

NOTES FOR
PRESENTATION OF

MR. SHAHID HAMID
FORMER GOVERNOR PUNJAB

ON

FEDERAL-PROVINCIAL RELATIONS
BURNING ISSUES AND THEIR EFFECT
ON THE NATION AND FEDERATION

AT THE
PAKISTAN ADMINISTRATIVE STAFF
COLLEGE LAHORE

ON

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1. A federal system is designed to accommodate the conflicting requirements of unity and diversity. Pakistan is a multi-ethnic and multi-lingual state. This is why the Objectives Resolution passed by the Constituent Assembly in 1949 envisaged a Pakistan in which various autonomous provinces were to form a federation. An attempt was made in 1955 to disregard these diversities through the creation of a Province of West Pakistan. The experiment failed and 15 years later it had to be undone.

2. Under our Constitution the executive authority of a Provincial Government extends to all matters in respect of which a Provincial Assembly has power to make law. A Provincial Assembly has exclusive power to make laws in all matters except for the 114 included in the Federal and Concurrent Legislative Lists. The ground realities are not in accord with the constitutional provisions. There is a large measure of federal interference in many matters falling within the purview of the provinces.

3. Local Government is a provincial subject. Uniform local government laws were promulgated by the provinces in 2001 under a decision of the Federal Cabinet acting on proposals made by the NRB. These local government laws have been given constitutional protection against any change by the Provincial Assemblies except with the prior consent of the President. This is not a new development. The same thing happened in 1979 (1980 in the case of Baluchistan) when all four Provincial Governments enacted virtually

identical Local Government Ordinances on the orders of the Federal Government headed by General Zia-ul-Haq.

4. It is the duty of the federal government to protect every province from internal disturbance. The Federal Government also has power to give directions to a Provincial Government to prevent any grave menace to peace, tranquility and economic life. Subject to these federal powers, law and order and the police forces are provincial responsibilities. The law and order administration in the provinces comprising the district magistrates and the executive magistrates has been abolished under orders of the Federal Government and reportedly against the representations of the provincial authorities. The Federal Government has notified the Police Order 2002 prescribing a uniform code of police administration for all the provinces. As in the case of the local government laws this Order too is protected against change by Provincial Assemblies through its inclusion in the Sixth Schedule.

5. Health is a provincial subject except for mental illness and contagious diseases. Similarly education is a provincial subject except for Islamic education and matters relating to curriculum, syllabus and standards of education. You only have to take a cursory look at the manifold activities of the Federal Health and Education ministries to see how far these ministries have travelled beyond the constitutional mandate.

6. These are only a few of the many matters in which the Federal Government has assumed powers in excess of the constitutionally

permissible limits. The President has spoken more than once of the need for meaningful devolution of power and of promoting harmony with and between the provinces. Fulfillment of this objective requires that the provinces be allowed to exercise, without interference by the federation, all powers and functions that fall within their constitutional authority.

7. There is a considerable body of opinion, who press for an even greater degree of autonomy. In November 1998 a 16th Constitutional Amendment Bill was introduced in the Senate which provided for the deletion of the Concurrent Legislative List as also Part-II of the Federal Legislative List. Deletion would mean that as many as 47 subjects in the Concurrent List and another 8 in the Federal List would stand transferred to the provinces. The previous NRB chief spoke more than once of transferring certain subjects from the federation to the provinces after completing the scheme for devolution of power from the Provincial to the District Governments. This intended devolution finds no mention in the LFO and can now only take place through a constitutional amendment passed in accordance with prescribed procedures.

8. Let me try and give you the historical perspective for the proper consideration of this issue. In the Government of India Act, 1935, which was the Constitution for Pakistan upto 1956, there were 98 subjects in the Federal and Concurrent Lists, and 55 in the Provincial List. *In the 1956 Constitution, the Federal and Concurrent Lists had 49 subjects, while the Provincial List increased to 94 subjects.* In the 1962 Constitution, the Federal List comprised 49 subjects, there was

no Concurrent List and all the residuary powers were reserved to the provinces. In the present 1973 Constitution, there are 114 subjects in the Federal and Concurrent Lists, and there is no Provincial List — all residuary powers being with the provinces. Since 1973, the Federal Government has far greater executive authority as compared to the Provincial Governments than in any previous period of our history.

