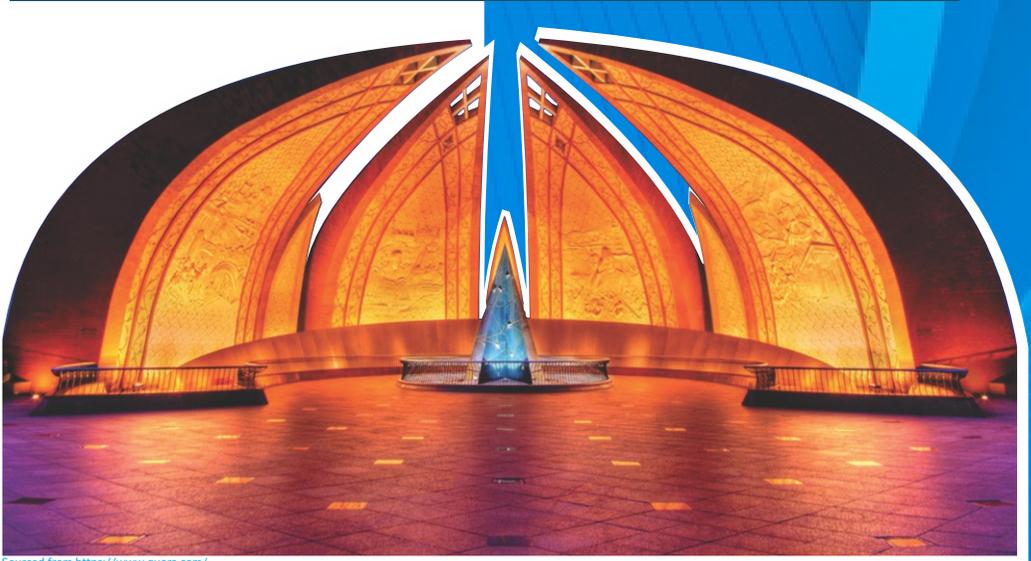




Pakistan Office

## DEMOCRATIC DEVOLUTION AND THE COUNCIL OF COMMON INTERESTS



Sourced from <https://www.quora.com/>

# TRAINING BOOKLET



# CONTENTS

Preface .....	i
About the Author .....	ii
Abbreviations & Acronyms .....	iii
What is Democratic Devolution?.....	01
Democratic Devolution.....	01
Modern Democratic Devolution.....	01
Processes and Institutions of a Federal State.....	03
Varieties of Democratic Devolution .....	04
Advantages of a Federal System .....	08
<b>Democratic Devolution in Pakistan .....</b>	<b>10</b>
Advantages of a Federal System in Pakistan .....	10
History of Democratic Devolution in Pakistan.....	11
The 1956 Constitution .....	12
The 1962 Constitution .....	13
The 1973 Constitution.....	14
The 18 <sup>th</sup> Amendment: A Milestone for Democracy and Democratic Devolution.....	16
<b>The CCI .....</b>	<b>19</b>
Introduction .....	19
Purpose of the Reform .....	19
Composition and Meetings .....	23
Responsibilities According to FLL-II .....	24
The New Rules of Procedure .....	25
The Agenda Items of the CCI Meetings.....	25
Outlook and Prospects .....	27
<b>FURTHER READINGS .....</b>	<b>29</b>
<b>ANNEXES .....</b>	<b>31</b>
Rules of Procedure of the Council of Common Interests .....	31
<b>SCHEDULE-I.....</b>	<b>34</b>
<b>SCHEDULE-II.....</b>	<b>35</b>
<b>SCHEDULE-III.....</b>	<b>36</b>

## Preface

The booklet “Democratic Devolution and the Council of Common Interests” resembles a training module designed for students of Pakistani universities who participate in the simulation exercise “Model CCI: Debating Democratic Devolution and the Council of Common Interests (CCI)” organised by HSF Pakistan.

The Model CCI is a nation-wide debating event and simulates the real CCI. This unique forum is designed to actively engage students from all provinces and administrative units of Pakistan. It intends to foster knowledge of the political and constitutional system of Pakistan after the 18<sup>th</sup> Constitutional Amendment and to create awareness about the case of Pakistan.

This booklet introduces theories of democratic devolution, federalism and intergovernmental relations and explains how these political theories practically work in the case of Pakistan. The evolution of federalism in Pakistan from a centralised state structure in 1947 to a decentralised and devolved federal state after the 18<sup>th</sup> Amendment will be traced back covering all major political and constitutional developments. This booklet digs deep in the historical development of intergovernmental institutions in Pakistan to explain the established intergovernmental forums in Pakistan and juxtapose the CCI within this institutional framework. The composition, structure, meeting details, agenda items, and powers of the CCI before and after the 18<sup>th</sup> Amendment will also be discussed in detail.

For further information about the Model CCI, please visit our website at <https://www.modelcci.pk>



## About the Author

Mr. Saeed Ahmed Rid is an academician from the National Institute of Pakistan Studies (NIPS) at Quaid-i-Azam University Islamabad where he works as an Assistant Professor of Politics, International Relations and Peace Studies. Dr. Rid did his postdoctoral research working as a Commonwealth Academic Scholar and Visiting Fellow at South Asian Studies, School of Interdisciplinary Area Studies, University of Oxford, UK. He has a PhD from the Peace Studies Department of the University of Bradford, UK. Saeed has been a recipient of the Commonwealth Scholarship award for his PhD at the University of Bradford and Rotary World Peace Fellowship (2004-06) for his double Masters in Political Science and International and Area Studies at the University of California Berkeley, USA.



### *Disclaimer:*

All contents and opinions expressed in this booklet are of the author and do not necessarily reflect HSF Pakistan's position.

## Abbreviations & Acronyms

AJK	Azad Jammu and Kashmir
CCI	Council of Common Interests
EU	European Union
FATA	Federally Administered Tribal Areas
FCR	Frontier Crimes Regulations
FLL-I	Federal Legislative List Part I
FLL-II	Federal Legislative List Part II
GB	Gilgit-Baltistan
HSF	Hanns Seidel Foundation
IGR	Intergovernmental Relations
IPC	Interprovincial Coordination
KP	Khyber Pakhtunkhwa
NEC	National Economic Council
NFC	National Finance Commission
PCCR	Parliamentary Committee on Constitutional Reforms
PPP	Pakistan Peoples Party
PTI	Pakistan Tahrik-i-Insaf
UAE	United Arab Emirates
USA	United States of America

# WHAT IS DEMOCRATIC DEVOLUTION?

01

## Democratic Devolution

Devolution is a statutory delegation of power from a central authority to the sub-national or local level. The unitary, federal, and confederal forms of government provide three ways to devolve power to the sub-national level. A purely confederal state is difficult to manage and offers only limited national unity which is why no example of such a state can be found in the contemporary world. The unitary system, on the other hand, is often criticised as too centralised and authoritative to satisfy the needs of heterogeneous multi-ethnic and multi-religious societies. Therefore, a federal organisation of a state is considered to be the most efficient form of government for democratic devolution in diverse and multi-ethnic societies.

It is likely that the root of the word federal refers to the substantive meaning of the latin word “foedus” which can be translated as “alliance” or “contract” and thus describes a central component of the federal state.

The idea of power devolution first came up in the Roman Empire, even though it had a very suppressive character. During its rise, the Romans conquered new areas, and imposed their own laws on the

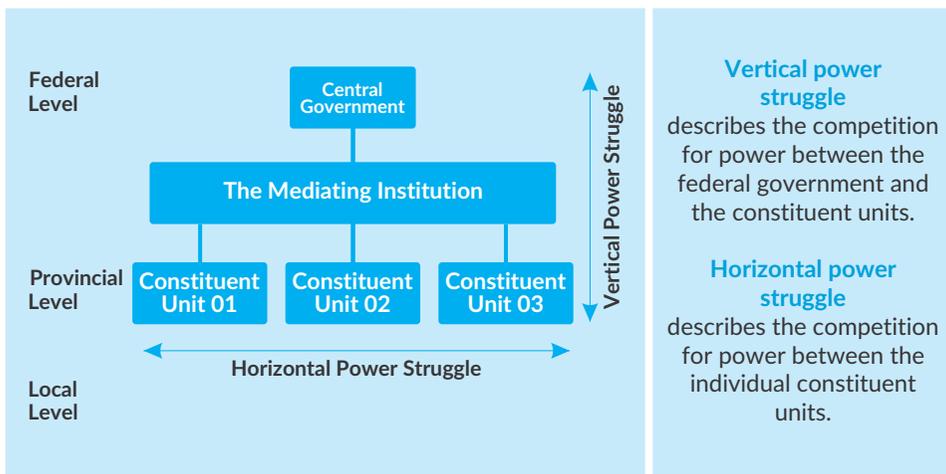
indigenous population of the land they had gained. Most of them had the character of fees and taxes or the provision of troops. As these areas were often far away from the centre of the empire and thus hard to control, the Roman government decided to provide the local administration with limited autonomy. Later, the idea of power devolution also expanded to the acceptance of Germanic tribes settling on the territory of the Roman Empire under similar conditions. Democratic devolution seems to have emerged as a system that was needed to manage the resources and ethnopolitical diversity of an empire. Since then, the theory and practice of Democratic devolution evolved and changed for the good.

## Modern Democratic Devolution

Modern democratic devolution has generally lost the suppressive connotation of forceful rule over an occupied territory. Today, democratic devolution describes a political structure that is defined in a country's constitution and aims at protecting the autonomy of regional governments. Democratic devolution is based on the belief that an institution that is closer to the people and emerging political challenges, can solve them better than a centralised body.

Therefore, one of the crucial defining

characteristics of modern democratic devolution is the requirement for at least two levels of governmental structures: the federal authority (national government) and the federating unit governments (sub-national or provincial governments). This characteristic of democratic devolution is termed the “dual government.” The second defining characteristic of democratic devolution is the autonomy of the federating unit governments. This autonomy should be constitutionally guaranteed through vertical distribution of power. In practice, these sub-national governments have a variety of names in different countries. Sometimes they are called states (United States of America (USA), India and Australia), sometimes provinces (Argentina, Canada and Pakistan), cantons (Switzerland) or Länder (Germany and Austria). To maintain a neutral approach, this booklet will refer to them as “constituent units” as opposed to the “federal” or “central government” that unites the separate constituent units within an overarching system. The term “province” will only be used with reference to Pakistan. These two levels of governments form a “federal system.” Moreover, the process of devolving power towards a more federal and decentralised system will be called democratic devolution.



