

Distribution of Powers Between Federal and Local Governments in Iraq

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Abstract: The distribution of powers between the federal government and local governments forms one of the most important characteristics of the federal system compared with other systems. Distribution process of powers has a great importance in ensuring the achievement of equality and parity among the constituent units of the federal state according to the constitution. This current paper highlights the distribution of powers in a federal system in Iraq under the constitution of 2005, accompanied by deficiencies in the constitutional provisions. After the fall of political regime in 2003, Iraq adopted federalism under the constitution of 2005. However, there are problems in the distribution of powers under this constitution such as lack of clarity and overlap in powers. The data had been collected through secondary sources, examining the contribution of the scholars in this field had been attained. A conclusion and implications of the study are presented accordingly.

Key words: Constitution, power, federalism, federal government, local government

INTRODUCTION

Federalism is defined as an agreement between two or more countries to initiate a federal state that has international legal distinctions. The state authorities in the field of international relations and some internal powers enjoy these distinctions. Moreover, federal union members enjoy specific benefits and authorities in the domestic field in relation with a federal constitution (Rodden, 2004).

Federalism includes the part of power in order to preserve the strength as well as the unity of the country. It is important to indicate that states resort to the implementation of federalism when they cannot preserve any form of unitary state. They do not want its social constituents to be divided from other constituents. The constitution divides the authority in a federal state between the centralized government and regional governments. Additionally, the authority offered to the centralized government might be more than the granted regional governments related to the constitution.

Consequently, a federal system is regarded optimal for states that contain multi-ethnic groups. Many countries also embrace the federal system since it was more appropriate for the situation of those states that achieve their interests and objectives. A third of the states of the world have been exceeded, including a number of powerful countries like the United States,

Australia, Canada, Germany, India and other countries. The federal constitution is regarded the basis for the powers of the federal and local governments in a federal state. The federal constitution is also regarded as the principle of law with respect to the federal state and one of the most important aspects of national unity as it definitely divides power between the federal and local governments (Bashir, 1963).

Furthermore, the federal constitution is the tool that identifies the common and exclusive powers between the federal and local governments (Nasr, 1973). Therefore, distribution of power is regarded as one of the hottest topics that face the federal state when its inception emerges (Jorf, 1973).

In the same thread, the authority in a federal state is distributed by the constitution between the centralized government as well as the regional governments. Moreover, the authority offered to the centralized government might be more substantial than the granted regional governments in relation to the constitution. The powers of members of the regions in a federal state are not restricted concerning administrative and cultural affairs if they are absolute in the management of political and economic affairs. In addition, federalism gathers between the autonomy and common rule. In general, a federal government has often enjoyed extensive powers in a way that performs action to attain advantages for the entire state. Similarly, the component units of the country derive

legitimacy from the people as federalism depends on representative democracy for powerful implementation.

However, the federal system included in the Iraq constitution of 2005 in accordance with the constituents of Iraqi society did not arise under normal conditions that are typically appropriate for the beginning of a federal union. In contrast, the emergence came about under the condition of internal disorder and foreign military occupation accompanied by the collapse of its previous political centralized system. Therefore, this act is reflected in the implementation of federalism as well as the distribution of powers between the local and federal governments.

Thus, the aim of this study is to determine the effectiveness of federalism implementation in Iraq as well as the distribution of powers between local and federal governments under the Iraqi constitution of 2005.

THE DISTRIBUTION OF POWERS ACCORDING TO EMERGENCE OF THE FEDERAL STATE

The distribution of powers between the central and regional governments differs from a state to another. However, the distribution of powers relies on how a federal state begins. To be more specific, there are three methods in respect of the beginning of the federal state. These methods are as follows.

The first method clarifies that a federal state can commence from joining many different independent states to each other as the result of a convention under a federal constitution. Examples of states that have combined together involve the US, Germany, Switzerland and the United Arab Emirates (Asfour, 1954). According to this method, the federal state optionally emerges from gathering independent states to each other. It is important to note that large number of modern federal states have emerged in this way. This might have due to the national unity which is based on the unity of language and history or it could be due to political, social, economic and defensive common interests (Khatib, 1999).

