

DISPUTE RESOLUTION MECHANISM IN PAKISTAN: AN ANALYSIS OF COUNCIL OF COMMON INTEREST AFTER 18TH CONSTITUTIONAL AMENDMENT

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Abstract

While introducing structural changes, the 18th constitutional amendment is a step toward participatory federalism. The said constitutional amendment revived the spirit of the original 1973 federal constitution and went a step further to scrap the concurrent legislative list, it devolved 17th ministries to the provinces and activated the dispute resolution mechanism. In the post 18th amendment era, the Council of Common Interest emerged as the highest national planning and coordination institution. The said refined council has been provided for 18th subjects of combined management of shared responsibilities, enumerated in the federal legislative list Part II. Its structure and functions have been vitalized and its ambit has been increased. To harmonize the center-provincial relations the 1956 constitution provides Inter Provincial Council, the 1962 constitution ignored it all together. However, the provision and refinement of the Council of Common interest under the 1973 constitution in 2010 was a “progressive leaf forward” to ensure provincial autonomy and to resolve the lingering issues. This article is an effort to analyze the performance of the dispute resolution after 18th amendment that how far it has been successful in its aims and objectives.

Keywords: *18th Amendment, Participatory Federalism, Dispute Resolution Mechanism, Council of Common Interest.*

Introduction

Council of Common Interest (CCI) was adopted in 1973 constitution of Pakistan as a dispute resolution entity. It has been provided for the federal legislative list Part II which consists on the shared interests of the center and

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provinces. The council underwent many changes. This council is a unique and highly valuable forum between and among center and provinces to create conducive environment for workable and harmonious relationship and to resolve political and economic issues. The forum has been undermined since its adoption in 1973 constitution. Till 2010, only 11 meetings of the council were held with large intervals. In 2008, the civilian government returned to power and initiated a comprehensive reform package in the constitution. The package was adopted in 18th constitutional amendment as was decided in the “Charter of Democracy” in 2005 in order to revive the pre-12 Oct 1998, 1973 constitution (Rabbani, 2012). The said amendment restored the dispute resolution mechanism. The amendment went a step further by increasing the powers and functions of CCI. The 18th amendment scraped the Concurrent Legislative List (CLL), devolved 47 subjects and 17 ministries to the provinces in three phases within one year (Khan I, 2017). Subjects of shared and mutual interests of center and provinces were transferred to the Part II of the Federal Legislative List (FLL)¹. In the post-18th amendment era CCI emerged as the central forum of policy formation and governing shared interests of center and provinces (Khan Z, 2015).

In the pre-independence era, the provinces were assured maximum autonomy after the creation of Pakistan. For the idea of Pakistan, All India Muslim League (AIML) got the support of different sub-nationalities through one way or another. However, since inception, Pakistan adopted federal sittings, which has generated a heated debate about federalism in the country. Centralization was accompanied with biased and one sided (majoritarian) constitutional arrangements, which was resulted in polarization of society. With the passage of time, due to the inactiveness of the dispute resolution mechanism, lack of provision of economic and political rights, small federating units were marginalized, their demands converted into grievances, the gap between the center and provinces widened and resulted into ethnic unrest; this ethnic unrest generated non-violent and sometimes violent resistance movements even insurgencies particularly in case of Balochistan and former East Pakistan (now Bangladesh (Adeney, 2007).

To make sure the participatory federalism and to address the grievances of the small federating units, 18th amendment activated the “damage control system”. In the post-18th amendment era, CCI has taken on some major issues of national importance like the issue of hydel power between Khyber Pakhtunkhwa and federal government and census etc. Therefore, it is of vital importance to analyze that how much CCI has accomplished in the post-18th amendment era? Furthermore, is the CCI meeting to its constitutional

¹ *Part II of the Federal Legislative List contains subjects of mutual interests between and among center and provinces which are governed by CCI. Policy formation, issues and decisions are taken through discussions or consultations and if any disagreement arises then the issue is referred to the joint session of the parliament.*

obligations? Or simply what is the gap between theory and practice regarding the damage control system? This article tries to find out answers to these questions. The technique used for data collection in this research is mostly qualitative and historical. Articles such as 1935 Act, 1956, 1962 and 1973 constitutions regarding CCI and dispute resolution have been utilized and the study has been built on the measures adopted in this respect. Secondary data regarding the 18th constitutional amendment has been collected from various sources and analyzed through critical policy analysis to answer the research questions. On the basis of findings fruitful recommendations have been provided for the policy makers and executors.

