

## Political Economy of Conflict: An Analysis of Council of Common Interests in the Post-18<sup>th</sup> Constitutional Amendment

Irfan Khan<sup>1</sup>, Hassan Shah<sup>2</sup>, Sajjad Ali<sup>3</sup>

Email: [irfankhan.9107@yahoo.com](mailto:irfankhan.9107@yahoo.com)

<sup>1</sup>Lecturer in Political Science, University of Buner.

<sup>2</sup>Senior Lecturer in Political Science, University of Buner.

<sup>3</sup>Lecturer in Political Science, University of Buner.

### ABSTRACT

Since inception, resource distribution and their ownership in Pakistan remained a bone of contention between the center and provinces. Formerly, issues related to political economy produced both non-violent and violent conflict in small provinces. To overcome this issue, Council of Common Interest (CCI) was created in the 1973 constitution and matters of shared interests to the center and provinces were brought under its authority. However, due to successive military interventions, power was concentrated at the center and constitution was amended in such a fashion that it was not less than a shock to the participatory federalism in Pakistan. In 2008, Pakistan People Party formed a Special Parliamentary Constitutional Reforms Committee to draw a reform package in the constitution as was agreed in the Charter of Democracy in 2005. The reforms package was made part of the 18<sup>th</sup> Constitutional Amendment and was signed by the president on 19<sup>th</sup> of April 2010. The 18<sup>th</sup> constitutional amendment went a step further in participatory federalism by restructuring the Council of Common Interests and gave extensive powers to it. This research article focuses on the question: to what extent the reformed CCI in the post-18<sup>th</sup> constitutional amendment has addressed the issues and concerns of small provinces related to political economy? The research is qualitative. Relevant available data (secondary data) has been utilized. The data has been analyzed through critical policy analysis.

**Key Words:** Political Economy, Council of Common Interest, Participatory Federalism, 18<sup>th</sup> Constitutional Amendment, Conflict, Center-Provinces Relations.

---

<sup>1</sup> Lecturer in Political Science, University of Buner.

<sup>2</sup> Senior Lecturer in Political Science, University of Buner.

<sup>3</sup> Lecturer in Political Science, University of Buner.

## **Introduction**

Council of Common Interest (CCI) was adopted in the 1973 constitution as a dispute resolution entity to resolve issues, tension and contestation between the center and provinces. It was a “great leap forward” in the participatory federalism due to its uniqueness in the Pakistani constitutional history. It was an effort to make federating units more participant and stakeholders in the decision-making process. Since its adoption, till 2009, the council remained less utilized constitutional body and held just 11 meetings (Khan, 2021). During this era, the council suffered at the hands of the martial regimes. They held the constitution in abeyance and then amended in such a fashion that the basic spirit of the constitution was undermined.

In 2010, the 18<sup>th</sup> constitutional amendment revived the basic spirit of the 1973 constitution and introduced two major changes to the CCI i.e., first it expanded the scope of the Federal Legislative List (FLL) Part II by abolishing the Concurrent Legislative List (CLL); secondly, the council was empowered through structural and functional changes. In the post-18<sup>th</sup> amendment the council became active and took on several important matters of national importance like the issue of hydel power royalty between the center and Khyber Pakhtunkhwa (KP) province, census, matters about the national mineral policy and its formation, water distribution issues, oil and gas development matters, China Pakistan Economic Corridor (CPEC) and the basic infrastructure development in different sectors including social, economic and political dimensions (IPC 2012, IPC 2013). During the process, its competence and authority regarding subjects enumerated in FLL Part II and their related matters and entities were questioned.

Since inception small provinces have raised their voices for the equitable distribution of financial and other resources. However, due to the lack of participatory decision making, consociational and accommodationist policies were not adopted. Adeney (2012) argues about the power elites in Pakistan that, “...they were short sighted in not accommodating these linguistic groups using consociation formula.”

