Pakistan Institute for Parliamentary Services

IMPLEMENTATION OF THE 18th CONSTITUTIONAL AMENDMENT

Case Study: on the Model of Communication
(Federal Government-Khyber Pakhtunkhwa Government)

Contents

List of Abbreviations

A.G.N Kazi Formula	Aftab Ghulam Nabi Kazi Formula
AJK	Azad Jammu and Kashmir
AMR	Automated Meter Reading
BNP (A)	Balochistan National Party (Awami)
CCI	Council of Common Interests
CDWP	Central Development Working Party
CPEC	China-Pakistan Economic Corridor
CPPA	Central Power Purchasing Agency
CRBC	China Road and Bridge Corporation
CTD	Contract to Difference
DI Khan	Dera Ismail Khan
DTRE	Duty & Tax Remission for Exporters
ECNEC	Executive Committee of the National Economic Council
FATA	Federally Administered Tribal Areas
FBR	Federal Board of Revenue
FED	Federal Excise Duty
FES	Friedrich Ebert Stiftung
GB	Gilgit Baltistan
GDP	Gross Domestic Product
GTS	General Sales Tax
HRD	Human Resource Development
IDPs	Internally Displaced People
IPCC	Inter-Provincial Coordination Committee
IPPs	Independent Power Producers
KP	Khyber Pakhtunkhwa
KPRA	Khyber Pakhtunkhwa Revenue Authority
LPG	Liquid Petroleum Gas
MMFCD	Million Cubic Feet per Day
MMR	Mobile Meter Reading
MoU	Memorandum of Understanding
MP&NR	Ministry of Petroleum and Natural Resources
MQM	Muttahida Qaumi Movement
MW	Mega Watts
NEC	National Economic Council
NEPRA	National Electric Power Regulatory Authority
NFC	National Finance Commission

NHP	Net Hydel Profit
OGRA	Oil and Gas Regulatory Authority
P & D Ministry	Planning & Development Ministry
PATA	Provincially Administered Tribal Areas
PDL	Petroleum Development Levy
PESCO	Peshawar Electric Supply Company
PIPS	Pakistan Institute for Parliamentary Services
PKR	Pakistani Rupee
PML (N)	Pakistan Muslim League (Nawaz)
PMLN (F)	Pakistan Muslim League (Functional)
PPA	Power Purchase Agreement
PPIB	Pakistan Power and Infrastructure Board
PPIB	Pakistan Power and Infrastructure Board
PPP	Pakistan Peoples' Party
PSDP	Public Sector Development Programme
PTI	Pakistan Tehreek-i-Insaf
SRO	Statutory Regulatory Orders
UFG	Unaccounted-For-Gas
WAPDA	Water and Power Development Authority
WeBOC	Web-Based on Customs
WWF	Workers' Welfare Fund

Foreword

The devolution of power under the 18th Constitutional Amendment is a landmark in Pakistan's political history. This does not mean that the amendment has resolved all conflicts and issues between the center and the provinces, but it certainly has been an important step towards a federal Pakistan. In order to avail the true benefits of it by strengthening the federal units of the country, there needs to be some mechanism or model for negotiations between the federal government and the respective provinces.

Against this background, FES and PIPS have attempted to develop this case study about Khyber Pakhtunkhwa being the first province which in 2016 claimed its rights under the 18th Amendment to the federal government. Yet, the negotiations did not come to a consensual solution. However, this process of negotiations has set an example for the rest of the provinces and indicated loopholes in the cooperation between the different levels of government; which is a precondition for the better functioning of the social contract in a democratic state.

We are thankful to the Pakistan Institute for Parliamentary Services (PIPS) for collaborating to produce this important piece of literature which will be highly useful for all those interested in making devolution work.

Rolf Paasch
Resident Director,
Friedrich-Ebert-Stiftung

Sidra Saeed
Programme Officer,
Friedrich-Ebert-Stiftung

December 2018

Preface

The constitution of Pakistan in its preamble states that "…*Pakistan shall form a Federation wherein the units will be autonomous with such boundaries and limitations on their powers and authority as may be prescribed.*" In this Article, one clearly identifies that Pakistan *shall be Federal Republic to be known as the Islamic Republic of Pakistan*. Adhering to the vision of the founding fathers of Pakistan and the constitutional command the 18th constitutional amendment attempted to operationalize the autonomy and devolution in accordance with the federal spirit of the constitution.

This paper is continuation of series of publications that the Pakistan Institute for Parliamentary Services (PIPS) has produced with the assistance of the Friedrich-Ebert-Stiftung (FES) on the "Implementation of the 18th Constitutional Amendment". This case study is unique as it documents new communication vectors between the federation and the federating units.

