



Senate Secretariat

REPORT OF THE FUNCTIONAL COMMITTEE ON DEVOLUTION



“March 2016 to till March 2018”

PRESENTED BY

**SENATOR MIR KABEER AHMED MUHAMMAD SHAHI
CHAIRMAN,**

FUNCTIONAL COMMITTEE ON DEVOLUTION PROCESS



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List of Abbreviations

BoD	Board of Directors
CCI	Council of Common Interests
D & P	Development & Production
DG	Director General
DGPC	Directorate General Petroleum Concessions
E & P Companies	Exploration & Production Companies
ECC	Economic Coordination Committee
EEZ	Exclusive Economic Zones
EPTB	Evacuee Trust Property Board
FAB	Frequency Allocation Board
FATA	Federally Administered Tribal Areas
FED	Federal Excise Duty
FLL	Federal Legislative List
GHPL	Government Holdings (Private) Limited
HDIP	Hydrocarbon Development Institute of Pakistan
HDIP	Hydrocarbon Development Institute of Pakistan
HEC	Higher Education Commission
IPC	Inter-Provincial Coordination
KP	Khyber Pakhtunkhwa Province
MD	Managing Director
LPG	Liquefied Petroleum Gas or Liquid Petroleum Gas
MoPNR	Ministry of Petroleum and Natural Resources
MPCL	Mari Petroleum Company Limited
NEPRA	National Electric Power Regulatory Authority
NFC	National Finance Commission
OGDCL	Oil and Gas Development Company Limited
OGRA	Oil and Gas Regulatory Authorities
PCA	Petroleum Concessions Agreement
PCB	Pakistan Cricket Board
PHC	Punjab Healthcare Commission
PhD	Doctorate in Philosophy
PPL	Pakistan Petroleum Limited
PPRA	Public Procurement Regulatory Authority
PTA	Pakistan Telecommunication Authority
PTDC	Pakistan Tourism Development Corporation

Genesis of the Report

The compilation of this report of Senate's Functional Committee on the Devolution Process (March 2015 to till March 2018) owes to the uniting efforts of the following persons:

Ms. Rabeea Anwar
Secretary of the Committee on Devolution Process

Ms. Sidra Saeed
Programme Officer, Friedrich-Ebert-Stiftung

Mr. Saad Nasir Janjua
Intern to the Chairman of Senate's Functional Committee on Devolution Process under the Short-Term Internship Program by the Senate of Pakistan

Mr. Zubair Ahmed
P.S to Chairman of Senate's Functional Committee on Devolution Process under the Short-Term Internship Program by the Senate of Pakistan

Mr. Asad
Assistant Personal Secretary to the Chairman of Senate's Functional Committee on Devolution Process

Composition of the Committee on Devolution

The composition of the Functional Committee on Devolution Process is as under: -



Senator Mir Kabeer Ahmed Muhammad Shahi
(Chairperson)



Senator Ilyas Ahmad Bilour
(Member)



Senator Nawabzada Saifullah Magsi
(Member)



Senator Taj Haider
(Member)



Senator Kamil Ali Agha
(Member)



Senator Sassui Palijo
(Member)



Senator Col (R) Syed Tahir Hussain Mashhadi
(Member)



Senator Muhammad Ali Khan Saif
(Member)



Senator Nisar Muhammad
(Member)



Senator Muhammad Usman Khan Kakar
(Member)



Senator Chaudhary Tanvir Khan
(Member)



Senator Liaqat Khan Tarakai
(Member)



Senator Lt. General (R) Salahuddin Tirmizi
(Member)



Senator Atta Ur Rehman
(Member)



Rabeea Anwar
Secretary Committee

Attendance of the Chairman/Members of the Committee in Meetings held from 17-06-2016 to 22-02-2018

S.No.	Name of the Member	Total Meetings held	Number of Meetings attended	Number of meetings not attended	Number of meetings in which leave was sought	Percentage (%)
1.	Senator Mir Kabeer Ahmed Muhammad Shahi	29	28	1		96.55
2.	Senator Nawabzada Saifullah Magsi	29	13	16		44.8
3.	Senator Kamil Ali Agha	29	10	19		34.48
4.	Senator Col(R) Syed Tahir Hussain Mashhadi	29	14	13	02	48.27
5.	Senator Nisar Muhammad	29	11	18		37.93
6.	Senator Ilyas Ahmad Bilour	29	08	21		27.58
7.	Senator Taj Haider	29	28	1		96.55
8.	Senator Muhammad Ali Khan Saif	29	9	20		31.03
9.	Senator Sardar Muhammad Yaqoob Khan Nasar	10	5	5		50
10.	Senator Muhammad Usman Khan Kakar	29	21	6	02	72.41
11.	Senator Ayesha Raza Farooq	15	3	11	01	20
12.	Senator Chaudhary Tanvir Khan	29	5	22	02	17.24
13.	Senator Liaqat Khan Tarakai	29	7	15	07	24.13
14.	Senator Atta-ur-Rehman	29	19	10		65.51
15.	Senator Sassui Palijo	18	7	11		38.88
16.	Senator Lt. General (R) Salahuddin Tirmizi	14	9	5		64.28

Notes:

1. Senator Mir Kabeer Ahmed Muhammad Shahi was elected as Chairman of the Committee w.e.f 17-06-2016, vice Senator Mir Hasil Khan Bizenjo.
2. Senator Sardar Muhammad Yaqoob Khan Nasar remained Member of the Committee up till 05-12-2016.
3. Senator Sassui Palijo nominated as Member of the Committee on 06-12-16, vice Senator Sardar Muhammad Yaqoob Khan Nasar and attended her first meeting on 11-1-17.
4. Senator Lt. Gen(R) Syed Salah-ud-Din Tirmizi became member of the committee in 2017 and attended his first meeting on 30-03-2017.
5. The attendance of Senator Ayesha Raza Farooq was counted up till 09-02-2017, thereafter ceased to act as member of the committee.

Executive Summary

I, Senator Mir Kabeer Ahmed Muhammad Shahi, Chairman of the Functional Committee on Devolution Process, have the honour to present a performance report of the committee regarding the issues and implementation status in pursuance of 18th constitutional amendment in my chairmanship.

The Committee on Devolution was initially a special committee constituted on a Motion under rule 204 of the Rules of Procedure and Conduct of Business in the Senate, 2012. Keeping in view the significance of the matter and noting the vacuum at the centre to effectively implement the scheme of devolution, the Senate of Pakistan on 13th August 2015, amended the Senate Rules to provide for a permanent Committee on Devolution with the following functions: -

- a) Review, on a continuous basis, implementation of devolution scheme as envisaged in the Constitution of the Islamic Republic of Pakistan, 1973;
- b) Identify and make remedial recommendations where the Constitution (Eighteenth Amendment) Act, 2010 has been deviated from, circumvented or not implemented;
- c) Identify and make recommendations to such aspects of the implementation plan/ process which due to administrative or lack of law or for any other reasons is facing or likely to face difficulty in its implementation; and
- d) On regular basis, seek the views of the federal government, provincial governments and or any division, department, autonomous or semiautonomous body / bodies related with or pertaining to the process of implementation of the Constitution (Eighteenth Amendment) Act, 2010 to evaluate and oversee the implementation status of the Constitution (Eighteenth Amendment) Act, 2010.

The Committee has endeavoured to provide a platform to the federating units to raise their concerns/issues regarding the devolution and ensure that fiscal and economic devolution should take place to ensure participatory federalism. The Functional Committee on Devolution held extensive consultations with the provinces and flagged the issues being raised by the provinces and impediments in the implementation of constitutional scheme of devolution. Provinces have posed confidence in the Upper House of Parliament as provincial departments are, on regular basis submitting their concerns before the Committee and the Committee is submitting recommendation before the House, in this regard. This proactive mechanism will definitely ensure that the scheme of devolution is implemented in letter and spirit.

The Committee also held provincial consultations after which Karachi, Quetta, Lahore and Peshawar Declarations have been adopted wherein the parliamentarians, members of provincial assemblies, academia, civil society organizations, journalists and Intellectuals have declared that: -

- Democracy and a true federal system is the only panacea for survival of Pakistan and the Constitution of Pakistan is guarantor in this regard which also provides for a mechanism to protect the rights of provinces;
- The federal and provincial governments shall take every possible step to ensure that the 18th Constitutional Amendment is implemented in letter and spirit.

- Attempts to bypass and undermine the jurisdiction and powers of CCI shall be stopped forthwith.
- Political, administrative and financial responsibility and authority should be devolved to the elected representatives of the local governments in letter and spirit to ensure the true spirit of federalism.
- NFC award shall be announced on priority basis after incorporating measures that would make devolution more meaningful in raising the living standards of the common citizens.
- The Senate, House of the Federation, being protector and representative of the rights of the federating units, shall ensure that the 18th Constitutional Amendment is implemented in letter and spirit and shall act as a forum to resolve the issues being faced in its implementation.

(Declarations annexed as A, C, B, D)

The Committee held the number of meetings to ensure the implementation status and resolve the issues regarding the devolution process. The Committee meeting includes the gathering of parliamentarians, provincial government representatives, academia, civil society organization, journalists and intellectuals. Apropos to the meetings of the committee held in different provinces, these were the core issues identified by the provinces: -

1. Reconstitution of devolved ministries with the new names
2. As per 18th Amendment, the subject "Higher Education Commission" was not handed over to the provincial governments and the share of the provinces has not been allocated in the funds of the Higher Education Commission.
3. Following the Article 172(3), Amendments in OGRA Ordinance 2002 are required for due representation of provinces on NEPRA model and Ministry of Petroleum & Natural Resources is claiming the authority over oil & gas matters but it had always been subject to the decisions of CCI and consent of provinces. Due to this issue, federal government is collecting royalty on crude oil instead of provinces and the federal government has not paid dues/ royalty of natural gas to KP and other provinces for the last 60 years' worth billions of rupees.
4. The NFC Award has not been announced after 18th Constitutional Amendment which is the main cause for financial problems of provinces and the earlier OGDCL, PPL, MPCL & GHPL's shares have not divided among the province according to NFC award.
5. The federal government shall assume its role and responsibility by establishing an independent permanent Secretariat of CCI on priority. Because of the unconstitutional interference of the federal government in the Federal Legislative List Part-II and the efforts to make Council of Common Interests as redundant must be stopped. Placement of regulatory authorities under the line ministries is a violation of the Constitution, while under part-II of Federal Legislative List, regulatory authorities are required to be placed under the CCI.
6. Under the 18th Constitutional Amendment, the issue of Evacuee Trust Property Board (EPTB) has not been resolved yet, The Punjab Government approached the Inter Provincial Coordination Division, Islamabad and the Prime Minister of Pakistan to resolve the issue of

Evacuee Trust Property Board (ETPB) in the pursuance of 18th Amendment but no response was received. The Punjab Government through Secretary Law & Parliamentary Affairs Department filed Constitutional Petition No. 12/2012 in August Supreme Court of Pakistan dated 23.02.2012 to transfer assets and properties vesting in and belonging to the ETPB but the court adjourned the case without fixing the next date of hearing.

(Relevant documents are annexed herewith)

After identifying the issues in meetings of the devolution committee, the Committee has also checked the implementation status of devolution process in pursuance of 18th Constitutional Amendment.

Summary of the implementation status is provided as under: -

1. Sindh assembly has enacted its own legislation i.e. the "Sindh Higher Education Commission Act 2013".
2. Devolved employees were transferred to the Government of Sindh according to the 23-C of Sindh Civil Servants Act, 1973.
3. Issue regarding existing agreements and licences has been resolved because it is to clarify that Article 172(3) only protects the existing agreements, licences or leases and provinces are allowed to collect royalty on crude oil but Article 161(A) was not implemented in letter and spirit and Article 161 (B) was not implemented at all.
4. The decision of LPG on Royalty PHC 2013 has not been implemented yet, the training funds have not been released to provincial governments since 2012 and the provincial government nominees has not been designated in OGRA and also the Board of Directors has not been designated in PPL, GHPL, OGDCL, MPCL and HDIP despite requests.
5. The Council of Common Interests (CCI) was given a new role to provide the centre and provinces a forum to take consensus decisions on conflicting issues. In the Article 157, Council of Common Interests has decided that provinces would be able to establish power plants without any limits and the political, administrative and financial responsibility and authority have not yet been devolved needed to the elected representatives of the local governments in letter and spirit.