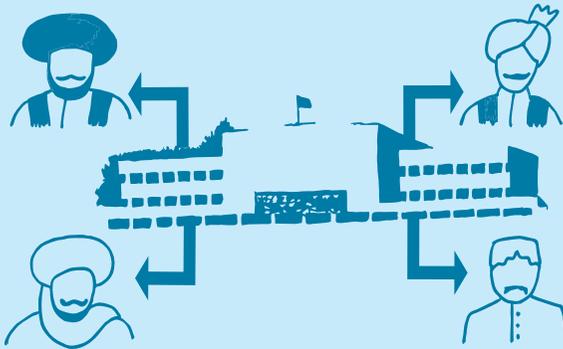
### The Need for a Mediating Unit

Even though major rights and structures of a federation are assured by a rigid written constitution, federal systems are very dynamic in nature. This is due to the ongoing tension between the responsibilities of central and regional powers and can potentially slow down decision-making if there are no institutional frameworks that support consensus-building. Yet, federal systems allow for differentiated policies that accommodate the needs of a modern political system. Therefore, many federal systems established institutions to facilitate decision-making and mediate between central and regional interests in case of conflicts.

## Processes and Institutions of a Federal State

A federal system is often embodied in the electoral and legislative processes and institutions of a country. Usually, the federal units have their own parliaments equipped with a number of competencies. Many federal countries also make use of additional mechanisms to ensure the representation of regional interests in federal bodies. For instance, to solve the tension between the basic democratic principle of “one person, one vote” and the question of meaningful representation of smaller regions, many countries developed a bicameral system. Most of these countries use their second chamber, the upper house, to offer equal representation to all constituent units or to assign seats according to the principle of digressive proportionality. Digressive proportionality means that while bigger constituent units may receive a higher number of representatives, smaller units get more seats than they would get according to proportional distribution. Therefore, the representatives per citizen are usually higher in smaller units.

The idea of a bicameral system led to the introduction of the Senate as the upper house of the Parliament of Pakistan with equal representation for all provinces in the 1973 Constitution.



Compared to centralised governments, a federal system gives more autonomy to its constituent units. This enables them to create locally appropriate and citizen sensitive laws within their power domains. Meanwhile, interregional dialogue allows units to learn from one another and creates a sense of national belonging while keeping in view local interests.

This effect can be enhanced through several other mechanisms which can improve the representation of members of certain religions, castes, ethnicities, genders, etc. An example for one such mechanism is to reserve special seats for women in the parliament.

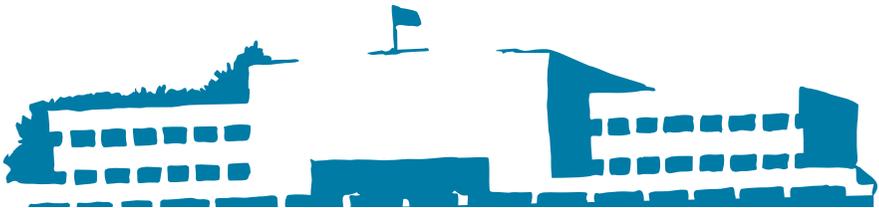
Furthermore, to promote conflict resolution and cooperation among constituent units, inter-governmental forums are created by federal countries. In Pakistan the CCI was created as an intergovernmental forum in the 1973 Constitution.

Moreover, a stable system needs a strong judiciary, which supervises legislative and executive institutions. The idea of the rule of law is that no government body and no individual within the ruling elite should be able to make or implement laws outside the constitutional framework and rules.

## Varieties of Democratic Devolution

Some states that are known to be federal like Argentina and Austria are more centralised than some non-federal states such as Norway, Denmark, and Japan. Moreover, some de facto federally organised states like India or Australia, do not use the term “federal government” but prefer the term “Union Government” or “Commonwealth Government” for historical reasons. Often the borders between a federal and unitary state seem to be blurred, as written law and governmental practice often differ from each other.

Just like these terms and self-understandings, the structures of federal systems and their processes vary greatly. A part of this variation can be attributed to the different origins of federal states. There are four major trajectories of federalist systems:



### SENATE

#### Punjab

Population  
110 Million (48%)  
Seats  
23  
(22.1%)

#### Sindh

Population  
47.9 Million (21%)  
Seats  
23  
(22.1%)

#### KP

Population  
36 Million (16%)  
Seats  
23  
(22.1%)

#### Balochistan

Population  
12.3 Million (5%)  
Seats  
23  
(22.1%)

#### Equal Representation

Each constituent unit gets the same number of seats, irrespective of the size of their population. Therefore, all constituent units get an equal share of power while small constituent units are factually over-represented.

### NATIONAL ASSEMBLY

#### Punjab

Population  
110 Million (48%)  
Seats  
183  
(53.5%)

#### Sindh

Population  
47.9 Million (21%)  
Seats  
75  
(22%)

#### KP

Population  
36 Million (16%)  
Seats  
43  
(12.5%)

#### Balochistan

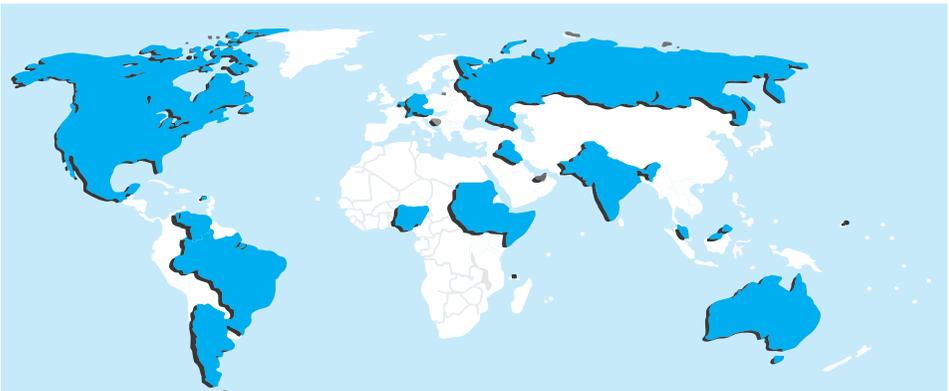
Population  
12.3 Million (5%)  
Seats  
17  
(5%)

#### Proportional Representation

“One man, one vote.” Each state is represented according to the relative number of people who voted in a state. Therefore, every vote weights equal while small constituent units are effectively under-represented.

- ▶ A confederation of single states that deepened their relations over time (e.g. Switzerland, USA)
- ▶ A voluntary segmentation of a state into smaller parts, while maintaining a central power to ensure unity (e.g. Belgium)
- ▶ A monarchy that has further been divided into autonomous regions and developed into a democratic republic (e.g. Austria)
- ▶ An external imposition on a country to avoid local conflicts (e.g. Bosnia and Herzegovina)

Every federal system has its own history and principles. There are federations with just two constituent units and others that have more than 80. In some federal states, the central power is dominating the regional powers, while in other systems, constituent units are provided with extensive autonomy. It is possible that responsibilities within a state are blurred or overlapping, either intentionally or due to inefficient division of power. And of course, there are very stable federations, with an appropriate number of checks and balances, as well as unstable systems that may tend towards separatism or a centralisation of the system. However, the division of power between a central government and its constituent units, at least to some extent, is the common factor between all these systems.



As depicted in the map, there are many federal states all around the world. Yet, the degree of autonomy of the constituent units varies among these states so that some have stronger central governments than others. On the other hand, some of the countries that have not been highlighted in the map might have strong federal characteristics but are not federal states by definition. While being federal in practice, their constitution does not provide a rigid division between the central and the constituent units.

There are some other systems that have many things in common with a federal state, but work differently. A confederation, for example, is created by a treaty between autonomous states that aim to solve certain problems in a political union, whereas the members of that treaty generally keep major competencies, especially their right to a self-determined legislation, executive and judiciary. Hence, the decisions of a confederation are usually dependent on a consensus of its members and the treaty does not have the character of a country. There have been many confederations in history, like the Argentine Confederation (1831-1861), Peru-Bolivian Confederation (1836-1839) and the German Confederation (1815-1866). However, it is debatable whether there are any real confederations in the contemporary world.

Today, the European Union (EU) is a good example to explain the variety and tensions of a federal system. The legal foundation of the EU is a treaty between states that leaves certain political processes to the responsibility of common institutions like the European Parliament, the European Commission, or the Council of the EU. The EU has many federal characteristics, but never established a common constitution that would move state power to any of the EU bodies. It is less than a federal state, but more than a confederation. Hence, it is often referred to as a system “sui generis” (Lat. for of its own kind). The European treaties delegate the competence of decision making in certain areas from national authorities to the European institutions. Some of the decisions are made by the European Commission and the Parliament and are based on the principle of supra-nationalism. This means that the EU can act like a federal

### **The Principle of Subsidiarity**

Subsidiarity means that decisions should always be taken by the most local unit possible. Therefore, matters within a family, for instance, a fight between two siblings for a toy should be addressed within the family and not by the provincial or national level. Similar matters that can be solved on the provincial level should not be carried to the national or international level. This practice is based on the belief that the smallest unit is closest to the people and issue and can, therefore, make more informed decisions. However, if a matter cannot be dealt with on a low level, the principle makes it mandatory to move the matter to the minimum high level required to solve the issue. Climate Change, for example, cannot be tackled on a city or even national level but needs to be addressed on the international level.

state in these areas and make binding laws for its member countries. Other decisions, however, must be taken by the national governments alone and common laws can just be made on voluntary basis of each state or a consensus of the Council of the EU. Moreover, the executive power to enforce all the

legislative decisions of the European institutions still lies with the national governments. For that reason, many of the legislative decisions taken by the EU are not called “laws,” but “regulations,” which must be implemented into national law based on distinct decision-making processes and interpretations of each country. A member state can practically never be forced to implement these regulations, as there is no institution that could effectively enforce the implementation of EU decisions. Yet, countries can be punished to pay a penalty in case they refuse to implement an EU law.

Apart from the EU, the United Arab Emirates (UAE) are another example which shows the varieties of federal governments. The UAE consists of seven autonomous emirates which include Dubai, Abu Dhabi, Sharjah, Ajman, Umm Al-Quwain, Fujairah, and Ras Al Khaimah. Foreign policy, defence, immigration, currency, and some other powers are reserved for the central government, while the Emirates enjoy autonomy in most of their local affairs including the complete authority over all-important oil rights and revenues. The supreme government body of the UAE is the Federal Supreme Council which includes the rulers of all seven emirates, and according to the UAE Constitution this council elects the President and Prime

## Multi-Ethnicity and Democratic Devolution

In most countries of the world, we can find more than one ethnic group. Sometimes these groups have close ties; while in other cases divergent interests between a country's ethnically diverse groups lead to grievances and conflict. This is also true for other sources of social tension or cleavages such as religion, class, etc.

