

Asymmetric Federalism: A Case Study of Pakistan

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ABSTRACT

Federations are generally a combination of multiple units having difference of interests. This difference of interests generally raises controversies among units as a result of variances that exist in natural and political structure of any federation of the world. These structural differences in the federations lead to asymmetric federalism when some federations try to compensate the natural and structural differences constitutionally to settle issues related to the demands of their federating units. In recent years, asymmetric federalism received great attention of political scholars. Many studies accentuated origin, evolution, conceptual issues and modifications in conceptual framework, effects and degree among world's federations. While the focus here is to explore this element of federalism in the federal system of Pakistan as Pakistan is a federal state, comprising unequal federating units. In doing so, this study examines a large number of theoretical foundations, natural structure of the country and constitutional schemes to observe whether the case of asymmetry exists in the federal system of Pakistan or not?

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Introduction

The concept of federalism is not new in origin. It existed in the ancient Greece and became part of Europe in the 16th and 17th centuries. The year 1787 is conceived as innovative in the history of federalism once the United States of America developed as a federal state.¹ At this juncture, bulk of the world's inhabitants live in the federal coordination, with 28 countries comprising of 40 percent of entire population of the world operating under the federal system.² This system was born out of necessity, primarily utilized for military and economic purpose and later to accommodate the culturally diverse characteristics. The get-up-and-go of the federalism is to bring unity though coincidentally protective diversity.³ This idea of federalism led to the concept of asymmetry, and asymmetric federalism is originated in the federation or in the confederation in which various provinces and states have different powers. One or two units have more autonomy than the other federating units. It is dissimilar to symmetric federalism where each province or state enjoys equal powers. Canada, India, Indonesia, Malaysia, United States and other countries are the examples of asymmetric federalism. In the following pages

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- 1 Syed Mujawar Hussain Shah, *Federalism in Pakistan: Theory and Practice* (Islamabad: NIPS, Quaid-i-Azam University, 1994), 6; Iram Khalid, "Politics of Federalism in Pakistan: Problems and Prospects", *Research Journal of South Asian Studies*, 28, no. 1 (2013): 200; and Chandra Pal, *Centre-State Relations and Cooperative Federalism* (New Delhi: Deep and Deep Publications, 1985), 21.
 - 2 George Anderson, *Federalism: An Introduction* (Canada: Oxford University Press, 2008), 1. Syed Jaffar Ahmed, "Historical Evolution of Federalism in Pakistan" in Series of workshops on Consolidating Democratic Devolution in Pakistan, January-March 2014: *Forum of Federations & Pakistan Institute of Legislative Development and Transparency*, accessed September 24, 2016, www.pildat.org/.../FPLGS/Historicalevolutionoffederalisminpakistan.pdf
 - 3 Alexandra Funk, "Asymmetric Federalism: A Stabilizing or Destabilizing Factor in the Multinational Federation? A Comparative Study of Asymmetric Federalism in Canada and Spain," (Master's Thesis, Centre International Européenne, 2009-2010), 3, accessed September 27, 2016, www.ie-ei/IE-EI/Ressources/file/memoires/2010/Funk.pdf.

an effort is made to discuss the concept of asymmetric federalism and its evolution in Pakistan.

In short, the intent of this paper is to travel around a comparatively ignored topic 'the case of asymmetry in the federalism of Pakistan', namely, unequal arrangements and special treatments for some units within a federation, to find out that whether the case of asymmetry be present or not in federalism of Pakistan? To arrive at estimation with precision this paper will observe the factors of asymmetry and explore this question in the context of *de facto* and *de jure* asymmetry. Thus, a study to inspect the constitutional schemes that is implemented in Pakistan has been conducted.

Concept of Asymmetric Federalism

A prominent scholar from America, Charles D. Tarlton⁴ was the first who introduced the term symmetry and asymmetry in 1965, according to him:

The notion of symmetry refers to the extent to which component states share in the conditions and thereby the concerns more or less common to the federal system as a whole. By the same token...the concept of asymmetry, expresses the extent to which component states do not share in these common features.⁵

Jennifer Smith defines asymmetry in these words, "asymmetry is the matter of some of the constituent units having more responsibilities than others."⁶ Though asymmetric federalism exists in a federation in which different constituent units possess different powers, one or

4 Every scholar of asymmetric federalism could not leave him from referring to the Tarlton as a pioneer of introducing the symmetric and asymmetric approaches.

