

## YARDSTICKS OF FEDERALISM: RELEVANCE FOR PAKISTAN

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### Abstract

*Federalism is considered as a panacea of war and assurance of peace within and between the states. It provides for unity with diversity and has been successfully practiced in several parts of the world, uniting together people of geographically proximate political units while maintaining their separate identities. A segment of political leaders and scholars even advocated creation of world federation for perpetual peace in the world. This paper discusses the theories of federalism and mainly evaluates the essentials or yardsticks of a true federation, as presented by Duchacek. Federal arrangements suit mainly the states, having large area, and heterogeneous and large population. There exist diversity and variations among the models of federalism practiced by around two dozens federal states in the world and none of them can be termed as an ideal or perfect type as the people and leaders have adopted federal systems keeping in view their own needs and socio-political conditions. The paper also delves into the relevance of these yardsticks for Pakistan.*

**Key Words:** Pakistan, federalism, federating units, constitution, autonomy, powers, functions.

### INTRODUCTION

Federalism is considered as a panacea of war and assurance of peace within and between the states. It has been regarded as “one of the great inventions of political theory and life” as it provides for unity with diversity. It has been practiced in several parts of the world uniting together people of geographically proximate political units while maintaining their separate identities. The federations represent the desire of the people to pursue peace among them and other common goals such as defense and foreign policies jointly and retain autonomy on a host of issues of relatively lesser importance (Ahmad 2013).

There is no fixed method to establish a federation because the system of federalism has variations. It is a fact that federal states have some common features. However, every federal state is unique and it is not appropriate to call any federation as an ideal. The nature of federalism in any state may alter over time. The historical background, political situation and social environment play an essential role in designing the structures of any federal state. The American Constitution of 1787 was enforced with the idea of a strong centre as compared to the Articles of Confederation. On the other hand, the German Constitution of 1949 had more decentralization provisions than that of Hitler’s Third Reich. Anarchism was, however, not the goal in the German case and absolutism was not the idea in the American case (King, 1982).

The variations can be seen in different federations. Federal states can choose a presidential or parliamentary system and the bicameral legislature is considered vital for a federal state. There are some similarities in the characteristics of the federal states: a written constitution; a distribution of

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powers between the central authority and the regional authorities, and; unanimity to be achieved on the essential issues. The judiciary plays a significant part in any type of the state, unitary or federal, but its role becomes paramount as it has to interpret the constitution in a federal state. It also makes judgments on disputes between the central and provincial or federating units' governments. In a federation, there are two sets of government, one at the national (federal) level and the other at the provincial (component units) level. Both levels of government work within their limits. They too execute their powers and functions in a collaborative way, though, there exist chances of disputes between the two levels of government. The distribution of powers is explained in the constitution of a federal state. Every federal state maintains a written constitution.

### **THEORIES OF FEDERALISM**

The theories of federalism are discussed below. The advocates of institutionalism believe that institutions play a vibrant role in determining the nature of the relationship among members of society. It is essential to look at the institutional change if we desire to perceive the evolution of society (North, 1990). The public institutions are established to work smoothly in all domains of social life. Social collaboration takes place within a framework set up by the institutions (Knight, 1992). Institutional theory and institutional analysis are not new in political science. Greek philosopher Aristotle, in his inquiry, depended upon formal features of governments and constitutions. Even after Aristotle, the institutional analysis remained focused of the political scientists. Some common features can be found in both the old and new approaches. Both do agree that institutions are of primary importance. There are variations in the institutional approach. Despite some differences among them, all strands do agree on the role of institutions as a mode to comprehend political problems (Guy & Pierre, 2007).

The authors such as Spinelli, Elazar, Wheare and Burgees belong to the liberal school of thought. Wheare remarks that a federation can be produced if there is a wish to "be under a single independent government for some purposes at any rate." There must be a sentiment to be united. There must likewise be an ambition of having governments of the federating units. Communities have created federations due to different objectives. It is significant that some of the vital objectives can always be found in the modern federations. These include; a feeling of military insecurity and the goal of joint defense, a purpose to preserve independence, an aspiration to obtain an economic advantage from the confederation, common approach for the political institutions and geographical proximity. These elements played a significant role in the creation of federations such as Australia, Canada, Switzerland and United States. Nevertheless, the role of each factor varied in each case (Wheare, 1964).