(Relevant documents are annexed herewith)

On 20th October 2017, the Functional Committee on Devolution, Senate of Pakistan, made a reference to the office of the Chairman Senate, to the affect, if requirements of Clause (3) of Article 172, Constitution of Pakistan, 1973, have been complied which is based on the following factual position: -

- a. The Functional Committee on Devolution in its meeting held on 27th June 2016, took up consideration of agenda item pertaining to "Operationalization of joint ownership on oil and natural gas: Mechanism in view of Article 172(3) of the Constitution of Islamic Republic of Pakistan, 1973."
- b. Ministry of petroleum through a working paper provided its response in the following terms: -

- a) *“After the 18th Amendment to the Constitution through insertion of Article 172(3) providing for joint and equal vesting of mineral oil and natural gas in provinces, the Petroleum Exploration & Production Policy 2012 was issued with the approval of the Council of Common Interests. To implement the policy, the Petroleum Exploration and Production Rules 2013 were promulgated with consultation of provinces. Further, a model Petroleum Concessions Agreement (PCA) has also been developed through a consultative process with Provincial Governments. All PCAs executed after 2012 Policy are exactly in accordance with model PCA.*
- b) *The PCA also guarantees provinces to hold rights and operations on prospective basis through forming Provincial Holding Companies. Special guidelines have been issued by federal as well as provincial governments for carrying out the social welfare activities in license/lease areas which involve political representatives of the respective areas.*
- c) *It is also pointed out the provisions of Article 172(3) have been introduced and made subject to the existing commitments and obligations and the provincial government(s) have not been conferred authority to regulate existing Petroleum Concession Agreements, Joint Operating Agreements, Exploration Licenses and the Mining Lease.*
- d) *Clause 1.3(6) of the policy states one of the objectives of policy as to enable a more proactive management of resources through establishment of a reorganized Directorate General of Petroleum Concessions (DGPC) comprising of federal and provincial representatives with federal director as ex-officio director general and providing the necessary control and procedures to enhance the effective management of Pakistan’s petroleum reserves.*
- e) *The following table highlights the impact of the Constitutional Amendment with respect to ownership: -*

Ownership of Oil and Gas				
No.	Subject	Before 18th Amendment	After 18th Amendment	Remarks
I.	Ownership of mineral oil and natural gas	Exclusively with the federal government. as per the Mineral (Acquisition and Transfer) Order, 1961(PO No. 8 of 1961)	Mineral oil & natural gas vest jointly and equally with the respective Provincial governments and federal government. However, exclusive ownership of natural gas situated beyond 12 nautical miles (Territorial Waters) from the base line till EEZ vests with the federal government. Article 173(2) – Offshore Article 172(3) – Onshore	
II.	Utilization of Gas	Right of respective provincial government to utilize natural gas in the province where the producing wellhead situated, as priority in the Article 158	No change	Royalty on oil and gas, excise duty on gas and gas development surcharge are being paid to provincial governments in accordance with the NFC Award.
III.	Royalty on Gas	Exclusive right of the respective provincial government. Article 161 (a)	No change	
IV.	Royalty on Gas	No specific provision on payment of royalty on oil. Article 161(b)	No change	
V.	Federal Excise Duty on Natural Gas	Exclusive right of the respective provincial government. Article 161(a)	No change	
VI.	Federal Excise Duty on Oil	Not available	Payment to Provinces under Article 161(b)	

f) 18th Amendment, has neither affected the legislative powers of the parliament nor executive and administrative authority of the federal government. This is further illustrated by following table which differentiates the position of oil and gas regulation and legislation before and after the promulgation of the 18th Amendment: -

Ownership of Oil and Gas				
No.	Subject	Before 18th Amendment	After 18th Amendment	Remarks
I.	Legislation	<p>Exclusive right of the Federal Government.</p> <ul style="list-style-type: none"> • Article 142(a) • Article 97 • Section 6 of 1948 Act 	No change	<p>The entry of 'mineral oil and natural gas' has been retained in the Federal Legislative List of the Constitution. Fourth Schedule – Part II- Para 2</p> <p>"Mineral oil and natural gas; liquids and substances declared by federal law to be dangerously inflammable"</p>
II.	Excise Authority (Regulatory control)	<p>Exclusive right of the federal government under the Constitution and the Regulation of Mines and Oilfields and Mineral Development (Government Control) Act 1948</p>	No change	<p>After the 18th Amendment, in certain policies the coordinative role of the provincial governments has been created so that as joint and equal owners, the provinces have a say in legislation and regulation of petroleum activities.</p>

g) In view of above, it is stated that Article 172(3) of the Constitution stands implemented."

- c. As per the statement of the Ministry of Petroleum, clause (3) of Article 172 stands implemented. This statement came as a shock to the committee members who represent all provinces, therefore, members belonging to the provinces of Sindh, Balochistan, Khyber Pakhtunkhwa and Punjab were of the firm view that the said provision is yet to be implemented and a mechanism in this regard will have to be devised. Accordingly, the Committee decided to hold provincial consultations on the issue.
- d. First meeting of the series was held with the province of Balochistan at Quetta on 31st August 2016. Mr. Shahid Khaqan Abbasi the then Minister for Petroleum maintained the stand taken earlier, however, Balochistan Government briefed the Committee that the province is not being given its due share on the pretext of interpretation of "subject to the existing commitments and obligations" and till date no share has been given to the province.
- e. Second meeting of the series was held with the Province of Sindh at Karachi on 12th October 2016, where the Government of Sindh briefed the committee on the following terms: -

“The 18th amendment to the Constitution of Pakistan through insertion of Article 172(3) has revolutionized the constitutional and legal framework by empowering provinces by vesting joint and equal role, power and authority in executive, administrative and regulatory affairs related to mineral oil & natural gas located within the province or the territorial waters adjacent thereto. Article 172(3) has very clearly enhanced the role of the provinces in administration, policy, management and regulation of matters related to mineral oil and natural gas. The new role is in addition to the role delegated to provinces through the Council of Common Interests (CCI).

Mineral oil & natural gas appears at Entry No. 2, Part II, Federal Legislative List (FLL) and in pursuance of Article 154 (1) the related matters fall within the exclusive domain of Council of Common Interests which is required to formulate and regulate policies and shall exercise supervision and control over related institutions. Keeping this status unchanged even after 18th Amendment. Therefore, the Ministry of Petroleum & Natural Resources (MoPNR) has erred in claiming the federal government’s exclusive executive authority over oil & gas matters as it had always been subject to the decisions of the CCI and consent of the province. Moreover, MoPNR itself, as far as matters related to oil & gas are concerned, shall come under the supervision and control of CCI.

Article 97, which defines “extent” of the federation to exercise its executive authority, starts with the words “subject to the Constitution. This shall mean that the federation may exercise exclusive authority on matters appearing in Part I of the FLL only but for the matters appearing in Part II, FLL i.e. oil and gas, its authority is subject to CCI were all provinces have equal representation. Moreover, the inclusion of Article 172(3) has further redefined the “extent” of federation to exercise executive authority on oil & gas matters and now, “subject to the Constitution” the federation is required to exercise its jurisdiction with provinces equally and jointly. The MoPNR has grossly misreported that 18th Amendment has not “altered or amended” the existing Constitutional framework on oil & gas matters. Article 172(3) has altogether amended the extent of federation’s executive authority and now federation is required to exercise the related authority and jurisdiction with provinces.

MoPNR has also grossly erred while maintaining that Article 172(3), which commences with the words “subject to existing commitments and obligations’ have not conferred with any authority upon the provinces to regulate existing agreements, licenses or leases. It is to clarify that Article 172(3) only protects the existing agreements, licenses or leases as long as they are being operated and implemented with the originally old terms and conditions. However, any change, alteration, addition, deletion, conversion or amendment in the terms and conditions of the old agreements, licenses or leases after promulgation of 18th Amendment requires approval of the provinces. Any amendments in the terms and conditions of the old agreements, licenses or leases etc. are not covered under the opening phrase “subject to existing commitments and obligations.”

The “ownership” right of the provinces over mineral oil & natural gas had never been an issue. It had always been with the provinces. The Constitution, since inception under Article 161(1), recognizes the ownership rights of the provinces over mineral oil & natural gas by transferring to them all the monies collected on account of royalty and federal duty of excise. Under Article 161(1), the net proceeds of the royalty and federal duty of excise shall not form part of the Federal Consolidated Fund and shall be paid to the province in which

the well head of oil & gas is located. Federal government is only required to collect these monies on behalf of the provinces. The joint and equal "vesting" of oil & gas under Article 172 (3) has not altered the provisions of Article 161 whose scope has even been further expanded after 18th Amendment.

It is, therefore, clear that Article 172(3) read with Article 154(1) and Article 161(1) has redefined the "extent" of the jurisdiction of federation in mineral oil and natural gas related matters and federation is required to exercise the authority in executive, administrative and regulatory sphere jointly and equally with the provinces.

Thus, in order to implement Article 172(3), which is not a self-executing clause the federation may carry out following steps:

- i. Amendments in all laws, ordinance, presidential orders related to oil & gas in the light of Article 172(3) especially "Regulation of Mines and Oil Fields and Mineral Development (Government Control) Act 1948," Mines Act 1923, repeal of President Order No. 8 of 1961, etc.;*
- ii. Amendment in the "Oilfield (Regulation & Development) Act 1969".*
- iii. Drafting and enactment of a new "Petroleum Joint Control Law" with provisions for establishment of petroleum management authority by relating or encompassing DGPC, DG Gas, DG Oil and DG LPG;*
- iv. Amendment in existing (upstream and downstream) rules, policies, PCA, D&P Lease agreements, petroleum sharing agreements in the light of Article 172 etc.;*
- v. Legal/ administrative framework for "Joint Control" over petroleum resources;*
- vi. Amendments in OGRA Ordinance 2002 for equal representation of provinces on the model of NEPRA Act;*
- vii. Due representation of provinces in the Board of Directors in the federal government owned oil & gas companies/ entities such as OGDCL, PPL, PSO, Government Holding Pvt. Limited, Oil Refineries, HDIP etc.;*
- viii. Amendments in relevant laws, rules, regulations on land reclamation, development of coastal regions, fishing rights and licensing regime in the light of Article 172(2);*
- ix. Imposition, collection and disbursement of the excise duty on crude oil in pursuance of Article 161(1)(b);*
- x. Federal government to stop collection of royalty on crude oil and respective province to start collecting royalty of crude oil under its own law as being a constitutional residual subject;*
- xi. Framing of guidelines/ policy in consultation with provinces in pursuance of Article 158;*

- xii. *Economic Coordination Committee (ECC) of the Cabinet may be requested not to encroach the constitutional mandate of the CCI*

In view of the above, it is clear that no serious measure/ step has so far been taken by the federal government to implement the Article 172(3) in letter and spirit. Minor consultation with the provinces on selective matters shall not be construed as implementation of the Article 172(3) rather it falls under the domain of Article 154 i.e. role, functions, duties and authority of CCI where provinces have equal role even prior to 18th Amendment. Implementation of Article 172(3) requires complete overhaul of the existing law, administration, management and regulatory regime related to mineral oil & natural gas."