Multi-ethnicity has many benefits, such as a richer cultural diversity and a higher capability to reach an understanding of each other and tolerate difference. Historically, many of the most powerful empires of the world such as the Roman Empire and the Mughal Empire were multi-ethnic. Nevertheless, if treated wrongly, i.e. if resources and privileges are not allocated equally, conflicts and even civil war may occur.

Democratic devolution allows to preserve unity in multi-ethnic societies rather than negating the multi-ethnic nature of a country and creating a false unity based on fabricated ideas. Democratic devolution is based on the principle of recognition and acceptance of multi-ethnicity and provides regional autonomy in matters of their individual concerns.

Pakistan is very diverse in terms of ethnicity, for instance Pashtuns, Kashmiris, Balochis, Sindhis, Punjabis, etc.

Therefore, democratic devolution provides Pakistan with the tools to satisfy the divergent demands of different ethnic groups by providing them autonomy at the local level while achieving national unity at the same time.

Minister for a five-year term. However, it is a practice that the rulers of Abu Dhabi and Dubai are permanently the President and Prime Minister of the UAE respectively. The UAE shows that democratic devolution can exist in monarchies and does not require democratic systems.

The former paragraph has shown that democratic devolution evolves within a variety of political systems. Furthermore, federal states are not static, but dynamic systems that develop over time within a given equilibrium of power. This development is caused by a constant struggle and mediation between different actors and institutions. A strong constitution and neutral checks and balances, increase the efficiency and fairness within the federal system. This adjustability should not be seen as an obstacle, but rather an advantage, as the following chapter will emphasise.

### Advantages of a Federal System

One of the major advantages of a federation is the fact that it maintains and improves democratic procedures. In its essence democratic devolution is a multi-levelled, inclusive governmental structure. It supports the participation of different actors on different levels and provides religious, ethnic and other minorities with a stronger stake in the system as compared to their respective size.

Due to its distribution of powers among the different levels of governance, it also improves the efficiency of the implementation of law. One of the underlying ideas is the principle of subsidiarity. Subsidiarity means a vertical share of powers, where every issue should be tackled on the lowest (most immediate or local) possible level that is consistent with the issue's resolution. The lowest governmental level is the local government level in a federal system. The federal system usually has three levels of government: the federal (central) government, the federating unit government and the local government. Generally, the distribution of powers between the centre and federating units is called the “devolution of power” while the distribution of power at the local government level is termed the “decentralisation of power.”

The distribution of powers between centre and federating units and between the federating units and the local government is equally important. If power is duly transferred to the federating units but the federating units do not transfer it to the local government, then citizens do not have a direct stake in the system which is against the basic spirit of the federal principle. Democratic devolution stands for satisfying the aspirations of the people at the lowest level by

accepting and accommodating their diversity. However, the higher levels of a subsidiary system are necessary to create a “unity in diversity” and stability of the system, without patronising local characteristics and standards. Moreover, certain issues need to be tackled on the federal or international level (such as climate change or transnational security) so that the national or international level become the smallest feasible unit according to the principle of subsidiarity.

In terms of democratic decisions, a federal state can make decisions and implement laws closer to the people's ideas. It is a form of self-governing, where political participation regarding active and passive elections can be organised on a local level, and not by a single and distant central government. It also prevents a central institution from becoming too strong and accumulating too much power.

Overall, democratic devolution respects the uniqueness of its constituent units and provides them with the necessary amount of autonomy. In comparison to separation, this does not mean that every unit just minds its own business, but rather understands itself as a part of a larger political system. This understanding and the cooperation between the units can lead to an enormous improvement not only in terms of political self-determination, but also as a source of synergies that arise from regional focusses on certain businesses and in solving conflicts and problems. Democratic devolution guarantees flexibility and proximity of decisions and enables competition and comparability between the units. It can be a source of expertise, by offering the opportunity to test and compare the success of policies and, therefore, improves the quality of policies in all units through inter-regional dialogue. Another advantage of democratic devolution is that political education is possible even at a local level, where new generations can practice decision-making within their own cultural and political framework.

Democratic devolution can, if implemented correctly, be a win-win solution for both, the federal state and the constituent units. While these units win an important amount of self-determination and representation, they provide their expertise and part of their resources to the federal state that ensures their unity.

# Democratic Devolution in Pakistan

## Advantages of a Federal System in Pakistan

Pakistan was meant to be a federal state from the heydays of the Pakistan movement. Since the annual session of the Muslim League held in Lahore in 1924, the Muslim League was very clear on the federal question. In that session, a historic resolution was passed which reads, “the existing provinces of India shall all be united under a common government on a federal basis so that each province shall have full and complete provincial autonomy, the functions of the central government being confined to such matters only as are of general and common concern.”

Quaid-i-Azam and the Muslim League fought against the implementation of an unitary system and the majoritarian Westminster model of democracy in India because they believed that a centralised majoritarian system would mean the permanent domination of the Hindu majority over the Muslim minority. By 1930 Muslim leaders of all political backgrounds were convinced that only democratic devolution provided the required safeguards against permanent Hindu domination in united India. Quaid-i-Azam Muhammad Ali Jinnah's famous Fourteen Points and Allama

Muhammad Iqbal's Allahabad Address further explain and confirm the centrality of the democratic devolution discourse in the Pakistan movement.

The second reason for Pakistan to be organised as a federation is the process through which the country has gained its independence. During the partition, the Muslim majority provinces were asked to decide about their future - either as part of India, or as a province of a new Muslim Republic. The integration of the former British Indian territories and princely states into today's provinces was a planned and guided process and changed over time. Even though the whole creation of Pakistan was done in the framework of a partition plan, it is hard to overlook the role of the autonomous states within. One good example to demonstrate the intensity of the demand for strong autonomous regions is the Lahore Resolution adopted by the All-India Muslim League in 1940, which states its future provinces to be “autonomous and sovereign.”

The third reason that determines Pakistan to be a federal state, is of a functional nature. Pakistan consists of many different ethnic groups with different languages and cultural identities. Given these circumstances, local identities need

to coexist with a larger national identity. This tension of a multi-level identity can justly be represented by a federal political system, which reflects the diverse composition of its people and is thus able to unite them to one single nation.

## History of Democratic Devolution in Pakistan

Despite being central to the quest for Pakistan, democratic devolution was not allowed to function in its true letter and spirit after independence. When Pakistan was created in 1947, the country inherited a highly centralised state structure under the Government of India Act 1935. Ideally that centralised structure should have been immediately devolved and the provinces should have been empowered but instead certain amendments were made in the 1935 act to increase the power of the central government which further eroded the federal structure of the new country. For instance, section 92A was added to allow the centre to impose governor-rule in provinces on the pretext of law and order. This compromised the principle of provincial autonomy.

Even though it took nine years to create a constitution, suitable for all the participating regions, it just took two years to abolish it in 1958. In total, three Constitutions (1956, 1962 and 1973) and several bundles of amendments are reflected in the 1973 Constitution. Like the 8<sup>th</sup> Amendment, the 13<sup>th</sup> Amendment, the 17<sup>th</sup> Amendment, and the 18<sup>th</sup> Amendment did not only compile a single amendment.

### Lahore Resolution (1940)

“No Constitutional plan would be workable or acceptable to the Muslims unless geographical contiguous units are demarcated into regions which should be so constituted with such territorial readjustments as may be necessary. That the areas in which the Muslims are numerically in majority as in the North-Western and Eastern zones of India should be grouped to constitute independent states in which the constituent units shall be autonomous and sovereign.”



Rather each contained more than one hundred amendments. It is alarming that in most such cases (re-)established constitutions or political systems lasted for short periods, making Pakistan a politically unstable country.

## The 1956 Constitution

The 1956 Constitution supported the idea of the distribution of power between federal and provincial governments in a way that provincial governments got the right to a partly independent legislation. Under Article 106, there was a list of exclusive legislation for the federal government (the Federal List which contained 95 subjects) as well as a list for the provinces (the Provincial List which contained 30 subjects). Moreover, the Concurrent Legislation List which contained 18 subjects was established. The list contained issue-areas in which the provinces were able to make their own laws, as long as they do not conflict with federal law. Under Article 109 the federal government was given the right to make laws about all matters not mentioned in the list (the residuary powers).

Moreover, for dispute resolution and inter-provincial coordination, the president was authorised to set up an Inter Provincial Coordination Division (IPC) as an intergovernmental conflict resolution body under Article 130 of the 1956 Constitution.

Besides, there are also two further important inter-governmental institutions in the 1956 Constitution. Under Article 118 the National Finance Commission (NFC), consisting of the Provincial Ministers of Finance and the Federal Finance Minister as its chairman, was established. The NFC made recommendations for fiscal distribution between the Federation and the provinces especially with reference to taxation and the distribution of subsidies.

The National Economic Council (NEC), established under Article 199, on the other hand, was responsible for the supervision of the overall economic development and gave advice on financial, commercial, and economic policies. It consisted of the Prime Minister as chairman, along with four Federal Ministers and three Ministers of each province. However, all three intergovernmental institutions were not established as the 1956 Constitution was abolished after two years.

In case of disputes that could not be solved by the above-mentioned inter-governmental fora, the Supreme Court was endowed with the original jurisdiction to settle the disputes between different levels of government. Under Article 156, the Supreme Court could take up any matter related to legal right or the interpretation of the Constitution. For any other dispute, which

might not have been covered in the articles mentioned above, the Chief Justice could set up a tribunal to settle the dispute.

Overall, the laws of the 1956 Constitution supported the idea of provincial autonomy in Pakistan. Yet, the Constitution was weak and still needed to be consolidated. Just two years after its promulgation, the constitution was abrogated by President Iskander Mirza, who was soon removed from office by the military leader, General Ayub Khan.

## The 1962 Constitution

In 1962 General Ayub Khan gave Pakistan his own constitution. Promulgating a new constitution on 1 March 1962, General Ayub Khan moved Pakistan away from its former federal course, to become a more centralised country. A more centralised system provides more power to the leader of the central government and is, hence, attractive for authoritarian leaders. Yet, Ayub Khan stuck to the basic structure of a federal state by maintaining the constitutional foundation of a federal state, consisting of two provinces, East and West Pakistan, and the federal government. Under Article 131, the 48 subjects were transferred to the centre while leaving all other residuary powers to the provinces. However, Article 131 (2) of the 1962 Constitution allowed the federal government to take decisions on residuary matters, whenever the national interest of Pakistan was threatened in terms of security, coordination or uniformity.

