

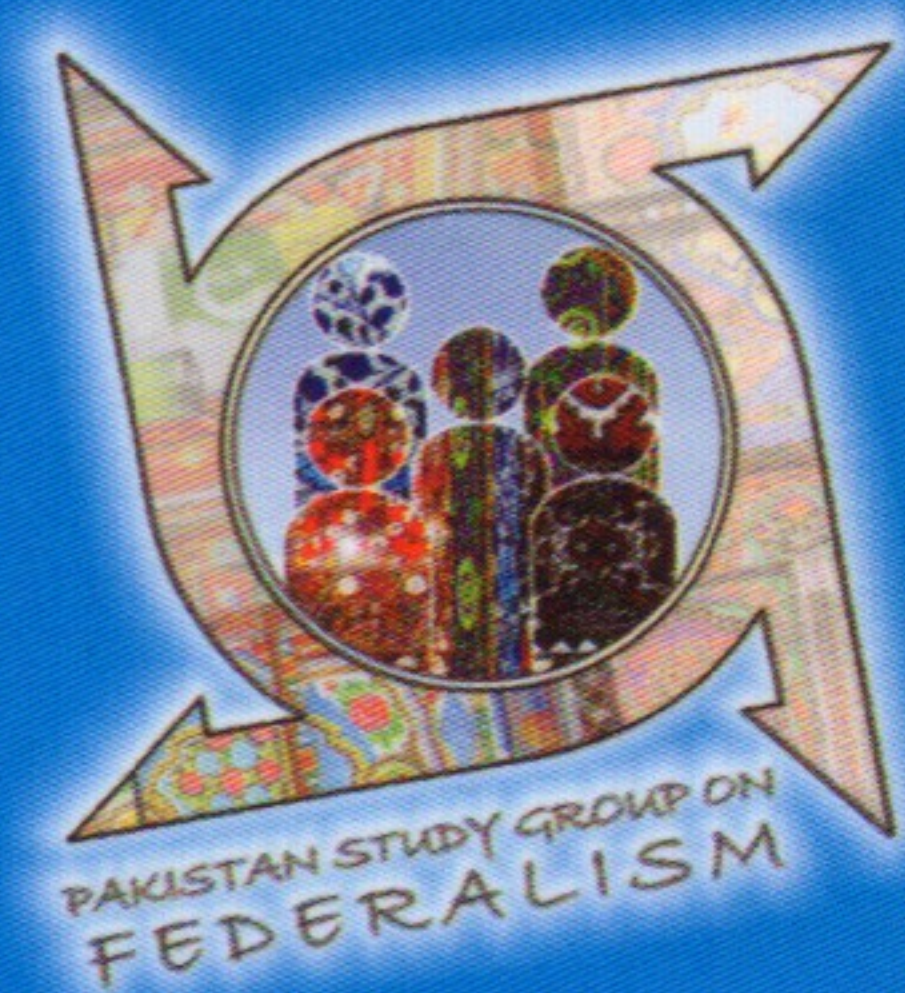
MINING MINERALS

Federal Legislative List Part -II Section 2



PAKISTAN STUDY GROUP ON
FEDERALISM

SCOPING STUDY PAPERS
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By:

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LIST OF ACRONYMS

ANP	Awami National Party
BHP	Broken Hill Proprietary Company Limited
BMDD	Balochistan Minerals Development Department
BNIPP	Bajj Nath Institute of Public Policy
CCI	Council of Common Interests
ECNEC	Executive Committee of the National Economic Council
EPA	Environmental Protection Agency
FANA	Federally Administered Northern Areas
FATA	Federally Administered Tribal Areas
FLL	Federal Legislative List
HDI	Human Development Index
IC	Implementation Commission
IPC	Inter Provincial Coordination
IUCN	International Union of Conservation for
KPK	Khyber-Pakhtunkhwa
MIFA	Mineral Investment Facilitation Authority
MIFB	Mineral Investment Facilitation Board
MPDC	Pakistan Minerals Development Corporation
MPNR	Ministry of Petroleum and Natural Resources
	Nature and Natural Resources
NEC	National Economic Council
NFC	National Finance Commission
NMP	National Mineral Policy
OGDCL	Oil and Gas Development Company Limited
PCCR	Parliamentary Committee on Constitutional Reforms
PPL	Pakistan Petroleum Limited
PPP	Pakistan Peoples' Party
SEA	Sector Environmental Assessments
VAT	Value Added Tax

EXECUTIVE SUMMARY

In order to enhance the provincial autonomy and strengthen the federation, Pakistan witnessed very significant developments in the years 2009 and 2010. The first of these developments was the signing of 7th National Finance Commission (NFC) Award on December 30, 2009, which significantly increased the share of provinces in national resources. The other major development was the signing of 18th Amendment to the Constitution of Pakistan.

Besides amending the allocation of functional responsibilities and much demanded fiscal powers, the 18th Amendment also radically strengthens the Council of Common Interests (CCI) and National Economic Council (NEC). These two Councils were present in the constitution prior to the 18th Amendment but had not been very active in the past. In the post 18th Amendment scenario, the CCI has been awarded the role of conflict resolution between the federation and federating units or among the federating units of Pakistan.

The 18th Constitutional Amendment introduced changes to about 36 percent of the 1973 Constitution of Pakistan: 102 out of 280 Articles of the Constitution were amended, inserted, added, substituted or deleted. It not only has abolished the Concurrent Legislative List of the Constitution rather has made momentous changes in the Federal Legislative List, Parts I and II.

The functions previously contained in the Concurrent List have now been devolved to the provinces except electricity. It has also transferred subjects from the Federal Legislative List Part-I, which defines the functions allocated to the federal government, to the Part II, making them a joint provincial and federal responsibility under the CCI. Consequently, these amendments have brought in substantive changes in the structure of government. Fifteen ministries/eighteen divisions have been devolved to the provinces.

Subject of this scoping study, which is mines and mineral, also falls in the Federal Legislative List Part-II, Section-2, which reads as: "Mineral oil and natural gas; liquids and substances declared by the Federal law to be dangerously inflammable". Where provision for joint and equal ownership of natural resources like oil and gas has addressed the much demanded autonomy by the provinces and has also raised some constitutional question as to who will own minerals or natural resources found in the federal area. Furthermore, instead of devolving the constitutional institutions relating to the natural resources, federal government has created new departments/ministries, which according to the architects of 18th Amendment is against the spirit of said amendment.

The joint and equal ownership in natural resources under Article 172 of the Constitution of Pakistan 1973 demands existing legislation needs to be revisited to ensure the role of the provinces in control and management of natural resources and devolution of the relevant regulatory bodies by giving provinces their due representation. But unfortunately no practical step has been taken in this regard and the provinces have also failed to come up with their proactive suggestions at the forum of CCI to initiate engagement in this process.

