



CHIEF MINISTER'S POLICY REFORM UNIT

Draft Report

18th Amendment Transition Management: Lessons Learned and Way Forward

17-18th December, 2013 - Quetta



A two day conference on “**18th Amendment Transition Management: Lessons Learned and Way Forward**” was held at Quetta on December 17-18, 2013, organized by the Chief Minister’s Policy Reform Unit (CMPRU), Inter-Provincial Coordination (IPC) Department, Government of Balochistan and United Nations Development Program (UNDP).

The participants included Focal Persons from all Administrative Departments nominated by the Government for dealing with IPC issues arising from the 18th Amendment to the Constitution. Key speakers included Dr. Abdul Malik Baloch, Hon. Chief Minister, Senator Raza Rabbani, retired Federal Secretary Mr. Ahmad Mahmood



Zahid, Federal Joint Secretary IPC, Mr. Shahzad Iqbal, Mr. Mohammed Ali Kakar, Provincial Secretary, IPC Department and Syed Hashim Zaidi, representative of UNDP. Other speakers included Dr. Hamid Khan Achakzai, Provincial Minister for Planning & Development Department, Mr. Abdul Rahim Ziaratwal, Provincial Minister for Law and Information and Dr. Ishaque Baloch, Policy Coordinator, CMPRU.

The objective of the conference was to familiarize the participants with the scope of the 18th Amendment, the resultantly altered parameters of Centre-Provincial relationships, powers and functions, and the legal, institutional, administrative and policy requirements that the Amendment entails.

Dr. Ishaque Baloch Policy Coordinator for Chief Minister’s Policy Reform Unit welcomed the guests and said that federalism is a form of government where the component units of a political organization participate in sharing powers and functions in a co-operative manner, despite the fact that the combined forces of ethnic pluralism and cultural diversity tend to pull people apart. The 18th Amendment, he said, was result of great sacrifices of our political workers, especially the efforts of this particular province, and the contribution of all political forces, civil society, judiciary, bureaucracy and



the media. The 18th Amendment, he said, was the unanimous voice of all the national forces that believed in strengthening the federation by empowering the federating units.

Balochistan, he said, was prepared to shoulder its added responsibilities and for which the Chief Minister had set up a Policy Reform Unit to provide the forum and technical expertise to collaborate with other Departments in order to enhance the capacities of the province.

In his keynote address, Senator Raza Rabbani, chair of the committee for formulation of the 18th Amendment, outlined the process leading to the drafting and unanimous passage of the Amendment and lauded the role and efforts of Dr. Malik; particularly with regard to clauses dealing with



provincial autonomy and control of resources. He said that the passage of 18th amendment was a great milestone because it restored the parliamentary and federal character of the Constitution. In particular, it restored the balance of powers among the President, the Parliament and the Prime Minister and marked a paradigm shift from an overreaching center to strong and stable provinces by abolishing the Concurrent List.

He, however, opined that even today there was an attempt to roll back the 18th Amendment or some of its key provisions, but warned of a strong reaction from the provinces if the 18th Amendment was undermined.

Alluding to the centrist mindset, he said that Article 154(3) of the Constitution requires a meeting of Council of Common Interests at least once within 90 days; however, the last meeting was held in July 2013 and now it is December and no meeting has been called yet. This, he said, was a violation of the Constitution.

Those with a centrist mindset were forwarding the argument that the provinces do not have the capacity to undertake the devolved responsibilities; he, however, asked as to how has the

centre faced with the quality of education and health services, among others, with its control over the last 65 years.

He urged the provinces to remain vigilant against the centrist mindset and adopt a more active role in protecting the Amendment. He said that the challenge the provinces were now facing was to develop their own technical expertise to deal with the transition and implementation phase of the 18th Amendment, so that they can get exercise their constitutionally mandated rights.

