

**CONSTITUTIONAL DYNAMICS:  
HISTORICAL PERSPECTIVE  
THE CASE FOR PROVINCIAL AUTONOMY<sup>‡</sup>**

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The mighty Indus river also known as Lion river, was in ancient times by Rig-Veda described as "the Sindhu". This vedic name was retained by Sindh (now a province of Pakistan), and then gradually changed to Indus, was a name that was given to the whole subcontinent. Indeed it is one of the world's most dramatic rivers breaking out of lofty mountains; it courses forward with a power that nothing could resist for long. Many millennia have passed but it flows unceasingly. It is beautiful, powerful, unpredictable and dangerous in its course. But it is also gentle, calm and life giving. The Indus cradled one of the three great civilizations of the world, a civilization nearly as old as those of the Nile, Euphrates and Tigris, more than four thousand years ago. It is noteworthy to say that while Sumer and Egypt had long emerged into civilized way of living at the time the Indus people had built their remarkable cities. Egypt has been unified for seven centuries and Sumer's early dynastic period was four centuries old. Only China the isolated centre of development in East Asia and Minoan Crete and Mycenaean Greece, the genesis of European cultural traditions, were late starters in the Old World. Yet of these four mainly cradles of civilization the Indus Valley was by far the largest in geographical area. It covered more than that of Egypt and Mesopotamia if taken together and its frontiers stretched well beyond the watershed of the Indus River. It was a powerful state or

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with strong but mysterious cultural movement which almost dominated and influenced a larger cultural area of about 1770 sq. km from east to west and 1290. km from north to south<sup>1</sup>. To the archaeologists, the striking feature is its cultural uniformity and quite interestingly the Indus people even but classed the Egyptians in their conservation and honesty. Thus it was brilliant vision and sagacity of the Indus people who built such a strong social organization with a strong base of economy to establish a powerful kingdom with good governance. Their law of the land reflected culture and aspirations of its people which created respect for and obedience to the law throughout society. The social and cultural freedom indicates strong link with material progress and prosperity of a nation is a case in point.

We have brilliant visionaries in history of the Indo-Pak subcontinent like Chandragupta Maurya (324-300 BC) and his grandson Asoka, while with Chandragupta decentralizing power of his Empire and transferring, dividing into the province, for the smooth running of the administration. The emperor usually worked according to the decision of the majority. Chandragupta Maurya had enjoined to look upon himself as a servant of the people and to regard the happiness of his subjects as his own happiness and their welfare as his own<sup>2</sup>. It was the genius of the Maurya empire in Chandragupta's time that his efficient administration and concept of the Welfare State can be seen almost modern, and enlightened in character. Asoka, his grandson, was undoubtedly the greatest ruler of the Maurya dynasty (273-232 BC) who tried to promote the moral and material welfare of his subjects. The paternal aspect of his rule is well illustrated in the famous dictum of the Emperor "All subjects are my children". After the bloodshed of that Kalinga war (261 BC), he abolished huge army jousts, believing in material progress of the people, preached and practiced the virtues of concord, toleration and non-violence and he successfully continued to rule over his vast empire of free India, comprising of present day Pakistan and India and Afghanistan<sup>3</sup>. Thus the missions of King Asoka are among the greatest of civilizing influences in the history of the world and therefore occupies a unique place as a

remarkable personality in Indian history, believing in religious tolerance and rationalizing ancient Indian society.

Much later after the advent of Islam, the Arabs invaded Sindh, chronicles concede multifarious reasons for it. Some are of the opinion that the sole cause of invasion was spread of Islam. During that era Islamic frontiers were spreading amazingly while others term it as economic onslaught on green Sindh. It is also evident from the original sources like al-Baldhuri and Chachnama that the main motive of the conquest was not entirely religious but economic cum political. Islam did not spread with the efforts of Arab rulers, but socio-political and economic forces as factors worked to convert people. The striking feature of the Arab rule or conquest of Sindh is that despite the occupation remaining a part of the Caliphate for 150 years, the Arabic language could not become the lingua-franca<sup>4</sup>. Like Iran and Central Asia, Sindh also put up strong resistance and maintained its glorious traditions to keep alive its language and culture which is deeply rooted in the Indus Civilization.