Consequently, this method increases the powers of the local government more than the central government as a result of its commitment to autonomy and absence of compromise. It is crucial to indicate that any compromise must be only in the degree of sovereignty needed for the emergence of the state in a way that the regions are retained in applying the rest of the powers.

Regarding the second method, the federal state has been initiated from the disintegration of unitary state. Hence, the federal government maintains most powers in a way that results in the political, social

and ethnic factors such as religious or sectarian diversity. Furthermore, such diversity makes it difficult to attain a political project in which it retains more privacy for all diversity of division by which the state is threatened. This in turn leads to the adoption of the federal system to gather and link the regions. It should be indicated that such a method was implemented in Mexico in 1856, Belgium in 1993 and Argentina in 1860 (Yakn, 1982). As a result, strength in the powers of the federal government can be noticed in comparison to the regions (Hussein, 1977).

As for the third method, it tackles the emergence of the federal state. This particular method combines together the two previous methods mentioned earlier. For instance, Canada and India adopted this method of federal emergence. A compromise with regard to centralized authority has been included by the Canadian federalism in which a method previously held in the province of Canada. This formed two new districts. These two districts were Ontario and Quebec. In addition, two colonies, previously separated have been added. These regions were New Bronczyk and Nova Scotia. The previous regions were described as two districts in the new federation. With regard to the Indian Union established by the constitution of 1950, it included a compromise in relation to the power of states that were previously districts. Additionally, states which were previously separated have been emerged into the new federal state. Princes governed these districts (Khalil, 1956).

Concerning the beginning of Iraqi federalism, the second method has been adopted in the distribution of powers. Unlike other states, the Iraqi federalism did not arise under normal or conditions that are typically appropriate for the beginning of a federal union. It however came about under the condition of foreign military occupation and internal disorder accompanied by the collapse of its previous political central system. In brief, this kind of act is reflected in the implementation of federalism as well as the distribution of powers between the local and federal governments.

ADVANTAGES OF THE DISTRIBUTION OF POWERS BETWEEN THE FEDERAL GOVERNMENT AND REGIONS

There are a number of advantages of the distribution of powers between the federal government and regions. These advantages involve the following items: first, the powers distribution is regarded as an essential element in identifying the duties and the rights of public authorities at the local and federal level. It reconciles various and

common interests in which the different interests do not influence the idea of the Federal Union and then lead to its collapse (Omari, 1961).

Second, the purpose is to attain the autonomy of the regions that is the most important condition for the emergence of the federal state (Ribat, 1964). Third, the regions can determine the needs of its people with local feature as well as acting to meet and satisfy these needs easily and quickly in addition to the address and elimination of crises occurred within the region (Hussein, 1977).

The fourth advantage is to minimize the federal expenses as a result of identifying the specialization of the federal government. This actually acts as a way of reducing the burden so as to be more involved with the issues of common national identity in the federal state. These include foreign affairs, defense and so on (Khalil, 1976).

THE DISTRIBUTION OF POWERS BETWEEN THE FEDERAL AND LOCAL GOVERNMENTS

A suitable solution to support religious and ethnic groups to live together in peace is represented by the federal system represents. However, this can be only attained by dividing powers between the federal government and the regions. In case of abuse or misuse of powers, these regions should obtain substantial powers as guarantees for the rights of the people toward a federal government (Smith, 2005).

The distribution of powers in federations evolves over time to fit the changing needs and conditions through introducing a balance between the interests of minorities and the protection of regional interests (Watts, 2005). In a word, there is a crucial need for a powerful response that can cause the change of the conditions. Moreover as a result of changing circumstances, the evolution of the distribution of powers could lead to the improvement and extension of the federal authorities like what the US did. On the contrary, there are federal states that widely tend towards decentralization. They have been reflecting the strength of the groups in which they have been composed. It should be noted that Canada is a very good example of such case (Simeon, 2005).

