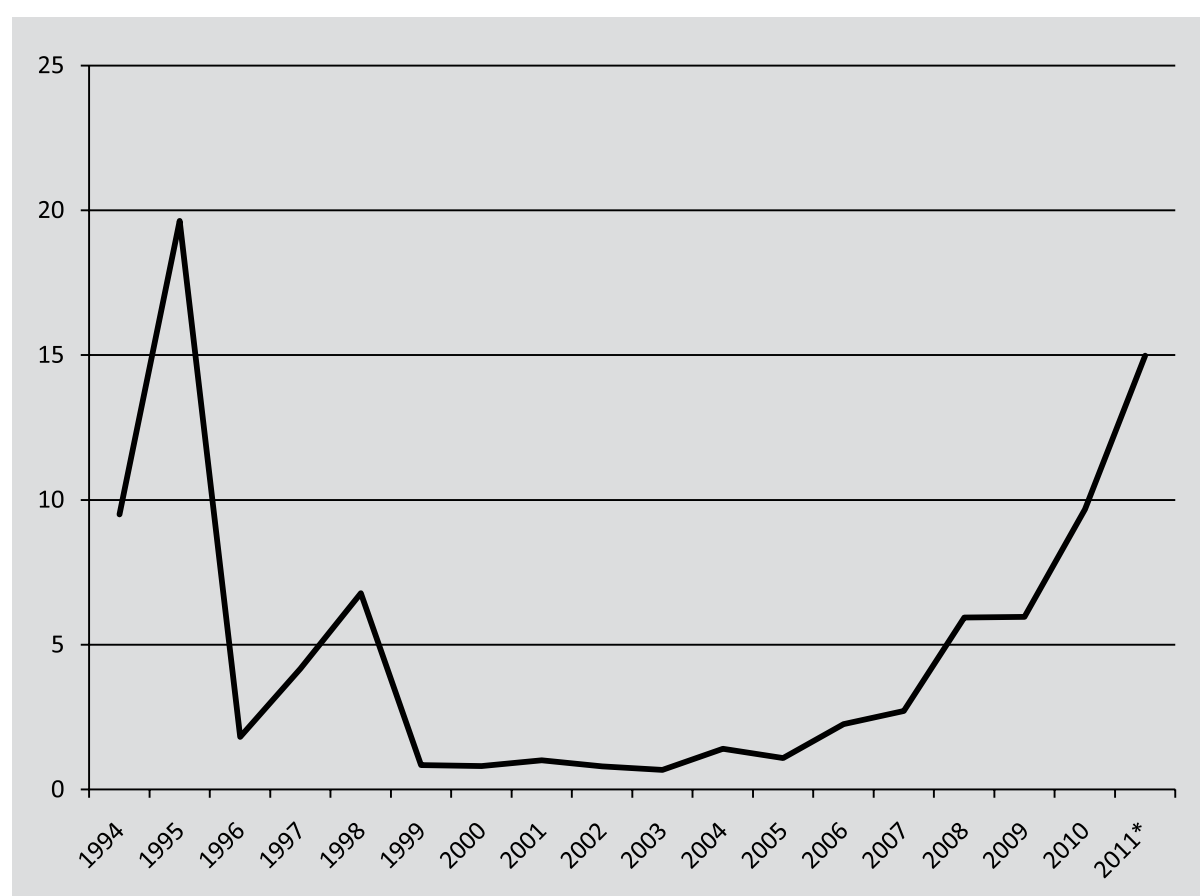


Source: CPLC compilation based on open sources

Although CPLC data, based on public sources, do not separately identify politically- motivated killings, it is widely understood that there is close correlation between political and general violence in the city. The Pakistan Institute for Peace Studies, which also relies on public sources, and reports casualties due to various forms of political violence across the country, found that ethno-political violence in Karachi claimed 636 lives in 2010, compared with 600 lives lost in the Balochistan uprising and 2,300 deaths due to the jihadist insurgency.⁴ On current trends, Karachi's political violence is likely to have become comparable, in terms of lives lost, with the war with the Taliban and related jihadists in the north of Pakistan.

4 Pakistan Institute for Peace Studies (PIPS), 2011. 'Pakistan Security Report 2010'

Figure 2: Homicide rate (per 100,000) based on CPLC data



Source: Author's calculations based on CPLC data and population trends

The period since the end of June has been particularly unstable. That was when the Muttahida Quami Movement (MQM) which is the largest political party of the city walked out of the coalition government in the Sindh province in which it had partnered with the Pakistan People's Party (PPP) and the Awami National Party (ANP), the other two parties with significant political support in Karachi. Over 100 people were killed through targeted assassinations and politically-motivated ethnic killings in early July, mostly in the western quarters of the city. The situation calmed down briefly before flaring up again in mid- August, this time with much of the violence being centred in the city's south.

There have been targeted assassinations of local leaders or supporters of various parties. The killing of a party functionary is quickly followed up by the aggrieved group naming a rival political party as the perpetrator. This often leads to a strike call by the aggrieved group which is enforced by its armed supporters often resulting in the killing of random individuals belonging to the ethnic support base of the rival party. There have also been increasing cases of abduction, torture and murder of people suspected of being rival political supporters or of simply belonging to a rival ethnic group. This is reminiscent of the 1990s when trussed up bodies bearing torture marks turned up in gunny bags, sometimes with pieces of paper

bearing gruesome messages of vendetta. Besides killings of political and ethnic rivals, extortion has become particularly vicious with several cases of grenade attacks on non-compliant business premises. Ominously, casualties have recently included a number of Sindh police personnel killed or wounded while intervening in armed clashes between rival groups.

At moments of heightened conflict between parties the implied ethnic associations are used by armed party cadres to deliver messages to one another. Although none of the parties openly admit to ethnic violence, most observers agree that political disputes often do take an ethnic colour with attacks on ordinary citizens belonging to particular ethnic groups being used to settle scores.

Ethnic demography and city politics

Karachi is not only Pakistan's largest city it is also its most diverse in terms of its ethnic demography. In the last census carried out in 1998 under half of its residents reported their mother tongue as Urdu. They are mostly partition migrants from northern India and their descendants, who may also refer to themselves as Mohajir. Sindhi and Balochi speakers, who were the overwhelming majority in 1947, accounted for 7 and 4 per cent respectively in 1998. Punjabi-Seraiki speakers counted in as the second largest linguistic group at 17 per cent, while 11 per cent reported their mother tongue as Pushto. Over 12 per cent of the population had 'other' mother tongues including Kachhi and Gujarati-speakers many of whom are also descendants of partition migrants, but not always self-classified as Mohajir.

There are ethnic patterns in Karachi's geography (Table 1). Language data in the 1998 census which are reported on the basis of the former districts of Karachi division show that District Central, and to a certain extent District East were predominantly Urdu-speaking while other districts were more or less ethnically heterogeneous.

Table 1: Distribution of population by reported mother tongue –Karachi and former districts in 1998						
	Karachi	Central	West	East	South	Malir
Urdu	49	74	40	61	26	16
Punjabi/Seraiki	16	11	15	17	21	20
Pushto	11	5	25	6	8	21
Sindhi	7	2	6	4	11	25
Balochi	4	1	5	2	10	9
Other	12	9	10	11	25	10

Source: Population Census 1998

The political preferences of the city's ethnic groups were distinguishable as early as the 1970s, when most partition migrants held out for Islamist parties while Sindhis, Baloch and other pre-1947 communities opted for the Pakistan Peoples Party (PPP). In the mid-1980s the city's politics became overtly ethnicised with the emergence of the Mohajir Quami Movement (MQM) which claimed that the partition migrants and their descendants formed a distinct ethnic group. The PPP retained its support in its traditional voting base, and religious parties were virtually eliminated as serious contenders in the city. Since the mid-2000s a new entrant has been the Pashtun nationalist Awami National Party (ANP) which has made inroads into Karachi's Pushto-speaking communities. Although the MQM changed its name from Mohajir to Muttahida to reflect its formal disavowal of ethnic nationalism, it remains strongly associated with Urdu-speakers. While the PPP has a more ethnically diverse support base it is widely assumed that Baloch and Sindhi populations of particular localities are 'their people'.

Voting data from successive elections reveal a number of durable patterns that appear to hold despite various qualifications expressed by election analysts on the transparency of any particular contest. The MQM is, obviously, the largest party in terms of vote share, and even at its lowest level in 2002 it managed to gain sufficient votes to win three-quarters of national and provincial assembly seats in the city. At the same time, the PPP is shown to have an enduring presence in the city which seems to have

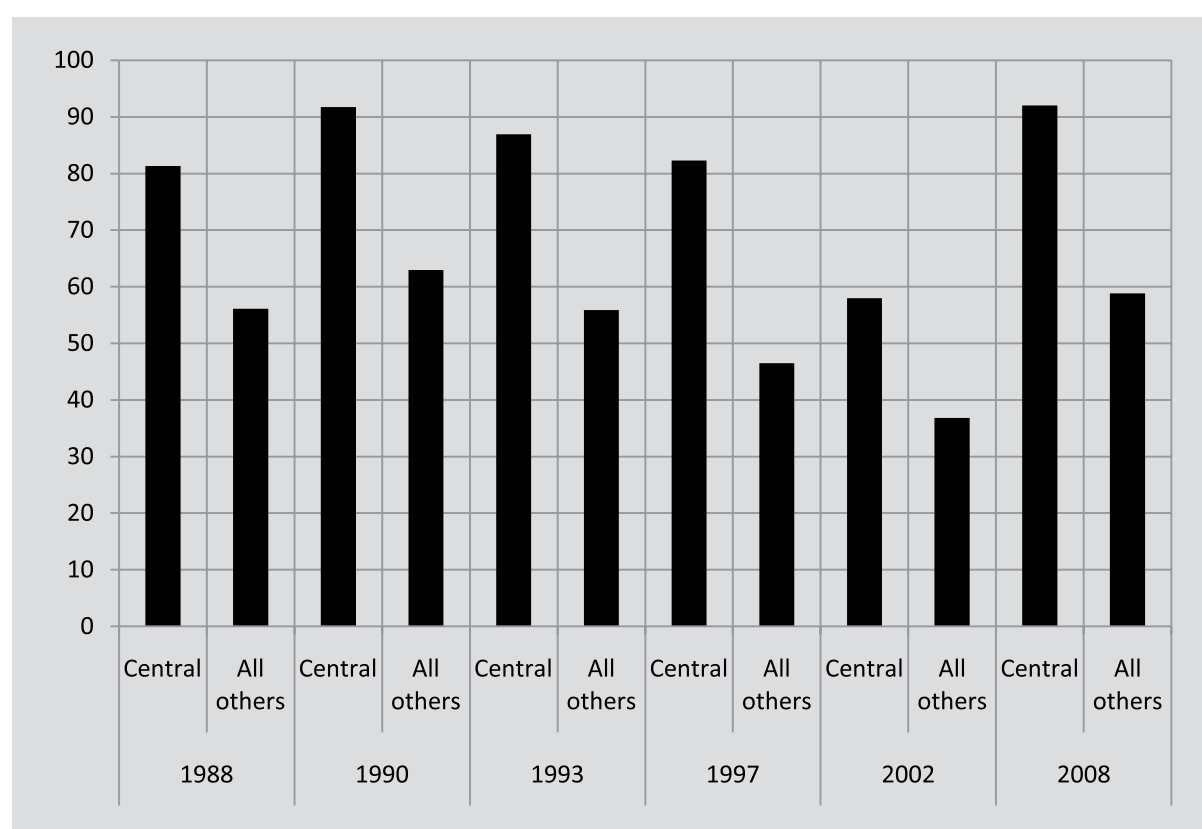
recovered steadily from its low point in 1997. The PPP's vote share is not always reflected in its share of seats won in Karachi, but its presence in the city can act as a vital political bridge between rural and urban areas of Sindh. Although the ANP has made great progress recently, by winning two provincial seats, its vote share up to now has been tiny. In fact, even in the 2008 elections it barely registered an increase over its vote share of 1988 – the difference was the party's strategic focus on winnable constituencies. The ANP may well emerge as a more significant vote-taker in future elections. The religious parties and the Muslim League (combined) have a generally weak presence in terms of vote shares, but they cannot be written off, given their performances, respectively, in 2002 and 1997.

Table 2: Party vote share in Karachi - provincial assembly elections

	MQM	PPP	PML	ANP	MMA/JUI
1988	63	20	6	2	0
1990	71	16	7	2	0
1993	65	19	4	1	0
1997	56	10	22	1	0
2002	42	13	4	1	26
2008	68	22	4	2	1

Source: Author's calculations based on Dawn Election Data, compiled from Election Commission of Pakistan sources

Figure 3: MQM vote share (per cent) in District Central and elsewhere in Karachi – provincial assembly elections 1988 to 2008



Source: Author's calculations based on Dawn Election Data, compiled from Election Commission of Pakistan sources

The ethnic and locality based patterns of politics within the city are visible from the relative vote shares of the largest party MQM in the predominantly Urdu-speaking District Central constituencies and other areas of Karachi (Figure 3). Although the MQM was clearly a major vote taker across the city, its vote share in District Central remained nearly 60 per cent even in 2002 when its overall vote share was down to 42 per cent. In fact, it enjoyed a virtual monopoly in District Central constituencies throughout. It was really in areas outside District Central that the party had to contend with strong competition from other parties.

In terms of electoral politics, it might be argued that the MQM ‘over-performed’ in District Central – it could afford to lose many votes and yet hold on to all seats there. Although we do not have precise data on the vote banks of other parties, it is likely that they too rely on ethnic and locality-based pockets of support, and possibly even monopoly. In terms of electoral politics over-performing in a particular vote pocket might correspond with under-performing elsewhere. For a party with a strong ethnic association it might pay to soften its ethnic image in order to pick up votes outside its core area, particularly if it can afford to lose some votes in the core area. The idea that parties in Karachi might be ‘over-performing’ in their ‘own areas’ will be important in making sense of future political scenarios in the city.

Demographic trends and scenarios

Karachi’s demographic trends and scenarios excite much speculation and give rise to various claims, counter-claims, fears and suspicions. We often hear wide-ranging the unsupported claims about the actual size of the population with figures as high as 20 million being cited sometimes in order to lend urgency to appeals that city’s problems are already unmanageable. In fact, the source of most demographic data is the population census, and the last one was held in 1998. The census is a controversial event in many places and at the best of times, and there is likelihood that the on-going census will be closely questioned by various critics. With these qualifications, it is still possible to say something grounded about Karachi’s population trends.

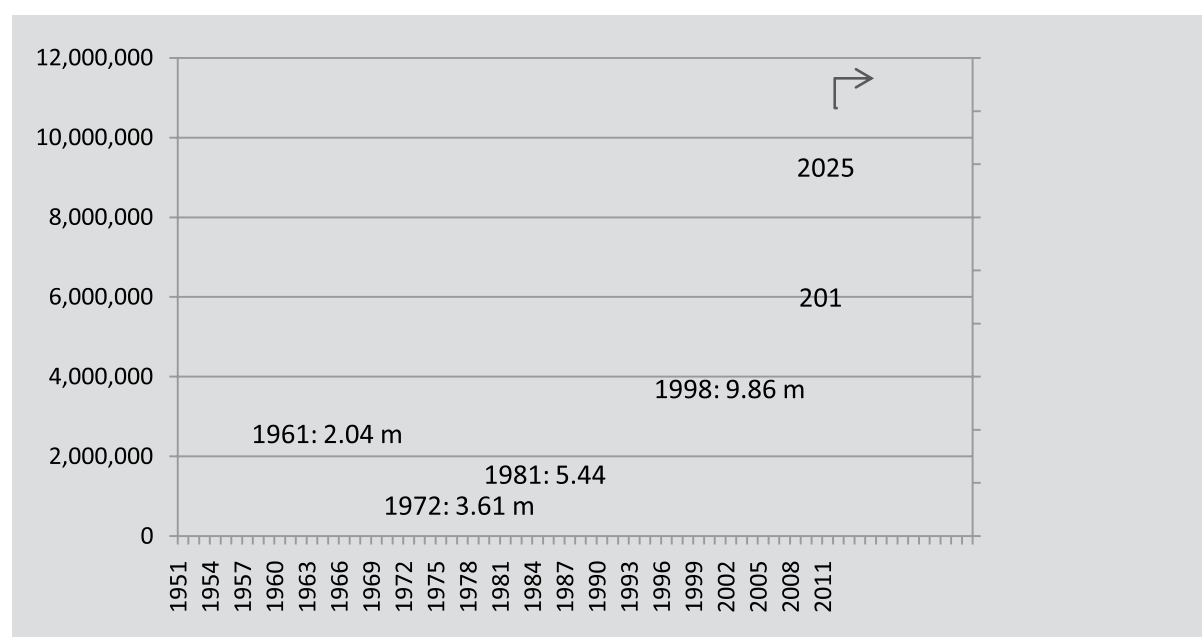
The 1998 census found Karachi to have a population of 9.86 million. It had risen at an average annual rate of 3.6 per cent from 5.44 million in 1981, which was the year of the previous census. The rate of growth had declined steadily between every census since 1951, which means that although Karachi was growing rapidly throughout this period, it was steadily growing less fast. Of course, in terms of absolute numbers more people were added to the city’s population, but they progressively represented a smaller proportion of the incumbent residents. Karachi’s rate of growth was significantly higher than that of Pakistan as a whole, as migrants from across the country came here. But there was a slowing down in this process too, as the gap between the growth rates of the city and the country narrowed.

Projecting onwards these trends in growth rates, Karachi’s population is estimated at around 14.25 million in 2011 (Figure 4). By 2025 we can expect the city to have just below 20 million people. Under most growth scenarios, Karachi will plateau out at around 8.5 per cent of the national population over the next few decades.

The city’s ethnic demography has also been undergoing significant changes, and it is a reasonable expectation that these changes will also happen less slowly in the coming decades.

Using the change in the ethnic composition between 1981 and 1998 as a guideline Figure 5 projects the language composition of the city in 2011 and 2025. Urdu speakers lost their majority status in the city between the last two rounds of the census in 1981 and 1998. Given that migration from non-Urdu speaking communities elsewhere in Pakistan is an important contributor to Karachi’s growth, this is understandable. Those speaking Pushto and Sindhi increased as a proportion of the population. For the purposes of this analysis Punjabi and Seraiki speakers are combined together because earlier rounds of the census failed to make adequate distinction between them. This group too registered an increase, mostly due to an increase in Seraiki speakers.

Figure 4: Population trends and projections – 1951 to 2025

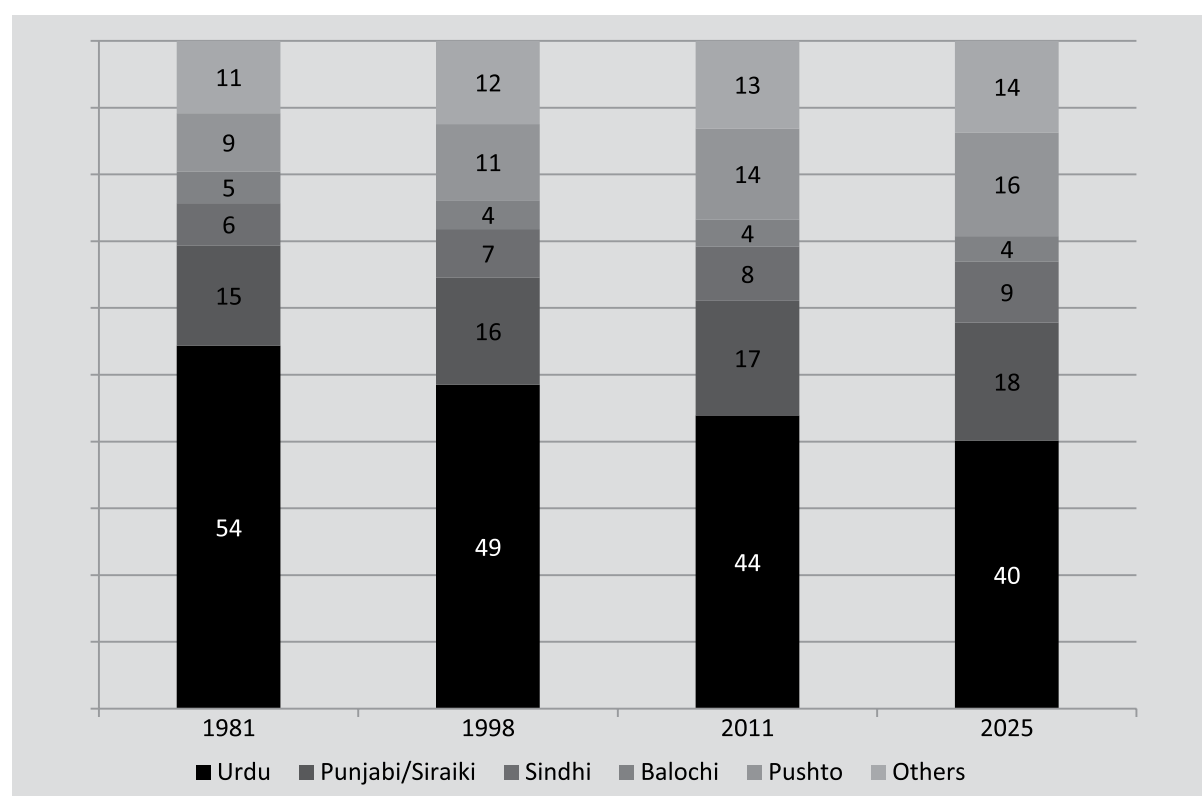


Source: Author's projections using population census data

Projecting these trends onwards, it is estimated that Urdu speakers constitute around 44 per cent of the city's population in 2011. Punjabi/Seraiki speakers are the next largest group, followed by Pushto speakers. Looking further ahead, the Urdu speakers will remain the largest plurality, and even though their proportion will have declined to 40 per cent, they would still be twice as numerous as any other single language group. The catch-all category 'others' which includes various ethnic groups will also remain substantial. The ethnic distribution of the population is unlikely to change very dramatically beyond 2025, as growth rates decline across the country, other urban centres emerge, and Karachi's share of Pakistan's population plateaus out.

As Karachi becomes more ethnically heterogeneous, it will naturally favour cross-ethnic political coalitions either between or within parties. It will become increasingly unrealistic for any one party to dominate the city on the basis of ethnic affiliation alone. Some might interpret this outlook as an unwelcome one for the MQM. Given the history of the party, and its success in gaining virtual monopoly in predominantly Urdu-speaking constituencies, there may well be some substance to fears of changes in the city's ethnic demography. But the same problem could well affect other parties such as the ANP and the PPP if they are too exclusively associated with particular ethnic vote banks. At the same time, there are opportunities for political parties to soften their ethnic affiliation and appeal to more diverse ethnic and locality-based pockets of support.

Figure 5: Trends and projections of the city's ethnic demography – 1981 to 2025



Source: Author's projections using population census data

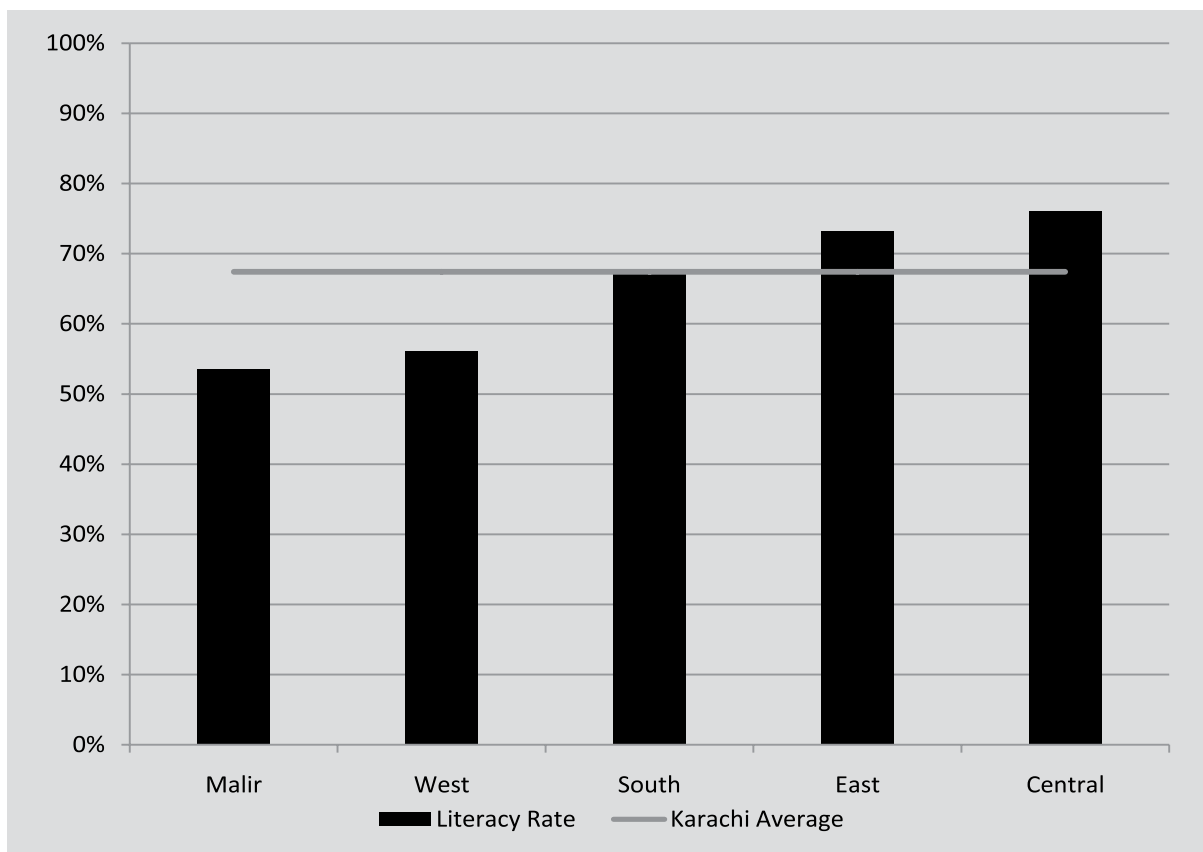
Localities, class and development interventions

Karachi is, obviously enough, not just about ethnicity. There are many more sources of social, economic, cultural and political diversity and plurality. Around half if not more of Karachi's population lives in localities that started life as unplanned settlements, and the poorer among the successive waves of migrants as well as those who claim to be indigenous have found sustenance in these localities. Unplanned settlements, and the slow process of regularisation associated with these, are often cited as sources of heightened political and ethnic conflict in the city.

Inequality between localities in terms of income, wealth, education, and infrastructure is a hallmark of any major city and Karachi is no exception. Data from the 1998 population census is used to illustrate the nature of socio-economic heterogeneity in Karachi at a given moment in time. The census provides data at the 'charge circle' level. This is not an administrative unit, but merely a territorial unit used by the census organisation. There were 1,286 charge circles in Karachi for which we have information on population, literacy and basic infrastructure. A charge circle allows us to go much below the Union Council which is the lowest level of political representative under SLGO 2001. There were 180 Union Councils in the 18 towns of Karachi, and therefore an average of around 7 charge circles in each Union Council.

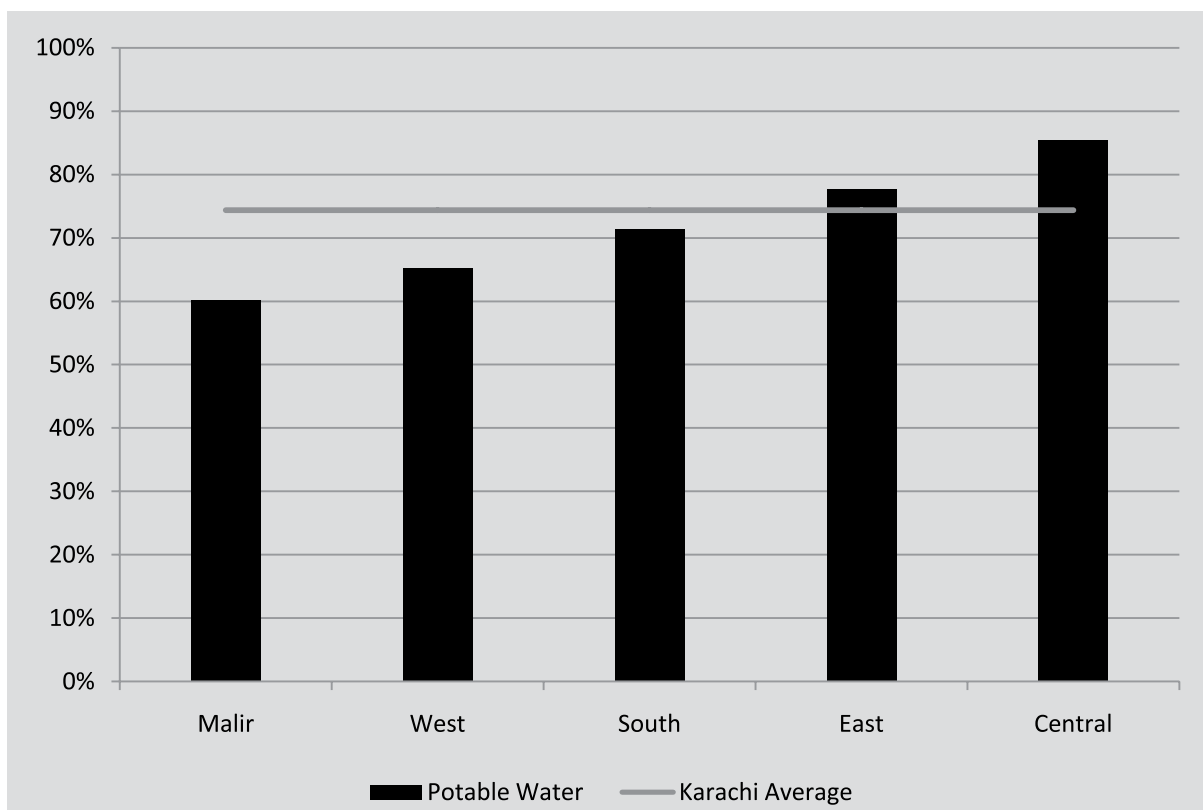
Things have obviously changed since 1998. Many of the charge circles that had low literacy rates, or low levels of service provision have become more developed. But the snapshot that the census presents is still useful because it tells us something about the geography of inequality. Even if many charge circles of 1998 have changed the fact remains that further population clusters have been added to the city thus creating new pockets of class-based inequality, sometimes organised along ethnic lines. These new pockets of relative deprivation are what allow the city to function, as it consumes the labour offered by their residents. They also offer potential for development and opportunities for political entrepreneurs to respond to people's needs.

Figure 6: Literacy rate across Karachi and in former districts



Source: Population census 1998

Figure 7: Availability of potable water, across Karachi and its former districts

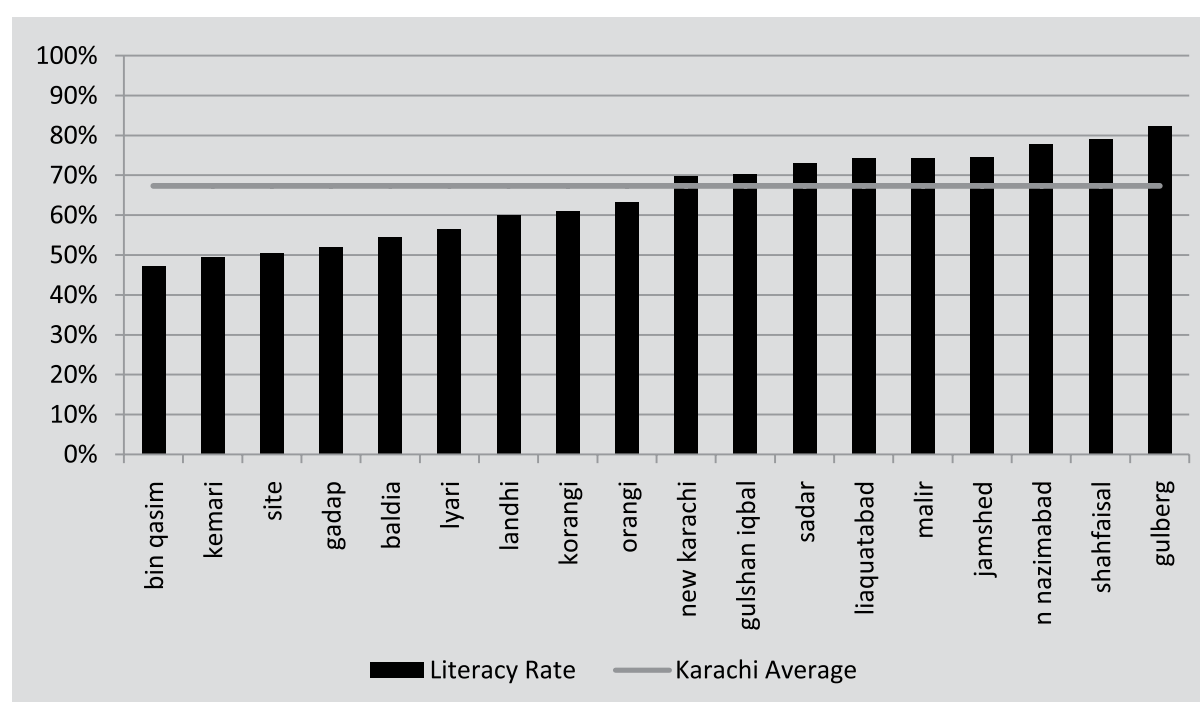


Source: Population census 1998

Karachi had a relatively high overall literacy rate compared to Sindh and Pakistan taken as a whole. There was considerable variation within Karachi though, with District Central at over 75 per cent and Malir at just above 50 per cent (Figure 6). Similarly, while around 75 per cent of the households across the city had access to potable water in 1998, the proportion was around 85 per cent in District Central and 60 per cent in Malir (Figure 7). The variation across the city was starker still when we look at towns rather than the former districts.

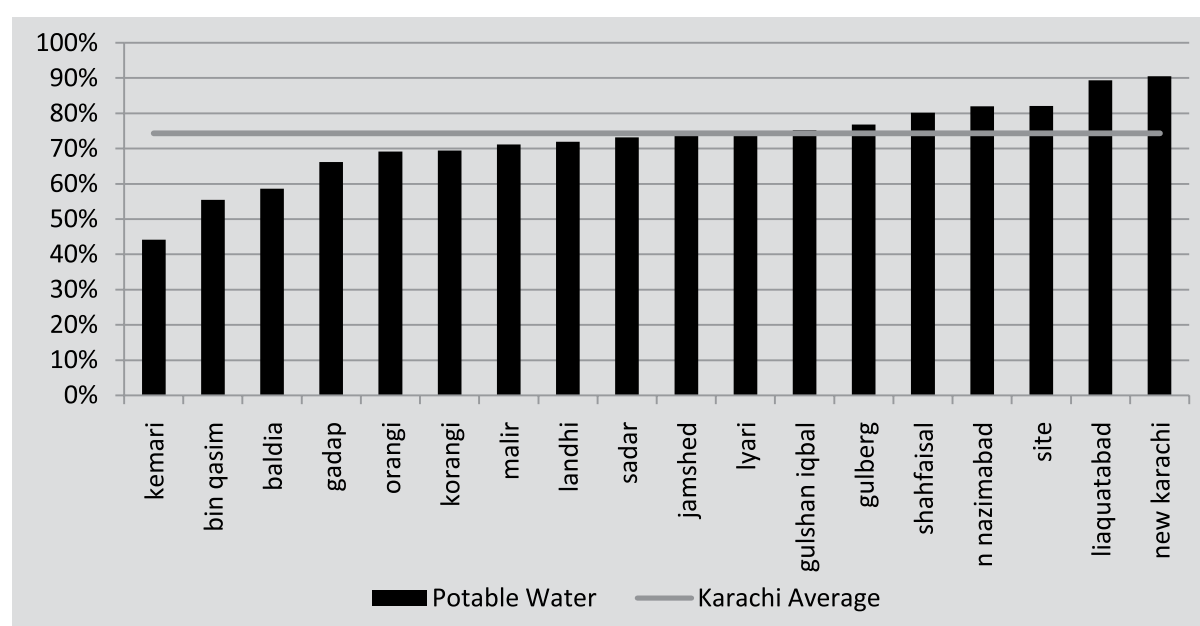
Gulberg town had a literacy rate of over 80 per cent while at the bottom, Bin Qasim, was well below 50 per cent (Figure 8). The towns that were the best and worst served were different when it came to potable water, but the inter-town contrasts were equally striking. In Liaqatabad and New Karachi around 90 per cent of homes had potable water, while in Kaemari the proportion was just above 40 per cent (Figure 9).