## **Clash of Economic Interests and CCI**

The main focus of this research is to investigate conflict in the federation of Pakistan caused by political economy in the post 18<sup>th</sup> amendment. Historically, the ownership of natural resources and their equitable distribution have raised violent conflict in case of the former East Pakistan which lead to the dismemberment of Pakistan. Similarly, Balochistan province is going through the third wave of militancy where people are demanding their rights over resources. On the other hand, Khyber Pakhtunkhwa (KP) and Sindh have seen nonviolent conflict. Historically, nationalist leader like Khan Abdul Ghafar Khan, Atta Ullah Mengal, Ghous Bakhsh Bezanjo and the like have raised their voices against the injustices in the distribution of financial resources (I. Khan 2017).

## **Council of Common Interest: Historical Overview**

There are some common problems in the federations around the world. Federal states with ethnically divided and ethnically concentrated units/provinces needs conflict resolution mechanisms for harmony. Since Pakistan is a federal state, therefore, different approaches have been adopted in the previous constitutions to conflict management. The damage control system

was undervalued in the previous constitutions. Unity in the state was sought in uniformity by adopting the one-unit scheme in West Pakistan ignoring the “unity in diversity” principle of the federal system. Pakistan has a troubled federalism since the very beginning. Hence the damage control system becomes imperative for the smooth working of the federal-provincial relations. Its units are disproportionate in size and populations. The disparity in size created uneven resource allocation and development while the disproportionate units have created majoritarianism in the system. The 1956 constitution adopted the Inter Provincial Council (IPC) and the 1962 constitution ignored the dispute resolution system all together. After losing East Pakistan and the bitter experience of the centralized federal system under one-unit scheme, Pakistan adopted a participatory federal constitution and an effective dispute resolution mechanism. However, the council remained ineffective till 2009. The reasons of the council’s ineffectiveness include the periodic martial laws which held the entire constitution in abeyance including the CCI, and the caused constitutional amendments i.e. 7<sup>th</sup> and 13<sup>th</sup>. These amendments destroyed the participatory federal spirit of the constitution. The CCI remained dysfunctional even during the civilian governments because of politician’s lack of interest in federalizing of the system and its majoritarian nature.

### **The 18<sup>th</sup> Constitutional Amendment: A Step Toward Participatory and Inclusive Federalism**

The 18<sup>th</sup> amendment comprehensively amendment the 1973 constitution. This amendment was a watershed in the checkered constitutional history of Pakistan, which not only revived the spirit of the 1973 constitution but went a step further by abolishing the Concurrent Legislative List (CLL) and devolved 47 subjects, 17 ministries and also created Part II with 22 subjects in the Federal Legislative List (FLL). Part II contain subjects of mutual interests to the center and provinces and a powerful restructured CCI was provided for the management of these subjects. The council was made a principle body for the national planning and decision making in the post 18<sup>th</sup> amendment (M. O. Khan 2017).

Article 153 provides the structure and members of the CCI which include: the prime minister being the chairman, the chief ministers of the provinces and three members from the federal government to be appointed by the prime minister. The article opines that the council shall be responsible to both the houses of parliament and shall submit an annual report to them.

Article 154 of the constitution (2018) specifies the powers and functions of the council and states that the CCI shall be appointed within 30 days of the prime minister taking oath of the office and that it “shall formulate and regulate policies regarding matters provided in Part II of the FLL and shall exercise supervision and control over related institutions”. It continues and opines that the council shall have a permanent secretariat (not established yet) and matters shall be decided through majority vote in its meetings. In case of dissatisfaction of any party with the council’s decision or lake of consensus on a particular issue, the matter could be referred to the joint session of the parliament and its decision shall be final.

Similarly, under article 155, conflicts related to the water supply and distribution among provinces and federal capital could be referred to the CCI through a written complaint. Upon receiving such

complaint, the council after consideration either could give its decision or could request the president to appoint a commission having the expert knowledge.