In 2016, the then PTI-led provincial government of Khyber Pakhtunkhwa, articulated its 24 demands, all pertaining to the federal government. The federal government's promised that it will look into the demands yet nothing concrete could be achieved on the issue nor the Council of Common Interests make any leap forward to resolve the matter. On the call of Khyber Pakhtunkhwa government, the then honorable Chairman Senate, Senator Mian Raza Rabbani constituted a special committee to consider the twenty-four demands after hearing viewpoint of the provincial government of Khyber Pakhtunkhwa and the federal government and thereafter to make such recommendations as the committee feels necessary. The special committee heard the views of the provincial government of Khyber Pakhtunkhwa on the twenty-four demands and the position of the relevant ministries of the federal government to make their recommendations to the Senate of Pakistan. This was the new role of the Senate as the House of Federation to mediate between the federal and provincial governments.

I appreciate the author Ms Farahnaz Khan and the Research & Legislation team of PIPS. We are thankful to the Friedrich-Ebert-Stiftung (FES) for its support to document this out-of-the-box parliamentary mode of consultative process to resolve federal-provincial matters. The case study is equally useful for members of parliament and provincial assemblies, governments as well as academia researching on evolution and working of country's federal parliamentary democracy.

Zafarullah Khan

Executive Director,

Pakistan Institute for Parliamentary Services (PIPS)

14th December 2018

Chapter 1: Introduction

The 18th constitutional amendment abolished erstwhile concurrent list and amended the federal legislative list. The amendment contributed to a significant increase in the extent of provincial autonomy. On the contrary, one can also observe the weak culture of provincial-federal communication on the devolved subjects.

It is over eight years by now that the various competencies and functions earlier being performed by the federal government were devolved to the provinces under the 18th constitutional amendment. It is now appropriate to take stock whether the democratic devolution has yielded any dividend to serve the citizens well and make the country a cohesive and cooperative federation.

The constitution in its current form stipulates a clear scheme of vertical devolution among the federal, provincial, and local tiers and horizontal devolution among the legislature, executive branch and judiciary. Even with these guidelines, disputes and disagreements remain amongst the federal and provincial governments about their jurisdictions, authorities and responsibilities. Most of the federal-provincial conflicts today emanate from the denial of constitutionally delineated rights and the centralized control of natural resources. To address persisting grievances, full use of the constitution's instrument will be required. This includes, in particular, the forums created in the Constitution of 1973 including the Council of Common Interests (CCI) (Article 153), National Economic Council (NEC) (Article156) and the National Finance Commission (NFC) (Article160).[1] However, according to Article 184[2] of the Constitution of Pakistan which states that the supreme court has jurisdiction in any dispute between the federal government and the provincial governments.

The Council of Common Interests (CCI) is a powerful constitutional body; it was designed to be an effective dispute resolution, economic planning and development forum with a sense of joint responsibility. It is currently mandated to meet quarterly, with provinces having the power to request a meeting.[3]

The National Economic Council (NEC) has a mandate to review the overall economic condition of the country and advise the federal and provincial governments on long-term economic planning. The constitution provides the federal and provincial governments with at least four distinct modes to address their concerns: They may:

1) Plead their case at constitutional forums, such as CCI and NEC;
2) Requisition/request meeting of these forums, if the federation is not meeting as mandated;
3) Democratically contest the decisions taken at these forums in the joint sitting of the parliament or highlight their concerns during mandatory parliamentary debates on the annual reports of the CCI, NEC and principles of policy and bi-annual reports of the NFC; and
4) Invoke the original jurisdiction of the Supreme Court of Pakistan

1. Zafarullah Khan, federal-Provincial Conflict and Constitutional Mechanisms for Resolution, pg 10.
2. Article 184: Original jurisdiction of Supreme Court. - The Supreme Court shall, to the exclusion of every other Court, have original jurisdiction in any dispute between any two or more Governments.
3. Ibid1.

In Pakistan, the senate consists of 104 members, out of these 92 are elected by the provincial assemblies, 4 are elected by the national assembly and 8 are from the Federally Administered Tribal Areas (FATA).

In the year 2016, the Khyber Pakhtunkhwa government articulated a list of 24 demands and pleaded before the federation. The then chief minister, Khyber Pakhtunkhwa, presided over a meeting that finalized these 24 demands. The Khyber Pakhtunkhwa government was doing all within its limits to get the constitutional rights of the province within the ambit of the constitution.

The then federal government, initially turned down the 24 demands submitted by Pakistan Tehreek-e-Insaf (PTI) led KP government, saying government could not violate the constitutional limits to pacify political opponents.[4] The Khyber Pakhtunkhwa government raised all the issues and demands from the federal government via media outreach through advertisements in the newspapers to highlight their demands and grievances and they continued with it till the federal government took notice of it.

On 12th May 2015, the parliamentary leaders of different parties decided unanimously to stage protest outside the parliament house against deprivation of the masses of Khyber Pakhtunkhwa of their legitimate rights.

Initially, many meetings were held between the federal government and the KP government, the former agreed in every meeting to ensure fair deal to the province. Consequently, the then chief minister accused the federal government of usurping legitimate rights of the province.

On the call of KP government, the then chairman senate, Senator Mian Raza Rabbani constituted a special committee to consider the twenty-four demands after hearing viewpoint of the provincial government of KP and the federal government and thereafter to make such recommendations as the committee feels necessary. The special committee was headed by Senator Syed Muzaffar Shah of Pakistan Muslim League (F) from Sindh, to examine the demands in the light of the constitutional provisions pertaining to the provincial autonomy.