Additionally, the dispute resolution mechanisms, introduced in the 1956 Constitution got restricted. Neither were tribunals required to be set up by the Supreme Court, nor did the 1962 Constitution mention the IPC as established in the 1956 Constitution. The NFC and the NEC continued to be mentioned in the 1962 Constitution but were never effectively implemented by President Ayub Khan. Democratically, the major weakness of the 1962 Constitution was the lack of direct accountability of provincial governors through elections. As provincial governors were appointed according to the wishes of the President, there was no effective provincial government under the 1962 Constitution. The provinces were completely subservient to the central government. Therefore, the 1962 Constitution was de-facto unitary as the defining characteristic of democratic devolution, the dual government, was not effectively given.

Because of the mounting political pressure from Shaikh Mujeeb-ur-Rahman's Awami League and Zulfikar Ali Bhutto's Pakistan Peoples Party (PPP) Ayub Khan abrogated his own constitution and handed over power to General Yahya Khan in 1969. Ruling under martial law for two more years, Yahya Khan was not

able to solve major conflicts between East and West Pakistan, which finally ended with the separation of the country.

## The 1973 Constitution

The third Constitution of Pakistan was ratified by the Parliament on 14 August 1973. It was suspended and put in “abeyance” twice in 1977 by General Zia-ul-Haq and by General Pervez Musharraf in 1999, yet it was never abrogated like the 1956 and 1962 Constitutions. Arguably the 1973 Constitution survives to date because of Article 6 which clearly stated the abrogation of the constitution a “High Treason” punishable by death sentence. Learning from weaknesses of the unitary and presidential Ayub Khan rule, the new constitution transformed Pakistan back into a parliamentary system with functional democratic devolution. The 1973 Constitution introduced bicameralism (a two-house parliament), one of the important characteristics of democratic devolution for the first time. The Senate was created as the upper house with equal representation for all federating units to provide the minority provinces with a stronger voice in the parliament. Moreover, “soft” aspects of democratic devolution, like the preservation of the different languages of Pakistan, had been manifested in the 1973 Constitution.

Structural changes due to codifying processes and compositions were manifold. The President, for example, could no longer interfere in the setup of the NFC and the NEC due to Articles 160 and 156, which clearly mentioned the timeframe for organising the NFC and NEC.

While many clauses of the 1973 Constitution equalled the 1956 Constitution, Pakistan's political system saw some major changes under the new constitution. To foster interregional dialogue, the 1973 Constitution established an intergovernmental council, the CCI. Article 153 required that the CCI shall consist of the Chief Ministers of the provinces and an equal number of Federal Ministers, nominated by the Prime Minister. They would be making decisions about matters mentioned in Part II of the Federal Legislative List (explained below).

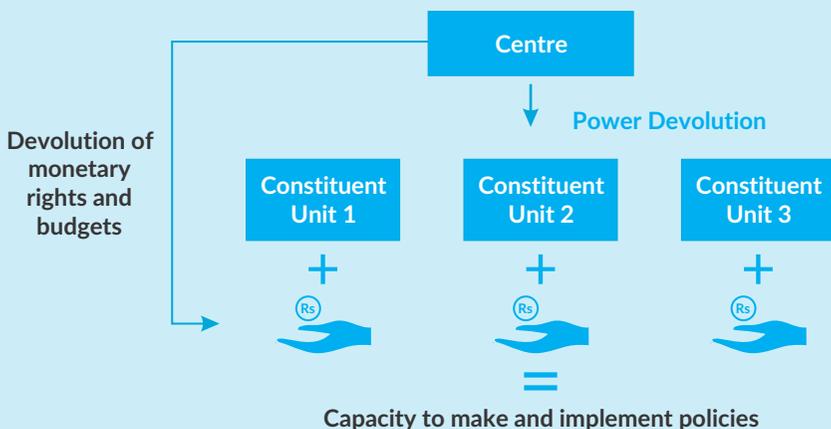
Regarding the distribution of power between the centre and provinces, the 1973 Constitution provided two lists the Federal List which contained 67 subjects and the Concurrent List with 48 subjects. The Federal List was further divided into the Federal Legislative List Part I (FLL-I) with 59 subjects and the Federal Legislative List Part II (FLL-II) which contained eight subjects. On FLL-II the CCI was empowered to “formulate and regulate policies” and “exercise supervision and control over related institutions.” Moreover, the provinces had

the right to make laws in any residual matters and the federal government was not meant to interfere under any given circumstances. When the 1973 Constitution was promulgated the Concurrent List was supposed to be abolished within a span of 10 years. This could only be achieved after the 18<sup>th</sup> Amendment was passed in 2010.

Yet, a closer look at the 1973 Constitution shows that the federating units did not gain much power. The Federal Legislative List in the 1956 Constitution contained 30 subjects being increased to 48 subjects in the 1962 Constitution, and 67 subjects in 1973. In fact, the 1973 Constitution even assigned education

## Fiscal Federalism and the NFC Award

Fiscal democratic devolution is an essential part of a federalist system. Even if power is devolved to the constituent units, it can only be exercised by them, if sufficient resources are available to independently take policy-decisions and implement legislation. Before 1973 the NFC never convened despite being an integral part of the 1956 and the 1962 Constitution. The distribution of resources between the centre and the constituent units was made through the “Reisman Award” with no proper representation of the provinces. From 1974 onwards the NFC awards were made in cooperation with the provinces, but was hardly ever received by the provinces. Moreover, the NFC awards were made considering population as the sole criteria for the horizontal distribution of resources among the constituent units of Pakistan and overlooked which units would need resources the most. This scheme clearly favoured Punjab which is inhabited by more than half of the total population of Pakistan. On the insistence of smaller units, in 2009, for the first- time multiple indicator criteria were introduced with the help of all provinces. Now the multiple indicators contain, population (82%), poverty and backwardness (10.3%), revenue collection and generation (5%) and inverse population density (2.7%). Moreover, in the same award the vertical distribution between centre and provinces was fixed assigning 57.5% of the resources to the provinces and 42.5% to the federation.



and health which had historically remained the responsibility of the federating units to the concurrent list.

Due to international and national pressure, the Bhutto-government collapsed in 1977. After a bloodless coup, General Zia-ul-Haq came to power. He declared martial law like his predecessors but unlike them did not abrogate the 1973 Constitution but rather decided to put it in “abeyance.” He revived the 1973 Constitution after non-party elections in 1985 and forced parliamentarians to agree to the 8<sup>th</sup> Amendment which clearly shifted power from the Prime Minister to the President of Pakistan. The President got the power to make all important appointments in the judiciary, military etc. and could even dissolve the Parliament under newly inserted Article 58(2B). Even his death in 1988 did not lead to any constitutional change as the Prime Ministers Benazir Bhutto and Nawaz Sharif did not have the required majorities for a constitutional amendment.

Prime Minister Nawaz Sharif could only strengthen the position of the Prime Minister compared to the President during his second term after winning a heavy mandate in the 1997 elections. Former efforts to establish a stable, decentralized government were again repressed by General Pervez Musharraf, who took over the reins of the state after a spectacular power game between Nawaz Sharif and himself.

Under the 17<sup>th</sup> Amendment to the Constitution of Pakistan, Musharraf again centralised power by shifting from a parliamentary republic to a semi-presidential system. Nine years later, Musharraf, under substantial political pressure, resigned from his post as the President and gave way to the re-establishment of the 1973 Constitution.

### **The 18<sup>th</sup> Amendment: A Milestone for Democracy and Democratic Devolution**

On 19 April 2010, Pakistan took a big step towards a stabilised and balanced democracy. Intending to overcome the concentration of power in the hands of the President, the amendment was designed to distribute power and improve the political participation of the people.

Not only did the 18<sup>th</sup> Amendment shift power from the President to the Prime Minister, but did also increase provincial autonomy by removing the Concurrent Legislative List and transferring more subjects to the provinces. Out of 47 subjects in the concurrent list two subjects, National Planning and National Economic Coordination, were transferred to FLL-II while one, boilers was transferred to FLL-I. Thus, the remaining 44 subjects were meant to be devolved

to the provinces as residual subjects. Those subjects included criminal law, criminal procedure, civil procedure, evidence and oath, marriage and divorce, adoption, explosives, opium, drugs and medicines, poisons and dangerous drugs, mental illnesses, environmental illnesses and pollution, bankruptcy, arbitration, contracts, transfer of property, preventive detention, arms and firearms, population planning and social welfare, labour welfare, trade unions, shipping and navigation on inland waterways, newspaper, books and printing presses, evacuee property, Islamic education, Zakat, tourism, and Auqaf. However, the implementation of the 18<sup>th</sup> Amendment has been a big challenge. More than a decade later only 18 ministries have been transferred to the provinces so far.

The 18<sup>th</sup> Amendment turned the President more into a figure head (bound by the advice of the Prime Minister) and thus changed the political system of Pakistan from a quasi-presidential system back to a parliamentary democracy. The amendment did not only give more power to the people and its representatives, it also improved the situation regarding the distribution of power between the provinces and the federal government. The former North-West Frontier Province was renamed into Khyber Pakhtunkhwa (KP), as demanded by its majority Pashtun population. This symbolic act of recognition of the need for self-determination was accompanied by several structural laws that shifted more legislative power to the provinces.

Some quarters raise questions over the process of the 18<sup>th</sup> Amendment saying it was not properly debated as the debate lasted only for two hours in the National Assembly and only four hours in the Senate of Pakistan. Nevertheless, there are strong counterarguments as the draft bill which was prepared for the 18<sup>th</sup> Amendment was a result of marathon negotiations and an unprecedented consensus among all political parties present in the parliament. For the negotiations and the joint draft, the speaker of the National Assembly had formed a 26-member Parliamentary Committee on Constitutional Reforms (PCCR) under the chairmanship of Senator Raza Rabbani of the PPP. The Committee did not exclusively include members of the government and their allies, but offered representation to all opposition parties and representatives of smaller units. For achieving a broad- spectrum political consensus on the 18<sup>th</sup> Amendment, the PCCR called 77 meetings over a period of ten months, deliberating for 385 hours, and reviewed 982 public proposals sent by diverse organisations and individuals.