9. The quantum of provincial autonomy is linked with the number and size of the federating units. In the context of a Pakistan with 4 provinces it would appear that many of the matters contained in the Concurrent List could be better dealt with by the provinces. Trusts, environmental pollution, social welfare, labour exchanges, boilers, books, newspapers, Zakat, auqaf are just a few of the subjects that could be transferred to the provinces without adverse impact on the strength of the federation. If at any time, it appears desirable to have a uniform law throughout Pakistan in these matters, this object can always be achieved through Article 144 of the Constitution which empowers Parliament to legislate for two or more provinces with their consent. An example of such a law is the Federal Bank for Co-operatives Act, 1977 which set up the Federal Co-operative Bank, and prescribed regulations for co-operative banking.

10. The Constitution provides that Parliament may confer powers upon provincial authorities in relation to any matter in respect of which Parliament has power to make a law. An alternative to deletion of the Concurrent List could be that whenever Parliament makes laws with respect to any matter included in this List, such law shall invariably be implemented through the Provincial Governments.

11. The difficulties in devolving power are three-fold: first, political; second, administrative; and the third, financial. Federal ministers, whether political or non-political, elected or appointed, do not like any reduction in their powers. The administrative difficulties are similar to the political ones. The various federal services are determined to preserve and protect the positions and privileges enjoyed by them at Islamabad. Only a strong and determined political will can overcome such opposition. Where, however, the political interests of ministers to protect their turf coincide with the self-preservatory interests of the bureaucracy, then the possibility of successful devolution of power from the federation to the provinces becomes a remote prospect.

P1 - B1
= Devolution

12. The greatest hurdle to any scheme for devolution of power is financial. Where are the revenues to come from? In 1999-2000 the federation collected 92.8% of the combined revenues of the Federal, Provincial and Local Governments while its expenditures were 71.5% of the whole. The Provincial and Local Governments together collected 7.2% of all revenues while their expenditures amounted to 28.5%. It is evident from these figures that Provincial and Local Governments meet three-quarters of their expenditures from revenues transferred to them by the federation. If still further functions are transferred from the federation to the provinces without commensurate transfer of resources the standards of service in respect of the transferred matters will deteriorate instead of improving. The federation can always borrow to cover its revenue short-falls, the provinces cannot do so, at least not without permission from the federation. Whenever there is a shortage of revenues,

functions entrusted to Provincial, and now local, Governments are either not performed or performed inadequately. The sectors that suffer the most are education and health.

13. During the financial year 2004-2005 Punjab's estimated revenues of Rs.180 billion included Rs. 144 billion on account of federal transfers (including Rs. 115 billion as Punjab's share in federal divisible pool) and Rs. 36 billion as its own resources. For 2005-2006 the corresponding figures are Rs. 224 billion, Rs. 165 billion, Rs. 131 billion and Rs. 58 billion. In the other three provinces also, the bulk of revenue comes from their shares in the federal divisible pool and federal grants. All the main sources of revenue viz sales tax, income tax, custom duties and excise duties are controlled by the federation. Neither the Punjab nor any other province has any say with respect to the rates of the taxes and duties forming part of the federal divisible pool or in respect of the persons, goods or services on which they are levied. Never during the last 30 years has any province received revenues equal to the projections made in the reports of the various National Finance Commissions. Frequently the release of the provincial shares is delayed depending on the current state of the Federal Government's overdraft with the State Bank.

14. In a sense, there can be no real provincial autonomy so long as the purse strings are controlled by the federation. One possibility for a more equitable distribution of not merely revenue but responsibility for revenue collection could be the re-transfer of the Sales Tax from the federation to the provinces except for that levied at the import stage. Prior to 1951 Sales Tax was a provincial tax. As this is a tax

on consumption and the bulk of it is eventually to be collected from individual shop-keepers it could just as easily be collected by provincial authorities. During 2004-05 sales tax revenue was Rs. 249 billion (out of total 580 billion). This year's estimate is Rs. 294 billion (out of total 690 billion). The transfer of this tax to the provinces would make for true provincial autonomy.