Initially, the special committee failed to resolve some of the issues. Special committee Chairman Syed Muzaffar Shah politely advised both federal and provincial governments to resolve the conflicting issues on mutual consultative basis or the special committee would have no choice but to send its final recommendations to the House.

The majority of the senators are elected by the provincial assemblies but after their election there is no formal or institutional link between them and their electoral college. This experience created a new kind of connection between the senate, referred to also as the House of Federation, and the provincial assembly, and especially the formation of the special committee of the Senate of Pakistan becoming a "communication bridge" between the federal and the provincial government happened for the first time in the country's history.

This constitutional mechanism had remained underutilized previously as the senate didn't directly entertain the issues of the provincial government. In this case, the senate practically became the interlocutor between the federal government and the provincial government and the mediation forum through the special committee that heard the views of the provincial government of KP and the federal government.

On January 20, 2016, the members of the committee mainly comprised of the chairmen

4. Rana Mushtaq, Federal government rejects 24 demands of Khyber Pakhtunkhwa, The Daily Times can be accessed on 'https://dailytimes.com.pk/85442/federal-government-rejects-24-demands-of-kp/'

of the relevant standing committees submitted their report on the twenty-four demands. It would be relevant to mention here that it became increasingly difficult to convene meetings of the special committee due to the absence of most of the members (says the senate report). The committee consisted of 15 members included 9 senators and 6 ministers.[5] Interestingly, all the senators were from the smaller provinces; 5 were from Sindh and one each from Khyber Pakhtunkhwa, Balochistan and Islamabad.

In terms of party affiliations four were from the Pakistan People's Party (PPP), one each from Balochistan National Party Awami-BNP(A), Pakistan Muslim League Functional-PML(F), Pakistan Muslim League-Nawaz-PML(N), Muttahida Qaumi Movement (MQM) and Jamiat Ulema-e Islam (F). The composition of the committee portrays that not a single member was from the PTI though the committee had majority of parties that is: PPP, JI, MQM who were in opposition to the then sitting federal government of PML-N.

The special committee heard the views of the provincial government of KP and the position of the relevant ministries of the federal government. It was heartening that the federal government cooperated and responded to the senate special committee in a positive manner. When the committee had partially formulated its recommendations, Senator Nauman Wazir Khattak of Pakistan Tehreek-e-Insaf (PTI), who was the special invitee to the meetings, requested time to verify the updated position of the KP government. Interestingly, the provincial government took a substantially long time to verify its position and that was forwarded to the relevant ministries of the federal government for their replies. This process of belated response on part of provincial government of PTI resulted in the delay of finalization of the report.

Nevertheless, it was for the first time that the Senate of Pakistan tried to bridge between the federation and a province. This process was unique because in the past none of the federating units had adopted this strategy to voice for the realization of their rights. When directed deeper, one comes across an interesting fact that all 24 demands of Khyber Pakhtunkhwa government were related to financial concerns and control over natural resources.

5. Composition of the Committee attached as annexure A.

Chapter 2: Demands of Khyber Pakhtunkhwa Government and Recommendations of the Special Committee

After the receipt of comments of the federal government, the special committee took into consideration the position taken by the Khyber Pakhtunkhwa government and the ministries of the federal government and all other facts and circumstances relating thereto, and formulated the recommendations that are mentioned below:

The first, second and third demand pertained to the profit of Net Hydel Profit (NHP), it is the case of provincial government that proportionate share under this head had not been received. The provincial government in its additional comment suggested that uncapping by NEPRA was an interim arrangement and the permanent solution of the problem would be A.G.N Kazi Formula of 1991[6] as approved by the Council of Common Interests, which needs to be implemented.

Issue

The Council of Common Interests in its decision dated 24th December, 1990 had decided that the methodology of the calculation of net profit of bulk generation should be decided in accordance with the decision given by the A.G.N committee and that the net profit up to the end of financial year 1990-91 should be adjusted against the deficit release to the provinces from 1973-74 onwards.

Provincial position: The province complained that its decision was not honoured

Federal position: A Memorandum of Understanding (MoU) has been signed through mutual agreement between the federal government and the KP government that is comprised of five points:

1. a) The uncapped NHP as determined and transmitted from NEPRA would be notified immediately by Ministry of Water & Power.

   b) A total amount of Rs 70 billion has been agreed upon on an account of arrears of uncapped NHP after reconciliation of mutual claims in the power sector between the two governments as full and final settlement; and

   c) WAPDA after seeking concurrence of CCI would file a tariff petition for recovery of the arrears in four installments as follows: (i) Rs 25 billion in current fiscal year and (ii) Rs 15 billion each in the next 3 years.

2. Pehur Hydro Power Project: The Power Purchase Agreement (PPA) would be signed by the Central Power Purchasing Agency (CPPA-G) latest by 31-3-2016 incorporating a mechanism for recovery of the outstanding amounts.

3. The Government of Pakistan would allocate 100 MMCFD gas to the Government of Khyber Pakhtunkhwa for use in power generation, either at its own or through partnership with the private sector.