- f. Third meeting of the series was held with the Province of Khyber Pakhtunkhwa at Peshawar on 27th January 2017, Government of Khyber Pakhtunkhwa briefed the committee in the following terms: -
- a. *"Provinces are the rightful and absolute owners of oil and gas. There is no concept of "Joint Ownership" of oil and gas.*
 - b. *Provinces are allowed to legislate on matters related to mineral oil and natural gas, through passing acts, rules, regulations and policies so as to expedite oil and gas production.*
 - c. *CCI being recognized as an important constitutional body; be allowed all operational powers so as to deal with the day to day business related to natural gas and mineral oil found in the province. Chief Minister be allowed to take executive steps, to legislate, issue licenses, and make contracts with E & P companies regarding the upstream of oil and gas. It may collect royalty, FED, windfall levy production bonus and all such other levies.*
 - d. *The federation along with the provinces needs to work jointly on issues of the establishment of Provincial Regulatory Authorities, division of OGDCL and PPL and direct interaction with E & P companies. Role of NEPRA, OGRA is to be redefined in compliance with Article 172(3).*
 - e. *Lastly MPNR is ultra vires to the Constitution and minor consultation with the provinces shall not be construed as implementation of Article 172 (3).*
 - f. *The rights of the provinces as per the Constitutional scheme of devolution are not yet protected nor implemented in true letter and spirit. Through 18th Constitutional Amendment Act, Article 172 (3); provinces got the legislative and executive powers. Article 172 (3) is self-executing, clear in its object and intent, as it allows the provinces to regulate and execute matters in Oil and Gas found in the locality of such province, with a clear demarcation of the extent of powers that can be exercised by the federal government in its own sphere. All previous acts, regulations, policies and ordinances need to be streamlined along with the Constitution. All existing / future laws not to be inconsistent with any of the Articles of the Constitution of Pakistan 1973 being the supreme law of the land."*
- g. Fourth meeting of the series was held with the Province of Punjab at Lahore on 31st

March 2017, Government of Punjab briefed the committee in the following terms: -

"Federal government is of the view that Article 172(3) stands implemented on the following basis:

- a. *Right of legislation on oil & gas is a mandate of the federal govt. under Article 142(a), Article 97 and Section 6 of the 1948 Act and there is no change in this after the 18th amendment*
- b. *Regulatory control is an exclusive right of the federal Govt. under the Constitution and the regulation of Mines and Oil fields and Mineral Development (Government Control) Act 1948*
- c. *With respect to Article 158, royalty on oil & gas, excise duty on gas and gas development surcharge is being paid to the provinces*

Whereas the Government of Punjab is of the view that: -

- a. *Oil and gas falls in Part II of the Federal Legislative list therefore is the subject of CCI;*
- b. *Amendments in all laws related to oil and gas may be made in the light of the 18th Amendment*
- c. *Administrative framework for joint control over petroleum resources*
- d. *Due representation in BoD in federal government owned oil & gas companies*
- e. *Formulation of guidelines in consultation with provinces*
- f. *Management of related institutional, regulatory and legislative frameworks.*
- g. *Operational arrangement/ tapping financial benefits arising out of joint control*

The Chairman Senate gave a Ruling on the matter in following terms: -

- i. *"Clause (3) of Article 172 of Constitution, 1973, provides for equal ownership of mineral oil & natural gas within the province or the territorial waters adjacent to a province (fifty percent belonging to the federal and fifty percent to the province) and the federation is required to exercise its authority in the executive, administrative and regulatory sphere jointly and equally with the province.*
- ii. *All decisions, except day to day working, pertaining to or related with these matters shall be taken by the Council of Common Interests (CCI), as this entry falls in Part II of the Federal Legislative List, Constitution, 1973*
- iii. *The government should frame a policy as to the extent of involvement of international donor/ organization into the internal affairs of the federation especially its policies and legislations and the same shall be placed before both the Houses of the Parliament for approval within a period of two months."*

REPORTS OF THE COMMITTEE

During the period under reference, the Committee presented its reports on the following issues whose brief reviews are depicted below:

The first report was presented by the chairman of the Functional Committee on Devolution Process on a resolution moved by Senator Sardar Muhammad Azam Khan Musakhel in the Senate's sitting on 5th October 2015, regarding shifting of Pakistan Cricket Board Office from Lahore to Islamabad". After discussion the committee considered the matter in its meetings held on 10th November 2015. In the meeting, the Chairman, Pakistan Cricket Board, along with his team was invited to give his input. He made following submission before the Committee: -

"There is no mala-fide intention in keeping the office of Pakistan Cricket Board at Lahore because international cricket boards are not located in the Capital (Australia, etc.) and shifting of entire infrastructure along with the amenities will be highly expensive. Furthermore, the government had allocated land to the PCB, near Shakarparian, however, subsequently, the same has been cancelled".

"Committee endorsed the submissions made by the Chairman PCB recommended as under:

Office of Pakistan Cricket Board shall not be shifted from Lahore to Islamabad and the Pakistan Cricket Board shall take necessary measures to operationalize all cricket grounds in the country. The composition of Pakistan Cricket Board shall equally represent all federating units and shall establish cricket academies in Balochistan, Khyber Pakhtunkhwa, Sindh and FATA" (Annexed as "E")

In second report, the chairman of the Functional Committee on Devolution Process has presented a special report on "Establishment of Permanent Secretariat of the CCI--A Constitutional Requirement". The Committee considered the matter in its meetings held on 10th November 2015 and 19th July 2016. The secretary from the Ministry of Inter Provincial Coordination (IPC) briefed the Committee and the core issue that is mentioned as under:

"In March 2010, the Prime Minister was pleased to designate Inter Provincial Coordination Division as secretariat of the CCI in place of the Cabinet Division till such time a separate secretariat was established as mandated by the Constitution. The need for a separate secretariat of the CCI, like the Cabinet and the National Security Council, has been felt for quite some time"

In view of the deliberation, the Committee recommends as under:

"The government shall establish a permanent and independent secretariat of CCI within a period of two months and shall ensure provincial and regional representation while appointing/placing staff in the said secretariat. The provinces may be asked to play effective role in agenda setting and holding of the meetings of CCI" (Annexed as "F")

In the third Report, chairman of the Functional Committee on Devolution Process has presented a report on the matter of "Placement of Regulatory Authorities under the Line Ministries". The matter was referred by the House on 23rd December 2016 to the Functional Committee for consideration and report. Following the meeting, the additional secretary of the Cabinet Division briefed the Committee from which the an important issue is mentioned as following: -

“The administrative control of the five (05) regulatory authorities has been transferred from Cabinet Division to the line ministries / divisions. The transferring of regulatory authorities has been made in accordance with the Rules of Business, 1973. As per proviso to the rule 3 (3) of the Rules of Business 1973, distribution of business of the divisions may be modified from time to time by the Prime Minister. Accordingly, the Prime Minister transferred the administrative control of NEPRA, PTA, FAB, OGRA and PPRA to the line ministries. A notification has been issued by the Cabinet Division”

The Committee after detailed deliberations recommended as under: -

“Regulatory authorities should be independent and placing regulatory authorities under the line ministries, without seeking approval from CCI, is a sheer violation of the Constitution and against the concept of “Regulatory Authorities. The independent permanent secretariat of CCI shall be established on priority and all regulatory authorities established under part-II of Federal Legislative List shall be placed under the CCI and at the end devolution shall be a permanent agenda item in every meeting of CCI. (Annexed as “G”)

The fourth report is based on a public petition which was received on 16-11-2017 in the office of the Chairman Senate regarding “Implementation of 18th Constitutional Amendment in the higher education sector confining role of the federal HEC to formulation of standards and enhancing legitimate role of provincial governments especially in funding and implementation of Higher Education Policy”. The Chairman Senate forwarded this petition to the Functional Committee on Devolution for consideration and report.

The petitioner raised the issues for consideration and decision of the Committee:

“Amending HEC Ordinance 2002 in the light of 18th Constitutional Amendment and decisions of Implementation Commission constituted under Article 270 AA. The academic freedom and autonomy of the universities should be ensured and respected as guaranteed by the Constitution of Pakistan and respective universities’ Acts and like other academically advanced countries and professions in Pakistan (judiciary) retirement age for universities’ teachers should be extended from 60 to 65 years due to shortage of experienced senior faculty/PhD supervisions in Pakistan and tax rebate up to 75 % should be restored immediately for universities’ faculty and researchers”

Keeping in view the deliberations specially resolve of all participants that reforms are required in the higher education sector, the Committee recommends as under:-

“Amendment of the Higher Education Ordinance, 2002, in order to ensure that functions of the Commission devolved vide the Eighteenth Constitutional Amendment should be transferred to the provinces and funds being allocated to the higher education sector should be increased. Furthermore, committee added that like other academically advanced countries and professions in Pakistan retirement age for universities’ teachers should be extended from 60 to 65 years due to shortage of experienced senior faculty/PhD supervisions in Pakistan and tax rebate up to 75 % should be restored immediately for universities faculty and researchers”. (Annexed as “G”)

PICTORIAL
GALLERY



Senator Mir Kabeer Ahmed Muhammad Shahi, Chairman, Senate Functional Committee on Devolution Process presiding over a meeting of the Committee at the Parliament House Islamabad, August 24, 2017



Senator Mir Kabeer Ahmed Muhammad Shahi, Chairman, Senate Functional Committee on Devolution Process presiding over a meeting of the Committee at the Parliament House Islamabad, December 21, 2017



Senator Mir Kabeer Ahmed Muhammad Shahi, Chairman, Senate Functional Committee on Devolution Process presiding over a meeting of the Committee at the Parliament House Islamabad, December 22, 2017



Senator Mir Kabeer Ahmed Muhammad Shahi, Chairman, Senate Functional Committee on Devolution Process presiding over a meeting of the Committee at the Parliament House Islamabad, February 22, 2018



The Committee visited the Punjab University. The vice-chancellor and deans of the university attended the meeting (2017)



The Committee conducted meeting at the University of Engineering and Technology (UET), Lahore (2017)

PROVINCIAL CONSULTATION MEETING ON "IMPLEMENTATION OF THE 18TH CONSTITUTIONAL AMENDMENT AT KARACHI, SINDH



Senator Mir Kabeer Ahmed Muhammad Shahi, convened the provincial consultation meeting on the Implementation of the 18th Constitutional Amendment, along with the Committee members at Karachi, Sindh on July 27th, 2018



Later the Peshawar Declaration on 18th Amendment was presented to the Speaker of Sindh Assembly, Agha Siraj Durrani at the Speaker's Office-Sindh Assembly. Other members of the Committee and members of the senate were also present.

PROVINCIAL CONSULTATION MEETING ON "IMPLEMENTATION OF THE 18TH CONSTITUTIONAL AMENDMENT AT LAHORE, PUNJAB



Senator Mir Kabeer Ahmed Muhammad Shahi along with the committee members convening the provincial consultation meeting on the Implementation of the 18th Constitutional Amendment, Lahore, Punjab on January 4th, 2018



PROVINCIAL CONSULTATION MEETING ON "IMPLEMENTATION OF THE 18TH CONSTITUTIONAL AMENDMENT AT PESHAWAR, KHYBER PAKHTUNKHWA



Senator Mir Kabeer Ahmed Muhammad Shahi, convened the provincial consultation meeting on the Implementation of the 18th Constitutional Amendment, along with the Committee members at Peshawar, Khyber Pakhtunkhwa on January 11th, 2018



Later the Peshawar Declaration on 18th Amendment was presented to the Governor of KP, Engr. Iqbal Zafar Jhagra at the Governor House Peshawar. Other members of the Committee and members of the senate were also present.



Senator Mir Kabeer Ahmed Muhammad Shahi along with other committee members also met vice-chancellors of main universities on January 12th, 2018

PROVINCIAL CONSULTATION MEETING ON "IMPLEMENTATION OF THE 18TH CONSTITUTIONAL AMENDMENT AT QUETTA, BALOCHISTAN



Senator Mir Kabeer Ahmed Muhammad Shahi, convening the provincial consultation meeting on the Implementation of the 18th Constitutional Amendment, Quetta, Balochistan on October 4th, 2017



Senator Mir Kabeer Ahmed Muhammad Shahi, convening the National Conference on the Implementation of the 18th Constitutional Amendment organized by Pakistan Institute for Development Economics (PIDE) and Friedrich-Ebert-Stiftung, Islamabad, February 7th, 2017

**SELECTED
PRESS
RELEASES**

**SENATE SECRETARIATE
MEDIA DIRECTORATE**

Press Release
21st December, 2017
Islamabad

Senate Functional Committee on Devolution recommended that the retirement age of university teachers should be extended to 65 years and to give them tax rebate of 75%.

The Committee discussed the public petition by the all Pakistan Teachers Associations regarding the implementation of 18th amendment in Higher Education Sector confining role of Federal HEC to formulation of standards and enhancing legitimate role of provincial governments specially in funding and implementation of Higher Education Policy.

They claimed that HEC is encroaching on their rights since the subject is now devolved and the Federal HEC has no right to interfere in their matters. The Chairman HEC along with vice chancellors of government universities from all provinces attended the meeting and submit their response on the said agenda and told the Committee that HEC is abundantly cooperating with universities and looking after the matters after the devolution of powers. Chairman HEC briefed the Committee and assured that the only intervention that the HEC does is in matters of maintaining the standards and quality of the education on national level.

The secretary cabinet division informed the Committee about their recent CCI meeting and said that the Prime Minister has designed a special task force under the chairmanship of the Federal Minister for Education in this regard and this task force has to take prompt action to demarcate the boundaries between the provincial and federal HEC and they are to meet again on 24th December for this purpose.