1. FEDERAL STRUCTURE AND THE LEGAL REGULATORY MECHANISM IN PAKISTAN

1.1 Statement of the Problem

The 18th Constitutional Amendment has ushered significant changes which revamped the structure of the Constitution of Pakistan 1973 and has thus restored its original form. The magnitude of the changes was so high that implementation on these changes required manifold efforts and political will of the politicians. Before this amendment the structure of federation was such that powers rested with the centre and provinces were dependent upon the federal government for many financial resources which provinces wanted to have in their control. The 18th Amendment gave the provinces their much demanded autonomy and freedom to generate their own financial resources for better governance and betterment of the people of the provinces, thus promoted participatory federalism.

Problem of the study is to evaluate if the devolution, as envisioned by the 18th Amendment, of ministries/divisions, departments, human resource, functional issues and relevant legislation, has been completed regarding Mining Minerals (Federal Legislative List Part 2, Section 2). It further intends to see what changes in laws and procedures have been made regarding the subject matter of this study.

1.2 Objectives of the Study

This study aims at documenting the functioning of mining minerals within the parameters of 18th Amendment. It will cover the institution relevant to the subject. Devolution of the selected subjects is a complex task. A number of decisions have to be taken for smooth transfers and subsequent smooth functioning of the subjects. In each case a number of questions have to be answered: How will the function be managed? How will it be financed? Does the enabling legislation exist? What changes in laws and procedures are involved? What will be the human resource requirements for providing uninterrupted service at the provincial level? How will the assets and liabilities be shared? These issues are complicated but need resolution. Further, it will document the hurdles in the smooth devolution of the selected subject. Existing enabling legislation and changes required in laws relating to mines and minerals will also be documented.

1.3 Definitions

The term “mine” has been defined in The Mines Act, 1923 in Section 3, Sub section (f) which reads as under:

Mine

“Mine” means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on and includes all works, machinery tramways and sidings, whether above or below ground, in or adjacent to or belonging to a mine:

Provided that it shall not include any part of such premises on which a manufacturing process is being carried on unless such process is a process for coal making or the dressing of mineral.

The term **mineral** has not been defined in any law but includes some substances and also explains the jurisdiction of governments in the following words explained in the Regulation of Mines & Oil-fields and Mineral Development (Government Control) Act, 1948.

Section 6 of this Act reads as under:

Definition of appropriate Government.—In this Act, “appropriate Government” means, in relation to the mines of nuclear substances, oil-fields, and gas fields, and development of such substances, mineral oil and gas, the Central Government and, in relation to the other mines and mineral development, the Provincial Government”.

According to Federal Legislative List, Part II, section 2, the term mineral includes:

“Mineral oil natural gas; liquids and substances declared by Federal law to be dangerously inflammable.”

1.4 Literature Review

Mian Raza Rabbani (2012) described the 18th Amendment as: “*The most comprehensive restructuring of the federal and provincial administration since 1947*”. The 18th Constitutional Amendment has redefined the structure of the state, shifting it from a heavily centralized to a decentralized federation. Federalism as originally coined is an institutional mechanism which divides power and sovereignty between national and regional levels of governments in order to minimize the chances of an authoritarian or centralized government (Stein and Turkewitsch, 2009). In this context, the new constitutional framework of Pakistan has reinforced a multi-level governance system by extending greater autonomy to the provinces and laid down fundamentals of decentralization at the lower level of the local governance.

Pakistan can learn from other countries where same three tiers of governance are present and running smoothly. The Article 90 of the Constitution of Pakistan, 1973 delineates the executive authority of the federal government. The executive authority of the federation extends to matters with respect to which the Parliament holds the power to make laws, including the exercise of rights, authority and jurisdiction in and outside Pakistan. The Article 137 tells the executive authority of the provincial government. The executive authority of the province extends to the matters with respect to which the Provincial Assembly has the power to make laws. Principally, the executive authority has been conditioned with the legislative authority at the federal and provincial levels (Wolkewitz, 2015).

Re-demarcation of the jurisdiction of Pakistan’s multi-level governance, by the 18th Amendment, at the federal, inter-provincial and provincial levels by revising the Federal

Legislative List Part I and Part II and abolishment of previous Concurrent List has changed the legislative and executive authority of the federal and provincial governments. It consequently has assigned 53 subjects to the federal government exclusively, 18 subjects to the Council of Common Interests (CCI) and rest of the subjects to the provinces. The provincial governments have further been vested with the redistribution of the functions at district, tehsil and union council level, in accordance with policy enunciated in the Article 140 (A) of the Constitution (Wolkewitz, 2015).

Canada has a similar constitutional structure like Pakistan. Legislative authority is divided between federal government of Canada and provincial governments of 10 provinces of Canada. Similarly, there are three tiers of government i.e. federal, provincial and local governments under the respective provinces. Both federal and provincial governments are sovereign within their respective limits of legislation and administration. The devolution process, as to mining matters, is complete in connection with Yukon, and continues in connection with the Northwest Territories and Nunavut. The provinces delegate certain powers to cities and other municipalities, effectively creating a third level of government (La Fleche, 2012).

The governments of Canada, the provinces and the territories are committed to mining and have provided a comparatively stable and well-developed legal framework for mining (La Fleche, 2012). Jurisdiction over mining in Canada is shared between the federal government of Canada and the provincial governments of the 10 provinces, except for uranium (See Annexure-I). Federal laws apply on lands situated within a province and provincial laws apply with full authority to exploration, development of minerals, conservation and management (La Fleche, 2012).

The governments of Canada and the provinces share jurisdiction over a number of areas, including the environment and taxation. There are certain other matters over which Federal Government of Canada has exclusive jurisdiction that affect mining indirectly, such as foreign investment and export control. The federal government also has exclusive power over mineral exploration, development, conservation and management within the three territories, although much of this power has been devolved to the territorial administrations (La Fleche, 2012).

In Canada, provinces and territories itself impose and collect taxes on profits, where significant mining activities are, and laws directly relating to mining deal with property and land-use planning, mining rights, the regulation of mining activities, taxation and the environment. By putting little conscious effort of standardization, somewhat consistent and stable legal approach to mining has been formulated by creating multiple distinct regimes through enacting laws relating to mining by the government of Canada, the provinces and the territories (La Fleche, 2012).

All provinces and territories with significant mining activities impose mining taxes and/or mining royalties or mineral land taxes on mining operations within their jurisdictions. This is a

third level of taxation, separate and distinct from federal and provincial/territorial income taxes. These mining levies are intended to compensate province or territory for extraction of non-renewable resources owned by it.

Essentially all provinces and territories impose mining taxes on defined mining profits. The mining taxes are conceptually levied on profits derived from the operations at the mining stage only. Since no fair market value of production can reasonably be established at the mining stage, the starting point of the tax computation is generally the profits from both mining and processing operations (Government of Canada , 2015).

Other federations such as USA and Australia have similar constitutional structure. Whereby control over natural resources and benefits of natural resources are left to be determined by the provinces/states. Some more countries like Iraq, Russia and Sudan are the examples where control over natural resources vests with provinces and the federal government (Khan, 2014).

Dominant groups, in federal government, may not have interest in a particular province and might sabotage the development of that very province. So giving provinces autonomy in management of the resources is most likely to result good in the favour of the province because they are in a better position to determine the needs and preferences of their people, direct interest of the province in their resources will increase their financial resources too (Khan, 2014).