4. Chashma Right-Bank Lift Irrigation Canal: This project when approved, would be financed between the Government of Pakistan and Government of Khyber Pakhtunkhwa in the ratio of 65:35 respectively, while the operation & maintenance and recurring costs of the project would be funded by the government of KP.

6. Attached as annexure B

5. The issues of Workers Welfare Fund (WWF) relating to Khyber Pakhtunkhwa would be attended to and resolved by the secretary Human Resource Development (HRD), Government of Pakistan expeditiously.

The issue has been resolved and WAPDA paid at least Rs80 billion in outstanding net hydel profits to Punjab and Khyber Pakhtunkhwa; it paid Rs55 billion to Punjab and Rs25 billion to Khyber Pakhtunkhwa bringing an end to the conflict between the federation and the provinces.

The fourth demand pertains to the grant by the federation under Article-167 of the Constitution of Pakistan, for issuing the requisite sovereign guarantee on behalf of the provinces in case of provincially managed/supervised power plants. This matter was taken up by the provincial government with the Ministry of Finance in the National Economic Council (NEC).

Provincial position: The provincial government demanded grant for issuing sovereign guarantee in case of provincially managed power plants.

Federal position: The federal government stated that all provinces are empowered to obtain international loans from multi-lateral and bilateral institutions through the Economic Affairs Division-Government of Pakistan. There is no limit on international borrowing by the provinces.

The National Economic Council (NEC) considered the summary dated 30th May 2015, the proposal submitted by finance division regarding 'fixation of provincial debt raising sealing" and approved the provisions as contained in the proposals in para-10 of the said summary.

The following proposals were submitted before NEC for consideration:

i) The federal government will continue to assist provinces to receive support from development partners such as the World Bank, the Asian Development Bank and bilateral sources. Since the loans are contracted by the federal government, they are counted in the federal indebtedness, and there is no additional burden on overall debt/GDP.

ii) Despite limitations of available space, provincial borrowing should be started. Accordingly, it is proposed that provinces may be allowed a domestic borrowing limit of 0.5% of GDP (or Rs.153 billion) after excluding domestic loans of Rs 40.4 billion owed to the federal government. This will mean a net limit of Rs 112.6 billion.

iii) The limit specified in point no. ii above will be distributed among the provinces as per relative share in the divisible pool.

The following provincial limits will therefore emerge:

Provincial Debt Limits					
	Punjab	Sindh	Khyber Pakhtunkhwa	Balochistan	Total
Share in the NFC Award (%)	51.74	24.55	14.62	9.09	100.00
Gross Limit	79.16	37.56	22.37	13.91	153.00
Domestic Provincial Debt	17.41	17.51	5.48	0.00	40.41
Net Available Limit	61.75	20.05	16.88	13.91	112.59

(Rs. In billion)

The fifth demand pertains to the allocation of 100mm CFD for gas power plants which was allocated by the ECC to private power infrastructure board in KP.

Provincial position: The provincial government desires that the 100mm CFD for gas power plant be allocated to the provincial government directly.

Federal position: The Ministry of Petroleum and Natural Resources has stated that the allocation which was previously made to the private power and infrastructure board is now at the disposal of the provincial government. Surplus gas of the province has already been allocated to the province; the surplus gas is available normally in the summer season while in the winter the gas demand exceeds the gas availability. The load running issue could be further avoided subject to the additional exploration of gas in the province.

This issue relates to the petroleum division and this demand deems to have been addressed.

In relation to demand no.6, the provincial government stated that after the passage of the 18th amendment, the petroleum development levy does not form part of the federal divisible pool and that the profit on the petroleum products and their benefits are not being passed on to the producing province. It is further stated that the issue in question related to the imposition of Federal Excise Duty (FED) on oil in terms of Article-161 (B) of the constitution and that the duty had to be imposed by the federal government.

Provincial position: Provincial government stated that the petroleum development levy does not form part of the federal divisible pool and that profit on the petroleum products and their benefits are not being passed on to the producing province.

Federal position: It was stated that the imposition of federal excise duty on oil was being imposed by the finance division. The finance ministry was asked for its comments and their response was that it does not fall within their purview and that the relevant ministry is the Ministry of Petroleum. The Ministry of Petroleum stated that it falls in the purview of finance division. The reply of the finance division dated June 14, 2016 on the issue of Petroleum Development Levy (PDL), the then chairman senate asked about which ministry/division is responsible to impose, collect and distribute the levy as enshrined in the Constitution of Islamic Republic of Pakistan (Article-161).

It was responded that PDL falls in the purview of MP&NR, however, the minister for MP&NR contested this view. It was therefore, submitted that the joint secretary, finance division would collect the information and submit it to the committee on the issue.

The ministries of the federal government have been unable to determine as to which ministry the subject matter pertains to. Since this issue pertains to the interpretation and application of the Article 161-B of the Constitution of the Islamic Republic of Pakistan, it would be appropriate for this issue to be taken before the NEC and the CCI. This was also the view taken by the Senate Standing Committees on finance, revenue, economic affairs, statistics, planning and development and privatization, whose views are endorsed.