Much water flowed down the Indus. Meanwhile history witnesses the Aryan immigration into the Indo-Pakistan sub-continent. The hordes of people belonging to various ethnic groups and racial varieties, the travellers, traders, invaders, plunderers and looters entered in this part of the world from Central Asia & through sea routes. The human variety, the Indian sub-continent presented with its teeming million is described by Dr. A. V. Smith as an 'ethnological museum.'

The Delhi Sultanate was founded by Qutubuddin Aebak in 1206 with the title of slave dynasty and Muslim power continued to expand until it reigned supreme over the entire subcontinent. Five Turkish/Afghan dynasties ruled Delhi till 1526. The Sultan himself was the chief executive; legislature and judiciary were in his hand. He administered justice to both Muslims and non-Muslims. The Hindus acquired the status of dhimmies paid toll tax and were exempted from military service on payment. The limitless power of the Sultan and his whims and wishes were the

law of the land. They divided the country into provinces (subas) run by governors (subedars). The courts of the Sultans were magnificent and luxurious-reward for obediences, suppression of dissent, pious disposition, they instilled fear and awe in the hearts of the subjects and rather than seeking the consent of the people, these were the chief traits of such a rule<sup>5</sup>. The Turko-Afghan Muslim dynasties were succeeded by the Mughals. The period of its first six emperors (1526-1707) is known for the glory and power of the Mughals. Akbar the great was indeed the jewel in the crown among all the emperors. His secular and wise thoughts inaugurated a policy of universal toleration. Infact, he chalked out a rational path for any one who would aspire to the position of national ruler of India<sup>6</sup>. He was indeed a man of enlightened vision and liberal ideas, thus Akbar occupies a unique position in the history of undivided India.

The Mughal Empire quickly fell into decay after the death of Aurangzeb for which he was himself responsible. By the middle of the nineteenth century, the British East India Company completely dominated the Indian sub-continent. The last attempt at throwing off the British yoke failed in 1857 when the Company's forces fought back and suppressed the mutiny known as the War of Independence. Interestingly enough, no written constitutions are known to have existed during the Muslim rule of India from 1206 to 1857 AD<sup>7</sup>. Queen Elizabeth I granting a charter about the trade with India for importing spices on 31<sup>st</sup> December, 1600, which was similar to the power of modern subordinate legislation. In 1757, the victory of Plassey by Clive paved the way for British govt. for wars to regulate the affairs of the company in India. The acts followed by what is known as Pitt's India Act of 1784 which was followed by canal control system of Board of control and the Court of Directors. The Act of 1786 made Cornwallis Governor General of India as well as the Commander-in-chief of Indian Military with the powers to override his Council<sup>8</sup>.

Then the British Parliament passed the Govt. of India Act, 1858. It was a constitutional document for Colonial India under a proclamation issued by Queen Victoria on first November, 1858.

The constitutional development took place between 1861 and 1909. The Act 1861 provided for the established of High courts in Calcutta, Bombay and Madras.