5 Charles D. Tarlton, "Symmetry and Asymmetry as Elements of Federalism: A Theoretical Speculation," *The Journal of Politics* 27, no. 4 (1965): 861, accessed September 27, 2016, <http://www.jstor.org/stable/2128123>.

6 Jennifer Smith, "The Case for Asymmetry in Canadian Federalism," *Asymmetry Series* 2005 (6):1-2, Institute of Intergovernmental Relations, School of Policy Study, Queen's University, accessed October 12, 2016, www.queensu.ca/igr/working-papers/asymmetric-federalism-series.

two units have largely more sovereignty than the other units under the same constitutional structure.

Origin, Types and Evolution of Asymmetric Federalism

Asymmetry, at times, may occur in reaction to the needs to preserve order in certain units. Charles D. Tarlton describes, cultural, economic, social and political factors existing in grouping in all federations to harvest asymmetrical disparities in the power and influence of different constituent units.⁷ According to Ronald L. Watts, historical, economic, social, ethnic, and cultural distinctions led to the origin of asymmetry in most of federations.⁸ Burges and Gress both agreed on a point that the political, social, economic, territorial and demographical variances gathered to center the asymmetric federalism in heterogeneous societies.⁹ In fact these are the factors which are real in federations but it's not essential that will be in equal degree in all federations.

The most important otherness to be situated between asymmetric conclusions is its types: *De facto* and *De Jure*. *De facto* is political asymmetry that comes from the cultural, social, political, and economical essentials as population, size, and wealth and leads to the *de jure* or constitutional asymmetry as provinces or federating units gain inequalities in function and power under the constitutional structure due to population, area, economic, social and cultural differences in the natural structure. Asymmetry arising in case of constitutional inequalities is *de jure* or constitutional asymmetry. Thus it is the type through which the constitution

7 Tarlton, "Symmetry and Asymmetry," 867.

8 Ronald L. Watts, "A Comparative Perspective on Asymmetry in Federations," *Asymmetry Series* 2005 (4): 2, Institute of Intergovernmental Relations, School of Policy Study, Queen's University, accessed October 12, 2016, www.queensu.ca/ligr/working-papers/asymmetric-federalism-series.

9 Michael Burgess and Franz Gress, "Symmetry and Asymmetry Revisited," in *Accommodating Diversity: Asymmetry in Federal States*, ed. Robert Agranoff (Baden-Baden: Nomos Verlagsgesellschaft, 1999), 43. cited in Funk, "Asymmetric Federalism: A Stabilizing or Destabilizing", 9.

permitted unequal powers to the provinces refers to asymmetry embedded in constitutional and legal processes, where constituent units are treated differently under the law.¹⁰ Watts, describes the types of asymmetry; *de facto* and *de jure* in terms of political and constitutional asymmetries, as he says,

Two kinds of asymmetry...one, which is characteristic of all federations and might be described as political asymmetries, arises from the impact of cultural, economic, social and political conditions...the other, which exist in some but not all federations and which might be labeled constitutional asymmetry, relates specifically to the degree to which powers assigned to regional units by constitution of the federation are not uniform.¹¹

Another scholar Wilfried Swenden marks the difference between two types of asymmetry in these words:

...asymmetry refers to cultural, socioeconomic and political parties' differences between the federated entities....We call this *de facto* asymmetry...asymmetry is used to describe a situation whereby some federating entities have gained some greater self-governing powers than others. We call this *de jure* asymmetry.¹²

As far as the evolution of asymmetry in federalism is concerned, "asymmetry has always been central to federal theory."¹³ The concept of asymmetrical federalism is not new as it had been inherent in the constitutional writing and the writings on federalism. The seed of asymmetry in the federalism planted to bring unity without ignoring the accommodation of diversities of different type among the units for acquiring political stability. According to Robert Agranofe, "asymmetry first recognized in regards to all

10 Burgess and Gress, "Symmetry and Asymmetry Revisited," 43.

11 Watts, *Comparing Federal Systems*, 57.

12 Wilfried Swenden "Asymmetric Federalism and Coalition-Making in Belgium" *Publius*, 32, no. 3 (2002): 67, accessed: October 16, 2016, <http://www.jstor.org/stable/3330967>.