Burgees and Elazar opine that moral values play a key part in the establishment of a federation. Elazar remarks that people must enter into a new covenant to make a union whose character is of an eminent level. People who believe in social justice and mutual respect show their willingness to introduce the moral order (Elazar, 1998). Burgees called the act of entering into a union, "a political bargain." The highest moral values such as respect for each other, cooperative sentiments, responsibility and mutual recognition are of great importance for the creation of a federation. Burgees remarked that Roman Catholic influence was found in the European Federalist thought. Some of the European Union (EU) founding fathers such as Gaspari, Konard, and Schuman used

Catholic ideas. Riker criticized the federalism's inclination towards moral values. He takes it as unscientific (Dosenrode, 2010).

Mckay and Riker belong to the realist theory of federalism. Riker believes that federalism has the capability to take on the problem of enlarging governments. He states that due to every new innovation in the means of transportation, it is possible to rule a larger area from one center, to gather a big army and to preserve larger police and bureaucracy. When one state does so, the neighbouring and the competing states also prepare themselves to defend their dominion. Riker uses the term "the federal bargain" for the integration of political units (Riker, 1964).

Dual sovereignty is the central feature of dual federalism. Exclusive powers are divided into two spheres under the constitution of a federal state. The federal administration and governments of the federating units perform their functions independently within their own domain and they are co-equals (Schutze, 2009). Grodzins used the term "layer-cake federalism" and "marble-cake federalism." He used the metaphor, "layer-cake federalism" to explain dual federalism.

Scholars such as Elazar, Clark and Grodzins rejected the notion of dual federalism. In 1938, Clark applied the term cooperative federalism for the first time. In early 1960s, the federal government of the United States decided to introduce structural and social reforms and the concept got much importance. Some other federal states such as Australia, Canada, Germany, India, and Switzerland also started to apply to the term cooperative federalism in the 1960s (Frenkel, 2007). Both parts of federalism (participation and autonomy) are influenced by cooperative federalism. As a magical formula, cooperative federalism is found for each and any kind of relationship. Broadly speaking, the governing bodies and the executives are the cooperating partners. There are two primary causes; their sizes are small and they are differentiated which enables them to negotiate. The legislatures and the citizens are not very frequently involved. Influence of the cooperative federalism can be drawn in the autonomy of the units and assigning of the powers and functions (Frenkel, 2007). Weiser defines cooperative federalism as "Opposite to dual federalism, cooperative federalism manifests a sharing of regulatory authority between the federal government and the units' governments. It permits states to function within a framework drawn by the federal law" (Young, 2014). The old federal states such as Australia, Canada, and the United States made adequate changes in the functioning of federalism since the First World War. A new phase of federalism started in which it was not possible for the federal government and state governments to operate in complete isolation from one another (Pal, 1985).

### **YARDSTICKS OF FEDERALISM**

Ivo D. Duchacek designed ten yardsticks of federalism to test states that declared or thought to be federal. In this section, these yardsticks are being critically analysed.

#### **First: Comprehensive Control over Foreign Policy**

An important purpose of the federal process is to concentrate on the establishment of a federal state, a sovereign and a distinctive entity as compared to other states. A federal country, having the mandate of the federating units with a single policy participates in international affairs that is otherwise too difficult in a league or an alliance of the nations.

An alliance cannot be changed into a federation. The East African countries Tanzania, Kenya and Uganda made an attempt to amalgamate into one federation but failed because Uganda wanted to formulate its own foreign policy. The central government of Switzerland holds the right to sign treaties, to join alliances and to declare war and peace with other sovereign states according to the 1848 Constitution. Article 1, section 10 of the US Constitution does not admit any state to enroll into any Confederation, Treaty or Alliance. There is a common practice in many federal states that defense and foreign policy related matters are only handled by the federal government. The basic intention of talking over the first yardstick "Comprehensive control over foreign policy" is not to establish a difference between unitary and federal state but to draw a line between an alliance or league of states and a federation. In the league of states or an alliance, the states have complete power over their defense and foreign policy (Duchacek, 1987). No doubt responsibilities of the federal government have been increased in the globalized world. In a federation, the federal government interacts with the world community, receiving the support of the component units that is not possible in an alliance or organization.