1.5 Methodological Framework for the Study

This study has utilized exploratory research methods. Primary data is generated through interviews of stake-holders. Secondary data is collected through official reports, proceedings relevant institutions' own data, government documents, print and electronic media reports. Inductive and deductive approaches would be used to make the final inferences. The focus of the study remains on the subjects of Mining Minerals. The scoping study highlights the challenges being faced, identifies the critical gaps and suggests specific policy recommendations to help smoothen and accelerate the implementation process. A multi-pronged methodology has been adopted to achieve the mentioned objectives. In the first stage, this document benefits from the review of various Federal and Provincial government documents – including, laws, regulations, and rules, etc. –, international best practices and different publications are already available on the subject. Later, it carefully examines the Baseline Survey already conducted by the CPDI in collaboration with the USAID. On the basis of the findings of the first two stages, a series of structured interviews were carried out with different senior government officials in the concerned departments. The recommendations thus arrived at were ratified/discarded in the light of Focus Group Discussions with different stakeholders.

2. FEDERAL STRUCTURE AND THE MECHANISM OF MINING MINERALS: PRE AND POST 18th AMENDMENT

2.1 Federal Structure of Pakistan in Historical Perspective

The main purpose of a constitution for any country is to set rules which its people have agreed to live by and also provide the basic principles which its people have decided to be governed under a nation state (Kazimi, 2012). The constitution is not a rigid document and can be amended in order to respond to the needs of the time. On the other hand constitution for the democratic form of government sets the rules for the smooth running of the government and state institution. It also gives empowers Judiciary to watch over and ensure the compliance of the principles and rules enunciated to determine the limits of the different organs of the state and all organs are functioning under their given authority. Thus the constitution of a country is the source of its sovereignty, territorial integrity, internal and external policies, the fundamental rights and well-being of its people and is a guarantor of country's national interests. Problems which emerged due to late start of constitution making are still being tried to be resolved. Pakistan faced shocks soon after its birth; sad demise of Quaid-i-Azam Muhammad Ali Jinnah in 1948 and assassination of its first Prime Minister, Liaquat Ali Khan in 1951, resource-less economy caused by the mass migration of Hindus who were businessmen and ran commerce and industry, rehabilitation of several million refugees, the Kashmir war and other disputes with a hostile neighbour were some of the impeding factors (Kazimi, 2012).

At that particular point of time, ruling party i.e. the Muslim League was divided and lacked political maturity that constitution making required under a shaky political situation and political structure. Rise of strong regional parties, agitation for provincial rights and religious groups demanding an Islamic dispensation for the country further deteriorated the state. Pakistan came into being with unique geography; the state of Pakistan was divided in two wings i.e. eastern and western, which created clash of interest in politics. The eastern wing as a single unit was thousand miles apart, commanding majority population and on the other hand western wing with ethnic division into four provinces. From these and other related factors, the need of framing constitution that could unite various political and economic interests in just equilibrium fainted. A constitutional crisis which was created as a result of various factors hanged on and remained unresolved till the country produced its third constitutional document in 1973. However, the consensus, that was necessary to frame the constitution and unite the

two wings, could only be achieved after the country got dismembered in 1971 and a new independent state of Bangladesh came into existence. Although 1973 Constitution survived through nearly four decades of political commotion but remained suspended or was partially revived under two long military regimes of General Zia ul Haq and General Pervez Musharraf with civil intermissions of Benazir Bhutto and Nawaz Sharif's governments respectively (Kazimi, 2012).

Before the Constitution of Islamic Republic of Pakistan 1973, country got two constitutions namely the Constitution of Islamic Republic of Pakistan 1956 and the Constitution of Islamic Republic of Pakistan 1962. The former had a parliamentary structure based on the British model whereas the latter, framed under the martial law regime of Field Marshal Ayub Khan, gave the country a presidential system. The 1973 Constitution, framed by an elected government brought the country back to a parliamentary form of government. However, since its promulgation, the 1973 constitution underwent a number of amendments, which are 21 in number. Seven instituted by its own author Zulfikar Ali Bhutto, followed by General Zia ul Haq, Nawaz Sharif and General Pervez Musharraf. These amendments transformed it into a fusion of presidential and parliamentary forms with characteristics of a unitary dispensation and centralized power as opposed to the federal structure initially proposed in the original document which had a decentralized power base. As a result of general elections held by General Pervez Musharraf in 2008, the PPP (Pakistan People's Party) came into power. General Pervez Musharraf resigned from his office and Mr Asif Ali Zardari was elected as President.

After assuming power, the PPP government constituted a Constitutional Amendment Committee in 2009 to recommend a package of amendments in order to restore the 1973 document to its original shape and intent. The Committee, comprising 26 members, was formed and members of the committee drawn from all major political parties and other stakeholders produced a consensus draft bill which the National Assembly and the Senate passed with near unanimity on April 8 and 15, 2010, respectively (Asghar, 2010). The Amendment became law on April 19, 2010 when the President affixed his signatures to it (Minhas, 2010). The government constituted an 18th Amendment Implementation Commission (IC) on May 4, 2010 to work on its implementation (DAWN, May 05, 2010). The purposes of restoring constitution to its original form are to strengthen the democratic structure, remove hurdles that have barred institutional growth, decentralize powers to the provinces and good

working relationship between federal units. After the passage of 18th Amendment, the real task for present and future governments is to implement it in letter and spirit. It is being considered as a challenging task in a political milieu that is accustomed to centralization of power at the federal level (Khan, 2011).

2.2 Pre 18th Amendment Scenario

Before the 18th Amendment structure of the federation of Pakistan was such that power rested with the centre and province were dependent upon the federal government for many financial resources which provinces were of the view that these must have been in the control of them. So this amendment has transformed the structure of the constitution from a highly centralized to decentralized federation.

Before the 18th Amendment the provinces were entitled to receive grants from divisible pool, this practice was affecting their economic efficiency and they had to levy taxes to finance each public expenditure item (Sultana, 2011). Contrary to the economic potential of its natural resources, Pakistan is depending on foreign aid instead of developing infrastructure and capacity building of provinces to manage and utilize these resources for the betterment of provinces and ultimately Pakistan.

Government of Pakistan formulated National Mineral Policy in 1995 after consulting stakeholders. The focus of this policy was investment and operational environment of the mining sector to attract local and foreign direct investments.

The 18th Amendment not only has abolish did the Concurrent Legislative List of the Constitution rather made momentous changes in the Federal Legislative List, Parts I and II. The functions previously contained in the Concurrent List have now been devolved to the provinces. It has also transferred subjects from the Federal Legislative List Part-I, which defines the functions allocated to the federal government, to the Part II, making them a joint provincial and federal responsibility under the CCI. Consequently, these changes have brought in substantive changes in the structure of government.