History of Dispute Resolution in Pakistan

Pakistan being multi-ethnic country needs an effective dispute resolution mechanism to address political and economic tension and contestation between and among center and provinces. Constitutionally, Pakistan had adopted different strategies for the resolution of tension and contestations between the center and provinces over a period of time. A centralized federal structure as a colonial legacy with certain consociational measures, one-unit scheme and some institutional arrangements are worth mentioning here in this respect. This is unfortunate that the dispute resolution mechanism in Pakistan most of the times remained inactive and dysfunctional (Khan Z, 2015). Resultantly with the passage of time, inequalities and injustices simmered and generated ethnic unrest. The 1971 debacle of Dhaka just after 22 years of independence was the reason of ethnic unrest created by political and economic inequalities (Khan H, 2012). It was the lack of resolution of the lingering issues between the center and provinces and the dominance of the migrated Urdu speaking Muhajirs and the Punjabi power elites that resulted in the separation of Bengal.

It is pertinent to note that the myth of a centralized state as a guarantee to the security of Pakistan has been proved ineffective. The annoyed behavior of centralist converted Pakistan into a “garrison state”. The frequent military interventions not only led to the derailment of the democratic and federal arrangements but also to the centralized tendencies (Rabbani, 2012).

The 1973 constitution provides Council of Common Interest (CCI), National Finance Commission Award (NFC) and National Economic Council (NEC) as dispute resolution entities and gives them the responsibility (after 18th amendment) of rectifying the historic injustices. These institutions are governing the shared interests of the federation and provinces enumerated in the federal legislative part II. This constitution was adopted through consensus of all major political forces, but the successive military interventions disrupted its original federal parliamentary structure. The operation of these institutions was suspended as the whole

constitution was in abeyance during Zia-ul-Haq and Pervez Musharraf's martial laws and emergencies. Later on, the powers and functions of these institutions were made subservient to the president. The centralization of powers became hurdle to the voices of small federating units, and led to the ethnic unrest which sometimes became violent particularly in case of Bengal crisis and Balochistan and a vibrant non-violent political moment in Khyber Pakhtunkhwa (KP) (Adeney, 2007; 2015; Khan M. O, 2017).

The Process of Reforms in CCI

In 2008, when the civil government returned to power, a Special Constitutional Reforms Commission was formed to draw a comprehensive reform package. This committee worked under the chairmanship of Senator Raza Rabbani. The said reform package was passed by the legislature in shape of 18th Amendment to the constitution. The 18th Amendment revived the spirit of 1973 constitution; it went a step further by activating the “*damage control*” system more effectively. It abolished the concurrent legislative list from the constitution and majority of its subjects were devolved to the provinces. This was a long-standing demand of the small federating units. Furthermore, it maximized the fold of the Constitution Federal List Part II as shared management of subjects. In case of any dispute or disagreement regarding these inter ties between the center and provinces, the affected or disagreeing party can bring the matter to the CCI and if not agreed there then the issue will be resolved in the joint session of parliament. After 18th amendment CCI emerged as the most powerful policy making body on National Level.

Pakistani society is a plural society like social, cultural ethno-political and lingual or any other grounds. Due to the complex social identities or as a federal society², Pakistan adopted different devices to accommodate these sub-nationalities to ensure national integration, in order to resolve and ensure the equitable economic, political and social development across the country. Before going any further, it would be important to provide a brief account of these dispute resolution devices adopted in Pakistan since independence under different constitutions.

- *Federalism*: Since inception Pakistan is a federal state, at least in theory if not in practice. First, it adopted the 1935 Indian Act with certain amendments as interim constitution with over-centralization of powers. After nine years of independence in 1956, Pakistan adopted its first ever constitution which failed to provide the results. The 1935 and 1956 constitutions were based on federalism. Ayub Khan introduced his own constitution in 1962 with federal presidential arrangement. This constitution met with the same fate as the previous constitution and his

² A federal society is one which represents multi-culturalism and multi-ethnic qualities.

government like the start ended on a martial law. After the separation of Bangladesh, the 1973 consensus based constitution was adopted with much more federal and consociation arrangements as compared to the previous constitutions. It will be discussed later on.