### **Second: Surrender of Sovereignty to the Federation**

The formation of a federation is impossible until the desire for the constitution of a common government has come up in the minds of people to protect their common interests. Fundamental laws or the Constitution of some states assert that federation is everlasting. In this case, federating units are not permitted to incline separation. There is no obvious interdiction of separation in the US Constitution. The first sentence of the Preamble accentuates a "more perfect Union." There could be suspicion about the right of self-determination of the federating units during the first 70 years. The question of whether a federating unit has a right in the constitution to get separation from the union was solved because of the Civil War. The Supreme Court, in its ruling, stated: "ours is an indestructible union of indestructible states." In contrast, the Constitutions of Burma, the erstwhile Soviet Union, and Yugoslavia acknowledged the right of separation and regional self-determination. It is explicable that practically no authority, unitary or federal, likes to allow separation to its area (Duchacek, 1987). The desire to build a common government is the crux of a federation. Constitutions of some federal states allow separation of the federating units but practically every state tries to intact its areas.

### **Third: Independent Role of the Centre**

Powers and functions are distributed between the central government and the governments of the federating units in a federation. Both the level of governments perform their functions independently. The element of coordination can also be viewed in their working relationship. Each government gets an independent domain to ensure the division of authority. If the central government relies on the federating units in every matter of finance etc. then the framework may be named as a confederation or an alliance. Fiscal matters are really important. The federal government is authorized by the constitution to impose direct taxes and federal laws. It demonstrates that dwellers of a federal state are federal citizens in addition to their component units' citizenship. The federal government must be in a placement to satisfy its financial needs to

perform functions regarding foreign affairs, defense, and welfare, etc. The developing countries that have taken in a federal system sometimes include certain provisions in their constitutions to establish a common fund. The backward zones are given certain grants-in-aid from the mutual fund. The Indian Constitution has such provisions in its Articles 266 and 268. Pakistan's interim constitution also had such type of provisions regarding provincial mass media.

The central authority also relies on component units in indirect elections of one house of the central legislature. This method was in practice in the US Senate election. In 1913, the seventeenth amendment changed the method by introducing direct elections for the Senate. States' or provincial legislative assemblies elect Indian members of the Council of the State. There are some other examples of indirect elections (Duchacek, 1987) including Pakistan where provincial assemblies elect members of the upper house, the senate of Pakistan. Due to some drawbacks in this system, it is being discussed in Pakistan to held direct elect for the Senate.

#### **Fourth: The Federal Constitution and Amendments**

The majority of the political scientists agree that it is the best dependable standard of federalism when the manuscript of the constitution is examined. If federating units have comprehensive control over constitutional amendments, it is understood that the system is not transformed from association of states to a new federal system. If the approval of each component unit is inevitable for every amendment in the constitution, then the establishment of a supra-territorial authority is not possible. In contrast, if the central legislature has the power to amend the constitution on a majority basis, it will be hard to differentiate the procedure of amendment from the unitary system. The Soviet central legislature could make any amendment by a two-thirds majority of both the houses. In some countries, the regional units only have the role to play in the amendment process of the constitution if the issue is connected to distribution of powers. Pakistan and India adopt this method. The Congress in the US can make amendments in the constitution if the consent of three fourth of the states is attained. The constitution in a federal state acknowledges two separate authorities at national and regional levels. It also expounds the duties and functions of both the governments (Duchacek, 1987). The procedure of bringing amendments in the constitution of a federal-state varies. Some federal states such as the US have adopted the method to involve the federating units in bringing amendments in the constitution while some other states involve the federating units in bringing amendments when the issue is connected to the distribution of powers. The American model of bringing amendment in the constitution is rigid as compared to India and Pakistan.