While the former Concurrent List has been removed, most of the above-mentioned topics were now moved under the responsibility of the provincial

legislation. Federal legislation on the other hand, also became more province-oriented. Since the 18<sup>th</sup> Amendment, the cabinet and the Prime Minister are accountable not only to the National Assembly, but to the whole parliament and thus to the provincial representatives of the Senate (except for financial powers). Moreover, provincial governments must be consulted when making decisions about hydro-electric power stations that affect their province while joint and equal ownership of natural resources like oil and gas was established.

Even though there are many responsibilities given to the provinces alone, there is a forum for joint decision making including both, federal and provincial actors: the CCI. The CCI was already established in 1973, but started as a weak institution. The 18<sup>th</sup> Amendment has turned it into an indispensable forum for communication and thus into one of the most important institutions to ensure complementary decision-making.

# THE CCI

## Introduction

In a federalist system different federating units and federations are autonomous in their affairs, resulting in overlapping competencies and competition as a natural result. This makes the presence of the Intergovernmental Relations (IGR) forum necessary in a federal set up to resolve the issues emerging between different government bodies. With this spirit, the CCI was introduced as an IGR institution in the original 1973 Constitution under article 153. As an IGR institution, the role of the CCI is to coordinate between provinces and the federal government on matters mentioned in the FLL-II, resolve their disputes and promote cooperative democratic devolution.

## Purpose of the Reform

It is interesting to note here that though the CCI was introduced in the original 1973 Constitution, its first session was called only two years later from 7-9 August 1975. Moreover, in the presence of the CCI, a constitutional IGR institution, Prime Minister Zulfiqar Ali Bhutto introduced the IPC 1973 as another intergovernmental forum. Bhutto's preference for the IPC over the CCI becomes visible when comparing

the seven IPC meetings with only three CCI meetings during his rule. The IPC was preferred because it was easier to control as no ex-officio members like the Chief Ministers in the CCI were represented in the IPC. All the members of the IPC were chosen by the government of the day.

Between 1973 and 2008 only 11 meetings were held, with no meetings held between 1977 and 1990. During that time, it was the President's decision to convene the CCI, as well as to nominate a Federal Minister to be its chairman if the Prime Minister was not part of the Council (see Article 153). Obviously, the Presidents rarely took the chance to improve the dialogue between the centre and the federating units.

Due to a lack of recognition and regulation, the Council framed its own Rules of Procedure during its 4<sup>th</sup> meeting in 1991. Originally, this had been the task of the Parliament. But clause 2 of Article 154 stated that the CCI was allowed to create its own Rules of Procedure, until the Parliament took a decision and passed a law in this regard. However, neither the Parliament, nor the government gave the CCI any direction.

The chart below shows the meetings that took place before the 18<sup>th</sup> Amendment.

Meetings	Dates
1 <sup>th</sup> meeting	7 - 9 August, 1975
2 <sup>th</sup> meeting	27-28 December, 1975
3 <sup>th</sup> meeting	31 December, 1976
4 <sup>th</sup> meeting	12 January, 1991
5 <sup>th</sup> meeting	21 March, 1991
6 <sup>th</sup> meeting	16 September, 1991
7 <sup>th</sup> meeting	12 September, 1993
8 <sup>th</sup> meeting	29 May, 1997
9 <sup>th</sup> meeting	9 May, 1998
10 <sup>th</sup> meeting	22 December, 1998
11 <sup>th</sup> meeting	6 August, 2006

In the 18<sup>th</sup> Amendment in 2010, the idea of an inter-governmental forum was re-discovered. The 18<sup>th</sup> Amendment assigned the CCI more rights and responsibilities which lead to a higher recognition of the Council. Since then, the CCI has held meetings more regularly and thus opened the way for the devolution of power to the provinces. Below is the chart of meetings held after the 18<sup>th</sup> Amendment:

12 <sup>th</sup> meeting	18 July, 2010	31 <sup>st</sup> meeting	2 May, 2017
13 <sup>th</sup> meeting	6 September, 2010	32 <sup>nd</sup> meeting	25 August, 2017
14 <sup>th</sup> meeting	8 November, 2010	33 <sup>rd</sup> meeting	13 November, 2017
15 <sup>th</sup> meeting	1 February, 2011	34 <sup>th</sup> meeting	24 November, 2017
16 <sup>th</sup> meeting	28 April, 2011	35 <sup>th</sup> meeting	26 February, 2018
17 <sup>th</sup> meeting	1 June, 2011	36 <sup>th</sup> meeting	27 March, 2018
18 <sup>th</sup> meeting	27 August, 2011	37 <sup>th</sup> meeting	24 April, 2018
19 <sup>th</sup> meeting	9 February, 2012	38 <sup>th</sup> meeting	27 May, 2018
20 <sup>th</sup> meeting	8 August, 2012	39 <sup>th</sup> meeting	24 September, 2018
21 <sup>th</sup> meeting	8 November, 2012	40 <sup>th</sup> meeting	19 November, 2018
22 <sup>nd</sup> meeting	23 January, 2013	41 <sup>st</sup> meeting	23 December, 2019
23 <sup>rd</sup> meeting	23 July, 2013	42 <sup>nd</sup> meeting	6 August, 2020

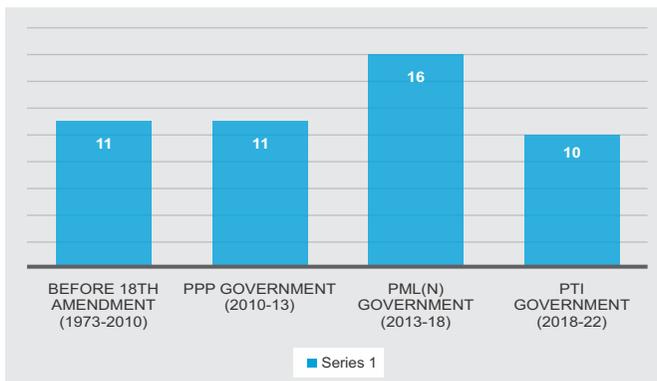
24 <sup>th</sup> meeting	31 July, 2013	43 <sup>rd</sup> meeting	11 November, 2020
25 <sup>th</sup> meeting	10 February, 2014	44 <sup>th</sup> meeting	7 April, 2021
26 <sup>th</sup> meeting	29 May, 2014	45 <sup>th</sup> meeting	12 April, 2021
27 <sup>th</sup> meeting	18 March, 2015	46 <sup>th</sup> meeting	17 June, 2021
28 <sup>th</sup> meeting	29 February, 2016	47 <sup>th</sup> meeting	21 June, 2021
29 <sup>th</sup> meeting	25 March, 2016	48 <sup>th</sup> meeting	6 September, 2021
30 <sup>th</sup> meeting	16 December, 2016	49 <sup>th</sup> meeting	13 January, 2022

## Composition and Meetings

Through the 18<sup>th</sup> Amendment Act, the CCI became a more steady and powerful institution. Meetings were no longer dependent on the mercy of the President and the government of the day. Under the 18<sup>th</sup> Amendment it was made mandatory to convene a CCI meeting every 90 days. Moreover, whenever a new Prime Minister assumes office, they must constitute the Council within 30 days. In special occasions, if need be, the Prime Minister can convene an urgent meeting of the Council on request of a province. These innovations led to a more province-oriented structure of the CCI. If there still is some need for guidance or dissatisfaction with the decisions of the Council, the provinces can request a joint sitting with the Parliament as described in Article 154.

Yet, the implementation of the Council is not perfect and leaves some space for improvement. Even though the Constitution clearly states that the maximum gap between two meetings can be 90 days, there was a gap of more than six months in some instances. Nonetheless, the CCI met far more frequently as compared to the 37 years before the 18<sup>th</sup> Amendment. Moreover, the CCI is required to compose an annual report, which is submitted to both houses of the Parliament according to Article 153.

Number of CCI Meetings Since 1973



Before the 18<sup>th</sup> Amendment, any Federal Minister could be announced to chair the council. Since 2010, the Prime Minister must be the chairman of the CCI and has to nominate three Federal Ministers as members of the Council. The fixed number of members thus increased to eight, four federal representatives and four provincial Chief Ministers (see Article 153).

The CCI was equipped with a Permanent Secretariat, which prepares its meetings, record minutes, and decisions made by the council to ensure continuity even when political staff changes. It is also responsible for supervising the implementation of the CCI's decisions as outlined in Article 154.

Although the 18<sup>th</sup> Amendment made a secretariat for the CCI a mandatory requirement, the implementation of it took the government more than a decade. A stop gap arrangement was made by Prime Minister Yousuf Raza Gilani on 4 March, 2010, when he had ordered the transfer of all secretariat work of the CCI from the Cabinet Division to the IPC. Finally, in the 44<sup>th</sup> meeting of the CCI on 7 April, 2021, a permanent Secretariat of the CCI was created which was put into writing by Prime Minister Imran Khan on 22 April, 2021, in the CCI Rules of the Procedure.

### **Responsibilities According to FLL-II**

One of many changes in the responsibilities of the CCI, brought by the 18<sup>th</sup> Amendment, was the permission for self-determined procedures. This meant that the Parliament was no longer allowed to create the Council's rules of procedure. As the Parliament had never intervened in these rules before the 18<sup>th</sup> Amendments this new responsibility of the Council can be seen as a legal adaptation of the real situation. Moreover, the members of the Council can now make complaints about any water reservoir disputes. Prior to the 18<sup>th</sup> Amendment, these complaints were possible only regarding any natural sources (see Article 155). Another water related responsibility is the right of any province to move the Council for a resolution, in case of projected hydro-power stations in the province (see Article 157). The biggest changes, however, brought the update of FLL-II. This core responsibility of the CCI has been extended due to new entries, as well as entries shifted from FLL-I to FLL-II.

### **The New Rules of Procedure**

After the 18<sup>th</sup> Amendment, the CCI framed new Rules of Procedure which have been revised several times. The new rules introduced several changes. It was decided that four members shall form the quorum which must include at least two Chief Ministers. Hence, the federal government cannot manoeuvre a

meeting without involving the provincial Chief Ministers. Furthermore, to ensure a proper communication and participation, notice for the meeting was required to be issued at least ten days in advance and no case could be discussed or issue can be raised if the summary relating to it was not circulated in advance. Only under exceptional circumstances can the chairman dispense this requirement.

Moreover, it was specifically mentioned that “a matter relating to a province shall not be discussed unless the Chief Minister of that province is present in the meeting.” Hence, no decision can be made by the Council regarding a particular province in the absence of the Chief Minister of the province concerned.