13 Esther SeijasVilladangos, "Answer to Spanish Centrifugal Federalism: Asymmetrical Federalism Versus Coercive Federalism," *Perspective on Federalism*, 6, no.2 (2014):170, accessed December 24, 2016, www.on-federalism.eu/attachments/185_download.pdf.

different relationships among U.S. Southern States, although it is applied in many other federal contexts, for example Canada, Belgium, India, and Malaysia.”¹⁴ The literature on federalism marked that classical federations accepted the symmetry as a mode but in 1965, as stated above, a prominent scholar from America Charles D. Tarlton shaped the theory of asymmetry. He conceived it as bitter for the federal system and expressed that remoteness from constitutional-legal relationships give way to cultural, political, social factors which existed in every federation in generating asymmetry in the power and swaying of different constituent units that also disturbed the grade of coherence or dissent in the federal organizations.¹⁵ So, he was against the existence of asymmetry in the federation because he was of the view that such design resulted in prospective separation. Recent progress from last two decades about the issue of asymmetry in the federal system drew more scholarly attention. For instance, H. Hannum, S. Henders, R. Lapidoth, D.T. Ramos, Will Kymlicka, A. Stepon, Wilfried Swenden, M. Govinda Rao and Nirvikar Singh, F. Requejo, Robert Agranoff, Ronald L. Watts, Richard M. Bird, Roger D. Congleton, Louise Tillin are among the prominent scholars in exploring the dimensions of the asymmetry within the federal systems of the world. In this attempt, instead, we aim to map out the case of asymmetrical aspect in the federation of Pakistan.

Asymmetry in the Federal Structure of Pakistan

Origins of asymmetric federal structure can be traced back in the colonial past of the subcontinent. Cabinet Mission of 1946 had recommended the federal system of government for un-divided subcontinent after the elimination of British

14 Robert Agranoff, “Federal Asymmetry and Intergovernmental Relations in Spain,” *Asymmetry Series* 2005 (17): 2, Institute of Intergovernmental Relations, School of Policy Study, Queen’s University, accessed October 12, 2016, www.queensu.ca/ligr/working-papers/asymmetric-federalism-series.

15 Tarlton, “Symmetry and Asymmetry”, 861-74.

government to deal with the two dominant nations i.e. Hindu and Muslims¹⁶ to solve the issue of religious asymmetry. The recommended federal system could not be implemented in un-divided India because the determination of Muslim League for a separate homeland for the Muslims led to the division of Subcontinent. After the partition, both India and Pakistan adopted the federal form of government following the pattern of the British India Act of 1935 which determined powers of centre and its federating units. Naturally, federating units of both countries entwined with the structural or *de facto* asymmetries inherently and both countries tried to cope with these asymmetries. Thus asymmetries in federal structure of Pakistan basically had its links with colonial past. Pakistan came into being in 1947 as a federal state with two wings. The eastern part of Pakistan was homogeneous and west wing was heterogeneous consisting of the Punjab, Sindh, Balochistan and NWFP (now Khyber Pakhtunkhwa—KP).¹⁷ An eminent scholar from Pakistan Syed Jaffar Ahmed has described accurately Pakistan's society as, highly diversified in race, language, levels of economic development and political heritage.¹⁸ Being a heterogeneous society federal form of government was considered as the best suitable system for the newly incepted state i.e. Pakistan.¹⁹ These diversities were not disseminated and entered into a new phase after the secession of eastern wing of Pakistan in 1971. Since its creation, the most crucial challenge was the formulation of constitution acceptable for all the federating units owing to

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- 16 M. Govinda Rao and Nirvikar Singh, "Asymmetric Federalism in India," *UC Santa Cruz: Santa Cruz Center for International Economics*, Series Recent Work 2004(6), accessed October 25, 2016. <https://escholarship.org/uc/item/4370m6p1>
 - 17 The name of the North West Frontier Province (NWFP) was replaced by the Khyber Pakhtunkhwa in 18th Amendment of the Constitution of 1973.
 - 18 Syed Jaffar Ahmed, *Federalism in Pakistan: A Constitutional Study* (Karachi: Pakistan Study Centre, University of Karachi, 1990), 40.
 - 19 Muntzra Nazir, "Problems and Issues of Federalism in Pakistan," *Pakistan Vision*, 9, no.1 (2008):113; Ali, *Politics of Federalism*, 10, and Khalid, "Politics of Federalism," 202.

characteristics of strong *de facto* or political asymmetry creating balance in the political, social, economic and cultural dynamics within Pakistan. *De facto* asymmetry penetrated the space for *de jure* asymmetry which was used as a tool of settlement. One of the authors of asymmetry Swenden observed precisely “de facto asymmetries frequently lead to the entrenchment of some formal institutional devices.”²⁰ The institutional devices are the constitution or legal process of the federation. Searching the case of asymmetry in Pakistan in the context of *de facto* and *de jure*, it would be imperative to take into consideration the preconditions of asymmetrical federalism in the country.