#### **Fifth: Indestructible Autonomy of Units**

Nothing is stagnant in the sphere of politics. The word "indestructible" is very absolute in this domain. We can compare political institutions with human beings. Political institutions are established; they get maturity, success and sometimes tragic end. The appropriate words like longevity and eternity might be employed instead of indestructibility. In a unitary system, local-self-rule-is generally ensured. There are two primary main causes: due to the overload of functions, improve the competency of the national authority and guaranteeing esteem for the local population. The provisions of constitutions of different unitary states encourage local autonomy by

encouraging local taxation, legislation and executive powers. It is significant that the unitary principle is upheld. Italy has set up regions, having official autonomous organs, taxing and fiscal powers. The people's Republic of China maintains a unitary constitution but ensures regional autonomy. It is a common practice that constituent units are outlined in the constitution of a federal state. Pakistan has also followed this suit. The names of the founding states were not mentioned in the US constitution. The delegates of the states were not certain that all would agree on their draft. As a result the words of the Preamble are "we the people" despite the names of the component units. But at the conclusion of the last article, the names of 13 of the original states (the Rhode Island state was not present) are written to mention the names of the delegates to demonstrate the states they had represented in Philadelphia (Duchacek, 1987).

All federal states do not exhibit a compact between regions knowing their authority and individuality. Very few have moved from a confederation or an alliance into a federal nation-state. Switzerland is a typical model of an evolutionary process towards a federal state. There is an utmost need in a federal system to devise a mechanism in the constitution for the intent of separation of prevailing component units, inside area changes and reorganization. In such a type of constitutional arrangement, the standard of indestructibility appears to be fulfilled through a ban on any transformation or elimination of local character without the approval of the particular component unit. In a federal scheme, if the constitution permits the establishment of new units or rearranging of present ones without any difficulty, especially without the consensus of the concerning unit, such a system is sometimes termed as administrative federalism. On the other hand, in a federal bargain, different regions join into new mutual grouping while retaining their own distinctive personality. West Germany was a distinctive example of administrative federalism (Duchacek, 1987). Generally, the federating units are established in the constitution of a federal state. Duchacek rightly remarked that a mechanism in the constitution for the purpose of separation of prevailing federating units, inside area changes, and the reorganization is required in a federal system. It has likewise been noted that the federating units in a federal state desire to maintain their own unique position.

### **Sixth: The Issue of Residuary Powers**

Some abilities and roles must be assigned to the central government to secure a real federation from any breakdown. Similarly the governments of the component units should also receive a big share in such responsibilities. It is more essential than the allocation of residual powers to any tier of government (Wheare, 1964). Generally, the division of powers and functions between the component units and the federal government is not on the basis of the fifty-fifty ratio. Some of the important matters such as war, taxation powers and defense are given to the central authority. It can be averred that by definition, the federal system always favors the central authority (Duchacek, 1987).

According to the 10th Amendment in the US Constitution, the powers are reserved to the people or to the states, respectively. Some people in the US are of the opinion that the above-mentioned mechanism is necessary to secure the federalism from centralization. Different types of constitutional provisions can be witnessed in modern federal states. The powers given to the component units are listed and the rest are reserved for the center. Burma and India have extended

lists of powers, reserved for the central authority i.e. union or federal list, some functions and powers are jointly exercised by both the levels concurrent list, and some powers are exercised at state / provincial level i.e. state or provincial list (Duchacek, 1987). In a federation, the powers and functions are distributed between the central and the component units' governments. The federation can be secured from disintegration by assigning substantial powers and functions to the federating units.

### **Seventh: The Principle of Geographical Parity among Units**

As an outcome of the Connecticut Compromise, the American national leaders decided to reserve some seats for the lower house on population basis and some for the upper house on a parity basis. The American bicameral legislature enjoys factual powers. Both the houses have an equal status in the legislative procedure. In other countries of the world, generally, the upper house has ceremonial powers. Unlike a parliamentary system, the American legislature is not the creator of the executive branch (the cabinet). The executive is likewise not accountable to the legislature. The function of the upper house (the Senate) is decisive regarding executive appointments and treaties (Duchacek, 1987).