Before The 18th Amendment, the federal excise duty on natural gas was paid to the province of origin but not on oil. But now Article 161 has been amended which gives federal excise duty on oil to province in which well-head of oil is situated. (Tahir, 2011)

Quite similarly the Article 172 consisted of two sub sections but after the amendment a new clause (3) was added which reads as follow:- "Subject to the existing commitments 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." This allows the provinces 50 percent of the ownership of natural resources, mineral oil and natural gas within the province and the territorial waters. (Tahir 2011)

2.3 Post 18th Amendment Scenario

The 18th Constitutional Amendment is a turning point not only in the constitutional history of Pakistan rather in the political history of the country as well. Key to major problems was considered centralization of the federal system but over the years it was proved wrong because the sense of deprivation in the smaller provinces grew strong and they started demanding autonomy to protect their economic and political rights. The long standing centralization of the federal system led to the strengthening of nationalist group who started demanding complete autonomy and the extremists groups among them started raising the slogans of independence. In the economic field the policy of centralization made the provinces financially dependent on the centre to the extent the local sources of revenue went parched (Sultana, 2011).

Pakistan's natural resources were exclusively owned and regulated by the federal government previously. But now according to the 18th Amendment Provinces are given autonomy and ownership of oil and gas resources which have been vested jointly and equally in the federal government and the relevant provinces (Khan, 2014).

This Amendment has created a clash between federal government and provinces as to who owns or has control over mineral, oil and natural gas. Lack of interpretation over this issue has incited provincial government to claim that they are deprived of their due share (Khan, 2014).

About 48 federal laws were identified which needed amendments to reflect the intent of the 18th Amendment. Implementation of the 18th Amendment required substantial changes, in the existing legal, regulatory and policy frameworks on devolved and shared subjects and a number of critical issues have been resolved by amending federal and provincial laws. However, some issues still remain unsettled because of the lack of political will besides policy disconnects and obstructions in the pace and process of transition mechanism. According to the Article 172(3), the oil and gas producing provinces are entitled to have 50 percent ownership and management control on oil and gas and mineral resources in their respective regions. The interpretation of this Article is still unsettled between provinces and the Federal Ministry of Petroleum and Natural Resources (MPNR). Sindh claims to have exclusive rights in the extension of exploration licenses to oil and gas companies, while Balochistan demands for straight abolition of the MPNR. The exploration of oil and gas in 50 blocks, allotted to national and international oil exploration companies, in different provinces is halted due to the ongoing tussle between provinces and the federal ministry (Butt, 2013).

The I.C (Implementation Commission) constituted by the federal government on May 4, 2010 completed its designated task of functional and ministerial restructuring on June 30, 2011 within the deadline set out in the 18th Amendment Bill. But the functional restructuring,

regarding mines and minerals, is yet to be done. The identified ministries were devolved in three phases with transfer of provincial subjects to the provinces and reallocation of remaining functions to other ministries/divisions in the federal government. Abolished ministries included the Ministries of Culture, Education, Special Initiatives, Environment, Health, Labour and Manpower, Local Government and Rural Development, Minorities' Affairs, Population Welfare, Social Welfare and Special Education, Sports, Tourism, Women Development, Youth Affairs, Zakat and Ushr. The critics, however, still term it an incomplete devolution, for instance; the natural resources such as oil, gas and other minerals are now under the joint ownership and management of the federal government and the respective provinces. The provinces thus have access to additional sources of revenue. However, the federal government has come under strong criticism for not respecting the new provision (Bhatti, 2011).

Though the implementation of the 18th Amendment, by the Implementation Commission (IC) in terms of transferring subjects, functions, institutions, assets and projects was completed on June 30, 2011, however, some issues still need to be resolved. The IC expired on a stipulated date and the pending issues were left to be resolved by the CCI, which by the constitution was desired to be a permanent body to resolve recurring disputes between federal government and provincial governments. All matters/disputes relating to 18 subjects, including mineral oil and natural gas, which fall in the Federal Legislative List Part II, between the provinces and in between the federal government and provinces is a domain of the CCI (Wolkewitz, 2015).

The international mining companies are showing great interest in mining because mining industry in Pakistan has a large base of industrial minerals. The great potential for the rapid growth of the sector is present coupled with a fact that international companies are interested in this sector which can go a long mile. But the internal legal disputes and non-implementations of the policies have bogged down the major initiatives and are causing the loss of charm for the international companies in this sector (*Dawn*, November 18, 2012).

All the revenue generating ministries are still in the control of federal government, even after five years of the passing of 18th Amendment and rest of the ministries have been devolved to the provinces. One example is that of the ministry of power. The provinces are empowered and are free to have their own power generation but the key factor relating to the decision for tariff and revenue collection is still in the control of the federal government. The mining sector should have been devolved to the provinces too, by now, but that is not the case (Mustikin, 2015).

The ownership of natural resources and the related revenues have been a bone of contention between the federal government and the smaller provinces. The 18th Amendment has made a number of an ends in this regard (Tahir, 2011). Under the Article 161 (1), it now has these two sub-clauses:

- (a) the net proceeds of federal duty of excise on natural gas levied at well-head and collected by the federal government, and of the royalty collected by the

federal government, shall not form part of the Federal Consolidated Fund and shall be paid to the province in which the well-head of natural gas is situated;

(b) The net proceeds of federal duty of excise on oil levied at well-head and collected by the federal government shall not form part of the Federal Consolidated Fund and shall be paid to the province in which the well-head of oil is situated. Before the 18th Amendment, the federal excise on natural gas was paid to the province of origin but not on oil.

The Article 172 has been amended to allow the provinces 50 percent of the ownership of mineral oil and natural gas within the province or the territorial waters without prejudice to the existing commitments and exclusive right to other natural resources within the territorial waters. The latter, among other things, means that fish stock in territorial waters belongs to the provinces (Tahir, 2011). Accordingly, clause (2) of the Article 172 has been amended and a new clause (3) added. These now read as follows:

“(2) All lands, minerals and other things of value within the continental shelf or underlying the ocean beyond the territorial waters of Pakistan shall vest in the federal government.

(3) Subject to the existing commitments 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.”

The bone of contention is the devolution of the Federal Ministry of Petroleum and Natural Resources. According to the amendment, passed by the Parliament in April 2010, the oil and gas producing provinces are entitled to have 50 percent ownership on oil and gas and mineral resources in their respective regions. They also have the right to have shares of the income generated from those resources with the federal ministry equally. However, the provincial governments have also not fulfilled their legal and constitutional obligations in making laws, which are necessary for the implementation of the amendment.