Section (g) of article 38 states for the rectification of the historic deprivation and provides to make sure that provinces get their due share in the federal services, autonomous bodies and corporation. It has been more than a decade after 18<sup>th</sup> amendment but the small provinces are still demanding their due representation in corporations and government services. Fake domiciles are a serious issue in Balochistan where people from other provinces uses them to get jobs and it comes on the cost of Baloch population. Therefore, the CCI has a major role to play in this regard.

### **Council of Common Interest Performance in the Post-2010 Era**

In a federal society like Pakistan, the CCI was supposed to have a central role in the policy making but unfortunately it remained dysfunctional since its creation. After the 18<sup>th</sup> constitutional amendment, the council held frequent meetings and submitted its annual report every year to the parliament. Table 1 shows details of the relevant data about the yearly meetings of the council, its discussed matters and also its annual reports to the parliament.

Table: 01

Data extracted from the yearly reports of CCI to the Parliament:

<b>Year</b>	<b>Meetings</b>	<b>Items Discussed</b>	<b>Annual Report</b>
2010-11	06	36	Submitted
2011-12	02	13	Submitted
2012-13	03	18	Submitted
2013-14	04	18	Submitted
2014-15	01	09	Submitted
2015-16	02	11	Submitted
2016-17	02	10	Submitted
2017-18	07	37	Submitted
2018-19	02	13	Submitted
2019-20	01	23	Submitted

Source: Compiled by the author from the annual reports of CCI submitted to parliament.

According to the data showed in table 1, from 2010 to 2020, CCI has held 30 meetings and has discussed 188 items.

### **The Issue of Hydel Power Royalty**

Approximately, 30 to 35 percent of the total electricity is generated from hydel resources in KP. According to the constitution, the net profits earned by the Federal Government, or any undertaking established or administered by the Federal Government from the generation of power at a hydro-electric station shall be paid to the Province in which the hydro-electric station exists. The province did not receive any royalty for its hydel power production till 1991 (I. Khan 2017).

In 1991 an agreement was signed between the center and the province of KP. Under this agreement KP received 5.99 billion as net hydel power royalties but later on the royalty was capped by the

central government. In 1996, both parties agreed that these arrears will be increased by 11 percent annually but due to the dissolution of the assemblies the decision was not honored. Another agreement was signed in 2002 in Musharraf era between the center and KP but was not implemented (M. O. Khan 2017).

The 18<sup>th</sup> constitutional amendment, transferred the subject of electricity to the federal legislative list Part II. According to the article 156, “the Federal Government may in any Province construct or cause to be constructed hydro-electric or thermal power installations or grid stations for the generation of electricity and lay or cause to be laid inter-Provincial transmission lines”, or any other issue or matter related to the electricity, in such a situation the federal government shall consult the provincial government concerned. If they did not agree, then the affected party can approach to the council to resolve the issue (Constitution of 1973).

In 2009, the federal government agreed to an Arbitration Tribunal and released 10 billion rupees to KP. Under the decision of the tribunal a balance of Rs.100 billion was paid in four equal installments of Rupees 25 billion annually till 2014. A technical committee was also formed to decide the remaining arrears. Historically, there have been differences over the amount of Net Hydroelectric Profit (NHP) between the federal and provincial government. However, a Memorandum of Understanding (MoU) was signed on Feb 25, 2016 between the federal and KP government (GoKP 2020). According to the MoU 70 billion had to be paid in lieu of arrears from 2005 till 2016 while the NHP rate was determined at Rs. 1.10kWh with 5% indexation annually” (GoKP 2020). The decision was sanctioned by CCI (M. O. Khan 2017). The federal government committed to pay Rs. 3 billion to the KP government every month. (GoKP 2020)