The last update of the rules of procedure came on 22 April, 2021, when the Permanent Secretariat of the CCI was finally put into writing in the rules through the Rules of Procedure. Moreover, according to the new Rules of Procedure a 22-grade civil servant shall be appointed as the Secretary of the CCI Secretariat and representation of all the provinces and regions in the service of the council shall be ensured based on provincial and regional quotas.

### The Agenda Items of the CCI Meetings

The dominance of the federal government in the CCI before the passing of the 18<sup>th</sup> Amendment can be observed from the list of the agenda items discussed in the first 11 meetings. As the agenda was only decided by the federal government and the provinces were not empowered to bring any item of their interest in the agenda before the 18<sup>th</sup> Amendment. Therefore, the Council mostly discussed matters in which the federal government needed the assistance of the provincial governments to implement their policies or raise issues of their concern.

After the 18<sup>th</sup> Amendment the agenda items gradually became diversified, and provinces started pushing for their issues in CCI meetings. During the initial years after the implementation of the 18<sup>th</sup> Amendment and presentation of the annual reports of the CCI and different autonomous bodies like the NEPRA etc. remained on top of the agenda. Moreover, the CCI started discussing and approving national policies. All of these changes caused a rise in the number of discussed agenda items from 44 during the 37 years before the 18<sup>th</sup> Amendment to 76 in the only three years between 2010 and 2013.

By 2014/15 provinces started raising issues. The 2015 report reveals that three out of a total of nine cases were submitted by the provinces, one each by Sindh, Balochistan, and KP. Among other matters discussed, the government of

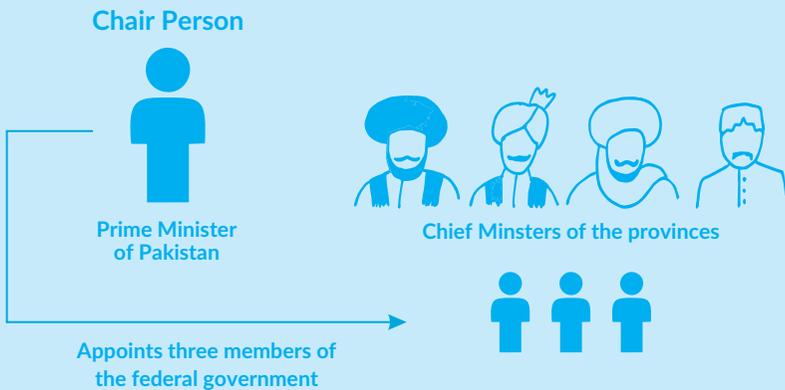
Balochistan raised the issue of “short supplies of water in Pat Feeder Khirthar Canals,” and KP asked for, “Amendment [to the] Indus River System Authority Act 1992,” while Sindh raised the case for, “Matters Pertaining to Higher Education in Post 18<sup>th</sup> Amendment Scenario.”

In more recent meetings matters related to the provincial coordination of the China Pakistan Economic Corridor have also become part of the agenda, as, for instance, the issue of development of Special Economic Zones in provinces. Recently provinces have also started raising their local issues in the CCI. Sindh, for example, raised the issue of the allocation of 1200 cusecs (650.5

### Article 153 (18<sup>th</sup> Amendment)

1. There shall be a Council of Common Interests this Chapter referred to as
2. the Council, to be appointed by the President.
  - a. The Council shall consist of- the Prime Minister who shall be the
  - b. Chairman of the Council; the Chief Minister of the provinces; and
  - c. three members from the federal government to be nominated by the Prime Minister from time to time.
3. [Omitted]
4. The Council shall be responsible to {Majlis-e-Shoora (Parliament)} and shall submit an Annual Report [...].

### The Composition of the CCI



MGD) additional water for Karachi city (KIV Project) and Balochistan drew attention to the issue of “resolution of the energy problems in Balochistan.”

The provincial governments also used the CCI to protest against policies of the federal government. In a CCI meeting held on 23 December, 2019, the three provincial Chief Ministers of Punjab, Sindh and Balochistan raised the issue of “unauthorized transfer of public money from the Provincial Consolidated Fund to the Federal Consolidated Fund by the State Bank of Pakistan on the directions of the Federal Board of Revenue.”

### Local Governance in Pakistan

Local governments can be considered one of the most important characteristics of a federal system. Article 140-A of the 18<sup>th</sup> Amendment authorised the provinces to establish local governments and obligated them to devolve political, administrative, and financial responsibilities to them. Yet, the provinces refused to pass on those responsibilities to a lower level of governance, despite several public litigations in the Supreme Court. Therefore, the system of local governance has not been implemented until today. This is not unconstitutional per se, as the constitution does not define a timeframe within which the local governments have to be implemented.

### The Special Cases of Federally Administered Tribal Areas (FATA)

The FATA were also excluded from the provincial scheme until the 25<sup>th</sup> Amendment was passed unanimously in May 2018 when they were officially merged to form KP. Before passing the 25<sup>th</sup> Amendment, FATA were controlled by the federal government in Islamabad. For maintaining law and order, the erstwhile FATA were ruled through the Frontier Crimes Regulations (FCR), a colonial set of laws made by the British.

After the 25<sup>th</sup> Amendment, former FATA are integrated in KP and the jurisdiction of the Peshawar High Court and the Supreme Court of Pakistan is now extended to the ex- FATA.

The 26<sup>th</sup> Amendment reserved 12 seats for KP in the National Assembly to accommodate the people of the former FATA. Moreover, 24 seats were added to the Provincial Assembly of KP to provide representation to the people of the ex- FATA.

## The Special Cases of Azad Jammu and Kashmir (AJK) and Gilgit-Baltistan (GB)

Pakistan has a symmetrical federalist system, meaning that provinces are given equal power by the constitution and do have access to governmental structures. Yet, AJK and GB are still excluded from this institutional orbit because they are attached to the disputed territory of Jammu and Kashmir. Therefore, the people of AJK and GB are still under-represented in many ways, especially as they do not have any representatives in the Parliament, the NEC, the NFC and the CCI.

AJK has its own Legislative Assembly and a unique arrangement with the federation of Pakistan. Until the Kashmir conflict gets resolved as demanded by UN resolutions, the Azad Jammu and Kashmir Interim Constitution Act 1974 makes the Government of Pakistan responsible for the defence, foreign affairs, currency, and the implementation of the United Nations Commission on India and Pakistan (UNCIP) resolutions.

Apart from the popularly elected Legislative Assembly, AJK has an 11-member Council headed by the Prime Minister of Pakistan as its chairman and AJK's President as its vice-chairman. Under this arrangement, Pakistan's Prime Minister nominates five members from his cabinet or members of the National Assembly for the council while the AJK Assembly elects six members proportionally representing all elected political parties.

The AJK Council is vested with the executive and legislative authority over 52 issue areas. These include electricity and hydro-power generation, tourism, population planning, banking, telecommunications, minerals, oils and gas, and

most importantly the income tax. Moreover, the chairman of the AJK Council, which is the Prime Minister of Pakistan, has the power to appoint Supreme Court and High Court Judges, the Chief Election Commissioner and the Auditor General of AJK. Apart from those 52 issue areas, the residuary powers are vested in the Legislative Assembly of AJK directly elected by the people of AJK.

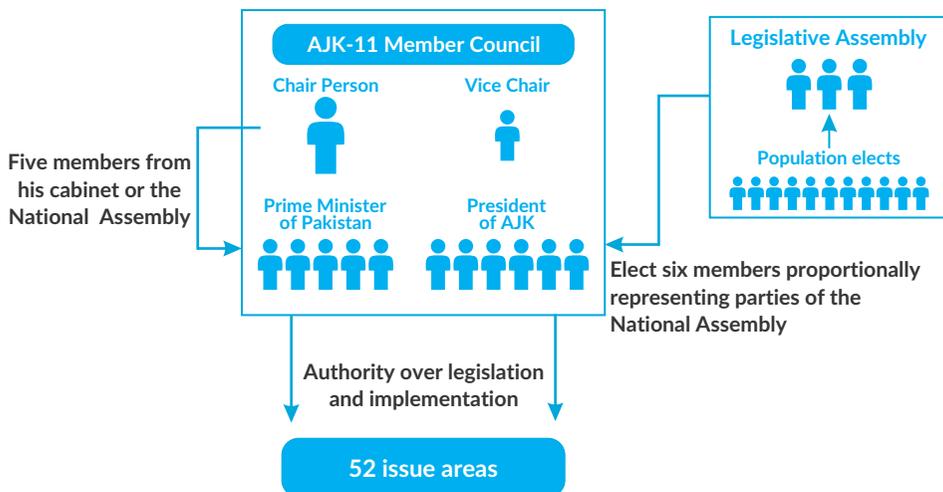
Although GB was part of Kashmir on 14 August, 1947 the people and scouts of GB revolted against the Dogra rule after Maharaja Hari Singh declared the accession of Kashmir. After a long political struggle, GB received an informal status as the "fifth province" of Pakistan when then President Mr. Asif Ali Zardari signed the Gilgit Baltistan Self-Governance Order.

Therefore, GB has now a Chief Minister, a Governor, an assembly called Gilgit-Baltistan Legislative Assembly and the GB Council. The GB Council is established on the same lines as the AJK Council, and decisively tilts the balance in favour of the Government of Pakistan.

In the electoral history of GB and AJK; opposition parties have never won an election in both GB and AJK. The party in power in Islamabad always emerges victorious in GB and AJK elections. People in GB were not satisfied with the Self-Governance Order of 2009 and kept pushing for a complete provincial status. So far their efforts have not brought any major change. If implemented this would mean that GB will be allocated seats in the National Assembly and the Senate of Pakistan and be represented in the NEC, the NFC and the CCI.

## Government of Pakistan

• Defence • Foreign Affairs • Currency • Implementation of the UN India-Pakistan Resolution



## Outlook and Prospects

As demonstrated, Pakistan historically moved between democratic devolution and unitarism. Pakistan started with a highly centralised federal structure but gradually devolved power to the constituent units. In this regard the 18<sup>th</sup> Amendment was a huge step towards a more decentralised system. Several mechanisms have been introduced to prevent political actors from removing federal mechanisms as happened before under military rule. Yet, as the past has demonstrated, powerful actors and authoritarian regimes often refuse to play according to those rules and prefer to establish their own constitutions and laws.