Factors of Asymmetrical Federalism in Pakistan

Burges identifies four specific preconditions of asymmetry; (i) political culture and tradition, (ii) territoriality, (iii) socioeconomic severances, (iv) demography. The asymmetry in Pakistan obliged greatly to the historical and political factors. The first is political culture and tradition as Burges describes, “An underlying culture and tradition of citizen welfare extending beyond territoriality to the individual person”²¹ also existed in Pakistan. Because, “certain federations have a culture of citizen welfare for every individual regardless of region and therefore have constitutional provisions that work to equalize regional disparities and set a minimal standard for everyone.”²² This is settled by funding the equal disbursements to the provinces to bring parity in the level of services, education and other facilities. The Article 72(3) of the Basic German Law and the Article 36 of Canada Act 1982 under part-II refer to unifying living condition.²³ Pakistan cannot ignore

20 Wilfried Swenden, *Federalism and Regionalism in Western Europe: A Comparative and Thematic Analysis* (New York: Palgrave Macmillan, 2006), 63.

21 Burgess, *Comparative Federalism*, 215.

22 Funk, “Asymmetric Federalism,” 9.

23 Constitution Act 1982, Section 36, Canada Constitution Acts, 1867-1982, accessed December 16, 2016, https://laws-lois.justice.gc.ca/PDF/CONST_E.pdf.

this kind of factors in any of its constitutional schemes. For instance, second part of the constitution sanctions fundamental rights, where the federal government commits to promote equal opportunities for the welfare of all citizens to reduce disparities. Such a political culture paves the way for asymmetry, if all the federating units do not receive equal opportunities from the federation.

Second vital factor of asymmetry is social severances that may be religious or ethnic heterogeneity. For example, in the worlds' federations this precondition certainly exists in Canada because Canada is a union of different peoples as protestant, catholic, aboriginal and immigrants.²⁴ Pakistan is a pluralistic society of very different people as Bengali (before the secession 1971 more dominant linguistically), Punjabi, Sindhi, Pashtun and Balochi.

Third key factor is regionalism. Regional disparities multiplied with economic and social factors gave birth to asymmetric consequences in Pakistan. The fourth significant factor is demography that mentions the representation of the federating units contextual to their population. This factor largely functioned in bringing asymmetry, for instance, in Canada and Belgium being greatly different in population size, asymmetrical representation is unavoidable.²⁵ This precondition is also present in the federation of Pakistan. Pakistan comprises provinces which show a discrepancy critically in population size that caused inescapable asymmetrical representation. Political scholars perceived these factors or preconditions as major variables for examining the asymmetry in federations. The present research is based on the above mentioned factors focusing the socio-political realities in Pakistan.

24 Funk, "Asymmetric Federalism", 21.

25 Burgess, *Comparative Federalism*, 215.

Asymmetries in Pakistan

The above discussion about the factors that underlined the asymmetrical application in any federation fixed the platform for asymmetry in the federation of Pakistan. This discussion also crystallise that the political, socioeconomic and cultural factors lead the asymmetries in the federal systems. The political culture and traditions lead asymmetry in the constitutional provisions that constituted to balance provincial inequalities and set a minimum average for every person. Social severance mentions the religious, linguistic and ethnic differences. Territoriality brings up space and relationships among provinces. Demography speaks of population which affect the representation. Watts sorts theoretical differences between political (*de facto*) and constitutional (*de jure*) asymmetries and specified political asymmetries exist in every federation which refers to the difference in the status of federating units.²⁶ All the federal systems can be constituted in the form of thorough symmetry or thorough asymmetry just theoretically but practically it is impossible.

De-facto Asymmetries in Pakistan

Like other federations, the federating units of Pakistan have massive amount of political or *de facto* asymmetries owing to large number of disparities inherent in its structure. Geographically, Pakistan comprised two wings in 1947: East Pakistan (later Bangladesh) and West Pakistan. With the secession of eastern wing in 1971, the structure of federation was transformed into single geographical component comprising four provinces—the Punjab, Sindh, NWFP (presently Khyber Pakhtunkhwa (KP), Balochistan and princely states. All the federating units of Pakistan varied in area, economy, social structure and demography. At present the total area of Pakistan is 796,096 km² (according to the 1998 census) out of which Balochistan

26 Watts, *Comparing Federal Systems*, 127.

covers 347,190 km², Sindh 140,914 km², KP 74,521 km² and Punjab 205,345 km².²⁷ Map of Pakistan after secession of East Pakistan is following which reveals the regional disparities.