The Muslims of India not only lost their empire but bore the main brunt of defeat in the 1857 War of Independence. The British held the Muslims responsible for their role in the war. As a result they suffered heavily in the following decades with illiteracy, ignorance and untold miseries to face with. Sir Syed Ahmed Khan's educational movement gave them not only hope but it changed their destinies with modern education, sciences and religious education which brought social, economical and political consciousness. During this period the Indian National Congress was founded on the initiative of Allan Octavian Hume. With the passage of time, the Congress produced selfless leadership and it provided a platform of political training to the Indian youth who later worked for the partition of India. (The partition of Bengal in 1905 embittered relation between Hindus and Muslims the reason for partition was mainly administration.) The Muslims of Bengal welcomed partition, but the Hindus bitterly opposed it. Thus the issue of partition of Bengal gave birth to political militancy which created fears among the Muslims of India and they were convinced that they should have their own political party. Therefore, some influential Muslim leaders formed the All India Muslim League in Dhaka in 1906 with the aim of protecting political and other rights of Indian Muslims. The All India Muslim League was later recognized as the political body representing Indian Muslims which later led the Pakistan Movement. A favourable situation developed during this period, in which a delegation led by Sir Agha Khan met with the Viceroy Lord Manto in 1906. The Muslims put a demand for a separate electorates in future reforms, which the Viceroy promised to give consideration.

The Indian Councils Act 1909 known as Minto-Morley reforms. In this Act the Muslims were given the right of separate representation (separate electorate) and to be elected by Muslims alone. The demand for a separate electorate was thus accepted. Later the inadequacy of the reforms of 1909 brought resentment

and unrest among the Muslims; they were further annoyed by the reversal in 1911 of the 1905 partition of Bengal. The Lucknow Pact of 1916 settled the proportionate election representative of Muslims and Hindus in provincial and all India legislatures. The Govt. of India Act of 1916 gave further hope to provide for increasing association of Indians in administration and for the gradual development of self-government in British India. The executive of provinces was divided into two parts. The Departments such as, education, local self-govt., public health, works known as transfer of subjects were allocated to the elected members of the provincial legislature<sup>9</sup>. This system of diarchy remained effective from 1921 to 1937 in the provinces had many drawbacks. Considering the general restlessness and discontent in post-war India, the act was an experimental adventure in Indian constitutional history.

The period from 1919 to 1935 was considered as the turbulent history from the political and constitutional development points of view in India. The All India National Congress in 1919 demanded a fully responsible Govt. in India. The Rowalt Act being suppressive was bulldozed through the official majority despite strong opposition. Mohammed Ali Jinnah resigned from the Central Legislature in protest. Gandhi later launched a movement of Satyagarh against the Act. As a result the worst incident of violence the Jalianwalla Bagh massacre occurred and Gandhi decided to call off Sayatagarh. The Muslims in India were enraged by the events in which the Turkish Empire was divided and the Sultan was deprived of all his powers. Gandhi observing the unrest and resentment among the Muslims of India wanted to seize the opportunity to lead the Muslims in India and threatened to launch non-cooperation movement. The Khilafat Movement led by Ali Brother was foundered in 1923 when Mustafa Kamal Pasha Ataturk declared the dismemberment of Ottoman Caliphate and establishment of Turkish state. In the Nagpur session of the Congress the matter of non-cooperation was discussed, Jinnah opposed the resolution and was jeered by a throng of Gandhi supporters at the meeting. He left the Congress after the Nagpur session.

The Central Assembly asked the British Govt. for making fundamental changes in the Indian Constitution making the Govt. responsible in 1925. The British Govt. appointed a commission composed entirely of the British under John Simon is known as white man commission. The Commission was boycotted by Indian political parties after labeling it as all white men Commission. Its report was published in 1930. It considered the ultimate constitutional framework for the whole of India as a federation and the place of provinces in that setup. The report of the all parties' conference, known as the Nehru Report was published in 1928. It proposed responsible Govt. at the centre and in the provinces. It proposed that the provinces be assigned enumerated functions. It was in 1929 that the Muslim League held a meeting in Delhi, Jinnah presented his Fourteen Points rejecting the Nehru Report. He demanded that a uniform measure of autonomy to be granted to provinces, on third representation of Muslims in Central Legislature, in all cabinets, religious liberty and Sindh should be separated from Bombay Presidency.