- *Consociationalism:* These are measures adopted for the accommodational purposes to provide some concessions to the neglected and underdeveloped classes of society. In the pre-independence era, All India Muslim League struggled for these consociational measures as they demanded maximum provincial autonomy and weightage etc. The same was demanded by small provinces after independence as they were assured of maximum provincial autonomy and balanced development. Indeed, there were certain measures in the previous constitutions but were jeopardized by the military dictators. The 1973 constitution provided maximum consociational measures as compared to the previous constitutions but the ultimate goal of grievance redress of the oppressed classes were not met due to lack of political will.
- *Ideology:* As used before independence, in the same fashion Islam was used by the civil and military establishment for legitimacy purposes. It is true that Pakistan was created on the basis of “*Two Nation Theory*” but the establishment used it to create sympathy and to create confusion among the masses while the vision of the founding fathers to create a welfare state was thrown behind.
- *One Unit:* To balance the numerical superiority of East Pakistan, the West Pakistan four provinces were merged together into one unit. Provincial governments were dissolved in these provinces and the only government was formed based in Lahore (Lahore as the West Pakistan province capital and the federal capital which was moved to Islamabad from Karachi in 1960 were both in Punjab). The One Unit was created in 1955 and was dissolved in 1969 by Yahya Khan. Under this setup, seats in national assembly were divided on the basis of parity formula irrespective of population. Bengali power elites agreed to this arrangement as their language (Bengali) was given the national language status along with Urdu (Ayaz, 2013).
- *Institutional Arrangements:* Federal system has been adopted since inception because this system suits the plural nature of Pakistani society. Dispute resolution mechanism in shape of CCI, NEC and NFC with democratically elected Parliament having the upper house as a balancer have been institutionalized. Historically these institutions were created to form policies and to resolve the political and economic issues and contestations among the center and provinces. Instead of solving problems, these institutions created “*more heat than energy*”. These institutions remained largely inactive and passive. Resultantly the gap between the ruler and the ruled, between center and provinces, among different regions and provinces widened instead of minimization. The

resources distribution and natural resources ownership are the main problems between the center and the provinces.

Historical Background of the Inter-Provincial Coordination/ Council in Pakistan

The dispute resolution mechanism is not an exception in the 1973 constitution. Its importance is multifaceted for plural society and participatory federalism in Pakistan. Pakistan's history of inter-provincial coordination goes back to the 1935 Act which was adopted by Pakistan as interim constitution immediately after independence.

- The said 1935 Act authorize his majesty government to form an inter-provincial council in case of any issue between provinces or any matter regarding common interest (Section 135 1935 Act: Senat, 2015).

The 1956 constitution also provided a dispute resolution mechanism which states:

- The Supreme Court can pick up any issue or dispute between the provinces and the federal government under its original jurisdiction.
- It also provides if necessary the formation of a council of inter-provincial coordination under Article 130 and 156. Article 130 says, in case of any issue of mutual interest the president can form the said council and determine its organizational procedure and duties to be performed by it. Article 156 provide for the formation of the NEC. The 1956 constitution also provide NFC (Senat, 2015).

The constitution of 1962 provides the following mechanism in this regard:

- The 1962 constitution has adopted the same dispute resolution mechanism of 1956 constitution with certain changes. It did not adopt the Inter-Provincial Coordination of article 130 of the previous constitution but it retained the NEC and NFC.
- Article 132 of the same constitution authorizes the provinces to legislate on residual subjects but article 131 of the said constitution had maximized the role of the federal government. Clause 2 of this article says "the national interests of Pakistan" whether "economic or financial stability", "Planning or Coordination" or the achievement of uniformity purposes in any respects and in any part of the country so demands, the central legislature can form laws having jurisdiction in any part of the country (Senat, 2015).

The 1973 constitution and the dispute resolution mechanism:

- The 1973 constitution provides NEC for matters related to economic planning and eradication of inequalities, NFC for the distribution of financial resources from the divisible pool, CCI for the shared interests enumerated in the constitution legislative list part II (if the dispute was not resolved, the joint session of the parliament is the net forum after

CCI) and by invoking the original jurisdiction of the Supreme Court in case of any dispute or issue between center and federating units. The detail of the CCI has been discussed in the next section (Khan M Z, 2015).