Source: This map is obtained from the google images.

The second asymmetry comes from population.²⁸ In its early phase, West Pakistan and the East Pakistan had population of 33,704,000 and 41,932,000, respectively. Thus, 55.4 percent people lived in eastern and 44.6 percent in the western part of the country²⁹ which showed the asymmetry in population. After the separation of East Pakistan, Punjab became the most populated province of Pakistan and Balochistan the least. According to the Census of 1998, 55.6

27 Government of Pakistan, Pakistan Bureau of Statistic "Table 1 - Area, Population by Sex, Sex Ratio, Population Density, Average Household Size and Growth Rate-Pakistan," accessed October 16, 2018, <http://www.pbscensus.gov.pk>.

28 The case of demographic asymmetry noted in many federations for instance, India, Switzerland, Canada, Belgium, Germany, etc. have one or two most populated units. See for details, Watts, *Comparing Federal System*, 59-64. Burges, *Comparative Federalism*, 218.

29 Government of Pakistan, Census Report 1951, cited in K. K. Aziz, *Party Politics in Pakistan, 1947-1958* (Lahore: Sang-e-Meel Publications, 2007), 1.

percent of people lived in the Punjab and the rest of the 44.4 percent in three other provinces.³⁰

The third asymmetry stems from finance. Punjab has the leading economy to Pakistan which generates sensitivity about its domination among the other provinces as it contributed 57 percent to Pakistan's gross domestic product (GDP), Sindh 27.5 percent, KP eight percent and Balochistan three percent.³¹ These figures reveal a considerable amount of asymmetries in the financial structure of Pakistan. Fourth is language asymmetry. East Pakistan was ethnically homogeneous while West Pakistan was heterogeneous having four dominant provincial languages i.e. Punjabi, Pashto, Balochi and Sindhi. In spite of separation of East Pakistan in 1971, all of the above mentioned asymmetries are still alive with a demand of the creation of new provinces.

De Jure Asymmetries

Essentials of *de jure* asymmetry reside in constitutions, constitutional reforms, laws and legal process where federating units are treated differently. According to Watts, "Constitutional Asymmetry refers specifically to differences in the legislative and executive powers assigned by the constitution to the different regional units."³² Another scholar, Jocelyn Maclure, stated as, "asymmetrical federalism" is usually understood in terms of "constitutional asymmetry".³³

30 Government of Pakistan, *Economic Survey of Pakistan, 1998-1999* (Islamabad: Finance Division, Economic Advisory Wing), 124.

31 Shahid Javaid Burki, "Economics and Extremism," *Dawn*, January 5, 2010.

32 The noted federations where *de jure* asymmetry applied in different ways and in varying degrees, particularly Quebec in Canada, Jura in Switzerland, Belgium and Germany, while Spain, although not yet a formal federation, has also put these tools and methods. Burges, *Comparative Federalism*, 222.

33 Jocelyn Maclure, "Beyond Recognition and Asymmetry," *Asymmetry Series* 2005 (9), 1, Institute of Intergovernmental Relations, School of Policy Study, Queen's University, accessed October 12, 2016, www.queensu.ca/igr/working-papers/asymmetric-federalism-series.

Here is an effort to identify the constitutional asymmetries in federalism of Pakistan. One of the most visible cases of *de jure* asymmetry in Pakistan is asymmetric representation of the provinces in the parliament in all the three constitutions of Pakistan 1956, 1962 and 1973. Regarding constitution of 1956, the question of representation was accommodated by creating East and West Wing and equality between the two Wings which is known as parity formula.³⁴ After the establishment of One-Unit, unicameral parliament was formed and equal representation was granted to the both wings i.e. each wing was allocated with 150 seats out of 300. Apparently equal division in reality led asymmetry in practice as East Wing got less representation with reference to its population. The other side, the seats were further divided among the sub-units of the Western Wing i.e. Punjab, Sindh, KP, and Balochistan on the basis of population which led the asymmetry in practice as the sub-units could not gain equal numbership. The asymmetry in representation not only found in the constitution of 1956 but also in the 1962 constitution. The Constitution of 1973 was no exception as according to the Article 50, the Parliament of Pakistan consisted of two houses—the Senate (Upper House) and the National Assembly (Lower House).³⁵ The lower house consisted of 342 seats and allocation to the provinces articulated on the basis of population. This created an asymmetry in terms of representation of each province as Punjab had 148, Sindh 61, KP 35 and Balochistan 14 seats.³⁶ This distribution packed with asymmetry in being weight to the most populated province Punjab. The Senate (Upper House) of Pakistan formed symmetrically as each province has equal number of representatives.³⁷ The representation of Senate is

34 *Constitution of Pakistan 1956*, Article 44.