“Due to the absence of the subordinate legislation, both the federal and provincial ministries have been claiming authority over decisions related to oil and gas exploration,” said former Federal Law Minister (Sofi, 2013). ***“For us the 18th Amendment is an unfinished piece of legislation as it has no significance without enacting the essentially required subordinate legislation,”*** the official claimed. ***This inaction on the part of the ministry to frame the required laws is a breach of provincial autonomy, he alleged*** (Sofi, 20013). He further claimed ***“the Federal Ministry of Petroleum and Natural Resources has also not taken any interest in making subordinate legislation for the implementation of the amendment despite repeated requests by the provinces”***

All oil and gas producing provinces and the Ministry of Petroleum have been empowered to frame rules of petroleum concession under the Petroleum Exploration and Production Policy 2012. “However, there is no progress on the matter.” The Ministry of Petroleum failed to respond to its legal and constitutional duty in this regard. “The ministry had demonstrated a similar attitude when the KP government demanded the required amendments in the Oil Fields and Mining Act 1948.”(Butt, 2013)

Dr. Abdul Malik, the then Chief Minister of Balochistan demanded that after the 18th Amendment, there should have been automatic proportionate devolution according to its share of the Oil and Gas Development Company Limited (OGDCL) and Pakistan Petroleum Limited (PPL). But this did not happen. The 18th Amendment gives Balochistan much more than that. (Butt, 2013)

Meanwhile, the governments of Sindh and Balochistan are also not actively participating with the petroleum ministry to get the necessary interpretation done of the 18th Amendment vis-à-vis oil and gas petroleum. The Sindh government is claiming that it has exclusive right in the extension of exploration licenses to oil and gas companies, while Balochistan is demanding the abolishment of the petroleum ministry following the 18th Amendment so that it could have provincial autonomy over its resources (Butt, 2013).

Minerals under the new constitutional structure are a joint wealth of the centre and province as well as a cause of bitterness between them over the pricing of the minerals and fixing the quantity of production of the minerals. The CCI has not reached to any conclusion after almost five years since the promulgation of 18th Amendment (Waseem, 2015).

Afrasiab Khattak of the Awami National Party (ANP) said that for the Council of Common Interests (CCI) it is stipulated in an amended constitution after the 18th Amendment that there must be at least one meeting in every 90 days but it had not met for over six months and no province has even summoned the CCI meeting either. Though the stakes of provinces are higher as were yearning for the autonomy but unfortunately the provinces themselves have demonstrated lethargy (Khan, 2014).

After the 18th Constitutional Amendment, the Article 172 says that mineral and natural resources within province vest jointly and equally in that province and federal government, this very fact has created some bottlenecks in centre-provincial governance. So it causes the

duplication of authority and provinces have started demanding the separate divisions in the state owned Petroleum Exploration Companies (PECs) and also to negotiate contracts for the allocation of exploration blocks (The NEWS, November 25, 2014).

Intention of amending the Article 172 was to give provinces more autonomy when dealing with transactions related to mineral oil and natural gas. Implementation of the Article 172 (3) in its true spirit and with strong political will is a core issue. Reason for which the provinces are unable to get benefits of the amendment is that, currently, there is no agreed policy and institutional framework. Provinces do not have the capacity to tap the financial benefits arising out of joint ownership over petroleum resources. A phased programme is required to develop policy, legal and institutional framework which could enable federal and provincial governments to implement the Article 172 in the spirit of the 18th Amendment (Wolkewitz, 2015).

In 1993, the Balochistan's Caretaker Chief Minister granted exploration rights to an Australian mining company the BHP—Broken Hill Proprietary Company Limited in Reko Diq. According to an agreement with the BHP, the Balochistan government granted 75 percent share to the company in discoveries for the next fifty-six years. Further, this agreement stipulated that the Balochistan Government would get 25 percent share on a joint investment basis and only two percent 2% royalty. After the insertion made by the 18th Amendment in the Article 172 (3), this agreement is declared against the constitution. Subsequently, the Supreme Court of Pakistan in 2013 declared, in an Order, the joint venture as void. However, the international firm approached the International Centre for Settlement of Investment Disputes (ICSID), citing a breach of contract and since then the Reko Diq project is in problem (Hasan, 2015).

The provincial governments of Balochistan and KP have shown a strong desire to implement the Article 172 (3). **In order to operationalize the Article 172 (3) adequately there is a need for an informed dialogue to generate inter-governmental consensus** (Wolkewitz, 2015).

In the case of Saindak Copper-Goldmine, where mineral, oil and natural gas became the property of the operating company whereas the province is only getting or earning the royalty and federal excise duty. This distribution of profits formula is against the will of Balochistan government (Wolkewitz, 2015).

Recently, the Supreme Court of Pakistan has directed, in an Order, to oil and gas exploration companies to invest \$30,000 in a block per year for the uplift and social welfare of the districts where the companies are exploring. As a result, exploration companies have contributed Rs-780 billion under these heads. These funds should be given directly to the provinces for the uplift of local communities, in light of the changes incorporated in constitution by the 18th Amendment (Wolkewitz, 2015).

The National Mineral Policy was formulated in 2013 with a vision to attract private investment which will contribute to the economic growth of mining sector and the economy of Pakistan. It

also envisioned smooth and operational coordination between federal and provincial institutions in the implementation of the regulatory and legislative regime for the mining sector in the light of 18th Amendment (Wolkewitz, 2015).

Khyber Pakhtunkhwa (KP) has done some homework in the field of mines and minerals. It has formulated its Mineral Policy 2014, established an Oil and Gas Development Company and Rs.10 billion has been allocated to this oil and gas company to develop a detailed action plan for expediting work on exploration of oil and gas in the province. KP is also working to upgrade two minor legislations i.e. (1) Mineral Act 1948 and (2) Mine Safety Act 1923 (Wolkewitz, 2015).

A new feature introduced by the 18th Amendment is the institutional framework intended for inflated and effective participation of the provinces in the decision making of the federation. But neither in theory nor in practice, have the intergovernmental relations received the attention as intended in the 18th Amendment. Formal rules and terms of engagement between the federal government and constituent units/provinces are still evolving, among the constituent units at fewer paces and between the constituent units at minimal pace (Tahir, 2011).

Mines and minerals being the provincial subject after the 18th Amendment cannot be legislated upon by the federal government. Only provincial governments have the right to draft on the subject, this interpretation was accepted by the CCI in its meetings in response to the objections raised by the government of Sindh. It was also admitted in meeting of the CCI that the proposed National Mineral Policy is not intended to encroach on provincial jurisdiction. The said policy will merely provide guidelines for mineral exploration, with a purpose of bringing in foreign investment and showcasing the country's minerals at an international level, besides providing the benefits of Geological Survey of Pakistan's know-how, which is a federal entity (Ali, 2011).

The NMP was formulated in 2013 with a vision to increase the economic input of the mining sector to Pakistan's economy through more private investment. It will also ensure smooth operational and effective coordination between federal and provincial institutions in the implementation of the regulatory and legislative regime for the mining sector in light of the 18th Amendment (Wolkewitz, 2015).

Balochistan was the first province to conduct local government elections and organize a Balochistan Development Forum to create a political consensus on development vision and

strategy of the province, while Khyber Pakhtunkhwa (KP) was the first province to come up with a Mineral Policy in 2014. The mineral policy is aimed at activating the mineral sector to enhance and sustain its contribution to government revenues, foreign exchange earnings, employment creation, ancillary economic activities, human resources and technology development and improvement of social and physical infrastructure (Wolkewitz, 2015).