Council of Common Interest (CCI)

The 1973 constitution provides CCI for the regulation and coordination (inter-provincial coordination forum) of policies regarding federal legislative list Part II. CCI is a constitutional body to ease the troubled center-provincial and provincial relations.

Structure and Functions of the CCI after 18th Amendment

Article 153 of 1973 constitution provides for the composition of the CCI. It says that there shall be a CCI, formed after the Prime Minister oath within 30 days. Prime Minister shall be its chairman, the chief ministers of all four provinces and three persons from the central government appointed by the prime minister from time to time will be the members of CCI. Furthermore, the constitution made CCI accountable to the Majlisi-Shura (Parliament). The council will submit an annual report to both houses of the parliament. This makes the council more accountable and aim to function more effectively. Constitution says that there shall be a permanent secretariat of the CCI and the council shall meet once in every ninety days (Khan M Z, 2015).

Article 154 governs the functions and responsibilities of the CCI. The article states that the Council shall formulate and regulate policies and subjects enumerated in Part II of the Federal Legislative List and shall exercise supervision and control over the related institutions. Its meetings shall be convened by the prime minister or on urgent matters on the request of any of the federating units. Most importantly shared ownership of natural resources was provided in 18th amendment, which is a contested subject between the center and small provinces. The council has the responsibility to ease tension regarding these shared interests. If any disagreement among provinces or between center and the provinces occurs, that would be brought into CCI and if the CCI failed to resolve the issue by a majority vote then it could be brought to the parliamentary joint meeting and its decision will be final. With the abolition of the concurrent legislative list, electricity has been transferred to the constitutional federal list Part II (Senate, 2010). Issues regarding royalty and the matters of common interests of the center and provinces shall be resolved by this institution. Similarly, article 155 provides for the provinces, erstwhile Federally Administered Tribal Areas and federal government or “any of the inhabitants thereof in water from any natural resource or supply or reservoir, have been or likely to be affected

prejudicially,” the issue be raised and referred to the CCI in writings (Khan M Z, 2015).

Inter-provincial issues

The grievances of small provinces

During colonial era, maximum provincial autonomy was the sole demand of the Muslims and Muslim League. During the Congress ministries from 1937-39, the dream of united India was shattered. Provincial autonomy under the 1935 Act and the majoritarian rule of the Congress did not satisfy Muslim League. In 1940, when Muslim League demanded a separate state, small provinces supported the demand for Pakistan as they were promised political and fiscal autonomy. But in the post-independence era, in the name of national security, centralization (which served the interests of the civil and military bureaucracy) was injected into the political system (Ayaz, 2013). Those who supported provincial autonomy were the anti-thesis of centralists forces, suffered from the legitimacy problems (Wasim, 1997). The defied behavior of the establishment alienated the ethnic minorities. Their just economic and political rights were denied to them which resultantly produced non-violent and sometimes (approximately all the times) violent and militant struggle for both maximum provincial autonomy and independence (Khan H, 2012).

Since independence, Pakistan has been dominated by educated Punjabi and Muhajir power elites both in civil and military bureaucracy. These elites used the techniques of the colonial masters while ruling the independent “Islamic Pakistan”. Baber Ayaz writes in his book that in 24 years of independence, West Pakistan ruled East Pakistan like a colony. He gives arguments that from 1950 to 1970, the total expenditure of Pakistan was \$ 23 billion dollar of which only 30.45 were given to East Pakistan instead of 55 percent of total population of the country. While discussing inequalities among provinces, he noted that in this period West Pakistan contributed 30 percent to the total foreign exchange earnings but received 70 percent of it. The 80 percent of total foreign aid was spent in West Pakistan. Moreover, 70 percent of the total developmental budget was utilized in West Pakistan. Same was the case in allocation of governmental jobs for East Pakistan (Ayaz, 2013, pp. 67-68). The political-cum-economic problems failed the two-nation theory as the only bound in the Muslims of the sub-continent. Due to these social and politico-economic inequalities and the annoyed behavior of elites convinced Bengalis to think about another solution for their problems. If the said dispute resolution mechanism was operational and the political will was exists, perhaps today the conditions would have been different.