35 Government of Pakistan, *Constitution of Islamic Republic of Pakistan 1973*, Article 50,

36 Government of Pakistan, *Constitution of Islamic Republic of Pakistan 1973*, Article 51.

37 Government of Pakistan, *Constitution of Islamic Republic of Pakistan 1973*, Article 59.

coupled with *de jure* asymmetry in practice in being weight to the small provinces. These constitutional arrangements done for securing *de facto* diversity actually created asymmetry in practice.

Another form of genuine asymmetry in Pakistan is religious asymmetry compensated by bringing in practice the *de jure* type of asymmetry by giving the right of separate electorates to the non-Muslim communities constitutionally and they have a right to choose their own representatives from their own community. Regarding Article 51, section (4), 10 seats are apportioned for the non-Muslim community in the lower house³⁸ (National Assembly) and Article 59 section 1(f) allocated 4 seats (one from the each province) in the Upper House³⁹ (Senate). In Pakistan, though, minorities are non-territorial, namely, minorities were scattered in the whole country instead of residing in a specific province or particular territory.⁴⁰ But their membership is determined by religion in the parliament by separate electorate until Musharraf period. They could elect their members by direct election but could not cast vote for Muslim constituencies. Separate electorate was overturned by Musharraf, who reintroduced the joint electorates but decided the way of proportional representation for non-Muslims. To my best understanding, the special right of representation in the parliament by different form of election for non-Muslim communities is a *de jure* asymmetry.

Besides, various provincial demands entrenched the asymmetrical establishment of some programs and policies by the federal government. Sometimes due to the case of

38 *Constitution of Pakistan 1973*, Article 51-4.

39 *Constitution of Pakistan 1973*, Article 59, 1(f).

40 André Lecours, "Speaking of Asymmetry: Canada and the Belgian Model," *Asymmetry Series 2005* (7), 2, Institute of Intergovernmental Relations, School of Policy Study, Queen's University, accessed October 12, 2016, www.queensu.ca/ligr/working-papers/asymmetric-federalism-series. Similar example in the world federations is Belgium as its communities are non-territorial so the membership is determined by language.

provincial progress particular programs were commenced for the development of specific province that was not available to other provinces. David Milne, use the term 'asymmetry by design' for the programs and policies are not available to other provinces.⁴¹ For instance, one of such programs in Pakistan is the "Aghaz-e-Haqooqe-Balochistan" that started regional and the economic development in the province of Balochistan.⁴² This programme is not available to other provinces. Though, that or these programmes incepted for economic development to create equity actually an asymmetry by design. Besides, the same case is exemplified in the federal programs of grants-in-aids. For instance, e.g. KP and Balochistan also received special grants on account of their relative under-development whereas Sindh and Punjab not received such grants in the past.⁴³ Recent example is Prime Minister Fee Reimbursement Scheme for selected regions.

According to David Milne, constitutional asymmetry in practice sometimes generated on similar availability to all but not use by all provinces, a selected example is here. Language controversy met to the Pakistan by birth. With the passage of time, provincial demands resulted in the constitutional asymmetry in practice. Particularly, the Eastern Wing of Pakistan demanded that the Bangla/Bengali should be accepted constitutionally as official language. The demand was accepted constitutionally and Bengali declared as an official language with Urdu language in the Constitution of 1956 remained applicable only to legislature of East Pakistan.⁴⁴ After the secession, these circumstances became the state of affairs once again when language violence arisen in Sindh during 1972. The Sindh Assembly