This issue has also been discussed in a meeting of Senate Functional Committee on Devolution on 5th October 2016 and it was recommended that the finance division, FBR and Ministry of Petroleum and Natural Resources may resolve the issue in consultation with OGRA and the four provincial governments.

The seventh demand pertains to the payment of windfall levy on oil and gas as per Petroleum Policy, 2012.

Provincial position: The provincial government demanded that after the 18th amendment there was a joint and equal ownership of provincial and federal government on oil and gas resources and that the benefits of windfall levy may equally be divided amongst the federal and provincial governments.

Federal position: It. has been stated by the Ministry of Petroleum that at present no windfall levy has been collected and when it is collected it would be shared accordingly with the provinces as per the provisions of the law. A draft summary seeking a decision of the CCI has been initiated for imposition of windfall levy on oil. After a decision, the petroleum division will be able to implement the CCI 's decision.

Demand number eight pertains to the collection and payment of royalty on LPG to the provinces.

Provincial position: It is the contention of the provincial government that the LPG which is a colorless, odorless and environment friendly mixture of hydrocarbons, its royalty is liable to be paid in respect of petroleum inclusive of LPG @ 12.5% of the wellhead value.

It is pertinent to state that the said demand was raised before the Peshawar High Court that has held that the companies were liable to pay the royalty.[7]

Federal position: It would be relevant to mention here that a reference was made to the law division by the Ministry of Petroleum and Natural Resources and the law division opined that the same did not apply to the royalty on LPG sale. Since, the opinion of the law division is vague and no appeal was filed against the decision of the Peshawar High Court as such the committee feels that the decision of the Peshawar High Court should also be placed at that forum.

In May 2016, the Interprovincial Coordination Department had circulated a summary for CCI for comments of various stakeholders and took the position that the non-implementation of the decision of the Peshawar High Court would amount to the violation of Article-204 of the constitution. Since the thrust of the Khyber Pakhtunkhwa government was on the implementation of the Peshawar High Court decision, as such the ministry for further clarification sought the opinion of the law division in the context of the decision of the Peshawar High Court. But the law division did not give any categorical and specific opinion as such.

The committee recommended that the decision of the Peshawar High Court be implemented and directed the federal government to make immediate arrangement for the payment of royalty amount on LPG to the provincial government but as a matter of abundant caution, since the Ministry of Law did not give a categorical opinion and if the issue continues to linger, the appropriate forum for the resolution of the same would be the CCI.

Demand number nine pertains to the share of the provincial government in the China-Pakistan Economic Corridor (CPEC).

Provincial position: According to the provincial government, since the portfolio of its projects is only US $2.7 billion, it has requested for inclusion of the following projects in the CPEC portfolio:[8]

a) 10 hydel power projects (capacity: 1698 MW cost: US $4979 million);

b) Industrial parks at Hattar, Rashakai and D.I.Khan-in principle with equal number of industrial parks has to be established in other provinces;

7. Peshawar High Court decision, attached as annexure C
8. Projects included in the CPEC, attached as annexure D.

c) Improvement/widening of N-90 Khawazakhela-Besham road;

d) Circular rail project;

e) Trucking terminals;

f) Abbottabad bypass road from Havalian to Abbottabad-Murree road dual carriageway

Federal position: According to the federal government, the projects amounting to Rs 5.627 billion pertaining to Khyber Pakhtunkhwa have been included in the CPEC. A meeting of the federal committee on CPEC was held on 10th May 2016, in which concerns of the provincial government were discussed and addressed and it was agreed that coordinating meetings would be held regularly to share the information. The committee recommends that the projects mentioned may be considered sympathetically for inclusion in the CPEC portfolio, keeping in view the share of the province, in the projects already allocated to the provincial government from the CPEC. Hence, the issue has not been settled yet and it relates to the Ministry of Planning Development & Reform.

The provinces of Khyber Pakhtunkhwa and Balochistan complained that the federally controlled planning commission is secretive and reluctant to broadly distribute the dividends of development among the smaller provinces. Instead of employing the CCI or another forum like the NEC, provincial leadership, including the chief ministers of three smaller provinces (Balochistan, Sindh and Khyber Pakhtunkhwa) raised their concerns about the western route of the China-Pakistan Economic Corridor at a series of multiparty conferences convened by the prime minister during which they agreed to form the Parliamentary Oversight Committee.

On 18th January 2018, the ministerial response was that the CPEC offers huge dividends for all the provinces and regions of Pakistan. It will open new avenues of opportunities for the people of the country, particularly the under-developed regions. The transport infrastructure projects of CPEC will give a boost to economic activities in far flung areas thus would help in emergence of new urban and economic centers. The linking would help in opening new markets and trade opportunities besides reducing travel time.

Every phase of CPEC; short term or long term, advocates for development of pre-identified nodal cities that include Gilgit, Peshawar, Dera Ismail Khan, Islamabad, Lahore, Multan, Quetta, Sukkur, Hyderabad, Karachi and Gwadar. CPEC routes passing through these cities would create huge social and economic impact in the less developed region along the routes.