The East Pakistani population and elites accepted one-unit scheme when the West Pakistan establishment agreed to recognize Bengali³ as national language along with Urdu (8 percent population's language), even though Urdu was the language of just two percent and was only the communication language in West Pakistan. When the gap widened to the unbearable extent in addition to the dysfunctional damage control system, all political, social and religious bounds failed, and the politico-economic and ethnic nationalism won over with the establishment of independent Bangladesh (Ayaz, 2013).

The 1973 constitution was a milestone in the troubled political and constitutional history of Pakistan. For the first time in the history of Pakistan, through greater consensus, the said constitution was adopted with much more consociational and federal measures promising provincial autonomy. But the usurpers disrupted its originality and continuity; they brought undemocratic and anti-federal arrangements to the constitution including the 8th and 17th Amendment. In 2010 the civilian government reiterated her intentions of provincial autonomy by reviving the originality of the constitution as were reiterated at the time of adoption of 1973 constitution.

Performance of the Council of Common Interest (CCI)

Dispute resolution mechanism is considered the essence of federal system. Provisions about CCI were adopted in 1973 constitution but practically remained ineffective. In this section the performance of CCI is reviewed briefly.

a) The Era from 1973-2010

The “*damage control system*” introduced by the 1973 constitution in shape of CCI, National Finance Commission (NFC) and NEC largely remained ineffective. Since the implementation of 1973 constitution till 2010, CCI held only 11 meetings. It was suspended by the military rulers and then converted into a quasi-presidential institution. Before 18th Amendment, president could appoint any federal minister as its head while the cabinet division served its secretariat. The 18th Amendment in 2010 reshaped CCI and enhanced its role and importance. Same were the conditions of the National Economic Council (NEC). NFC however, without the 7th award remained controversial.

b) The 18th Amendment

“The structural reforms introduced by the 18th Amendment have impacted almost all pillars of the State namely; the Legislature, the Executive and the Judiciary. It has expanded the scope of constitutionally guaranteed fundamental rights. The amendment has redefined federal-

³ Bengali was the language of 54 percent population

provincial political and fiscal relations and legislative competences. The amendment has also introduced an innovative concept of institutional power through the Parliament, provincial assemblies and federal forums like CCI and NEC.” (Khan Z, 2014) While reclaiming the 1973 constitution “the 18th constitutional amendment has amended 36 percent of the contents of the constitution”; “the Sixth and Seventh Schedule were omitted and the Concurrent Legislative List was omitted from the forth schedule along with some inclusion and exclusion in the Federal List (Part I and Part II)”(Khan Z, 2015). The amendment introduced a more effective mechanism of shared responsibilities in shape of modified and powerful CCI. The said amendment holds the prime minister as its chairman. It also held CCI accountable to the both houses of parliament as it shall submit an annual report to both houses. Moreover, the 18th amendment provides that CCI shall have a permanent secretariat. It shall meet once in 90 days and its meetings could be called on the request of the any affected bodies (Senate, 2010).

The extensive reform package in 2010 widened the horizon of the CCI by transferring electricity to the Federal List Part II (as mentioned above other Concurrent List subjects were devolved to the provinces.) Other important entries which enhance the role of the CCI are the national planning and economic coordination, railways, natural gas and oil, electricity, federal regularity authority, major forts, census and management of public debt etc. It could prove effective mechanism but unfortunately due to lack of political will it has never been remained fully operational. Several times governments have been accused of sheer violation of the constitution because of failure to convene its meetings on regular intervals (Zahid, 2013). In the constitution shared ownership of natural resources was provided and in case of any disagreement over the issue relevant to the said resources, could be brought to the CCI and if not agreed upon, then it could be referred to the joint parliamentary meeting, whom decision will be final (Senate, 2010).

Critical Analysis

It is very unfortunate that the forum of CCI has not been utilized effectively. The council was supposed to perform the central role in the inter-provincial relations and as a mechanism of dispute resolution. However, 18th amendment brought extensive changes to the constitution and it has strengthened democracy and participatory federalism. In the post 18th Amendment era it has undertaken some important matters regarding national importance like the hydel power royalty issue between the center and Khyber Pakhtukhwa province, census, matters about the national mineral policy and its formation, water distribution issues, oil and gas development matters and the basic infrastructure development in different sectors including social, economic and political dimensions (Division, 2012;

Division, 2013). In a nutshell, it would be safe to conclude that the CCI is not less than that of the cabinet division (Khan I A, 2017) but there are certain issues and complexities too, which are creating problems for the center and federating units e.g. failure to establish its permanent secretariat, holding of its meetings within the constitutional prescribed limitations, bypassing the council by the cabinet etc.