Other agenda relating to the devolution of PTDC to provinces and the liquidation of its assets among the provinces that not only translates into the violation of the Constitution but also raises question on the implementation of the 18th Amendment.

The M.D PTDC highlighted the background of the situation arose and the legal advisor gave the presentation and adopted the view that although the subject of tourism was devolved but PTDC is a corporation which was established in 1971 and registered under the Companies Act 1911 and since the company cannot be devolved. They also briefed that since the PTDC being a corporation is still a federal owned company therefore all the assets wherever in the country they may be they are still the ownership of the federal government and their liquidation now will create unequal distribution among the provinces as some provinces have more assets than the others but the committee and all its members were of the view that those assets are the ownership of the provinces and should be handed over to federal.

Chairman directed the MD PTDC to give the detailed briefing on PTDC budget, balance sheet, auditors' report, working staff and details of all of its assets provincial and city wise.

The chairman of the Committee asked about the pending salaries of the staff in response to which MD PTDC told that regular salaries are being paid on regular basis and promised that few months' arrears would be paid within next two months.

Committee was chaired by Senator Mir Kabir Ahmed Shahi, and was attended among others by Senators, Taj Haider, Kamil Ali Agha, M. Ilyas Blour, Liaquat Khan Tarakai and Sassui Palijo. Officials from HEC and Cabinet Division also attended it.

**SENATE SECRETARIATE
MEDIA DIRECTORATE**

Press Release
2017
Islamabad

Meetings of the Functional Committee on Devolution were held in the University of Engineering & Technology and University of Punjab. These meetings are follow up of an earlier meeting of the Committee held at Islamabad, wherein a public petition regarding implementation of 18th Constitutional Amendment in the sector of Higher Education was examined by the Committee. The petition was filed by the Teachers Association. The Committee had detailed briefings from the vice chancellors of UET & University of Punjab, respectively. The Committee observed that financial devolution of resources from HEC to the provinces is yet to be achieved. Accordingly, the Committee will hold a meeting at Islamabad with all stakeholders including Federal HEC, Provincial HEC and provincial education departments to ensure that Item 12 of the Federal Legislative List Part-II is implemented in letter and spirit. The Committee also recommended that, given the quality of education in UET & University of the Punjab, the said universities may extend support and assistance to universities in other provinces. The Committee also recommended that quota for students of less developed areas especially Balochistan and FATA may be increased and issues faced by the students of these areas may be resolved.

**SENATE SECRETARIATE
MEDIA DIRECTORATE**

Press Release
4th January, 2018
Lahore, Punjab

**Consultation on Implementation of the 18th
Constitutional Amendment**

LAHORE: Politicians, academicians and civil society members discussed issues related to challenges to the implementation of the 18th Constitutional Amendment here on Thursday stressed that for harmony and good governance in the country, the provinces should be part of policy and decision making at the federal level.

They expressed the views at a consultation meeting on the Implementation of the 18th Constitutional Amendment. Arranged by the Pakistan Institute for Parliamentary Services (PIPS)), in cooperation with the German foundation Friedrich-Ebert-Stiftung (FES) in collaboration with Senate's Functional Committee on Devolution Process the meeting addressed the topics of Civil Services, Oil and Gas Resources, Council of Common Interests and Education/Curriculum.

Chairman of the Senate's Functional Committee on Devolution Process; Senator Mir Kabeer Ahmed Muhammad Shahi in his address stated the challenges to implementation of the 18th amendment and said that the 18th Amendment devolved the oil/gas resources to the provinces, it is a subject of debate since Article 172(3) of the Constitution has different interpretations.

The article states that "subject to existing commitment and obligations, mineral oil and natural gas within the province or the territorial waters adjacent thereto shall vest jointly and equally in that province and the federal government."

"It focuses on the equal distribution of revenues, but it does not discuss joint decisions on the subject of oil and gas. It is, indeed, a bottleneck,"

"Federal and provincial governments have confronted each other many times because provinces want to be part of the decision-making process.

He also highlighted the issue of lack of the Council of Common Interests (CCI) secretariat which needs urgent attention.

The Ministry of Petroleum is run by the federal government, but it should be a joint ministry between both parties.

Senator Shahi recalled that the provinces had no say in any ministry or decisions made until the 18th Amendment was introduced in April of 2010, giving hope to the deprived provinces.

"Under the amendment, 17 federal ministries were to be devolved to the provinces, but so far not even five percent of the amendment has been implemented," he lamented.

Report of the Functional Committee on Devolution

Instead of fully devolving the 17 ministries to the provinces, the federal government has established 12 new ministries, he said, likening the act with the banned organization reappearing under another name.

The committee members were unanimously of the view that without giving due rights and devolving the power to provinces, there can never be a strong federation.

ANNEXURES

Annex-A

KARACHI DECLARATION

This gathering of Parliamentarians, Academia, Civil Society Organizations, Journalists and Intellectuals, meeting on the invitation of the Senate's Function Committee on Devolution, do hereby declare as under:-

7. That democracy and a true federal system is the only panacea for survival of Pakistan and the Constitution of Pakistan is guarantor in this regard which also provides for a mechanism to protect the rights of provinces.
8. That the Eighteenth Constitutional Amendment reaffirms the principles of democratic, parliamentary and federal structure. It widened the concepts of participatory federalism, joint ownership of natural resources, collective management and supervision of items in Federal Legislative List Part-II, Constitution 1973, and dispute resolution.
9. That the Federal and Provincial Governments shall take every possible step to ensure that the 18th Constitutional Amendment is implemented in letter and spirit.
10. That the Council of Common Interest (CCI) was given a new role under the 18th Constitutional amendment to provide the center and provinces a forum to take consensus decisions on conflicting issues; this forum shall be effectively utilized to address the issues being faced by the Provinces regarding the implementation of devolution scheme.
11. That attempts to bypass and undermine the jurisdiction and powers of CCI shall be stopped forthwith.
12. That the Federal Government shall assume its role and responsibility by establishing an independent permanent Secretariat of CCI on priority.
13. That placement of regulatory authorities under the line ministries is a violation of the Constitution, therefore, regulatory authorities established under part-II of Federal Legislative list shall be placed under the CCI.
14. That 'Devolution' shall be a permanent agenda item of every meeting of CCI.
15. That the forum of IPCC shall meet more often and more suchlike forms shall be established to create better linkages with the Provinces.
16. That the true benefits of the paradigm shift, by giving more provincial autonomy, brought in by the 18th amendment are yet to be reaped, therefore, political, administrative and financial responsibility and authority should be devolved to the elected representatives of the Local Governments in letter and spirit to ensure the true spirit of federalism.
17. That the Eighth NFC award shall be announced on priority basis after incorporating measures that would make devolution more meaningful in raising the living standards of the common citizens.
18. That Senate, House of the Federation, being protector and representative of the rights of

the federating units, shall ensure that the 18th Constitutional Amendment is implemented in letter and spirit and shall act as a forum to resolve the issues being faced in its implementation.

19. That there shall be active interaction and linkages between the Senate's Functional Committee on Devolution and Provincial Governments as well as corresponding Committees of the Provincial Legislatures to rectify issues being faced in the implementation of scheme of Devolution as provided in the Constitution.

27th July, 2017

Karachi

Annex-B

QUETTA DECLARATION

This gathering of Parliamentarians, Provincial Government representatives, Academia, Civil Society Organisations, Journalists and Intellectuals do hereby declare as under:-

1. Democracy and a true federal system is the only panacea for survival of Pakistan and the Constitution of Pakistan is guarantor of the participatory federalism and also provides a mechanism to protect the rights of provinces.
2. The 18th Constitutional Amendment reaffirmed the principles of a democratic, parliamentary and federal structure. It widened the concepts of participatory federalism, joint ownership of natural resources, collective management and supervision of items in Federal Legislative List Part-II, Constitution, 1973 and dispute resolution.
3. The Federal and Provincial Governments shall take every possible step to ensure that the 18th Constitutional Amendment is implemented in letter and spirit.
4. The constitution provides right of education to all including higher education as well. There is a need to make amendment in the rules of the Higher Education Commission in pursuance of the 18th Constitutional Amendment. The share of the provinces should also be allocated in the funds of the Higher Education Commission.
5. Keeping the devolved ministries with new names under the federal government is against the spirit of the 18th Constitutional Amendment.
6. It is unfortunate that the federal government did not transfer assets of the devolved ministries to provinces.
7. The NFC Award has not been announced after 18th Constitutional Amendment which is the main cause for financial problems of provinces. The federation should play its constitutional liability and announce the NFC Award forthwith.
8. The unconstitutional interference of the Federal Government in the Federal Legislative List Part-II and the efforts to make Council of Common Interest as redundant must be stopped.
9. There shall be active interaction and linkages between the Senate's Functional Committee on Devolution and Provincial Governments as well as corresponding Committees of the Provincial Legislatures to rectify issues being faced in the implementation of scheme of Devolution as provided in the Constitution.

4th October, 2017

Quetta

Annex-C

LAHORE DECLARATION

This gathering of Parliamentarians, Provincial Government representatives, Academia, Civil Society Organizations, Journalists and Intellectuals, meeting on the invitation of the Senate's Function Committee on Devolution, do hereby declare as under:-

1. Democracy and a true federal system is the only panacea for survival of Pakistan and the Constitution of Pakistan is guarantor of the participatory federalism and also provides a mechanism to protect the rights of provinces.
2. The Eighteenth Constitutional Amendment reaffirmed the principles of democratic, parliamentary and federal structure. It widened the concepts of participatory federalism, joint ownership of natural resources, collective management and supervision of items in Federal Legislative List Part-II, Constitution, 1973, and dispute resolution.
3. The Federal and Provincial Governments shall take every possible step to ensure that the 18th Constitutional Amendment is implemented in letter and spirit and its benefits are transmitted to the common people.
4. Attempts to bypass and undermine the jurisdiction and powers of the Council of Common Interest (CCI) shall be stopped forthwith; CCI was given a new role under the 18th Constitutional amendment to provide the center and provinces a forum to take consensus decisions on conflicting issues, therefore, this forum shall be effectively utilized to address the issues being faced by the Provinces regarding the implementation of devolution scheme.
5. The true benefits of the paradigm shift, by giving more provincial autonomy, brought in by the 18th amendment are yet to be reaped, therefore, political, administrative and financial responsibility and authority should be devolved to the elected representatives of the Local Governments in letter and spirit to ensure the true spirit of federalism.
6. The Federal Government shall establish a dedicated Devolution Cell to deal with the issues pertaining to devolution and provide support to provinces in this regard.
7. Devolution shall be part of Charters of all political parties of Pakistan; Members of Provincial Assemblies shall use various Parliamentary tools to highlight the impediments in the way of devolution and ensure accountability of the Federal and Provincial Governments in this regard.
8. Higher Education is the lifeline of the Pakistan's future, therefore, for resolution of issue as to devolution of functions of the Higher Commission, the Functional Committee on Devolution shall take up this intricate matter and provide a forum to all stake holders including the Universities, Federal and Provincial Governments and HECs to review the Higher Education Commission Ordinance, 2002, to ensure that item 12 of Federal Legislative List Part-II is implemented in letter and spirit .
9. Eighth NFC award shall be announced on priority basis after incorporating measures that would make devolution more meaningful in raising the living standards of the common citizens.

Report of the Functional Committee on Devolution

10. That Senate, House of the Federation, being protector and representative of the rights of the federating units, shall ensure that the 18th Constitutional Amendment is implemented in letter and spirit and shall act as a forum to resolve the issues being faced in its implementation.
11. There shall be active interaction and linkages between the Senate's Functional Committee on Devolution and Provincial Governments as well as corresponding Committees of the Provincial Legislatures to rectify issues being faced in the implementation of scheme of Devolution as provided in the Constitution.
12. The Provincial legislatures shall also constitute dedicated Committee on Devolution.