In federalism, the bicameral legislature is established to eliminate the sense of deprivation in smaller federating units. It is hard-to assume whether representatives of the upper house really protect the interests of their own state or not, particularly in the presence-of the political parties. Australia too as a federal state has a bicameral legislature. Upper house, the Senate, was established to safeguard the interests of states (a component unit in Australia is called state). Practically the members of the Senate blindly follow their party directions (Overacker, 1952). Most of the federal states have enforced-the principle of parity, having equality between component units like Australia, Switzerland, and countries of Latin-America. In contrast, some federal countries, such as India, do not pursue the principle of equal representation. A bicameral legislature is considered indispensable for successful federalism. However, sometimes a federal state establishes unicameral legislature like Pakistan that adopted unicameral legislature in constitutions of 1956 and 1962 ( it adopted a bicameral legislature in 1973 constitution) and Cameroun (Duchacek, 1987).

In bicameralism, both the houses should have equal powers in legislative as well as the political process. Most federal states that have executed the British cabinet system, the prime minister and the cabinet are answerable to the lower house. It is the lower house that elects and passes the vote of no confidence against the Prime Minister. A federation having fewer component units may adopt proportional representation in the central cabinet. Australia and Canada do this practice (Duchacek, 1987). The seats in the lower house of the central legislature of US were distributed on the basis of the population and the upper house on a parity basis. It is significant that both houses enjoy equal legislative powers. In other federal countries, mostly the upper house of the legislature enjoys ceremonial powers only. In Pakistan, the Senate (upper house of the parliament) has fewer powers as compared to the lower house (national assembly). The basic aim of the establishment of the bicameral legislature is to abolish the sense of deprivation in the smaller units.

**Eighth: Two Sets of Courts**

Apparently two levels of courts take up nominal criteria. Some say that it is so essential in federalism. There are a few states like Brazil, Mexico, and the US that have really instituted two parallel systems of courts. The courts at federal levels make judgments according to national laws and courts at regional levels make judgments according to local laws. The US has formed a comprehensive system of courts at federal and state levels. In other federal states, a single cohesive structure of courts with diversities can be found. The provincial courts function at the provincial level. There is a federal court of appeal at the upper level. Meanwhile, an additional federal court is also established. There is the special federal court of admiralty and exchequer in Canada. In Switzerland, cantons have powers to manage the whole system of the judiciary. The courts at the canton level adjudicate laws at canton and federal levels (Duchacek, 1987).

In some states, there is a twofold (federal and provincial) system of the judiciary. Australia, India and Pakistan have adopted this system. If a pivotal yardstick of federalism is an established system of the judiciary at the state and federal levels, then the US and to some extent Brazil and Mexico fulfill this requirement (Duchacek, 1987). Finer considered that the Soviet Union was not a federal state. He presents eight standards of a federal state, that includes: the establishment of a court above component units and the union; creation of two autonomous sets of court, one for the units and other for the union; different component units having their own party structure without any intervention; powers to make amendment in the constitution; foreign policy formulation entirely by the union; enumerating powers of the centre and residual powers to the units; non-interfering policy in fiscal resources and units having special representation along with veto powers in the upper house of the central legislature (Finer, 1949). The systems of the courts vary in different federal states. Some federal states such as Australia, India, and Pakistan implemented twofold (federal and provincial) system of judiciary. There are also a few models of two parallel systems of courts such as Mexico, Brazil, and the US.

**Ninth: The Apex Court**

There is an utmost need of a neutral judicial entity in all types of systems, unitary or federal that can explain/interpret national laws. This exercise has resulted in the shape of judicial review. According to this principle, the courts have the right to view the validity of the laws given by central or provincial legislatures. The courts can nullify such laws that are against the existing laws of the land. To some extent, a few other countries have tried to embrace the idea-of an American judicial review. Factually no other country is equal to the American Supreme Court as it holds broad powers (Duchacek, 1987).