Hence, the relationship between states and the federal government and the relationship among the states with each other can be represented as being ruled by the principles of parity and equality. Each state has federal authorities. These federal authorities noticeably are equal under the constitution regardless of population, size, economic and financial strength (Kremer, 2007).

On the other hand, the partition of powers cannot be regarded as the only solution to attain federalism; it is rather just the beginning of the implementation of the federal system that acts to attain reconciliation in communities that have multiple races and nationalities. It is important to note that work must be done in the spirit of cooperation and participation between the central government and the regions in order to attain a true implementation of the federalism (Narang, 2012).

Additionally, the distribution of powers between the regions and federal government must be in accordance with the conditions of the beginning of the federal system. Federalism begins by the unification of independent states. This leads to limiting the powers of the federal government and expansion of the powers of states. Due to the previous statement, these were originally independent states that could emerge by the adoption of the method of identifying the powers of the states and other federal government if the union began by disintegration of a unified state into other states (Kazim, 2011).

As for the Iraqi context, after 2003, Iraq became a federal state under the Law of administration of the state of Iraq in the transitional period. It should be indicated that Article 4 stipulated that “the system of government in Iraq is republic, unification (federal), democratic, pluralistic and the division of authorities is among the federal government, regional governments, governorates, municipalities and local administrations. The National federal system is based on the geographical and historical facts as well as the division of powers that it is not based on race, origin, creed or ethnicity”.

In addition, federalism was confirmed in Iraq’s constitution of 2005. The Article stipulated that “the Republic of Iraq is a single federal, independent and fully sovereign state in which the system of government is republican, representative, parliamentary and democratic and this constitution is a guarantor of the unity of Iraq”.

Such indication clarifies the adoption of federalism in Iraq followed the year 2003. Its practical implementation in legal contexts was also the result of Iraq’s transition from a unitary state to a federal state. This state of transition needed a new system to manage the whole state. That state’s system was totally different from the previous one. It is crucial to note that federalism has been adopted in Iraq and featured by the sectarian and ethnic diversity described in the administration through the existence of multiple minorities with ethnicity, nationalism and assorted religions (Christin and Hug, 2012).

Accordingly, the existence of diversity in Iraq needs democratic rule that includes all the components of society. It should afford equal representation to

all. Hence, federalism can positively tackle the issues of social, national, political and religious diversity like what other nations did. Because any negative conduct typically leads to separations in society and may fuel ethnic or sectarian conflict, the implementation of democracy in Iraq confronts a widespread challenge. It may lead to a failure that addresses conflicts within the framework of federal democratic rule. This will restore Iraq to the dictatorship stage as it was previously plagued.

On the other hand, the federal system involves the Iraq constitution of 2005 in accordance with the components of Iraqi society. It attains the advantages mentioned above. However, it did not arise under normal conditions that are typically appropriate for the beginning of a federal union. Hence, this came about under the condition of foreign military occupation as well as internal disorder accompanied by the collapse of its previous political central system. This can be reflected in the subsequent implementation of federalism and the division of powers between the local and federal governments.

Furthermore, Article 119 of the Iraqi constitution of 2005 paved the way to the choice of governance concerning the governorates that formed a region. This article stipulated that "one or more governorates shall have the right to organize a region based on a request to be voted on in a referendum submitted in one of the following two methods.

First: a request by one-third of the council members of each governorate intending to form a region and the second is a request by one-tenth of the voters in each of the governorates intending to form a region". Given the provisions in the two methods, the council of representatives issued executive procedures regarding the formation of Regions No. 13 in 2008. Therefore, other regions have yet to be made up. Since federalism in Iraq involves only one region (Kurdistan), this case represents a unique issue in the Iraqi constitution of 2005 compared to other constitutions subsequent to federalism. It describes a negative aspect in implementation of federalism. If the situation continues in that certain respect, it should be indicated that most federations involve two or three regions. As a result, they faced many problems (Orluwene, 2007; Suberu, 2009). Based on the aforementioned, Iraq includes.

The Kurdistan region. It includes Erbil, Dohuk and Al-Sulaymaniyah governorates which follow a federal system of governance.