4th January, 2018

Lahore

Annex-D

PESHAWAR DECLARATION

This gathering of Parliamentarians, Provincial Government representatives, Academia, Civil Society Organisations, Journalists and Intellectuals do hereby declare as under:-

1. Democracy and a true federal system is the only panacea for survival of Pakistan and the Constitution of Pakistan is guarantor of the participatory federalism and also provides a mechanism to protect the rights of provinces.
2. The 18th Constitutional Amendment reaffirmed the principles of a democratic, parliamentary and federal structure. It widened the concepts of participatory federalism, joint ownership of natural resources, collective management and supervision of items in Federal Legislative List Part-II, Constitution, 1973 and dispute resolution.
3. The Federal and Provincial Governments shall take every possible step to ensure that the 18th Constitutional Amendment is implemented in letter and spirit.
4. The Constitution provides right of education to all including higher education as well. There is a need to make amendment in the rules of the Higher Education Commission in pursuance of the 18th Constitutional Amendment. The share of the provinces should also be allocated in the funds of the Higher Education Commission.
5. Keeping the devolved ministries with new names under the federal government is against the spirit of the 18th Constitutional Amendment.
6. It is unfortunate that the federal government did not transfer assets of the devolved ministries to provinces.
7. The NFC Award has not been announced after 18th Constitutional Amendment which is the main cause for financial problems of provinces. The federation should play its constitutional liability and announce the NFC Award forthwith.
8. The unconstitutional interference of the Federal Government in the Federal Legislative List Part-II and the efforts to make Council of Common Interest as redundant must be stopped.
9. There shall be active interaction and linkages between the Senate's Functional Committee on Devolution and Provincial Governments as well as corresponding Committees of the Provincial Legislatures to rectify issues being faced in the implementation of scheme of Devolution as provided in the Constitution.
10. There is a need to enhance scope and financial powers of the Upper House for implementation on the 18th Constitutional Amendment. The Resolution passed in this context by the Senate should be implemented as it is.
11. The Federal Government should pay dues/ royalty of natural gas to Balochistan and other provinces for the last 60 years worth billions of rupees.

Report of the Functional Committee on Devolution

12. The Federal Government should pay dues worth billion of rupees to government of KP.
13. The subject of tobacco should be transferred to KP because it is one of the cash crops of KP.

11th January, 2017

Peshawar

Annex-E

**REPORT OF THE FUNCTIONAL COMMITTEE
ON DEVOLUTION PROCESS**

On a matter referred by the House
*“Shifting of Pakistan Cricket Board Office from Lahore to
Islamabad”*

**Report No. 01
(Thirteenth Parliamentary Year)**

PRESENTED BY

**SENATOR MIR HASIL KHAN BIZENJO
CONVENER**

SENATE SECRETARIAT

REPORT OF THE FUNCTIONAL COMMITTEE ON DEVOLUTION PROCESS ON “A RESOLUTION MOVED BY THE SENATOR SARDAR MUHAMMAD AZAM KHAN MUSAKHEL IN THE SENATE SESSION ON 5TH OCTOBER, 2015 RE- GARDING SHIFTING OF PAKISTAN CRICKET BOARD OFFICE FROM LAHORE TO ISLAMABAD”

I, Chairman of the Functional Committee on Devolution Process, have the honour to present a report on “ a resolution moved by the Senator Sardar Muhammad Azam Khan Musakhel in the Senate Sitting on 5th October, 2015, regarding shifting of Pakistan Cricket Board Office from Lahore to Islamabad”. After discussion the matter was referred to the Functional Committee for consideration and report.

2. The composition of the Functional Committee on Devolution Process is as under:-

1. Senator Mir Hasil Khan Bizenjo	Chairman
2. Senator Nawabzada Saifullah Magsi	Member
3. Senator Kamil Ali Agha	Member
4. Senator Col (R) Syed Tahir Hussain Mashhadi	Member
5. Senator Nisar Muhammad	Member
6. Senator Ilyas Ahmad Bilour	Member
7. Senator Taj Haider	Member
8. Senator Muhammad Ali Khan Saif	Member
9. Senator Iqbal Zafar Jhagra	Member
10. Senator Muhammad Usman Khan Kakar	Member
11. Senator Ayesha Raza Farooq	Member
12. Senator Chaudhary Tanvir Khan	Member
13. Senator Liaqat Khan Tarakai	Member
14. Senator Atta-ur-Rehman	Member
15. Minister for Inter Provincial Coordination	Ex-Officio Member

3. The Committee considered the matter in its meetings held on 10th November, 2015.

4. The Chairman, Pakistan Cricket Board, alongwith his team was invited to give his input. He made following submission before the Committee:-

- i. There is no malafide intention in keeping the office of Pakistan Cricket Board at Lahore.
- ii. Internationally Cricket Boards are not located in the Capital. (Australia, etc.).

- iii. Head offices of other sports organizations/Boards, hockey, squash, etc., are also not located in the Federal Capital.
 - iv. Shifting of entire infrastructure alongwith the amenities will be highly expensive.
 - v. Initially, the Government had allocated land to the PCB, near Shakarparian, however, subsequently, the same has been cancelled.
5. Members endorsed the submissions made by the Chairman PCB and opined that either all head offices of Federal Organizations/bodies be shifted to the Capital or suchlike stand alone practices should not be developed.
6. Senator Muhammad Usman Khan Kakar stressed the need to strengthen the spirit of Federation and supported the shifting of PCB Headquarter from Lahore to Islamabad.
7. The Committee recommended as under:-
- i. Office of Pakistan Cricket Board shall not be shifted from Lahore to Islamabad.
 - ii. The Pakistan Cricket Board shall take necessary measures to operationalize all cricket grounds in the country.
 - iii. Composition of Pakistan Cricket Board shall equally represent all federating units.
 - iv. The Pakistan Cricket Board shall establish cricket academies in Balochistan, Khyber Pakhtunkhwa, Sindh and FATA.
8. In view of the above-mentioned, the Committee recommends that the instant Resolution may not be passed by the Senate.

RABEEA ANWAR
D.S/ Secretary Committee

(SENATOR MIR HASIL KHAN BIZENJO)
Chairman

Annex-F

SPECIAL REPORT OF THE FUNCTIONAL COMMITTEE ON DEVOLUTION PROCESS

***“Establishment of permanent Secretariat of CCI--
a Constitutional requirement”***

Report No. 2

PRESENTED BY

**SENATOR MIR KABEER AHMED MUHAMMAD SHAHI
CHAIRMAN**

SENATE SECRETARIAT

SPECIAL REPORT OF THE FUNCTIONAL COMMITTEE ON DEVOLUTION PROCESS ON "ESTABLISHMENT OF PERMANENT SECRETARIAT OF CCI -- A CONSTITUTIONAL REQUIREMENT"

I, Chairman of the Functional Committee on Devolution Process, have the honour to present a special report on "Establishment of permanent Secretariat of CCI -- a Constitutional requirement". After discussion the matter was referred to the Functional Committee for consideration and report.

2. The composition of the Functional Committee on Devolution Process is as under:-

1. Senator Mir Kabeer Ahmed Muhammad Shahi	Chairman
2. Senator Nawabzada Saifullah Magsi	Member
3. Senator Kamil Ali Agha	Member
4. Senator Col (R) Syed Tahir Hussain Mashhadi	Member
5. Senator Nisar Muhammad	Member
6. Senator Ilyas Ahmad Bilour	Member
7. Senator Taj Haider	Member
8. Senator Muhammad Ali Khan Saif	Member
9. Senator Sardar Muhammad Yaqoob Khan Nasar	Member
10. Senator Muhammad Usman Khan Kakar	Member
11. Senator Ayesha Raza Farooq	Member
12. Senator Chaudhary Tanvir Khan	Member
13. Senator Liaqat Khan Tarakai	Member
14. Senator Atta-ur-Rehman	Member
15. Minister for Inter-Provincial Coordination	Ex-Officio Member

3. The Committee considered the matter in its meetings held on 10th November, 2015 and 19th July, 2016.

4. Secretary, Ministry of Inter Provincial Coordination (IPC) briefed the Committee on the instant agenda item in the following terms:-

"In March, 2010, the Prime Minister was pleased to designate Inter Provincial Coordination Division as Secretariat of the CCI in place of Cabinet Division till such time a separate Secretariat was established as mandated by the Constitution. The need for a separate Secretariat of the CCI, like the Cabinet and the National Security Council, has been felt for quite some time and has been impressed upon at various for a.

The CCI in its meeting held on March 18, 2015, directed the Ministry of IPC to firm up proposal for strengthening of CCI and establishment of its permanent secretariat. The Governments of Balochistan and Khyber Pakhtunkhwa have also recommended for establishment of a permanent Secretariat of CCI having provincial representation.

The Ministry of IPC submitted a Summary, in this context, for approval of the Prime Minister on 4th June, 2015. In response, the Prime Minister's Office vide u.o. dated 10th August, 2015 advised to re-formulate the proposal so that if new CCI Secretariat is created, strength of IPC may be reduced correspondingly and the cost of both formulations should remain within allocated budget of IPC Division without recourse to any supplementary budget requirement. Accordingly, the Ministry of IPC submitted a reformulated proposal for approval of the Prime Minister on 1st September, 2015.

The Prime Minister's Office, however, returned the Summary with the advice for its re-submission along with clarifications on Para 28/N of the Summary. This Ministry submitted its reply on 18-01-2016 and proposed that the Ministry of IPC may be renamed as "Ministry of IPC and CCI Secretariat" and the subject of all Federal Regulatory Authority may also be transferred to Ministry of IPC.

However, the Prime Minister's Office again returned the Summary and advised this Ministry of resubmit the case, after examining the merits and demerits of all the three options given vide Para 28 (ii) of the Summary and route it through M/o Information and Broadcasting & Cabinet Division in the light of new issue i.e. transfer of Federal Regulatory Authorities.

Accordingly, after examining the merits and demerits of the case, a draft reply has been prepared and is under submission to the Prime Minister's Office through M/o Information and Broadcasting & Cabinet Division.

Meanwhile, the Senate of Pakistan vide its Resolution No. 263 dated 19th May, 2016 has also stressed the establishment of a permanent Secretariat of CCI."

5. The Committee noted that despite the Ruling of the Chairman Senate on the instant matter two resolutions passed by the House and efforts of Ministry of IPC, the matter remains unresolved. The members were one voiced as to the need of independent secretariat for CCI and termed it as an effective tool for creating linkages between CCI and provinces.

6. The Committee also took note and made reference to the Constitution making Debate of the National Assembly in 1973, wherein, during debate on article 141, as then it was, the then Law Minister made following submissions on the floor of the House:-

"under the Constitution a new institution has been set up-institution of the Council of Common Interests. In this institution, under the Constitution, equal representation has been given to the Provinces of Pakistan. Each Province is to be represented on this Council by their Chief Ministers and representation equal to the total number of Chief Ministers has been given to the Federal Government also so that a permanent Constitutional institution of the Council of Common Interests comprising the four Chief Ministers and four Federal Minister shall be constantly functioning and this shall have the authority, the exclusive authority not only in the Federal Cabinet, but apart from outside the Federal cabinet, it shall have the executive authority, over the subjects which form part which are mentioned in the Second Part of the Federal Legislative List and these are all important subjects like heavy industry, oil and gas development, railways, mineral oil and natural gas, liquid and substances declared by the Federal law to be dangerously inflammable, development of industries, where development under Federal Control is declared to be Federal law, expenditure in the public interest and so on and so forth, institutions like the WAPDA, WPIDC and like matters and

electricity from the Concurrent List at No. 34. Now decisions shall be taken by the Council of Common interests by majority of the Members present. It shall have the power to frame its rules. This Council of Common Interests has also been given authority to adjudicate upon disputes arising out of the natural waters between the Provinces and between Provinces and Federation and the appellate authority or the revisional authority against the decision of the Council of Common Interests in not the Federal Cabinet, is not the National Assembly of Pakistan, but Parliament of Pakistan comprising the National Assembly as well as the Senate in joint sitting. The Council of Common Interest shall exercise control and supervision over the institutions which are federal or which are autonomous bodies controlled by the Federal Government dealing with such subjects like railways and oil and gas development heavy industries, and so on and so forth, SAPDA and WPIDC. Only Parliament shall have the power to issue, from time to time, directions to Council of Common Interests. In such a way, by this innovation, although it was not possible to hand over these subjects to the Provinces because of contiguity and innumerable Problems which have resulted by handing over subjects like railways to the provinces, every Province has been given representation equal to that of the other Province irrespective of the population of the province. This is truly and genuinely an innovation, an attempt to bring about provincial participation with equal status to every provinces irrespective of size of the province or the population of the province and then this institution under the Constitution has not been subjected to the overall jurisdiction of the executive authority of the federation.”

7. The Committee also noted with concern that the existing strength of four officials is insufficient to provide meaningful support to CCI and provinces. The Chairman Committee inquired about the number of committees of CCI and output of the same. The Additional Secretary, IPC, informed that only one committee of CCI is working with the mandate to review/ examine the agenda to be placed before the CCI, in order to refine the same.