3 NATIONAL AND PROVINCIAL CONTEXTS ON MINING MINERALS IN PAKISTAN

3.1 National Context

There are two national enactments on mines and minerals (I) - The Mines Act 1923 and (II) - Regulation of Mines & Oil-fields and Mineral Development (Government Control) Act, 1948; Other than these two there is no national law specific to mining. Mining is a provincially governed subject according to the 18th Amendment in the Constitution of Pakistan 1973; it does not include minerals other than oil, gas and nuclear minerals. Each province has adopted former federal Mining Concession Rules to be their own with some slight modifications and changes (Louise, 2013).

Regulation of Mines & Oil-fields and Mineral Development (Government Control) Act, 1948 and the related rules deal with grant and management of mining concessions in Pakistan. This same Act and the rules are the main law of administration, compliance and dispute resolution in respect of Pakistan minerals. The federal government administers this law with rules relating to the minerals which fall in its jurisdiction. Thus, the federal government administers the Act in respect of oil, natural gas and nuclear minerals, where as provincial governments also use same law with different rules for the minerals which fall in their respective jurisdiction and territory.

The Mines Act, 1923. Mines being a provincial subject so subject to the conditions imposed by the constitution, each province maintains its own set of policies, rules and institutional arrangements.

The National Minerals Policy 2013 (NMP). The 2013 NMP policy document is comprehensively covering all of the key-aspects for the development of the mining sector, namely (i) Objectives, (ii) Constitutional Position of Minerals, (iii) Establishment of a Regulatory Framework, (iv) Sector Institutional Framework, (v) Licensing Types and Conditions, (vi) Environmental Protection, (vii) Fiscal Regime, (viii) Small Scale Mining, and (ix) Social Development and a Number of Miscellaneous Matters. The document is not only expressive of mining policy aspects but also covers a number of legal regulatory aspects which in other mining countries are defined in the mining code and associated regulations (Louise, 2013).

3.2 Provincial Context

Award and implementation of license/lease rights, levy of taxes, violations and penalties, provincial institutions and their roles etc. are the subjects which fall in provincial domain. The overall legal and regulatory context in which mining is being conducted at provincial level implies that the NMP is playing the role of a "Minerals Law". The contents of NMP embraces are those which would typically be included in law or regulations. For example, it states that minerals other than oil, gas and nuclear minerals and those occurring in special areas are under the control of federal government (e.g. the Federally Administered Tribal Areas and national

area surrounding Islamabad are governed by the laws and regulations of the provinces in which they are located) (Louise, 2013).

In addition, there are a number of mineral-related institutions which have been published as a part of the province but this is still not fully implemented. One of them is the Mineral Investment Facilitation Board (MIFB), which will be chaired by the Prime Minister at national level and in the provinces and Special Areas a Mineral Investment Facilitation Authority (MIFA) will be chaired by the respective Chief Ministers (*Dawn*, November 18, 2012).

3.3 Council of Common Interests

The Federal Legislative List, Part II, now after the 18th Amendment, comprises subjects requiring Federal-Provincial interaction. The CCI which remained dormant in the original 1973 Constitution has now been assigned a much important role. The CCI was built on the basic idea of 1973 Constitution under the Article 153 by the Parliamentary Committee on Constitutional Reform (PCCR), in order to promote joint supervision of federal resources and dispute management while providing a collective leadership to further strengthen the Federation (Tahir, 2011).

The 18th Amendment has widened the scope of the Federal Legislative List, Part II, when the CCI has also emerged as the most important forum in the new institutional framework. The Article 154 (1) says: "The Council shall formulate and regulate policies in relation to Part II of the Federal Legislative List and shall exercise supervision and control over related institutions." Provisions that it could make its own rules of procedure and majority rule for decisions already existed. It was also provided that dissatisfaction with any decision of the CCI could be taken to a joint sitting of the Parliament and the Parliament in joint sitting could also issue directions to the CCI. Under the 18th Amendment, its composition has been strengthened. It consists of the Prime Minister as Chair, the Chief Ministers of provinces and three members from the federal government to be nominated by the Prime Minister. The constitution of the CCI now cannot be delayed; it has to be constituted within thirty days of the Prime Minister taking oath of his office. A meeting is mandated at least once in ninety days. It shall have its own secretariat. The Parliament shall have to be informed about the activities of the CCI by submitting an Annual Report to both the houses of Parliament.

The Articles 153 and 154 depict, the provinces are not mere passive participants of the CCI. In case of any complaints envisaged in the Articles 153 and 154, the provinces can request a meeting through formal communication with the Chairman CCI and the provinces have also been empowered to set agenda for the CCI meeting. In its meeting held on February 1, 2011, the CCI decided prior to circulation to the provinces to include their comments in summaries initiated by the federal ministries and divisions. Approval of all the bills and policies within the CCI domain has been made conditional to concurrence by the provinces (Wolkewitz, 2015).

4. FINDINGS, CONCLUSION AND POLICY RECOMMENDATIONS

4.1 Findings

- The restructuring of the constitution by the 18th Amendment no doubt is a milestone in the constitutional and political history of the Pakistan. This amendment redefined the structure and shifted it from heavily centralized to a decentralized federation and provinces were given autonomy. This amendment has also reinforced a multi-level governance system by extending greater autonomy to the provinces and has also intended decentralization at lower level of the local governance.
- Re-demarcation of the jurisdiction of multi-level governance of Pakistan at the federal, inter-provincial and intra-provincial levels by revising the Federal Legislative List Part-I and Part II and abolishment of the Concurrent Legislative List has made significant changes in the executive authority of the federal and provincial governments. 18 subjects have been added in the Federal Legislative List Part II which is now the joint ownership of the federal and provincial governments, and now is a domain of the CCI. But the CCI did not meet since last many months and violating the constitutional role awarded to it by the constitution.
- The 18th Amendment has created a balance through division of power between federal and provincial tiers of governance. However, the trickle-down effect of this vertical devolution has not been equitably distributed to the lower levels by the provincial capitals. Consequently, the fiscal and policy controls have been concentrated in the provincial legislatures and executives.
- The trickle-down effect of decentralization will be through the formulation of local governments with substantive devolution of fiscal and administrative authorities to local governments at district, tehsil and union council levels.
- The 18th Amendment amended, altered, and changed almost 32% per cent of the constitution. Such a huge restructuring surely need time to implement the changes intended or introduced. But five years have lapsed since the amendment and restructuring or re-allocation of the ministries/division have not been completed yet. The current situation is that the revenue raising authorities largely vests with the federal government. This reflects the lack of political will, policy disconnect and obstruction of the pace and process of transition management.
- The 18th Amendment has transferred the concurrent list to the provinces which means functional responsibilities belong to provinces now, but for fiscal responsibilities the provinces are relying on the centre by now and surely will at least in the foreseeable future. As long as fiscal responsibility is not borne by the provinces for delivering services, autonomy in the real sense will not be achieved by them.