The 7th NFC award and the 18th amendment had provided some relief to the small provinces. This multi-standard formula adopted in 7th NFC award and under the 18th amendment seventeen ministries devolution to the provinces with different kind of administrative and revenue raising rights and shared ownership of natural resources are some of the important rectification measures (Faiz, 2015). The issue of hydropower royalty related to Khyber Pakhtukhwa was partially resolved in 2009. In 2016 an MOU has been signed between the center and Khyber Pakhtukhwa government ratified by CCI for the payment of the remaining arrears. By expecting to solve the lingering issues of 70 years overnight is not rational but it is important that consultation process continue in the CCI. The role of CCI as a forum for dispute resolution is regarded very important in creating consensus on issues of national importance which throughout the years affected the center-provinces relations.

China Pakistan Economic Corridor (CPEC) is another important issue crucial to federalism in Pakistan which has resurfaced the small provinces versus Punjab controversy. Various aspects of the project come under the premises of CCI (shared interests) i.e., including electricity, railways, ports, national planning, and national economic coordination, as well as public debt. This is significant because the CCI is tasked with policy formulation and regulation in key areas related to the CPEC: investments pertaining to ports, railways, minerals, oil, natural gas, and electricity. Given the renewed centrality of the CCI, and the fact that the manner of implementation of the CPEC was the subject of provincial concern, we would have expected the CCI to play a central role in the planning and implementation of the CPEC (Filippo Boni, 2020). However, provincial calls for discussion over the project were neglected for five years. From 2010 till May 2017, the minutes of the meetings do not contain explicit mention of CPEC; till December 2019, the only meeting of February 26 2018 discussed special economic zones under CPEC. Furthermore, due to the centralized and shared interest nature, the Senate Special Committee on the CPEC suggested that control of the project [the CPEC] be handed over to the Council of Common Interests (Filippo Boni, 2020) The discussion over the CPEC in the context of CCI suggests that the federal government bypassed the forum by centralized decision making. It is pertinent to mention that decision making regarding CPEC were further centralized through a cabinet committee formed by former Prime Minister Shahid Khaqan Abbasi to make important decisions

by himself neglecting provinces, the committee is still functioning under premier Imran Khan (Filippo Boni, 2020).

Democracy is an evolutionary process and it takes time to evolve. Pakistan is passing through a democratic transition. In this time of transition, the ascendancy of the parliament and democratic institutions will take some time to improve (Rabbani, 2016). Historically corruption and bad governance remained the major hurdles to the federal system and provincial autonomy. Towards provincial autonomy and a rational federal order in Pakistan, 18th constitutional amendment is just the beginning. In the words of Zafrullah khan;

“The 18th Constitutional Amendment is definitely not a panacea to all the problems that this country suffers due to the long denial of democracy and ignoring claims for provincial autonomy. Nevertheless, this could be described as a paradigm shift to reclaim the inherent federal character and spirit of Pakistan”(Khan Z, 2014).

a) **Pre-andPost-18th Amendment Scenario**

The CCI, NFC and NEC were provided for the conflict resolution between the central and provincial governments, but their role remained controversial due to one province inflexible behavior towered the other federating units (Faiz, 2015). The system of distribution of resources from the divisible pool remained controversial. In the post-1971 era, population was considered as the soul criteria for the distribution of money among provinces, and not considering the other “international best practices” (however till 7th NFC award). In addition to the distribution formula, the irregularity of the award is another major impediment. Constitutionally, NFC award should be issued every five years but after the 7th NFC award due to the differences between the center and provinces, the federal government is unable to issue a new NFC award and has extended the previous one. All these issues are increasing the friction between the center and provinces (Ahmed et.all, 2007). In the 7th NFC award other standards have been included to the distribution formula, to make it more rational but the lack of permanency still creating discontent and issues between the federation and its units.