8. The Committee was also briefed that the Provinces are not actively participating in providing/contributing agenda items for the meetings of CCI. The Committee took note of the situation and decided to write to the provincial Chief Ministers to use the forum of CCI more effectively. The Committee also took note that Provinces of Khyber Pakhtunkhwa and Sindh have already written for holding the meeting of CCI, however, the same has not been held till date.

9. In view of the deliberations, the Committee recommends as under:-

- i. The Government shall establish a permanent and independent secretariat of CCI within a period of two months.
- ii. The Government shall ensure provincial and regional representation while appointing/placing staff in the said secretariat.
- iii. The provinces may be asked to play effective role in agenda setting and holding of the meetings of CCI.

RABEEA ANWAR
J.S/ Secretary Committee

(SENATOR MIR KABEER AHMED
MUHAMMAD SHAHI)
Chairman

Annex-G

**REPORT OF THE
FUNCTIONAL COMMITTEE ON DEVOLUTION**

***“Placement of Regulatory Authorities under the
Line Ministries”***

Report No. 3

PRESENTED BY

**SENATOR MIR KABEER AHMED MUHAMMAD SHAHI
CHAIRMAN**

SENATE SECRETARIAT

REPORT OF THE FUNCTIONAL COMMITTEE ON DEVOLUTION ON “PLACING OF REGULATORY AUTHORITIES UNDER THE LINE MINISTRIES, WHICH WAS REFERRED BY THE HOUSE ON 23RD DECEMBER, 2016”

I, Chairman of the Functional Committee on Devolution Process, have the honour to present a report on the matter of “placement of Regulatory Authorities under the Line Ministries”. The matter was referred by the House on 23rd December, 2016 to the Functional Committee for consideration and report.

2. The composition of the Functional Committee on Devolution is as under:-

1. Senator Mir Kabeer Ahmed Muhammad Shahi	Chairman
2. Senator Nawabzada Saifullah Magsi	Member
3. Senator Kamil Ali Agha	Member
4. Senator Col (R) Syed Tahir Hussain Mashhadi	Member
5. Senator Nisar Muhammad	Member
6. Senator Ilyas Ahmad Bilour	Member
7. Senator Taj Haider	Member
8. Senator Muhammad Ali Khan Saif	Member
9. Senator Sassui Palijo	Member
10. Senator Muhammad Usman Khan Kakar	Member
11. Senator Ayesha Raza Farooq	Member
12. Senator Chaudhary Tanvir Khan	Member
13. Senator Liaqat Khan Tarakai	Member
14. Senator Atta-ur-Rehman	Member

3. The Committee considered the matter in its meeting held on 11th January, 2017; the following Members attended the meeting:-

1. Senator Mir Kabeer Ahmed Muhammad Shahi	Chairman
2. Senator Kamil Ali Agha	Member
3. Senator Col (R) Syed Tahir Hussain Mashhadi	Member
4. Senator Nisar Muhammad	Member
5. Senator Ilyas Ahmad Bilour	Member
6. Senator Taj Haider	Member
7. Senator Muhammad Ali Khan Saif	Member
8. Senator Sassui Palijo	Member

9.	Senator Muhammad Usman Khan Kakar	Member
10.	Senator Ayesha Raza Farooq	Member
11.	Senator Atta-ur-Rehman	Member

4. The Committee took serious note of absence of Secretary Cabinet Division and termed it as a serious disregard of the Parliament and its Committees. Additional Secretary, Cabinet Division, informed the Committee that Secretary had to attend the meeting of ECC, which was rescheduled at the last time. The Committee was of the considered opinion that Secretary Cabinet Division should have attended the meeting as his absence gives an impression that Cabinet Division is not interested in the issues of national importance, specially, related to the Federation, which is deplorable.

5. Additional Secretary, Cabinet Division briefed the Committee on the instant agenda item in the following terms:-

- i. The administrative control of the five (05) Regulatory Authorities has been transferred from Cabinet Division to the line Ministries / Divisions. The transferring of Regulatory Authorities has been made in accordance with the Rules of Business, 1973. As per proviso to the rule 3 (3) of the Rules of Business 1973, distribution of business of the Divisions may be modified from time to time by the Prime Minister. Accordingly, the Prime Minister transferred the administrative control of NEPRA, PTA, FAB, OGRA and PPRA to the line Ministries. A Notification has been issued by the Cabinet Division.
- ii. It is important to note that the Rules of Business, 1973 derive their power from Articles 90 and 99 of the Constitution of Pakistan. The Rules define the term Business as "Business means all work done by the Federal Government", and rule 3 (3) of the Rules of Business, 1973 categorically state:

Allocation of Business:

- 1) The Federal Secretariat shall comprise the Minister and Divisions shown in Schedule- I.
- 2) The Prime Minister may, whenever necessary, constitute a new Ministry consisting of one more Division.
- 3) The business of Government shall be distributed among the Divisions in the manner indicated in Schedule-II.

Provided that the distribution of business or the constitution of the Division may be modified from time to time by the Prime Minister.

- iii. The subject Regulatory Authorities are included in Federal Legislative List Part-II. In terms of Article 154 (1) of the Constitution the Council of Common Interest shall formulate and regulate policies in relation to matter in Part-II of the Federal Legislative List and shall exercise supervision and control over related institutions. However, Article 1, 54 is not relevant to the transfer of Regulatory Authorities in the instant case as it does not relate to change in policy but is an administrative measure which is within the ambit of the Prime Minister in terms of rule 3 (3) of the Rules of Business, 1973.

- iv. It is added that the Regulatory Authorities work in accordance with their statute / law. The placement of a Regulatory Authority under a certain Division of Federal Secretariat does not involve any deviation from their prescribed statute / law and policy. Moreover, the transferring of Regulatory Authorities from Cabinet Division to line Ministries / Divisions will not affect their administrative and financial autonomy as their parent legislation stands unchanged.
 - v. It is pertinent to mention that a number of Regulatory Authorities are already functioning under their line Ministries / Divisions.
 - vi. It is also pertinent to mention that Regulatory Authorities recently transferred from Cabinet Division to line Ministries / Divisions were either working under a certain Ministry / Division including their line Ministry / Division prior to their placement under the Cabinet Division. For example, NEPRA was established in 1995 under line Ministry i.e. Minister of Water & Power. Similarly, PTA also constituted in 1996 under the line Ministry, then Ministry of Communication. Thereafter, PTA was transferred to another line Ministry i.e. Ministry of Information & Technology. Gas Regulatory Authority, now OGRA was originally established under Ministry of Petroleum & Natural Resources. PPRA was also originally established under Finance Division in 2002 and thereafter was transferred to Cabinet Division in 2005.
 - vii. In all the previous cases, administrative control of Regulatory Authorities was transferred by the executive by invoking rule 3 (3) of the Rules of Business, 1973 and not even in a single case was referred to the Council of Common Interests.
6. Secretary, Ministry of Inter Provincial Coordination briefed the Committee on the instant agenda item in the following terms:-
- i. IPC Division/ CCI Secretariat initially requested Prime Minister's Office on 3rd June, 2016 to seek convenience of Honourable Prime Minister to the holding/ convening of CCI meeting. A list of seven available agenda items was also conveyed. The item "Transfer of Regulatory Authorities from Cabinet Division on line Ministries" was not included as the summary on the subject was not available in the Secretariat.
 - ii. Again on 6th of October 2016, the IPC Division/ CCI Secretariat requested Prime Minister's Office for convenient date and time for the purpose. This time, the number of available agenda items as conveyed to Prime Minister's Office was eleven. The agenda item in question i.e. Transfer of Regulatory Authorities was still not included therein as the summary on the subject was not available in the Secretariat.
 - iii. The Prime Minister's Office conveyed approval of the Prime Minister to the convening of CCI meeting on 15th December, 2016, alongwith the approved seven point agenda item including "Transfer of Regulatory Authorities" to the line ministries. Ministry of IPC/CCI Secretariat circulated the approved agenda to all concerned on 7th December, 2016.
 - iv. In response, Prime Minister's Office conveyed approval of the revised agenda, incorporating three additional items while simultaneously excluding the previously approved item of "Transfer of Regulatory Authorities from Cabinet Division to line

Ministries” from the final agenda.

- v. Accordingly, Ministry of IPC/CCI Secretariat circulated the revised agenda on 9th December, 2016 to all concerned by deleting the item of “Transfer of Regulator Authorities” while also adding the newly approved items.

7. Heads of the Regulatory Authorities were also invited to give their input. Chairman NEPRA briefed the Committee that all over the world regulatory authorities are administratively, financially, and operationally independent so that they can perform their functions of protecting the interests of stakeholders; in the case of NEPRA, the stakeholders are,- NEPRA, its Consumers and the Government. He further apprised the committee that Government is the major stakeholder as it has 80% ownership of the electricity and power generation setup. The Government has 100 percent ownership of distribution companies, Ministry of Water and Power and transmission Company NTDC are also government organizations, 34 IPPS are owned by the Private Sector whereas others are owned by the Government. NEPRA, as a regulator, has to keep a check on the performance of Distribution companies, examined whether the transmission line is complete, grid station is complete, etc. Ministry of Water and Power is the main stakeholder in this entire process of regulation and placing NEPRA under the said ministry amounts to putting fetters to the independence of regulatory authority. Putting under the lone ministry will mean that the Ministry of water and power will initiate appointment of the chairman NEPRA and members, removal from the office, their extension and tenure and allied matters like salaries and other perks.

8. Chairman PPRA briefed that PPRA is fully funded by the Government when you are financially dependent on government you cannot say that it is autonomous so we do not have any objection as to the placement under the line ministry.

9. Chairperson, Oil and Gas Regulatory Authority (OGRA) stated that OGRA performs all functions and powers strictly in accordance with its Ordinance. Placement of OGRA under the line ministry has resolved many issues specially matters pertaining to licensees.

10. Chairman Pakistan Telecommunication Authority (PTA) also stated that he does not foresee any issue due to the placement under the line ministry and PTA fully supports the decision.

11. Members of the Committee gave their point of view on the issue of placement of the Regulatory Bodies under line ministries. Chairman of the Committee remarked that creation of a permanent Secretariat of the CCI would enable the forum to play its Constitutional role effectively and there is dire need to act seriously in this regard. Senator Sassui Palijo observed that the decision is against the spirit of the Constitution and the government should review this process. She said that deliberate attempts were being made to undermine the true spirit of 18th Constitutional Amendment and Parliament was kept in the dark while taking decision on an important issue.

12. Senator Muhammad Usman Kakar pointed out that federal government is not serious in implementing the devolution process in letter and spirit. He reiterated his resolve to make every effort for true implementation of the devolution plan. He proposed that the subject of devolution should be a part of the CCI agenda on permanent basis to ensure its proper implementation.

13. Senator Tahir Hussain Mashhadi also protested on the move and said that it is a grave violation of the Constitution.

14. Senator Ayesha Raza Farooq strongly opposed the stance that the government wants to roll back the 18th Constitutional Amendment and reaffirmed that Government is sincere in the implementation of the devolution plan and steps are being taken in the right direction.

15. Senator Ilyas Ahmad Bilour stated that people have rendered sacrifices and vowed to stop every move aimed rolling back the 18th Amendment. Senators Taj Haider, Saif Ali Khan, Nisar Muhammad Khan and Kamil Ali Agha also opposed the placement of regulatory authorities under the line ministries.

16. The Committee noted that no proper trail is available that why the item was placed on the agenda of CCI and then it was taken away; directions of the Competent Authority in this regard are missing, therefore, it can be safely concluded that the said agenda item was taken out on the observations of the province of Khyber Pakhtunkhwa, which can be corroborated with the letter of Chief Minister Khyber Pakhtunkhwa, dated 13th December, 2016.

17. The Committee also took note of Article 154, Constitution, 1973, which provides that *“the Council shall formulate and regulate policies in relation to matters in Part II of the Federal Legislative list and shall exercise supervision and control over related institutions”* and inquired that whether a policy decision as to placement of Regulatory Authorities under the line Ministries can be taken without seeking prior approval from the Council of Common Interests? The Cabinet Division take it that Article 154 is not relevant to the Transfer of Regulatory Authorities in the instant case as it does not relate to change in policy but is an administrative measure which is within the ambit of the Prime Minister.