41 Milne, *Asymmetry in Canada*, 6.

42 Parliament of Pakistan Joint Sitting Debates: Official Reports, Session 4th, Vol. IV, no.1, November 24, 2009.

43 Mahendra Prasad Singh and Veena Kukreja, *Federalism in South Asia* (New Delhi, Routledge, 2014), 86.

44 Constitution of Pakistan 1956, Article 214(1).

passed a bill for the promotion and the use of Sindhi language and Sindhi succeeded the status as a regional official language of the province and medium of teaching with the Urdu on July 17, 1972⁴⁵ that paved the way for further asymmetry in practice. For instance, Article 251 of the Constitution of 1973 debates about the national language; and section C of the said Article specifies that without prejudice to the status of the Urdu “a Provincial Assembly may by law prescribed measures for the teaching, promotion, and use of provincial language in addition to the national language.”⁴⁶ Though this section is not asymmetrical by law but it substantiated asymmetry in practice e.g. this opportunity available to all provinces but only Sindh launched its own language Sindhi as regional official language with the Urdu while the other provinces were distanced from this bilingual practice. It is an asymmetry in practice.

Moreover, all provinces have the right of legislation equally in each constitution practiced in Pakistan i.e. 1956, 1962 and 1973. For example, under Article 141 of 1973 Constitution, “a Provincial Assembly may make laws for the province or any part thereof.”⁴⁷ By the same token, prior to 18th Amendment provinces had equal rights of legislation on the subjects enlisted in concurrent list. This right is symmetrical but could create asymmetry in practice in case variance in legislative measures among provinces. The 18th Amendment decided dissolution of concurrent list which also initiated the series of asymmetry, for instance, it decided the creation of local governments by the provincial governments. The current Local Government Acts formulated by all provincial governments but asymmetry occurred in practice. Since, the scale or degree of devolution in KP is more than other provinces e.g. “KP has devolved power beyond the

45 Sindh Act no. II of 1972, Sindh (Teaching, Promotion and Use of Sindhi Language) Act, 1972, 17th July, 1972.

46 Constitution of Pakistan 1973, Article 251(c).

47 Constitution of Pakistan 1973, Article 141.

district, tehsil, and union council levels of local government to the even lower tier of village and neighbourhood councils” whereas “Punjab and Sindh have done away with the mid level tier of local government (the tehsil), and have not created any further local government structures beyond the union council level.”⁴⁸

Besides, “certain federations have a culture of citizen welfare for every individual regardless of region, and therefore have constitutional provisions that work to equalize regional disparities and set a minimal standard for everyone.”⁴⁹ Disparities and some basic needs handled through the idea of fundamental rights on individual basis in three constitutions of Pakistan. For instance part two, section one of the constitutions of 1973 contained with fundamental rights, does not assume condition of equality in economy and education. Similarly, the section two, principles of policy’s Article 38(g) illustrated the share of provinces in all the federal services,⁵⁰ and Article 39 participation of people of all areas of Pakistan in the armed forces⁵¹ to bring equality. Actually these provisions accommodated the asymmetry in practice e.g. 82 percent weight had given to population in the allocation of the federal services which gave the weightage to the Punjab.

De jure asymmetry also viewed in the case of financial allocation to the provinces. Burgess was of the view that the *de jure* symmetry for allocating financial resources among the provinces generates unequal marks in context of each province’s financial ability where the provinces vary greatly in size of wealth.⁵² In case of Pakistan, four provinces differ

48 Syed Mohammed Ali, “Devolution of Power in Pakistan,” *United States Institute of Peace*. Special Report, 422 (March 2018): 4, accessed May 13, 2019, https://www.usip.org/sites/default/files/2018-03/sr_422_mohammad_ali_final.pdf

49 Funk, “Asymmetric Federalism,” 9.

50 Constitution of Pakistan 1973, Article 38(g).

51 Constitution of Pakistan 1973, Article 39.

52 Burgess, *Comparative Federalism*, 230.

greatly in financial ability, for instance, in 2010 the Punjab contributed 57 percent, Sindh 27 percent, KP eight percent and Balochistan three percent of the GDP.⁵³ Throughout the history of Pakistan sole factor formula was adopted in all the NFC Awards of Pakistan for distribution of federal divisible pool among the provinces. The population was the sole factor which led the discontentment among the less populated provinces. In the 7th NFC Award multi factor formula was adopted for giving the effect to the social needs of the less populated provinces particularly to Balochistan. Thus, asymmetry was introduced in the form of multi factor formula for financial distribution in reducing the *de facto* asymmetry in financial distribution among the provinces. Though this opportunity is available to all provinces equally *de jure* asymmetry resulted in practice. Since, the allocation of sources based on population 82 percent, poverty 10.3 percent, revenue percent and inverse population density 2.7 percent regarding revenue sharing formula for the 7th NFC Award. The shares of provinces in term of this formula are: Punjab 51.74 percent, Sindh 24.55 percent, KP 14.62 percent and Balochistan 9.09 percent.⁵⁴ In this case the *de jure* symmetry for financial equality of the provinces by law has been largely preserved whereas substantial asymmetry in practice has taken place.