- Despite the 18th Amendment under which 47 subjects in the concurrent list stand transferred to the provinces such as: population, planning, electricity, tourism, trade unions, trusts, arms and explosives, transfer of property and registration of property, arbitration, bankruptcy, adoption, marriage and divorce, general sales tax on services the ministries related to mines and minerals are still not devolved and the federal government has come under strong criticism for not doing so.
- According to the amended Article 172 (3) the oil and gas producing provinces are entitled to have 50 percent ownership and management control over mineral resources in their respective provinces. Due to the absence of subordinate legislation, both the federal and provincial governments have been claiming authority over the mineral oil, gas and other minerals. Thus the 18th Amendment has no significance without enacting the subordinate legislation relating to mines and minerals. Furthermore, the Ministry of Petroleum and Natural Resources also has not paid heed to much required legislation despite repeated requests of the provinces.
- Article 172 (3) is a bone of contention between federal government and provinces. Interpretation of this article may solve the matter but the institution responsible for resolving such issues between the federal government and federating units is the CCI which has not met since many months whereas the constitution stipulates one meeting of the CCI in every ninety days. Provinces have also been lethargic in this respect and have not knocked at the doors of CCI to get their due rights. Oil and gas are the lucrative minerals and generate much revenue for the centre so acquiescent of provinces suits the federal government.
- Allotting fiscal autonomy and expecting the allocation of that money fairly for public services seem next to impossible. How and when corruption can be controlled cannot be predicted in at least the foreseeable future. Of course, the 18th Amendment is a milestone in redressing the grievances of the federating units against the centre; However, there is a need for taking a series of steps to fully implement the 18th Amendment
- The role of federal and provincial institutions and their demarcations are not clear. This very fact is confusing for institutions itself and for investors as well. Especially relating to large-scale mining— some federal institutional functions will emerge, i.e. Ministry of Petroleum and Natural Resources— oil and natural gas, Board of Investment (BOI)— notably relevant with large and foreign investments, Ministry of Finance (Federal Board of Revenue, Tax and Custom Authorities), Planning Commission of Pakistan— especially when integration of infrastructure, water and mining reserves, Ministry of Labor and Manpower, Ministry of Law and others.
- The 18th Amendment in Article 173 (3) of the Constitution saying that oil and natural gas is now a concurrent item so needs to be jointly managed by federal and provincial governments. It has made the case further ambiguous for foreign investors, so the

Balochistan Minerals Development Department (BMDD) sought advice on how to manage this. Investors will similarly need to understand this relationship.

- The insertion of Article 172 (3) contradicts Article 161, according to Article 172 (3), 50 percent of government receipts are to be shared equally by the federal government and the relevant provinces. Whereas article 161 provides 100 percent royalty on natural gas to the provinces. A question then arises, as to why 100 percent royalty was paid to the provinces when 100 percent ownership of oil and gas resources was with the federal government.
- If any of policies on the subjects mentioned in Part-II of the Federal Legislative List, discussed and approved by the CCI, it needs implementation through framing of rules or a law, the said rules or law has obviously to be framed/approved by the federal government or the Parliament. Powers of the CCI, thus, appear restricted to the formulation and regulation of policy in the matters referred to in Part-II of the Federal Legislative List and do not, in any way, restrict the administrative powers of the federal government or the legislative powers of the Parliament in matters listed in the Federal Legislative List Part-II also.
- The devolution of different domains, like legislature, executive, policy making, redistribution of subjects and reallocation of attached departments is not at all easy and free of contest. The proponents and promoters of participatory federalism and devolutionist remained unprepared to convert the intent of 18th Amendment into public policy and governance framework.

4.2 Conclusion

Canada has almost same structure as we have here in Pakistan now after the 18th Amendment. Like Pakistan, Canada also has three tiers of governance particularly relating to mines and minerals and is running smoothly. But after the laps of five years since the promulgation of the 18th Amendment, politics of Pakistan failed to resolve the issues hampering the devolution process. Pakistan is not the only country in the world which has undertaken devolution at such a vast scale. It needs to learn from other countries especially India as the institutional and financial history and structures of the two countries are very similar. Surely, Pakistan will need to develop proper monitoring mechanism for the process of devolution which should be capable of highlighting interprovincial differences to ensure timely resolution of any decline in quality of service that may emerge in the transitional stage, timely resolution of emerging administrative/institutional issues, adequate funding arrangements, agreeable and impartial settlement of issues like sharing of assets and liabilities and learning from good practices in

other provinces and information sharing should not remain informal rather institutionalized through an appropriate mechanism.

4.3 Policy Recommendations

- The National Mineral Policy 2013 (NMP) was formulated and announced. This NMP is serving as official guidance on mining and mineral matters. It would have been better if the subjects which this NMP covers are formulated in a coded form which depicts more modern and comprehensive legal basis, clarity of regulatory framework and clarity of laws. This would have been more attractive for the investors.
- Given the chaotic situation in Balochistan and militancy in Khyber Pakhtunkhwa as well as continuous wave of violence in Karachi, the 18th Amendment seems to be a timely step forward to handle grievances of the provinces. The 18th Amendment and the NFC Award are the accomplishments of the federal government and there are high hopes that the persistent demand of provincial autonomy has been redressed as the concurrent list, through which the central government used to dominate the provinces, has been transferred to the provinces. However, reliance of provinces on the divisible pool for provision of revenues does not empower them to attain financial autonomy. So as long as financial capacity of the provinces is not created to tax and generate their finances to fund services to the people, full autonomy that is envisaged in the 18th Amendment will not be exercised by the provinces.
- All the provinces will have to have local governments in place, to complete the first cycle of multi-level democratic governance.
- The menace of financial corruption will obstruct the transfer of fiscal autonomy to provinces and their reliance on federal government for funding will continue under such circumstances. The test of the 18th Amendment will lie when it is fully implemented. At present, only the functional responsibility has been transferred, except mines & minerals, and for financial support the provinces will have to depend on the central government which is not the intention of 18th Amendment.
- Continuous contest, institutionalized negotiation and quest for consensus-building for equitable inter-governmental relations can be the building blocks of a functional federal structure of Pakistan.

- Appropriate steps to be taken to develop the institutional design and establish an independent secretariat of the Council of Common Interests (CCI) as provided by the 18th Amendment. The CCI secretariat should have equal provincial representation in the functioning and management thereof.
- The provincial governments need to review their rules of business and bring amendments therein to further devolve fiscal policy and planning authorities to the district, tehsil and union councils through elected local governments. So that the structural ambiguities may be clear to investors.
- A comprehensive coordination and communication mechanism on implementation and reporting on international agreements, treatise, protocols and covenants need to be established for a consolidated reporting at international fora.
- Federal government needs to emerge as a 'coordinating government' facilitating the provincial governments to address regional and intra-regional difference and create an enabling environment for equitable inter-governmental relations.
- The process of transition management could be made more informed, inclusive and result-oriented in increasing the quality and outreach of development outcomes at respective tiers of governance.
- Federating units must strive quickly and jointly to get their respective shares sprouting from the 18th Amendment regarding mines and minerals. Timely and uniform interpretation of the related issues will be a great success of the provinces; otherwise different interpretations, on the same issue, for every province might create trouble and will consume much time which at this stage is important to formulate the laws and policies and to supervise the smooth transition in the post 18th Amendment scenario.
- Although the CCI itself got a new role after the 18th Amendment, and is in the process of evolution and development, for instance the rule of usual meeting of the CCI in every 90 days is not being observed. Provincial governments can effectively use the CCI even in presence of these obstacles, as it has open doors. However lethargic role of provinces, in last many meetings of the CCI, is not reflecting serious political will as provinces only contributed three applications to get their right determined.
- The National Mineral Policy 2013 was announced and followed the KP Mineral Policy 2014. Such duplicity must be avoided because it may cause conflict of policy. Such

conflict will discourage international investors which ultimately will cause financial loss to the province which have to generate its own finances after the 18th Amendment autonomy.