Figure 8: Literacy rate across Karachi and its towns



Source: Population Census 1998

Figure 9: Availability of potable water across Karachi and its towns

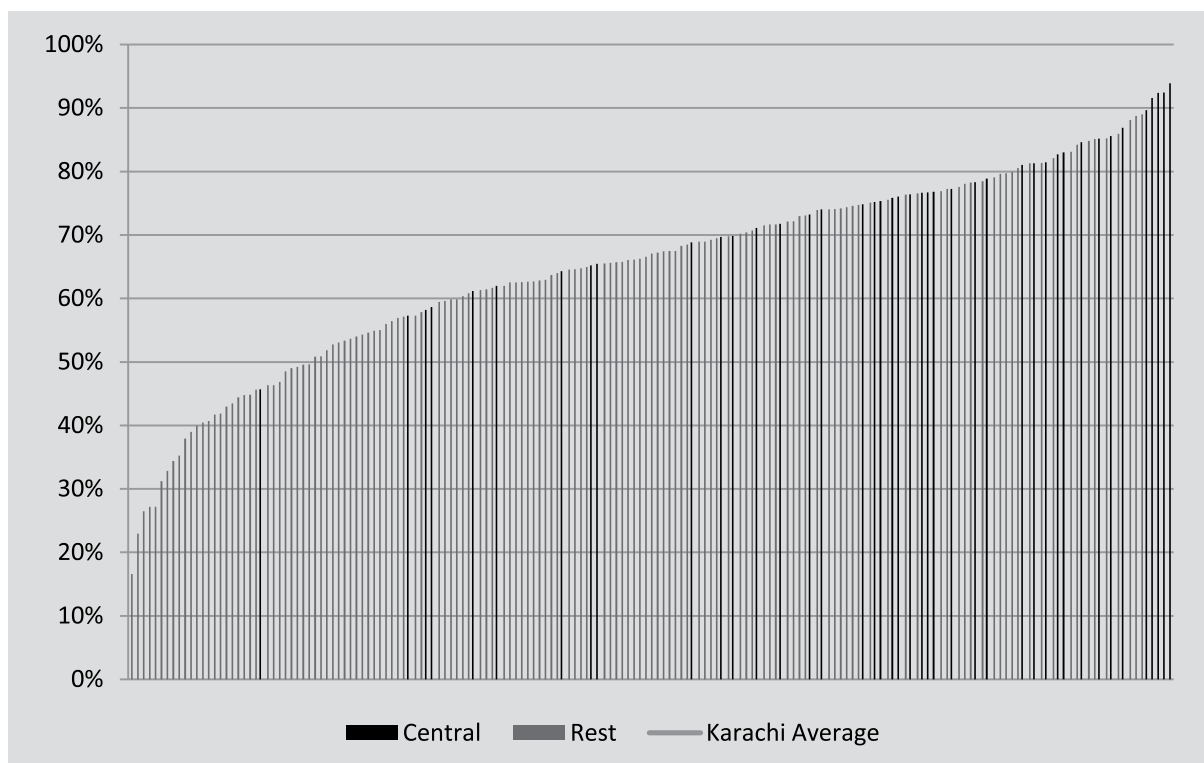


Source: Population Census 1998

These differences, which can be broadly taken as measures of socio-economic heterogeneity, may have diverse causes. It is possible that the literacy rates are lower in communities where a large proportion of the population is made up of relatively recent rural-urban migrants, and that over time there is a natural process of catching up. Similarly, in newer localities of migrants it may take longer to provide the infrastructure necessary for supplying potable water. There are also those who would argue that that these forms of inequalities and dualities are integral to the hierarchies and power relations ingrained in models of urban planning prevalent in Pakistan. There may also be valid complaints of discrimination against particular localities at different moments in time. The fact of heterogeneity suggests, however, that there will be room for political mobilisation around issues of regularisation and public service provisioning. In some cases this mobilisation might correspond with ethnicity, but in most cases it will correspond with class.

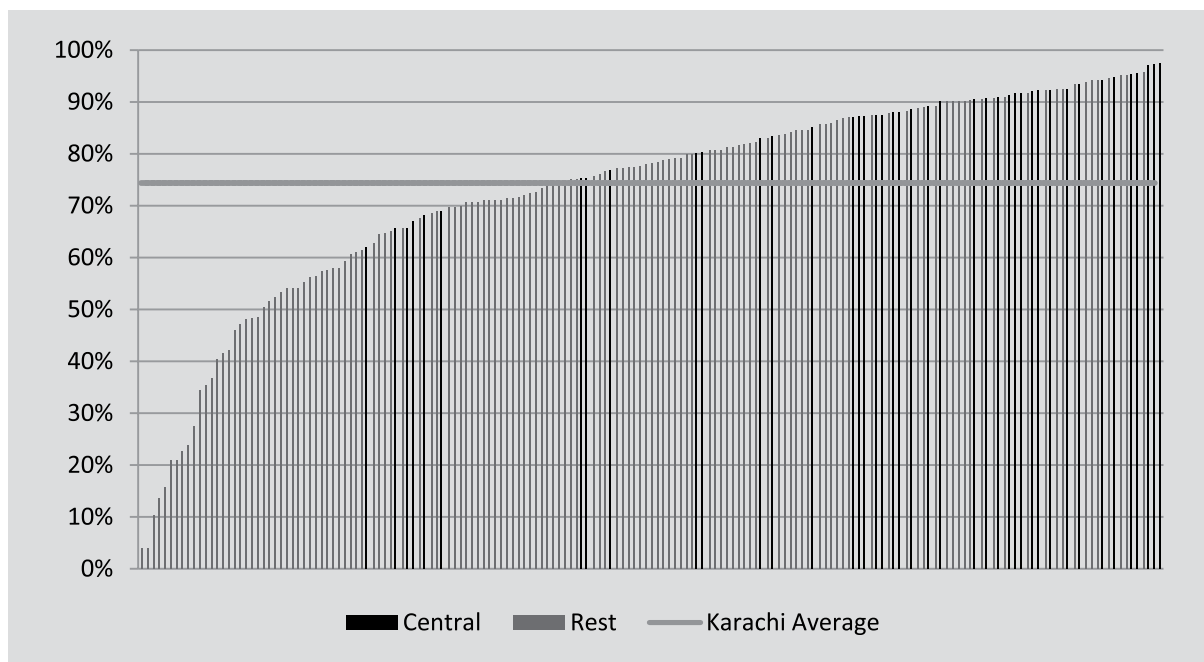
Socio-economic heterogeneity becomes starker still when we move to lower levels of territorial aggregation. Figures 10 and 11 respectively illustrate Union Councils by literacy rates and availability of potable water, while highlighting those Union Councils that are within the former District Central. The UC-wise illustration shows that there are entire UCs in Karachi where the literacy rate was below 20 per cent, and where less than 20 per cent of homes had access to potable water. What is striking, moreover, is that localities with different levels of development – or potential sources of mobilisation – need not be at opposite ends of the city. While most UCs within the former District Central were with high rates of literacy and potable water, even within that district there were many whose levels of development were similar to the least developed towns.

Figure 10: Literacy rates across Karachi and its UCs, highlighting District Central



Source: Population Census 1998

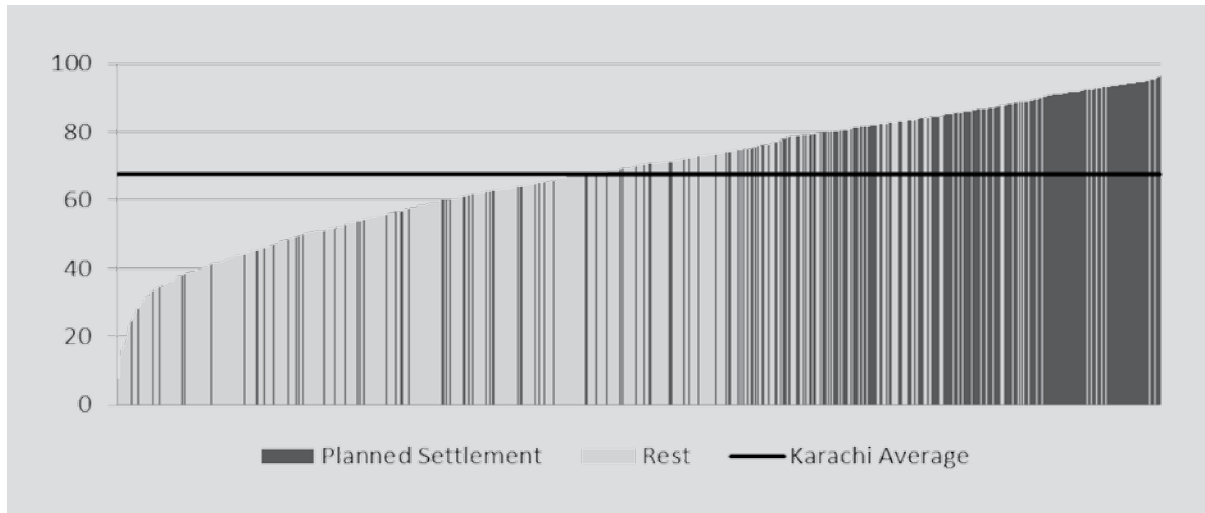
Figure 11: Potable water across Karachi and its UCs, highlighting District Central



Source: Population Census 1998

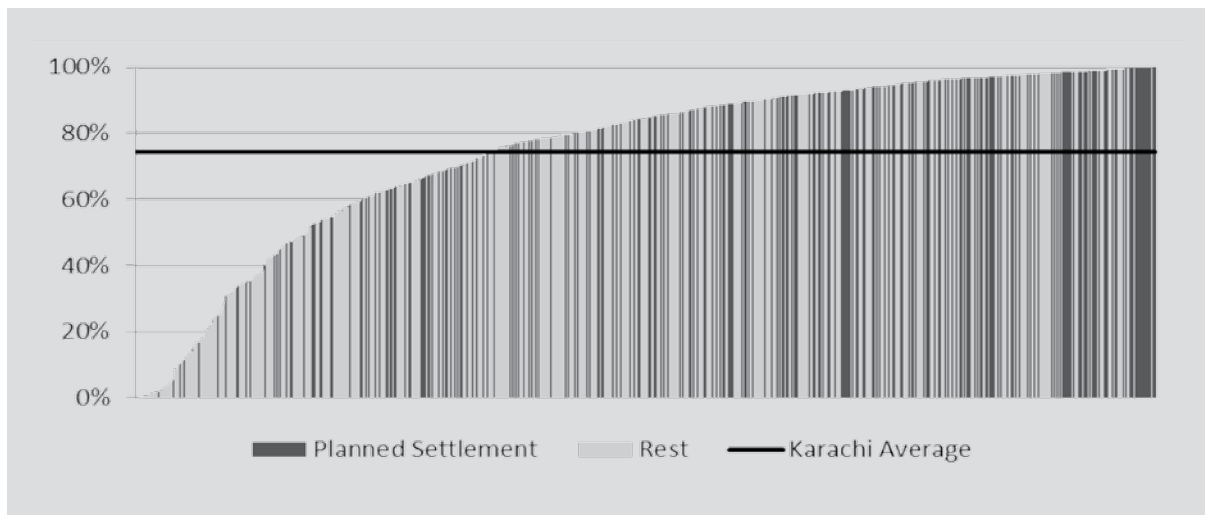
The charge circle is the lowest territorial unit for which census data were available. The average charge circle of Karachi had around 11,000 residents in 2011. Figures 12 and 13 respectively show literacy and potable water availability respectively for the charge circles, highlighting those charge circles which appear to be made up entirely of planned settlements. These figures show, interestingly, that while planned settlements were clustered around high levels of literacy, there was more variability with respect to potable water, with many supposedly planned settlements faring badly in 1998.

Figure 12: Literacy rates across Karachi and its charge circles, highlighting planned settlements



Source: Population Census 1998

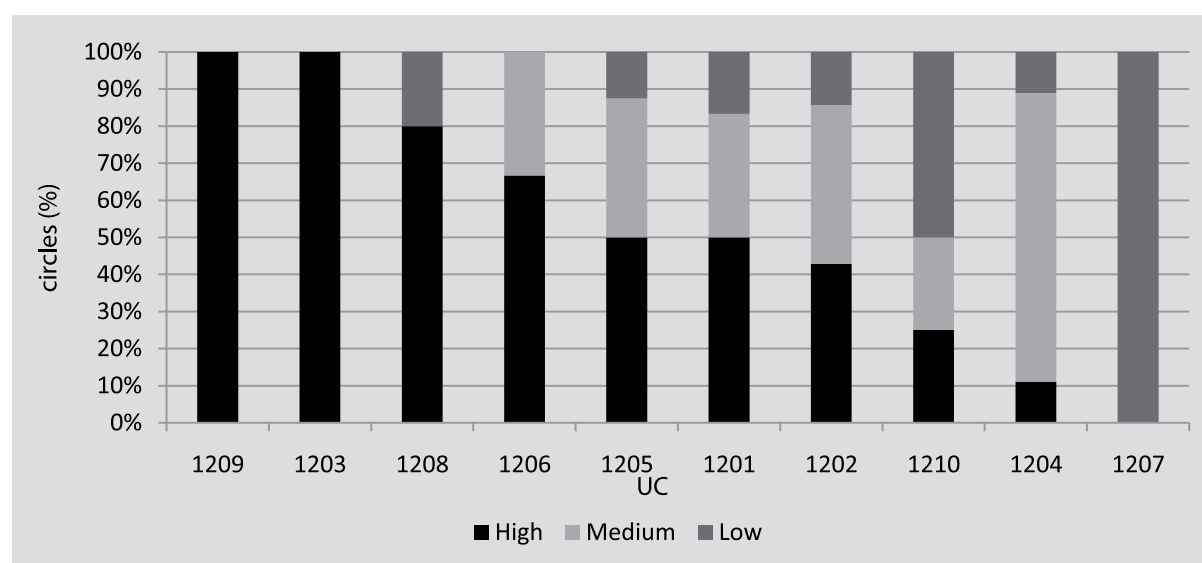
Figure 13: Potable water across Karachi and its charge circles, highlighting planned settlements



Source: Population Census 1998

While the more developed charge circles and union councils tended to be clustered together geographically, there was a great deal of heterogeneity within localities. Taking North Nazimabad Town for illustrative purposes, Figure 14 shows that all circles in two of its UCs had high (90-plus) literacy rates, while in one UC all circles had literacy rates in the low (0-60) band. Even within individual UCs there could be much variation. There were UCs in North Nazimabad in which individual charge circles had high (90+), medium (61-90) and low (0-60) literacy rates. This case is merely illustrative of the fact that there are localities with diverse levels of development in Karachi - across districts and towns, within towns, and even within UCs. The potential for rival political mobilisation, therefore, was ever present not only along the lines of ethnicity, but also along the lines of class, regularisation and infrastructure provision.

Figure 14: Percentage of circles according to literacy levels in North Nazimabad Town



Source: Population Census 1998

Diversifying constituencies

Karachi's political parties have various options before them. At the local level their supporters and activists, many of them armed, are involved in turf wars which often escalate into ethnic violence. In many instances the politics of Karachi's heterogeneous localities encourages parties to become involved in enforcement activities which can easily morph into extortion rackets. Models of party organisation which involve some coexistence of 'political' and 'militant' wings have been successful, at least with respect to local control in Karachi.

But as the events of the last three years have shown, such models can lead to such a level of violence and instability that the very existence of parties and their links with their constituents can be put at stake.

The MQM presents an important but not unique case in this regard. During the Musharraf period, particularly between 2005 and 2008, the party not only controlled municipal functions, but also began to exercise *de facto* authority over state-owned land around the city which formally comes under the jurisdiction of the provincial government. It had come out of the shadows following a period of state repression and human rights abuses. At this time the MQM began to refashion its public image from Mohajir militancy into the delivery of the mega-city dream. The party was successful in gaining some level of international acceptance as a voice of liberal secularism particularly after 9/11, and was able to build upon its own past struggles against Islamist parties in Karachi while doing so. On urban issues it became a proponent of visible large-scale projects such as flyovers and express roads. However,

migration into the city was continued to be read by the MQM through the prism of Mohajir fears of losing ethnic predominance over the city. Most poor migrants from rural areas settle in irregular settlements inside the city, or in newly emerging unplanned localities on its outskirts. The mega-city vision came into conflict with these very communities who were put under pressure to make way for large projects.

In short, the MQM was unable to make a transition to non-ethnic politics at a time when it enjoyed virtually unchallenged authority in the city and beyond. Its attempts at turning political advantage into hegemonic control provoked a backlash which opened the door for the PPP and the ANP to win or win back supporters in the poorer irregular settlements populated by the pre-1947 communities or migrants from other parts of Pakistan. Most of the non-Mohajir areas, particularly the densely populated and rapidly growing irregular settlements became visible centres of resistance to the party.

Although the MQM is the largest party of Karachi, and has its own distinctive form of organisation, its experiment with diversifying its political constituency holds lessons for everyone. The reliance on the mega-city dream in the context of Karachi alienated potential supporters among those who might have been open to mobilisation along demands for regularisation and local level consolidation. But there is nothing unique about the fascination of MQM with the mega-city dream. It is a dream that is being sold across the world, and was in particularly strong form during the global property market boom of the mid-2000s. The lesson from Karachi is that no party can afford to turn its back on the city's uneven socio-economic development, as there will always be constituencies to mobilise among the large number of localities that are bound to lag behind. Moreover, as demographic trends suggest, parties that are focused on electoral politics will consciously need to dilute their ethnic affiliations.

The bigger picture

Despite their bitter rivalries in Karachi, there were sound reasons for the PPP (and its ANP allies) to enter political partnership with the MQM in Sindh after the 2008 elections which saw off General Musharraf's military government. Although the PPP enjoyed a simple majority in the Sindh assembly it needed a broader coalition in the centre where it had a plurality. The PPP leadership was also aware that MQM retained the capacity to disrupt security in Karachi, thus making Sindh virtually ungovernable. The MQM, for its part, stood isolated in national politics due to its close alliance with General Musharraf, and welcomed the opportunity of coming back in from the cold and also retaining some power. Perhaps most importantly, PPP, ANP and MQM shared their opposition to Islamist nationalism, particularly its jihadist variety. These parties were most likely encouraged to work together by foreign powers such as the United States and Britain which had played a key role in negotiating the transition from military to civilian government.

The accord between these parties was clearly unstable given that according to CPLC data killings doubled in Karachi in the year of transition in 2008. The fact that violence continued to increase while these parties remained partners in government suggests at least a tacit understanding that not all local level violence would be controlled. Many observers believe that local party cadres, particularly armed ones, have developed major economic stakes in extortion rackets and other sources of rent that come from controlling territory. As argued above, there is certainly scope for local level enforcement and mobilisation, that the city's uneven development engenders. If local anxieties and insecurities have come in the way of broader political cooperation, it is a costly price for the city to pay indeed.

Accord between Karachi's political parties, particularly the MQM and the PPP, but also the ANP, can underpin the rollback of undemocratic forces in Pakistan. The fact that these parties are able to control violence in the city is both an indictment but also a possibility.

Pakistan's politics are divided along many lines, and on the main national issues of division – foreign policy, attitude towards Islamist extremism, provincial autonomy – the parties with representation in Karachi have similar views.

Economic future

The economic stakes too are much larger than anything that local extortion rackets and turf battles can yield. Sindh is has historically been a key engine of growth in Pakistan.

Although much of the growth has been built upon the agricultural economy it is Karachi with its port and infrastructure which has been the main locus of wealth creation. This is well understood by ordinary people as well as the elites of Pakistan. Karachi's pre-eminent economic position within the national economy, however, has often been at the detriment of the rest of Sindh which is among the poorest regions of the country. Much of the political articulation in the rest of Sindh is with respect the exploitation of the rural and agrarian economy by urban-based elites with strong footholds in the state apparatus. The organisational paraphernalia of the modern economy (or capitalism) in the form of large corporations, the financial sector and mass media are seen as being controlled by the cities, often in opposition to the interests of the rural poor and elites alike. While Sindh taken as a whole is richer, in terms of per capita income, than Pakistan, the main advantage resides in Karachi (Table 3). Karachi's 'national' income per capita was estimated at \$1,483 in 2006- 2007, some 80 per cent higher than that of the rest of Sindh.

Duality has been part and parcel of the economic development models which Pakistan and many developing countries have adapted in accordance with their own local conditions. The duality we observe between regions, within provinces and inside the city, also becomes a focal point for political mobilisation. Pakistan's economic future depends on the exploitation of its strategic location and its natural resources. The last few decades have seen the discovery of and exploitation of resources such as petroleum.

Table 3: 'National' incomes of Pakistan, Sindh province and Karachi city under various scenarios

	Actual		With Thar coal	
	Total (\$million)	Per capita (\$)	Total (\$million)	Per capita (\$)
Pakistan	145,638	921	195,638	1,237
Sindh	40,633	1,070	90,633	2,388
Karachi	21,118	1,483	21,118	1,483
Rest of Sindh	19,516	823	69,516	2,930

Source: Author's calculations based on Economic Survey, Sindh government data on Thar coal resources, and World Bank estimates of Sindh's provincial GDP

Sindh will remain an important engine of economic growth in Pakistan in the future, not only due to Karachi, but also increasingly because of major discoveries of natural resources there. Simply the development of Thar coal would have added at least \$50 billion to the national economy in 2006-2007. This would have meant an increase in Pakistan's per capita national income by 34 per cent (Table 3).⁵ In terms of provincial and regional per capita 'national' incomes, Thar coal would have made Sindh nearly twice as wealthy as Pakistan taken as a whole, and within Sindh, made the rest of Sindh twice as wealthy as Karachi city. Thar coal is the most important, but by no means the only natural resource that holds promise of future economic growth.

Such scenario building is clearly incomplete in the absence of a more detailed discussion of the politics of resource development. But it is merely suggestive of the economic possibilities, and the types of issues that will need to be resolved politically, particularly in light of the political and constitutional tendency in Pakistan towards greater provincial autonomy and resource ownership.

For economic growth in Pakistan to benefit from Sindh's resources there will need to be agreements among diverse political constituencies. In the absence of such agreements there is potential for grave conflict which can paralyse the development of these resources.

Karachi, which has historically been seen as a tool for the economic exploitation of the rest of Sindh will now have to play the role of an instrument for the harmonious and mutually beneficial development of the entire province and the country. Political negotiation for peace in Karachi can form the basis for wider agreements between political constituencies for the realisation of great economic rewards.

Conclusion

This paper started from the premise that Karachi's violence is at least partly linked to the temper of accord between the main political parties that represent the city. Ethnicity and political preferences have been entwined for a long time, and at moments of conflict it sometimes become difficult to distinguish between ethnic and political violence. While parties in Karachi – notably MQM, PPP and ANP - vary in terms of their support bases and forms of organisation, no party enjoys a monopoly in terms of popularity. Parties are also not immune to the charge of maintaining links with armed groups, or preying upon ethnic difference.

Karachi contains a great deal of geographic heterogeneity, not only along lines of ethnicity but also in terms of class and development. There are clusters where particular ethnic groups enjoy a majority but also parts of the city with highly mixed populations. Pockets of class and development inequality are obvious not only across the city but within districts, towns and union councils. These various dimensions of differences are quite often sources of political mobilisation, at least at the local level. Dualities and inequalities within the city also generate a logic of local enforcement and 'turf' control.

The demographic outlook for Karachi favours the building of cross-ethnic political coalitions within or across parties. This is because the city's ethnic composition is likely to become 5 Calculations based on data from: Ministry of Finance, 2007. 'Economic Survey of Pakistan 2006 – 2007'; Thar Coal and Energy Board, Government of Sindh, 2008. 'Thar Coal field Sindh, Pakistan: Facts and Figures'; The World Bank, 2009. 'Project Appraisal Document on a proposed credit to the Government of Pakistan for a Thar Coal and Power Technical Assistance Project', Report No 4800-PK; and unpublished World Bank sources. even more heterogeneous than it is at the present. Even at the present moment, parties in Karachi tend to 'over-perform' in their core areas and under-perform in other areas. If parties were to lessen the value they attached to 'controlling' territory, they might be able to improve their overall performance through diversifying their support bases.

Class and development inequalities between localities are likely to remain significant - even as some localities catch up other new ones that lag behind will emerge. There will always be scope in Karachi to base political mobilisation on these within-city disparities, often using the vehicle of ethnicity. Political strategies that over-commit to conspicuous mega-projects are likely to come into conflict with the poorer segments of the city, who live in unplanned settlements, with insecure tenure, and with poor access to public infrastructure.

There is a strong political basis for accord between the main parties that represent Karachi. These parties have a history of bitterness towards one another, but also happen to be on the same page with regard to some of the key political issues dividing Pakistan viz foreign policy, attitude towards jihadist

extremism, and provincial autonomy. Most significantly, future economic scenarios for Pakistan rely greatly on the economic exploitation of natural

resources, particularly those of Sindh. For economic development to benefit Sindh, there has to be accord between the main parties of the provinces, its ethnic groups, and its rural and urban areas. Political and civil society of Sindh taken as a whole, and the parties with support in Karachi have special responsibility to play a constructive role in reducing inequalities in Sindh province and within Karachi city, and laying the foundations of a prosperous, Sindh its capital Karachi and Pakistan.

SPO DISCUSSION PAPER SERIES

**A Review of Pakistan
National Climate Change Policy**

Hammad Raza Khan

List of Acronyms

CC	Climate Change
CDM	Clean Development Mechanism
DRR	Disaster Risk Reduction
EPO	Environmental Protection Order
GoP	Government of Pakistan
GHG	Greenhouse Gas
HKH	Hindu Kush Himalayan
ICAO	International Civil Aviation Organization
MoE	Ministry of Environment
NCCP	National Climate Change Policy
NEQS	National Environmental Quality Standards
NGO	Non-governmental Organization
PC	Planning Commission of Pakistan
PEPA	Pakistan Environmental Protection Act PEPC Pakistan Environmental Protection Council PEPO Pakistan Environmental Protection Ordinance SPO Strengthening Participatory Organization
TFCC	Task Force on Climate Change
UNFCCC	United Nations Framework Convention on Climate Change

Preface

In Pakistan, Climate Change (CC) has consistently manifested itself through extreme events such as the unprecedented floods, droughts, storms, Glacial Lake Outburst Flooding (GLOF), etc. The economic and social losses caused by these disasters run into billions of dollars. In the recent floods alone, 20 million people have been affected and displaced. This outbalances three major securities of the country namely water, food and energy. Pakistan's first National Climate Change Policy (NCCP) has been approved by the cabinet and effective since March 2012. Strengthening Participatory Organization (SPO) and CARE international in Pakistan have jointly produced this policy review paper.

The NCCP is much appreciable initiative on part of government. There is a need to bring this valuable document to public ranks for healthy debate and citizens' oversight. SPO undertook this review through stakeholders feedback and the objective is initiate a discussion on the policy. The review paper is prepared with an aim to provide a comprehensive account of an unbiased and an independent opinion/analysis in context to NCCP's relevance, scope, merits, demerits, shortcomings and unique selling points in the particular scenario of Pakistan vis-à-vis state's role and responsibility to respond to vulnerabilities resulting from global, regional, national and local events of climate change and factors affecting or causing change in the climate. The draft policy review paper was presented to the key stakeholders from government and civil society and was revised in consultation with them.

I would like to acknowledge and appreciate the hard work of the team which was put in towards the preparation of this first ever policy review document of NCCP. I extend the sincere gratitude of the government officials to our partners (donors, civil society organizations, media, and academia) who participated actively throughout this process.

Implementing the NCCP will require serious, sustained and disciplined reform over the coming years. Policies in Pakistan were not followed in spirit and there are serious gaps in their effective implementation. Pakistan immediately needs to adopt an approach of climatically appropriate development planning to avoid more catastrophes.

Naseer Memon

Chief Executive

DRAFT POLICY REVIEW OF PAKISTAN NATIONAL CLIMATE CHANGE POLICY

I. Background

In Pakistan, Climate Change (CC) has consistently manifested itself through extreme events such as the unprecedented floods, droughts, storms, Glacial Lake Outburst Flooding (GLOF), etc. The economic and social losses caused by these disasters run into billions of dollars. In the recent floods alone, 20 million people have been affected and displaced¹. This outbalances three major securities of the country namely water, food and energy. Pakistan's first National Climate Change Policy (NCCP) has been approved by the cabinet and effective since March 2012. However, in its present form it is difficult to implement as NCCP has not meaningfully involved key stakeholders. Furthermore, government has so far struggled to streamline CC adaptation into regular Disaster Risk Reduction (DRR) and development initiatives.

Strengthening Participatory Organization (SPO) and CARE in Pakistan have jointly produced this policy review paper to be subsequently presented to the key state and non state actors for their future input and deliberation aimed at necessary revisions in the NCCP, and implementation of NCCP in the most desirable manner.

This policy review paper is prepared with an aim to provide a comprehensive account of an unbiased and an independent opinion/analysis in context to NCCP's relevance, scope, merits, demerits, shortcomings and unique selling points in the particular scenario of Pakistan vis-a-vis, the global scenario i.e. factors contributing to, and resultant outcomes of global climatic changes and phenomenon.

This paper seeks to bring out an independent analytical view of NCCP vis-à-vis state's role and responsibility to respond to vulnerabilities resulting from global, regional, national and local events of climate change and factors affecting or causing change in the climate. The paper has also accumulated a stock of the process that culminated into formulation of the NCCP.

II. Policy Review

1. Relevance & Scope

The NCCP document is an outcome of the efforts of Task Force on Climate Change (TFCC) that was set up by the Planning Commission of Pakistan (PC) in October 2008 with the view to (i) take stock of country's situation in relation to climate change; (ii) contribute to the formulation of climate change policy that would assist the government in achieving sustained economic growth by appropriately addressing climate change threats so as to ensure water, food and energy security of the country; and (iii) recommend policy measures for promoting large scale adaptation and mitigation efforts, awareness raising of various stakeholders and enhancing the capacities of relevant national institutions.

The TFCC comprises over 18 members belonging to GoP, academia, and civil society² with a mandate to carry out the above mentioned tasks. TFCC has held ten meetings and setup nine *working groups* comprising some 42 experts³. Each working group was headed by a TFCC member, who was assigned to look into some particular aspects relevant to the TFCC mandate. Based on the inputs of the working groups and the deliberations of the TFCC meetings, a guiding document was finalized in February 2010.

1 Government of Pakistan, (2012), "National Climate Change Policy, 2012", Ministry of Climate Change, Islamabad.

2 To be precise, TFCC comprised of members from (i) NGOs - 4, (ii) Academia - 2, (iii) GoP - 12

3 These were the total number of individuals participated in such meetings (though their consistency of participation and relevance of expertise related to the subject matter is not known). These experts comprised of representatives from (i) NGOs - 5, (ii) PC - 7, (iii) GoP - 30

The composition of TFCC and experts consulted during the TFCC report formulation process was greatly government focused. Hence, the document that NCCP is heavily based on lacked fair representation from groups other than government. Even within the government representation it was only federal government focused. However, an academia representative from Forman Christian College University, Lahore was included from Punjab. Surprisingly, majority of the members and experts consulted to the highest degree were Islamabad based with no representation from the regions; which leads to a serious concern of national representation and consultation.

The NCCP is claimed to adopt an independent process for its formulation where consultations were carried out in the provinces⁴. The extent and nature of such consultation carries serious reservations. Despite of such claimed consultations the outcome of final NCCP document still relies heavily on TFCC main report. Moreover, stakeholders from provinces have raised concerns on nature of such engagements for the preparation of NCCP.

The NCCP is formed with the following goal: *“To ensure that climate change is mainstreamed in the economically and socially vulnerable sectors of the economy and to steer Pakistan towards climate resilient development”*. With this objective, the policy has taken stock of various sectors of economy especially Water, Agriculture, Forestry & Biodiversity, Fishery, Energy, and Industries sector, which will further broaden the policy so as to steer Pakistan towards (or in the direction of) climate resilient development.

The policy has ten objectives, broadly covering main subject matter so as to promote national economy and climate resilient developments. These broader areas almost cover the above mentioned context but unfortunately they haven't yet been addressed in spirit.

The policy document has identified integration of climate change policy with other interrelated government policies (targeting environment and more broadly economic growth) in objective #2. However, the document has not reflected on its linkages with National Growth Strategy, Draft Industrial Policy and other similar initiatives which could have contributed to adopting a comprehensive i.e. a resilient, adaptive and responsive approach.

The policy has highlighted strengthening of inter-ministerial decision making and coordination mechanisms on CC in objective 6. While doing so it demonstrates that CC is a federal subject and deals with only matters related to federal jurisdiction/area of concern. However, on the contrary, in the wake of the 18th Amendment it must and in fact can only be dealt with the provinces, e.g. Agriculture, Health, Forestry, Environment and etc.

In another instance, the policy discusses fostering development of appropriate economic incentives to encourage public and private sector investment in adaptation measures (objective 8). While in policy reflections this area is not adequately addressed.

2. Benefits / Merits

The policy provides a baseline framework to address CC related issues in Pakistan. It has attempted to take a stock of the potential issues the country is to face in future as a result of changing climatic conditions. There are potentially numerous and diverse range of collateral benefits that can be associated with the NCCP in addition to the direct avoided climate impact benefits. The NCCP provides an opportunity to gain a few benefits in the near future by properly addressing CC adaptation measures by adopting pragmatic pollution control and Disaster Risk Reduction (DRR) measures at local levels. Much greater benefits from CC mitigation will be visible in the longer run i.e. some incentives for a CC

⁴ Dr. Qamar-uz-Zaman Chaudhry (lead author & adviser on climate affairs), states that the NCCP formulation was an independent process with the most extensive consultation exercise involving around 500 experts and stakeholders from all across the country.

mitigation agreement by offsetting some share of the GHG mitigation costs. However, the weightage of the incentives depends on several issues that have not been fully addressed by the existing literature. In particular, a potential source of incentives is through claiming carbon credits; corporate sector by adopting cleaner technologies and eco-friendly mechanism can not only contribute in terms of reduced emissions but can potentially enhance export business opportunities due to meeting environmental standards.

3. Shortcomings

1. Policy recommendations lacking scientific scrutiny - In several instances the policy has made recommendations that lack scientific scrutiny. In particular while identifying Pakistan's vulnerability to *CC Threats*, the policy states: "*Increased health risks and climate change induced migration*", but no reference has been made to any statistics/data of migration in Pakistan due to increased health risks and CC. Similarly, while reflecting on the *Forestry* sector the policy mentions: "*Initiate pilot projects on adaptation efforts in the forestry sector with multilateral assistance*", but again the recommendation does not provide a reference to any data or scientific research correlated to forestry and CC adaptation issues.
2. Incomprehensive policy recommendations - In several occurrences the recommendations are too general in nature and are lacking details of specific, targeted actionable measures. In particular while addressing *Integrated Water Resource Management*, the policy recommends: "*Ensure rational ground water exploitation by avoiding excessive pumping*", whereas given the present water resource situation of Pakistan, the issue hasn't been adequately addressed particularly in reference to the measures of enforcement. In this specific scenario, when the country is already water scarce, it does not have suitable water supply mechanism and the people are forced to adopt measures such as underground pumping to fulfill their pressing needs. Instead, specific action points would have been of utter significance.
3. Devolved subjects - The policy has made recommendations regarding several subjects that are provincial chapters now owing to the 18th Amendment. These recommendations suggesting actions may not be well received by the provinces. Many of these recommendations refer to the regulatory affairs. While addressing *Human Health* issue, the policy states: "*Ensure that appropriate measures to address health related climate change issues are incorporated into national health plans*". Due to the devolution of various subjects such as Health, Education, Agriculture, etc in lieu of the 18th Amendment, recommendations at the federal level (such as above) are fractional and present an incomplete picture of the issue.
4. Redundant recommendations - The document has made several recommendations that are unnecessary, in particular while addressing *Forestry*, it is stated: "*Enhance capacity building of forest departments to combat forest fires and involve forest communities in detection and suppression of wildfires*". Functions like these are already mandated to Forest Departments (at provincial level) and hence do not require further reinforcements.
5. Overzealous recommendations - At several instances the document provides intricate set of recommendations; particularly in reference to *Integrated Water Resource Management* the policy states: "*Protect the HKH glaciers, which are considered the world's water tower, by declaring them as 'protected areas' through agreements among countries sharing the Himalayan region*". Recommendations like these are too ambitious and complex to be implemented practically. Given the present political situation of the country and tense relationship with India over problems such as the Siachen Glacier issue, recommendations like these are a far cry.

6. Unwarranted subjects - The policy discusses unwarranted subjects, in particular while deliberating on *Socio-Economic Measures* i.e. *Poverty* the policy says: “*Integrate poverty-climate change nexus into economic policies and plans*”. Recommendations like these are unwarranted subjects which the policy has no jurisdiction and mandate to deliberate on. Since the country’s economic policies are prepared on a priority set by the particular government regime, hence recommendations like these may not get the necessary buy in of the stakeholders.
7. Contradicting suggestions - Some of the recommendations made in the document are contradictory, specifically while reflecting upon *Transport* issue the policy says: “*Participate actively in ICAO’s activities and initiatives and ensure that new strategies and policies of ICAO do not hurt the economic interests of developing countries’ aviation industry*”. This is a contradictory statement since it suggests “participation in ICAO’s activities by avoiding practices that may include strict regulations (related to emissions, etc) on part of ICAO while addressing environmental obligations” and at the same time another recommendation suggests “to promote fuel efficient aircrafts”.

In another instance the policy while deliberating upon *Industries*, states: “*Incorporate economic incentives to promote emission-reduction by upgrading the industrial processes and technologies*”. The GoP has recently formulated two documents namely *National Growth Strategy* and *Draft National Industrial Policy*, with a focus on industrialization, economic growth, etc. Recommendations like these can be appreciated on a standalone basis, but at the same time it is in contradiction with the two policy documents mentioned above. The impression given in the NCCP is of subsidy, whereas these GoP documents are promoting competitiveness where such measures are to be taken up by the industry itself in order to not only become competitive in the international/ local market, but to fulfill environmental obligations as well.