15. In the context of the present distribution of revenue sources between the federation and the provinces, permit me to say a few words with regard to the inter-se share of the 4 provinces. The amounts each province obtains from the federal divisible pool form part of its revenue receipts for meeting its revenue expenditures. Apart from debt servicing the main revenue expenditures are education, general administration, police and the civil armed forces, health, irrigation, agriculture and the wheat subsidy, in that order. Expenditures on these 7 subjects account for over 90% of the revenue budgets of the provinces exclusive of debt servicing, and have a direct and proportional relationship with the population of each province. These revenue expenditures are neither directly linked nor proportional to either the geographical size of each province or its relative backwardness or the locations from which collections are made. It is right and proper, therefore, that the share of the provinces in the federal divisible pool should be further divided between them in accordance with their populations. The inadequacy of the revenue base from provincial sources in the case of NWFP and Baluchistan should be met, and is met, by subventions and grants from the federation. The problem of backward areas is faced by all 4

provinces. To the extent that this problem is more acute in NWFP and Baluchistan, the solution lies in giving them an edge in the allocation of development funds as indeed has been and is being done.

16. The outstanding debt liability of Punjab was over Rs 162 billion at the end of June 2004. This figure includes Rs. 67 billion on account of rupee loan obtained from or through the Federal Government on which the average rate of interest is 14.44% per annum. *The debt servicing liability of the Punjab is estimated as Rs. 10.50 billion during the current financial year.* This is one fifth the size of the development budget of Rs. 53 billion. The other three provinces are faced with similar burdens. The Federal Government has obtained substantial debt relief from its bilateral donors on account of loans that were, in part, passed on to the provinces. Therefore, it is only fair and equitable that the debt relief in respect of these loans should also be passed on to the provinces. The Federal Government should also reduce the rate of interest charged on the outstanding amount of rupee loans to the provinces in line with the decrease in the rates at which it has to borrow from the banking system and the general public. This will enable the provinces to substantially increase their productive development expenditures.

17. There has also been a substantial erosion in the finances controlled by the provinces. During the financial year 2004-2005 the Punjab Local Government Ordinance mandated the transfer of Rs. 68 billion out of Punjab's budget revenues of Rs. 180 billion, to the district governments. During 2005-2006 the mandated transfers are

Rs. 78 billion out of Punjab's total budget revenues of Rs. 224 billion. The Nazims, at the district and tehsil level, in the 35 districts of the Punjab have supervisory control and command over Rs. 2 billion per district including about Rs. 300 million per district for development purposes. The 5 MNAs in each district between them have been given a total of Rs. 25 million for development schemes, the 10 MPAs per district another Rs. 100 million. It is not going to be easy for the MNAs and MPAs to reconcile themselves to this new reality. Will, therefore, the new dispensation survive its creator? Only if it leads, in the near future, to a visible and significant improvement in the delivery of services to the common man in the fields of education, health, housing, civic services & social welfare facilities — all functions that stand transferred to the district governments. Is there evidence of any such improvement? No objective independent study has been made to date while the anecdotal evidence presents a mixed picture. However, for the long-term survival of the new system it would be advisable to involve the elected MNAs and MPAs in at least some aspects of district government, for example, in the selection of development schemes.

18. I mentioned a little earlier that there are 67 subjects in the Federal List of our 1973 Constitution, another 47 on the Concurrent List, a total of 114. The Indian Constitution has 97 subjects in the Federal List, 47 in the Concurrent List, total 144, and 66 in the State (or Provincial) List, with all residuary powers vested in the Federation and not with the Provinces. Under our Constitution, all residuary powers is with the provinces. Are we then moving in the right

direction by taking steps to increase the quantum of provincial autonomy? India has 29 States while Pakistan has only 4 Provinces. It appears obvious that the need and practicality and demand for greater autonomy will reduce if there are a large number of provinces in a Federation as compared to a case where such number is relatively small.

19. Do considerations of administrative convenience, the necessity of curbing the growth of ethnic and parochial tendencies, the requirement for effective devolution of power to local communities, the need to address the problem of Punjab's domination in the affairs of the Federation, the imperative of preventing secessionist movements, amongst other considerations, justify the creation of a larger number of Provinces in Pakistan? In brief would national integration be promoted, would it be strengthened if there were Provinces in Pakistan. One of the reasons for the collapse of the Soviet Union was perhaps the predominant position of Russia within that Union. There can also be little doubt that the dominance of Serbia led to the demise of the erstwhile Yugoslav Federation. Nigeria was faced with similar problems viz the problem of secessionist tendencies in one of the smaller of its 3 regions. Nigeria sowed this problem by dividing its 3 regions into 19 provinces.