18. The Committee was of the view that Rule 3 sub rule (3), Rules of Business, 1973, cannot over rule Article 154 of the Constitution, 1973, hence the matter should have been placed before the Council of Common Interests.

19. The Committee after detailed deliberations recommended as under:-

- i. Regulatory Authorities should be independent.
- ii. Placing regulatory authorities under the line Ministries, without seeking approval from CCI, is a sheer violation of the Constitution and against the concept of “Regulatory Authorities”.
- iii. An independent permanent Secretariat of CCI shall be established on priority and all Regulatory Authorities established under part-II of Federal Legislative list shall be placed under the CCI.
- iv. Devolution shall be a permanent agenda item in every meeting of CCI.

RABEEA ANWAR
J.S/ Secretary Committee

(SENATOR MIR KABEER AHMED
MUHAMMAD SHAHI)
Chairman

Annex-H

SENATE SECRETARIAT

**Report of the
Functional Committee on Devolution**

Regarding “implementation of 18th Constitutional Amendment in the Higher Education Sector confining role of Federal HEC to formulation of standards and enhancing legitimate role of provincial governments especially in funding and implementation of Higher Education Policy”

Report No. 4

PRESENTED BY

**SENATOR MIR KABEER AHMED MUHAMMAD SHAHI
CHAIRMAN FUNCTIONAL COMMITTEE ON DEVOLUTION**

SENATE SECRETARIAT

REPORT OF THE FUNCTIONAL COMMITTEE ON DEVOLUTION ON “IMPLEMENTATION OF 18TH CONSTITUTIONAL AMENDMENT IN THE HIGHER EDUCATION SECTOR CONFINING ROLE OF FEDERAL HEC TO FORMULATION OF STANDARDS AND ENHANCING LEGITIMATE ROLE OF PROVINCIAL GOVERNMENTS ESPECIALLY IN FUNDING AND IMPLEMENTATION OF HIGHER EDUCATION POLICY”

A Public petition was received on 16-11-2017 in the office of the Chairman Senate regarding “implementation of 18th Constitutional Amendment in the Higher Education Sector confining role of Federal HEC to formulation of standards and enhancing legitimate role of provincial governments especially in funding and implementation of Higher Education Policy”. The Chairman Senate forwarded this petition to the Functional Committee on Devolution for consideration and Report.

2. The composition of the Functional Committee on Devolution Process is as under:-

1.	Senator Mir Kabeer Ahmed Muhammad Shahi	Chairman
2.	Senator Nawabzada Saifullah Magsi	Member
3.	Senator Kamil Ali Agha	Member
4.	Senator Col (R) Syed Tahir Hussain Mashhadi	Member
5.	Senator Nisar Muhammad	Member
6.	Senator Ilyas Ahmad Bilour	Member
7.	Senator Taj Haider	Member
8.	Senator Muhammad Ali Khan Saif	Member
9.	Senator Sassui Palijo	Member
10.	Senator Muhammad Usman Khan Kakar	Member
11.	Senator Lt. General (R) Salahuddin Tirmizi	Member
12.	Senator Chaudhary Tanvir Khan	Member
13.	Senator Liaqat Khan Tarakai	Member
14.	Senator Atta-ur-Rehman	Member
15.	Minister In-charge of Cabinet Division	Ex-Officio Member

3. The petition was filed by one Prof. Dr. Kaleemullah Bareach, President FAPUASA wherein he conveyed recommendations, which were duly considered and unanimously adopted, by the elected representatives of university faculty belonging to various public sector universities of Pakistan. The deliberations were mainly related to academic freedom, university autonomy, 18th Constitutional Amendment and higher education and public interest.

4. The Committee considered the matter in its meetings held on 21st and 22nd December, 2017. The Committee also invited the petitioner, Higher Education Commission and Ministry of

Federal Education and Professional Training. The meeting was also attended by Vice Chancellors of various public sector universities including the University of Punjab, Fatima Jinnah Women University, University of Sindh, International Islamic University, University of Engineering and Technology, University of Balochistan and Islamia College, Peshawar.

5. The petitioner placed following points for consideration and decision of the Committee:-

- i. Like other sector, 18th Constitutional Amendment should be implemented in higher education sector in true letter and spirit through confining role of Federal HEC merely to formulation of standards and enhancing legitimate role of provincial governments especially in funding and implementation of higher education policies.
- ii. Amending HEC Ordinance 2002 in the light of 18th Constitutional Amendment and decisions of Implementation Commission constituted under Article 270 AA.
- iii. Academic freedom and Autonomy of the Universities should be ensured and respected as guaranteed by Constitution of Pakistan and respective universities Acts.
- iv. Each universities should enroll students as per its own admission criteria/ policy in view its specific needs and requirements rather through National Testing Council established by Federal HEC.
- v. Elected representatives of faculty and students along with relevant citizens should be taken on board in all the statutory bodies of the universities. Student Union elections should be held immediately.
- vi. Like other academically advanced countries and professions in Pakistan (judiciary) retirement age for universities teachers should be extended from 60 to 65 years due to shortage of experienced senior faculty/PhD Supervisions etc. in Pakistan.
- vii. Following best global practices and as per previously implemented decision, Tax rebate up to 75 % should be restored immediately for universities faculty and researchers.
- viii. In Governing board of International Islamic Universities Islamabad, representation of elected representatives of faculty should be ensured.

6. The Chairman Higher Education Commission briefed the Committee that in light of Article 154(1) of the Constitution of Pakistan 1973, the Council of Common interests ("the CCI") is empowered to formulate and regulate policies in relation to matters in Part II of the Federal Legislative List, and shall exercise supervision and control over related institutions (HEC being one of such institutions). The Supreme Court of Pakistan vide its judgment dated 12.04.2011 passed in Constitution Petitions No. 33, 34 and 35 of 2011 held that "the status of Higher Education Commission as it has been assigned to it under HEC Ordinance 2002 with its functions covered by the Constitutional provision namely at Srl# 16 and 17 of Part-I and Srl # 7, 11 and 12 of Part II of the Federal Legislative List, shall remain intact unless the same is changed by promulgation of some legislation in this behalf". It is in this context that the Government of Pakistan, Ministry of Law, Justice and Human Rights has opined that "the laws enacted by the Provinces are ultra vires of the Constitution and an encroachment on the Federal Legislative Domain". The CCI in its

Meeting held on March 18, 2015 considered the Summary dated 12-02-2015 submitted by the Government of Sindh regarding "Matters pertaining to the Higher Education in Post Eighteenth Amendment Scenario" and setup a Committee under the Chairmanship of the Hon'ble Minister for Planning, Development and Reform. The Committee is required to look into the matters pertaining to Higher Education in Post 18th Amendment scenario and similar bodies in the provinces and provide a comprehensive report for the redressal of the grievances of the provinces. Six meetings of the CCI Sub-Committee have been held with last meeting on September 28, 2017. The Sub-Committee is yet to finalize its recommendations. Matter was further discussed by the CCI in its last two meetings held respectively on May 02 and August 25, 2017 and CCI in its last meeting ruled that "the matter being sub-judice in the Supreme Court of Pakistan may be kept pending till a final decision of the apex court. The Council, however, decided that the Inter-Provincial Coordination Committee (IPCC) will examine the issues pertaining to Higher Education and other similar bodies in post 18" Amendment Scenario to build consensus among all stakeholders and submit recommendations to CCI".

7. The Chairman Higher Education Commission denied contentions raised by the petitioner vis-à-vis HEC role in limiting academic freedom and autonomy of the Universities/ HEIS in post 18th Constitutional Amendment scenario are unfounded and without any evidence. Therefore, impression created in the petition may not be supported and responded. Instead, petitioner may be asked to come up with specific cases and evidences thereof. Foregoing in view, HEC is of the considered opinion that Governance of the Higher Education Sector is a Constitutional issue, therefore, it is appropriate that status quo is maintained till final decision by the Council of Common Interest (CCI).

8. All Vice Chancellors of Public Sector Universities present in the meeting rejected any interference by the HEC in the affairs of the universities; the only interference is limited to maintain standard of education being imparted.

9. Keeping in view the deliberations specially resolve of all participants that reforms are required in the Higher Education Sector, the Committee recommends as under,-

- 1) Amendment of the Higher Education Ordinance, 2002, in order to ensure that functions of the Commission devolved vide the Eighteenth Constitutional Amendment should be transferred to the Provinces.
- 2) Funds being allocated to the Higher Education sector should be increased.
- 3) Like other academically advanced countries and professions in Pakistan retirement age for universities teachers should be extended from 60 to 65 years due to shortage of experienced senior faculty/PhD Supervisions in Pakistan.
- 4) Following best global practices and as per previously implemented decision, Tax rebate up to 75 % should be restored immediately for universities faculty and researchers.

RABEEA ANWAR
J.S/ Secretary Committee

(SENATOR MIR KABEER AHMED
MUHAMMAD SHAHI)
Chairman

Annex-I

WORKING PAPER FOR THE MEETING OF THE FUNCTIONAL COMMITTEE ON DEVOLUTION PROCESS

The meeting of the Senate Functional Committee on Devolution Process is scheduled to be held on 9th, 10th November, 2016 at 10:30 am, respectively, at Chief Secretary Office, New Sindh Secretariat, Building No. 1, Karachi (Annexure-I).

2. The minutes of the meeting of Senate Functional Committee on Devolution process held on 29th march, 2016 are at Annexure-II. The requisite agenda item wise working paper for the meeting of the Functional Committee on Devolution Process is as under:-

9th November, 2016 at 10:30 am

i. BRIEFING BY THE CHIEF SECRETARY SINDH REGARDING STEPS, OBSERVATIONS, ISSUES AND OBJECTIONS, IF ANY PERTAINING TO THE DEVOLUTION PROCESS PURSUANT TO THE 18TH CONSTITUTIONAL AMENDMENT

Consequent upon approval of 18th amendment in the Constitution of Islamic Republic of Pakistan, the concurrent legislative list stands abolished and all 47 subjects mentioned therein, previously handled by various Federal Ministries/ Divisions were require to be devolved to the provincial governments by June 30, 2011. However, the federal government, despite persistent pursuance by this government, has not yet transferred some of the subjects.

The Sindh Government adheres to its principled stand that devolution should affect in its totality, as per letter & spirit of 18th Amendment in the Constitution. Accordingly, all subjects/ activities, mentioned in the concurrent legislative list, be transferred along with assets/ facilities attached to them to the provincial governments, on the basis of principle as laid down in article 274 of the Constitution of Islamic Republic of Pakistan.

The department wise details of assets/activities, which have not yet been transferred to Sindh Government, are submitted as under:

POPULATION WELFARE DEPARTMENT

Population Welfare Program is one of the subjects devolved in pursuance o 18th constitutional amendment and abolishment of concurrent legislative list.

According to amendment in Federal Rules of Business 1973 vide Cabinet Division Notification dated 7th December, 2010 (Annexure-III) the subject of Population Welfare Program from Schedule-I, Sr. No. 25 has been omitted. Further, the business of Dealing and agreements with other Countries and international organizations related to Population Planning Program has been added as Sr. No. II in the business of Economic Affair Division.

i. BRIEFING BY THE SECRETARY ETPB ON THE NON DEVOLUTION OF EVACUEE TRUST PROPERTY BOARD (ETPB)

The Minority Division, Government of Pakistan, was devolved to the province in the wake of 18th Constitutional Amendment in 2010. Pursuant to it, the Sindh province based offices of Minorities were transferred along with the employees excepting the Evacuee Trust Properties, which were transferred to the human Rights Division, Government of Pakistan.

The Provincial Assembly Sindh in its session held on Tuesday, 2nd February, 2010 unanimously passed the following resolution moved by Mr Saleem Khursheed Khokhar, MPA and Nawab Muhammad Taimur Talpur, MPA **(Annexure-XI)**.

“This Assembly recommends to the Sindh Government to approach the Federal Government to transfer the administrative control of Evacuee Trust Property Board to the Province of Sindh.”

The President of Pakistan, on 18-May-2010, desired that Ministry for Minorities Affairs might look into the matter and redress the grievance **(Annexure-XII)**.

Evacuee Trust was at Entry 36 in Concurrent Legislative List. However, Federal Government is holding it unconstitutionally.

b. Status of government employees transferred to Government of Sindh

In pursuance of Constitution (18th Amendment) Act, 2010, Devolved employees were transferred to the Government of Sindh. Section 23-C. “Appointment of Federal Civil Servants” has been inserted in Sindh Civil Servants Act, 1973. Sindh Government has also determined the terms and conditions of Civil Servants appointed under Section 23-C of Sindh Civil Servants Act, 1973.