The asymmetric arrangements in the federalism of Pakistan have some connections and continuity with the colonial past. Pakistan also reveals asymmetric trend in civil law.⁵⁵ Pakistan inherited two kinds of laws from the colonial past;

53 Shahid Javaid Burki, "Economics and Extremism," *Dawn*, January 5, 2010.

54 Government of Pakistan, *Report of the National Finance Commission of Pakistan 2009* (Islamabad: National Finance Commission Secretariat, 2009), 36.

55 For example, in the world federations, Quebec's have different civil law while the other nine Canadian provinces have common law. Same situation is exhibited in some Asian and African federations as they documented provisions for religious law in certain constituencies. For example, Sharia law is introduced in some Nigerian states. Watts, "Comparative Perspective," 4-5.

the British Common Law and the Frontier Criminal Regulations (FCR). The British Common Law was for the regions known as the settled areas consisted of Sindh, Punjab, a few districts of the KP and Quetta whereas the FCR was for the unsettled areas or Tribal Areas. FCR remained in force in the Federally Administered Tribal Areas (FATA) until May 27, 2018. Thus, this asymmetric condition still was the part of federalism of Pakistan and removed recently with the merger of FATA in KP through the 31st Amendment in the Constitution of 1973.⁵⁶

Asymmetric federalism in Pakistan also exhibited in governing system. In the constitution, tribal areas mean the areas of Pakistan which immediately before the commencing day, were Tribal Areas, including the Tribal Areas of Balochistan and Khyber Pakhtunkhwa they were all administered by the central and provincial governments of KP and Balochistan.⁵⁷ Though they have not any legislature but are represented in the lower house of the parliament as 12 seats in the house of 342 have been allocated to the Tribal Areas.⁵⁸ While Gilgit-Baltistan has no representation in the parliament,⁵⁹ is run by different way, by dint of which asymmetry placed, namely the Gilgit-Baltistan Empowerment and Self Government Rule Order 2009. They have their own elected legislature, without becoming a part of Pakistan, constitutionally having the status of semi province. State of Azad Jammu and Kashmir enjoys certain special position. The State has a constitution drafted by its constitutional assembly, elected President, Prime Minister

56 *National Assembly of Pakistan Debates: Official Reports*, Session-56, Vol. LVI, no. 18, May 24, 2018, 93.

57 *Constitution of Pakistan 1973*, Article 246.

58 *Constitution of Pakistan 1973*, Article 51 (3).

59 For Details see Shaheen Sardar Ali and Javaid Rehman, *Indigenous Peoples and Ethnic Minorities in Pakistan: Constitutional and Legal Perspective* (Richmond: Curzon, 2001), 37. Also see Tom Muller, *Political Handbook of the World 2012*, ed. Tom Lansford (London: Sage Publications, 2012), 1102.

and High Court. These three areas are under the control of Pakistan but not administrated symmetrically.

Conclusion

The crucial point of the study is that; whether the case of asymmetry exists in the federation of Pakistan or not? In order to get an accurate answer to this question, we started with the theoretical introduction of both the federalism and asymmetrical federalism. Through observing the factors of asymmetries, it becomes clear that asymmetry exists in the federation of Pakistan. In order to get visualize these asymmetries, the application of theoretical concepts, helped us to detect many factors of both *de facto* and *de jure* asymmetries. We conclude *de facto* asymmetries are the part of each federation which contributed to *de jure* asymmetries thus every federation has more or less *de jure* asymmetries in its structure. Pakistan is a heterogeneous federation and inherited *de facto* asymmetries abundantly. *De facto* asymmetry has been there since its inception and *de jure* asymmetry has been present since its constitutional commencement. Therefore, *de facto* asymmetries recognized in the federation of Pakistan in cases of area, population, wealth, language, religion and ethnicity. Each constitution of Pakistan secured these diversities by federal arrangements which led to the *de jure* asymmetry in design and practice. *De jure* asymmetries become stimulus in creating the nature of relations between centre and provinces which should be stable and harmonious for the strength and stability of the country. Thus, it is suggested that, constitutional asymmetry should be the part of federation securing diversity without surrendering unity.