Besides, many countries including Pakistan, experience a gap between constitutional practice and lived government practice. The consolidation of the Constitution and its Amendments are an ongoing process. It is the task of today's and future generations to implement and shape fully.

Therefore, it is imperative to inform those who are actively participating in the system about their rights and responsibilities. Constitutional laws are only of symbolic use if not implemented. Therefore, if Constitutional Amendments are made with consensus and meet ground realities, the democratic system gains strength, as it serves the interests of its people.

Political education and a broad understanding of political processes are important to bring politics closer to the people. Too distant and vague political processes lead to frustration. A steady federal system requires the active participation and understanding of the people. It needs checks and balances not only on a horizontal level but also through vertical dialogue and an active civil society. It needs strong institutions and a political elite that does not strive for power but for a common, prosperous, and democratic future for the country.

Hopefully, this manual would give readers an insight into the idea and importance of democratic devolution and the CCI. It may be used as a reference work for academic studies and serve as a guide through the history of the Constitution of Pakistan, Nevertheless, students are recommended to go through additional relevant reading material and keep themselves updated about the current situation of the country. Students can find suggestions for further reading, as well as relevant excerpts of the Rules of Procedure in the annexes.

## FURTHER READINGS



Ahmed, Syed J. (2014): Historical Evolution of Federalism in Pakistan. PILDAT Discussion Paper. <https://pildat.org/parliamentary-development1/historical-evolution-of-federalism-in-pakistan>

Buhler, Hans Hegemer, Christian J. (2013): Federalism in Asia and Beyond. The Wildbad Kreuth Federalism Days 2012. Muenchen: Hanns Seidel Stiftung  
[https://www.hss.de/download/publications/Foederalismustagung\\_2012\\_02.pdf](https://www.hss.de/download/publications/Foederalismustagung_2012_02.pdf)

Chandio, Jami (2020): Cultural Federalism: Embracing Unity in Diversity in Pakistan. Islamabad: Friedrich Naumann Foundation for Freedom.  
<https://www.freiheit.org/publikation/cultural-federalism-embracing-unity-diversity-pakistan-eng>

Khan, Irfan and Khan, Bakhtiar (2020): Dispute Resolution Mechanism in Pakistan: An Analysis of Council of Common Interest after 18th Constitutional Amendment. Pakistan Journal of Humanities & Social Sciences Research, Volume No. 03, Issue No.02, pp. 67-83.  
[https://journals.wumardan.edu.pk/view\\_paper.php?paper\\_id=121](https://journals.wumardan.edu.pk/view_paper.php?paper_id=121)

Ministry of Inter-provincial Coordination: <http://www.ipc.gov.pk/index>

Rana, Mohammad Ahsan (2020): Decentralization Experience in Pakistan: The 18th Constitutional Amendment. Asian Journal of Management Cases. Vol, 17, No.1, pp. 61-84.  
<https://journals.sagepub.com/doi/full/10.1177/0972820119892720>

Rid, Saeed Ahmed (2019): Federalism in Pakistan: Evolving from a highly centralised federal system to a more decentralised federal structure. In Jahrbuch des Foederalismus 2019: Foederalismus, Subsidiaritaet und Regionen in Europa (Band 20), Tuebingen: Europaeischen Zentrum fuer Foederalismus-Forschung Tuebingen (EZFF) European Centre for Research on Federalism. <https://www.nomos-elibrary.de/10.5771/9783748901174-373/federalism-in-pakistan-evolving-from-a-highly-centralised-federal-system-to-a-more-decentralised-federal-structure>

Rid, Saeed Ahmed (2021): The Pakistan Movement and Federalism. Pakistan Journal of Social Research, ISSN 2710-3129 (P) 2710-3137 (O), Vol. 3, No. 2, June 2021, pp.116-123. <https://pjsr.com.pk/wp-content/uploads/2021/10/15.-Vol.3-Issue2.-Rid.pdf>

The Constitution of Pakistan:  
[https://na.gov.pk/uploads/documents/1549886415\\_632.pdf](https://na.gov.pk/uploads/documents/1549886415_632.pdf) [As modified up to the 31 May, 2018]

Website of the Forum of Federations: <https://forumfed.org/>

Zahid, Ahmed Mehmood (2013): Institutional Analysis of Council of Common Interests (CCI): A Guide for Functionaries. Islamabad: Centre for Civic Education Pakistan.  
[https://www.undp.org/content/dam/pakistan/docs/Democratic%20Governance/Federalism/CCI%20Manual%20\(1\).pdf](https://www.undp.org/content/dam/pakistan/docs/Democratic%20Governance/Federalism/CCI%20Manual%20(1).pdf)

# Annexes

## Rules of Procedure of the Council of Common Interests

GOVERNMENT OF PAKISTAN  
MINISTRY OF INTER PROVINCIAL COORDINATION  
(IPC DIVISION) \*\*\*

In exercise of the powers conferred by clause 5 of Article 154 of the Constitution of the Islamic Republic of Pakistan, the Council of Common Interests has made the following Rules of Procedure, namely:-

### RULES OF PROCEDURE OF THE COUNCIL OF COMMON INTERESTS

1. **Short title and commencement.** –
  - (1) These rules shall be called the Rules of Procedure of the Council of Common Interests, 2010.
  - (2) **These rules shall come into force at once.**
2. **Definitions.**- In these rules, unless there is anything repugnant to the subject or context;-
  - a) “Article” means an article of the Constitution;
  - b) “Chairman” means the Chairman of the Council of Common Interests;
  - c) “Constitution” means the Constitution of the Islamic Republic of Pakistan;
  - d) “Council” means the Council of Common Interests constituted under Article 153;
  - e) “Department” means a department of a provincial government;
  - f) “Division” means a self-contained administrative unit of the federal government responsible for the conduct of its business in a distinct and specified sphere and declared as such by the federal government;
  - g) “Federal government” means the government of Pakistan;
  - h) “Provincial government” means the government of a province;
  - l) “Secretariat” means the Secretariat of the Council established under rule 3;
  - j) “Secretary” means the Secretary of the Council appointed under rule 3; and
  - k) “Schedule” means schedules to these rules.
3. **Secretariat of the Council.**- (1) There shall be a permanent Secretariat of the Council. The federal government, with the approval of the Chairman, shall appoint Secretary of the Council:

Provided that till such time a separate Secretariat is established, the Inter provincial Coordination Division of the federal government shall act as the Secretariat of the Council and till such time a Secretary of the CCI is appointed the Secretary, Inter provincial Coordination Division shall act as Secretary of the Council.

- (2) The Secretary shall be the administrative head of the Secretariat of the Council and shall be responsible for its efficient functioning.
- (3) The Secretary shall appoint such other officers and officials for the Secretariat, as he may think appropriate, in accordance with the rules prescribed by the Council:

Provided that appointment to the posts in BS-20 and above shall be made with the approval of the Chairman:

Provided further that representation of all the provinces and regions in the service of the Council shall be ensured on the basis of provincial and regional quotas.

4. **Functions of the Council.**- The Council shall formulate and regulate polices in respect of matters given in the Schedule I and shall exercise supervision and control over related institutions.
5. **Meetings of the Council.**- (1) The Chairman may summon the meetings of the Council, to meet at such time and place as he thinks fit.
  - (2) The Council shall meet at least once in 90-100 days: Provided that the Chairman may convene a meeting on the request of a province on an urgent matter.
  - (3) The meetings of the Council shall be attended by its members.
  - (4) The Chairman may permit any other federal minister, or a Provincial Minister and any official to attend the meeting of the Council by special invitation.
  - (5) In a meeting of the Council, four members, shall form the quorum; provided that at least two Chief Ministers are present: Provided further that a matter relating to a province shall not be discussed unless the Chief Minister of that province is present in the meeting.
  - (6) No case shall be discussed nor any issue be raised in a meeting unless summary relating to it has first been circulated: provided that the Chairman may dispense with this requirement in exceptional circumstances.
  - (7) Notice for the meeting shall ordinarily be issued at least ten working days in advance.
  - (8) For inclusion in the agenda of a meeting summary relating to the case shall reach the Secretary at least 15 days in advance of the meeting:

Provided that, if a case is urgent and is required to be taken up at a short notice, the Secretary of division or Chief Secretary of the concerned province shall obtain approval of the Chairman for its inclusion in the agenda before it is transmitted to the Secretary.

- (9) The Secretary of the division or Chief Secretary of the province concerned shall attend the meeting of the Council for the purpose of the case relating to his division or province. However, these officers may be asked to withdraw from the meeting before the Council starts discussion on the issue.
- (10) The decisions of the Council shall be expressed in terms of the opinion of the majority.
6. **Circulation and confirmation of minutes and decisions.** The Secretary shall circulate to the members, within seven working days of the meeting, a copy of the minutes and decisions of the Council for perusal. The members shall return the aforesaid copy of the minutes and decisions to the Secretary within fifteen working days of issue. The Secretary shall also supply to the Secretary of the division or the Chief Secretary of the province concerned for action, a copy of the relevant decision of the Council, and wherever considered necessary, of the relevant excerpts of the points made during the discussion.
7. **Committees of the Council.** The Council may constitute its standing committees or special committees laying down their terms of reference and membership.
8. **Procedure regarding Committees of the Council.** Meetings of a Committee of the Council shall be convened by the chairperson of the Committee concerned who shall also preside over such meetings: Provided that the procedure for the meetings of the Council shall apply mutatis mutandis for the meetings of the Committees except that the recommendations of the Committee shall be placed before the Council.
9. **Cases to be submitted to the Council.** The Council shall consider the cases mentioned in Schedule-I of these rules or those notified by the federal government from time to time in the Gazette of Pakistan.
10. **Manner of submission of cases to the Council.** The manner of submission of the cases before the Council and preparation of summaries therefor shall be as given in Schedule-II and Schedule-III to these rules, respectively or as notified by the Secretariat from time to time.
11. **Implementation of decisions of the Council.** (1) When a case has been decided by the Council, the federal government or provincial government concerned shall 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.

