

Q - Explain the spirit of federalism as enshrined in the 1973 constitution. What measures are required for smooth functioning of relations.

1 - Introduction

The constitution of 1973 was based on Federal system. It is a system consists of center and federating units. While the constitution was based on federalism, but it was not in support of true federalism. It was consolidating the power by selection of judges, by provision of decision making in a hands of a single person. This determined no mechanism to regulate Council of common Interests (CCI). Furthermore, there was continuous strife among provinces and center related to distribution of resources and clear demarcation of powers. However, these

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loopholes has been tried to
sileout by implementing 18th
amendment in the constitution
of Pakistan. For the smooth
functioning of center-province
relations the 18th amendment
need to be reviewed in states
interest. clearly demarcate boundaries
and add further attributes in
the NFC award. In addition
focus should be given to cap-
-city building of provinces and
need to solve issues related
to debt servicing.

2- Historical development in constitution since 1973

1971 Separation
of East Pakistan

Implementation
of 1973 Constitution

1997 - 8th Constitutional
Amendment (58-2B)

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1997 - 13th Constitution

Amendment

17th constitution

Amendment

(2003)

18th constitution

Amendment (2010)

3. 1973 Constitution was not
in support of true federalism
till 18th amendment

a - appointing selected judiciary
consolidation of Power

In the 1973 constitution, all
the powers were given to the
President for the appointment
of Judges of high court and
Supreme court. Due to this reason
all the powers were consoli-
dated in the hand of
few individuals and this
were against the true

• true spirit of federalism.

b. No hindrance to abrogate
Constitution - strong non-democratic
forces

The 1973 constitution tried
to put a check on the abro-
gation of constitution by inc-
-lusion of article of high
treason act. But due to vague
definition of Abrogation provided
it a pretext to ignore the
Constitution. Hence, this weakened
the spirit of federalism.

For example: Zia and Musharraf
instead of abrogating constitution
rather suspended it.

c. No clear mechanism
for Council of Common Interest
(CCI)

In 1973 constitution, although
there was clear formation of
Council of common interest but

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no mechanism was developed to related to their meeting and resolve issues.

d. No clear demarcation of powers among centre and Provinces

In 1973 constitution, Two lists were developed Federal list and concurrent list. concurrent list consists of 47 subject. If legislation related to concurrent matters done by both provinces and center and it clashes, then the the legislation of centre would prevail. This weakened the say of provinces even the subject matters of their.

e. No clear mechanism for distribution of Financial and mineral resources

In 1973 constitution, there was no clear mechanism was

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developed related to the distribution of resources among provinces and centre. For example all the provincial resources were taken away without giving them necessary share. Furthermore, Finances are given to provinces on the basis of population share.

4- Measures for the smooth functioning of relations between Centre and provinces

a- Initiate a dialogue to amend ~~the~~ conflicting clauses of 18th amendment

There are discussions carrying on the reversal of 18th amendment, but this is not the solution. It will further aggravate the matter and strain the center province relations to the extent of no revers

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sol. The only pragmatic solution is to initiate a dialogue and compromise

b. NFC should be added with more attributes to distribute resources

currently finances are divided among provinces on the basis of 4 points, but these are not enough because provinces are still contending with each other. There is need to further addition of attributes that resolve this

For example: The way India designed its NFC Award

c. clearly demarcate boundaries b/w center and provinces

The boundaries b/w provinces and center should consolidated currently, there are some issues that comes under the ambit of the province center is dictating

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them

For example: education is Subject of Provinces, but centre forces to apply SNC

d. Burden of debt servicing and circular debt should pass on

Now, center only left with 42.5% of the budget. From this, it has to control defence and several other matters. In addition, federal have to pay installments of debt. This burden need to be shared.

Conclusion

The 1973 constitution has flaws that hinder Pakistan to be a true federation. The 18th amendment was an act to eliminate these flaws, but it also has some issues that need to be addressed as soon as possible.