8. The Gender aspect - The policy document has attempted to address the Gender aspect (in terms of women), so that it can be mainstreamed accordingly. While this is a good attempt to highlight vulnerable groups that are likely to be affected at individual levels, unfortunately, the document reflects on this aspect superficially. The policy recommends: “*Take steps to reduce the vulnerability of women from climate change impacts, particularly in relation to their critical roles in rural areas in provisioning of water, food and energy*”. Women issues like these have vulnerable implications and with such outward recommendations it is highly unlikely to address them positively.
9. Recommendations deficient on financial aspects / planning - Given the present economic viability of the country some of the recommendations are likely to have serious financial implications. For instance, while addressing the *Energy* challenges, it is stated: “*Plan the necessary expansion of nuclear power for Pakistan’s energy security while ensuring the highest safety standards*”, and another recommendation is to: “*Explore the possibility of obtaining technological know-how and its transfer for installing clean coal technologies like Pressurized-Fluidized-Bed-Combustion (PFBC), Near-Zero Emission Technology (NZET) for vast coal reserves in south of Pakistan and their inclusion in future pulverized coal Integrated Gasification Combined Cycle (IGCC) systems*”. While these recommendations are appreciable as they discuss the on-going energy crisis with eco-friendly solutions, but on the other hand the policy has failed to reflect on their funding mechanism criteria. These recommendations not only have a grave cost implication but availability of technology is also a point of concern (in particular when Pakistan’s nuclear program is already under microscope, the transfer of technology would be a challenge). In particular to produce electricity from Sindh coal reserves, PC has taken lead by starting initiatives under guidance of Member Science & Technology, but during the current fiscal year it struggled to get financial allocations for further on-going operations. The *Finance* sub-head in the policy document has delineated a few of the available financial options, but given the ambitious agenda these options only deal with some meager funds available through windows of CDM, etc. Unfortunately,

Pakistan has a very low success rate of availing carbon credits. To- date some 40+ projects were approved and submitted to UNFCCC but only 13+ could get final approval, and it is important to mention that even those approved were not of high financial volume with comparison to the above mentioned policy suggestions requiring high cost.

10. Dysfunctional policy implementation mechanism - The proposed policy implementation mechanism consists of forums to engage at two levels i.e. federal and provincial/state. However, the proposed mechanism has inherent flaws and is most likely to fail. It is important to be mindful that, forums like these were formed in the past but failed poorly due to various reasons. An example of one such forum is Pakistan Environmental Protection Council (PEPC)⁵.

Among others, an important function of PEPC (under section 4 (e) of PEPA) is to “*co- ordinate integration of the principles and concerns of sustainable development in to national development plans and policies.*” However, PEPC was unable to perform because it remained almost non-functional for most of its tenure. Not only did PEPC fail to meet bi annually as required under section 3 of PEPA 1997, it failed to meet at all between 2004 and 2010.

This leads to serious reservations on the proposed implementation mechanism for NCCP. As the apex environmental institution in Pakistan, PEPC’s weak performance does not reflect well on GoP’s commitment to the environment. It is unclear how the proposed structure will deal with these dilemmas this time around.

11. Capacity building & institutional strengthening - The Policy has reflected in great detail on issues like capacity building and institutional strengthening. It provides several recommendations suggesting individual level trainings, inter- ministerial/inter-departmental coordination, and creation of some new institutions/sections to deal with CC related issues. In the past many of the policies have already highlighted such issues and despite of these recommendations, unfortunately no significant development is visible in the situation as per expectations. Without proper institutional analysis and need assessments such recommendations are not destined for success.
12. Citizen Engagement - The Policy document has identified only a handful of suggestions/ activities with an element of citizen engagement and the ones where such element is discussed most of the suggestions are linked to awareness building activities only. Citizen engagement is an important area that needs to be addressed in order to have an effective policy implementation and in order to reap benefits as per spirit. The proposed citizen engagement/community participation activities are not sufficient, since meaningful citizen engagement requires far more commitment than the proposed casual engagements. It requires carefully articulated mechanism/approach for effective relationship building; particularly because it is a troubled area and lack of trust prevails among the identified stakeholders and government.

5 PEPC is the apex decision-making body on environmental issues in the country and was established under the Pakistan Environmental Protection Ordinance (1983), it was later reconstituted based on section 3 of PEPA, 1997. The Council was headed by the Prime Minister of Pakistan, and the Federal Minister of Environment served as the Vice-Chairman. Membership of the Council comprised of multiple stakeholders: Chief Ministers of four provinces, Provincial Environmental Ministers, 35 ex-officio representatives (industry, technical professional, trade unions, NGOs), and the Secretary of the Ministry of Environment (MoE). The Ministry of Environment served as the Council’s secretariat.

Annexure:

Comments by
Dr. Qamar uz Zaman Chaudhry
(Lead Author NCCP)

on the review of
National Climate Change Policy

,

- **NCCP Approved by Federal Cabinet on 14th March, 2012 & not in 2011 as indicated by Reviewer.**

- **True: The Task Force on Climate Change experts were mainly from Islamabad.**
- **But the NCCP development & formulation was an independent process.**

- **Review Points:**
- **NCCP is heavily based on, lacked fair representation from groups other than government & that too from Federal government.**
- **NCCP deals devolved Subjects: Agriculture, Health, Forestry, Environment.**

Policy development and consultation process

- **Extensive Consultation undertaken with all relevant stakeholders including Federal Ministries & Departments, Provincial Governments & their line-departments, NGOs & Civil society organizations, trade & Industries, academia.**

Two Separate Initiatives :

- **1. Preparation of Task Force On Climate Change Report.**
- **2. Formulation of National Climate Change Policy.**

- **Around 500 experts from across the country, from all the provinces participated in the NCCP consultation and formulation process.**
- **NCCP formulated probably through the most extensive Consultation exercise.**

AJK (31/03/2011) Organization / Stakeholders consulted in 1st Round

- | | |
|--|---|
| 1 Children First | 2 Local Government & Rural Development |
| 3 UNDP | 4. AJK Forest Department |
| 5 Wildlife & Fisheries Department | 6 Development Authority Muzaffarabad |
| 7 IPA Humanitarian emergencies Committee | 8 Health Department 1 |
| 9 Univ. of AJK, Muzaffarabad | 10 Municipal Corporation Muzaffarabad |
| 11 PP&H | 12 Pakistan Mountain Areas Conservation-AJK |
| 13 EPA | 14 SERRA/UNDP 1 |
| 15 P&D Department | 16 Livestock Department |
| 17 UNICEF | 18 PHE (N) |

.....Punjab Continue

- | | |
|-----------------------------------|-------------------------------|
| 12. Punjab Irrigation Deptt. | 13. C.R.P Deptt. |
| 14. I & P Secretariat | 15. PDMA |
| 16. Economic Studies(Environment) | 17. Forest department |
| 18.Daily Awaz | 19. Business Reporter |
| 20. Env. Journalist | 21. Pakistan GT & GE Division |
| 22. NESPAK | 23. LCWO |
| 24. Inst. Of Plant, Punjab Univ | 25. P & D Deptt. |
| 25. AUSAF | 26. Urban Unit P & D |
| 27. Deptt. Of Botany, | 28. GC University Lahore , |
| 29 . Punjab Chemical Energy PHA | 30. CDO (W) Wapda |

GILGIT-BALTISTAN (19/03/2011) Organization /Stakeholders Consulted in 1st Round

1. Environmentalist
2. Karakoram International University
3. Education Department
4. WWF- Pakistan
6. LG & RD
7. The News
8. Agha Khan Rural B.S. P
9. EPA-GB
10. GB- Forest Department
11. MAWCO-UNDP
12. Livestock Department
13. PMAC-GB
13. 14. GEO & KZ

SINDH (25/1/2011) Organization /Stakeholders consultation 1st round.

1. Association of Trade & Industry.
2. Chairman , Envirniment Dept. NED University
3. Local Govt. Deptt.
4. Planning & Development Deptt.
5. Transport Deptt.
6. World Wide Food for Nature-Pakistan
7. WWF-Pakistan
8. Industry
9. UNDP-GEF
9. UNDP
10. IES
11. Dept Of Environment Sindh
12. Alternate Energy Dept Sindh
13. SUPARCO
14. Social Welfare Dept Sindh
15. EPA -Sindh
16. Sindh Forest Deptt.
17. MoE, Pakistan
18. SITE

Punjab Organizations/ Stakeholders Consulted in 1st Round.

1. WAPDA
2. HUD & PHED Development Pool
3. EPA-Punjab
4. LG & CD
5. PDMA
6. F.G University Lahore
7. Regional Planning, UET
8. Forest, Wildlife & Fisheries Department
9. Citizen's Commision for HumanDevelopment
10. Transport Deptt.
11. SDSC,
12. G.C Univ. Lahore.

Punjab..... Continue

KPK Organizations/Stakeholders consultation in 1st round.

- | | |
|--|-----------------------------|
| 1. EPA-KPK | 2. UN-HABITAT |
| 3. Hazara Univ. Mansehra | 4. LG & RDDept |
| 5. Irrigation Department KPK | |
| 6. Elementary & Secondary Education Department | |
| 7. Transport Department. | 8. Industries Department |
| 9. Agriculture & Environment Departments | |
| 11. Health & Education Department. | |
| 12. C & W Department | 13. UET, Peshawar |
| 14. Energy & Power Department | 15. SHYDO Univ. Of Peshawar |
| 16. Agriculture Univ. Peshawar | |

Review Point:

Incomprehensive policy Recommendations.
Recommendations are too general in nature and lack details of specific, targeted action able points.

Answer:

The difference between Policy & Action Plan Documents needs to be understood. Policies documents have to be general, setting the direction of the government in a particular field. Where as the " Action Plan" document is suppose to translate the policy into specific actions.

Review point:

Redundant Recommendation about Capacity building of forest depts to combat forest fires. As functions like these are mandated to Provincial Forest Departments, hence donot require further delebrations.

Answer: The recommendation is meant for Provincial Forest Depts & added on their request.

Review Point:

Policy deficient on financial aspects.

Policy document is not suppose to be a budget document. However, many international financing windows has been indicated, particularly the Green Climate Fund is an important window with US\$ 100 billion per annum.

Solace for Balochistan?

Zafarullah Khan

About the Author

Zafarullah Khan is Islamabad based Political Management Consultant. His research interests include federalism, democratic developments, political parties, and right to information.

He holds a masters degree in Media and Communication from London School of Economics and M. Phil in Pakistan Studies from Quaid-i-Azam University, Islamabad. Mr. Khan worked with leading newspapers and occasionally contributes for The Friday Times, Newslite and News on Sunday.

Presently, Mr. Khan is working as Executive Director of the Centre for Civic Education Pakistan-a research and training organization in the field of social sciences recognized by the Higher Education Commission.

Abbreviations

Alternate Energy Development Board	(AEDB)
Council of Common Interests	(CCI)
Export Processing Zone	(EPZ)
Front End Engineering Design	(FEED)
Frontier Corps	(FC)
Gas Development Surcharge	(GDS)
Government of Balochistan	(GoB)
Gwadar Development Authority	(GDA)
Gwadar Port Authority	(GPA)
Inter Provincial Coordination	(IPC)
Jamiat Ulma-e-Islam	(JUI)
Member of the Provincial Assembly	(MPA)
Million Metric British Thermal Unit	(MMBTU)
Million Metric Cubic Feet	(MMCF)
National Assembly	(NA)
National Economic Council	(NEC)
National Finance Commission	(NFC)
National Party	(NP)
Pakistan Coast Guards	(PCG)
Pakistan Navy	(PN)
Pakistan Railways Advisory & Consultancy Services	(PRACS)
Parliamentary Committee on Constitutional	(PCCR)
Reforms Parliamentary Committee on National Security	(PCNS)
Pakhtoonkhwa Milli Awami Party	(PKMAP)
Strengthening Participatory Organization	(SPO)
Sni Southern Gas Company	(SSGC)

Preface

The current situation in Balochistan is extremely grave and concerns all those who care about the federal future of Pakistan. The continued denial of basic fundamental rights and a reluctance to allow control over natural resources, have contributed to the prevailing predicament of this province. Whether these have been long spells of dictatorship or weak democratic dispensation the impact has multiplied the misery for Balochistan, a province which is rich in resources.

Consequently today in Balochistan there is a sense of alienation, which is growing, especially among the youth, and stories of grievance dominate the public sphere. The threats and challenges to basic rights such as the 'right to life and liberty' are further widening this chasm between the powerful and the oppressed.

Amid this environment where a lack of trust prevails Islamabad has taken a number of initiatives to heal the wounds of a strife torn province. Strengthening Participatory Organization (SPO) is committed to improve the conditions of Pakistanis especially the oppressed whose rights are denied with impunity. As a vigilant civil society organization SPO tries to monitor the ground realities in Balochistan and engages concerned players in a dialogue that can lead to feasible solutions.

Three initiatives namely: the Aghaz-e-Haqook-e-Balochistan (Balochistan Package), the 7th National Finance Commission (NFC) Award and the 18th Constitutional Amendment are worth detailed analysis. It is also equally important to assess the impact of these interventions. This paper is the first focused attempt in this direction. We hope it will stimulate discussion and debate on the situation in Balochistan.

At this stage, it is important to emphasize that what is happening in Balochistan today is not a spontaneous reaction to one or two odd developments. In fact it is an accumulated effect of what has been done to this province since 1947. The effect of the current initiatives is merely three years, therefore it would be wise to assess the direction of each as one will have to wait and see if any outcomes emerge.

SOLACE FOR BALOCHISTAN?

The crises and conflict in Balochistan are complex and multi-dimensional. Apart from the historical legacy of oppression, the denial of basic fundamental rights and a reluctance to acknowledge legitimate control over natural resources during the last six decades have contributed to a complicated situation on the ground in this province which is endowed with many valuable resources.

The return of civilian rule in 2008 tried democratic “*rapprochement*”, first through a public apology over the wrong doings and mistakes in the past and later through a series of federal reconciliatory initiatives. These efforts started with the ‘Aghaz-e-Huqook-e-Balochistan’ (Balochistan Package) in the Joint Sitting of the Parliament in November 2009. A month later in December 2009 the 7th National Finance Commission (NFC) Award was signed in Gwadar. The choice of venue was symbolic as Gwadar appears to be the future hub of economic activities in Balochistan. In April 2010 the 18th Constitutional Amendment redefined Federal-Provincial relations by abolishing the Concurrent Legislative list, protecting the provincial share in the NFC and jointly vesting an equal share in natural resources between the concerned Federal and Provincial Government. These three interlinked initiatives could be described as indigenously crafted democratic confidence building measures that can prove a solace for Balochistan, which is a province in turmoil. This briefing paper analyzes the contents and substance of these initiatives and assesses their potential impact. It also examines how the vision of a political elite is combining itself with the energy of the executive to have these ideas enforced and implemented. However, the discontent prevailing on the ground regards all these measures too little and too late. The paradox appears to be that when the state and its political drivers have started recognizing the notion of provincial autonomy, the discourse of resentment and narratives of grievances have increased and have graduated into a call for independence by ultra-nationalists.

1. Aghaz-e-Huqook-e-Balochistan

The Aghaz-e-Huqook-e-Balochistan (Balochistan Package) was announced at a Joint Sitting of the Parliament on November 24, 2009 and was the first intervention by the Government. The 35-point Package suggested 61 policy steps and practical actions in four distinct categories namely: Constitutional, political, administrative and economic issues. The last part of the Package prescribed a proper periodic reporting and monitoring mechanism.

The language and contents of the Package are of significant value as they clearly acknowledge the concerns and grievances that shape Baloch resentment. The government has implemented all the six points that pertained to reforming the framework conditions through a Constitutional amendment. This reflects the seriousness of the Parliament to address the Balochistan situation. In terms of political policy actions the actual performance has not gone beyond occasional platitudes. The political protagonists have yet to embark on any covert or overt dialogue with aggrieved Baloch nationalists. The progress on administrative policy actions especially those involving the security apparatus require a lot more seriousness. In terms of the flow of resources and economic policy actions there is significant movement. For the financial year 2012-2013 Balochistan is the only province of Pakistan with a surplus budget. However, in the absence of Standing Committees in the Balochistan Assembly for the last four years there are concerns about transparency and accountability.

Analysis:

- A) The Parliamentary Committee on Balochistan that authored the Balochistan package was primarily a single party committee.ⁱⁱⁱ It consulted other political parties but failed to evolve broader ownership, more specifically of the Balochistan based parties.

- B) Regarding the Package, the Federal Government emphasizes its contributions in quantitative terms, whereas the Baloch hope for impact on the ground in qualitative terms. The qualitative improvements in reality will require a well thought out strategy to bring elected and non-elected (*who boycotted Election-2008*) political leaders into a dialogue and initiate a meaningful discussion with those annoyed forces that are moving towards militancy.
- C) The Package and its monitoring mechanisms totally ignore any kind of responsibility on the part of the Provincial Executive and the Balochistan Assembly. The Package was never discussed or debated in the Balochistan Assembly. It also ignores any kind of formal or informal liaison with relevant stakeholders. This approach reduces the Package to a sort of 'federal charity' whereas the Baloch want justice with rights.
- D) The right to life is the most threatened human right in Balochistan. Only after some serious measures to solve the problem of missing persons and their mutilated bodies can one think of a meaningful dialogue to resolve other contentious issues.

2. The 7th National Finance Commission (NFC) Award

Chapter I of Part VI in the Constitution of Pakistan provides mechanisms (*Article 160-165-A*) for distribution of resources among the Federation and the Provinces. Article 160 entrusts the National Finance Commission (NFC) to agree on a formula for the award after every five years.

This framework of fiscal federalism remained weak due to two long periods of military rule and more shockingly a Caretaker government (1996) headed by Malik Miraj Khalid with an imported Finance Minister from The World Bank, Shabid Javed Burki which altered the vertical distribution equation between the Federal Government and Provinces. From, 20 percent (federal):80 percent (provinces) to 62.50 (federal): 37.50 (provinces). Secondly from the first NFC Award in 1974-75 under the Constitution of Pakistan till 2009 the sole criterion for horizontal distribution within the provinces was based on population.

The 7th NFC Award finalized at Gwadar (Balochistan) on December 31, 2009 could be described as a step forward for Pakistani federalism. It redefined the Federal-Provincial share 44:56 respectively and opted for a multi-indicator formula for horizontal distribution i.e. population 82 percent, poverty/backwardness 10.30 percent, revenue collection/generation 5 percent and inverse population density 2.70 percent. The provinces were also allowed to levy and collect general sales tax on services.

With these changes the share of three smaller provinces increased in terms of percentage. The share of Balochistan increased to 9.09 percent from 5.11 percent in the 2006 interim arrangement. The award guaranteed a share of Balochistan at the projected sum of eighty three billion rupees from the provincial share in the net proceeds of divisible pool taxes in the first year of the Award. Any shortfall in this amount was to be made up by the Federal Government from its own resources. This arrangement for Balochistan will remain protected throughout the remaining four years of the Award based on annual budgetary projections. Similarly, the persistent problem of payment of net proceeds of development surcharge on natural gas to the Provinces was resolved as follows:

- (I) Each of the Provinces shall be paid in each financial year as a share in the net proceeds to be assessed based on average rate per Million Metric British Thermal Unit (MMBTU). The average rate per MMBTU shall be derived by combining the royalty on natural gas and the development surcharge on gas. Royalty on natural gas would be distributed in accordance with clause (I) of Article 161(I) of the Constitution whereas the development surcharge on natural gas would be distributed by making adjustments based on this average rate.

- (2) The development surcharge on natural gas for Balochistan with effect from 1st July, 2002, shall be reworked on the basis of the formula given in clause (1) and the amount, subject to maximum of ten billion rupees shall be paid by the Federal Government in five years. According to the Finance Department, Balochistan's share has increased from Rs. 45 billion in 2009, to Rs. 83 billion in 2010 and to Rs.93 billion in 2011 and Rs.114 in 2012-13. The province is also receiving its arrears of gas development surcharge in installments. Due to these record transfers, for the financial year 2012-2013 Balochistan has a surplus budget. On April 2, 2012 the first and second bi-annual reports of the National Finance Commission were presented to the Balochistan Assembly that confirms these improvements in the financial strength of the province. However, no debate or discussion has taken place in the Provincial Assembly.

Analysis:

- A. Balochistan depends heavily on federal transfers. Its own fiscal efforts are very small. Sindh and Punjab have established their own revenue boards or authorities. And there is no movement to create any such authority in Balochistan.
- B. During the last three years Balochistan received resources which were greater than usual; the question is how is this being spent? Critics say that the members of the Provincial Assembly have distributed these resources among themselves. Ninety percent development work is being undertaken through two new departments namely: Urban Development and Balochistan Development Authority whereas this work should have been done through the local government department so that there is an element of follow-up, maintenance and accountability.
- C. In the absence of a leader of the opposition and Public Accounts Committee in the Balochistan Assembly we cannot expect any accountability. Every Member of the Provincial Assembly (MPA) receives 25 million rupees from the development fund and most of their development schemes are with a one-line explanation.
- D. Instead of fulfilling its Constitutional obligation to present its provincial report on the NFC according to the spirit of Article 160 (3Biv, the Balochistan government opted to present the report of the Federal Government and that too was never discussed or debated from a provincial point of view.

3. The 18th Amendment and Balochistan

The politics of Pakistan during the last 65 years have revolved around the question of provincial autonomy. Pakistan experienced a 'negotiated legislative revolution'^v in the shape of the landmark 18th Constitutional Amendment in April 2010. The amendment offers an opportunity to convert Pakistan in to a participatory federation.^{vi} The Constitution of the Islamic Republic of Pakistan-1973 consists of 12 Parts arranged in 27 Chapters, 280 Articles, five Schedules, a Preamble and one Annexure. The 18th Constitutional Amendment was passed by the National Assembly on April 8th, 2010 and by the Senate of Pakistan on April 15th, 2010 and accented by the President of Pakistan on April 19th, 2010.

The 18th Amendment changed about 100 Articles. Out of which 69 Articles were amended, 20 were substituted, 7 articles were inserted, 3 were omitted, one was repealed, Sixth and Seventh Schedules were omitted and the Concurrent list from the Fourth Schedule was deleted along with some inclusions and exclusions in the Federal list-I (the exclusive domain of the Federal Parliament/Government) and Federal list-II (shared domain). Additionally, 11 recommendations were also enunciated, which fall within the executive authority of the Government. There are about fifteen notes of reiteration by various political parties that could be described as "pending politics"^{vii} as these points of view could not yield multiparty consensus at the time in the Parliamentary Committee for Constitutional Reforms that

authored the 18th Amendment.viii In order to fully comprehend the post 18th Amendment politics of federalism in Pakistan these three pieces of the puzzle have to be put together. This also implies that federalism is a work in progress in Pakistan and we may resolve these issues in the future.

Part V and VI of the Constitution especially Articles 141-174 specifically deal with relations between federation and provinces. Out of these thirty four (34) articles, seventeen (17) were amended in April 2010ix to strengthen what could be described as the federal parliamentary fences. The major amendments included; redefining legislative competence of the Parliament and provincial assemblies after the abolition of the Concurrent list, inclusion of a provincial legislative ratification clause if the provincial government entrusted any function to the federation. (for example Drugs Registration Authority). It also included reforms in the Council of Common Interests, National Economic Council, National Finance Commission and a Constitutional obligation to submit annualbi-annual performance reports to both Houses. Mandatory consultation with the concerned provincial government prior to a decision to construct hydro-electric power stations, protection to current provincial share and possibilities of increase only in future awards of the National Finance Commission, and provincial power to raise domestic or international loans and a fifty percent share in natural **resources.x**

Box 1: Balochistan in the Constitutional Reforms Committee

1. Although the Baloch and Pakhtoon political parties namely: Balochistan National Party-Mengal, National Party, Balochistan National Movement, Jamhoori Wattan Party and Pakhtoonkhwa Milli Awami Party (PKMAP) boycotted Elections in-2008, due to the presence of three parties namely; National Party, Jamhoori Wattan Party and PKMAP in the Upper House-the Senate had a representation in the Parliamentary Committee on Constitutional Reforms (PCCR.)
2. In total there were six political parties from Balochistan represented in the 26- member PCCR. (i.e. 23.07 %). Pakistan Peoples' Party, Jamiat Ulema-i-Islam (Fazlur Rehman), Balochistan National Party-Awami, National Party, Jamhoori Wattan Party, Pakhtoonkhwa Milli Awami Party.
3. In the ten member Implementation Commission Balochistan had two members (NP and JUI-F)

The role of the Parliament and respective Provincial Assemblies has been enhanced in case of the imposition of an emergency in the country or in any one or more provinces. The 18th Amendment also incorporated a new entry in FL-11 i.e. inter-provincial matters and coordination. All these amendments have a direct or indirect bearing on Balochistan. Hence, the Post 18th Amendment journey towards participatory federalism can provide solace for Balochistan and other smaller provinces.

The Baloch leadership who opted for the Constitutional path deserves special reverence as it was a difficult choice in a country where military dictators mutilated the Constitution, and made it a redundant social contract during two long periods of dictatorship in 1977-1988 and 1999-2008.

“I want to pay tribute to the Baloch nationalist parties and leaders for they not only accepted the political fallout but also put their lives at stake for being part and signatories of the amendments. However, they delivered a very significant message that rights can be achieved by adopting the path of political parleys, within the orbit of the Constitution, the confines of federation and advancing the political struggle on these lines. In juxtaposition, it is a strong message for those who have resorted to the politics of guns for their political rights. If the

1811 Amendment is not implemented now we would provide an opportunity and justification to those involved in the armed struggle to say that they adopted the path of political dialogue and Constitution and became the part of a Constitutional process and its implementation, they voted for it but when the time came to reap the fruits by implementing the entire process in a practical sense, Islamabad

once again washed its hand off. In such a situation they would say that they have no other choice but to pick up weapons for their rights. God forbid! If any such situation develops it would be very dangerous for Islamabad and for the Federation. Through your programme, I would like to invite and suggest to all those who have adopted the path of armed struggle that viewing this complete process of Constitutional

Amendment and its implementation they should follow it. I invite them to come to the table for talks. Nevertheless, the 18th Amendment is not the final testament but only a beginning of provincial autonomy. nXi

Leaders of the National Party, Senator Mir Hasil Khan Bizenjo hailed the 18th Amendment as the biggest achievement since the 1973 Constitution. Mir Ghaus Bakhsh Bizenjo, K. hair Bux Marri and Ataulah Mengal could not persuade Bhutto and others despite years of struggle to abolish the Concurrent list. It has been done now. So it is a great achievement.xii

Senator Dr Malik Baloch, President of the National Party and a permanent member of the Constitutional Reforms Committee and the Implementation Commission maintains that not all of their demands were accepted. The National Party had demanded that Pakistan should be declared a multi-national state and Balochi, Pashto, Sindhi and Punjabi should be granted the status of national languages. This demand was not accepted. Though the abolition of the Concurrent list and giving 50 percent share to provinces in oil and gas resources was a progress in the right direction, complete provincial autonomy was still not granted to the federating units.xiii

Box 2: Balochistan specific/related Recommendations for the Government by the PCCR:

- 1 Provide equal opportunities for recruitment in Armed Forces.
- 2 Make appropriate laws to ensure, “security of person” *Article 9*.
- 3 Expediently provide infrastructure for the utilization of water in the provinces, where it does not exist.
- 4 After abolition of Concurrent list the distribution of work between the Federal Public Service Commission and Provincial Public Service Commissions to ensure provincial autonomy.
- 5 Steps/policies for harmony and stability between the Baloch, Pakhtun and all the communities in Balochistan.

Box 3: Balochistan specific/related/proposed notes of reiteration:

S.no	Leader/Party	Context
1	Senator Haji Adeel and Senator Afrasiab Khattak (ANP)	<ul style="list-style-type: none"> • As lingua franca Urdu is the National language arrangements shall be made for it being used for official and other purposes while similar measures will simultaneously be taken for other National languages spoken in the country within 15 years. (Article 251) • Endorsement of PKMAP proposal about protection of rights of Pakhtoon’s in Baluchistan. • President of Pakistan shall be elected on rotational basis from all federating units and the condition of being Muslim shall be removed.

2	Dr. Farooq Sattar, Haider Abbas Rizvi (MQM)	<ul style="list-style-type: none"> Article 27 (<i>quota system for jobs</i>) be deleted. Major Ports be devolved to the lowest level of the government.
3	Prof. Khurshid Ahmad (JIP)	<ul style="list-style-type: none"> The Senate shall be directly elected (proportional representation). It shall have a role in the election of the Prime Minister and adoption of Money Bill. Appointments to public corporations, federal authorities and non-career diplomats to be ratified by a Parliamentary Committee.
4	Senator Shahid Bugti- JWP, Senator Israrullah Zehri- BNP- A, Senator Dr. Abdul Malik-NP	<ul style="list-style-type: none"> Balochi, Sindhi, Pushto, Punjabi and Seraiki shall be the national languages. National Economic Council shall have equal members from the Federal and the Provinces. Money Bill powers for the Senate.
5	Pakhtoonkhwa Milli Awami Party Senator Abdur Rahim Mandokhail	<ul style="list-style-type: none"> The Senate shall have a role in Money Bill, role in election or vote of no confidence against the Prime Minister. Money Bill can originate in either House of the Parliament. Pashto, Balochi, Sindhi, Punjabi, Seraiki be made national languages. Call for Pakhtoonkhwa Southern and Seraikistan as new provinces. FATA shall be named Pakhtoonkhwa (Central) and shall have the existing status. It shall be merged into respective contiguous unit.
6	Senator Mir Israrullah Zehri, BNP-A	The Center shall keep only four subjects i.e. defense, currency, communication and foreign affairs.
7	Senator Rehmatullah Kakar, JUI-F	<ul style="list-style-type: none"> More provincial autonomy. The Center shall keep only four subjects i.e. defense, currency, communication and foreign affairs.

Analysis:

- A. The provinces have wanted provincial autonomy for a long time. These framework reforms by Parliament are trickling down to provincial capitals at a very slow pace. Secondly, the subsequent legislative, administrative and financial reforms are absent in the province. After the 18th Amendment in Balochistan two committees were constituted to review changes in the Constitution and facilitate transition, but their performance is inadequate. There appears to be a federal-provincial and inter departmental communication gap which impedes progress and prevents realization of the spirit of the amendment at provincial level.
- B. After democratic devolution more than 70 laws were required to be adapted according to provincial needs and perspectives. Although there is no Constitutional vacuum but this space could have been effectively utilized for indigenous reforms. In the absence of Standing Committees the performance of the Balochistan Assembly is characterized by lethargy and inaction.

- C. The Balochistan Local Government Law was enacted in May 2010 and the government has failed to hold Local Elections even after two years. As a result, citizens as consumers of governance and democracy at grass-roots are unable to relate to the devolution process. Similarly, the criteria for distribution of fiscal resources among the districts are based on old mechanisms.
- D. The Balochistan government has also failed to make maximum use of forums like the Council of Common Interests (CCI) and National Economic Council (NEC). Under Article 167 (4)iv provinces can negotiate direct loans and the Provincial Consolidated Fund can serve as security. The National Economic Council (NEC) was supposed to prepare a new framework but even after two years nothing has happened. It is a lapse on the part of the Federal Government and the NEC. The Balochistan Government has failed to raise this issue. Even more important is the issue of equal and joint ownership of natural resources under Article 172xv. The existing legislation in this context is flawed and needs to be revised to ensure the role of provinces in control and management of natural resources, and any proactive engagement in this regard is also missing.

4. Conclusion

We must realize that Pakistan is changing. Its Constitutional framework for fiscal and political federalism has changed after the 18th Constitutional Amendment and the 7th National Finance Commission Award. For Balochistan there is an additional affirmative action in the shape of Aghaz-e-Huqooq-e-Balochistan. All these developments might not be ideal, but these could be regarded as significant steps towards participatory federalism in Pakistan. The provinces are at the center of these changes, and they must come forward and make these changes work in their favour.

The democratic government has tried to re-write the federal-provincial relations. There is great resistance from the centralist forces who will try to reverse this democratic devolution. Therefore the provinces, especially Balochistan has to become proactive to protect what has been achieved. The future voices for more autonomy will be taken seriously only when the provinces are able to prove their worth and vanguard what they have achieved through negotiated legislative revolution and affirmative democratic actions.

Endnotes:

- i **President Asif Ali Zardari has on many occasions apologized to the Baloch over the mistakes of the past especially atrocities and injustices committed in Balochistan. The first public apology was in February 2008 and later upon being elected President in September 2008.** (source: www.presidentofpakistan.gov.pk)
- ii **See Annex 1 on Review of progress on Aghaz-e-Huqooq-e-Balochistan based on Federal Government and Balochistan Government reports.**
- iii **The committee members included Senator Raza Rabbani, Federal Ministers Makhdoom Amin Fahim, Syed Khurshid Shah, Syed Naveed Qamar and Dr Babar Awan. Prime Minister Yusuf Raza Gillani chaired many of its meetings and only one member from Balochistan, Senator Mir Lashkari Raisani occasionally attended some meetings.**
- iv **Article 160 (3B) National Finance Commission: The Federal Finance Minister and Provincial Finance Ministers shall monitor the implementation of the Award biannually and present their reports before both Houses of Majlis-e-Shoora (Parliament) and Provincial Assemblies.**
- v **Interview of Senator Mian Raza. Rabbani by the author July 2011.**
- vi Rabbani, Mian Raza, *A Biography of Pakistani Federalism: Unity in diversity*, Islamabad 2012, p. 173
- vii *Federalism and Provincial Rights: Implication of the 18th Amendment*, Human Rights Commission of Pakistan, 2011, p.33
- viii **Ibid**
- ix **Operational Manual: Transition Management of Democratic Devolution in Pakistan, Forum of Federations and Centre for Civic Education, 2011.**
- x Rabbani, Mian Raza (2012) and the author's analysis.
- xi **Ibid**
- xii <http://ang.com.pk/thenews/apr2010-weekly/inos-ii-04-2010/dia.htm#6>

Annex

Review of Progress on Aghaz..e-Huqook-e-Balochistan

A. Constitutional issues

<i>s. no</i>	<i>Promise</i>	<i>Performance</i>
1	Deletion of the Concurrent list from the Fourth Schedule of the Constitution;	The Concurrent list has been abolished and 17 Ministries have been devolved to the Provinces.
2	Deletion of the Police Order, 2002 and The Balochistan Local Government Ordinance, 2001 from the Sixth Schedule of the Constitution;	The Sixth Schedule has been deleted through the 18th Constitutional Amendment in April 2010.
3	Effective implementation of Article 153 of the Constitution, Council of Common Interests;	The Council of Common Interests (CCI) has been strengthened. Balochistan has yet to take any summary issue to this forum.
4	Implementation of Article 160 of the Constitution, NFC Award; <i>[In the past, the formula was based on population. This has been changed and other criteria such as inverse population ratio, backwardness, poverty and resource generation need to be taken into consideration.]</i>	The 7th NFC with an increased provincial share and Balochistan with guaranteed share. (Balochistan's share increased from Rs. 45 billion in 2009, to Rs. 83 billion in 2010 and to Rs.93 billion in 2011 and Rs.114 in 2012-13)
5	Implementation of Articles 154, 155, 156, 157, 158 and 159 of the Constitution [These Articles relate to the CCI, Water, National Economic Council, Electricity, Priority of requirements of Natural gas, and Broadcasting and telecasting etc.]	These Articles have been reformed.

B. Political issues

<i>s. no</i>	<i>Promise</i>	<i>Performance</i>
1	Release of Political Workers: The Federal Government in consultation with the Provincial Government should immediately release all political workers, except those charged under heinous crimes;	Of 183 cases implicating 678 persons, Home Department, 172 cases are withdrawn and 665 persons released.
2	Immediate to the acceptance of all the proposals contained herein, initiation of a political dialogue with all major stakeholders in the political spectrum of the Province, to bring them into the mainstream politics.	Promised All Parties Conference has yet to be realized. However, an offer for a political dialogue has been made repeatedly at least through the media.
3	The political exiles who return to Pakistan will be facilitated. (Except those involved in acts of terrorism).	Nobody has ended their exile, and 340 families including three prominent persons; Mir Suleman Dawood, Brahmdagh Bugti, and Hairbyar Marri are still in self exile.
4	Provincial Assembly Resolutions: The unanimously passed resolutions of the Assembly from 2002 to date, related to the Province, are implemented within the legal framework of the Constitution.	Of 27 Resolutions, 17 are implemented. <i>[Details are included in the second part of this annexure.]</i>
5	Local Government: The Balochistan Local Government Ordinance needs to be amended by the Provincial Government keeping in mind the administrative needs of the Province.	A new law was adopted on 10th May 2010 but no election has been held.