Under the CPEC framework, projects are selected by the two governments on the basis of mutual consensus on the principles of scientific planning and economic viability. Joint working groups for planning, transport, infrastructure, energy in Gwadar have been formed where projects are evaluated and recommended for consideration of the joint cooperation committee. The chief minister and officials of the provincial government are regularly participating in these forums, wherein their involvement in negotiation’s and decision making regarding different projects are ensured.

The tenth demand pertains to the provincial government requesting that the increase in the Unaccounted-For-Gas (UFG) ratio should either be picked up by gas companies or partially by the consumers.

Provincial position: Provincial government requested that an increase in UFG ratio should either be picked up by gas companies or partially by the consumers.

Federal position: The petroleum ministry informed the committee that the subject matter of this demand was presented before the Council of Common Interests /Inter-Provincial Coordination Committee whose decision is still awaited.

The committee feels that, in view of the facts and circumstances, that the gas companies should take effective measures to control the menace of theft of gas in order to bring down UFG at allowable rates, it would be appropriate for the gas companies to pick up the rates over and above the benchmark fixed by OGRA (i.e. 4.5UFG). This is subject to the decision taken by the CCI.

Demand number eleven pertains to the removal of moratorium from new gas connections and load-extensions for industries in the province generally and gas producing districts (Karak, Kohat and Hangu) in particular.

Provincial position: The provincial government demanded the removal of moratorium that the federal government has placed on new industrial connections and extensions in load of the industrial connections since 2011.The notification of moratorium was stated to be for only one year.

Federal position: The committee was informed by the relevant ministry that the ratio of UFG is alarmingly high in some districts of the province and that the oil and gas producing districts of the province are more than 10,000 MMCFD per annum and that the provincial government should take appropriate measures to reduce the same in this regard.

It is pertinent to mention that currently there is no gas load management and that the additional gas produced from the province has already been allocated.

The committee recommends that the request for lifting a moratorium on charitable institutions may be considered sympathetically depending on the availability of additional gas. The issue of UFG and GTS is presently pending before the Council of Common Interests (CCI) and the decision is still awaited.

The twelfth demand pertains to providing Sovereign Guarantee by the federal government for the hydro or other IPPs owned by the provincial government for projects above 50 MW by the Pakhtunkhwa Energy Development Organization (PEDO).

Provincial position: The provincial government demanded Sovereign Guarantee for hydro or other IPPs owned by the provincial government for projects above 50 MW.

The issue is liable to be addressed in view of the statement of the Ministry of Water and Power and Power Generation Policy of 2015.

Federal position: In order to determine demand, supply and future sources of power generation, a 'National Electricity Plan' along with a new "Energy Policy" is being finalized in collaboration with the provinces which is expected to be announced soon. Once the said plan is announced, the new 'Energy Policy' may entail the issuance of GoP's Sovereign Guarantees to the power generation projects (including hydropower projects) initiated by the provinces/AJK and GB.

It has been stated that as per the approved Power Generation Policy 2015, the Government of Pakistan would issue Sovereign Guarantee for the development of hydropower plants which are initiated by the provincial government.

No proposal has been received by Pakistan Power and Infrastructure Board (PPIB) from the provincial government for issuance of Sovereign Guarantee for Hydro or other IPPs owned by Government of KP for projects above 50 MW. Only one small hydropower project proposal of 1.7MW on Machai Canal has been received by PPIB so far which along with any other proposals, if received will be processed in line with the National Electricity Plan and Energy Policy. As reported by PPIB; the matter stands resolved.

Demand number thirteen pertains to the release of adequate allocation and utilization of Public Sector Development Programme (PSDP) in the province and same should be non-lapsable.

Provincial position: The provincial government demanded allocation and utilization of PSDP and that should not be lapsable.

The provincial government suggested that adequate allocations, proportionate with the costs of the projects may be made on priority basis in PSDP 2016-17 and in future development programmes. Some of the examples are as follows:

- China road and Bridge Corporation (CRBC (PSDP # 975): Cost 640600 million allocation 1000 million.
- Link of Kohat to motorway via Jund (PSDP # 354): Cost 6660 million-allocation 450 million.
- Dualization of Indus Highway balanced portion Dera-Serai Gambila PSDP #125) Cost 101000 million-allocation 1000 million.

The figures of PSDP allocation for projects falling with in the province for 2015-16 and 2016-17 are as follows:

Year	Allocation	Rel	% release against the allocation
2015-16	159 Billion	63 Billion	39%
2016-17	38 Billion (1st quarter)	9.2 Billion	24 % (for 1st quarter)

It is requested to ensure that these allocations are released during the year besides increasing allocation for the key projects in the PSDP.

Federal position: In the federal, the Public Sector Development Program (PSDP), 2017-18, 133 development projects located in the province are being financed related to various sectors of the economy such as national highways, motorways, water resources, energy, higher education, health and industry and commerce. The aggregate cost of these projects in Rs.1848 billion, of this amount Rs 323 billion has been spent up to June 2017. An allocation of Rs 95 billion has been made for these projects in the PSDP 2017-18 and out of this amount, Rs 30 billion stands released for these projects during first half of the year which is about 32%.