Mr. Shahzad Iqbal, Senior Joint Secretary Inter-Provincial Coordination Division Government of Pakistan, elaborated that the Council of Common Interests (CCI) is an icon of federalism in the Country and provides the federating units a say in the affairs of the Federation. It is now headed by the Prime Minister of Pakistan and consists of the Chief Ministers of the Provinces and three members from the Federal Government to be nominated by the Prime Minister.

The CCI is responsible to Parliament and is responsible for formulation and regulation of policies in relation to matters enumerated in Part-II of Federal Legislative List. The Council has a permanent Secretariat and is required to meet at least once in ninety days. The Council also deals with complaints as to interference with water supplies or reservoirs and to resolve disputes with respect to construction of hydro or thermal power stations in any province and laying of Inter-Provincial transmission lines. Decisions of the Council are appealable to the Joint Sitting of the Parliament.

Elaborating the performance analysis of CCI he said ; Since introduction of the 1973 Constitution on 14th August 1973, Twenty Four (24) meetings of the Council have been held:-

- 11 meetings in 37 years from 1973 to 2010 (Before 18th Amendment)
- 13 meetings in 3 years from 2010 to 2013 (After 18th Amendment).
- After 18th amendment, the Council considered and decided on 76 items out of which around 64 decisions have been implemented.

When a case is decided by the Council, the Federal Government or Provincial Government concerned is responsible to take prompt action to give effect to the decision unless it conveys its intention to make reference to the Parliament within fifteen days of its communication.

Monitoring of implementation is the responsibility of Secretary CCI under Rule 11 (3) of the CCI Rules.

He said the challenges facing CCI are that there are no legal/constitutional punitive provisions for non-compliance. The CCI is historically in search of consensus and the benefits of effective decision making through simple majority has not been exercised. Resultantly, “hard decisions” could not be made or followed through. CCI Secretariat requires technical expertise and needs to tap technical knowledge for meaningful supervision of the CCI mandate.

Mr. Ahmad Mahmood Zahid, Retired Federal Secretary, briefed the participants on the essentials of Transition Management in the wake of the 18th Amendment and the implementation issues that have arisen. He started with the historical perspective and said Pakistan, though conceived as a Federation, adopted centrist-oriented Constitutions in 1956 and 1962 and for which the country has paid a heavy price, including dismemberment. The Constitution of 1973 made some headway with regard to provincial autonomy; yet, however, the Centre arrogated to itself the authority over subjects in the Concurrent Legislative List and even those not appearing in any



list. He said that the 18th Amendment had repealed the dictators’ legacy provided a protective cover to democracy. A unique feature of the 18th Amendment was the empowerment of joint Federal-Provincial Government forums.

He discussed in detail various clauses of the 18th Amendment, highlighting specific clauses that repealed the Legal Framework Orders, strengthened Article 6 dealing with subversion of the Constitution, empowered the Provincial Assemblies, expanded the Rights to Information and to Education, protected the National Finance Commission Award, and other Articles dealing with subjects such as borrowing by Provincial Governments, ownerless property, etc. The Council of Common Interests was a participatory mechanism that provided space for the provinces to participate in decision making in federal subjects. Subjects falling in the domain of the Council increased through additions in Federal Legislative List Part 2.

A number of subjects were added to the Federal Legislative List; i.e., major ports, census, and national planning and economic coordination, electricity, legal, medical and other professions, ; regulatory authorities, public debt, standards of higher education & research, inter-provincial matters and coordination. The Concurrent Legislative list was abolished. Some subjects were deleted from Federal Legislative List Part 2, i.e., state lotteries, succession and estate duties in respect of property, capital gains tax on immovable property, and sales tax on services,.

Talking about the implementation phase, he said that a 9-member Implementation Commission has been set up for the purpose and the IPC Division has been made the secretariat of the commission. He further said that devolution has three basic aspects: legal, administrative and financial.