Chairman senate and the architect of the 18th Amendment Raza Rabbani argued that the council will become an effective dispute resolution, economic planning and a developmental forum in the future (Rabbani, 2012).

b) **The Gap between Theory and Practice**

Political will play a vital role in the formation and implementation of policies in national interest. Since inception Pakistan fulfills the minimum criteria of a federal state. Due to minimum consociational measures and lake of federalization of the system there is still a huge gap between theory and

practice. Only federalism is not enough but the consociational measures are also very important to overcome and address the long-standing demands of the small provinces and neglected areas, like Balochistan, Khyber Pakhtunkhwa, South Punjab and the former FATA. However, the lack of equitable and just distribution of economic, political, administrative and social development generated grievances and alienated these oppressed segments of the Pakistani society. These grievances produced heat, sometimes bred violent ethnic unrest particularly in case of Balochistan (Adeney, 2007).

As mentioned above it is the constitutional responsibility of the federal government to convene regular meetings of the CCI with regular intervals. Resultantly, when the council do not meet with regular intervals the pending problems increase. The long awaited meetings and the overburdened agendas show lack of interest for institutional building and seriousness (Aditorial, 2015). Furthermore, bypassing the provinces and CCI by taking decision in the Cabinet e.g. Committee on Energy headed by Prime Minister and Economic Coordination Committee headed by Ishaq Dar (during Pakistan Muslim League (N) regarding the new explored oil in KP, changes in gas prices, a combined own resource, matters about Liquefied Natural Gas (LNG) regarding the shared interests (Sindh moved a reference supported by KP to the center that the decisions of the ECC and CCE shall be declared null and void) and matters about electricity to be resolved in the CCI but was bypassed (Kiani, 2015). In a ruling Chairman Senate warned the federal government about the violation of the constitution. He argued that neither it is for the prime minister nor the cabinet to take decisions and subsequently took it for approval to the CCI. He also has warned the government that it will create a chaotic situation in politics (Dawn, 2016). Furthermore, the constitution declares the CCI as an independent entity but till 2016, the CCI was supported by the IPC, which is an integral part of the federal government. This makes the independent nature of the council doubtful (Dawn, 2015).

The issue regarding the royalty on net hydel power and the distribution of water among provinces particularly between Punjab and Sindh needs consideration from the CCI. Some entries of the federal legislative list need explanation. The constitution provides shared ownership of natural resources. Resultantly the provinces particularly the small federating units are demanding 50 percent representation in institutions which are responsible for the regulation and policy formation related matters. In this regard, currently the subordination of the five independent regulatory bodies under the line ministries has brought criticism from the opposition quarters. Those bodies are the National Electric Power Regulatory Authority (NEPRA), Oil and Gas Regulatory Authority (OGRA), Pakistan Telecommunication Authority (PTA), Frequency Allocation Board (FAB) and the Public Procurement Regulatory Authority (PPRA). As per the

notification by the cabinet division these entities are being placed under the respective ministries. According to the opposition in the Senate these are the matters of the common interest and should be placed under the CCI. Likewise, the opposition has termed the development as derogatory to the principles of federalism and against the spirit of the constitution and 18th amendment (Dawn, 2017). However, this decision of the government has been suspended by the Lahore High Court and then set aside by the Islamabad High Court on March 27. The High Court observed that these regulatory bodies are expressly mandated to the CCI and the matter could be brought to the Council (Asad, 2017). KP demanded provincial representation in the management of the federal institutions, which 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 devolution process under the 18th amendment gave birth to some controversies regarding the federalization of the system after abolishing the concurrent legislative list. Though seventeen ministries devolved in the prescribed time frame to the provinces. But at the same time, the federal government created several devolved ministries at the federal level. These ministries include the ministry of climate change, human resource development, national food security and research, national harmony, the ministry of national heritage and integration, national regulations and services and the ministry of professional and technical training. These ministries were created for the transferred subjects like education, environment, health, agriculture, minority affairs, culture etc (Alam, 2015). Further, in addition to these ministries there are also some programs and institutions which were retained on the federal level, in order to facilitate the donors and other international entities. The provinces are blaming the central government for the devolution of responsibility without economic devolution. Ministries are being transferred to the provinces while its financially rich assets and institutions have been retained on the central level, e.g. Employs Old Age Benefit Institution (EOBI), Workers Welfare Fund (WWF), Higher Education Commission (HEC), Institutions regarding tourism and Pakistan Baitul Mall etc. The CCI could handle these issues and contestation very effectively but so far it does not seem on the agenda (Advocate, April 2015).