20. Apart from India, amongst our neighbours and near-neighbours, Afghanistan has 28 provinces, Iran has 30, Turkey has 65, Iraq has 18 and Sri Lanka has 22. Bangladesh is the odd man out — it has none. The comparison with our neighbours other than India is not strictly valid because they are not Federations.

21. It bears mention here that the fact that we have 4 Provinces is because of the decision of one man. If in 1970 General Yahya Khan had decided that Bahawalpur, Khairpur, Karachi, the Baluchistan States Union, Amb, Chitral, Dir and Swat, which all had varying degrees of autonomy prior to their absorption into the Province of West Pakistan in 1955, should be constituted as Provinces, then today we would have 12 provinces instead of the present 4. The late General Zia-ul-Haq talked about dividing the country into 25 provinces. Is this a viable solution? Would it strengthen the Federation? Perhaps but only if a national and political consensus emerges in its favour in all the existing provinces and I see no signs of any such consensus. For that matter, there has not even been any meaningful public debate in this matter.

22. There are several constitutional provisions, more than 20, that regulate relations between the Federation and the Provinces, that are designed to bring about inter-provincial harmony, inter-provincial co-ordination. I would like to bring a few of them to your notice.

23. Article 153 and 154 provide for a Council of Common Interests presided over by the Prime Minister and comprising the Chief Ministers of all the Provinces and an equal number of members from the Federal Government. This Council is to formulate and regulate policies in relation to electricity, railways, mineral oil and natural gas and development of industries under federal control including WAPDA and PIDC. There is provision for an appeal against any decision of the Council by either the Federal Government or any Provincial Government to a joint sitting of Parliament. Article 155

makes special provision for complaints to the Council by the Federal Government or any Provincial Government in matters relating to natural sources of water supply if the interests of a Province, the Federal Capital or the Federally Administered Tribal Areas or any of the inhabitants is adversely affected by any executive act or federal or provincial legislation.

24. These provisions have remained a dead letter. From time to time various Prime Ministers have constituted Inter-Provincial Co-ordination Committees headed by particular Federal Ministers and comprising the Chief Ministers but such Committees did not have legal, let alone constitutional, sanction. As the Council of Common Interests has a special and defined role to perform with respect to natural sources of water supply, this is the forum to which an issue like the Kalabagh Dam should have been referred. It should have been possible for the Prime Minister, the Chief Ministers and other members to evolve a consensus and if they could not do so then to refer the same to a joint sitting of Parliament. There can be no just complaint or grievance if even the most contentious issues are decided, one way or the other, in accordance with prescribed constitutional procedures.

25. Article 151 of the Constitution mandates that trade, commerce and intercourse throughout Pakistan shall be free except to the extent that Parliament may restrict in the public interest. Reasonable restrictions on the freedom of inter-provincial trade and commerce can also be imposed by a provincial assembly in the interests of public health, public order or for preventing any serious shortages of

an essential commodity in that province. The question is whether the recent temporary ban placed by the Punjab Government on movement of wheat from the Punjab to the NWFP can be said to be a reasonable restriction for the purposes of preventing a serious shortage of wheat in the Punjab province. In the 1998 case of Mahmood Majeed, Director Asia Flour Mills Bahawalpur the Lahore High Court held that restrictions placed on movement of specified foodstuffs outside specified districts were permissible in terms of the power granted to a provincial assembly under Article 151. Notwithstanding the above judgement, I am personally of the view that even such temporary bans should not be imposed except in conditions of an emergency. After all what has to be prevented is not just any shortage but only a serious shortage. Furthermore, before any provincial government imposes any such ban it should take the province or provinces likely to be affected into confidence so as to preserve and promote inter-provincial harmony.

26. I would also like to bring to your notice Article 184 of the Constitution which confers original jurisdiction of the Supreme Court of Pakistan in any dispute between the federal government and a provincial government or between two or more provincial governments. The NWFP Government has a continuing dispute with the federal government over profits payable to the NWFP on account of bulk generation of electricity at Tarbela. Why is this dispute not taken to the Supreme Court? In the alternative the NWFP government could ask that it should be considered by the Council of Common Interest and if they are aggrieved by any decision of the

Council of Common Interests the NWFP government can appeal such decision to a joint sitting of Parliament. Disputes between the federation and the provinces and between one province and another should not be allowed to linger or fester. If disputes are allowed to fester sooner or later public opinion gets inflamed and makes the ultimate resolution of the dispute even more difficult. Resort should promptly be made to the prescribed constitutional authorities which include the Supreme Court, the Council of Common Interests and the National Finance Commission.. No one can have a just or reasonable grievance if disputes are resolved promptly in accordance with constitutional provisions.