On the legal side, a number of federal and provincial laws, rules and regulations need to be amended and new provincial laws enacted to bring them in line with the requirements of the 18th Amendment. On the administrative side, employees working in devolved Ministries and federal organizations are to be transferred to respective administrative departments of provinces, employees or adjusted in other Ministries; and office buildings, furniture, fixtures, equipment and transport are to be handed over to Provinces on the financial side, development projects, at whatever stage they may be, are transferred to the Provinces along with project employees and unreleased part of the revised allocations for the year 2010-2011. The CCI decided that Federal government will bear financing of following activities: population welfare program, 10 vertical programs in Health Sector, and current and development programs of Higher Education Commission.

He opined that a centrist mindset continues to prevail and because of which the Centre is reluctant to devolve financially lucrative organizations like Workers Welfare Fund, EOBI, Evacuee Trust Property, etc. Thus, it is necessary for the provinces to strengthen their capacity to enable them to protect their rights enshrined in the 18th Amendment.

Dr. Abdul Malik Baloch, Chief Minister Balochistan, lauded the efforts of the Chief Minister's Policy Reform Unit Balochistan and Inter-provincial Coordination Department in organizing the conference to familiarize government officials on matters arising from the 18th Amendment. He also appreciated UNDP for assistance in the establishment of the Chief Minister's Policy Reform Unit. In his address in the concluding session, he said that all mainstream political parties in and out of parliament and nationalists played an important role

in the passage of 18th amendment as a stage had come where all stakeholders have realized that there should be a decentralization process for resource distribution between the federation and provinces.

He further elaborated that Pakistan is a multi-ethnic, multi-linguistic country, where the people hold their respective culture, language, ethics, traditional values, and norms to be important and expect the federation to protect this diversity. The National Party supported a Pakistan as a federation, with subjects like defense, currency, and foreign affairs with the federal government and the rest vested to the provinces.

The process of draft formulation was a cumbersome process because it was the first time when tire of references were demanded from the sister provinces to draft, formulate policies, enhance rules regulations, and framing other legal formalities. For the said our party 'National Party' legal team sits together under the head of Advocate Mazhar Ilyas Nagi and Advocate Shakeel Baloch and then we added our political input in it. Our basic concept was turning Pakistan into such a federation that believes on maximum decentralization. He emphasized, Pakistan can become a strong, prosperous and stable country if the 18th Amendment was preserved.

He briefed the participants in detail about the process of the drafting and enactment of the 18th Amendment, which has given the provinces full autonomy to legislate on the subjects enumerated in the now deleted Concurrent Legislative list. He said that questions of capacity were not relevant as Balochistan has the potential and the expertise to implement the devolved subjects. He, however, warned that Balochistan's political and civil administration will have to gear up to meet the new challenges or else the forces with a centrist mindset will prevail.

****Political and fiscal federalism, he said, is essential to strengthen democracy and promote development in Pakistan. In a country with such diversities, there cannot be a single benchmark to measure development. The federal system possesses an inherent flexibility, enabling us to find solutions to the unique problems of each province.

He showed his concerns over the non-implementation of Article 172 (3) and said that this Article is a milestone for the provinces with respect to mineral resources. The Article 172(3) confers 50 per cent ownership of hydrocarbon petroleum resources to the provinces.

The subject was held by the federal government and now we will remove the legal and administrative bottlenecks and transform the Department on modern and technical basis.

He also said that the federation had some commitments, which are not being fulfilled. For instance, the Petroleum Ministry has to be umbrella ministry, managed by a Board with representation from all the federating units, the center and technical expertise in related field. Sui Southern and Sui Northern also needs to be restructured

It has been seen that federal employees in devolved departments have been transferred, imposing liabilities on the provinces, but key departments with large budgets have not been devolved.

We are serious about making the 18th Amendment work and have hired the services of a legal expert in Senator Raza Rabbani and an economic expert in Dr. Kaiser Bengali to assist us in strengthening our legislative and economic planning capacities. He also said that the provincial government will provide full scholarships to student who enroll anywhere in the best universities in Pakistan or abroad in order to improve the human resources of the province.