Holding of census is another issue which produced heat in between the center and provinces. Finally, the issue was resolved as the federal government after a delay of eight years issued a notification for the holding of census throughout country in two phases. The census was scheduled from 15 March to 15 May and was conducted (Dawn, 2017).

The establishment of a permanent secretariat of the CCI is another issue. The successive governments time and again reiterated their resolve of the establishment of a permanent secretariat as provided in the constitutions. Previously, the cabinet decision of putting the CCI under the IPC was

termed as sheer violation of the constitution and termed unacceptable to the opposition law makers. It was suggested by the government that the IPC will be renamed and will be established as the secretariat of the CCI. The former senate chairman Raza Rabbani observed that the CCI in no way below that of the cabinet division and asked the government to consider the establishment of a permanent independent secretariat of the CCI on the pattern of the Cabinet Division (Khan I A, 2017; Haq, 2017). The 18th constitutional amendment has enhanced the role and importance by adding a new paragraph to the article 38 of the constitution of 1973. It says;

The shares of the Provinces in all federal services, including (g) 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).

Center and provinces are at odds since inception on the subjects mentioned in the sub-section “g” of the article 38. Though the amendment has mentioned that any omission in the allocation of the shares of the provinces in the past shall be rectified, but the role of the two important institutions i.e. CCI and NEC is subject to discussion. In the post-18th amendment, the highest dispute resolution body between the center and provinces i.e., CCI has a leading role to play but lack of political will is the main hurdle to fulfill the constitutional obligations on the part of the political leadership and bureaucrats, because it has been noted that politicians and some bureaucrats are creating obstacles in the way of decentralization and devolution process. These sentiments could be found in the creation of devolved ministries on the federal level.

Conclusion

The research suggests that the importance of the Dispute Resolution systems in plural societies like Pakistan is multifaceted. A case in this research was built on the historical experiences (constitutions) of Pakistan in the dispute resolution and the structural and functional changes in the 18th amendment to the CCI with respect to their working in the post-18th amendment have been thoroughly discussed. It could be concluded, that the 18th amendment has restructured the CCI and elevated its status by giving extensive powers to it. In the post18th-amendment, CCI has tackled some important issues between the center and provinces like royalty from the natural resources, census, and water distribution between provinces, regulatory authorities and other. However, when it comes to constitutionalism there are still gap between theory and practice. A permanent secretariat was provided in the 18th amendment but in practice it is still lacking. The amendment states about the regular meetings of the CCI

after 90 days but this is not happening. Furthermore, during the PML (N) government, CCI was bypassed several times and issues were decided in the cabinet despite their nature. In a nutshell, 18th amendment brought major changes to the dispute resolution mechanism in the federation of Pakistan and has increased the tempo to the process. However, there are still shortcomings in the implementation process which could be overcome through constitutionalism and political will.

Recommendations

After the discussion, it could be recommended that the government should fulfill its constitutional responsibilities of convening the meeting and formation of the CCI on regular intervals to avoid the overburdened agenda of the council meetings and further constringent of the center provinces relations. Bypassing the CCI in shared center-provinces interests needs to stop completely. The vague articles of the constitution should be provided with explanations, and subordinate legislation should be done. Furthermore, a permanent secretariat of the CCI should be established as the constitution had mentioned.

The recognition of ethnic identities and their just induction in institutions which really matters, would more likely promote affinity with main stream politics (Adeney, 2015). In this respect the CCI can play a very vital role to ensure participatory federalism.

The continuation of the democratic process is very important. Pakistan is passing through a transition period. A democratic government had handed over power to a legitimate civilian government peacefully. The 7th NFC award and the 18th amendment are just the beginning to harmonize the center-provinces or center-small provinces relations and to resolve their grievances. The acceptance and recognition of plurality is the dire need of national integration and national integrity. It will ensure the concept of unity in diversity.

All institutions should work within the ambit of the constitution. The initiations of an intra-institutional dialogue to end historical and animosities, settle issues of jurisdiction and work in harmony for achieving national objective (Lecture, 2015). Through this way the tension between or among institutions could be avoided and cooperation and coordination could be ensured.

Due to nature and importance of CPEC project, regular discussions should be held in the meetings CCI. Its importance is manifold; as the constitution says that any injustices happened in the past should be rectified and the project was aimed to bring the under-developed and neglected areas (provinces) as per the advanced regions, therefore discussions and equitable distribution of projects under CPEC are important.

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