The capital city of Baghdad and other provinces which do not follow federalism but have adopted an administrative decentralization system (Governorates that are not organized in a region) (Map of Iraq).

In addition, the Iraqi constitution of 2005 has adopted a federal system. This means duplication in the

constitution and power. Hence, the powers are divided between the federal government, regions and governorates (Hannoun, 2009). There are, however, various dilemmas facing the implementation of federalism in Iraq such as the ambiguity of constitutional provisions in addition to geographical and regional problems (Moradi, 2014).

To be more specific, there are many problems and developments concerning the implementation of federalism. This is sometimes described as ambiguous or contradictory. Besides, the implementation of federalism in Iraq emerges to be totally different from the way the concept is applied in other states. Hence, confusion exists between the concept of federalism and administrative decentralization in the division of powers between local and federal governments that involve governorates that are not organized in a region. Instead, it has adopted the principle of decentralized administration and the regions have adopted the federal system. Thus, Article 114 of the Iraqi constitution of 2005 stipulated that "the following competencies shall be shared between the federal authorities and regional authorities.

The first issue aims at managing customs in accordance with the governments of the regions and governorates that are not organized in a region. This shall be regulated by a law. As for the second issue, it aims at regulating the main sources of electric energy and its division. The third issue is to formulate environmental policy to ensure the protection of the environment from pollution. It also aims at keeping its cleanliness in coordination with the regions and governorates that are not organized in a region.

The fourth issue is to formulate development and general planning policies. As for the fifth case, it is to formulate public health policy in cooperation with the regions and governorates that are not organized in a region. The sixth case involves the formulation of the public educational and instructional policy in consultation with the regions and governorates that are not organized in a region. The seventh issue is to formulate and regulate the internal water resources policy in a way that guarantees their just division. This shall be regulated by a law". Additionally, "Article 122/second provided that Governorates not integrated in a region shall be given extensive administrative and financial authorities" to enable them to manage their affairs in relation with the principle of decentralized administration. This shall be regulated by law.

The eighth issue provides that the Governorate Council shall not be subject to the control or supervision of any ministry or any institution that is not connected to a ministry. Moreover, the Governorate Council shall have independent finances".



Fig. 1: Map of Iraq

In the same thread, the delegation of federal governmental powers concerning the governorates that are not organized in a region or vice versa under Article 123 violates the public law. This includes “powers practiced through the federal government can be delegated to the governorates or vice versa with the consent of both governments. Once again, this shall be regulated by law”.

Moreover, the division of powers makes multiple issues concerning the implementation of constitutional provisions and their interpretation, particularly if those provisions are lacking or having ambiguous clarity such as having more than one meaning as the case in the text of Article “115. It involves all powers that are not stipulated in the exclusive powers of the federal government. It then belongs to the authorities of the regions and governorates that are not organized in a region. With respect to other powers shared between the federal government and the regional government in case of dispute, the priority shall be offered to the law of the regions and governorates that are not regulated in a region”.

Similarly, “Article 121/fourth provided that offices for the regions and governorates shall be established in embassies and diplomatic missions. This was to follow cultural, developmental and social affairs”.

Finally, “Article 110 provided that the federal government shall have exclusive authorities in the following issues.

The first matter deals with the formulation of the foreign policy and the diplomatic representation; negotiating, signing and ratifying international treaties

and agreements; negotiating, signing, and ratifying debt policies as well as formulating foreign sovereign economic and trade policy”. This leads to a number of problems when implementing their powers in practice.

Consequently, the incorrect implementation of federalism and misinterpretation of constitutional provisions may influence the future of Iraq. It may also threaten its internal stability; prevent its development as a nation and as a developmental possible instigator for the distribution of the state rather than its unity.

Map of Iraq: Map of Iraq shown in Fig. 1.

CONCLUSION

To conclude, a federal system is the best solution to multi-ethnic and religious communities. This is only attained by distributing the powers between regions and federal government under the constitution. Based on what has been researched, the Iraqi legislator was not a conciliator in the distribution of powers because of the overlap in dividing the powers as well as the absence of clarity in the constitutional provisions which lead to problems when implementing these provisions.

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