- The 18th Amendment stipulated that international treaties, conventions and similar instruments are the exclusive responsibility of the federal government. However, obligations under the international agreements often require reporting on subject areas, such as health and education, that are now exclusively under the provinces. These requirements have been assigned to various federal ministries. For example, environment-related reporting falls to the Ministry of Climate Change. Reporting on compliance with conventions and reporting on human rights will be the responsibility of the new National Commission for Human Rights in collaboration with the Ministry of Human Rights. There has been some criticism that the creation of new federal bodies such as the Commission for Human Rights (which was envisaged as a federal institution created through political consensus) runs counter to the spirit of the devolution (seven new ministries have been created since adoption of the 18th Amendment). This makes the case further ambiguous as who will report on mining related environmental issue.
- With respect to royalties and penalties, regulatory guidance may be improved. The application of royalty on weight does not capture optimal revenue for government. Penalties are too low in most cases to reflect the violation. Specific guidance is provided on licensing and other matters that creep beyond typical policy guidance.
- The Article 172 (3) has been effective since April 19, 2010 when the 18th Amendment was enforced. However, till date it has not come fully into force as we can see that in most of the foreign ventures, the mineral, oil and natural gas become the property of the operating company, whereas the province is only paid the royalty and the federal excise duty. Once the Article 172 (3) comes fully into force, it will lead to greater accountability, better compensation for the producing area, political stability and increased investors' confidence. So provinces need to act actively to get the issue of interpretation of the Article 172 (3) resolved.
- A strong coordination and mechanism is needed. As power operations are federally administered and institutions that deal with coal operations are provincially administered, there is a high need for coordination. Cognizant of the fact, the two

governments have taken important measures to promote federal-provincial cooperation and coordinate the regulatory approvals.

- Mining Concession Rules formulation is a domain of the provinces which they themselves have to draft. Balochistan and KP have adopted old Mining Concession Rules with slight changes. These Mining Concession Rules focus on small-scale mining. The provincial concession rules are virtually identical in content and approach and were prepared to implement one part of the National Mineral Policy (NMP)—the fundamental parameters in which mineral rights may be awarded. The rules as published set forth clear and relevant processes for the award and implementation of license/lease rights, but they are narrowly confined to this aspect and do not comprehensively address related legal aspects of considerable importance, i.e., environment, social, fiscal.
- Additional laws, regulations and rules are required. A detailed review of the rules in the context of modern and market-based mining is inevitable. Whether included in the Mining Concession Rules or additional rules, additional attention to certain aspects is recommended i.e. detailed rights and obligations of government, mine companies, workers, civil society, institutional roles and responsibilities, financial rules (comprehensive), environmental and social assessment and mitigation requirements, technical standards, updated violation and penalties.

Comparative analysis with different countries has also been given in the literature review. Where constitutional structure of division of power suggests that multi-level governance is possible and is running smoothly, the only need is to have a strapping political will to resolve the relevant issues.

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ANNEXURE-I

Division of power between Federal Government of Canada and Provincial Governments regarding mines & minerals.

<http://ec.europa.eu/DocsRoom/documents/6445/attachments/1/translations/en/renditions/native>.

Federal	Provincial/Territorial	Shared
Federal lands	Resource ownership and management	Economic development
Fiscal and monetary policy	Land-use decision-making	Environmental protection and conservation
International relations and trade	Royalty design and collection	Health and safety
National statistics	Laws and regulation on resource	Aboriginal economic development
Explosives regulations	Exploration and development Operational matters	
Aboriginal affairs		
Science and technology		

Available at:

<http://ec.europa.eu/DocsRoom/documents/6445/attachments/1/translations/en/renditions/native>.

ANNEXURE-II

(Interview with Dr. Sania Nishtar)

Q-1) According to Article 172 (3), the oil and gas producing provinces are entitled to have 50 percent ownership and management control on oil and gas and mineral resources in their respective regions. The interpretation of this article is still unsettled between provinces and the Federal Ministry of Petroleum and Natural Resources (MPNR). Sindh claims it has exclusive right in the extension of exploration licenses to oil and gas companies, while Balochistan demands the abolition of the MPNR. The exploration of oil and gas in 50 blocks, allotted to national and international oil exploration companies, in different provinces is halted due to the ongoing tussle between provinces and federal ministry. What are the hurdles in implementing article 172 (3)? And what steps have been taken to resolve the difference of interpretation? Why this matter is not being taken to the CCI (no meeting of CCI since last 6-7 months whereas it is mandatory & stipulated by constitution to have one meeting in 90 days)?

Q-2) Is the pricing of the minerals and fixing the quantity of production of the minerals is bone of contention between federal government and provinces?

Dr. Nishtar: (In answers to Q 1 and 2): There is no major ambiguity in the constitution in relation to the subject you have raised. The problem is that people like to interpret the constitution to suit their objectives. Hence wherever there is a margin for rent-seeking and padding incentives, there is a tussle to get hold of the mandate and wherever there isn't, no one is interested in taking responsibility.

172 (3) is clear about joint ownership, but then other covenants of the constitution stipulate the role of federal government (cabinet) and the federation (CCI)

Entry 32 of Federal Legislative List Part 1 states that international agreements are under the federal government's purview, so it is clear that federal government will enter into oil and gas agreements. However the following entries, which relate to governance of minerals and oil are in Federal Legislative Part II which means that these functions are the subject of the federation and not the federal government and hence the CCI is the approving authority. These are Entry 12 standards, Entry 13 interprovincial matters, Entry 7 economic coordination, Entry 6 Regulatory authorities. One can extrapolate all these to any subject including minerals, oil and gas. In view of these entries, provinces have to understand that they have to sit on the CCI table to voice their opinion and claim proceeds, but that they have to work in partnership with the

federal government, which has the mandate to play many roles here, including signing agreements and taking sovereign responsibility. The federal ministry is also critically needed to serve these constitutional "national" roles. Neither federal, nor provincial but "national".

There is no excuse for delaying the CCI meetings. They must be convened to deal with all the agenda items on its pending list and if there is a need to sit every week, so be it. However, it is not just the CCI meeting itself but the homework before it that matters most. Collecting evidence, making a case, getting consensus has to be part of the preparations. But no one is interested in such work here. The government priorities 'visible' infrastructure projects, which have no bearing for long term country outcomes. Also there is a capacity deficit. I don't think those at the helm of governance understand what the role of government is; hence the damage which is being caused by their inattention to these matters.

Q-3) which ministries, departments & divisions related to mines and minerals have been devolved to provinces?

Dr. Nishtar: I will have to check with the MoIP to give a correct answer