Though Rs. 70 billion in arrears have been paid to the KP and the net profit has been calculated, but the difference between the actual calculations and agreed upon between the parties differs. Further the lack of sustained and continuous payment of Rs. 3 billion per month creating tension between the center and KP province. According to the KP government white paper of 2020-2021, “in 2019-20, although not in its entirety, regular payments were made in the first seven months of the financial year, however, no payments were received under the NHP for the last five months, compounding dues towards the federal government,” this type of iritic payment compromised the ability of the government predictability and budgetary spending’s (GoKP 2020). Similarly, since the MoU in 2016 the “NHP tariff has been revised one time to Rs. 1.155/kWh whereas in actual the NHP tariff should have been Rs. 1.337/kWh for the FY 2019-20. This mismatch of NHP tariff is causing increasing loss to the provincial revenue amounting to Rs. 7,572 million YTD” (GoKP 2020). NHP should also be applied to the earstwhile FATA because the region has become part of KP after the 25<sup>th</sup> amendment. A potential NHP from this region is the hydel power generated from Gomal Zam dam. The dam is in South Waziristan district of earstwhile FATA. This still remains pending and an approximate arrears of Rs. 116 million are pending (GoKP 2020). On 26 Jun 2020, the KP assembly passed a resolution demanding the payment of the arrears of NHP as per the MoU in 2016 which was ratified by the cabinet, supreme court and the CCI.

## Natural Resources

Pakistan is blessed with numerous natural resources including oil and gas. Majority of these resources are being extracted from the small provinces including the Sindh, KP and Balochistan. Historically, small provinces continuously demanded ownership rights of their natural resources and that they shall have precedence in benefiting from these resources. Economic inequality and injustice created disparity among provinces and regions in Pakistan particularly in Balochistan where people feel alienated. The federal government in 18<sup>th</sup> amendment recognized this right of the provinces. Article 172 of the constitution after the said amendment states that, “mineral oil and natural gas within the Province or the territorial water adjacent thereto shall vest jointly and equally in that Province and the Federal Government.” (Constitution 1973)

According to the article 158 of the constitution, “the province in which a well-head of natural gas is situated shall have precedence over other parts of Pakistan in meeting the requirements from that well-head, subject to the commitments and obligations as on the commencing day.” Article 161 adds that the net proceeds of the Federal duty of excise on natural gas and oil levied at well-head and collected by the Federal Government, and of the royalty collected by the Federal Government, shall not form part of the Federal Consolidated Fund and shall be paid to the Province in which the well-head of natural gas exists (Constitution 1973).

In the post-18<sup>th</sup> amendment a vacuum was created for the subordinate legislation and explanation of the constitutional provisions regarding natural resources. As stated above, the CCI is the concerned forum for the issues related to the natural resources and mutual interest but the constitution is silent about the bodies regulating these resources including the National Electric Power Regulatory Authority (NEPRA), Oil and Gas Regulatory Authority (OGRA), the Public Procurement Regulatory Authority (PPRA) and others. The small federating units demanded 50 percent representation in the regulatory bodies. when the federal government placed these bodies under the line ministries, they brought criticism from the opposition quarters. The opposition in Senate rejected the move and demanded to place them under the CCI. Likewise, the opposition termed the development as derogatory to the principles of federalism and against the spirit of 18<sup>th</sup> amendment (Dawn 2017). Lahore High Court suspended the decision of the federal government and later on, the Islamabad High Court declared the decision null and void on March 27. The High Court observed that these regulatory bodies are expressly mandated to the CCI, therefore without its approval these regulatory bodies could not be placed under the very ministries (Asad 2017) “against whom they were supposed to protect the consumers” (Shehzad 2017). KP demanded provincial representation in the management of the federal institutions; the demand was supported by other small provinces. Due to the lack of “subordinate” legislation, there are problems while defining the domain of the CCI (Analysis 2015).

The 18<sup>th</sup> constitutional amendment added a new section (g) to the article 38, which states; “the shares of the provinces in all federal services, including autonomous bodies and corporations established by, or under the control of, the Federal Government, shall be secured and any omission in the allocation of the shares of the Provinces in the past shall be rectified” (Secretariat, 20 April 2010).