C. Administrative issues

<i>s.no</i>	<i>Promise</i>	<i>Performance</i>
1	The Federal Government should immediately review the role of Federal Agencies in the province and stop all such operations that are not related to the pursuit of fighting terrorism;	Federal Agencies' role in Balochistan is continuously discussed with a view to stop operations that are not related to the pursuit of terrorism.
2	Construction of Cantonments: The Federal Government should announce that the presence of the army in Sui will be withdrawn and replaced by the Frontier Corps (FC) in pursuit of peace in the present situation. And proposals should not be formulated for the construction of new cantonments except in frontier areas, wherever required. Construction of new cantonments in Sui and Kohlu should be stopped for the time being. The Army will be withdrawn from Sui after handing over the duties to FC. FC will also take over the already constructed Cantonment at Sui.	Construction of Cantonments has been stopped. In principle the FC has taken over from the Army.
3	Commission: A commission should be constituted in respect of missing persons. The commission should be headed by a sitting member of the superior judiciary from Balochistan, including the Federal Defense, Interior ministers and the Home Minister of the Province. The proceedings of such a commission shall be held in camera. Missing Persons: The names of missing persons be identified and following actions be taken immediately, after verification, in any case, if they are found to be in custody. (i) Those persons against whom there are no charges be released. (ii) Those persons against whom there are charges be brought before a court of competent jurisdiction within seven days for trial (effective from the date of promulgation of commission). (iii) Such persons be allowed legal counsel of their choice, the government should assist them in this regard in accordance with law. (iv) Family members of such persons be informed accordingly and allowed visiting rights.	An enquiry was held by a Judge of the Balochistan High Court. No Witness showed up. First Commission worked from April – December 2010. Another commission is working since March 2011. Total 144 Cases Received 99 Cases Disposed (52 Persons Traced); 45 Cases in Process

4	<p>Judicial Inquiry: Judicial inquiry by the superior judiciary be ordered by the Federal Government to inquire into: -</p> <p>a. Murder of Baloch political workers, Ghulam Muhammad, Lala Munir and Munir Ahmed. b. Target killing in the province.</p>	<p>The reports are silent about any progress.</p>
5	<p>Nawab Akbar Bugti Shaheed: A fact-finding commission, headed by a retired judge of the Supreme or High Court to be constituted, to determine the circumstances leading to the death of Nawab Akbar Bugti Shaheed.</p>	<p>Under Implementation.</p> <p>The matter is sub-judice.</p>
6	<p>Conversion Of “B” Areas Into “A” Areas: In view of the decision of the Provincial Government, the policy of conversion of “B” areas into “A” areas may be reviewed from time to time. Urban areas may have regular police.</p> <p>The Role Of Civil Armed Forces:</p> <p>Frontier Corps; The role of the FC in law enforcement shall be under the Chief Minister of the province. The powers conferred under the Customs Act shall be withdrawn, (ii) Coast Guard; The CG should perform its primary duty of checking smuggling of arms and narcotics along the coast and the border. The check posts established beyond their territorial limits as prescribed under the law shall be dismantled. An exercise of delimitation of the border areas needs to be undertaken by the Federal Government, Provincial Government and the Frontier Corps to give effect to the aforesaid.</p> <p>Check Posts: The various check posts established by the civil armed forces and other related agencies, other than border areas should be in accordance with the directions of the Provincial Government.</p>	<p>Status restored to position of 2002.</p> <p>‘A’ Areas have been re-designated as ‘B’ Areas.</p> <p>Coast Guards perform duties as per the law / Act of 1973 to prevent Smuggling and Human Trafficking. Ten Check Posts of Coast Guards have been Dismantled Coast Guards function/establish posts within 8 Km distance from the Coast;</p> <p>FC is to operate in coordination with local/district administration.</p> <p>35 Check Posts of FC have been dismantled, from time to time, as indicated by the Provincial Government.</p>
7	<p>Judicial Inquiry: there should be a judicial enquiry by the superior judiciary into the allotment of land at Gwadar.</p>	<p>Under Implementation.</p> <p>Inquiry in Progress.</p>

8	Flood Relief: Some funds are due by the Federal Government for the flood-affected people of Balochistan, these amounts should be released.	<p>One Billion Rupees were Released to Government of Balochistan.</p> <p><u>Flood Relief 2007:</u></p> <p>i. Rs. 1.5 billion received against the committed amount of Rs. 8.000 billion from the</p> <p>Federal Govt. (1.000 billion for relief & 0.500 billion of reconstruction/works/development)</p> <p>Flood relief 2010:</p> <p>i)_1.5 billion received the from the Federal Government (1.000 billion directly transferred to the bank by the Federal Government & Rs. 250.00 million released by the Federal Government for Flood Affected people)</p> <p>ii) Rs. 1.250 billion as a matching amount has been released by the Government of Balochistan</p> <p>iii) In the current financial year no such funds have been received so far.</p>
9	Education: Balochistan be given a special quota of scholarships by the Higher Education Commission so that students of the province can pursue studies leading to local or foreign Masters and PhDs.	<p>Under Implementation.</p> <p>PC-1 is Approved by the ECNEC & a Committee has been formed for implementation (led by Deputy Chairman Planning Commission).</p>

D. Economic issues

<i>s. no</i>	<i>Promise</i>	<i>Performance</i>
1	<p>Rationalisation of the Royalty Formula:</p> <p>(i) Rationalization of the Royalty Formula and the Gas Development Surcharge have been done, (ii) The concept of public-private ownership in the areas of a district granted for exploration should be followed. Where contracts are awarded, the said district should be given 15% of revenue to be received by the Provincial Government, (iii) Due representation should</p> <p>(ii) be given to the province on the boards of the PPL; OGDC and Sui Southern Gas, (iv) Distribution companies should be obligated under contract law to provide on priority basis gas to the district where it is explored, (v) In case of a successful find the Federal Government shall spend an amount equivalent to 10% of the net profits on development projects in the area. The ascertainment of profits shall be open to scrutiny by independent/third party auditors. (vi) The Federal Government has released the accrued Production Bonus to the districts producing oil and gas. This policy will be strictly implemented</p>	<p>Royalty Formula has been revised with effect from January 2010. GDS distribution amongst provinces to be made in the ratio of their share in total production Gas explored from Balochistan is priced at par with gas from other areas.</p> <p>This calls for a change in Petroleum Policy 2009 and has legal implications as well.</p> <p>In the presence of the 18th Amendment, the Ministry of Petroleum recommends, the issue may be dealt with separately between the Government of Balochistan and Inter Provincial Coordination (IPC) Division.</p> <p>In the presence of the 18th Amendment, the Ministry of Petroleum recommends that the issue may be dealt with separately between Government of Balochistan and Ministry of IPC.</p> <p>Production Bonus will be given to the respective districts when commercial production begins in leased blocks of Balochistan. Govt. of Balochistan is already a member of approving forums like CDWP, ECNEC etc.</p> <p>It is an internal matter of the Government of Balochistan. Representation in Boards of Directors has been increased as follows:</p> <p>OGDCL-Chief Secretary &</p> <p>One Director from Balochistan; PPL- Chairman & 02 Directors SSGCL - Chief Secretary & One Director SML – M.D. & 02 Directors</p> <p>H₂ DIP-01 Director For Gas Provision in Balochistan. highest criteria of per consumer cost (Rs. 270,000) & distance from gas field (67.5 Km) have been approved.</p>

	<p>Mega Projects:</p> <p>(i) All new mega projects to be initiated with the consent and approval of the Provincial Government. The share of the province in its profits/benefits to be assured in the contract/agreement, (ii) The concept of public-private ownership in such projects to be followed where ever possible, (iii) In Gwadar, there shall be a free economic zone and political activities in the said zone may be regulated by an appropriate law to be framed in consultation with all the stakeholders, (iv) In Gwadar, all or as far as possible, appointments in BS-1 to 16, should be from the local population, (v) In Gwadar, the local youth should be provided technical training and absorbed in GPA, GDA and Special Economic Zone, (vi) Preference should be given to the qualified local contractors while awarding contracts related to the port. (vii) Compensation and reallocation of all those fishermen, who are being displaced due to the Gwadar Port must be finalised immediately, (ix) The two jetties agreed to be constructed for the fishermen on the eastern and western bays be constructed, (x) A fisheries training centre as required to be established under the 9th Five Year Plan for Balochistan be constructed, (xi) A portion of the revenue collected by the Gwadar Port Authority be allocated for the development of the province, (xii) The Chief Minister shall be the ex-officio Chairman of the Gwadar Development Authority and there shall be seven members from the province on the Board of Directors, (xiii) The Provincial Government of Balochistan will nominate a person duly qualified to be the Chairman of the Gwadar Development Authority.</p>	<p>Required provisions have been made in Gwadar Port Authority Bill. Standing Committee on Ports & Shipping has completed its Deliberations on the draft. The Bill awaits formal approval of the Parliament.</p> <p><u>Under Construction.</u></p> <p>Federal Share of funds (Approx. Rs. 1040 million) were transferred. Physical progress is 30%. Costs escalated during construction. Revised PC-1 was approved by the CDWP on 13-01-2012.</p> <p><u>Under Construction.</u></p> <p>Substantial construction work of the building is complete. Funds Required for Completion. Agreed in Principle. 10% of Revenues from Gwadar Port are reserved for the purpose. Gwadar Port Authority (GPA) is encouraging local participation in port activities. Out of 44 contracts, 25 contracts were awarded to local contractors. Rs. 128 million were disbursed as compensation to the people displaced from Mula Band Area.</p> <p><u>Under Implementation.</u></p> <p>Gwadar Port comprises 03 Zones: Port of Singapore (PSA) Zone; Export Processing Zone (EPZ); and Balochistan Industrial Estate (GoB). PSA is functioning; EPZ is in demarcation & land acquisition process/stage; GoB has (acquired) 3000 Acres of Land and PC-1 is under preparation. Out of 150 employees (BS 1 - 16) in GPA, 142 are from? missing check</p>
3	<p>SUI:</p> <p>(i) There should be a special development package for the area. (ii) The armed forces should be systematically withdrawn from the area.</p>	<p><u>Under Implementation.</u></p> <p>Dera Bugti Development Package (09 Projects): Total Cost: Rs. 4.1 billion Expenditure: 650 million. Allocation for 2011-12: 955 million. Physical progress is slow.</p>

4	<p>Employment Opportunities:</p> <p>(a) The Federal Government will create, with immediate effect, five thousand additional jobs for the province, (b) (i) The quota for the province as prescribed in the rules/law for employment in government (specially foreign service), semi-government, autonomous/semi-autonomous, corporations and bodies must be strictly complied with. Deficiency if any, needs to be met in a proactive manner, (ii) The Overseas Employment Foundation needs to facilitate the recruitment of skilled or unskilled labour for employment abroad, (iii) The local people living along the coast who meet the criteria should be given jobs in the Coast Guards, (iv) The monitoring of the aforesaid shall be the responsibility of the Senate Standing Committee for Establishment.</p>	<p>The Chief Minister said that only 5,000 people had been recruited under the Aghaz-i- Haqooq-i-Balochistan package and the Provincial Government was asked to regularize their appointment and pay their salary from its own resources.</p> <p><u>Under Im lementation.</u></p> <p>Ministry of Professional & Technical Trainings has prepared a PC-1 prepared for Training of 5000 Labour from Balochistan. Overseas Employment Corporation, Ministry of Human Resource Development would explore their employment in markets abroad. 2500 High School Teachers (BS 14) & 2500 Assistant Lecturers (BS 16) Appointed in Balochistan. Salaries are Financed by the Federal Government for 04 Years i.e. from FY 2010-11 to 2013-14. (ii) Establishment Division has identified 5600 Posts (BS 1 – 20) in the Federal Government. Recruitment has been made on 2950 Posts.</p> <p><u>Under Im lementation.</u></p> <p>Government of Balochistan has Submitted proposal. Pakistan Coast Guards (PCG) has employed 118 youth <i>I sevovs</i> (soldiers) (BPS-5).</p>
5	<p>Gas Development Surcharge: The Federal Government agrees to pay the arrears of Gas Development Surcharge from 1954 to 1991. This is a total amount of Rs 120 billion payable in 12 years.</p>	<p>GDS arrears are paid as agreed in 7th NFC Award. Rs. 120 h billion are being paid in Annual installments – Rs. 10 billion Every year since 2010-11.</p>
6	<p>Ownership in oil and gas compan ies: In organizations such as PPL, OGDCL and Sui Southern, the province will be able to purchase up to 20% of the right shares when offered in the open market</p>	<p>Under Im lementation. PPL and OGDCL are public sector companies. Whenever the Privatization Commission divests their shares, the Government of Balochistan may acquire the same.</p>

7	<p>Saindak Project: The Federal Government from its 30% shares in the project will immediately give 20% to the province. On completion of the project and when the foreign company withdraws, the project shall be owned exclusively by the province.</p> <p>Profit Sharing In Existing Agreements:</p> <p>(i) It is proposed that existing agreements on projects such as Saindak, Reko Diq and others where agreements have already been negotiated, the Federal Government may reconsider the agreements concerning the sharing of income, profits or royalty between the Federal Government and the Provincial Government.</p>	<p>Reko Diq Project is already in the provincial domain. Saindak will follow in October 2012 when the Lease Agreement with MCC China expires. Profit Share of Government of Balochistan (GoB) has been enhanced as agreed. GoB received an amount of Rs. 953.390 million in 2011 (out of Saindak Leases) from the Federal Government.</p>
8	<p>Fishing Trawlers: Fishing trawlers should be restricted to the authorized limits of 33 kilometers from the coast. This will help promote the small fishermen.</p>	<p>Large Fishing Trawlers are restricted to the authorized limits of 33 nautical miles from the coast.</p>
9	<p>Kohlu District: Special incentives should be given to the local tribes to facilitate exploration in the area, which remains closed due to security concerns.</p>	<p><u>Under Implementation.</u></p> <p>Kohlu Development Package 15 Projects Costing Rs. 6.9 billion. Expenditure incurred Rs. 3.1 million.</p>
10	<p>Poverty Alleviation: In all poverty alleviation schemes, the allocation of the province should be proportional to the percentage of people living below the poverty line.</p>	<p>Benazir Income Support Program has completed a poverty survey in 27 Districts (except Awaran, Khuzdar & Panjgur). Other details: # of Families/HH Surveyed - 964,399 # of Cash Grant Recipients - 290,994 Disbursement made- Rs. 5.1 billion</p>
11	<p>Dera Bugti Internally Displaced Persons: The Federal Government for the rehabilitation and settlement of the IDPs shall provide a sum of Rs 1 billion.</p>	<p>Federal Government has transferred Rs. One billion to Government of Balochistan in March 2010 for Resettlement of IDPs in Dera Bugti.</p>

12	Water Management: The Federal Government shall immediately undertake schemes, which include the construction of small dams throughout the province but particularly in the districts of Quetta, Pishin, Qila Abdullah, Qila Saifullah, Zhob etc.	<u>Under Implementation.</u> 100 Delay Action Dams are under Construction including: Quetta (Barak Dam); Pishin (Bostan Dam); Qila Abdullah (Arambai Dam); Qila Saifullah (Tor Kane Dam), and Zhob (Bahlool Dam). Four Small/Medium Dams Projects are in Tendering stage: Naulang Dam; Winder Dam; Pelar Dam; and Garuk Dam.
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E. Monitoring Mechanism

<i>s. no</i>	<i>Promise</i>	<i>Performance</i>
1	A Parliamentary Committee on National Security (PCNS): It is proposed that the Federal Government, Provincial Government and other departments/agencies involved in the implementation of the proposals shall brief the Parliamentary Committee on National Security on the status of implementation on a monthly basis.	First Senator Raza Rabbani was responsible for monitoring. Now Senator Rehman Malik is responsible who is not part of PCNS.
2	Parliament: The Federal Government and the Provincial Government shall every three months submit a report before both Houses of Parliament, separately, on the state of implementation of the proposals. The two Houses shall separately allocate appropriate time for discussion on the report.	18 Progress Review Meetings have been conducted including 04 Sessions chaired by the Prime Minister of Pakistan. Monitoring done by following committees <ul style="list-style-type: none"> - NA Standing Committee on IPC; - Cabinet Committee on AHB; - Committee comprising Federal Ministers from Balochistan. But no such reports have been presented before the Parliament.
3	The Standing Committee on Establishment of the Senate of Pakistan: The Standing Committee on Establishment of the Senate shall present a report every three months on Item No25. The Senate Chairman, after the report has been laid in the Senate, transmit the same to the speaker, National Assembly of Pakistan, for information of that House.	Nothing progress has been made.
4	Certification: The Federal Minister for inter-provincial coordination shall at the end of each financial year certify to both the Houses of Parliament separately, the amount of monies spent for the implementation of these proposals.	No such certificate has been presented.

F. Policy Actions on Assembly Resolutions

<i>Political Policy Actions: Assembly Resolutions</i>	<i>Status/ progress</i>
Employment in Pakistan Navy (PN) and Pakistan Coast Guards (PCG) for youth of Balochistan – Ministries of Defense and Interior.	PN Selection Centers are functioning at Karachi & Quetta. Measures to improve recruitment include: i) 20% Relaxation in SSC marks; ii) Relaxation of age limit by 2 years; iii) Seats reserved in each batch of Sailors - 122 joined in 2011 and 54 will join in March 2012; iv) ISSB facilities provided at Quetta. Coast Guards have employed 118 soldiers (<i>sepoys</i>) in Balochistan.
Appointment / Training of Engineers of Balochistan in Gwadar Sea Port – Ministry of Ports & Shipping.	18 engineers of Balochistan appointed in GPA, and received on the job training from MIS China Harbor Engineering Company, Pakistan International Terminal, KPT etc.
Appointment of Jobless youth in various Banks in Balochistan – Ministry of Finance.	State Bank has recruited 18 Officers in 2010. National Bank appointed 117 OG-III on contract. First Women Bank: Recruitment is in process. Zarai Taraqati Bank has 364 employees from Balochistan against a quota of 329 posts.
Enhancement of Zakat Funds for treatment of poor in various Hospitals - Zakat and Ushr Division.	Zakat Funds of three hospitals were increased in 2008 as follows: * Bolan Medical Complex Hospital (Funds increased from Rs. 6 million to Rs. 9 million) * Civil Hospital Quetta (Rs. 6 million to Rs. 9 million) * CENAR Quetta (Rs 5 to Rs 7.5 million).
Completion of Quetta-D. I. Khan Road (531 Km) and construction of Quetta-Zhob Section on N. Highway Standard - Ministry of Communication.	Section wise progress of N-50 is as follows: Quetta-Qila Saifullah (151 Km) is complete. Qila Saifullah – Zhob (150 Km) is in construction. Zhob – Mughal Kot (87 Km) is in design phase. Mughal Kot- D.I. Khan (143 Km) is complete
Provision of TV boosters in all backward areas of Balochistan – Ministry of Information.	Government of Balochistan has indicated 19 areas where people are deprived of PTV transmissions. Feasibility of Installing TV Boosters has been considered.

Marine Sciences classes in Engineering University Khuzdar & Establishment of a Marine Sciences College in Gwadar. - Higher Education Commission.	University of Engineering is situated in Khuzdar and initiation of classes there is not feasible. However, University of Agriculture, Lasbela offers a BSc. and intends to launch an MSc. in Marine Sciences. It has acquired 30 acres of land at Gwadar where it plans to establish related infrastructure.
Establishment of 500 MW Transmission Line from Dera Ismail Khan – Zhob and National Grid Station. - Ministry of Water and Power	Response awaited <u>from</u> Ministry of Water and Power.
Sanction of 300 lines exchange for connecting different lines of District Musakhel with National Direct Dialing Network -Ministry of Information Technology	Following telephone exchanges are working & connected to NDD Network: 1. Musakhel – with 240 Lines capacity; 2. Kingri – 312 Lines; and 3. Rarasham – 312 Lines
Revival of rail service from Quetta – Zhob - <u>Ministry</u> of Railways.	Under Implementation. For revival of Bostan – Zhob rail link and laying a new broad Gauge track from Zhob – D.I. Khan – Kotla Jam (near Bhakkar), Feasibility Study has been completed by Pakistan Railways Advisory & Consultancy Services (PRACS). PC-1 is under preparation.
Development of command area of Sabakzai and Mirani Dams by Federal Government - Ministry of Water and Power.	At Mirani Dam, 10,000 acres of land has been developed/leveled against a target of 12,620 acres. All of the planned 195 watercourses have been constructed in the command area. At Sabakzai Dam, all of the planned 1670 acres of land has been developed, and 31 watercourses have been also constructed against a target of 34.
Establishment of Cancer Department. in Sandeman Hospital, Quetta - Finance and P&D Divisions.	Under Implementation. Government of Balochistan has submitted PC-1 of the project to P&D Division.
Share in gas royalty for Balochistan in Pak-Iran –India Gas Pipeline - Ministry of Petroleum.	Under Implementation. There is an Agreement between Pakistan and Iran for the import of 750 Million Metric Cubic Feet (MMCF) of which 250 MMCF of gas will be allocated to Balochistan. Work on Front End Engineering Design (FEED) of Pakistan Section (781 Km) of the pipeline is in progress. Feasibility will follow.

Construction of check dams and end to load- shedding -Ministry of Water and Power.	Under Implementation. Government of Balochistan 's PC-II for feasibility study (costing Rs. 151.30 million) of 200 Check Dams was considered by CDWP on 13-01-2012.
Installation of windmills on coastal belt for production of electricity - Minista of Water and Power.	Under Implementation. Alternate Energy Development Board (AEDB) has considered installation of five wind masts on test basis. Further progress would be made on basis of test results.
Shifting of Head Office of Sui Southern Gas Company (SSGC), Saindak Metals Ltd. to Quetta - <u>Ministry</u> of Petroleum.	Head office of Saindak Metals Ltd. is in Quetta. SSGCL is a public company and is engaged in transmission/distribution of natural gas in both Sindh & Balochistan. Hence shifting of its Head Office may not be feasible.
Loans for mineral sector without interest and waiving off agricultural loans up to Rs 500,000/- - Ministry of Finance.	Under various relief packages, loans amounting to Rs. 482.729 million were written off by ZTBL. In case all loans outstanding against borrowers of Balochistan province up to amount of Rs. 500,000 (as on 30th June, 2009) are waived off, an amount of Rs. 6.746 billion would be required (principal Rs. 2.904 billion and markup of Rs. 3.842 Billion). Charter of the State Bank prohibits providing any write off or waiver to its borrowers on government directive, without payment of amount by the government. Due to resource constraints further extension of these packages to entire Balochistan cannot be recommended.

- *Performance is based on claims of Government of Pakistan, periodic report (4th June 2012) on Balochistan package by the Establishment Division and report (12th June 2012) by Finance Department, Balochistan.*

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Post 18th Amendment of the Constitution of Pakistan
A Critical Appraisal
A Critical Appraisal

Zafarullah Khan

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List of Acronyms

ANP	Awami National Party
CADD	Capital Administration and Development Division
CAT	Convention Against Torture
CCI	Council of Common Interest
CRC	Convention on the Rights of the Child EOBI Employees Old Age Benefit Institution
ETPB	Evacuee Trust Property Board
FATA	Federal Administrated Tribal Areas
FC	Federal Court
GST	General Sales Tax
ICCPR	International Covenant on Civil and Political Rights
ICESR	International Covenant on Economic, Social and Cultural Rights
JUI	Jamiat Ulma-e- Islam
JWP	Jamhoori Watan Party
MQM	Muttahida Quami Movement
NEC	National Economic Council
PATA	Provincial Administrated Tribal Areas
PCJA	Parliamentary Committee for Judicial Appointments
PCO	Provincial Constitutional Order
PML N	Pakistan Muslim League-Nawaz
PML Q	Pakistan Muslim League-Quaid-i-Azam
PMP	Pakhtunkhwa Milli Awami Party
PPP	Pakistan People's Party
SC	Shariat Court

Abstract

The 18th Constitutional Amendment and its sequels the 19th and 20th Amendments have attempted to reclaim the federal character and spirit of Pakistan. This is a paradigm shift to restore the original structure of the state based on the principle of the trichotomy of power. It is expected that these constitutional changes will provide space to a suffocating state and society due to prolonged military interventions. Today the state of Pakistan is fraught with many fault lines defined by highly centralized authoritarian tendencies. During the last 65 years the Provinces had wanted greater provincial autonomy. The structural reforms envisaged by these Amendments call for rethinking legislative and public policy, as well as planning and fiscal efforts to address the governance needs of citizens. This study examines the promises and impediments of this challenging journey.

Key words: Federalism, provincial autonomy, institutional powers.

Introduction

The 18th Constitutional Amendment is definitely not a panacea to all the problems that this country suffers due to the long denial of democracy and ignoring claims for provincial autonomy. Nevertheless, this could be described as a paradigm shift to reclaim the inherent federal character and spirit of Pakistan. The unanimous adoption of the 18th Amendment and its sequels the 19th and 20th Constitutional Amendments reflect the maturity of a political class. These changes have led to immense change in the country's federal architecture by delineating new division of powers between the Federal and Provincial governments, making representative institutions repositories of numerous powers and expanding the scope of fundamental rights.

The Constitution that is regarded as a „user manual of statecraft’ (Senator Nizamani, 2012) has suffered much mutilation in Pakistan. This had an adverse impact on the federal dream of the country and diluted all parameters of transparent and accountable democratic governance.

Now the 18th Constitutional Amendment that is a „negotiated legislative revolution’ (Senator Raza Rabbani 2011) has changed more than 36 percent (102 Articles) contents of the Constitution. This may not be an ideal deal but it is the first ever home-grown initiative to reclaim the original federal character and spirit of the country. It could be described as a second grand national political consensus after the adoption of the 1973 Constitution.

The Federal Quest Amid Missing Federal Heritage

“The theory of Pakistan guarantees that federated units of the national government would have all the autonomy that you will find in the constitutions of the United States of America, Canada and Australia. But certain vital powers will remain vested in the Central Government such as the monetary system, national defense and other federal responsibilities.”

Quaid-i-Azam Muhammad Ali Jinnah

(An interview with the Associated Press of America, 8th November 1945)

Pre and post-partition politics of the sub-continent have revolved around the critical question of rights of the provinces. Federalism; a democratic concept of constitutionally divided powers between the federal governing authority and constituent units, had been the promise for the establishment of Pakistan. This demand is embedded in all major political documents, declarations and positions taken by the leadership that struggled for the creation of Pakistan. The provinces were to be at the heart of these arrangements. This aspiration for provincial autonomy features prominently in the fourteen points of Quaid-i-Azam when he demanded that the, “form of the future Constitution should be federal with residuary powers vested in the provinces.” A similar vision was enshrined in the Pakistan Resolution of 1940.

However, the adoption of the Government of India Act of 1935 as the provisional constitution at the time of Independence undermined the original federal vision for the country. Later the constitutional journey of Pakistan remained uneven. The „majority constraining’ (Senator Waseem, 2011) approaches resulted in the introduction of the parity formula and creation of the One Unit system (1955) by merging the provinces and princely states of then West Pakistan which further delayed the federal dream. The Constitution of 1956 created a cosmetic federal republic but was abrogated in 1958. The 1962 Constitution promulgated by a military regime centralized the governance structure and opted for a privilege term „central’ over „federal’ in its contents. The end result of these distortions was the dismemberment of Pakistan in 1971.

The idea of federalism returned after this tragedy and the Constitution of 1973 offered a federal structure with a bicameral legislature. The Senate of Pakistan was established as a Federal Upper House alongside the people’s chamber the Lower House i.e. the National Assembly. While defining the State in Article-7 three tiers of governance i.e. local, provincial and federal were envisaged. The nascent Constitution was put in abeyance in 1977 by General Zia who later through the 8th Amendment in 1985 changed its spirit. Once again in 1999 General Musharraf put it in „abeyance’ and in 2003 via the 17th Amendment gave it a quasi-presidential outlook.

Almost all political responses to these centralizing tendencies were orchestrated around a democratic federalism claim with increased provincial autonomy. The 21-points of the United Front (*Jugto* Front) in 1954, the 6-points of the Awami League in 1966, the Declaration of Provincial Autonomy (1986) by the Movement for the Restoration of Democracy and the Charter of Democracy (2006) were authored in the idiom of provincial autonomy.

Secondly, among the family of 28 federally organized countries in the world, Pakistan falls in the category of a “coming together federation” because the constituent units joined it through a legislative vote in Sindh, Punjab and Bengal and through public referendums in Sylhet and the then NWFP (now Khyber Pakhtunkhwa). Over a dozen princely states, including Bahawalpur, Kalat, Makran, Kharan, Lasbela, Khairpur, Swat, Amb, Dir, and Chitral, also became part of the new state.

This compositional diversity was replaced by artificial unity through the One Unit system in 1955 that nullified the demographic and electoral advantage that the more populous East Pakistan had in a united Pakistan, along with depriving the provinces of their historical and distinct identity. The military regime of General Yahya Khan abolished the One Unit on July 1, 1970 but clubbed the princely State of Bahawalpur in Punjab and Balochistan States Union with the former Chief Commissioner Province of Balochistan. The Constitution of 1973 is the first democratic document that formally recognized the original names of the four provinces.

The 18th Amendment renamed the former NWFP as Khyber Pakhtunkhwa to settle the lingering quest for identity of its majority population. After the 18th Amendment this aspect has led to demands for the creation of more provinces for secondary communities namely, Hazarawal in Khyber Pakhtunkhwa and Seraikis in Punjab.

Even today, ostensibly Pakistan is a federal governance structure, but practically there are six distinct governance zones. The system of governance in FATA (Federally Administered Tribal Areas), PATA (Provincially Administered Tribal Areas), Gilgit-Baltistan, Federal Capital Islamabad, and 43 cantonments is different from the rest of Pakistan. This exposes the myth of equality of citizenship and underlying questions of identity in Pakistan.

Deciphering the 18th Amendment

The structural reforms introduced by the 18th Amendment have impacted almost all pillars of the State namely; the Legislature, the Executive and the Judiciary. It has expanded the scope of constitutionally guaranteed fundamental rights. The amendment has redefined federal- provincial political and fiscal relations and legislative competences. The Amendment has also introduced an innovative concept of institutional power through the Parliament, provincial assemblies and federal forums like the Council of Common Interests (CCI) and National Economic Council (NEC). In order to understand these changes the following is an indicative dissection of the contents of the 18th Amendment according to the three pillars of the State. Part-II of this paper specifically focuses on federal-provincial institutional relations after the democratic devolution.

Part-I Institutional Design: Trichotomy of Power

A. The Legislature

According to the constitutional scheme the Parliament and the provincial assemblies are supposed to be the centre stage of a nation's democratic aspirations. In democratic dispensation the Constituent Assembly authors and approves the Constitution of a nation. After its adoption, its supremacy is ensured and enforced by the Parliament as the custodian of the Constitution with a right to amend it through due procedure.

The Constitution of 1973 envisages Pakistan as a federal republic with representative parliamentary institutions. The Objectives Resolution adopted in March 1949 also acknowledges that delegated sovereignty shall be exercised through the chosen representatives of the people.

Post 18th Amendment Scenario:

The 18th Constitutional Amendment offers an opportunity to convert Pakistan into a “genuine cooperative federation” with a strengthened parliamentary role in running the affairs of the State and government with democratic checks and balances. The Amendment has introduced the concept of “shared responsibilities” through the reformed Council of Common Interests (CCI) for subjects enlisted in the Federal Legislative List-II. The CCI has been made responsible to and is required to submit its annual report to both Houses of Parliament. The Parliament in a joint sitting may also from time to time by resolution issue directions through the Federal Government to the Council generally, or in a particular matter to take action as the Parliament may deem just and proper. Such Parliamentary directions shall be binding on the Council. Similarly, if the Federal Government or a Provincial Government is dissatisfied with a decision of the Council, it may refer the matter to Parliament in a joint sitting whose decision in this behalf shall be final.

The reorganized National Economic Council (NEC) has been entrusted to review the overall conditions of the country and advise the Federal Government and the Provincial Governments to formulate plans in respect of financial, commercial, social and economic policies. Besides other mandates it is supposed to ensure balanced development and regional equity. The NEC has been made responsible to the Parliament and is supposed to submit its annual report to both Houses of Parliament. Similarly after the 18th Amendment the annual report on implementation of Principles of Policy will also be placed before the Senate along with the National Assembly. The provinces are also supposed to submit their own reports.

With their expanded role and mandate these two vital constitutional forums offer new avenues of federal-provincial coordination and cooperation. Through the 18th Amendment the Parliament has also been assigned a role in the appointment of judges to the Supreme Court and the High Courts. The appointments of Chief Election Commissioner and provincial members of the Election Commission of Pakistan are also via the Parliament. The 18th Amendment delineated the concept of caretaker governments at the federal and provincial levels during the election period. Later the 20th Amendment further refined and explicitly defined the role of the Parliament and the provincial assemblies in this regard.

The role of the Parliament and respective provincial assembly has been enhanced in case of imposition of emergency in the country or in any one or more provinces. There are many other articles of the Constitution that make the Pakistan Parliament and provincial assemblies real repositories of power. The Amendment has restored the spirit of the parliamentary system in the country, and has transferred the key presidential powers to the Parliament. Now the Prime Minister and the Cabinet have been made collectively responsible to both Houses of Parliament [The National Assembly and the Senate].

Previously such responsibility was solely to the National Assembly. The Prime Minister in the federation and the Chief Ministers in the provinces have been made the Chief Executives. The concept of run-off election has been introduced for the office of Prime Minister and Chief Ministers and restriction on the number of terms for these offices has also been lifted.

The Constitution has specified that after a general election the National Assembly and the provincial assemblies have to be summoned within 21 days to elect their Speakers, Deputy Speakers and Leaders of the Houses. This is a democratic safeguard against potential manipulations. The Amendment discourages legislation through Ordinances. Any Ordinance could be promulgated only once, and one-time extension can be given by a resolution of the National Assembly or the Senate or the respective provincial assembly. The assemblies have been given power to disapprove any Ordinance. In case of differences of opinion on any legislative bill the joint sitting of the Parliament has been empowered to pass it by the vote of majority.

Although the Amendment has failed to entrust financial power to the Senate, the number of its working days have been increased from 90 to 100 and the number of days to make recommendations on the Money Bill have been increased from 7 to 14. In addition, four seats, one from each province, for religious minorities have been added in the Senate, raising its strength to 104 from 100.

The discretionary presidential powers to dissolve the National Assembly through notorious Article 58 (2) b and to refer a question to a referendum have been removed. In Article 48 (6) words “by order of the President” have been omitted to make the call for a referendum a prerogative of the Prime Minister. Now the said Article says, “If at any time the Prime Minister considers it necessary to hold a referendum on any matter of national importance, he may refer the matter to a joint sitting of the *Majlis-e-Shoora* (Parliament) and if it is approved in a joint sitting, the Prime Minister may cause such matter to be referred to a referendum in the form of a question that is capable of being answered by either “yes” or “no”. Similarly, Article 48 (7) empowers the Parliament to lay down the procedure for the holding a referendum, compiling and consolidation of results through an Act of Parliament. These changes appear to be a parliamentary safeguard against referendums held by military dictators in 1984 and 2002 to prolong their regimes.

Box 1: Understanding the work of PCCR

The multi-party Parliamentary Committee on Constitutional Reforms produced three distinct products after twelve months of in-camera deliberations:

First: *The 18th Constitutional Amendment has revisited the entire Constitution. The Constitution of the Islamic Republic of Pakistan-1973 consists of 12 Parts arranged in 27 Chapters, 280 Articles, five Schedules, a Preamble and one Annexure. The 18th Constitutional Amendment was passed by the National Assembly on April 8th, 2010 and by the Senate of Pakistan on April 15th, 2010 and accented by the President of Pakistan on April 19th, 2010. The 18th Amendment changed about 100 Articles, Sixth and Seventh Schedules were omitted and the Concurrent List from the Fourth Schedule was deleted along with some inclusions and exclusions in Federal List-I (exclusive domain of the Federal Parliament/Government) and Federal List-II (shared domain as far as policy formulation, regulation, supervision and control of institutions related to the list are concerned)*

Second: *Eleven recommendations articulated for consideration of the Executive to amend laws and improve certain policies. (Annex :A)*

Third: *Fifteen „Notes of Reiteration’ by political parties on issues that could not yield consensus and could be described as „pending politics.’ These points are for the sake of record and for possible future opportunities to expand the scope of provincial autonomy and address remaining contentious issues. (Annex: B)*

In order to make complete sense of the process one has to take all the three aspects into account. By doing so, many critics of the 18th Amendment will find adequate answers to their concerns and questions.

Box 2: Post 18th Amendment Legislative Competences

S. no	Legislative powers	Competent forum
1	Federal Legislative List-I and II	The Parliament
2	Fundamental Rights: Right to Education, Right to Information and all other justice and fundamental rights	Federation and the Provinces
3	(a) Local Government (b) Only for Cantonments (entry 2-FL-I)	(a) Provinces (b) Federal Government
4	Criminal Law, Procedures and Evidence (Article 142 (b))	Both the Federal Parliament and the Provinces. It is a sort of new concurrency.
5	Residual subjects (including the subjects of erstwhile Concurrent List)	Provinces
6	For Islamabad Capital Territory and other territories outside Provinces	The Parliament
7	Assigned under Article 144 (for one or more Provinces by consent)	The Parliament
8	(a) Federally Administered Tribal Areas (FATA) b) Provincially Administered Tribal Areas (PATA)	(a) The President can extend/ direct. (b) The Governor can extend/ direct

In order to realize all these changes the National Assembly, the Senate of Pakistan and the provincial assemblies have to amend their Rules of Procedure and Conduct of Business. The National Assembly and the Senate did this on 24th December 2010 and 8th March 2012 respectively.

Box 3: Expanded Fundamental Rights

Citizens' space:

The 18th Amendment expanded the scope of fundamental human rights. The Amendment affirmed three new rights namely: the Right to fair trial and due process, Right to Information and Right to Education. The Amendment slightly modified three other fundamental rights. In Article 17, Freedom of Association, the intra party election condition has been deleted. Similarly, a proviso related to sectarian, ethnic and regional hatred and militant wing of parties has been eliminated. These were added by a Legal Framework Order-2002 and were retained by the 17th Amendment (2003). In Article 25 pertaining to Equality of citizens the word „alone’ from „No discrimination on the basis of sex alone’ has been dropped. In Article 27, safeguard against discrimination in service, the following has been added; „provided also that under representation of any class or area in the service of Pakistan may be redressed in such manner as may be determined by an act of (Majlis-e-Shoora) Parliament.’

However, the Amendment failed to address vague ideological areas like Federal Shariat Court and other Articles that undermine the equality of citizenship in Pakistan. However it brought back the word „freely’ for religious minorities in the text of Objectives Resolution that was deleted in 1985 during the military regime.