The Viceroy Lord Irvin said in 1929 that the ultimate goal of India's constitutional progress was the attainment of dominion status. The Indians and British views differed on the issue, the Irvin-Gandhi talks failed, and the Civil disobedience movement was launched in 1930. There seemed to be a complete breach between the Govt. and the nationalist movement in India<sup>10</sup>. Gandhi withdrew the civil disobedience movement and the famous Gandhi-Irvin Pact was signed in 1931 after the failure of first Round Table conference. The second and third Round Table Conference did not bring any fruitful results. The purpose of the Communal Award was for the arrangements to be made for the representation of British Indian Communities in provincial legislature. The Govt. of India Act 1935 was a comprehensive written constitution given to the people of India. The broad principles on which the Act was based were the autonomy of the provinces and the powers of their legislatures to make the legislatures almost wholly elective to introduce the principles of a cabinet system at the provincial level and to enlarge participation

of Indians in the Govt. at the Centre<sup>11</sup>. Thus the Govt. of India Act, 1935 established diarchy at the centre which was unique that it provided provincial autonomy more than any other constitutions of Pakistan including the existing one.

By 1931, Jinnah was so disgusted with the Indian politics that he decided to settle in England. He returned to India in 1936. Jinnah returned to India little before elections were held in 1937. He toured India, organized the Muslim League, and prepared Muslims for the forthcoming elections. Jinnah was asked to show his majority in provinces where Muslims were in a majority. The first Muslim premier was elected from the newly separated province of Sindh from Bombay presidency; while addressing the Assembly, Sir G.H. Hidayatullah said:

"A new era is to dawn for Sindh within a few days, an era rich with promise for the future of this province; provincial autonomy is to be introduced in Sindh as in all other parts of India<sup>12</sup>.

The first Sindh Provincial Muslim League Conference held in Karachi on October 7, 1938 was a significant event for the Muslims of the Indian sub-continent. Sindh has given a lead to the whole of India on many occasions in the past. Similarly, at this juncture also, it was the first province to adopt the resolution for an independent Muslim state."<sup>13</sup>

The Conference was chaired by Jinnah and attended by Sikandar Hayat, A.K. Fazal Haque and Allah Bakhsh Soomro. The meeting further recommended that:

"All India Muslim League should devise a scheme of constitution under which Muslims may attain full independence."<sup>14</sup>

It was indeed a most memorable and auspicious occasion for the Muslims of India that on March 21, 22 and 23, 1940 the historic All India Muslim League session was held at Lahore under the presidency of Quaid-i-Azam Muhammad Ali Jinnah, just before the annual session, the working committee in its meeting had appointed a committee Quaid-i-Azam and Sikandar Hayat Khan as members to draft the resolution. Sir Abdullah Haroon claimed

that the resolution was drafted in the light of an outline placed by him in the hands of Quaid-i-Azam in the shape of a small memorandum in February, 1940<sup>15</sup>. The historic session was represented by a delegation of nineteen members from Sindh including Khan Bahadur Muhammad Ayub Khuhro, Shaikh Abdul Majid Sindhi and G.M. Syed who were sitting on the dais with prominent leaders of All India Muslim League<sup>16</sup>. The resolution in the form of a demand for a homeland for Indian Muslims was moved by Maulvi Fazal-ul-Haq. It said:

“No constitutional plan would be workable in this country or acceptable to Muslims unless it is designed on the following basic principles, namely, 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 the Muslims are numerically in a majority, as in the North-Western and Eastern zones of India, should be grouped to constitute ‘Independent States’ in which the constituent units shall be autonomous and sovereign...adequate, effective and mandatory safeguards should be specifically provided in the Constitution for minorities...for the protection for their religious, cultural, economic, political, administrative and other rights.”

The Resolution simply laid down the basic principle. The details were to be worked out by the Working Committee which was “to frame a scheme of constitution in accordance with these basic principles” and one of its tasks would no doubt be to define more precisely the autonomy or sovereignty of the units to be included in the federation.