Balochistan is enriched with numerous natural and mineral resources like chromite, marble, fluorite, garnet, barite, asbestos, vermiculite, gold, iron, petroleum, gas and coal. However, the province had remained underdeveloped despite its abundant natural resources and their contribution to the GDP. Natural Gas was discovered in 1952 in Sui, district Chaghi of Balochistan province. The Sui town which is mere 4 miles away from the gas field, do not have access to natural gas (Shohaz 2019). In 1995, Balochistan was producing 56 percent of the total natural gas production in the country but sadly its ratio dropped to 22.7 pc and in the same year, it consumed 5.81 pc. According to a report after 60 years 14 town out 34 districts in Balochistan have access to natural gas (Shohaz 2019). According to the constitution, Balochistan has 50 percent ownership right to its natural resources, royalty and the well-head. According to the government of Balochistan, the province received only 2 pc of its royalty (Firdous 2014).

Moreover, several foreign companies particularly Chines have heavily invested in this sector of the province. The “Saindak Copper Gold Project” is one of the largest copper and gold mining project in Balochistan. In 2002, under the federal ministry of Petroleum and Natural Resources, the Saindak Metals Limited (SML) and a Chines Metallurgical Construction Company agreed to a 10 years joint venture. Both SML and the Chinese company are 50-50 partners in the project. After paying the loan, the province receives only 2 pc royalty and the federal government gets 48 pc, while the Chinese company gets 50 pc (M. O. Khan 2017).

### **Share in the CPEC**

Part II of the FLL includes subjects having relevance to the CPEC. These subjects are electricity, railways, ports, national planning, and national economic coordination, as well as public debt (Adeney 2020). Initially, the mega project was portrayed as game changer for the less developed areas in the country including Balochistan and KP. However, the politics of CPEC has created more heat than energy in the federation. The CCI was expected to play a central role in the project because of its relevance to the policy making and regulation in key areas as discussed earlier. Time and again, small provinces have raised questions regarding the manner in which the project is implemented and decisions are taken. Though the CCI was regularly holding meeting but due to the centralized implementation, secrecy related to the project and provinces exclusion from the decision-making process, matter regarding the project were not brought to the council till 2017. Later on, the Special Economic Zones (SEZ) and some other projects were discussed in the CCI but previously the provinces of KP, Sindh and Balochistan had demanded discussions on matters related to CPEC (Adeney 2020). It was also advertised in the initial year that the western route of the CPEC will be completed on priority basis but due to the lack of resource allocation even its existence is at stake. Filippo Boni and Katharine Adeney quoting an official in the Planning Commission that prioritizing the eastern route was due to the existing rail and road links. They further added that the Chines wanted to work on the existing links and did not want to build from the scratch. Secondly, party politics is a major hindrance in the development of the Western route. Punjab has the largest share of seats in the national assembly due to its size of population. Therefore, the major political parties have concentrated on their vote banks in Punjab.

## Conclusion

It could be concluded from the discussion that the CCI was added to the constitution to work as a ventilator for the center province relations but remained dysfunctional and held only 11 meetings till 2009. In 2010 the constitution was comprehensively amended under the 18<sup>th</sup> amendment. The said amendment reformed and restructured the CCI and went a step ahead in the participatory federalism. The CCL was abolished and the FLL was divided into 2 parts. Part II includes 22 subjects that are of mutual interest to the center and provinces and come under the CCI. The constitution states that the council shall meet at least once every 90 days. Since the adoption of the 18<sup>th</sup> constitutional amendment in 2010 till 2020, the council has held 32 meetings and have submitted 10 annual reports to the parliament. Since 18<sup>th</sup> amendment, various important issues have been brought to the council for consultation and policy making. CCI played important role in resolving the royalty issues of hydel power, natural gas and oil. It could be concluded from the discussion in this article that though the council held regular meetings and discussions but several important issues like the CPEC, preference in the natural resources to the area where the well-head exists and royalty issues from the natural resources remained unresolved. Bypassing the council in important matters is another concerning issue by ignoring small provinces and centralizing decision making regarding matters of shared interests.