Section 23-C of Sindh Civil Servants Act, 1973 reads as:

- 1) Notwithstanding anything contained in this Act, the Government may, by notification, appoint a person to a civil service of the Province or to a post In connection with the affairs of the Province, who immediately before the commencement of the Constitution (18th Amendment) Act, 2010 (Act No. X of 2010) was holding a post in connection with the affairs of the Federation and whose service has been transferred to the Province In the wake of the said Amendment Act of 2010.
- 2) Government shall, in prescribed manner, determine the terms and conditions of service of the civil servants appointed under sub-section (1’) including cadre and seniority”.

V. ANY OTHER ITEM WITH PERMISSION OF THE CHAIR

Annex-J

BRIEFING BY THE GOVERNMENT OF SINDH REGARDING ITS POSITION AS TO THE STATEMENT MADE BY THE MINISTER FOR PETROLEUM AND NATURAL RESOURCES IN THE MEETING OF THE COMMITTEE DATED 27th JUNE, 2016, THAT "ARTICLE 172(3) OF THE CONSTITUTION STANDS IMPLEMENTED"

The 18th Amendment to the Constitution of Pakistan through Insertion of Article 172(3) has revolutionized the Constitutional and legal framework by empowering Provinces by vesting joint and equal role, power and authority In executive, administrative and regulatory affairs related to mineral oil & natural gas located within the Province or the territorial waters adjacent thereto. Article 172(3) has very clearly enhanced the role of the Provinces In administration, policy, management and regulation of matters related to mineral oil and natural gas. The new role is In addition to the role delegated to Provinces through the Council of Common Interest (CCI).

Mineral Oil & natural gas appears at Entry No. 2, Part II, Federal Legislative List (FLL) and in pursuance of Article 154(1) the related matters fall within the exclusive domain of Council of Common Interest which is required to formulate and regulate policies and shall exercise supervision and control over related institutions. Keeping this status unchanged even after 18th Amendment. Therefore, Ministry of Petroleum & Natural Resources (MoPNR) has erred in claiming the Federal Government exclusive executive authority over oil & gas matters as it had always been subject to the decisions of the CCI and consent of the Provinces. Moreover, MoPNR itself, as far as matters related to oil & gas are concerned, shall come under the supervision and control of CCI.

Article 97, which defines "extent" of the Federation to exercise its executive authority, starts with the words "subject to the Constitution." This shall mean that the Federation may exercise exclusive authority on matters appearing In Part I of the FLL only but for the matters appearing In Part II, FLL I-e oil & gas, its authority is subject to CCI where all Provinces have equal representation. Moreover, the inclusion of Article 172(3) has further redefined the "extent" of Federation to exercise executive authority on oil & gas matters and now, "subject to the Constitution" the Federation is required to exercise its jurisdiction with Provinces equally and jointly. The MoPNR has grossly misrepresented that 18th Amendment has not "altered or amended" the existing Constitutional framework on oil & gas matters. Article 172(3) has altogether amended the extent of Federation's executive authority and now Federation is required to exercise the related authority and jurisdiction with Provinces.

MoPNR has also grossly erred while maintaining the Article 172(3), which commences with the words "subject to existing commitments and obligations" the Provinces have not conferred with any authority to regulate existing agreements, licenses or leases. It is to clarify that Article 172(3) only protects the existing agreements, licenses or leases as long as they are being operated and implemented with the originally old terms and conditions. However, any change, alteration, addition, deletion, conversion or amendment in the terms and conditions of the old agreements, licenses or leases after promulgation of 18th Amendment requires approval of the Provinces. Any amendments in the terms and conditions of the old agreements, licenses or leases etc. are not covered under the opening phrase "subject to existing commitments and obligations."

The “ownership “right of the Provinces over mineral oil & natural gas had never been an issue. It had always been with the Provinces. The Constitution, since inception under Article 161 (1), recognizes the ownership rights of the Provinces over mineral oil & natural gas by transferring to them all the monies collected on account of royalty and Federal duty of excise. Under Article 161 (1), the net proceeds of the royalty and Federal duty of excise shall not form part of the Federal Consolidated Fund and shall be paid to the Province in which the well head of oil & gas is located. Federal Government is only required to collect these monies on behalf of the Provinces. The joint and equal “vesting” of oil & gas under Article 172 (3) has not altered the provisions of Article 161 whose scope has even been further expanded.

It is, therefore, clear that Article 172(3) read with Article 154(1) and Article 161(1) has redefined the “extent” of the jurisdiction of Federation in mineral oil and natural gas related matters and Federation is required to exercise the authority in executive, administrative and regulatory sphere jointly and equally with the Provinces.

Thus, in order to implement Article 172(3), which is not a self-executing clause the Federation may carry out following steps:

- i. Amendments in all laws, ordinance, presidential orders related to oil & gas in the light of Article 172 (3) especially “Regulation of Mines and Oil Fields and Mineral Development (Government Control) Act 1948,” Mines Act 1923, repeal of President Order No 8 of 1961, etc.
- ii. Amendment in the “Oilfield (Regulation & Development) Act 1969”
- iii. Drafting and enactment of a new “Petroleum Joint Control Law” with provisions for establishment of petroleum management authority by replacing or encompassing DGPC, DG Gas, DG Oil and DG LPG;
- iv. Amendment in existing (upstream and downstream) rules, policies, PCA, D&P Lease agreements, petroleum sharing agreements in the light of Article 172 etc.;
- v. Legal/administrative framework for “Joint Control” over petroleum resources;
- vi. Amendments in OGRA Ordinance 2002 for equal representation of Provinces on the model of NEPRA Act.;
- vii. Due representation of Provinces in the Board of Directors in the Federal Government owned oil & gas companies/entities such as OGDCL, PPL, PSO, Government Holding Pvt Limited, Oil Refineries, HDIP etc.;
- viii. Amendments in relevant laws, rules, regulations on land reclamation, development of coastal regions, fishing rights and licensing regime in the light of Article 172(2);
- ix. Imposition, collection and disbursement of Excise Duty on crude oil in pursuance of Article 161(1)(b);
- x. Federal Government to stop collection of Royalty on Crude Oil and respective province to start collecting Royalty of crude oil under its own law as being a constitutional residual subject;
- xi. Framing of guidelines/policy in consultation with provinces in pursuance of Article 158;

- xii. Economic Coordination Committee (ECC) of the Cabinet may be requested not to encroach the constitutional mandate of the CCI.

In view of the above, it is clear that no serious measure/step has so far been taken by the Federal Government to implement the Article 172(3) in letter and spirit. Minor consultation with the Provinces on selective matters shall not be construed as implementation of the Article 172(3) rather it falls under the domain of Article 154 i-e role, function duties and authority of CCI where Provinces have equal role even prior to 18th Amendment. Implementation of Article 172(3) requires complete over haul of the existing laws, administration, management and regulatory regime related to mineral oil & natural gas.

Annex-K

PRESENTATION TO THE “FUNCTIONAL COMMITTEE OF SENATE ON DEVO- LUTION PROCESS. ARTICLE 172.”

Government of Khyber Pakhtunkhwa 27 Jan, 2017 Peshawar

1. Ownership of Oil & Gas
2. Objective of 18th Amendment –Fast Track Oil / Gas Exploration & Production
3. Point of view of MPNR Article 172/3
4. Validity of Acts, Policies & Rules
5. Executive Orders & legislations by Provincial Govts.
6. Roles of Federal Government & OGRA
7. Development Regulatory bodies in Provincial Govts.
8. Synergizing Article 172/3
9. Article 161.a, 161.b (Revenue for Provincial Government)

Question: Who is the Owner of Oil & Gas?

Article 172(1): “Any property which has no rightful owner shall, if located in a Province, vest in the Government of that Province, and in every other case, in the Federal Government”.

1. 172(1) Clearly Establishes Sole Ownership of the Provinces over Oil and Gas.
2. Question: Who ever gets the Royalty on Oil & Gas shall be the owner?

Answer: Provinces get the Royalty on Oil & Gas. Thus Provinces are Sole Owners of Oil & Gas. There is No Joint Ownership of Oil & Gas between Federal & Provincial Governments.

18th Amendment NOT being IMPLEMENTED -6 years have passed

1. Provincial Government Losing Revenue
2. Shares in Productive Blocks (Working Interest)
3. OGDCL, PPL, MPCL & GHPL's shares divided amongst provinces – NFC Award
4. Article 161.a (Excise Duty on Gas) not implemented in letter and spirit
5. Article 161.b (Excise Duty of Oil) not implanted at all
6. DG PC office not reorganized as yet
7. LPG on Royalty PHC Decision 2013 not yet implemented
8. Training Funds not released to Provincial government since 2012
9. Agreements changed without the knowledge of provincial government
10. Provincial Governments nominees not in OGRA
11. Provincial Governments nominees not on BOD (PPL,GHPL,OGDCL, MPCL,HDIP) despite requests
12. Provincial Governments bypassed – CCOE/ECC instead of CCI

18th Amendment – DEVOLUTION PROCESS

1. MPNR 'Brief' for the Senate Standing Committee dated 24th Jun, 2016 incomplete. Such an important matter cannot be disposed of in 2 pages with a few mundane actions cannot be said to be172(3) implemented..."
2. MPNR 'Brief' superficially touches Article 172(1) & 172(2) which are the foundations of Article 172(3). Need to understand and implement 172 fully
3. Repealing Articles like 266 not mentioned
4. Article 161.a & 161.b not mentioned
5. Implementation of Petroleum Policy 2012 and Rules 2013 not mentioned
6. Implementation of Appendix A Petroleum Policy 2012 not mentioned.
7. 'Brief of 'MPNR' and WB, UNDP states 'we-they', Feds-Provincial is one team.
8. So, the 'brief of 'MPNR' is mere cursory and superficial so, to be set aside.
9. OBJECTIVE: SPEED UP OIL AND GAS Exploration & Production

Annex-L

Subject: STATUS OF EVACUEE TRUST PROPERTY BOARD AFTER EIGHTEENTH AMENDMENT

1. The Concurrent Legislative list was omitted through the constitution (Eighteenth Amendment), Act 201, but the subjects of "Trusts and trustees" and "Evacuee property" were not included in the Federal Legislative List.
2. Resultantly these subjects being residuary fall within the exclusive legislative competence of the provinces under the amended Article 142 of the Constitution.
3. Government of Punjab approached the Inter Provisional Coordination Division, Islamabad and the Prime Minister of Pakistan to resolve the issue but no response was received.
4. The Punjab Government through Secretary Law & Parliamentary Affairs departmental filed constitutional petition No 12/2012 in august Supreme Court of Pakistan dated 23.02.2012 praying that a declaration be made to the affect that the federal government is constitutionally and legally bound to transfer assets and properties vesting in and belonging to the EPTB to the petitioner Punjab province.
5. The Constitutional petition No. 12/2012 lastly came up for hearing before the Honorable Supreme Court of Pakistan on 05.11.2015 and the adjourned the case without fixing next date of hearing.
6. In compliance of one of the decisions taken in the meetings held on 14.03.2016 & 18.04.2016, under the chairmanship of Finance Minister, Punjab, the Board of Revenue, Punjab on 15.08.2016 requested the Law & Parliamentary Affairs Department for early fixation of Constitution Petition No. 12/2012 before Honorable Supreme Court of Pakistan.
7. In response, the Law & Parliamentary Affairs Department 19.08.2016 informed the Board of Revenue, Punjab that a request for early hearing of said Constitutional Petition has been forwarded to Advocate General Pakistan.
8. Board of Revenue, Punjab also on 23.09.2016 directly requested the Advocate General, Punjab for the early Fixation of said Petition.
9. Furthermore, Board of Revenue, Punjab has also taken this matter with the Federal Government in the upcoming 25th IPCC meeting.
10. According to Minutes of the meeting on all outstanding issues with Federal Government held on 23.09.2016, the following decision was taken:
"Board of Revenue, shall continue efforts for re-fixation of the case through Law Department and the office of Advocate General, Punjab."
11. In compliance of above said decision, the Board of Revenue, Punjab on 17.02.2017 requested the Law & Parliamentary Affairs Department and Advocate General, Punjab for the re-fixation of Constitution Petition No. 12/2012 before Honorable Supreme Court of Pakistan.



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