Supporting the resolution, Haji Abdullah Haroon said that it was a well-known fact that the Muslims came to India through Sindh. The Sindhi Muslims were the first to meet this question which was now before the League. In 1938, The All India Sindh Provincial Muslim League passed a resolution for having independent states in the North Western and the Eastern Zones. Since then, various constitutional schemes had been framed and they were now being examined, and as for the present resolution, it was the duty of the Muslims to pass it without any hitch. He hoped

that the proposal embodied in the resolution would be acceptable both to the Hindus and the British, as there was no better solution of the thorny problem<sup>17</sup>.

The Sindh Legislative Assembly met on March 3, 1943, when G. M. Syed tabled the Pakistan Resolution that since Indian Muslims were a separate nation, their demand for a separate state was a proper demand and must be accepted.

Sheikh Abdul Majeed Sindhi moved two verbal amendments to the Resolution introducing the words "with safeguards for the minorities" after the words "national states of their own" in the Resolution, and substituting the words "disastrous" for "in civil war with" at the end. There were 27 members who attended the meeting. Twenty-four voted in favor of the Resolution whereas; the only three who voted against it were Hindus.

In Delhi, the Resolution was passed by the All India Muslim League Council on March 7, 1943, in the light of the Sindh Assembly Resolution as: "This meeting of the Council of the All India Muslim League approves the decision of the Sindh the Pakistan scheme adopted by the Lahore Resolution of the All India Muslim League on March 23, 1940 and feels confident that before long the other Muslim majority provinces will follow suit."

Pakistan was created on 14<sup>th</sup> August, 1947. Quaid-i-Azam Muhammad Ali Jinnah was moderate, secular and progressive in his thoughts and actions. Jinnah's August 11, 1947 speech to the then Constituent Assembly was intended to be an abiding promise to the non-Muslim minority that "religion would have nothing to do with the business of state", the very fundamental route to democratic governance in a pluralist society. The essence of Quaid's speech has been elaborated by the Supreme Court judgment on the NWFP "Hasba Bill":

- a) State cannot enforce any religious obligations stipulated in Islam.
- b) Private life, personal thoughts and individual beliefs of citizens cannot be allowed to be interfered with.

- c) Interfering in personal life, freedom of assembly, liberty, dignity and privacy is strictly prohibited in Islam.

Thus, the Quaid Azam's vision of Pakistan was a country totally free from every kind of bigotry. Peace, amity fraternity would be the order of state. The state to be free from all kinds of socio- ethnic and racial prejudice. While defining Constitution, Thomas Paine said: "A constitution is a thing antecedent to a government and government is only a creature of a constitution...A constitution is not the act of a government, but of a people constituting a government; and without a constitution is power without right."

The collection of principles of forming the frame for only political society is called its Constitution. The sanctity and priority to be accorded to constitution-making was demonstrated by the last Prophet of God himself when he prioritized the Charter of Medina, which contains 43 clauses. The establishment of the first Islamic state was followed by the formulation of the Charter of Medina and construction of the Masjid-i-Nabvi, in that order<sup>18</sup>. Following the Charter of Medina Quaid-i-Azam MA Jinnah, the founder of the nation reiterated the letter and spirit of Sunnah pertaining to Constituent Assembly on 11 August, 1947. Leaving the sacred task of Constitution making to the representatives of the people in Constituting Assembly, Jinnah pledged equal national rights to all the citizens of Pakistan. Jinnah was a first rate Constitutionalist. He did not thrust his own version, yet he wanted the Constitution to be formulated by the people's representations.