Pakistan has signed and ratified many international instruments such as: the International Covenant on Economic, Social and Cultural Rights (ICESR) and the International Covenant on Civil and Political Rights (ICCPR) as well as the Convention Against Torture (CAT) in April 2008, and is already a party to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC), and to the core ILO Conventions. All these obligations do not figure prominently in the reformed Fundamental Rights chapter and the federal and provincial governments have not taken tangible steps to practically enforce many of these rights.

However, while reading the Rules of the National Assembly with relevant provisions of the Constitution, one finds at least two factual errors. The first is in Chapter XVI i.e. Resolutions mentioned in the Constitution. The Rule 171 still mentions a Resolution for extension of the term of office of the Chief Election Commissioner under clause (1) of Article 215. The post

18th Amendment Constitution has deleted this proposition. The second is in the Chapter XVIII i.e. Reports to be placed before the Assembly the new Rules do not include three new reports to be placed before the House after the 18th Amendment. These new reports are:

- (a) According to Article 153 (4) of the Constitution annual report of the Council of Common Interests.
- (b) According to Article 156 (5) of the Constitution annual report of the National Economic Council; and
- (c) According to Article 160 (3B) bi-annual report on National Finance Commission.

B. The Judiciary

The role of an apex judiciary vis-à-vis democratic development in Pakistan had always been quite controversial. Since the dissolution of the first Constituent Assembly in 1955 (*Federation of Pakistan versus Maulvi Tamizuddin*, (PLD 1955 FC 240) till the last military intervention by General Pervez Musharraf in 1999 (*Zafar Ali Shah versus General Pervez Musharraf*, PLD 2000 SC 869) the courts endorsed disruptions of democracy by invoking a „doctrine of necessity. In the absence of the Constitution the judges had to take oaths of allegiance on the Provisional Constitutional Orders (PCO) and legitimize the usurpers. To prevent such practices the 18th Amendment changed the mechanism of appointment of judges for the superior judiciary. According to a newly inserted Article 175-A, a multi stakeholder Judicial Commission of Pakistan headed by the Chief Justice by a majority decision nominates to the Parliamentary Committee on Judicial appointments one name for each vacancy. This committee includes four senior judges of the Supreme Court, one former chief justice/judge, the Federal Law Minister, Attorney General and a member nominated by the Pakistan Bar Council for appointments in the Supreme Court. For appointments in a High Court, the Commission also includes; Chief Justice of the respective High Court, a senior most judge of that High Court, the provincial Law Minister and a nominee of the concerned Bar Council. The Article has separate clauses for appointments in Islamabad High Court established through the 18th Amendment and Federal Shariat Court.

The eight-member Parliamentary Committee with equal membership from the Senate and the National Assembly and with 50 percent representation from the opposition parties confirms the nominees by majority of its total membership within fourteen days, and could reject the nomination by three-fourth majority with recorded reasons.

After the passage of the 18th Amendment this Article along with many others were challenged by 21 petitioners, and on October 21, 2010 the 17-member full bench of the Supreme Court through its short order referred back to the Parliament to revisit Article 175- A. In order to avert any institutional clash the Parliament adopted the 19th Constitutional Amendment in December 2010, and addressed the concerns of the Supreme Court.

It is interesting to observe that this article was the first one that became operational on November 6, 2010 when the Judicial Commission adopted its rules and in the same month the Parliamentary Committee for Judicial Appointments (PCJA) became functional. Since then all appointments in the superior judiciary have been made through the new mechanism. As of today the Supreme Court has overruled all decisions taken by the PCJA that rejected the Judicial Commission nominations. Nevertheless, the process of appointment of judges has been democratized a bit.

The 18th Amendment has also added some new clauses in Article 6 that makes subversion, suspension, putting in abeyance or abrogation of the Constitution an act of high treason. The aiding, abetting or collaboration in such an act has also been made high treason. The said Article specifically asks the Supreme Court and a high court not to validate an act of high treason. In this way the 18th Amendment makes the role of the judiciary in sustaining the nation's democratic dreams and safeguarding the Constitution of vital importance. The Supreme Court on July 30, 2009 declared General Pervez Musharraf's second coup of November 3, 2007 as unconstitutional and developed safeguards against future military interventions. These changes inspire confidence in the democratic future of Pakistan, but they have to be tested as the country has experienced four military coups in its 65 year existence.

Equally important is the role of superior judiciary to make Pakistan's federalism work. Article 184 while elaborating the original jurisdiction of the Supreme Court assigns it a role to pronounce declaratory judgments in any dispute between any two or more governments.

C. The Executive

The concept of separation of power entails that the executive branch of the State holds the authority and responsibility to conduct daily affairs and administration of the State. The constitutional framework and laws made by the legislature are implemented by the Executive.

According to the Rules of Business 1973 policy formulation and undertaking policy decisions is the mandate of the Executive. The rules designate the Secretary (civil servant) as the official head of division/ministry and as a principal accounting officer. Besides assisting the minister-in-charge of a division/ministry the Secretary also executes the sanctioned policies through the team comprised of civil servants.

The Article 41 of the Constitution says that the President of Pakistan is the Head of State and represents the unity of the Republic. While the Article 50 makes him part of the Parliament. In the absence of Parliament from 1977-1985 and 1999-2002 i.e. the duration of military rule, the Presidents in uniform became the Chief Executive.

The 18th Amendment has restored the original vision of the architects of the 1973 Constitution and made the Prime Minister the Chief Executive of the Federation to be elected from the National Assembly. His/her team i.e. the Cabinet comes from the National Assembly (75 percent or more) and the Senate (maximum 25 percent) with a provision of a maximum of five advisors. The 18th Amendment has fixed the size of Cabinet after election- 2013 to maximum 11 percent of the total membership of the Parliament and the respective provincial assemblies. The Amendment also makes the Chief Ministers as executive head in the provinces.

In this way we can say that only a small but driving part of the executive comes from the legislature and the federal and provincial civil servants remain the consistent thread in this scheme. The Constitution specifies these services and entrusts the Federal Public Service Commission and the Provincial Public Service Commission to recruit them.

The Parliamentary Committee on Constitutional Reforms recorded its realization in its set of recommendations that the federation and the provinces will require a different set of skills to make post-18th Amendment federalism work. The committee recommended, “In view of a major devolution of powers and responsibilities to the provinces in the constitutional reforms package, it is imperative that the extent of and modalities for distribution of work between the Federal Public Service Commission, Provincial Public Service Commissions and the respective services be reworked and the services reorganized as to ensure provincial autonomy and good governance. It is also recommended that adequate indigenization of the services should take place as part of this reform.” As of November 2012 no tangible progress has been made in this regard.

Part-II New Paradigm of Federal-Provincial Relationship

A. Redefined Federal-Provincial Relations:

The 18th Amendment has introduced important steps towards the devolution of authority and enhancing provincial autonomy. It removed the Concurrent Legislative List that was a bone of contention between the federation and the provinces. In addition to all subjects in the Concurrent List, except boiler (shifted to Federal List-I) and electricity (shifted to Federal List-II), four subjects from the Federal List including state lotteries, duties in respect to succession of property, estate duty on property and sales tax on services have gone to the provinces.

Part V and VI of the Constitution (Articles 141-174) specifically deal with relations between the federation and provinces. Out of these thirty four (34) articles, seventeen (17) have been amended. The major amendments included: redefining legislative competence of the Parliament and provincial assemblies after the abolition of the Concurrent List, mandatory consultation with the concerned Provincial Government prior to a decision to construct hydro-electric power stations, and the provincial power to raise domestic or international loans within the prescribed limits by the NEC has been added. Furthermore, there is a provision for joint and equal ownership of natural resources like oil and gas.

The Amendment has empowered the provinces to exercise joint control with the Federal Government over 18 subjects of Federal Legislative List-II including some key subjects like sea ports, all regulatory authorities, national planning and national economic coordination, supervision and management of public debt, census and natural resources through the Council of Common Interests (CCI). The CCI has been made a powerful constitutional body comprising the Prime Minister as Chairman, three representatives of the federation and all the four provincial Chief Ministers. The new constitutional scheme envisages the Council to become an effective dispute resolution, economic planning and development forum with a sense of joint responsibility. It has been mandated to meet once every quarter and the provinces have been empowered to requisition its meeting.

The National Economic Council (NEC) has been reformed with an advisory role to review overall economic conditions in the country and to advise the federal and provincial governments to formulate plans in this regard. Another significant step forward is the consent of the concerned provincial assembly for the imposition of emergency rule in any province. Similarly the distribution of national revenues through the National Finance Commission have been protected under this Amendment that provinces' share cannot be reduced beyond that decided in the previous award.

In this way the changes introduced by the 18th Amendment could be described as the largest structural reforms introduced in Pakistan since 1947. The Amendment envisaged an Implementation Commission to transfer powers to the provinces after abolition of the Concurrent List within a specified deadline of June 30, 2011. For the first time a constitutional deadline was met and seventeen ministries that fell under the abolished Concurrent List had been transferred to the provinces. Some functions of six other ministries were also devolved and Pakistan celebrated a Day of Provincial Autonomy on July 1, 2011.

The 18th Amendment did not create new institutional architecture. Rather it reallocated powers with the Parliament, Federal Government and the provinces. The Amendment proposed to create only three new institutions with specific objectives and mandate; first the Implementation Commission to transfer ministries and subjects of abolished Concurrent List with a conclusion clause, the second a permanent secretariat of the Council of Common Interests with due provincial representation and the third High Court in Islamabad Capital Territory. During the process of implementation one new ministry i.e. Capital Administration and Development Division (CADD) was created to manage the devolved subjects and functions for the Federal capital.

B. Post Devolution Predicament

After a year and a half of democratic devolution the real situation is not as promising as had been predicted in the 18th Amendment. The Parliament and the judiciary have internalized and operationalized almost all constitutional articles related to them. The troubled domain remains within the executive branch.

Since June 30, 2011 the Federal Government has created seven new ministries to reassemble the federally retained subjects, functions and institutions in the fields of education, environment, health, culture, minorities, food and agriculture. The creation of a Ministry of Climate Change, Ministry of Human Resource Development, Ministry of National Food Security & Research, Ministry of National Harmony, Ministry of National Heritage and Integration, Ministry of National Regulation and Services and Ministry of Professional and Technical Training (renamed the Ministry of Education and Training) have diluted the spirit of devolution. Senator Mian Raza Rabbani the architect of the 18th Amendment and who steered its implementation declared the creation of new ministries as unconstitutional that have laid the foundation for the rollback of the 18th Amendment. (Daily Times August 7th, 2012)

The Senate which in a way is the house of federation also discussed and debated „fears of roll back’ in May 2012 and constituted a Special Senate Committee on the Implementation of the 18th Amendment. The Committee was given a three month deadline to present its report, but its first meeting was held in August-2012 and it has yet to complete its task. However in the meetings of this committee many senators questioned the need for the new ministries.

The reasons behind this roll back can be found in a written reply to a question in the Senate by Federal Minister for Inter Provincial Coordination that some vertical programmes including National Programmes on Malaria, TB, AIDs and EPI have been started at federal level again following an executive order of the Prime Minister. The reason cited by the Minister for this move includes the request by donors and international partners to place a federal mechanism that ensures continuity of presently approved grants and to ensure securing of grant funds in future. Similar arguments have been made to re-create the Ministry of Education and Training. The legislators termed this as unconstitutional and against the spirit of the 18th Amendment. They criticized the typical mindset of the federal bureaucracy to usurp provincial powers. The legislators urged the Senate who is the custodian of the 18th Amendment and representative of the federation to review the affairs of devolved ministries and prevent the government from violating the country’s Constitution for foreign aid. “It was not difficult to convince the foreign donor agencies on the situation that arose after the passage of the 18th Amendment but the government never tried to do so,” maintained the Senators from various political parties.

Ideally the Council of Common Interests (CCI) and inter-provincial coordination mechanisms would have been the appropriate forums to resolve these contentious issues. The Constitution also offers some ways to voluntarily delegate some role and responsibilities to the federation and the creation of Drugs Regulatory Authority after resolutions in the spirit of Article 144 by three provincial assemblies is a living example.

Box 4: Implementation of Democratic Devolution:

Fourteen major political parties including the four (National Party, Jamaate-Islami Pakistan, Pakhtunkhwa Milli Awami Party and Jamhoori Wattan Party) that had boycotted Election-2008 and an independent legislator from Federally Administered Tribal Areas (FATA) were part of the multi-party Parliamentary Committee on Constitutional Reforms that deliberated and authored the 18th Amendment. Hammering out a political consensus in Parliament where no one has a simple majority, let alone the required two-third majority to amend the Constitution, reflects the maturity of mandate bearers.

Out of these parties three are lead partners in Provincial Governments: Pakistan People's Party in Sindh and Balochistan, Pakistan Muslim League-N in Punjab and Awami National Party in Khyber Pakhtunkhwa. About eight parties are coalition partners in one or the other province. While they were part of the process there is also a broader ownership of the product i.e. the 18th Constitutional Amendment.

However, the provinces adopted different methodologies to implement the 18th Amendment. There were Cabinet Committees and Inter-Departmental Committees to facilitate the transition. After initial enthusiasm these committees have become almost dysfunctional in Sindh, Punjab and Balochistan. In Khyber-Pakhtunkhwa while there is strong political will for the cause of provincial autonomy the oversight mechanisms are slightly more effective. In all the four provinces no new ministry or department has been created and all devolved functions have been assigned to existing departments.

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C. Critical Provincial Concerns:

Many critical concerns have been raised by the Provincial Governments over non transfer of assets, ownership and functions of several devolved subjects under the 18th Amendment. The provinces are specifically concerned about the non-transfer of Employees' Old Age Benefit Institution (EOBI), Workers Welfare Fund, Evacuee Trust Property Board (ETPB),

Education, Health, Sports, Fisheries, Dairy, Livestock, and Tourism that had been ostensibly devolved but practically and unjustifiably kept with the federation. They also complain that the federation is not providing required funds for the vertical programmes related to health and other ministries.

At a meeting of the Senate Special Committee on Devolution on October 09, 2012 all the four provinces were unanimous in declaring recreation of seven new ministries on subjects which had already been devolved as sheer violation of the Constitution. The Chief Secretaries of all the four provinces at this meeting talked about the unclear status of government officials transferred to provinces. The provinces are in a dilemma whether to consider them on deputation or as permanent staff members, moreover, the issue of their promotions and other privileges are also increasing and proving additional financial burden on the provinces.

D. Fiscal Space

Federalism has two sides; political and fiscal. For the smooth functioning of the federation there has to be a balance between policy and resources. Provinces have often eulogized the political space given to them through the 18th Amendment but complain about the Federal

Government's reluctance to transfer corresponding resources. All the four provinces publically maintain that the 7th National Finance Commission preceded the 18th Amendment and the provinces had very little fiscal resources to finance transferred functions. In June 2010 it was decided at a meeting of the CCI that funding for vertical projects and Higher Education Commission will continue from the Federal Government till the next NFC in 2014.

The amendment through Article 167 (4) empowered the provinces to negotiate a domestic or an international loan for which their Provincial Consolidated Fund can serve as security. The National Economic Council (NEC) was supposed to prepare a new framework which until now has not been evolved and agreed. The provinces have also been given joint and equal ownership in natural resources (Article 172). This meant the existing legislation had to be revisited to ensure the role of the provinces in control and management of natural resources. Equally important is to federalize the governance structures of the relevant regulatory bodies by giving due representation to the provinces. No practical step has been taken in this regard and the provinces have also failed to come up with their suggestions and initiate proactive engagement in this process.

Traditionally the provinces in Pakistan have relied on federal fiscal transfers and had always hesitated to raise revenue independently. After the 18th Amendment this culture has to change. In order to increase provincial fiscal efforts, especially to collect General Sales Tax (GST) on services, the Sindh Board of Revenue was created in 2011, and the Punjab Revenue Authority in July 2012. Khyber-Pakhtunkhwa and Balochistan have not begun any such initiative. The 18th Amendment has provided at least five new windows of opportunities to the provinces to expand their fiscal base. These windows include: capital gains, state lotteries, duties in respect to succession of property, estate duty in respect to property and sales tax on services.

The provinces have also failed to revise their Provincial Finance Commissions by introducing a multi-factor resource distribution formula to offer resources to the districts in a democratic manner. These points indicate that the provinces need a new kind of economic vision and should enhance their capacity to increase their fiscal base. By doing so they will have enough fiscal resources to offer the best public services to citizens and invest in vital infrastructure and human resource development.

E. Denial of Local Government:

The 18th Amendment inserted Article 140-A that says, “Each province shall, by law, establish a local government system and devolve political, administrative and financial responsibility and authority to the elected representatives of the local government. Elections to the local governments shall be held by the election commission of Pakistan.”

According to Article 7 of the Constitution of Pakistan the State means the Federal Government, Parliament, a Provincial Government, a provincial assembly, and such local or other authorities in Pakistan as are by law empowered to impose any taxes. The Article 32 of Principles of Policy asks the State to encourage local government institutions composed of elected representatives of the areas concerned and give special representation to peasants, workers and women in such institutions. When read together these three articles of the Constitution clearly convey that without local government the State will remain incomplete. Secondly, the Constitution categorically defines three parameters for elected Local Government that it has to have political, administrative and financial responsibility and authority.

A year and a half later, the provinces are still struggling for a viable legal framework for their local governments. By not holding the local elections the devolved powers have been concentrated at the provincial capitals and citizens are not getting the dividend of democratic devolution. Service delivery has deteriorated in the absence of functional local governments. The superior courts have taken up a number of petitions seeking to direct the provincial governments to hold local elections.

Box 5: Status of Local Government Laws and Elections-November 2012

<i>S. no</i>	<i>Province/Area</i>	<i>Status of Law</i>	<i>Elections</i>	<i>Court's order/observations</i>
1	Balochistan	<i>The Balochistan Local Government Act-2010 on May 13, 2010</i>	No	<i>On April 12, 2012 the Supreme Court while hearing a petition on the law and order situation in Balochistan asked the provincial governments to honour the command of the Constitution as enshrined in the 18th Amendment and immediately announce schedule for local bodies" elections.</i>
2	Khyber Pakhtunkhwa	<i>The Khyber Pakhtunkhwa Local Government Act-2012 on May 17, 2012</i>	No	
3	Punjab	<i>Draft law under consideration</i>	No	
4	Sindh	<i>The Sindh People's Local Government Ordinance-2012 adopted by Sindh Assembly on October 1, 2012</i>	No	<i>On May 18, 2012, a High Court bench headed by Justice Faisal Arab ordered the Sindh Government to hold elections in 90 days.</i>
5	Federal Capital	<i>No progress</i>	No	<i>On October 23, 2012 the Islamabad High Court ordered the Government to hold municipal elections in the Federal Capital within the next six months.</i>
6	Cantonments	<i>No progress [According to Federal Legislative List-Part-I (entry 2) local self- government in cantonment areas is a federal responsibility.]</i>	No	
7	Federally Administered Tribal Areas	<i>FATA Local Government Regulation-2012 announced on August 14, 2012</i>	No	
8	Gilgit-Baltistan	<i>Draft law under consideration</i>	No	

Part-III The Way Forward: What needs to be done?

The overall impact of the 18th Amendment could be analyzed in three distinct categories. First is the transfer of power, authority and reallocation of various subjects and functions. By and large this has happened with some remaining contentious issues like non-transfer of assets and certain institutions. These issues need to be addressed on an urgent basis. In this regard the role of the Special Committee of the Senate on Devolution is important. An assertive role of the Parliament is required to vanguard the Constitution and to accomplish the devolution process in true spirit. Any bid to rollback the devolution process or the half-baked devolution would have serious consequences for the federation. The Ministry of Inter Provincial Coordination (IPC) that also serves as the secretariat for the Council of Common Interests must come forward with a solution to the reservations being expressed by the provinces. The role of the Council of Common Interests (CCI) and National Economic Council (NEC) is of paramount importance.

The second is the transition that is on-going with its teething problems. This phase requires extensive communication among all stakeholders to grasp the character and spirit of the Amendment and redesign institutions, improve policy and planning and reform laws. In order to address their fiscal concerns and extended responsibilities the provinces shall start preparing their cases and convincing arguments for the 8th National Finance Commission Award due in 2014-15. Extensive training of civil servants in their new roles and responsibilities is necessary to make these changes work. Citizens, civil society organizations, academia and media must read and comprehend the post-18th Amendment Constitution and play a catalyzing role to expand its understanding and interpretation. Presently there is a paucity of such efforts and initiatives.

The third is the long-term and continuing efforts to completely transform Pakistan's federation by making the framework function, articulated by the 18th Amendment for good and responsive governance to meet citizens' expectations. While the provinces are at the centre of these political and fiscal changes, this calls for a proactive provincial role to convert Pakistan into a participatory federation. The provinces also need to understand and make effective use of new federal institutional spaces. The provinces must take the spirit of devolution down to districts, *tehsils* and union councils to improve delivery of vital services.

Conclusion

The architects of the 18th Amendment have attempted to rewrite the social contract between the citizens and the state under the umbrella of democracy. In broader terms the amendment has tried to harmonize the institutional balance and redefine institutional boundaries within the ambit of parliamentary democracy and federalism. Today in terms of a constitutional framework, Pakistan stands high among 28 federally organized countries in the world. In black letter law the provinces of Pakistan perhaps benefit from more autonomy and control over resources and policy spaces than the federating units in many other federations.

However, the prevailing centralized mindset has affected the functioning of the system. Responsible provinces do not exist in the popular imagination of the authorities in Islamabad. Centralist narratives also promote skepticism about the patriotism of provinces and fear the emergence of centrifugal tendencies. This does not argue well for the gradual evolution of a federal culture and federal mindset in Pakistan.

One cannot deny the fact that every policy requires corresponding structures and systems to effectively perpetuate it. Unfortunately there are very few efforts to urgently address existing deficits by introducing well thought out reforms in the civil services at federal and provincial levels.

A Constitution is not carved in stone rather it is organic and could be amended through due process. The 19th Amendment was introduced in the light of a short order by the Supreme Court regarding Article 175-A i.e. about the appointments in the superior judiciary. Whereas the 20th Amendment that has established a democratic framework for a neutral caretaker arrangement for free and fair elections was adopted to address the gaps and deficits of the 18th Amendment. These amendments testify that democracy is not a rigid proposition and federalism is always a work in progress.

The 18th Amendment and its implementation is one of the most well documented processes in Pakistan. The reports of the Parliamentary Committee on Constitutional Reforms and the Implementation Commission are public documents. One cannot read on someone else behalf and internalize the character and spirit of this historic development. The media also either ignored this major story of contemporary Pakistan or preferred to trivialize its gray areas. There is a dire need to dissect and disseminate various aspects of the Amendment.

A complete absence of any support mechanism after June 30, 2011-that was the deadline for transfer of ministries has impacted the process adversely. Since then the federal provincial communication vectors are either weak or simply nonexistent. Now the Special Committee of the Senate can bridge this gap. Creative utilization of inter-provincial coordination mechanisms can also yield meaningful communication and cooperation. The performance of revitalized Council of Common Interests (CCI) also inspires confidence and can serve as an effective forum for inter-governmental relations.

It is time to heal the wounds of the provinces inflicted by a denial of autonomy and control over their resources. By supporting them in an environment of trust and meaningful facilitation we can rectify the mistakes of the past and reclaim the federal vision of our founding fathers and architects of the Constitution of 1973.

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Annex: A

Recommendations for the Government by the Parliamentary Committee on Constitutional Reforms-2010

- 1 Provide equal opportunities for recruitment in Armed Forces.
- 2 Election Tribunal to complete trial (Representation of People Act) within 90-days.
- 3 Introduce reforms in Federally Administered Tribal Areas (change Frontier Crime Regulation, allow political parties to work there).
- 4 Make appropriate laws to ensure, “security of person”) *Article 9*.
- 5 Islamabad High Court shall have judges from all the Provinces and the Federal capital.
- 6 Islamabad High Court be conferred original civil jurisdiction in cases of the value of Rupees five million or above.
- 7 Federal Finance Secretary shall not be appointed as the Auditor General of Pakistan.
- 8 Implementation Commission shall be constituted to facilitate process of devolution after the abolition of the Concurrent List.
- 9 Expeditiously provide infrastructure for the utilization of water in the provinces, where it does not exist.
- 10 After abolition of Concurrent List the distribution of work between the Federal Public Service Commission and Provincial Public Service Commissions to ensure provincial autonomy.
- 11 Steps/policies for harmony and stability between the Baloch, Pakhtun and all the communities in Baluchistan.

Annex: B

Summary of the Notes of Reiteration by Political Parties

S. no	Leader/Party	Context
1	Senator S. M. Zafar (PML-Q)	<i>The Concurrent List shall not be abolished (it will be too early to take a quantum leap. Adopt an evolutionary approach to devolve some subjects to the Provinces.</i>
2	Senator Wasim Sajjad-PML-Q	<i>The new name for NWFP shall be, “Sarhad”,</i>
3	Senator S. M. Zafar (PML-Q)	<i>The procedure for creation of a new province (article 239) is cumbersome. It should be made simpler.</i>
4	Senator Haji Adeel and Senator Afrasiab Khattak (ANP)	<ul style="list-style-type: none"> ● Article 246 and 247 about FATA (Federally Administered Tribal Areas) shall be omitted and these areas be mainstreamed. ● As lingua franca Urdu is the national language and arrangements shall be made for it being used for official and other purposes while similar measures will simultaneously be taken for other national languages spoken in the country within 15 years. (Article 251). ● Money bill, foreign assistance, raising of debt, and monetary expansion shall be subject to mandatory approval of the Senate. (Article 73) ● Endorsement of PKMAP proposal about protection of rights of Pakhtuns in Baluchistan. ● Article 2 A (that makes the Objectives Resolution an operative part of the Constitution) shall be deleted. ● The age for national assembly membership shall be increased to 30 years and for the Senate to 40 years. ● President of Pakistan shall be elected on a rotational basis from all federating units and the condition of being Muslim shall be removed.
5	Justice (R) Abdul Razak Thahim (PML-F)	<i>Article 182 (appointment of ad hoc Judges) be deleted.</i>
6	Dr. Farooq Sattar, Haider Abbas Rizvi (MQM)	<ul style="list-style-type: none"> ● Article 27 (quota system for jobs) be deleted. ● Major Ports be devolved to the lowest level of the government. ● Overseas Pakistanis be given political rights and representation.
7	Prof. Khurshid Ahmad (JIP)	<ul style="list-style-type: none"> ● Article 25-A (right to education) be time bound (10-year). ● Deletion of article 45 (President’s power to grant pardon) or at least in cases under Hudood or Qisas. ● Senate is elected indirectly parties can award tickets to minorities, therefore no need for reserve seats for them. ● Legislation through Ordinance shall be prohibited.

		<ul style="list-style-type: none"> ● <i>Attorney General shall not be included in the Judicial Commission.</i> ● <i>Constitutional guarantee in case of civil servants (article 240).</i> ● <i>Tenure of the Chairman and members of Public Service Commission, Chief Election Commissioner, and Chiefs of the Armed Services should not be renewable. Their tenure could be made 4-years.</i> ● <i>There shall be some mechanism for coordinating uniform education at federal level.</i> ● <i>The objective of article 251 (National Language) be achieved within next five years.</i> ● <i>The Senate shall be directly elected (proportional representation). It shall have role in the election of the Prime Minister and adoption of Money Bill.</i> ● <i>Appointments to public corporations, federal authorities and non-career diplomats be ratified by a Parliamentary Committee.</i> ● <i>International Treaties, agreements and Conventions be ratified by the Parliament.</i> ● <i>Advisors to the Prime Minister shall also take a proper oath.</i>
8	<i>Senator Shahid Bugti-JWP, Senator Israrullah Zehri-BNP-A, Senator Dr. Abdul Malik -NP</i>	<ul style="list-style-type: none"> ● <i>Balochi, Sindhi, Pushto, Punjabi and Saraiki shall be the national languages.</i> ● <i>National Economic Council shall have equal members from the Federal and the provinces.</i> ● <i>Money Bill powers for the Senate.</i>
9	<i>Senator Wasim Sajjad-PML-Q</i>	<ul style="list-style-type: none"> ● <i>The right of a person to contest from several seats be curtailed.</i>
10	<i>Senator Abdul Rahim Mandokhel, Pashtunkhwa Milli Awami Party</i>	<ul style="list-style-type: none"> ● <i>The Senate shall have role in Money Bill, role in election or vote of no confidence against the Prime Minister. Money Bill</i> ● <i>can originate in either House of the Parliament.</i> ● <i>Pashto, Balochi, Sindhi, Punjabi, Saraiki be made national languages.</i> ● <i>Call for Pashtoonkhwa Southern and Sraikistan as new provinces.</i> ● <i>FATA shall be named Pashtunkhwa (Central) and shall have the existing status. It shall be merged into respective</i> ● <i>contiguous unit.</i> ● <i>Islamabad Capital Territory be named, Federal Capital</i> ● <i>Appointments of Ambassadors shall be subject to the approval of the Senate.</i>
11	<i>Ahsan Iqbal, PML-N</i>	<i>Curriculum and syllabus should be the joint responsibility of the Federal and Provincial governments.</i>
12	<i>Senator Muhammad Ishaq Dar, PML-N</i>	<ul style="list-style-type: none"> ● <i>An additional nomination by the Chief Justice for the Judicial Commission.</i> ● <i>The Federal Law Minister or the Attorney General be</i>

		<i>dropped from the Judicial Commission and President, Supreme Court Bar Association be made a member.</i>
13	<i>Aftab Ahmad Khan Sherpao, PPP-S</i>	<ul style="list-style-type: none"> ● <i>The new name for NWFP shall be “Pukhtunkhawa” according to the resolution of the provincial assembly.</i> ● <i>Electricity shall not be transferred to Federal List-II from the Concurrent List.</i>
14	<i>Senator Mir Israrullah Zehri, BNP-A</i>	<i>The Center shall keep only four subjects i.e. defense, currency, communication and foreign affairs.</i>
15	<i>Senator Rehmatullah Kakar, JUI-F</i>	<ul style="list-style-type: none"> ● <i>Islamic legislation according to the spirit of the 1973 Constitution.</i> ● <i>More provincial autonomy. The Center shall keep only four subjects i.e. defense, currency, communication and foreign affairs.</i> ● <i>The new name for NWFP shall be “Pukhtunkhawa” according to the resolution of the provincial assembly.</i> ● <i>The appointment of judges shall be in accordance with the suggestions of the Charter of Democracy.</i> ● <i>Reserved seats in the Parliament shall be according to the number before October 12, 1999.</i>

**The Crisis of Federalism in Pakistan:
Issues and Challenges**

Jami Chandio

About the Author

Mr. Jami Chandio is Executive Director of the Center for Peace and Civil Society (CPCS), a Think Tank based in the province of Sindh in Pakistan. He is the editor of the CPCS' quarterly journal freedom, and oversees policy dialogues and research programmes that focus on civil society, especially young writers, journalists and academia. One of Pakistan's most celebrated writers and scholars, Mr. Chandio was the former editor in-charge of Ibrat, one of the largest Sindhi-daily newspaper's, a former anchor on PTV, Sindh TV and KTN, and former chair of the Liberal Forum of Pakistan. The two-time winner of the All Pakistan Newspapers Society Award (in 2000 and 2001), he has authored more than a dozen books in Sindhi, Urdu, and English on Sindhi literature, politics and Sindh. He has worked with the National Democratic Institute (NDI) in Pakistan as a political expert since 2004. He was awarded the Reagan Fascell Democracy Fellowship in 2008 by the International Forum for Democratic Studies, Washington DC and during his fellowship Mr. Chandio conducted research on the crisis of federalism in Pakistan and prospects for provincial autonomy and wrote one book on the subject.

List of Acronyms

AIML	All India Muslim League
BSO	Baloch Student Organization
CCI	Council of Common Interests
CPCS	Center for Peace and Civil Society
CADD	Capital Administrative and Development Division.
FANA	Federally Administered Northern Areas
FATA	Federally Administered Tribal Areas
HDI	Human Development Index
INC	Indian National Congress
IPC	Inter Provincial Coordination
IRSA	Indus River System Authority
IUCN	International Union of Conservation for Nature and Natural Resources
IJMS	International Journal on Multicultural Societies
GoP	Government of Pakistan
KPK	Khyber Pakhtunkhwa
KTN	Kawish Television Network
MMM	Mulla-Military-Market
NDI	National Democratic Institute
NFC	National Finance Commission
PNA	Pakistan National Alliance
UNDP	United Nations Development Programme
US	United States
USSR	United Soviet Socialist Republic
WAPDA	Water and Power Development Authority

PARTITION OF INDIA AND PROVINCIAL AUTONOMY

Introduction

Since its inception in 1947, Pakistan has been faced with a crisis of federalism. Early decisions to centralize power deprived smaller provinces of their most pressing demands for joining the new state: increased national/provincial autonomy and the devolution of power. For six decades, the promise of federalism has been eroded under the weight of unfettered military rule, imbalanced and undemocratic state structures, and the domination of all federal institutions by the Punjab. With external attention focused on the Islamic insurgency, observers miss the most crucial dynamic in Pakistani politics, that of declining inter-provincial harmony. The specter of separatist movements once again haunts Pakistan, which has been on the verge of becoming a failed state. To survive these existing crises, Pakistan must adopt further transformative constitutional reforms that limit the reach of the center to the fields of defense, foreign policy, currency and other inter-provincial matters. By restoring a balance of power both between the executive and legislative branches and between the center and the provinces, Pakistan can move a pivotal step closer to substantive democracy, participatory federalism and sustainable political stability.

This paper provides a comprehensive overview of the development and subsequent failure of federalism in Pakistan. Beginning several decades before Partition, the analysis weaves together an original explanation for the break-up of Pakistan, asserting that the issue of provincial autonomy was one of the key motivating factors in Muslim-majority provinces seeking independence. This view stands in contrast to the widely accepted notion that religious differences and communalism drove these provinces out of the new Indian federation. Once partition is completed, however, the initial promises of autonomy and devolution of power go unfulfilled by Pakistan's ruling elite. Critical decisions taken by the center concerning the ratification of constitutions and governing documents, the elevation of the Urdu language, and the amalgamation of the provinces of West Pakistan into the One-Unit scheme in 1955, deprived the provinces of the authority and position in the federation they expected upon joining the union. Federalism was bankrupted purposively, culminating in the 'liberation' of East Pakistan and the subjugation of the smaller provinces to the ruling Punjab-Urdu speaking nexus.

Once the history is laid out, this paper moves on to exploring the issues and consequences of the denial of federalism for current Pakistan politics. The federal center had acquired immense control over all working of government and economic policy, shortchanging the provinces and indigenous peoples whose interests are not being represented. Not only does one province dominate decision-making processes, military and bureaucratic appointments, and the state coffers, but smaller provinces have suffered destructive cultural, linguistic, and economic policies. National identity and linguistic diversity is denied, provincial assemblies have witnessed a receding of authority to the districts, and resources are disproportionately exploited without commensurate compensation for their places of origin. Conflicts have arisen throughout the country: between the center and provinces, between larger and smaller provinces, and between the provinces and the districts. Pakistan is truly in a state of flux and uncertainty.

Inclusive federalism offers the most democratic system to govern Pakistan's diverse array of nationalities and communities. The institution of genuine devolution of power in a federalist manner could provide for the democratic resolution of these intra-state conflicts and promotion of inter-provincial harmony as well as help to protect language and cultural rights of all nationalities and communities. Governance could be improved across the country as provinces are more aware and responsive to the needs of their citizens, not just from a development perspective, but also culturally and linguistically. The integrity of the State of Pakistan must be achieved through equality and justice.

Pakistan's state related multidimensional crisis is no more a secret. In the world perspective Pakistan is considered a malfunction state and no one will believe it is a reliable country. The catastrophe of religious extremism hovers over Khyber Pakhtunkhwa (KPK) and across the country, which has

virtually exposed the capacity of state institutions; despite expending a major share of public resources on defense for more than the last six decades the state has failed to protect its citizens. The situation in Baluchistan is so unfavorable that the national anthem cannot be played in government schools.

In Pakistan not a day goes by without target killings in Karachi, protests, hunger strikes and acts of violence in other parts of the provinces. There is no control over the breach of law and order. Severe rising poverty and alarming unemployment has deprived the common people of their fundamental right to live. The energy crisis coupled with mismanagement has dragged the system into the doldrums. The pertinent issues of the federation and its constituent units, i.e. implementation of 18th Constitutional Amendment in letter and spirit, fiscal awards, fair distribution of water, complete ownership of the provinces over their natural resources, substantial parliamentary democracy and the supremacy of the parliament in all the affairs of state and above all provincial autonomy remain the key challenges to the Federation of Pakistan.

Leaving aside the new generation, even those who made this country are extremely disappointed over Pakistan's future for a better, democratic, and secular country based on principles of democratic federalism and unity in diversity. Despite that all the optimistic and prudent people seem to be united over a fact that in spite of these complications and disappointments the only ray of hope for the survival and continuance of this country lies in a paradigm shift to run this federation successfully.

1. Partition of India and Provincial Autonomy

Although more than six decades ago, the partitioning of India still evokes widespread debate both in academia and the wider sections of societies of the divided subcontinent. Many competing narratives exist that try to describe and explain the reasons and dynamics behind the 1947 Partition of India. Despite the fact that India had never been a unified polity throughout history, the division on the basis of the communalist 'Two Nation Theory' laying the foundations of religious and communalist rifts between the countries, is still very unfortunate. But these historic events should not only be examined through circumstantial evidence. Neither religious tensions nor the politics of communalism were primarily responsible for Partition. A consequence of abhorrent colonial design by the British, the main reason for the events of 1947 was the denial of provincial autonomy and over-emphasis of the unitary form of federal system. This arrangement was not acceptable to the Muslim-majority provinces and the issues of contention included misused and manipulated British colonial power, the relative power of the Congress party and communalist Muslim politics.