The Ministry of Planning, Development & Reforms informed the committee that the allocations for funding of public sector development programs are based on the available fiscal space and that the PSDP allocations should not be enhanced without availability of additional resources.

The committee recommends that the provincial government could take up cases through the concerned sponsoring ministeries giving justification for enhancement in the allocation and that the Ministry of Planning and Development would consider the said request for the identified projects during the mid-year review meetings of PSDP subject to availability of additional resources or saving on other projects.[9]

Demand number fourteen, pertains to the request of the provincial government for waiver from approval of the CDWP and ECNEC on its financed projects. The ministry of P&D has stated that in the third quarter the releases were 100%.

9. The list of projects in the revised comments of the Khyber Pakhtunkhwa government is attached herewith as annexure E.

Provincial position: The provincial government requested for waiver of CDWP and ECNEC on its financed projects.

The request of the provincial government for waiver is forwarded to the appropriate forum.

It has demanded for special development project to the province in the light of terror incident that hit the province including Army Public School and the operation Zarb-e-Azb.

Federal position:

1. As per the procedure by the ECNEC for processing and approval of development projects from sponsoring ministries/ divisions/provinces, are coordinated by the Ministry of Planning, Development and Reform for approval by the CDWP/ECNEC based on financial competency CDWP is empowered to approve projects costing up to Rs 3.00 billion. The projects exceeding this limit are recommended to ECNEC by CDWP for approval. The provincial P&D departments are empowered to approve development projects up to Rs10 billion from their own resources other than water sector projects provided no federal funding or external financing of more than 25% of the total cost involved.

2. CDWP frequently meets to consider development projects sponsored by ministries/divisions. During the period April 2014-March 2015, CDWP considered 322 projects and approved 155 projects costing Rs 130.66 billion in its fifteen meetings. In these meetings five projects sponsored by the Government of KP were approved by the CDWP. ECNEC during the same period considered 66 projects and approved 61 projects costing Rs 1426.171 billion in its eight meetings. Out of these projects, one project was sponsored by the Government of KP.

3. At present, no project of the provincial government is pending for ECNEC. Two projects (mentioned below) were pending for consideration of CDWP out of which one is near to its completion.

    i) Construction of Koto HPP Lower Dir which is under construction and will be completed in 2019

    ii) Work is under progress on Daral Khwar HPP, Swat (revised)

On the basis of the above facts, the demand for waiver to the provincial government finances projects from approval of CDWP and ECNEC is not supported on the basis of prescribed procedure. Hence, it's not approved.

Demand number fifteen, pertains to special financial package for the provincial government security on various grounds including war-on-terror, law and order situation, influx of IDPs and presence of the Afghan refugees etc. The committee was informed that in view of the situation in the province, Rs. 114billion was provided to the home secretary of the Government of KP and a new special force for the borders with Afghanistan and front line may also be setup.

Provincial position: The provincial government demanded special financial package for security against war-on-terror, law and order situation, influx of IDPs and presence of the Afghan refugees.

Federal position: The committee recommends that the chief secretary of the provincial government, the home secretary and the Inspector General of Police make out the case for the special package with concrete reasons and proper justification. The committee also recommends special consideration to such a package, keeping in view the fact that the provincial government is on the frontline on the war-on-terror, the influx of IDPs and the presence of very large number of the Afghan refugees.

Under the 7th NFC Award, 1% from divisional pool resources were being transferred to the province on account of war-on-terror (up to June 2017) an amount of Rs 161.80 billion was transferred. Finance division has not received any proposal of special financial package from the provincial government. However, request of special package when received from the province shall be placed before the NFC for consideration.

Demand number sixteen pertains to the facilitations in imposition and collection of provincial taxes, such as infrastructure development cess and cross development of sales tax on services. It is stated on behalf of the provincial government that the collection of cess could not commence for the reason that the contractor for collection required approval of the FBR.

Provincial position: The provincial government demanded facilitations in imposition and collection of the provincial taxes.

Federal position: The committee was initially informed that an MoU would be signed between the Ministry of Finance and the government of Khyber Pakhtunkhwa but then subsequently, the committee was informed about the present status according to which sub-clause-(d) of clause 14 of section 2 of the Sales Tax Act 1990 was omitted through the Finance Act 2016.

In view of the said omission, there is no need for signing of any MoU since the Finance Act had deleted the said provision.

The provincial government acknowledged the collection of infrastructure cess through the Web Based One Customs (WeBOC) system that started since May 2016 and therefore, the matter stands settled.

The provincial government has acknowledged that SRO 814(I)/2016, dated 02.09.2016 has been issued providing for adjustment of sales tax paid under Khyber Pakhtunkhwa Finance Act, 2013. Regarding demand for an MoU between KPRA and FBR, it has been signed on 23rd November 2016.

Demand number seventeen states that after the 7th NFC Award and 18th amendment, the provinces had the right to impose taxes on capital gains and services and as such the provinces had accordingly legislated and imposed different taxes on these subjects. It was further stated that the federal government had also imposed certain withholding taxes through amendments in the Income Tax Ordinance like sales tax on the marriage halls.