Secretary for the inter provincial coordination department government Balochistan **Mr. Mohammad Ali Kakar** said that the 18th Amendment has taken a major step in moving the country towards a sound federal system. He said that operationalizing of the system under 18th Amendment was a real test for Federal and Provincial Governments; as controversy surrounds many aspects of governance at different levels, with some continuing to strive for maintaining the status quo and the centralized structure. It is thus a challenge reconcile/overcome the legacy of centralization.



The 18th Amendment has redefined nature of relationship between federations and federating units will have financial implications. Devolution is significant since it has changed the financial landscape of the country by empowering provinces through larger share in resource

allocation. New challenges have emerged for the provinces, especially for Balochistan and the Province has to devise a mechanism to properly tackle the changed management.

The immediate causes of concern include inadequate infrastructure, lack of avenues for provincial revenue generation, low electricity generation capacity, and low quantum of representation of Balochistan in the Federal services. Now, a comprehensive policy along with operational framework needs to be adopted to promote a culture of Inter-Provincial Coordination for developing and coordinating, information and communication amongst Federal/Provincial organization. Research analysis is required by respective sectors/departments to pre-empt the notion that provinces lack fiscal capacity or discipline to tackle social and economic issues.. Now, the provinces have to legislate and create the necessary infrastructure to fully utilize the potential of the devolution process for the benefit of provinces and their people. The IPCC Department is assigned as the Focal Department for coordination with concerned departments on the issue of 18th Amendment.

Article 154(1) provides that the Council of Common Interest (CCI) shall formulate and regulate policies in relation to matter enumerated in Part-II of the Federal Legislative List and shall exercise supervision and control over related institutions. By abolishing the Concurrent List and deleting certain items from the Federal Legislative List Part-I, the 18th Amendment has substantially increased the quantum of provincial autonomy. Second, the role of the provinces in the decision making of the federation has been substantially enhanced by the enlargement of the Federal Legislative List Part-II.

Provinces now have more subjects to deal with than was the case before the 18th Amendment. In the first place, they have been given full and effective control of the social sector, especially education, health, population, labour, social welfare, Zakat, Auqaf, environment, tourism, print media and cinematograph films, culture and archeology etc. Other than standards of higher education, research and international student's exchange, the provinces are now entrusted with Education policy formulation, planning, and curriculum standards.

By virtue of provisions contained under Clause-27 of Aghaz-e-Huqooq Balochistan Package, the Government of Balochistan will purchase up to 20% of the right shares when offered on the face value (instead of open market) in PPL, OGDCL and SSGC. The Government of Balochistan intends to place the matter of acquisition of shares as agenda item in next CCI meeting. Evidently, privatization of above mentioned entities would mar the status of afore-

mentioned facility granted under the Huqooq Package and interest of the Province may suffer in that case.

Talking about the electricity situation, he said, against the total 15,401 MW electricity generated in the country, share of Balochistan at the rate of 6% quota comes to 924 MW. The peak load actually supplied to the province from the national grid was only 600 MW in 2013, whereas, accumulated electricity demand in the province during corresponding period rose to 1550 MW. Resultantly, a shortfall of 950 MW has been observed, aggravating the shortage of electricity.

On its part, the Government of Balochistan has coordinated the matter of equitable distribution of electricity with the Federal Ministry of Water & Power and with QESCO. Efforts have been made to curb menace of electricity theft by strengthening monitoring and oversight capacity. Allocations under “Payment of Electricity Dues” have been enhanced to cope with the outstanding arrears. The Provincial government is paying the Agriculture subsidy share to QESCO which now stands at Rs. 3.00 billion. Government of Balochistan has also budgeted a 02 year’s Solar Energy project in PSDP 2013-14, with a cost of 2.00 Billion (1.00 Billion allocated in the first year of commencement).