- (2) When the decision of the Council is received by the Secretary of the division or the Chief Secretary of the concerned province, he shall -
  - (a) acknowledge the receipt of the decision in the form provided;
  - (b) transmit the decision to his division or department for action;
  - (c) keep a register with him of the decisions received, for the purpose of ensuring that prompt and complete action is taken on those decisions; and
  - (d) coordinate action with any other division or a province, which may be concerned with the decision.
- (3) The Secretary shall monitor the implementation of decisions and the Secretary of the division or Chief Secretary of a province concerned shall supply to the Secretary such documents as the latter may, by general or special request, require, enabling him to complete his record of the case and to satisfy himself that the decision of the Council has been fully implemented.
- 12. Correction of minutes and decisions of the Council.**- If a Member considers that there has been a mistake or omission in recording the minutes or decisions of the Council, he shall point it out to the Secretary in writing within fifteen working days of their issuance. The Secretary shall obtain orders of the Chairman and circulate the same to Members.
- 13. Reference against the decisions of the Council.**- If the federal government or a provincial government is not satisfied with a decision of the Council, it may refer the matter to the Parliament in a joint sitting whose decision in this behalf shall be final.
- 14. Repeal.**- The Rules of Procedure for the Council of Common Interests 1991, are hereby repealed.

## SCHEDULE-I

[See rule 4]

### CASES TO BE SUBMITTED TO THE COUNCIL

- (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 Water and Power Development Authority and Pakistan Industrial Development Corporation and 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 specified in Part-II of the Federal Legislative List but not including fees taken in any court;
- (16) Offences against laws with respect to any of matters in Part-II of the Federal Legislative List;
- (17) Inquiries and statistics for the purposes of any of the matters in Part-II of the Federal Legislative List;
- (18) Matters incidental or ancillary to any matter enumerated in Part-II of the Federal Legislative List;
- (19) Complaints as to interference with water supplies (see Article 155);
- (20) Implementation of the directions given by the Parliament for action by the Council under Article 154(6);
- (21) Submission of Annual Report to both Houses of Parliament (see Article 153(4); and
- (22) Resolution of disputes with respect to construction of Hydroelectric station in any province (see Article 157(3)).

## SCHEDULE-II

[See rule 10]

### MANNER OF SUBMISSION OF CASES TO THE COUNCIL

1. In respect of all cases to be submitted to the Council, Secretary of the division or Chief Secretary of the province concerned, shall transmit to the Secretary a concise, lucid and printed Summary, giving the background and relevant facts, points for decision and recommendations of the federal government or provincial government concerned, as the case may be.
2. The Summary shall be self-contained as far as possible, not exceeding two printed pages and may include as appendices only such relevant papers as are necessary for proper appreciation of the case.
3. Where a reference is made to a previous decision of the Council, the decision of the Council shall invariably be reproduced in the Summary or annexed to it.
4. Where a case concerns more than one division or the province, the Summary shall normally not be submitted to the Council until it has been considered by the divisions and/or the provinces concerned. In case of difference of opinion, the point of difference should be stated in the Summary.
5. The provinces and the divisions concerned of the federal government should furnish their comments or views on the summaries for the Council circulated for the purpose, within two weeks. The requirements of prior consultation may be waived in very exceptional circumstances, but the Summary must, in that case, be sent to others concerned with the request to send their views direct to the secretariat of the Council by a given date. The secretariat would circulate the views, if received in time, along with or in continuation of the Summary.
6. It shall be the duty of the Secretary to satisfy himself that the summary submitted by the federal or a provincial government is complete and in the prescribed form. He may return a case until the requirements of these rules, have been complied with.

### SCHEDULE-III

[See rule 10]

#### PREPARATION OF SUMMARIES AND DOCUMENT

A Summary for the Council shall include

- (a) name of the sponsoring division of the federal government or department of the provincial government;
  - (b) subject of the case;
  - (c) name and designation of the officer submitting the Summary (Secretaries/Additional Secretaries-in-Charge of divisions concerned in case of federal government and Chief Secretaries in case of provincial government);
  - (d) place and date of submission; and
  - (e) serial number.
- (2) The words "SUMMARY FOR THE COUNCIL OF COMMON INTERESTS" shall invariably appear at a prominent place, above "Subject." It shall be marked as "SECRET" at the top right corner on first page.
- (3) All papers submitted to the Council shall be marked "SECRET" until discussion on them has taken place in the meeting. Thereafter, unless the Council has decided otherwise, the sponsoring government shall decide the de classification of these documents under intimation to the secretariat.
- (4) The members shall return to the Secretary
- (a) the summaries supplied to them for decision by discussion in a meeting of the Council or a Committee of the Council immediately after the discussion has taken place; and
  - (b) minutes and decisions circulated by the Secretary immediately after they have perused them, but not later than fifteen days.

[F.No.1(1)/2010-IPC-III date 19 July, 2010]

QURAT-UL-AIN,  
Deputy Secretary (IPC)





## About Hanns Seidel Foundation (HSF) Pakistan

HSF works in the service of democracy, peace and development in Bavaria, Germany and beyond. Since more than 50 years, HSF has been a respected global partner on good governance, the rule of law, and contacts with Germany.

Being part of the broader German development cooperation, the Munich-based foundation is currently implementing more than 97 projects in about 71 countries worldwide, including Pakistan. It is the first German political foundation to work in Pakistan; since decades HSF has strengthened parliamentary and academic structures while pursuing a partnership-based approach that focuses on ownership by local organizations and transparency.

HSF has been collaborating with the secretariats of both parliamentary chambers as well as with research institutes, think-tanks and public universities for the purpose of strengthening democratic structures in Pakistan. Today, the Foundation is regularly involved in activities all over the country with a focus on the federal capital Islamabad, and the provincial capitals of Karachi, Lahore and Peshawar.

Since 2012, HSF Pakistan has increasingly focused on projects related to good governance through constitutional understanding, intraregional and interregional dialogue, and expertise in areas relevant to sustainable development, such as non-traditional security challenges.

Until today, these HSF projects in Pakistan have encompassed training sessions, publications, seminars and conferences where researchers and experts from around the world share and exchange their thoughts and experiences.



Council of Common Interests and Democratic Devolution by Nils Heining is updated and revised by Dr. Saeed Rid for Hanns Seidel Foundation Pakistan on March, 2022 licensed under a Creative Common Attribution-Noncommercial 4.0 International License. To view a copy of this license, visit <http://creativecommons.org/licenses/by-nc/4.0/>



Hanns Seidel Foundation Pakistan  
Block 4B, Entrance 1, Bhattai Road, F-7 Markaz, 44000  
Islamabad - Pakistan



Year	Event / Background	Main actors	Distribution of powers	Inter-governmental dialogue	Conflict- / dispute resolution
1956	After independence, the Pakistan government continued ruling the country with the help of highly centralised regulations of the colonial masters. As Government of India Act (1935) and Indian Independence Act (1947) formed the basis of the interim constitution (1947-56), After nine years of work, the first constitution of the Islamic Republic of Pakistan could finally be created.	First Constituent Assembly of Pakistan	Three legislative lists that defined the share of power (Article 106): 1.The Federal List, where the legislation was the responsibility of the federal government alone. 2.The Concurrent list, where both federal and provincial government could legislate. 3.The Provincial List under the sole jurisdiction of the provincial legislature.	<ul style="list-style-type: none"> <li>The National Finance Commission (NFC), was established. The NFC would be chaired by the federal finance minister and consists of the provincial finance ministers, plus other relevant officials (appointed after consultation with the governors of the provinces). Its task was giving recommendations about the distribution of tax proceeds and subsidies. (Article 118)</li> <li>Establishment of the National Economic Council (NEC), chaired by the Prime Minister and consisting of four federal ministers and three ministers from each province. The NEC's task was the revision of the overall economic position and to guide the federal and provincial governments by formulating plans in terms of financial, commercial, and economic policies. (Article 199) Possibility for the President to establish an Inter-Provincial Council, if it appeared to serve the public interest. It should make recommendations in terms of coordination of policy. (Article 130)</li> </ul>	<p>By the Supreme Court through a declaratory judgement- (Article 156), if it involves questions about existence or extent of a legal right or the interpretation of the constitution. The conflict-parties can be just provincial and also the federal government. (Article 156)</p> <p>By a tribunal for the cases, which are not embraced by the responsibility of the Supreme Court. The Chief Justice of Pakistan was empowered to appoint the members of the tribunal and review its outcomes, to send it to the responsible Legislature. (Article 129)</p>
1958-1962	The 1956 constitution was abrogated by Iskandar Mirza and country was ruled under martial law regulations by General Ayub Khan.				
1962	2nd Constitution of Pakistan was formed under Ayub Khan, who created a presidential system to rule the country.	General Ayub Khan	The central government got exclusive powers to make laws in any matter enumerated in the Third Schedule. (Article 131) While there was still officially some power left for the Provinces to legislate on residual matters (Article 132), the Federal Legislature had been granted the power to make laws in any matter if the national interest was touched in terms of a) security b) planning or coordination c) achievement of uniformity (Article 131, Clause (2))	<ul style="list-style-type: none"> <li>NFC still continuing as before (Article 144)</li> <li>NEC still continuing, but president was given full authority in the nomination of the members (Article 145)</li> <li>Provincial Councils were no longer mentioned in the 1962 constitution.</li> </ul>	The former course of dispute resolution by the Supreme Court was continued. The former tribunals were no longer mentioned in the 1962 constitution.
1969-1971	Ayub Khan abrogated 1962 constitution and left power in the hands of General Yahya Khan. First General Elections were held in 1970 and East Pakistan became independent after 1971 war.				
1973	The 3rd Constitution of Pakistan was promulgated which brought major changes in Pakistan's political system.	Zulfikar Ali Bhutto	The constitution provided two lists- the Federal List which contained 67 subjects and the Concurrent List with 48 subjects. The Federal List was further divided into the Federal Legislative List Part I (FLL I) with 59 subjects and the Federal Legislative List II (FLL II) which contained 8 subjects	<ul style="list-style-type: none"> <li>NFC still continuing, its composition was defined by the constitution (Article 160)</li> <li>NEC still continuing, its composition defined by the constitution (Article 156)</li> <li>Establishment of the Council of Common Interest (CCI), which was appointed by the president and consisted of the Chief Ministers of the provinces and the Prime Minister. An equal number of members from the Federal government could also be nominated by the Prime Minister, who also chairs the Council. (Article 154)</li> <li>The CCI is responsible for the matters in Part-II of the Federal Legislative List, its own Rules of Procedures (Article 154), specific matters of complaints concerning water supply (Article 155) and had to act in accordance with the directions of the Parliament, through a</li> </ul>	The Supreme Court, excluding any other court, had the original jurisdiction in any dispute between two governments, be it federal and provincial or inter-provincial matter. (Article
1977-2010	The 1973 constitution was suspended twice in 1977 and 1999 by General Zia-ul-Haq and General Pervez Musharraf respectively. Finally, the democratic order was revived properly in 2008 and the 18 <sup>th</sup> constitutional amendment was passed in 2010.				