27. I come now to the role of the Armed Forces. Military rule by its very nature has the effect of converting Pakistan from a federal to a unitary state. To the extent that national integration is sought to be promoted through devolution of power from the Federation to the provinces it will become effective and meaningful only when there are elected provincial assemblies and governments who are the recipients of such power. Military rule may, for a short period, silence parochial elements but its continuance for any length of time will inevitably lead to accentuation of provincial alienation. A democratic dispensation and the free inter-play of political forces are the sine-qua non for inter-provincial harmony, for national integration.

28. There can be four possible roles or a combination of two or more of them for the Armed Forces in the context of the civil-military relationship in Pakistan — a quiet background role of giving advice whenever asked or whenever needed, the sort of role that a

constitutional President is expected to perform. Second, a participatory role in permitted fora such as the Defence Council headed by the Defence Minister and the Defence Committee of the Cabinet chaired by the Prime Minister. Third, a role in implementation of policy as aid to civil power, for example, the induction of military personnel into WAPDA and the survey of the ghost schools in the Punjab. And fourth, an extra-constitutional role in which the Armed Forces take over the control and command of the Federal Government.

29. Every civilian government has readily conceded to the Armed Forces the first three of these four roles. The Army Chiefs have, sometimes openly and publicly, advised the civilian governments on the policies they deem to be correct and necessary. From 1985 to 1988 effective state power was in the hands of a President who retained the office of Chief of Army Staff and declared that his real constituency was the Army. For a considerable period after 1988 the Army Chief was one of the key players in the troika that took the final decisions of state at times of crisis. On one particular occasion the then President and the then Prime Minister, at loggerheads with each other, agreed with the Army Chief that, in the national interest, they should both go. Throughout the period of the civilian governments the Armed Forces have determined the size of their own budget. Certainly there has been minimal civilian input with regard to the details of the defence budget and no debate worth the name in the National Assembly on either the quantum or the particulars of defence expenditures. The Army did not volunteer to take over

WAPDA. A civilian government invited the Army to do so. It was again a civilian government, which 7 years back asked the Army to set up military courts in a particular province. Unprecedented? Not really. 28 years ago another civilian government invited the Army to impose localised martial law in the major cities of the country.

30. Because of their structural and organizational strength, the Armed Forces in Pakistan have their own interests. They are sensitive to threats, real or perceived, to their autonomy and cohesiveness. They want institutional continuity and progress. They also want a monopoly over matters requiring military expertise, and control over policies that affect their present or future operational activities. In times of internal or external crisis they see themselves as the final arbiters of national security, in short as saviours of the nation.

31. What happens when the values of the Armed Forces are not in harmony, or in conflict, with those of the civilian government? What happens when perceptions differ and the Armed Forces feel that the government of the day is acting against the national interest? What happens, in a time of crisis, when a significant body of political and public opinion shares the perception of the Armed Forces that the government of the day is following a course detrimental to the national interest. What are the service chiefs, in particular, the Army Chief, to do in such circumstances? Are they the servants of the State or of the government in power? Should the Army Chief have intervened to prevent the storming of the Supreme Court on the basis of the letter written to him by its Chief Justice? If there is a perceived

clash of loyalty between the State, on the one hand, and the elected government, on the other, what should the Army Chief do — make his views public and resign or intervene?

32. There are no easy answers to these questions. One Army Chief resigned, another intervened. The present Army Chief and President has attempted to put in place various constitutional and legal mechanisms including a balancing of powers between the President and the Prime Minister, a strengthening of the Senate, a revised version of the repealed Article 58(2)(b) and a National Security Council to contain resolution of future crises within constitutional parameters. It is not certain whether these mechanisms will survive the rule of their author. However, it does appear fairly certain that in the context of Pakistan, we are not ever, at least not in our life-times, likely to see a situation in which the military is subordinate to the civil power in the manner seen and understood in the West. It appears to me therefore, that the political parties should also seek to work together with the Commanders of the Armed Forces to bring about a strengthening of the institutional structures relating to the civilian-military interaction in the constitutionally permissible roles, and in ensuring an ever increasing degree of transparency and open public debate with respect to defence expenditures. Increasing degrees of civilian control will automatically follow in the wake of greater transparency and public debate.