Provincial Minister for Planning and Development and Provincial Minister for Information and Law, Mr. Abdul Raheem Ziaratwal also addressed the participants. There followed a lively questions answer session with the speakers responding to several queries. Many of the



questions related to federal government responsibilities for various functions and services. Speakers clarified that functions and services which are now devolved are the responsibility of provincial governments and we should not look to the centre for their delivery. There is a need to change the mindset at the provincial level as well. Dr. Kaiser Bengali, Head of the Chief Minister's Policy Planning Unit responded to several of the questions regarding political and fiscal issues. At the conclusion of the conference, the Chief Minister distributed certificates to the participants.

The present composition of the CCI is as follows:

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| i. | The Prime Minister | Chairman |
| ii. | Chief Minister Balochistan | Member |
| iii. | Chief Minister Khyber Pakhtunkhwa | Member |
| iv. | Chief Minister Punjab | Member |
| v. | Chief Minister Sindh | Member |
| vi. | Pir Syed Sadaruddin Shah Rashidi,
Federal Minister | Member |
| vii. | Lt. General (Retd.) Abdul Qadir Baloch,
Federal Minister | Member |
| viii. | Sardar Muhammad Yousaf,
Federal Minister | Member |

Secretary IPC Division is Secretary of the Council.

Purview of CCI (Federal Legislative List Part-II)

1. Railways;
2. Mineral oil and natural gas ; liquids and substances declared by Federal law to be dangerously inflammable;
3. Development of industries, where development under Federal control, is declared by Federal law to be expedient in the public interest ; institutions, establishments, bodies and corporations administered or managed by the Federal Government immediately before the commencing day, including the West 1[Pakistan Water and Power Development Authority and the West Pakistan Industrial Development Corporation] ; all undertakings, projects and schemes of such institutions, establishments, bodies and corporations, industries, projects and undertakings owned wholly or partially by the Federation or by a corporation set up by the Federation;
4. Electricity;
5. Major ports, that is to say, the declaration and delimitation of such ports, and the constitution and powers of port authorities therein;
6. All regulatory authorities established under a Federal Law;
7. National planning and national economic coordination including planning and coordination of scientific and technological research;
8. Supervision and management of public debt;
9. Census;
10. Extension of the powers and jurisdiction of members of a police force belonging to any Province to any area in another Province, but not so as to enable the police of one Province to exercise powers and jurisdiction in another province without the consent of the Government of that Province; extension of the powers and jurisdiction of members of a police force belonging to any Province to railway areas outside that Province;
11. Legal, medical and other professions;

12. Standards in institutions for higher education and research, scientific and technical institutions;
13. Inter-provincial matters and co-ordination;
14. Council of Common Interests;
15. Fees in respect of any of the matters in this Part but not including fees taken in any court;
16. Offences against laws with respect to any of the matters in this Part;
17. Inquiries and statistics for the purposes of any of the matters in this Part;
18. Matters incidental or ancillary to any matter enumerated in this Part.

The Secretariat of Council he said it is responsible for:-

1. Inviting the summaries from Ministries/Divisions of the Federation and the Provinces for the meeting,
2. Scrutinizing the summaries with a view to ensuring that these pertain to the subjects that fall in the domain of CCI,
3. Ensuring that the manner of submission of cases to the Council mentioned in Rule 10 and elaborated in Schedule-II of Rules of Procedure, 2010, has been followed,
4. Ensuring that the summary for the Council has been prepared in accordance with Rule 10 and instructions contained in Schedule III to the Rules of Procedure, 2010,
5. Seeking the approval of Chairman under rule 5 (1) of Rules of Procedure for the date, time and venue for the meeting.
6. Issue notices under rule 7 of Rules of Procedure for the meeting to all concerned, ordinarily at least ten working days in advance,
7. Recording the minutes of the meetings and decisions taken by the Council,
8. Circulating, under rule 6 to the Rules of Procedure, to the members, within seven working days of the meeting, a copy of the minutes and decisions,
9. Supplying to the Secretary of the Division or the Chief Secretary concerned for action a copy of the relevant decision,
10. Monitor the implementation of the decisions of the Council,
11. Preparation of Annual Reports of the Council for lying before the Parliament.

At the end he thanks participants.