2. Religious Dispute not the only source of Conflict in United India

The history of partition and the inception of Pakistan has been repeatedly maligned and manipulated by the country's conservative ruling elite and vested interests. Since Pakistan's birth, efforts began to indoctrinate the public about the social and political legitimacy of a hypothetical notion of the so-called 'Two-Nation Theory'. It is a fact that religion was badly misused and pragmatically exploited not merely by the Muslim elite and the Muslim League, but also by the Indian National Congress and British colonial leaders. The responsibility of partition lies equally on all those three actors, which resulted in the emergence of a new state in south Asia and an unending communalist politics in the region. In the words of the scholar K. K. Aziz, "*in the secularism of the twentieth century religion has lost much of its force, yet it has produced the two most controversial nation-states of the post-war period-Pakistan and Israel.*"¹

Instead of the putative conflicts among Hindus and Muslims professed in the 'Two Nation Theory,' the true dynamic of conflicts were purely constitutional, political, economic and rights-based in nature. If we look at the entire history of these conflicts and the process of dispute and dialogue among the Indian National Congress (INC), the All-India Muslim League (AIML) and British colonials, the issues that came under discussion and floated for political and constitutional bargains were basically not

1 Aziz, K. K., *The Making of Pakistan: A Study in Nationalism*. Lahore: Sand-E-Meel, 2005, 14.

religious at all. Hindus were in a permanent majority in the country as a whole, yet Muslims of India, albeit a minority overall, constituted a majority in several northwest and northeast provinces/areas. The proposed constitution, the institution of genuine democratic federalism and the ration of maximum provincial autonomy were the key issues which have dominated the debate since the Partition of Bengal in 1905. Even the proclaimed communalist party of Muslims, the Muslim League which was established in 1906 at Dhaka, was not a separatist party. Though purely political and constitutional, the issue of partition was manipulated by the INC and AIML for strategic reasons, including the mobilization of their constituencies and the consolidation of power in a small elite of the two parties, that rode the tide of religious fervor into positions of authority. The Muslim League demand for Pakistan was based on this theory and, though generally neither the Hindus nor the British accepted it, India was partitioned on the premise that Muslims constituted a separate nation and should therefore be given a separate state.

The real problem of United India was decentralization. The AIC claimed that India was one nation and a united country in their arguments for independence. The AIML appeared with counter-claims that India was neither a united entity nor a nation that the Muslims formed a separate nation, and “*that Muslim freedom from Hindu domination was as essential as Indian liberation from British rule.*”² The Muslims of India were not against the unity of India as a region, but being a strong minority, they wanted a federation in which more autonomy would be given to the provinces. Unfortunately, the AIML exploited the issue by transforming it from a political issue and inserting it into a communal context. In turn, the INC also did not exhibit real secular and democratic credentials by accepting the genuine demands for participatory federalism or agreeing upon more provincial autonomy for the provinces. As Aziz points out,

Principally, there were three ways in which the Hindus, or the Congress, could have dealt with the Muslim problem: toleration, discrimination, coercion. The Congress might have treated the Muslims on an equal footing, tolerated their existence, acknowledged their separate status and honestly tried to meet their wishes. This is how the British and, to some extent, the United States meet their minorities. But the Congress refused to adopt this method. Again and again its leading figures denied the very existence of a Muslim problem, blamed the British for creating this rift, and right up to the end ignored or grossly underestimated the strength of Muslim feeling.³

Consequently and rather regrettably, “*the community became a nation and an affected nationalism burst into two opposing nationalisms. A policy of toleration even of amiable neutrality, might have achieved different results.*”⁴ The movement for the creation of Pakistan merits a critical overview to understand the real dynamics of Hindu-Muslim conflict which ultimately resulted in the partition of India. Even the champion of communalist ‘Two Nation Theory’, the Muslim League repeatedly called for provincial autonomy and federalism, instead of making Islamic or religious claims. From its origins as a political force, a “*historical analysis of the Pakistan Movement adequately reveals that the issue of provincial autonomy remained the linchpin of the All India Muslim League’s (AIML) struggle for the freedom movement.*”⁵ In 1924, a Muslim League session was held in Lahore; Muhammad Ali Jinnah presided over the session. This session strongly demanded the introduction of the federal form of government in India ‘with full and complete provincial autonomy.’ Further, the session urged the government to introduce reforms in the North West Frontier Province and placing “*this province, in all respects, in a position of equality with the other major provinces of India.*”⁶ In 1925, AIML in its Aligarh session passed a resolution in favour of the separation of Sindh from the Bombay Presidency and demanded it be constituted as a separate province. Throughout the history of the Freedom Movement the AIML showed its unshakeable commitment to the struggle for maximum provincial autonomy and minimal powers for the central government. From the All Parties National Congress of Calcutta session to Jinnah’s Fourteen Points, from the Round Table Conferences to Dr. Syed Abdul Latif’s scheme of Indian Federation and

2 Ibid, P163

3 Ibid, P84.

4 Ibid, P85.

5 Dr. Aman Memon “Provincial Autonomy in Historical Perspective: Case Study of Sindh.” (Unpublished Article), 1.

6 Lahore Session Statement, March 1924.

from Sir Sikandar Hayat's scheme of a two-tier Federation to the Lahore Resolution, AIML supported the cause of the establishment of a federal form of government with maximum provincial autonomy, instead of a unitary form of government.⁷ Muntzra Nazir's description of the early efforts of the Muslim League, clearly illustrates this;

The Muslim League (the founder political party of Pakistan) supported the provincial autonomy and federalism in the pre independence period as a vehicle for protection and advancement of Muslim interest in British India. Later, when the Muslim League demanded the establishment of a separate homeland for the Muslims of South Asia, it envisaged the federal system for the new state. While contemplating a federal polity, it talked about autonomy for the constituent units. Later, in November, 1945, in an interview, Quaid-i-Azam Muhammad Ali Jinnah reaffirmed his views on federalism and explained: "the theory of Pakistan guarantees that federal units of the National Government would have all the autonomy that you will find in the constitution of the United States of America, Canada, and Australia. But certain vital powers will remain vested in the Central Government such as monetary system, national defense and federal responsibilities"⁸

3. The 1935 Indian Act and Provincial Autonomy

The colonial British government played a vital and decisive role in fueling the Hindu-Muslim conflict and laying the political, constitutional and emotional foundations of the partition of India. Both the supposed representatives of Hindus and Muslims - INC and AIML - were badly exploited, paving a smooth pathway for the colonial plan of Indian partition. The INC did this by continuously denying provincial autonomy and overemphasizing Indian nationalism and unitary federalism whereas the Muslim League played at the hands of their colonial masters, which they had always supported since its birth in 1906. The Muslim League supported the communalist Two-Nation Theory instead of demanding autonomy on a political basis as a matter of principle and as a pre-requisite for democratic federalism.

Knowing the fact that unitary federalism would never be acceptable by the Muslims of India and was fast becoming a major source of conflict between the INC and AIML, the British colonial rulers presented the Government of India Act 1935.

The Government of India Act 1935 promoted a Federation with a strong unitary bias. The Act not only empowered the centre to legislate the federal list of subjects but also the Concurrent List if so decided. The Act did not protect the Provincial autonomy as the ministerial functions were restricted by the authority of the Governor who was representative of the Governor General. The Act did not allay the Muslim apprehensions articulated all along and were reluctant to submit to a central government dominated by the Hindu majority community. They were conscious of the fact that they could never turn the majority rule into one of concurrent majority rule. Therefore, Jinnah condemned the Act saying that it was devoid of all the basic and essential elements and fundamental requirements which are necessary to form a Federation.⁹

The Government of India Act 1935 was the first federal constitution for British India. It proposed setting up a federation, consisting of British Indian provinces and the princely states. The British Indian provinces were further divided into the categories of governors and chief commissioners' provinces. A new province of Sindh was carved out of the Bombay province. In all, the Act raised the number of provinces to eleven. The princely states were to join the federation through each princely state individually signing an instrument of accession which defined the terms and conditions of admissions to the Indian federation. It was obligatory for provinces to join the federation but there was no such obligation on the part of the princely states theoretically speaking, a princely state could decide to stay out of the federation. However, it was expected that given the influence of the British Government over them, they would join the federation.

7 Dr. Aman Memon, , Ibid

8 Muntzra Nazir, "The Problems and Issues of Federalism in Pakistan." *Journal of Pakistan Vision*, 9, no. 1, (2007)

9 Naseer, Sajjad, "Federalism and Constitutional Development in Pakistan" Paper presented at an International Seminar on "Constitutionalism and Diversity in Nepal" organized by Centre for Nepal and Asian Studies, Kathmandu, August 22-24, 2007, 5.

The division of powers between the center and provinces were brought about by giving three lists of subjects: central, provincial and concurrent. In this regard, the Act neither followed the Australian Constitution nor the Canadian, it was their mixture. The federal list contained 59 subjects, which concerned federation as a whole, like defence, foreign affairs, currency, federal revenues, railways, customs, import-export and public service commission etc. The provincial list included 54 subjects over which provinces had exclusive powers i.e. health, education, forests, provincial civil service commission, agriculture, local governments and police. The Concurrent List comprised the subjects, which were essentially of provincial concern but demanded uniform treatment throughout India. Both central and provincial governments could legislate in these subjects. However, in the case of conflict in their legislation the center had over-riding powers. The Concurrent List included 36 subjects i.e. criminal and civil procedure, marriage and divorce, wills and succession, transfer of property, trusts and contracts etc.¹⁰

It is quite understandable why the British proposed a controversial and over-centralized constitution; the Government of India Act 1935 was given by a colonial power to its colony (India) which helped reaffirm and bolster colonial rule. The ultimate legal/constitutional authority was the British Parliament, not the Indian legislature. The Act could be amended only by the British Parliament. The Governor General, as the representative of the British Crown, held vast executive, legislative and financial powers. The consolidation of these powers in a single authority was very much against the spirit of federalism. Moreover, the federal government exercised sufficient powers on the provincial governments through the governor, which greatly comprised the provincial autonomy. The special powers of governors and the Governor-General did not allow the provincial governments to work independently in the administrative and legislative domains. That was the reason that a constitutional expert A.B Keith was skeptical about the prospects of federation under the Government of India Act 1935:

Whether a federation built on incoherent lines can operate successfully is wholly conjectural, if it does, it will probably be due to virtual disappearance, of responsibility and the assertion of the controlling power of the Governor General backed by the conservative elements of British India.

Both the political parties, the Congress and the Muslim League, criticized the Government of India Act, 1935. The Congress did not agree to the provisions regarding the representation of princely states in the federal legislature on the principle of nomination by the state ruler. Its leadership also attacked the provisions about the ‘special responsibility’ of governors. Nehru in his presidential address to the Lucknow Congress in April 1936 described the Act as a new ‘*character of slavery*’. On another occasion, he categorically stated that “*the Act of 1935 was bitterly opposed by all sections of Indian opinion.*”

From the Muslim League’s point of view, the 1935 Act acceded to the demands of the Muslim League for the creation of separate provinces of Sindh and constitutional reforms of Khyber Pakhtunkhwa, but failed to assure Muslims of their majorities in the Punjab and Bengal legislatures. It was due to this reason that the Quaid-e-Azam termed the 1935 Act as unsatisfactory and fundamentally bad.¹¹

Finally, the 1935 India Act was the strategic triumph of British colonial powers that they were successful in their divide and rule policy. The Act created a huge constitutional controversy that ultimately led India towards partition.

4. The 1940 Lahore Resolution as a Rationale for Pakistan

The Government of India Act 1935 became the milestone for the emerging gulf between Congress and the Muslim League. The British colonial rulers wanted to widen this gulf through their controversial constitutions and policies.

¹⁰ Muntzra Nazir, *Federalism in Pakistan: Early Years*. Lahore: Pakistan Study Centre, 2008, P60-61.

¹¹ Muntzra Nazir, *Ibid*, .P65-67.

The 1935 Act could not solve the constitutional problems of India. In 1938, the Sindh chapter of the Muslim League met in Karachi and adopted a resolution under the President Quaid-I-Azam Muhammad Ali Jinnah showing its dissatisfaction with the working of the Federal Schemes of the 1935 Act. The Conference records its emphatic disapproval of the scheme of the All-India Federation as embodied in the Government of India Act, 1935, and is opposed to its introduction and urges the British Government to refrain from its enforcement as it considers the scheme to be detrimental to the interests of the people of India generally and those of the Muslims in particular. Further, the Conference recommended “the All-India Muslim League to devise a scheme of constitution under which Muslims may attain full independence.”¹²

Aziz offers an additional perspective on how the Government of India Act was received by Muslim elite circles.

The partition of India –clean and complete –was officially adopted for the first time in March 1940, when the Muslim League, fresh from its freedom from the Congress rule, met in its annual session at Lahore and passed the famous Lahore or Pakistan Resolution on 23rd March. After reiterating that the scheme of federation embodied in the 1935 Act was ‘totally unsuited to and unworkable in the peculiar conditions of this country and is altogether unacceptable to Muslim India’, and that the constitutional plan should be reconsidered *de novo*, the following important paragraph summarized the Pakistan demand: ‘Resolved that It is the considered view of this session of the All-India Muslim League that no constitutional plan would be workable in this country or acceptable to the Muslims unless it is designed on the following basic principles, viz, that geographically contiguous units are demarcated into regions which should be so constituted, with such territorial readjustments as may be necessary, that the areas in which Muslims are in majority as in North-western and eastern zones of India should be grouped to constitute “Independent States” in which the constituent units shall be autonomous and sovereign.’¹³

There is a fundamental contradiction between the narratives of the Pakistan Movement and the real dynamics behind the support of 1940 Lahore Resolution by the Muslim majority provinces of India like Sindh.

The constitutional basis for Pakistan and the commitment of its founding fathers was to create a genuine federation in which the states joining Pakistan would enjoy maximum self government. Indeed the Pakistan Resolution of 1940, on the basis of which the Muslim majority provinces agreed to support the demand for a separate Muslim state in the sub-continent, promised ‘autonomy and sovereignty’ to the constituent units of this state. This was a deciding factor in gaining support for Pakistan among the majority provinces that were apprehensive of the Congress policy of centralization.’¹⁴

Rasool Bux Palijo offers an interesting perspective on why the Muslim-majority provinces supported the 1940 Lahore Resolution.

Consequently in the historic, founding document of Pakistan, the 1940 Lahore Resolution, subsequently named the Pakistan Resolution, there was absolutely no mention of Pakistan or for that matter, of any single, united state of the Muslims of undivided India. Through this historic 1940 Resolution, therefore, the millions of Muslims of undivided India voiced, their unanimous historic demand that the Muslim majority provinces of India viz Bengal, Punjab, Sindh, Khyber Pakhtunkhwa and the territory of Baluchistan, the homelands of Bengalis, Punjabis, Sindhis, Pashtoons and Baloch Muslims of India should be made independent and sovereign states.

¹² Dr. Aman Memon, “Provincial Autonomy in Historical Perspective: Case Study of Sindh.” 4.

¹³ Aziz, K.K. *The Making of Pakistan: A Study in Nationalism*. P56.

¹⁴ Hamuda Khuhro, “Parameters of Provincial Autonomy – View from Sindh (Rural)” in Pervaiz Iqbal Cheema and Rashid Ahmad Khan (eds), *Problems and Politics of Federalism in Pakistan*, Islamabad Policy Research Institute, Islamabad, 2006, 53.

It was for the achievement of the above five independent and sovereign Muslim states in the Indian subcontinent that after the passage of the 1940 Lahore Resolution and the fixation of the above grand goal, that the millions of Muslims of the sub-continent waged a historic valiant struggle for independence which along with other political forces of the country shook the foundation of the British Empire. In the mean time, India elections were announced for 1946. The Muslims of India duly seized this opportunity and massively voted for the Quaid-e-Azam and Muslim League who promised them these independent and sovereign homelands, and thus compelled the British Government and the Congress to recognize the Muslim League as the sole representative of the Muslims of India and a power to be reckoned with, for deciding the future fate of India.

As it happened, the elected Muslim representatives of India after their elections in 1946 did not honor this electoral mandate. They decided to substitute a single state for the proposed five independent and sovereign states. Incidentally this was the first major historic and fateful violation of the declared mandate given by Muslims of the Indo-Pak subcontinent to their elected representatives through their massive vote, which tradition has been regularly followed in later times till today, with fatal results like the debacle and betrayal of East Pakistan by military usurpers and their puppet politicians.

To allay the well-founded grave apprehensions of the four provinces and Baluchistan, it was declared that the proposed single state would not be a unitary but a genuine federal state, consisting of five autonomous provinces with real equal rights for all provinces. It was judged that the presence of the preponderant numerical superiority of Bengali Muslims would never allow anyone to dominate the whole country or its western half in the periphery of Punjab. This totally unexpected new prospect of a single Muslim state brought a sudden veritable sea-change in the thinking of the Punjab elites and authorities.¹⁵

Thus, it is evident that the Muslim majority provinces (except Balochistan and Khyber Pakhtunkhwa) after sheer disappointment from Congress and British colonials supported the Lahore Resolution only because it offered them the status of autonomous and sovereign states. They considered it a blessing because they had tasted the bitter experience of an authoritarian Bombay Presidency and centralist Congress rule.

Even then, the Sindh Assembly passed a resolution in favor of the 1940 Lahore Resolution and the demand for Pakistan in 1943 (see appendix) but far-sighted people like Mohammad Ibrahim Joyo, a founding father of progressive Sindhi Intelligentsia, perceived the deviation from the path envisioned in the 1940 Lahore Resolution. In his historical book “Save Sindh-Save the Continent-From Feudal Lords, Capitalists and Their Communalisms,” he wrote:

‘No doubt, Pakistan and Hindustan are both very fine words; and when the question of having either of them is posed –well, who would not like to have something even if it be only a word? But here the question is not that of having something, but that of losing everything!’

5. The 1947- Independence Act and Colonial Legacy

The State of Pakistan was created under the Independence Act of 1947. The existing constituent assemblies and the dominion legislature were created under this Act. The 1947 Independence Act was based on the same controversial, colonial and notorious 1935 Indian Act.

The Government of India Act 1935 promoted a Federation with a strong unitary bias. The Act not only empowered the centre to legislate the federal list of subjects but also the Concurrent List if so decided. The Act did not protect the Provincial autonomy as the ministerial functions were restricted by the authority of the Governor who was representative of the Governor General. The Act did not allay the Muslim apprehensions articulated all along and were reluctant to submit to a central government dominated by the Hindu majority community. They were conscious of the

15 Rasul Bux Palijo. *Sindh-Punjab Water Dispute 1859-2003*. Hyderabad: Center for Peace and Human Development, 2003, P24-26.

fact that they could never turn the majority rule into one of concurrent majority rule. Therefore, Jinnah condemned the Act saying that “it was devoid of all the basic and essential elements and fundamental requirements which are necessary to form a Federation”. The Congress rule in seven of the nine provinces brought out the ugly face of majority rule and confirmed the Muslim fears that the minority would suffer at the hand of majority. Consequently the Muslims demanded in the Lahore Resolution of 1940, that the Muslim majority provinces be autonomous and sovereign.

The dominant political trends which emerge from the above discussion are that the Muslims did not welcome the Representative Government introduced by the British and they did not agree with the federal concept of governance as it would condemn them to a permanent minority status. This inevitably would have serious and far reaching implications for the post 1947 governance paradigm for Pakistan.¹⁶

Despite using the 1947 Independence Act as the basis for Pakistan (which was inherited from the colonial 1935 Act), the Governor General in this case Jinnah, had been given the powers to amend it. It is generally said that the loss of Jinnah after only one year of Independence was an incredible tragedy and the country was handed over to the second-rank leadership of the Muslim League, who Jinnah always considered ‘fake coins’ in his (political) pocket. However, a valid critique of Jinnah exists in that being a lawyer of high stature and a proclaimed secular democrat, why didn’t he amend the Independence Act and lay the foundations of the new constitution to get rid of the colonial legacy? He was the person who could build Pakistan on the basis of the spirit of the 1940 Resolution after being Governor General, but unfortunately he also acted like a centralist, denying his own formula of ‘autonomous and sovereign’ federating units. Although his August 11th, 1947 speech to the first constituent assembly of Pakistan was clear on many issues, but he continued to make many contradictory statements on various occasions which were badly exploited by his ‘fake coins’ of Pakistan.

6. Post Partition Dilemmas and Over-Centralization of State

The story of Pakistan after 1947 begins with unfortunate episodes of deception, detraction, and deviation from the path of democratic federalism, where the federating constituent units were to be given the status of autonomous and sovereign states or provinces. On the contrary, Pakistan was badly driven and dragged into an unwanted crisis of unitary federalism laden with theocracy, hegemonic power centric, exploitative policies, and a lack of constitutionalism. On the one hand, Pakistan is an accident of history for the partition of India happened not only on the basis of religion or religious conflict, but also the issues of autonomy and sovereignty for the provinces and their respective nations. Support for the 1940 Lahore Resolution led a portion of Muslims, especially from Sindh, to back the creation of Pakistan because they had also seen the hypocrisy of Congress and their rule after 1937 elections.

It is a tyranny of history that the deviation from the path of Muslim League from provincial autonomy to centralist tendencies was started even before the partition of India. The first violation was committed when the historical Lahore Resolution was amended on 12th May 1946 in the meeting of the council of the All-India Muslim League. There the terms of reference were changed by replacing the idea of states by the provinces. This is why Pushtun leader Khan Ghafar Khan and Baloch leadership refused to join Pakistan. It is an afflictive incident of history that the Muslim League who had struggled against the centralization of power at the centre and rejected the Nehru report of Congress in 1928 as well as the Indian Act of 1935 had itself started taking a paradigm shift by opposing the provincial autonomy on one hand and accepting the disputed Act of 1935 as the interim constitution on the other hand. In the 1940 Resolution it was agreed to give the status of independent and sovereign states to the units joining the federation but practiced exemplary betrayal to their struggle and promises immediately after the creation of Pakistan, which means the very act on the basis of which it demanded the division of India, was given the status of interim constitution and practically threw away the Lahore Resolution of 1940; which was later called the Pakistan Resolution, into the waste bin of history.

16 Naseer, Sajjad. op cit

Another unpleasant incident of history is that the very founder of the country Mohammad Ali Jinnah who was an advocate of provincial autonomy and the rights of minorities, and who had always rejected unitary federalism, too never made a concrete attempt from 1947 up to his death to keep the foundation of Pakistan in synchronization with the 1940 Resolution. Although as the governor general he possessed powers to make amendments to the unitary imperialist interim constitution, but he never did this. .On the contrary he had been making speeches all year that Urdu will be the only national language of Pakistan, and that there is no room for provincialism in the country.

That way a leader who had promised to give the status of free and autonomous sates to the nations started calling provincialism a curse; let alone working for provincial autonomy for example in his reply to the welcome speech presented to him by the Quetta Municipality on 15th June 1948, he clearly stated that *'all these pillars of provincial autonomy and local freedom were created as the safeguard against the control of the British, to which few people are holding fast even till today ,but now we have our own central government which is totally powerful, therefore sticking to old and wrong propositions is equivalent to sticking to the pathetic supports. He further said it should be remembered that provincial bias as well as endeavoring for personal, local gains is equivalent to suicide.'*

Jinnah had clearly stated on 31st March 1948 at Dacca that it is an obligation upon you not to speak of Bengali, Sindhi, Punjabi, Pathan etc. You are one nation and belong to one state. This state doesn't belong to any Punjabi, Bengali, Sindhi or Baloch. That way in reply to the citizens laudatory speech at Quetta on 15th June 1948 he said we are no more Baloch, Pathan, Sindhi, Bengali or Punjabi, our feelings and actions should be Pakistani.

The seeds of Pakistan's multi-faceted state crisis were sown when federal principles were denied and the foundations of a newly born country were laid on unitary federalism, denial of diversity and making Pakistan a theocratic state. Though federalism is not an ideal system and not always successful in many parts of the world.

Federalism is generally viewed as an ideal type of political arrangement of governance which accommodates the diversity of groups and regions to form a political union enabling these identities to maximize advantages by ceding some authority to the center yet seeking to preserve and keep their separate identity by retaining a degree of autonomy. Under this arrangement, two obvious but diverse political trends are discernible: a desire to cooperate for mutual advantage and a strong penchant to preserve socio-political, ethnic and regional identities as well as space for political action. These two trends meet in an uneasy interaction in many federally organized states, resulting in civil wars, secessionist movements and, in the case of Pakistan, to actual secession (East Pakistan becoming Bangladesh).

The most widely cited example of a successful federal system is that of the United States. The route followed in this case was unique. Thirteen American colonies first declared independence from the British colonial authority to establish a confederation in 1781. Subsequently, these states decided to convert the confederation into a federation under the 1789 constitution. The fear of a 'majority rule' kept lurking in the minds of political managers. Therefore, Calhoun propounded the thesis of a 'concurrent majority' as the operating basis of American federalism. A 'permanent majority' he argued, would establish 'tyrannical rule' and undermine the dynamics of a functional federal state. Despite the safeguards ensured under the American Constitution, i.e. the principles of separation of power, bicameral legislature, and a strong upper house, a bloody civil war was fought over economic issues eventually to save the Union (1860-65).

Another illustration is that of an existing unitary state that opts for a federal system by formally dividing powers between the national /federal government and the smaller administrative units like provinces. This approach was followed by Canada when it adopted the federal system in 1867. Australia also embraced federalism in January 1901.

The case of India and Pakistan falls into another category. The British Raj, driven by its imperial policies and compulsions, created a 'special type' of federal system in its colonies. The introduction of this system through devolution, decentralization and autonomy to the administrative or provinces was provided within the trappings of the vice-regal system. A federation was established under the Government of India Act 1935, comprising the States, the provinces and the princely states. The federal system stated in the Government of India Act 1935, was the one inherited by India and Pakistan at the time of Independence in the middle of August 1947. Pakistan, however, continued to be governed under the Government of India Act 1935 with minor modifications till 1956. Mr. Muhammad Ali. Jinnah, the leader of the Muslim community and founder of Pakistan, assumed the office of Governor General and in three Provinces, British Governors continued at the helm of affairs, while the commander –in-chief of the armed forces was also British.

Another variant and manifestation of federalism can be observed when states and territorial entities tend to be more or less centralized by adopting differing governing structures. Fear of falling apart and in order to prove the legitimacy of the freedom struggle, the instinctive and conscious choice of political managers stimulates trends of centralization. State building takes priority over nation – building and the activities of the latter are subsumed in the name of state construction.¹⁷

There are certain agreed and established pre-requisites and parameters for any federalist system and no system can be termed federal if it does not fulfill those criteria. Federalism as a system took several centuries to develop after the French Revolution and the birth of modern democracy after the Renaissance period in Europe. In the nineteenth and twentieth century's, federalism gained an enormous space to grow and develop as a theory of running plural states and societies. Although there have been different criteria for various models of federalism, there have been some agreed and common features and criteria for all models and practices ranging from USA to Canada, and from Belgium to Germany and from India to Nigeria. Muntzra Nazir in his paper 'The Problems and Issues of Federalism in Pakistan' has outlined these criteria as such:

Federalism is a contrived system of political and economic management, which is created by a conscious decision to achieve shared political objectives. It aims at the division of authority of state between a national government and the smaller administrative units. The federal scheme, generally speaking, seeks to evolve a measure of unity within a diversified socio-political and economic context by combining two seemingly conflicting trends - the desire to maintain identity and independent action and an urge for union and cooperation for achieving mutually agreed and shared objectives. This form of political organization is suited to communities where the territorially diversified pattern of values, interests and traditions can be accommodated in a constitutional and political framework in pursuance of common values, goals and interests.

All federations have some common features, though their finer details vary, depending upon their peculiar social and political circumstances and historical background.

First, the foremost common feature of federalism is the simultaneous existence of two sets of government - federal or national and regional/constituent units. Each is autonomous and free to function within its defined field. They maintain a cooperative interaction with each other but guard their exclusive domains.

Second, a federation maintains a written constitution, which embodies the principle of federal relationships between these two sets of government. The written document defines and determines the terms and conditions of the federation and divides power between the federal level and its constituent units. As the formula for division of powers as well as the framework of relationship is a part of the constitution, these cannot be changed except by amending the constitution, which is always a difficult process.

17 Naseer, Sajjad. Op cit

Thirdly, the division of powers and functions is on territorial basis. Each territorial unit is assigned powers and rights through the constitution. However, there is no ideal or precise formula for the distribution of powers. Every political system has to evolve consensus on the details of distribution of power. It requires revision from time to time and it institutionalizes if it functions in its letter and spirit over some time.

A fourth important requirement of a federal system is non-centralization of powers. It calls for the diffusion of powers in the polity, guaranteed by the constitution. In a federation, both central and units' governments derive their powers directly from the constitution and these powers cannot be taken away by either of them through an executive order or ordinary law making.

The fifth common feature of federalism is the existence of an independent judiciary, which has the last word in the interpretation of the constitution and adjudicates the disputes on the exercise of powers by the constituent units or the federal government.

Federalism is an attempt in heterogeneous societies to promote cooperation and coordination in the social, political, economic and administrative fields as well as respect and accommodate diversity and regional identities of the constituent units. The comparative study of various federal schemes shows that different federations were created for different reasons, caused by the peculiar history, problems, and political context of each case.

There are certain factors which facilitate the smooth working of federalism. These are:

- (a) The units must share a sense of community.
- (b) There should be no sharp inequalities in size, population and resources.
- (d) Equitable sharing of economic resources.
- (e) Geographic contiguity.
- (f) Democratic form of government and greater decentralization.¹⁸

Taking the example of Pakistan the author further writes,

It is distressing to note that even after sixty years of Independence; Pakistan continues to grapple with the problems of federalism. The unresolved issues of federalism have complicated the problems of governance and political management, building strains in the political process.

Federalism strives to create a political union comprising diverse regions and people on the basis of a mutually agreed constitutional and legal framework that determines the relationship between the federal authority and its constituent units. It is an attempt to accommodate divergent regional, ethnic and linguistic identities and interests in a political union. They recognize the advantages of becoming members of a bigger and federal state. Pakistan was established as a federal sovereign state in August 1947. Given Pakistan's ethnic, linguistic and cultural diversities federalism was the logical choice. However, despite a broad consensus on the need of creating a federal system, Pakistan faced serious problems in evolving a working federal system which could ensure unity in diversity and promote harmony and interdependence among different political entities in the state. The central government invoked Islam to counterbalance regional and parochial sentiments and emphasized unity based on Islamic principles. However, it did not establish a participatory political system and failed to address the concerns of the provincial interests. The interim and the regular Pakistan Constitutions (1956, 1962 and 1973) created a strong centre, reinforcing the centralizing trends inherited from the pre-independence British Indian political arrangements.¹⁹

¹⁸ Muntzra Nazir, "The Problems and Issues of Federalism in Pakistan." *Journal of Pakistan Vision*. 9, no. 1, (2007) P111-112.

¹⁹ Ibid, P111

On the basis of the above parameters, it can be said that Pakistan does not qualify to be called a real federation because neither the people of various nations and provinces share a common sense of nationhood, nor does Pakistan have any real decentralization of powers and equitable distribution of economic resources among the federating units. This could have been achieved not through the centralist approach but through decentralizing authorities and powers from center to province level. That is the real dilemma of Pakistan after its so-called Independence in 1947.

7. The 1949 Objectives Resolution and Deviation from the 'Path'

As discussed earlier, Pakistan deviated from the path of becoming a secular and democratic polity right from the beginning. Despite his contradictory statements on almost all pertinent matters, Muhammad Ali Jinnah clearly said in his famous August 11th, 1947 speech that Pakistan would be a secular country in which the government would have no relationship whatsoever with religion. Later on, he also clarified that Pakistan would, by no means, be a 'theocratic state'. But after Partition, events occurred to the contrary. The 1949 Objectives Resolution, passed by the first constituent assembly of Pakistan, was a turning point in the early history of Pakistan because it also contributed to the deviation from the 'path'. It was announced that "*whereas sovereignty over the entire universe belongs to Allah Almighty alone and the authority which He has delegated to the State of Pakistan, through its people for being exercised within the limits prescribed by Him is a sacred trust*". It was basically meant to deny the 1940 Lahore Resolution and the August 11th speech of Mr. Jinnah, which he made to the first constituent assembly of Pakistan. This was mainly deceptive rhetoric because nations are not and cannot be based on religion or faith.

Pakistan did not go, directly, into the hands of the Islamic clergy, it went into the hands of anti-secularist, narrow-minded and a short-sighted ruling class. In reality, they had no relationship whatsoever with the actual human spirit of Islam. They just wanted to justify falsehood, plundering, deception, historical fraud and illegal interest in the guise of Islam. And as enlightened and secular views was the very interpretation of the public interests, they wanted to crush a secular mode of thinking at any cost.

Therefore, the conflict between the secular mentality and parties with the fanatic religious forces emerged right after the birth of Pakistan. This very difference was instrumental in the PNA movement against Shaheed Zulifqar Ali Bhutto's elected Government. This issue arose even more vigorously during Zia-ul-Haq's regime. General Zia also wanted to prolong his dictatorship through the slogans of the Islamic system. Though he did not implement that 'Islamic system' to the very end, he kept trumpeting this term all along. Besides, it was also the state tirade. In the time of General Zia, a force of extremist religious bigots was created on the strength of the US dollars to fight the American war against the USSR through Afghanistan. The agencies set up an industry in the name of 'Jihad'. In those days, the troika of "Mulla-Military and Market-MMM" became very famous in Pakistan. Even inside the country, an atmosphere of fear and terror was created against secular thinking. The spirit of ignorance and fanaticism smelt the danger of "secularism" from every side.

However, it can be said that the Objectives Resolution which remained *ground norm* for Pakistan, misled the newly born country and created a chain of misguided processes which developed interdependence between centralist and the so-called Islamic features of the polity of Pakistan. Though the 'Objective Resolutions' talked about the principles of democracy, independence of judiciary, freedom, equality, tolerance, Islamic social justice and rights of minorities to practice their religion, it actually laid the foundations for a theocratic state and centralist constitution. This was more damage done to Pakistan by one of the 'fake coins' of Mohammad Ali Jinnah.

8. Denial of Unity in Diversity through Uniformity

National edifice, growth and expansion of nations do not take place through political and fiscal means alone, but also through progressive cultural dynamism. While there has been a monopoly of the ruling class of Punjab over the political and economic affairs, the cultural dominance in Pakistan has remained the Urdu language. Pakistan is a multi religious, multinational, multicultural, multiracial, and

multilingual country where the historic nations have had distinct identities of their own and traditions with respect to national historic status, language, common beliefs, culture, literature, and poetry.

Since the inception of Pakistan, pluralism and diversity have always been denied and Urdu, the language of 3.1% population was given the status of National language of Pakistan, which caused fatal damage to the other indigenous languages of Pakistan. This cultural unfairness and aggression has like politics, economics and other sectors of the country, made culture a contentious issue.

This was one of the reasons of the development of a separatist movement in East Pakistan because Urdu's cultural monopoly was never acceptable to a historically and culturally rich nation like Bengal.

Besides Bengalis, Sindhi's have persistently been confronting cultural hegemony since the One Unit period which still continues, but the state is not ready to learn lessons from the obvious facts of history even after losing half the country.

The provincial autonomy in Pakistan will be considered true autonomy of the provinces only when national status is given to the languages and culture of the nations and such a policy is provided in the constitutional protection. Until the provinces are free to formulate cultural, linguistic and education policies of their own, the pseudo provincial autonomy only for the sake of ostentation will be noting except mockery of the federal spirit.

The summary of the above discussion about national/provincial autonomy and the national issue is that until the basic structure, balance of power, and the wrap and weft of the web of interests are changed, and the historic nations and people dwelling in the provinces are given not just empty/barren provincial autonomy but national autonomy in a true sense, and when a foundation of a new federation among the nations -who created the country- is laid through a social contract on the basis of the 1940 Resolution, all the pageantry and dramatic attempts about provincial autonomy can only aggravate the multidimensional state crisis but will never lead to a just and sustainable settlement.