## References

- Adeney, Filippo Boni and Katharine. 2020. "The Impact of the China-Pakistan Economic Corridor on Pakistan's Federal System." *AsianSurvey*, Vol.60, Number3, pp.441–465. ISSN0004-4687, electronic ISSN1533-838X. ©2020 by The Regents of the University of California.
- Analysis. 2015. "FIVE YEARS OF THE 18<sup>th</sup> CONSTITUTIONAL AMENDMENT: THE FEDERALIST IMPERATIVES ON PUBLIC POLICY AND PLANNING ." *Development Advocate Pakistan vol 2 issue 1*, April: 3-9.
- Asad, Malik. 2017. *IHC orders regulators out of ministries' control*. March 28. <https://www.dawn.com/news/1323299>.
- Assembly, Khyber Pakhtunkhwa. 2020. *Provincial Assembly of Khyber Pakhtunkhwa*. Jun 26. Accessed 02 27, 2021. <https://www.pakp.gov.pk/resolutions/hydro-power-royalty/>.
- Constitution. 2018. *The constitution of the Islamic Republic of Pakistan*. Islamabad: National Assembly of Pakistan.
- Dawn. 2017. "Senate panel wants regulatory bodies under CCI." *Dawn*, January 12. <https://www.dawn.com/news/1307884> .
- Firdous, Iftikhar. 2014. *Deprived province: 59% of Balochistan without natural gas*, *The express Tribune*. Retrieved from. May 26. Accessed February 27 2021. <https://tribune.com.pk/story/713135/deprived-province-59-of-balochistan-without-natural-gas/>.
- GoKP. 2020. *Resilient: Khyber Pakhtunkhwa White Paper 2020-21*. Budget, Ministry of Finance.



- IPC. 2012. *Annual Report on the Council of Common Interest under Article 153 (4) of the Constituion of the Islamic Republic of Pakistan (2011-12)*. Inter Provincial Coordination Division Secretariate of the Council of Common Interest.
- IPC. 2013. *Annual Report on the Council of Common Interest under Article 153 (4) of the Constituion of the Islamic Republic of Pakistan (2011-12)*. Inter Provincial Coordination Division Secritariate of the Coucil of Common Interst.
- Khan, Iftikhar A. 2017. *Permanant Secrariat of the CCI Sought*. Mar 10.  
<https://www.dawn.com/news/1319545>.
- Khan, Irfan. 2017. "Center-Provinces Political Economic Relations in the Post-18th Amendmnet: A Case Study of Khyber Pakhtunkhwa Province."
- Khan, Irfan Khan and Bakhtiar. 2021. "Dispute Resolution Mechanism in Pakistan: An Analysis of Council of Common Interest After 18th Constitutional Amendment." *Pakistan Journal of Humanities and Social Sciences*.
- Khan, Muhammad Ozair & Irfan. 2017. *Federalism in Pakistan: The Question of Provincial Autonomy in Khyber Pakhtunkhwa and Balochistan in the Post-18th Constitutional Amendment*. Islambad: Iqbal International Institute for Research and Dialogue (IRD).
- Secretariat, Senate. 20 April, 2010. "Acts, Ordinances, Presedent Orders and Regulations (Eighteenth Constitutional Amendment)." *The Gazette of Pakistan; Extra Ordinary Published by Authority*.
- Shehzad, Rizwan. 2017. *The Express Tribune*. August 02. Accessed February 26, 2021.  
<https://tribune.com.pk/story/1472021/ihc-summons-top-official-violation-order>.
- Shohaz, Sher Jan. 2019. January 16. Accessed February 27, 2021.  
<https://www.dawn.com/news/1457876>.