Keith B. Callard, an American political scientist said; "No one is willing to die for preservation of the Constitution of Pakistan." Interestingly enough, in twenty years it has had three constitutions. The newly born country adopted the Indian Act of 1935 as an interim constitution of the country through which it ran the Government from 1947 to 1956. The new constitutions took nine years to be framed by two Assemblies but sadly enough it remained in operation for only two and half years (23 March 1956 to 7 October 1958) when, following a period of martial law where

the people lived under authoritarian rule for a period of about four years, a new constitution was promulgated by President Ayub Khan on 8 June 1962. The people of Pakistan have been always subjected to suffer endlessly, overburdened by ideological clichés. They have always projected Almighty Allah's pleasure as the reason for every abortive constitutional system in Pakistan. In Pakistan, the adoptions of extra-constitutional methods were used for ulterior motives, suspension, and abrogation of Constitutions as mere pieces of paper to be easily scrapped. The imposition of One-Unit in 1955 resulted in the suppression of rich languages and cultures of Sindhi, Balochi, Punjabi and Siraiki. Similarly, Sindhi being the most ancient language of the sub-continent, and its 5000 years old glorious cultural heritage which had its roots in the Indus Civilization. The 1956 Constitution was not a purely federal one, the executive and the legislative powers conferred in the federating units were much less than those exercised by the federal government<sup>19</sup>. The 1962 Constitution was the "brainchild" of Ayub Khan, his imposition of a fully centralized administration and the abolition of provincial autonomy particularly in East Pakistan assumed extreme tendencies, approaching secessionism. Ayub had perhaps unwittingly caused irreparable damage to national politics, national political organizations, the prevailing political culture and the concept of Pakistan<sup>20</sup>.

The inequality prevailing in the two wings of Pakistan gave rise to the feelings of separation. An unfortunate feeling developed in East Pakistan that their legitimate interests had not been properly handled by the centre. This was the root cause of discontent in East Pakistan. If the economic, language and cultural problem had been tackled with broad national perspective, things would not have taken the shape of a national disaster. The same situation is prevailing in the country today. Sindh remained in the forefront of its struggle against One-Unit along with other smaller provinces and finally the historical provinces were restored and One-Unit, was undone with the heroic struggle of the people of Sindh. It is an undeniable fact that Sindh had played a very significant role in the freedom movement. The creation of Pakistan

had not been possible without separation of Sindh from Bombay Presidency.

Z. A. Bhutto deserved credit for giving the nation a unanimously evolved constitution but it could not provide provincial autonomy. The present constitution has been mutilated, altered and re-altered to suit the ambitions of Pakistan's ruling elites. The Constitution of 1973 could not save the life of the first elected Prime Minister of Pakistan, the man who successfully brought the country out of the chaos, crises and the gloom of the break up of Pakistan and who ultimately ushered the country into a new era. He was sent to the gallows. Certain judicial decisions have remained controversial and are still talk of town. Justice ® Nasim Hassan Shah has himself testified these facts and influence used on judiciary to have favourable decisions.

Thus a new constitution based on democratic and secular character for Pakistan is the need of the hour, taking in view the sufistic mindset of the masses of Pakistan. Full provincial autonomy showing be guaranteed and no bifurcation of the provinces would be accepted in the name of provincial autonomy. To save the country from further disintegration, the demands of the smaller provinces ranging from complete independence, a confederation to a federation based on the 1940 resolution should be fulfilled. The supremacy of the parliament could be established with equal representation from provinces. It is the strong desire of the people of Pakistan that a true federation must be created on the basis of the 1940 resolution. All the provinces should get equal representation in all the three forces and federal departments. Provinces should be given powers of taxation and revenue collection and they should be owners of their resources. They should contribute to the federation proportionally. No dam or mega projects should be undertaken without the consent of the provinces and water should be distributed according to the 1945 Sindh-Punjab agreement.

It emphasized that priority rights of the indigenous people be guaranteed under the constitution. Illegal aliens should be

repatriated to their countries and people of all the provinces should be provided employment and economic opportunities in their own provinces.

During the last sixty years the leadership has failed to find viable solution to the problems. As a result it persistently hinders normal growth and development, creating disharmony and unrest among the people of the smaller provinces. Thus the cultural freedom and autonomy has a strong link with material progress and national integration.

Considering the volatile situation it is suggested that the constitution of 1973 be restored in its letter and spirit. Provincial autonomy be given to avoid the sense of deprivation among the masses.

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