The elevation of Urdu as the sole national language of Pakistan was a milestone in creating unending ethnic and cultural conflict in Pakistan. The founder of the State and a liberal democrat Jinnah could not foresee the consequences of such cultural suppression of other indigenous languages of constituent nations of Pakistan when he strongly advocated Urdu as the national language of Pakistan. Dr. Muhammad Waseem in his paper on pluralism and democracy in Pakistan has rightly said that,

Urdu, the first language of the UP Muslims, became the symbol of Muslim nationalism in British India. Later, Urdu became the national language of Pakistan even though it was the first language of only 3 per cent of the people in the new state. Among the ninety-five Muslim Indian Civil Service officers who opted for Pakistan, two-thirds came from Urdu speaking migrants (Sayeed 1967, 132). In the aftermath of Partition, migrants dominated several cities, especially in Sindh but also in Punjab. The new phenomenon materialised on the basis of a sectoral dichotomy between migrant-dominated cities and local-dominated countryside. In Sindh, this phenomenon overlapped with ethnic polarisation as the Urdu-speaking Muslim immigrants (*mohajirs*) gravitated towards cities while the countryside remained predominantly Sindhi. *Mohajirs* constituted 63.9 per cent of the population in urban Sindh and 86.16 per cent in the urban areas of one district, Hyderabad, followed by Karachi at around 60 per cent (Census of Pakistan 1951). This dichotomy created a permanent source of alienation among Sindhis.²⁰

Along with Sindhi, Bengali was a highly developed language and it had been the national language of Bengalis for thousands of years. The Bengali people were not ready to give up their mother tongue and adopt Urdu as their national language. Coming together with Bengal, the Sindhi intelligentsia also vehemently opposed the elevation of Urdu as the national language of Pakistan. It can be said that the seeds of the national question and intra-state conflicts were sown when Urdu was imposed on all the

20 Mohammad Waseem, "Pluralism and Democracy in Pakistan." *International Journal on Multicultural Societies (IJMS)* 5, no. 2 (2003) P165-166

constituent nations as their sole national language. *‘The language movement (1951) in East Pakistan was the first vocal expression of protest against denial of legitimate rights of provinces.’*²¹

However, the foundation for yet another conflict was laid by making Urdu the sole national language and its alien culture as the national culture. One of the historic and strong psychological reasons for East Pakistan turning into Bangladesh was this very difference. Since Bengali was a highly advanced and rich language and its speakers were a politically, and aware group, they could not bring themselves to bow before the monopoly of a minority language and alien culture. The language insurrections in Bengal that took place soon after partition were the very reaction to this. Bengal parted ways with Pakistan in 1971. But even after this, the cultural conflict remained alive in one form or the other. After the partition, this difference has been there, for the most part, mainly in Sindh. There are three main reasons for this. Firstly, Sindhi is also, like Bengali, an old, rich and vast language. Secondly, the Sindhi people have also been highly sensitive on and aware to the issue of language. Thirdly, even Sindhi writers, poets and intellectuals have always waged this war thinking the defense of language to be a cultural arena of national emancipation.

Now that the Punjabi middle class has become fond for their language and culture, it is most likely that the prevalent tradition of conflict of language and culture will grow vigorously. Punjabi intellectuals like late Hanif Ramay and Fakhar-uz-Zaman have been instrumental in this. Indian Punjab has also played a significant role, indirectly, in this context. It gave a boost to the liberal Punjabi culture by showing a great deal of Punjabi folk music and dance on the electronic media. The Pakistani Punjabi public also responded enthusiastically to this. This trend has been increasing for the last ten years, and it increases each day. Hence, it will reinvigorate the already present cultural diversity of the country which, in its essence, is natural and progressive. The Punjab that could not, despite being an authority over the country, publish a single Punjabi newspaper, during the last six decades, has its own television channel today. This cultural diversity of the country will also affect the cultural hegemony of the Urdu language in Pakistan.

The elevation of Urdu as the sole national language did not serve the legitimate, broader, progressive social interests of the development of the Urdu language. Urdu is a sweet and rich language like all languages of the world, and people in Pakistan do not hate the language. They only rejected and keep rejecting the status of Urdu as the sole national language of Pakistan. Unfortunately, the Urdu speaking writers, poets and intelligentsia have not played a positive role in opposing the cultural hegemony of one language at the cost of depriving other historical indigenous languages of Pakistan. It would have been far better if they had opposed it and demanded an equal status for all the languages of Pakistan, and gave them the status of national languages like India where 22 have the status of nationally recognized official languages including Bengali, Sindhi, Urdu and Punjabi.

Ian Talbot in his famous book ‘Pakistan-A Modern History’ while discussing the language and political identity in Pakistan has written that,

Language has acted as an important marker and source of political mobilization in South Asia as is evidenced, for example, by the Telegu movement in the Indian state of Andhra Pradesh and the Dravidian movement and rise of the Dravida Munnetra Kazhagam in Tamil Nadu. Language politics rest first on cultural reactions both in India and Pakistan to be centralizing attempts to impose a national language on babel of tongues; second on elite fears of disadvantage in the competition for public employment if the mother tongue is relegated in status.

For this reason the Prime Minister Liaquat Ali Khan rejected a motion in the Constituent Assembly in February 1948 that Bengali be used along with Urdu. He pointed that ‘Pakistan has been created because of the demand of a hundred million Muslims in this subcontinent and the language of a hundred million Muslims is Urdu. It is necessary for a nation to have one language that can only be Urdu and no other language.’ Such statements were contradicted by a

21 Khalid, Mahmood, “Problems And Politics of Federalism In Pakistan”, 2006, P17.

reality in which only 7 percent of the population spoke Urdu as their mother-tongue. Attempts at strengthening Urdu as part of the nation-building enterprise proved counterproductive as was demonstrated most clearly in East Bengal. Even after 1971, Urdu has remained a minority language, despite its status as the national language.

The eminent Pakistani scholar Akber Ahmed has seen rapid social mobility as aiding the process of 'Pakistanization' by its strengthening of Urdu as a common *lingua franca*. However, Urdu has proved much less effective in promoting a national Pakistani identity than Bengali, Sindhi, Pashto, Siraiki or Balochi have been in articulating ethnic identity. In fact Balochi existed only as an oral language until after Independence and was widely regarded as a dialect of Persian. From the 1950s onwards it was established as a literary language and nationalist figures such as Gul Khan Naseer (1914-83) were prominent poets and writers. In the early 1980s Urdu finally emerged as a major political rallying point, but for a *mohajir* ethnic identity rather than Pakistani Nationalism.²²

9. Constitutions of Pakistan and Provincial Autonomy

The constitutional history of Pakistan is not different from its overall bleak political history. Rather the history of the constitutional processes should be seen in the context of the nature of state, the overall balance of power and also in the light of incorrect democratic practices. From its early days, Pakistan did not follow the path of constitutional federalism through substantial democracy because of various reasons discussed earlier. The Objectives Resolution which was proposed by Liaquat Ali Khan and adapted by the Constituent Assembly on 12th March 1949 became the basis for the future constitution of Pakistan, or a *grund norm* of Pakistan. On the same day, a Basic Principles Committee was formed which comprised 24 members to prepare the draft of the Constitution. The serious intentions of the Committee were visible from this example that the final draft of the Constitution was prepared in 1954. By that time not only had the initiator of the Objectives Resolution Liaquat Ali Khan been assassinated but his successor Khuawaja Nazimuddin was also ousted and Mohammad Ali Bogra took over as Prime Minister.

The first decade of Pakistan's political history verifies this perception that the then ruling establishment did not want constitutional democracy and federalism in Pakistan, to maintain their extra constitutional power and de-facto control on the country through a unitary pattern of governance.

At the time of Independence Pakistan, adopted the Government of India Act 1935 with minor changes to be its first interim constitution. Having failed to frame a constitution for almost a decade, the inherited vice-regal system continued to be the governance document. During this period (1947-56) attempts were made to plug in the parliamentary system within the confines of an imperial order. The structural tensions led to the tripping of the parliamentary democracy, which is a misnomer. Parliamentary working could not co-exist within the vice-regal system. Inevitably, the civil and military bureaucracy became dominant players in the body-politics of Pakistan.²³

9.1 The 1956 Constitution

The second Constituent Assembly of Pakistan, which created One-Unit in West Pakistan, gave the first Constitution to the country on March 23rd, 1956 (on the eve of sixteenth anniversary of 1940 Lahore Resolution). Sikander Mirza, the presiding Governor General was inaugurated as the first President of Pakistan. This meant that on the one hand the country remained deprived of having its own constitution developed and passed through a democratic process because the colonial 1935 Indian Act was adopted as an interim Constitution of Pakistan under the 1947 Independence Act, which was not amended fundamentally despite the provision that the Governor General had the authority to amend it. On the other hand when the country was given its first Constitution it was based on the One-Unit.

²² Talbot, Ian. *Pakistan: A Modern History*. London: Hurst, 2005, P26-27.

²³ Naseer, Sajjad. Op cit

The first Constitution of Pakistan was drafted by Ch. Mohammad Ali, a civil bureaucrat turned politician. The first article of the Constitution referred to Pakistan as a Federal Republic. The preamble of the Constitution stressed federalism and several other provisions dealt with various aspects of federalism and provincial autonomy. The 1956 Constitution like the interim Constitution divided powers into three categories; Central, Provincial and Concurrent. The Federal government was assigned 30 items as against 61 in the interim Constitution. The Provincial subject list increased to 94 subjects as against 55 and the Concurrent List had 19 items. The Government of India Act 1935 was diluted somewhat in terms of allocation of subjects. Before the 1956 Constitution could be implemented by holding general elections, Ayub Khan imposed Martial Law in October 1958.²⁴

The 1956 Constitution did not commit on this issue and instead provided for the parliament to ascertain the views of provincial assemblies, and then the Act provided whether elections to the National Assembly and provincial assemblies shall be held on the principle of joint electorate or separate electorate. Finally, the division of functions between the center and provinces remained a hotbed of controversy between the advocates of maximum provincial autonomy, especially those from East Pakistan and smaller provinces, and the proponents of a strong center, led by the Punjabi politicians, bureaucrats and military officers.²⁵

The 1956 Constitution provided a parliamentary form of government under which the parliament was unicameral. As compared to 1962 and 1973 constitutions, it gave more autonomy to the provinces but because of the One-Unit neither was it acceptable to Bengal nor did it benefit Sindh, Baluchistan and Khyber Pakhtunkhwa.

9.2 The 1962 Constitution

On October 27th, 1958, General Ayub Khan took over as the second President of Pakistan, also the first military dictator of the country. On February 17th, 1960, he appointed a commission which was apparently supposed to submit proposals for the new constitution of the country based on ‘basic democracy’ and ‘Islamic principles of justice’.

Again, the second Constitution was framed by a military bureaucrat, Ayub Khan. This constitution did not refer to the federal system as mentioned in Article 1, which officially described the name of the state. The preamble, however, mentioned the federal system, delineating the relationship between federal government and the constituent units of the federation. The 1962 Constitutions excluded the Provincial list of subjects and mentioned the Central List of 49 items and a Concurrent List. It created a powerful centre with concentration of power in the office of the President and an impotent unicameral legislature. The Provincial governments were headed by the Governors, who as nominees of the President also enjoyed enormous powers. A lip service was paid to federalism but in reality a more powerful and centralized system was put in place.²⁶

The 1962 Constitution envisaged Pakistan as a ‘Federal State’ and introduced a presidential form of government where the legislatures both at the center and in the provinces remained unicameral. The 1962 Constitution is known in Pakistan as the constitution of the dictator, by the dictator and for the dictator.

9.3 The 1973 Constitution

Despite all its shortcomings, the 1973 Constitution was the first ever Constitution of Pakistan which was formed and passed through a democratic parliamentary process; however it was unacceptable to the nationalist parties and leaders of oppressed nations. In Parliament some of them boycotted the assembly, including the former Chairman of BSO, Dr. Abdul Hayee Baloch and others.

²⁴ Ibid.

²⁵ Muhammad Waseem. *Politics and the State in Pakistan*. Islamabad: National Institute of Historical and Cultural Research, 2007, P126.

²⁶ Naseer, Sajjad. Op cit

In Article one of the 1973 Constitution, Pakistan is mentioned as a Federal Republic to be known as the Islamic Republic of Pakistan. The preamble also recognizes federalism as the organizing principles of the state. The 1973 Constitution is characterized by the absence of Provincial List of subjects and provides for a Federal List of 59 subjects and a Concurrent List of 47 subjects, where the centre will prevail in case of conflict. The sixth and seventh schedules of the 1973 Constitution place additional restrictions on the powers of the provincial assemblies. For the first time, a bicameral legislature was provided to accommodate the federating units. The Upper House called the Senate, has limited power and has no effective role in the passage of the budget. Pakistan has the unique distinction of passing the budget the same way as provided in the Government of India Act 1935. The budget is divided into charged and non – charged categories. The charged items include the defence, President, Governors and debt receiving expenditure which is mentioned as one liner statements and cannot be debated on the floor of the House. The center picks up 90 % of the revenue. These bodies have failed to perform and in the case of the Council of Common Interests have remained dormant and inactive for years. The National Finance Commission did not do any better as for the last four years; the President of Pakistan has decided the distribution of revenues among the federating units. The issues of water distribution and royalty of natural gas continue to embitter relations between the centre and the provinces. The overwhelming role of the centre continues to dominate the decision making of the country.²⁷

As compared to the 1956 Constitution, the 1973 Constitution gave less autonomy to the provinces but promised that within ten years, the Concurrent List would be abolished. Unfortunately, all successive governments including PPP's own governments in 1988 and 1993 did not abolish the List, which continues in effect to this day. Secondly, unlike the 1956 and 1962 Constitutions, it offered a bicameral legislature in the parliamentary form of government where the executive authority of the state lies with the Prime Minister and the President is at the top, securing the unity of state, but rendering the upper legislative chamber powerless. From the perspective of provincial autonomy, the 1973 Constitution can be termed a constitution of centralist unitary federalism. Secondly, it has been continuously maligned through undemocratic and extra constitutional amendments. It is believed that even if it is restored to its original form, the situation has changed so much that it could only work as an interim constitution. The real solution of the federation would be to make a new constitution through a new constituent assembly based on the principles and spirit of the 1940 Lahore Resolution.

9.4 Federation of Pakistan after 18th Constitutional Amendment

Continuous Amendments i.e. 18th and 17th Amendments through arbitrary powers by two military dictators General Zia ul Haq and General Pervez Musharaf caused fatal damage to the constitutional structure of the country. These despotic amendments changed the federal structure and parliamentary character of polity and shifted key powers to the presidency leaving parliament deprived of its constitutional rights. Keeping in view the dire need for substantial constitutional reforms both leaders of two major federal parties in Pakistan Benazir Bhutto and Mohammad Nawaz Sharif signed an agreement in 2006 popularly known as a 'Charter of Democracy'. The 18th Constitutional Amendment was passed in April 2010 by both the Houses of Parliament was basically an act of endorsement of the Charter of Democracy, which restored the parliamentary and federal character of the 1973 Constitution. Rather it went even beyond the 1973 Constitution and laid foundations of a constitutional paradigm shift in Pakistan.

The 1973 Constitution of Pakistan consists of 12 parts, 27 chapters, 280 articles and 5 schedules; whereas 18th Constitutional Amendment thoroughly reviewed 102 articles. Out of those 69 articles were amended, 20 were substituted, 7 new articles were inserted, 3 were omitted, and one (17th Amendment) was repealed and sixth and seventh schedules were also omitted. In addition to that 11 recommendations were also enunciated that falls within the executive authority of the Government. Following are some key features of the 18th Constitutional Amendment regarding significant efforts to make Pakistan a "Participatory Federation".

²⁷ Ibid, P8.

- The first and the foremost intended outcome of the 18th Amendment is to create an enabling environment for the “participatory federalism” in Pakistan. The Amendment, in this context, has taken major historic decisions where centre-provinces dynamics would substantially change for the good of the people. The delegation of demanded autonomy to the provinces in the legislative, executive, fiscal and administrative spheres is meant to bring competition and cooperation between provinces leading to strengthen the essence of the Federation of Pakistan.
- With the policies, planning and programming related to service delivery in the social sector decentralized to the provinces, Federal planning bodies can no more design and plan a development project without taking into account the National Economic Council, Planning Commission. The same is required from the provinces in relation to districts, only then the top-down paradigm of development could be replaced with the bottom-up- down paradigm of Accountability, and representation are two key features of devolution which need to be incorporated at every tier and sub-tier of development planning management and execution. This would usher in a new era of development through devolution in Pakistan.
- Dictatorial disruptions have not allowed democracy to take root in the country. The 18th Amendment has provided an elaborate mechanism which would lead to broadening and deepening democracy in Pakistan. By correcting the distortions in the assignment of executive authority at the Federal and Provincial level, the 18th Amendment has also provided for grassroots elections for Local Government jurisdictions. As popularly believed that local governments (by the respective Provincial governments) will deepen the democratic process at the lowest tiers of the governance.
- In the aftermath of the 18th Amendment, a sizeable number of subjects, functions and institutions have been relocated at the Federal and devolved at the Provincial levels. It is, therefore, important to develop a comprehensive policy and operational framework to:
 - (a) Reorient and build the institutional capacities of the ministries, divisions and departments at federal and provincial levels;
 - (b) Promote the culture of inter-provincial coordination by restructuring and expanding the representations and outreach of Federally relocated and retained institutions;
 - (c) Develop a mechanism of providing technical support and specialized services to the provinces requisite for policy making, transition management, devolution management and effective implementation of the 18th Amendment;
 - (d) Develop information, communication and coordination *vectors* targeting federal and provincial divisions and departments for efficient sharing of policy information, sectoral statistics, standards, guidelines, protocols and coordination with international best practices; and
 - (e) Propose a requisite legislation to clarify the administrative and legislative status of Islamabad Capital Territory. Though Capital Administration and Development Division (CADD) have been created, yet, there are a number of legislative, representational and administrative issues to be sorted out, which need a special attention of the federal legislature.
- Provincial administrations are expected to enhance their capacity to embrace autonomy, authority and responsibility assigned to them through democratic devolution. Therefore, civil service and administrative reforms are essential to achieve the responsive and citizen-oriented governance, which is rightly claimed as a larger goal of the 18th Amendment. The devolution of powers in 2011 faces two major dilemmas. First, the provinces are currently operating as over-centralized bureaucratic apparatus with little or no powers and accountability at the local level. Second, and perhaps far more important, the provinces have to re-build their technical and political capacity to efficiently manage the new powers and functions.

- There are three major tiers of governance which remain the entry points of fiscal equalization in Pakistan i.e. Federation, Provinces and Districts. Recently, the process of fiscal equalization beginning at federal level with the approval of the 7th NFC Award could only be enhanced and optimized meaningfully by instituting provincial and district finance commissions within provincial jurisdictions. Provinces would have to devise an equitable formula of fiscal transfer which could subsequently reverse the structure of disparities and inequities at sub-regional, district, *tehsil* and Union Council levels.
- The broader principles of policy for grassroots fiscal equalization may include: (a) fiscal needs of respective areas and communities; (b) fiscal capacity of respective areas of communities; (c) sectoral performance of respective tiers of governance at local level; (d) potential of public-private partnership; and (e) degree of community participation.
- the 18th Constitutional Amendment opens up five key areas for much desired structural re-engineering at provincial level through: (a) legislative innovations (b) institutional/administrative re-ordering (c) re-directing sectoral policy, planning, and programming (d) harnessing new fiscal opportunities and (e) optimizing provincial autonomy through pro-active engagement with forums of joint control and shared responsibilities i.e. CCI, NEC, NFC.
- Indeed, the 18th Amendment has re-written the relationship between the Federation and the Provinces. However, the relationship between common people, the Constitution and democracy could only be re-written, strengthened and furthered by the Provinces. Therefore, it requires a set of follow-up affirmative action by the Provincial governments to undertake corresponding reforms at the appropriate tiers to allow the dividends of vertical devolution roll down to the grassroots level through horizontal devolution. By creating more spaces for people to participate in the process of planning and decision making at grassroots level would cultivate an enduring democracy in Pakistan. Only then, the spirit and objective of the 18th Amendment could be realized in letter and spirit.²⁸

Mr. Zafarullah Khan, a researcher and political expert believes that the overall impact of the 18th Constitutional Amendment could be analyzed in three distinct categories. First, in the transfer of power, authority and reallocation of various subjects and functions. By and large this has happened with some remaining contentious issues like non-transfer of assets and certain institutions. These issues need to be addressed urgently. Therefore, the role of the Special Committee of the Senate on Devolution is important. An assertive role of the Parliament is required to vanguard the Constitution and to accomplish the devolution process in its true spirit. Any attempt to rollback the devolution process would have serious consequences for the federation. The Ministry of Inter Provincial Coordination (IPC) that also serves as the secretariat for the Council of Common Interest must come forward with a solution to the reservations being expressed by the provinces. The role of the Council of Common Interests (CCI) and National Economic Council (NEC) is of paramount importance.

The Second is the transition that is on-going with its nascent problems. This phase requires extensive communication among all stakeholders to understand the character and spirit of the Amendment and redesign institutions, improve policy and planning and reforms laws. In order to address their fiscal concerns and extended responsibilities the provinces shall start preparing their cases and convincing arguments for the 8th National Finance Commission Award due in 2014-15. Extensive training of civil servants in their new roles and responsibilities is necessary to make these changes work. Citizens, civil society organizations, academia and media must read and comprehend the post-18th Amendment Constitution and play a catalyzing role to expand its understanding and interpretations. Presently there is a paucity of such efforts and initiatives.

The third is the long-term and continuing efforts to completely transform Pakistan's federation by making the framework functions, articulated by the 18th Amendment for good and responsive governance

²⁸ Amjad Bhatti, "Operational Manual, Transition Management of Democratic Devolution in Pakistan", Center for Civic Education Pakistan, Islamabad, December, 2011.

to meet citizens' expectations. While the provinces are at the centre of these political and fiscal changes, this calls for a proactive provincial role to convert Pakistan into a participatory federation. The provinces also need to understand and make effective use of new federal institutional spaces. The provinces must take the spirit of devolution down to districts, *tehsils* and Union Councils to improve delivery of vital services.²⁹

Issues of Fiscal Federalism in Pakistan

Fiscal decentralization is also a basic principle and requisite for democratic federalism. The distribution of financial resources among the constituent units of the federation have the basic significance in multinational or multi state federal systems all over the world, which is also termed fiscal federalism or financial decentralization. In such democratic federations the constituent units or provinces possess the right to collectively decide the extent to which resources are provided to the centre to run its business because the federation is the name of an agreement and administrative system of which the states or provinces are the units. But Pakistan has been a unitary federation where matters run in reverse and even after six decades and the passage of the 18th Constitutional Amendment Pakistan's federal structure has continued to remain a centralist.

From the very beginning the National Finance Award has remained disputed and subjugated to the interests of the Punjab. When East Pakistan was part of the federation and its population exceeded that of all the provinces of West Pakistan taken together, the basis of the NFC award was not population but revenue and inverse population density, because that was the way Punjab could appropriate the financial resources of the country. But after the separation of East Pakistan when Punjab became the most populated province, population was made the sole basis for the distribution of the NFC award instead of the previous criteria of revenue and land in the 1974 NFC award, which in practice was prevalent till the 6th NFC award.

Also there is no such federal system in any of the twenty seven federal states of the world where the financial distribution among the provinces is made solely on the basis of population. After the separation of East Pakistan six NFC awards from 1974 to 2006 were done solely on the basis of population.

Under the present 7th NFC award, 44% is directly taken away by the centre, which is termed vertical distribution. Out of the remaining 56% Punjab, Sindh, Baluchistan and Khyber Pakhtunkhwa get 57.36%, 23.71%, 5.11% and 13.82% respectively that is termed as the divisible pool. There is no such unjustified mode of distribution in any genuine federal system anywhere in the world. It means that under this formula Punjab takes the major share of financial resources from both sides whereas Sindh contributes about 70% to the total financial income of the country, and if the assessment is made on the basis of revenue the share of Punjab comes to 23.04% and Sindh will get 69.02%. As a result the distribution of financial resources has always remained a contentious issue among the centre and the provinces as well as among the provinces.

The Pakistan People's Party Government announced the country's 7th NFC award on 10-12-2009, according to which the share of the centre and the provinces was fixed as 44% and 56% respectively which according to the principle that was practiced before the 1996 Award should have been 20% and 80%. The distribution according to the new award this time has apparently been based on multiple criteria, but unfortunately still 82% share of the distribution among the provinces is kept on a population basis, whereas a share for poverty and backwardness, production and collection of revenue, and inverse population density has been kept as 10.3%, 5%, and 2.7% respectively. From this it is clear that Punjab is still receiving the major share. On the whole according to the Seventh National Finance Award Punjab, Sindh, Khyber Pakhtunkhwa and Balochistan will now get 51.74%, 24.55%, 14.62% and 9.09% respectively which reflects that just distribution of financial resources is still a dream of smaller provinces. According to the 18th Constitutional Amendment the share of provinces could be increased but cannot be decreased from the share fixed in 7th NFC award. A just and

29 Zafarullah Khan, "Post 18th Amendment of the Constitution of Pakistan-A Critical Appraisal". March 2013. SPO, Islamabad.

equitable distribution of financial resources in Pakistan based on inclusive federal principles is yet to be achieved through consensus, in which other parameters like the human development index and revenue generation could get significant importance.

Table 1						
Inter-Provincial Distribution of Financial Resources under various NFC Awards ¹						
						(%)
Year	Federal/ Provincial	Punjab	Sindh	Khyber Pakhtunkhwa	Balochistan	Total
1974	20.80	60.25	22.50	13.39	3.86	100
1979	20.80	57.97	23.34	13.39	5.30	100
1985	Interim Award	Interim Award	Interim Award	Interim Award	Interim Award	Interim Award
1990	20.80	57.87	23.29	13.54	5.30	100
1996	62.5:37.5	57.88	23.28	13.54	5.30	100
2000 (Not Implemented)	Interim Award	Interim Award	Interim Award	Interim Award	Interim Award	Interim Award
2006 (Estimated)	45.55*	56.07	25.67	13.14	5.13	100

Table 2					
Distribution of Financial Resources according to the 7 th NFC Award ²					
Distribution between Federal and Provinces					
Federal	2010-11	2010-15	Provinces	2010-11	2010-15
	57.50 %	56 %		42.50 %	44%
Distribution Among Provinces					
Province		7 th NFC Award		6 th NFC Award	
Punjab		51.74 %		53.1%	
Sindh		24.55 %		24.94 %	
Khyber Pakhtunkhwa		14.62 %		14.88 %	
Balochistan		9.09 %		7.17 %	
Multi Criterion Percentage of Distribution					
Population			82 %		
Poverty/ Backwardness			10.3 %		
Revenue Generation/ Collection			5.0 %		
Geographical Area/ Inverse Population Density			2.7 %		

Ownership of Natural Resources and Royalty Distribution

Natural resources develop after an extremely long natural process and by passing through different stages over millions of years. This is considered a blessing of nature to people living in that environment. But in modern neo-colonial rule natural resources have become an emblem of misfortune, and economic exploitation for the people who happen to be the heir of those natural resources.

In Pakistan, Baluchistan and Sindh became the prey to economic discrimination due to their ownership of natural resources, and such violation has continued for the last six decades. For example Sindh produces 71% of the total production of gas in Pakistan, whereas the share of Balochistan, Punjab and KPK is 22%, 5% and 2% respectively. The share of Sindh, Baluchistan, Punjab and KPK in oil production is 56%, 25%, 1% and 18% respectively. However, the centre has been taking away 88.5% of the royalty on natural

resources before the 18th Constitutional Amendment. The provinces used to receive only 11.5% which is further affected by bureaucratic and government corruption. The oil, gas and coal producing districts and provinces specifically Sindh and Balochistan had been deprived of their ownership rights over their natural resources. Mr. Naseer Memon a technocrat and writer states;

- Sindh is the largest oil producing province of Pakistan
- Sindh is the largest gas producing province of Pakistan
- Sindh and Balochistan together contribute more than 93 percent of the national gas production and therefore can be considered the energy basket of Pakistan.

The same data source reveals that Sindh and Balochistan consume only a small portion of their production. According to statistics, Sindh consumed only 46 percent of its production whereas Balochistan consumed 29 percent of the gas it produced. Punjab utilized a staggering 852 percent against its production in the national output of gas. Higher consumption of energy is considered a major indicator of higher development. Thus, one can conclude that much of the development is centered in one province that consumes natural resources produced by other provinces.³⁰

Table 3 – Annual Gas Production by Provinces 2008-09

Province	Non-Associated Gas (MMCF)	Associated Gas (MMCF)	Total (MMCF)	%
Sindh	1,032,198	15,475	1,047,673	71.72
Punjab	66,728	9,560	76,287	5.22
Khyber Pakhtunkhwa	28,677	2,682	31,359	2.14
Balochistan	305,359	0	305,359	20.9
Pakistan	1,432,962	27,717	1,460,678	100%

Source: Pakistan Energy Yearbook 2009, Ministry of Petroleum and Natural Resources, GOP

Table 4 - Consumption Trend of Gas in Provinces by Sectors 2007-08

Type of Consumption	Province-wise Number of Consumers				
	Sindh	Punjab	Khyber Pakhtunkhwa	Balochistan	Total
Domestic	1,866,585	2,760,238	375,325	179,372	5,181,520
	36%	53%	7%	3%	100
Commercial	20,671	41,111	8,065	1,887	71,734
	29%	57%	11%	3%	100
Industrial	3,515	4,792	650	46	9,003
	39%	53%	7%	1%	100
Total	1,890,771	2,806,141	384,040	181,305	5,262,257
	36%	53%	7%	3%	100

Source: Pakistan Energy Yearbook 2008³¹

³⁰ Naseer Memon, "Discriminatory Development Paradigm of Pakistan", pP71-72, CPCS, 2012

³¹ Memon, Naseer. "Discriminatory Development Paradigm of Pakistan", P71, CPCS, 2012

Table 5 - Oil Production in Pakistan by Provinces 2007-08		
Province	Oil Production (Million Barrels)	Percentage
Sindh	14.37	56.13
Punjab	6.51	25.46
Khyber Pakhtunkhwa	4.68	18.32
Balochistan	0.024	0.1
Pakistan	25.60	100%

Source: Pakistan Energy Yearbook 2008, Ministry of Petroleum and Natural Resources, GOP

While discussing the state of Human Development in oil and gas producing areas Memon argues that an 'estimated value of oil produced from Sindh at the rate of US\$ 50/barrel comes to around 55.5 billion rupees per year. In spite of that, the larger part of rural Sindh which produces this wealth of resources is far behind in development indicators. Practically the Federal Government has control over the oil and gas fields located in the provinces. The Federal Government dispenses 12.5 percent royalty to provinces based on the well head price. The amount becomes part of provincial income in the annual accounts. There is no policy which ensures the oil and gas producing *talukas* / districts should also get a certain part from that royalty. That is why oil and gas producing *talukas* / districts of Sindh and Balochistan are conspicuous by poor indicators of human development. Major oil and gas producing areas of Sindh such as Badin, Nara *taluka* in Khairpur, Saleh Pat in Sukkur, Sehwan and Thano Bola Khan *talukas* in Jamshoro and Johi *taluka* in Dadu are under developed and communities surrounding the oil and gas field live in primitive ages. Data on the state of human development shows that the major oil and gas producing districts of Sindh suffer from the worst human development indicators.

- According to Human Development Report of UNDP (2003) Badin, the major oil producing district was ranked at 60th out of 91 districts in the country. Under the same ranking only 3 districts of Sindh (including Karachi and Hyderabad) found a place in the top thirty districts of the country on the Human Development Index. The same report placed rural Sindh lowest among all urban and rural areas of all provinces ranked on the Human Development Index. The report also shows similar trends for Balochistan. According to the report Balochistan has 12 districts among the last 30 districts ranked in the country. Whereas the top 30 districts on HD Index included only 3 from Balochistan. Ironically Dera Bugti was the last on the Human Development Index in the country. Dera Bugti is home to the largest natural gas field "Sui" of the country.
- The Millennium Development Goals Report 2006, of the Government of Pakistan also indicates a similar trend of human development in the hydro carbon producing districts of Sindh. Table.6 shows the ranking of three major oil and gas producing districts of Sindh against key development indicators.³²

Though in the 18th Constitutional Amendment the subject of natural resources is shifted to the provinces and the share of royalty on the natural resources has increased from 11.5% to 50% it still requires implementation and tangible trickledown effect not only to the provinces but mainly to the local communities of areas which produce natural resources.

10. Water Conflict in Pakistan

Distribution of water has been the reason and stimulant of an unending dispute in Pakistan in general and between Sindh and Punjab in particular, which has caused great damage to the spirit of federalism in Pakistan. In fact the dispute over the distribution of water between Sindh and Punjab is not new, it has continued since 1859 from British colonial rule in India. It commenced the moment when undivided Punjab initiated preparing illegal irrigation schemes over the River Indus.

³² Memon, Naseer. "Discriminatory Development Paradigm of Pakistan", P73-74, CPCS, 2012

Despite the fact that the distribution of water has remained a sensitive issue and a source of conflict all over the world; as a result the relevant rules have also remained rigid at the global level. The universally admired principle prevalent all over the world is that the final and significant right over the rivers pertain to the tail users, and the head users have no right to construct a dam, draw water or make an irrigation plan without the consent or agreement of the lower riparian, but Punjab has breached the universally admitted principles and right from the days of British rule.

It is also a fact of history that Sindh used to receive a relatively proper share of water during the British rule in comparison to present day Pakistan, and Sindh was a shareholder as the lower riparian in Sindh of the Indus basin rivers namely Indus, Jehlum, Chanab, Ravi, and Satluj, but the Punjab authorities taking advantage of their privileged position unjustifiably constructed dams and canals over the Indus Basin system, the proof of which are Sarhand canal, Lower Chanab canal, and lower Jehlum canal constructed from 1855 to 1901 during the British rule. Similarly Paharpur canal and Upper Swat canal were constructed in 1908 and 1917 respectively all of which happened to be illegal and unjustified.

In the year 1915 the Punjab authorities started three canal projects under which the Jehlum canal, Chanab canal and Lower Bari canal were unlawfully constructed but when, crossing all the limits of reverence for joint rights, the illegal construction of eleven canals and four other irrigation projects was started in 1919, only then did the British government take notice of it. In this way the views of the lower riparian's travelled to the central government and Cotton Commission was constituted by the government which rejected such decisions of the Punjab on the grounds that Punjab cannot construct any dam or canal over the Indus basin without the consent of lower riparian Sindh. When disdainfulness from the side of the Punjab did not cease, once again a commission namely the Anderson Commission was constituted in which Punjab's objection that Sindh has no authority to construct the Sukkur Barrage was also included. The committee issued its report on 30th March 1935 on the basis of which the final report was issued by the government on 30th March 1937 and decisions were declared. Punjab did not seize its activities for a single day and continued making its unfair irrigation plans.

The British colonial government was relatively fair and just in comparison to Pakistani rulers, which despite the privileged state of the Punjab had laid emphasis over the judicious distribution of water and always restricted it from the contravention. One such example is the Indus Basin Treaty of 1945; such agreement was made under the leadership of Chief Justice Roi (in whose name the Roi Commission was constituted) of Calcutta high court, who was appointed by the Central Government of India, because in 1939 Sindh had once again lodged a complaint with the British government that Punjab wants to steal water of Sindh in the name of Bhakra dam. The Roi Commission rejected such actions of the Punjab about having any authority regarding preparation of any irrigation plans without the consent of lower riparian party of the shared water i.e. Sindh. Sindh –Punjab Water Agreement -1945 came into force on the basis of the recommendations and decisions of the Roi Commission, which was signed by the Sindh and Punjab authorities; it is a tragedy that even after that Punjab did not stop the practice of pillaging the water and continued its haughtiness, obstinacy and prowling through various irrigation plans.

After the creation of Pakistan, there was One Unit in the country when Pakistan made an agreement namely the Indus Basin Treaty with India, and smaller provinces of West Pakistan were even deprived of the position of a province let alone the national status of constituent units of a federation. Sindh was excluded from all the stages and the matters of such an agreement and Pakistan sold three rivers containing jointly owned waters which the legal right of Sindh was admitted/ confirmed since the British rule. This is what happened in the case of Tarbela and Mangla dams too, and not only did Sindh never get the required share from these, but Sindh's agriculture coastal forests and life existing in the riverine tract suffered disastrous consequences.

The issue of a dispute of water between Sindh and Punjab is quite old, the simple proof of which is that six commissions have been constituted in this respect up to the 1991 Water Accord, which formulated their recommendations too, but the dispute continues, and increases each day. The Anderson Commission was constituted in 1935; Indus Rao Commission in 1941, Akhtar Hussain Commission in 1968, Fazal e

Akbar Commission in 1970, Anwarulhaq Commission in 1981 and Haleeman Commission in 1983 but the water dispute among the provinces of Pakistan and specifically between Sindh and Punjab could not be resolved. That is why the Indus River System Authority-IRSA was formed as a result of the 1991 Water Accord with the object that this authority will play an effective role in the settlement of the water dispute by ensuring a fair distribution of water in accordance with the water accord and international norms. But in contradiction to this it failed to distribute the water in a justifiable manner and has been and continues to play in the hands of the Punjab Government.

These days it is said that the 1991 Agreement should be put into practice but the truth is that even the 1991 Water Agreement was imposed over Sindh during the non representative government of Jam Sadiq Ali. Intellectuals, the general public and civil society opposed this accord vehemently, and the Punjab government as well as the federation, are reluctant to implement it. For example according to the 1991 Water Accord no project relating to the distribution of Indus water can be planned until the matter regarding the release of water downstream Kotri is finalized, but despite that no study has been conducted with respect to the discharge of water downstream Kotri as envisaged in the 1991 Accord nor has water been released as per agreement. As a result of no water being released downstream Kotri, and rise in sea level, major parts of two districts of Sindh i.e. Thatta and Badin have almost been destroyed and millions of acres of cultivable land has become brackish and rendered unfit for cultivation, and this has become the main reason for environmental pollution as well. In addition, twenty nine *lacs* of riverine land are being destroyed. Even the species *Avicenna marina* in the mangrove forests located in the Indus delta are being depleted. According to IUCN and some other environmental agencies these were the world's sixth largest contiguous mangrove forests which covered an area of 650,000 acres till 1990.

A report released by IUCN in 1991 stated that the safety and development of the Indus delta is essential for the environment, economy and development of Sindh. These mangrove forests are continuously being destroyed due to no water being released downstream of Kotri, and if this situation persists the sixth largest contiguous mangrove forests of the world will be completely destroyed within a few years. A major portion of these mangroves has already been ruined due to a shortage of water, sea intrusion, and the lack of sweet water towards the sea.