The judicial agency has to explain the meanings of the institution. The dispute between the component units and the central authority is also adjudicated by this agency. Hence the neutrality of the judicial body is vital. It should be independent of the influence of the federal and provincial governments. Only Switzerland can be considered as an ideal. The judges and citizens of Switzerland can query about the validity of the federal laws. Till 1949, there was a neutral constitutional agency in the Canadian Judiciary Committee of the Privy Council. It was situated in London and consisted of law lords of the British House of Lords. It does not exist nowadays. Only the Supreme Court is the final court of appeal now. There may be apprehensions about the selection



of judges at the federal level. Its substitution may be constitutional and legislative referendum like in Switzerland. At the end, it can be stated that the highest court in any state consists of men and women, including judges of the highest court have definitely their social and political inclinations (Duchacek, 1987). The procedure of appointment of the judges of the Apex Court in federal states has variations. It is a fact that the American Supreme Court enjoys extensive powers. The role of the Apex Court is very significant in a federal state as it adjudicates the disputes between the component units and the central authority.

### **Tenth: Principle of Distribution of Power**

From different definitions of federalism, it can be concluded that the division of powers between central and provincial authorities is a principal matter. The study of the formation of any federal state illustrates that the demarcation of powers and functions between federal and the component units' governments are ambiguous. Sometimes there is intentionally or unintentionally overlap in the distribution of powers. Five core issues overlap and make a sensation of disarray in the clear demarcation of powers in a federal state: emergency powers of the federal government; domination of the federal government in defense and foreign relations; intentionally or unintentionally dearth of verbal precision; coefficient or elastic articles and the concurrent powers and functions (Duchacek, 1987). Distribution of powers and functions between the federal and the component units' governments is an essential characteristic of federalism. However, sometimes there is an overlap in distribution of powers.

### **Synthesis of Debate on the Yardsticks of Federalism**

To evaluate a real federalism, ten yardsticks of federalism have been examined. Yet it is difficult to make any precise definition of genuine federalism. One lesson has been learned from this experience that we should not show any rigidity while defining federalism as every state has varied conditions. It is not just to say that only American federalism is a real one. It has likewise been discovered that some federal states consciously or unconsciously have adopted an amalgamation of different systems in their constitutions. It is the main reason that different terms are used like; quasi-federal, federal with unitary characteristics, pseudo federal, or unitary system with federal inclinations. Some states proclaim them as unitary, still, they ensure regional autonomy of different groups (Duchacek, 1987).

### **YARDSTICKS OF FEDERALISM: RELEVANCE FOR PAKISTAN**

Pakistan's founding fathers had decided from the onset to make the country a federal state and this very principle was incorporated in the Objective Resolution passed in 1949, as well as the three constitutions adopted by the country since its inception, i.e. in 1956, 1962, and 1973. Even the military dictators who either abrogated or suspended the constitutions retained the federal structure of the state, at least theoretically, as powers were most concentrated in the hands of one person under non-democratic governments. However, Pakistan's score related to the ten yardsticks varied over time, as discussed below:

Pakistan comprehensively and completely meets the standard laid down in the first three yardsticks, i.e. related to: comprehensive control over foreign policy; surrender of sovereignty to the federation, and; the independent role of the centre. First, the federal government enjoys a comprehensive and sole control over the foreign policy. Under the Fourth Schedule of the Constitution of 1973, foreign policy is a federal subject. Second, the federating units in Pakistan enjoy provincial autonomy as given in the constitution and the sovereignty rests with the central government alone. Third, consequent to the first two conditions, the centre plays an independent role in scores of issues enumerated in the constitution under the federal list. In fact, both the federal and the provincial governments work within their domain mostly independently. Under the 18th constitutional amendment, the subjects previously enumerated in the concurrent legislative list have been devolved to the provinces that further delineated the line of authority and powers between central and provincial governments. Moreover, the procedure of the distribution of revenues between the provinces and the federation is also mentioned in Article 160 of the 1973 Constitution.