There is approximately twenty-nine lac acres of land located along both the banks of the Indus river out of which six lac acres are covered with thick forests whereas the rest has remained extremely fertile arable land and grazing grounds, which is being deteriorated at an alarming rate. The existence of these lands, forests and grazing grounds depends on the flooding of the Indus, and the flood water usually remains for three months namely July, August and September. In the case of a shortage of water this area does not receive the required moisture needed for the germination and nourishment of crops. It is important to mention that this area is very valuable from the economic perspective, because of the yield of wood, vegetables and pulses derived from the land which has made the riverine tract and the livelihood of about 1.3 million people dependent on this land.

At the place where the river water enters the sea, there were dense mangroves forests spread over 650,000 acres which have shrunk to one lacs acres. The environmental and economic value of this forest is enormous because it serves as the nursery for prawn and shrimp. Besides it is the grazing ground for animals of southern Sindh particularly camels. It also provides a resource of fuel for the local people. The source of living of approximately two million people residing in the entire area depends on the sea and sweet water fish, wood, domestic animals and fuel wood. All these precious resources are getting destroyed now due to scarcity of water.

The water dispute is a persistence danger for the federation and a major source of conflict among the provinces which could be resolved on the basis of federal principles and international laws regarding water sharing. Since IRSA has virtually failed to ensure fair water distribution among the provinces; CCI can play a significant role after the passage of the 18th Constitutional Amendment.

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Cultural Diversity and Social Harmony

Uxi Mufti

About the Author

Uxi Mufti, a Pakistani folklorist, social scientist and cultural expert of repute. He is the founder of Lok Virsa, The National Heritage Museum, Islamabad- a project that has spanned over forty years of labor of love in detail and sensitivity. His work has been recognized internationally through many national and International awards including the Sitar-e-Imtiaz and the Asia Prize for Culture 2006, Japan.

Mufti took up God-hypothesis as a PhD dissertation in 1969 at Charles University, Prague but on successive intermittent attempts failed over 40 years of search. Finally he has completed the scientific God hypothesis.

List of Acronyms

CULTURAL DIVERSITY AND SOCIAL HARMONY

It is said that we do not so much out-grow the past as we grow out of it. The cultural heritage of the Indus Valley is an evolution of centuries of communal living, indigenous knowledge, continuity of practice and belief, struggle against adversaries, steadfast endurance, acumen, perception, cumulative experience and wisdom of centuries. A heritage evolved over great lengths of time. Though living today it is a tradition of great antiquity. The living traditions go back to the ancient civilization of the Indus valley (2500 BC) further enriched by the Buddhist civilization of Gandhara (250 BC) and deeply influenced by the Islamic cultures of Central Asia, Persia, Turkey, India, Middle East and Arabia. This gives Pakistan, the seat and center of Indus Valley Civilization, a baffling diversity of people, numerous sub-cultures, ethnic, racial and tribal groups, sects and beliefs, traditions, rites and rituals, cultural conventions and practices, material culture, life styles, arts and crafts.

Add to this unique antiquity the continuity of the tradition which implies that cultural traditions of Pakistan not as a thing of the past. It is a vibrant living tradition today. Not something vanishing that may be preserved for posterity. Not something that may be conserved embalmed in a museum or salvaged from the ravages of transition but as dominant living culture of present times that plays an important role in the lives of the people till date and is vitally embedded in living styles, essential character, mental make-up and social progression of its people.

For instance any of the ancient civilizations that gave birth to Pakistan such as Mohenjo-Daro, Gandhara, Silk Route, Central Asia, Islam have not perished and vanished in time. These survive not as mere archaeological ruins but as energetic, dynamic and living folkways of the people of Pakistan today. These living customs of the people are the repository of historical traditions and a trustee of our heritage. Many examples can be cited of the remarkable continuity of ancient civilizations in Pakistan today. A musical instrument called 'borendo' originally excavated from the ruins of Mohenjo-Daro is still blown by stray shepherds in Dadu district, Mal Kohistan, Baluchistan and Dera Ghazi Khan. Borendo is a simple clay ball with three blowing wholes on its body like a rudimentary flute. The ancient technic of blowing dexterously into this almost primitive instrument still survives whereby farmers, to the amazement of professional musicians, reproduce five musical notes from only three whole clay ball. The famous Mohenjo Dara cart, bullock cart is another example. It is still used by farmers day to day around Sukkur and Dadu districts. Its design, construction, the measurement and size of its wheels are still the same, unchanged over centuries. Even the carved motifs on the body of the bullock cart continue in the same style as Mohenjo-Daro. The once famous river boats, large barges and house boats that once plied the waters of the Indus carrying cotton and yarn up and down and all the way to the Pharaohs of Egypt are still seen and very much in use on the river around the modern city of Sukkur. One still can see artisans building such boats and embellishing these with ancient motifs along the banks of the Indus there. The boats still transport goods, fire wood and provision though now inhibited by the dam that limits their movement up and down the river. The terracotta water pots, pans and utensils seen in the Mohenjo-Daro museum are no different than the ones used by way side hotels and households in the region today along the Super highway to the modern city of Karachi. The exquisite silver and gold jewelry seen in the Gandhara Museum galleries at Peshawar, Swat, Dir and Taxila are still worn by the villagers all over the regions. The jewelers in Hazara and Swat still produce the same designs. Such continuity of traditions is a remarkable feature of Pakistan that lends unbelievable richness and diversity to the Indus land. Two hundred years of colonial rule could not obliterate it and modern onslaught of technology has not effaced it.

Pakistan is a land of great cultural diversity. The customs and traditions of this land are as varied as its regions, geography, culture, languages and people. In the north it is surrounded by the Himalayas and Karakorum, the highest snow clad mountain peaks and the most extensive and largest glaciers of the world. The three most towering mountain ranges Hindu Kush, Karakorum and Himalayas meet near

the mountain town of Gilgit, the gateway to these mountains. Remote and inaccessible valleys nestle quietly within the bosom of these grand folds are verily living museums of ethnic tribes, languages and life styles. In the center spread fertile planes green fields and broad flowing rivers called 'Punjab' the land of five rivers that is the agrarian granary of Pakistan and the home of diverse farming communities, settlements of spiritual and landed families of feudal lords, spiritual descendants, Pir and Mir having varied lineage, sects, origins and dialects. Deep South, lie the parched and arid stretches of the Thar desert, the Thal and Cholistan deserts which are the abode of some of most ancient indigenous tribes of India, the Oddh, Bawria, Kohli, Bheel, Mareeche, Mengwal, Labara, Riasti, Mahr each speaking their own semantics and having a distinct life style. Further down are the mild and temperate regions of coastal Makran where canoe-fishing is the main occupation of negroid inhabitants and settlers from Africa many of whom still speak Swahili. Adjacent to it are the tribal populations of inhospitable and barren territories of Baluchistan, the Mengal, Bizenjo Bugti, Buledi, Magsi Maree, Mirani, Zehri, Zardari being only some of the tribes that inhabit this immense land mass that comprises nearly two thirds of Pakistan and has its roots in ancient history going back to Mesopotamia and Mehr Garh, 9000BC. In center south in Sindh are the Mirbahar or fisher men living on house boats on the largest inland lake in the country. The name Sindh, the southern province of Pakistan is derived from the Indus River. The river is known from ancient times as 'Sindhu' in Sanskrit, to the Greeks as 'Indus' the Persians called it 'Ab-e-Sind' and the Pashtuns 'Abasind'. It is also locally known as the "Mehran" and has been given the title of Bab-ul-Islam (The gateway of Islam) as Islam landed here by the sea root at the port of Debal in 710 AD. Surrounding the capital city of Islamabad are the eroded plateau land of Potohar, the Salt Range and scenic Hazara the home of staunch races whose ancestry and physiognomy can be linked to the invading Greeks. In the North West are rugged belts of equally rugged and fiercely independent and often warring Pathans and Pushtun tribes, amongst others the Khattak, Afridi, Shinwari, Yusufzai, Momandzai, Kakezai, Niazi, Achakzai, Kheshgai many of whom specialize in hand fabrication of pistols and guns and are the very proud descendants of honored ancestries. In the North West along the tough terrains of Broghul pass and Shandur pass is Chitral, home to many tribes of Central Asian and Afghan descent. Nestled in Chitral somewhere along the mountainous borders are the remote valleys of Bomboret, Birir and Rumbhur where the last surviving White Huns are the prime tourist attraction.

Pakistani cultural traditions are likewise extremely diversified in arts, crafts, songs, folklore, music, dances, rituals, ceremonies, festivities, costumes, languages, literature, dialects, musical instruments, material culture that vary from region to region and from community to community within a region. In a museum survey during 2008 nearly four hundred different specimen of local hand-made footwear were collected from different parts of the country and this in no way exhausted the possibilities for further collection. Despite the over-abundance of local designs, it is also a fact that few if any use local foot wear in growing urban areas. In a similar survey for the National Heritage Museum at Islamabad nearly thirty six ways of wearing a turban were documented among Baluch tribes alone and each tribe could be identified by the style of turban worn or the design of the foot wear. Pakistan is so ancient and diverse a culture that dig any mound and you are bound to strike antiquity, travel fifty kilometers in any direction the cuisine, costumes, dialects will change like a moving cultural kaleidoscope. No wonder the Government departments in Pakistan concerned with archaeology and arts are the most inefficient in the world. They simply cannot cope with the enormity of such a rich heritage.

Peshawer ancient Pehapur, Swat ancient Udiyana, Charsada ancient Pushkalavati, Taxila ancient Takshila have all been the hot hunting grounds of antique collectors and Museum collectors from France, Italy, Germany, UK and USA. Truckloads of containers are being smuggled out of Pakistan over decades and the department of Archaeology watches helplessly despite the law against smuggling of antiquities. Many organized local gangs of pillagers and raiders in Mansehra, Hazara, Chitral, Indus Kohistan, Skardu, Baltistan make a lavish living as plunderers of antiquities. Despite numerable books that have been written on the ancient heritage and archaeological sites of the Indus Valley by world

authorities, If anyone today wishes to be the next author of a book entitled “One Thousand undiscovered Ancient Sites of Pakistan” verily he will succeed as most of this ancient heritage is still undocumented and unmapped.

Time and place never die; history and geography affect the awareness and character of a people. It lives on in the living styles and customs and beliefs of the people. Even the skills survive. When in 2008 I was commissioned to design an Ethnological Museum at Islamabad, namely The National Heritage Museum and the Department of Archaeology refused to part with any of its reserve collections I was surprised to discover that artisans in and around Taxila could still make life size sculptures in such immaculate detail that it was difficult to know the copy from original. Ghulam Mustafa and his aging father made a stone replica of the famed fasting Buddha for my museum which is an undeniable evidence of the living skills of Gandhara. Soon Mustafa was in great demand and Mark Kenoyer, the American archaeologist invited him to America to work with him at the Sachler Gallery and teach at the Wisconsin University. It would be a fallacy to believe, despite the prejudice of the hard core Islamic clergy, that these ancient cultures are a thing of the past. No not at all, these live on in the lives of the people despite their accession to Islam. People see no dichotomy because Islam always adapts to local culture. Only a minority acting under the extreme and misplaced passion of orthodox and illiterate Maulvi condemn such pre-Islamic practices while the real heritage lives on amongst communities. These cultural practices have been the emphasis of cultural studies of the decade by International scholars and experts. Karl Jetmar, a German scholar of repute, made innumerable research excursions into Northern Pakistan for his acclaimed work on Pre-Islamic Cultures of Pakistan writing about shamans, strange practices, pre-Islamic festivals, shrines and living customs of the people. Over a thousand pages comprise the text of his now famous work yet it does not exhaust the possibilities for further research in the area rather it opens up further possibilities. Researchers from Heidelberg University have been probing new areas over the last twenty five years where it is now an academic tradition to probe further on the leads provided by the Late Prof Dr. Karl Jetmar..

Many of the languages of this ancient and mysterious land are still unknown or marginally known; Brahvi, Baluchi, Hindko. Quite a few are completely oral Qalasha, Buroshaski, Wakhi, Khowar, Shina, Marwari, Thari, Riasti, Makrani, Bashguli, Balti. For this reason Pakistan has been a hunting ground for world renowned linguists name the linguists. It is verily a laboratory for linguistic studies. Apart from archaic scripts such as the hieroglyphs of Mohenjo Daro, the Pali and Kharoshti scribbling on ancient stones and other dead prehistoric languages there is a wealth of living languages spoken through remote areas of the country. According to one linguistic survey there are about seventy different languages and dialects spoken in the northern areas of the Karakorum ranges alone. Some languages such as Qalasha is spoken by a few thousand people of select valleys of Bomboret, Birir and Rumbur, others are spoken by one village even a few families in a remote village. These incredible fairy tale like facts stand to logic considering that the mountain ranges of the Karakorum have been the gate way into the coveted lands of India, the golden sparrow of the East. Successive Invaders over history hence came through these narrow gorges of mountain passes and were in turn compelled to hide in the remote inaccessible valleys of these very mountains when pushed by subsequent invaders. Oddly the same mountain ranges of Hindu Kush, Karakorum and Himalayas that offered convenient passages into lush green riverine plains of Indus also provided excellent safe heavens from conquerors and invaders. Even today in the present day Pakistan terrorists, criminals and run away fugitives still find a safe hide out in these very valleys, hard to locate or patrol. It should be no surprise therefore that linguist who wishes to study ancient Tibetan language do not go to Tibet where this language long expired. They rather come to remote valleys of Baltistan where it is still spoken. These languages are not written but these are alive in the communities who speak the language.

Recent emergence of new appreciation of the ethnic, the indigenous and a growing perception of the importance of popular traditions in the changing contemporary society, there has been a general

awareness of cultural diversity, which is gaining in socio-political and economic life of communities. The old historical-geographical approach towards regional cultures which simply traced house forms, architecture, artifacts, material and ancient culture from historical point of view, a vestigial approach in preserving and conserving what is antiquarian is now replaced with renewed interest in living traditions, folklore as a dynamic and living present day culture. Fresh studies by new writers on cultural geography, how place affects culture has dramatically revived interest in cultural diversity. The theme of most such modern researchers on the subject is that time and space affect human awareness. Eiffel Tuan, the American sociologist, for example in emphasizing the relation between man and space quotes the example of a child who runs away but then looks back to be sure that his mother is there. Tuan stresses that we need something of both space and man.

What is Diversity and Why?

Diversity as a concept focuses on a broader set of human qualities than race and gender, ethnicity, religious belief, geographical location, income and job classification. It refers to human qualities that are different from our own and those of groups to which we belong; but that are manifested in other individuals and groups. Valuing diversity implies creating a social environment that respects and includes differences, recognizing the unique contributions that individuals and groups with many types of differences can make, and creating an environment that maximizes the potential of the collectivity or political entity within which such groups belong.

Emphasizing diversity moves good governance beyond considerations of only race and gender in its efforts to achieve an inclusive socio-political environment. Educating rulers, administrators and managers on how to work effectively in a diverse environment helps prevent discrimination and promote inclusiveness. There is evidence that managing a diverse community justly and equitably contributes to increased social harmony and productivity. It can enhance the organization's responsiveness to an increasingly diverse world of communities within the nation state and without, improve relations with the surrounding community, increase the organization's ability to cope with change, and expand the creativity of the organization or the nation state. Hence diversity is in fact the encounter with the "OTHER".

In 2001, UNESCO adopted the Universal Declaration on Cultural Diversity and in December 2002, the UN General Assembly, in its resolution 57/249, declared May 21 to be the World Day for Cultural Diversity for Dialogue and Development. The day provides us with an opportunity to deepen our appreciation of the values of cultural diversity and to learn to live together better and understand the "other".

In our increasingly diverse societies, it is essential that persons and groups having plural, varied and dynamic cultural identities should live together in harmonious interaction and proper accord. Policies that seek the integration and participation of all citizens are an earnest of social cohesion, vitality of civil society and peace. Defined in this way, cultural pluralism is the policy offshoot of cultural diversity. Since it is inseparable from a democratic context, cultural pluralism is conducive to cultural exchange and the flowering of the creative potential that sustains life in society. Hence the idea that commitment to cultural pluralism is necessary prerequisite for both democratization and socio-economic development.

Growth and development lies in understanding and interacting with the other. This lack of understanding is polarizing societies, for instance, Baluchi and Punjabi communities in Pakistan; growing misunderstanding between Islam and the West. Similarly the relationship of old traditional cultures to modern secular society causes conflict between tradition and change, secular and religious which stems from a lack of understanding for the "other". Prejudice, bias, intolerance, ethnic or communal violence are some of the offshoots of such conflict or a deep sense of injustice. The ideologies of race, religion and nationalities will harden as groups demand larger share of income and feel discriminated

unless such relationships are based on understanding for the other and economic justice and equitable opportunity.

The Inverse Cycle of Diversity

Pluralism derives from the Latin *Plures* which is formulated in the motto of United States as “Out of many, one.”. But more accurate translation of *plures* would be several with its implications of diversity and difference, rather than more homogeneous ‘many’.

Cultural Pluralism and diversity could to the contrary lead to increasingly fragmented, polarized and divisive society. According to some sociological studies the independent emergence of civil society has not lead to increased diversity and democracy but rather to polarization, which in turn leads to political upheavals and military intervention, a vicious circle that provokes the state into imposition of social order by force. This has been the recent history of many third world countries.

In this sense multiculturalism and pluralism are euphemisms for deep social problems even in the West despite social welfare measures and egalitarian laws. Islamic unity in particular has degenerated into its anti-thesis of divisiveness. Islamic unity has disintegrated into extreme divisiveness and cultural split over the years through forcible enforcement of Islam rather than social harmony. This has led to extreme polarization of the social fabric of a country like Pakistan. The problem confronting the Islamic world today is not how to enforce Islamic unity but rather to understand, develop and promote pluralism which is essentially a part of and a concomitant of unity. In fact the very concept of Islamic unity has been misunderstood by political administrators who have enforced Islam to gain cheap popularity. How to cope with cultural diversity and develop pluralism within Islamic unity is a key question and one of the core socio-political problems confronting the Islamic nation state. Linked to this core problem is the issue of “What is national culture?” and “what is unity?” These are the main problems confronting Islamic countries today. In the West the founders of most secular states had assumed that as modernity proceeds, religion will wither away or be confined to the private sphere. This has turned out not to be true, much to the confusion of enlightenment dogma. The belief hence that secularism will lead to pluralism has also failed. Many popular misconceptions have proved wrong over the years. For example the melting pot misconception in the American experience and the belief that religion would wither away with the growth of scientific and secular society or be confined to an individual’s private sphere and hence in time cease to play any social role. As opposed to the liberal and secular West has been the Islamic experience of a forcible imposition of political nationalism in many countries to the utter neglect of cultural identity. It seems that the Islamic world is afraid of its pluralism (cultural identity) and the Western world is equally afraid of its monism (religion). Hence these subjects are taboo, our experiences may be divergent but lessons learnt, if any, the conclusions may be the same. Secularism and liberalism are in fact the safety valves of the West against religious fanaticism. In the Islamic East the opposite holds true, hence, the importance of understanding the “other”. Pakistan’s internal repression of cultural identity is a case in point which has brought the country to the brink of many secessionist movements that threaten the very existence of the state. This misconceived policy of Islamisation has a direct parallel in similar Western policies of repressive and coercive implementation of Secularism and Western liberalism that has led to a violent resurgence of Islamic movements and Islamic identity to an extent that such impositions by the West has brought the Islamic world in direct collusion with the West. These are all burning issues of today’s world that relate essentially to the issue of cultural diversity.

However there is a problem with religious sects. It is not unique to Islam that has over 70 religious sects each a unique and exclusive way of perception of Divine reality. There are as many in USA within Christianity. Given the plural nature of mankind it is not possible to build a moral consensus except in very fundamental issues. Where ever there are human beings, there will be beliefs and there

will be sects. The problem with religious sects each holding its belief staunchly and even propagating aggressively or worst imposing on others has led to the grave problem that we do not wish, in fact we shy away from describing social reality in terms of religion. Similarly European civilization as a whole has consciously and deliberately promoted its cultural values as universally applicable. This world view considers divergent values embraced by other cultures as inferior or invalid or 'primitive' even barbaric.

The Americans have in contrast to Islamic countries followed a different approach of integration and assimilation of cultural diversity and exclusion of religion. The Muslim countries on the other hand have followed the policy of imposing religion to the exclusion and negation of local cultural identities. These two opposed approaches are equally flawed but make an interesting study. However the confrontation between Islam and the West is unfortunate consequence of lack of understanding of the "other". Modern secularism and liberalism has developed as a safety valve to keep religious fanaticism away. In the East the opposite has happened fundamentalism has arisen as a revolt against the imposition of Western liberalism. This makes assertive liberalism a negative reaction in the West and religious fanaticism an equally negative reaction in the East. These reverse cycles are equally destructive contemporary socio-political trends.

We must aspire and work towards an understanding of our disagreements and realize the importance of preserving and promoting those institutions, religious or secular, in which disagreement can be aired without creating deadly polarization. These are taboo questions that we must ask and face. Insufficient discourse about Islam in enlightened circles, universities, higher education. There are scarcely any Muslim countries where there are freedom of speech required for such a dialogue. Wanting to turn the state into a church or a mosque is a utopia bound to fail as it inflicts a strait jacket on Islam. Geography defines culture not politics. Islam is adaptive to local cultures. It is as simple as that.

Universalism Vrs Cultural Relativism

One of the most pertinent issues of the past twenty years has been the conflict between two different ideologies of human rights on a national scale, universalism, and cultural relativism. Universalism holds that more "primitive" cultures will eventually evolve to have the same system of law and rights as Western cultures. Cultural relativists hold an opposite, but similarly rigid viewpoint, that a traditional culture lends identity to people and is basically unchangeable.

In the West the church dominated all thinking for centuries. In order to be a professor, one must first be a priest! When Europeans first started colonizing and settling the world, they assumed European customs and Christianity were the absolute best. Many of the earliest settlers were missionaries. This belief system would be best defined as Cultural Universality, there is a single "truth" to the world and it applies to everyone. Universalism is a perspective that views people from different cultures as largely the same. Observed cultural variability exists only at a superficial level. Though there is much variability in the languages people speak, this variability is superficial.

Cultural relativism on the other hand arose from cultural anthropology as people truly explored the peoples of the world. We must "walk a mile in another man's shoes" in order to truly understand them. Behaviors are the result of the unique history of the individual. A perspective that maintains that cultural diversity in ways of thinking reflects genuinely different psychological processes and that culture and thought are mutually constituted. Cultural practices lead to different ways of thinking. What we think influences what we do, but also, what we do or practice influences what we think. Relativism assumes that differing cultural practices reflect solutions to differing problems in differing contexts.

A founding principle of human rights embraces the notion that human rights belong to everyone wherever he or she resides – human rights are universal. In contrast to this universalism is the basic theme that individual cultures define their own values and ethics. A universal application of human rights

without deference to cultural traits diminishes the cultural identity – a human rights violation in itself: “everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights” (United Nations, 1966 – preamble). Academic discussions of universalism vs cultural relativism often focus on a Western tendency toward universalism and a non-Western tendency to highlight cultural identity (Harris-Short, 2003; Gangjian & Gang, 1995; Morsink, 1999;

In universalism, an individual is a social unit, possessing inalienable rights, and driven by the pursuit of self-interest. In the cultural relativist model, a community is the basic social unit. It is recognized that the community always comes first. This doctrine has been exploited by many states. Even though cultural relativism has great problems and a potential for abuse, universalism in its current state is not the ideal solution. It has its own abuses. Universalism is used by many Western states to negate the validity of more ‘traditional’ systems of law. For example, if a tribe in Pakistan or Africa is ruled by a chieftain and advised by the twelve most senior villagers, such as a ‘jirga’ is this system any less representative than the supposedly more liberal societies of the West?. It is not possible to impose a universal system of human rights if the effects of social change stemming from modernization are not understood or worse do not relate to non-Western societies, where industrialization, capitalism, and democracy might not have been the eventual outcome of the process of cultural evolution. These ideologies have been shaped and created by Western imperialism, the slave trade, colonialism, modernization, urbanization, mass industrial society and consumerism and hence do not apply to the socio-cultural and economic conditions of non-western societies. A forced imposition of such human rights to the exclusion of and to the utter disregard of local culture and a compelling linkage of humanitarian aid by the rich West for the poor is an abuse of the doctrine of Universal rights to say the least.

The case of child labour effectively demonstrates the clash between the two concepts. In 1992, Senator Tom Harkin of the United States introduced a congressional bill that would disallow the importing of goods produced by child labour. Factories in Bangladesh, a major producer of garments for the United States, were shut down as child labour was discovered on the premises. The ramifications of the bill were almost instantaneous, as “50 000 children lost their jobs because of the Harkin Bill”. As little as the children were earning, it enabled them to financially support their families. Many of the child workers were satisfied with their payment, and enjoyed the special working status that they held. Following the layoffs, employment was not easily found, and many children were left in dire situations. Sure, the actions of Senator Harkin were well intentioned, but in passing the bill, he fought for the universal rights of the children, neglecting the rights of the individual and the local socio-economic conditions of non-western countries. The same applies to child labour in Pakistan.

Universalism is not without criticism. Critics charge that universalism perpetuates colonialist practices, complaining that one group assumes superiority over the other and bases values, ethics, power on that assumption (Ife, 2001; Economist, 2001; Harris-Short, 2003). Similarly, criticism focuses on the “imperialistic” nature of human rights: “Human rights doctrine is now so powerful, but also so unthinkingly imperialist in its claim to universality, that it has exposed itself to serious intellectual attack. These challenges have raised important questions about whether human rights norms deserve the authority they have acquired: whether their claims to universality are justified, or whether they are just another cunning exercise in Western moral imperialism” (Ignatieff, 2001b, p. 102).

The Western world is becoming more involved with human rights violations in poorer countries backed up by powerful political and economic pressures. As a result, the decisions and actions of the powerful nations have a large impact on the affected people. Regardless, it remains important to consider both individual and collective rights, Universalism and cultural relativism. Only then can one fairly pass judgments on an issue without jeopardizing the wellbeing of an individual or an entire group. The reality is that no country or culture even in the West readily accepts the imposition of a “universal” human right when that right clashes with indigenous viewpoints.

The problem with an uncritical acceptance of cultural relativism lies within the resulting avoidance of examining the societal structure that creates the cultural norm. Who determines culture? As with many cases of cultural relativism within a human rights context, the power to define cultural, religious, and legal norms controls the outcome. Individual freedoms and equality of rights have been seriously impinged and drastically curtailed even severely violated at the hands of feudals, lords, kings, religious leaders in many Islamic countries. For that reason, social workers should avoid an uncritical acceptance of culture over universal human rights.

People mistakenly believe that they must think from either a universal or culturally relative framework when in practice both approaches may have serious flaws.

ISLAM recognizes the LOCAL and then interacts with the GLOBAL within the fundamental framework of unity of GOD. Islam does not interfere with local culture at all it rather assimilates, absorbs and promotes unless local value systems or ethics are in absolute contrast with the basic tenants of Islam. Think globally but act locally is a motto that verily sums Islamic ideals of unity within diversity.

Growing Interdependence

Global universal trends are very obvious. All reality portrays the same characteristics. New physics holds a testimony to the interdependence of everything. Modern science bears witness that nothing can be isolated. An isolated part (juzz) has no real existence. It simply cannot sustain itself. A severed part dies and an isolated puddle pollutes and evaporates. As eco-literacy spreads, we become increasingly aware of nature's inter-linked patterns and processes. All living things in nature, in the emerging picture of reality, are interconnected through interdependent network of relationships. All things survive through dependence on the same web of life. All things hang together as one living reality.

Interdependence is fully illustrated through global economy where materials and even labor comes from other sources. Robert Keohane and Joseph Nye have gone a step beyond to show how international politics is being transformed today by interdependence, which has become foundational to current theories of liberalism. Decline of military and increase in economic, political, social and other forms of interdependence are compelling co-operation amongst sovereign states. Isolation, on the other hand, is a form of punishment awarded to hardened criminals and anti-social elements. It is psychological torture. Documented case histories have shown that solitary confinement have severe negative impact on a prisoner's state leading to mental illness, depression, changes to brain physiology and even death.

Denying the Universal, such as equality and respect for women, prevention of child abuse, forced labour will not only be retrogressive, regression, reactionary but also against the spirit of Islam. It is a losing game because the Universal though evolving is a shared ideal of humanity born out of valued experience over centuries of warfare and social evolution of mankind. These are shared aspirations of human beings born out of common experience. Islam firmly pleads for "Ijma" whenever and wherever there is difference of views and advocates good governance through consensus.

On the other hand denying local realities and imposing the Universal will not only create further hurdles in the acceptance of Universal but may also cause violent reactions leading to extremism and deep resentment. Islam, it may be recalled, itself was a movement against the cultural practices of pre-Islamic Arabia that conflicted with the Universal tenants of Islam. The tribal mores of Arabia before Islam where in conflict with the Islamic ideals of One God, One mankind, compassion, equality and justice for all. These Islamic ideals are in themselves universal. Ideally hence there is no clash between human rights and Islam. Unfortunately Islam itself has been tainted and contaminated by local cultures through ethnic and cultural practices of tribal and feudal societies that that have reflected negatively on Islam and need to change.

The question is to find universal value? The West believes in evolving and discovery of such values through effort and experience. The East believes that such values are Divine and therefore revealed. This is a case of evolution against revelation, self-experience against Divine guidance. This is the main problem. However if universal values exist in themselves then evolution is a movement in that direction and will eventually bear out these values. Muslim tolerance of Christians, Jews and other religions is grounded in scriptures, Muslim respect for the people of the book is unique feature of Islam, belief in all prophets and deep reverence for Christ, Moses and Abraham are characteristic fundamental tenants of Islam that advocates tolerance for not only sects but also religions. Islam is pluralistic within and without. The message of Islam because of its universality is adaptable to any cultural environment and any historical circumstance. Islam by its nature is pluralistic religion. In Europe religion had to be destroyed to make way for democracy. During enlightenment philosophers called for the destruction of the non-rational and insisted that scientific reason was the only path to truth. This led to creation of religion of reason. This is not the case with Islam that supports and validates both science and democracy.

Unfortunately in Muslim world there has been an insistence, not on the value of Islam but on the forms. Whenever an Islamic government comes into power the first act is to impose the penal law, with no reference to social justice, equality, or honesty, all of which are deeply held Islamic values. The moral content, the spirit of Islam is ignored and merely the form is taken in imposing shariah or penal codes. The problem with religiously grounded parties is that all desire to take over political power in the name of God. Hence the utopia that wants to turn the State into a church becomes the greatest threat to pluralism and tolerance. This has been a major cause for the demise of ideologically based authoritarianism that imposes firm but very shallow unity on otherwise diverse societies. Hence conflicts stemming from diversity are engulfing the world. National unity is threatened. Only a very misguided interpretation of Islam could dissent universal values as democracy, human dignity, equality, justice and pluralism. It is not Islam rather the political vested interests and power politics in Islamic world that use Islam as an instrument to make themselves powerful. Islam has been abused by such rulers. On the other hand there is no reason why radical Islamic movements should not be regarded as positive forces for social change just as the radical feminist or environment activists are regarded in the West.

Muslim societies in present times are consumers rather than producers of culture while the inherent colonial institutions are divisive in nature making cultural integration difficult. The dilemma here for Pakistan is that if we conform to Western culture we are plural democratic even modern but if we stick to our own cultural identity and assert our traditions we become at once a threat. Muslims feel that they have tried harder to understand the West perhaps forced by circumstance but Muslims have failed to reach the West. Hence there has been a one way traffic.

The American model which is held up as example was first in history was a social order in which the rulers declared that they had no authority over what the people believed. Islam already provides that security. There is no compulsion in Islam.

Islamic Concept of God

Muslims believe in Allah who has multiple attributes and names (Diversity) yet is One (Unity). Since the Divine attributes, (“sifat”) manifest in physical phenomenon as well as human characteristics, like the visible spectrum of light, as a range of wavelengths and as variety of gradations, Allah’s Unity manifests as diversity. Hence, Allah is One in many like the “plures” constitution of America. Allah is “Al-Wase’”, (encompassing all). Allah is “Al-Jame’”, and “Al-Wase’” meaning All-Collective, All-Comprising, All-Combining, All Comprehensive, Whole, All Embracing, Everything. Hence Islamic concept is defined in the fundamental belief of unity within diversity. Therefore, the manifest diversity is a Unity. Indeed, this is the scientific import of modern ecological sciences. The immense diversity

that man encounters in nature is in fact a unity. Nature is an organic whole. It all holds together and opposite qualities interact and are held in constant balance in nature. Allah's diversity is of immense value to human beings it gives individuals and species unique qualities, characteristics, experiences. It provides the potential for greater innovation, newer ideas and creativity, better approaches to business, social and political organization, Cultural diversity is a driving force for development; it is a means of leading a more fulfilling intellectual, emotional, moral and spiritual life.

Allah in Islam is also defined as "Ar-Raqeeb" meaning the "other", the competitor, the rival, the contestor. An understanding of the "other" is an essential tenant of Islam by virtue of the attributes of the God of Islam who is also the God of all mankind regardless of creed, colour, cast or religion.

Moral aspects of the problem

How to order our life together? This is a moral question as well as cultural. How can political nationalisms cope with this? What is pluralism less morality and there is already an enormous fear of the appearance of religion in American public life. The meaning of justice, tolerance, human rights, civil liberties, have metaphysical grounds closely connected to religion. Less its moralistic significance pluralism is reduced to many more in the sense of fragmentation. Pluralism is hence not just a cultural question it is also a moral and ethical issue. Multiculturalism, relations with minorities with other societies and ethnic groups within the society and all such burning issues relate to ordering our life together on moral ground.

Controversy about abortion, alternative life styles, homosexuality all are inescapably moral questions about how we order our lives together. Removed from religiously grounded truths we lead into an empty and procedural liberalism that has no reality. Hence democratic pluralism less religious values is a sham. The real hope for pluralism, beyond mere tolerance, is a religiously based understanding that legitimizes pluralism. Task for future is to convince the enlightened, secular, humanist, progressive, agnostic who believe that humanity will eventually transcend the need for traditional religion are gravely wrong. In fact it is their belief system and their faith in secularism that has now collapsed. In God we trust is inscribed on every American dollar as the basis of their economy. The limits of pluralism is now being tested by such issues as abortion, gay rights, family values, free speech, free media, and many other contested grounds. The recent historical events in India, Bosnia and Afghanistan have proved that there is no secularism. That secularism is a utopian concept, something that makes you look good in your own eyes but is not really practiced nor believed in. It is a rationalization of virtues that do not exist in reality. It is as utopian an idea and as dogmatic as the forced imposition of religion. Secularism is a flawed view of reality. It may have originated as a reaction against the Church yet the basis for secular values; its end objectives are moral and hence derived from religion.

It is precisely for the sake of religion that we should practice not only tolerance but also actively embrace pluralism. Islam is a pluralist religion . it is not a strait jacket. This is why Islam emphasizes the local over the Universal. The entire Islamic practice of Azan, Namaz, Roza, Eid celebrations on moon sighting follow local timings rather than concur with the universal timing of Mecca, the center of Islam. Ummah is advised to follow local time and space for all such basic codes of Islamic practice. Hence unlike Christmas, Islamic Eid has no fixed date and must vary from place to place according to local conditions of moon sighting.

Conflict between Religion and cultural dynamics is no conflict in the Islamic East. Hence we are caught between two negative cycles. The secular and liberal imposition of the West and the dogmatic religious enforcement of the Islamic East both are flawed and equally misunderstood. and the half educated maulvi has tried to impose a dogmatic model of Islam which the Koran does not support. The state or the Mosque cannot be allowed to coerce or dictate belief. Religion is not the only point of identification

there are tiers of identification, family, clan, tribe, village, club, nation, religion. Cultural identification is very important aspect of self-definition.

Dream and Reality

Utopian assertion of Islam cannot succeed in modern times, see page 7. Reality refuses to accept dictation. This is the lesson of American story and this is the lesson of Pakistan story. Ideology without culture is a utopia just as a state without geography has no real existence see page 33. Culture is a fundamental right, the right to culture. Ideology is an ideal to reach up to within our varied cultures. There is no conflict the conflict is only in our minds. Just as national unity is threatened in many Islamic countries due to rejection of cultural diversity, International community is threatened similarly due to denial of diversity amongst nation states by the powerful West. This is one of the principle problem areas of the world today. We must find a solution. How to balance the two opposing strains of unity and pluralism? Unity is the cherished ideal while pluralism is the down to earth inescapable reality.

Harmony implies adaptation of parts to each other, a system intended to form a connected whole, a design to produce unity of effect. Harmony has been defined in standard dictionaries as pleasing combination of elements in a whole: such as color harmony, the order of nature, the harmony of the universe. Congruity of parts to their integral whole and to one another, a compatible or congenial combination, concord, law and order, harmonious relations, peace, comity or mutual civility and respect.

Islam the balance

There are only two forces in human life, GOD and MAN. God is divine, religious, man is secular, cultural, God is One man is plural and many, Islam believes in “al-mizan” balance between Allah and mankind.

Pluralism is in reality the ability to balance the ethnic, the cultural, the national, the religious and the universal. This is the full spectrum of pluralism. Problem lies with our binary and divergent thinking that has divided our minds between secular and religious, local and universal, cultural and ideological. These divisions are only in our mind and our flawed perception of reality. Reality itself may offer contrasts but is not divisive. Reality is a continuum of interacting polarities. Such contrasts are healthy options for growth and development through an understanding of the other. Tell a Hindu to be a better Hindu, a Christian to be a better Christian, tell a Baluch to be a better Baluch, tell a Pakistani to be a better Pakistani and a Muslim to be a better Muslim rather than compel or impose a political or liberal identity to the rejection of their native identity.

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