Pakistan also meets the fourth criteria of a federal state. Pakistan's constitution can be amended by a two-thirds majority of both the houses of the central legislature and provincial assemblies have no role expect with regard to change in their boundaries. It is, however, mentioned that Pakistan has a bicameral legislature and upper house, i.e. the Senate of Pakistan represents all federating units. As stated earlier, all federating units, i.e. provinces enjoyed considerable autonomy since the inception of the country. There had been a greater demand for more provincial autonomy from smaller provinces over the year and it has been granted under the 18th constitutional amendment through revisions in Article 157, Article 158, Article 161, Article 167 and Article 172 that in combination abolished the concurrent list and devolved seventeen federal ministries to the provinces. The federating units in Pakistan are now more autonomous than ever before and hence meets the fifth yardstick as well.

Duchacek proposed that there must be parity among federating units. In order to alleviate the concerns and sense of deprivation among the smaller provinces, Pakistan follows parity principle under the present constitution and gives equal representation to all federating units in the Senate. The National Assembly (lower house), however, enjoys more powers as compared to the Senate (upper house), especially Senate has less, if any, powers on financial and budgetary affairs. There is growing demand from various quarters that powers of Senate may be enhanced particularly on financial and budgetary affairs. As the experience of the past shows, it can be hoped that this demand too would and should be accepted sooner or later. Nevertheless, both the houses enjoy equal powers in bringing amendment in the constitution (Article 239) and hence Pakistan meets, to some extent, this standard too.

As in several other federal states, Pakistan has two sets of courts, i.e. federal and provincial judiciary (Article 176 and Article 192). Keeping in view the importance of the Apex Court in a federal state, Pakistan's Apex Court, i.e. the Supreme Court of Pakistan (SCP) has been vested in huge responsibilities. It exercises its powers mentioned in the 1973 Constitution (Article 175-191). Under Article 184, SCP exercises its powers in any dispute between two or more governments, either federal or provincial. It has, however, been asserted that superior court generally played a

subservient role to the executive throughout its history and more so under the rule of military dictators that tarnished its image and weakened federalism in Pakistan (Naazer, Kundi & Farooq, 2018).

Lastly, Duchacek set the condition of the distribution of powers in a federal state and Pakistan meets this criterion satisfactorily. Under the 1973 Constitution, distribution of powers has been ensured. The subjects enumerated in the former concurrent list were transferred to the provinces under the 18th amendment. The subjects that are enumerated in the federal legislative list part-I come under the jurisdiction of the federal government. The subjects enumerated in the federal legislative list part-II are regulated at the forum of Council of Common Interest (Article 154). The federal government and the provincial governments have representation in the said council (Article 153).

### **CONCLUSION**

The variations can be viewed in different federations. Federal states can implement a presidential or parliamentary system and the bicameral legislature is considered vital for a federal state. There are some similarities in the characteristics of the federal states. There is a distribution of powers between the central and federating units' government. The theories of federalism have been discussed and ten yardsticks of federalism have been evaluated in this paper. It is concluded that it was too difficult to arrive at any precise definition of real federalism. Every state is a unique case so there should not be rigidity in defining federalism. Duchacek opined that to some extent the central authority in a federal state meddles in the local affairs of component units through different means, especially emergency powers. Generally, the central authority uses these powers in the name of protection of the federation from any collapse or protection of the democratic government. To ward off any critical situation, the constitutions of different federal states grant reciprocal powers to the central and regional authorities. Experience has shown that federalism has served an important means of democratic governance that is essential for peace within and between states.

Pakistan meets most of the standards/conditions or yardsticks of federalism suggested by Duchacek. On at least two issues, Pakistan's score is not good that needs attention by those concerned. One of them relates to enhancing the powers of the upper house (Senate) in order to give all provinces the equal voice in making laws and especially on deciding financial and budgetary issues. Though law-makers generally partake and vote in the legislation process on party lines, instead of the provincial line. Still, this issue is debated among political circles and needs serious consideration by mainstream political parties in order to alleviate the concerns of leaders from smaller federating units. Likewise, the issue of creation of new provinces on administrative basis must be amicably resolved in order to give just and equal representation to all major ethnic or geographical identities. Lastly, the role of the judiciary has not been ideal in the past and it needs to be emboldened in order to strengthen democratic institutions in Pakistan. The independence of superior courts should be guaranteed in letter and spirit in order to put the federalism in Pakistan on solid foundations.

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