Provincial position: Provincial government stated that after the 7th NFC award and the 18th amendment they had the right to impose taxes on capital gains and services.

It is submitted that these issues were substantially raised and decided in the case of Messer's Elashi Cotton Mills Ltd v/s Federation of Pakistan.[10] Which is on identical issues of withholding tax on expenses, purchases etc. wherein the honorable Supreme Court of Pakistan has settled various principles of taxation and have observed that legislature enjoys a wide latitude in the matter of selection of persons, subject matters, events etc. for taxation.

The gist of the case law is as under:

- The taxing power is unlimited as long as it does not amount to confiscation.
- The legislature enjoys wide latitude in the matter of selection of person, subject matters, events etc. for taxation.
- The presumption is in the favour of the validity of the legislation.

10. Reported in PTD-1997, page 1555 and PLD-1997. Page 58,copy attached as annexure F

- The power to levy taxes is a sine qua non for a state. In fact, it is an attribute of sovereignty of a state.
- The state has prima facie power to tax whom it chooses, power to exempt whom it chooses, power to impose such conditions as to liability or as to exemption as it chooses, so long as they do not exceed the mandate of the constitution.
- A single tax may derive its sanction from one or more entries and many taxes may emanate from one single entry.
- Income tax is not only levied in the conventional manner i.e. by working out the net income after adjusting admissible expenses and other items, but the same may also be levied based on the gross receipts, expenditure etc.

In this context, it is submitted that the adjustable withholding tax on the payments made to the owners of marriage halls, wedding lawns, clubs etc. on account of marriages and other functions is justifiable in view of the already settled principles of taxation by the honourable Supreme Court of Pakistan.

The committee feels that this issue needs to be settled in accordance with the observations and directives made by the Supreme Court and further it could be taken up in Council of Common Interests (CCI) keeping in view, the judgement of the Supreme Court as the basis. It is pertinent to mention here that this tax be levied in all the four provinces across the board.

The question of cross judgement of sales tax on services for which the MoU is presiding with the FBR may be expedited at the earliest.

The provincial government earlier raised the objection that they had imposed sales tax on certain services which were subject to various withholding taxes and had demanded withdrawal of withholding income tax on these services.

Federal position: The FBR had submitted that the federal government has the right to levy income tax under the authority of Entry No. 47 of Part-1 of the fourth schedule to the constitution.

It is recommended that the provincial government and the Ministry of Finance may raise this issue in the Council of Common Interests.

Demand number eighteen, pertains to the financial assistance to meet additional cost of conflict and payments under damage need assessment.

Provincial position: The provincial government demanded financial assistance to meet conflict and damage need assessment.

The committee stated that in June 2009, the World Bank and the Asian Development Bank along with the provincial government had conducted a damage need assessment in the militancy-hit Malakand Division. In that, the damage need assessment of the provincial government was Rs. 68.68 billion.[11]

The Prime minister in a meeting of the Strategic Oversight Council held on 5th May 2009 had directed the release of Rs. 17 billion in that only Rs. 2 billion has been released so far.

Federal position: The finance ministry has held various meetings with the provincial government and it has been decided that a comprehensive plan covering all sectors for the reconstruction of war damaged economy of the province and that the plan after its approval from the competent forum will be placed before the Economic Affairs Division (EAD) for exploring funding for the

11. Damage need assessment carried out in militancy affected areas of Malakand in 2009, attached as annexure G.

donors/development partners. This will address the issue pertaining to this demand with the recommendation that the commitments made by the federal government to the provincial government may be implemented.

The provincial government may submit this case to Economic Affairs Division for financing by the donor.

Demand number nineteen refers to the inclusion of the chief secretary of the provincial government in the list of invitees to ECC meetings.

Provincial position: They demanded inclusion of the chief secretary in the list of invitees to the ECC meetings.

Federal position: In accordance with rule 17(2) of the Rules of Business, 1973, the composition and terms of reference of a cabinet committee are laid down by the "cabinet or the prime minister." Accordingly, the matter was submitted to the prime minister for consideration. It has been observed that there is no provision in the Rules of Business, 1973 to include chief secretaries of the provinces as 'members' of the ECC. However, they are being invited as 'special invitees' on need basis in the meetings of the ECC, in cases where provincial governments are stakeholders or where input of the provinces is required. Hence, it has to be considered at the appropriate forum, issue not resolved yet.

Demand number twenty, pertains to compensation for the un-utilized share of water and construction of requisite infrastructure. The committee was informed that MoU was signed and the PC-1 has been prepared.

Provincial position: The provincial government demanded compensation for the unutilized share of water and construction of requisite infrastructure.

The committee recommends that the approval for the concern PC-1 may be expedited and thereafter appropriate alternate allocations be made.[12]

Federal position: In February 2016, a meeting held under the chairmanship of the federal minister for Finance, Revenue, Economic Affairs, Statistics and Privatization to deliberate upon the pending issues between the Government of Pakistan and the provincial government. In the meeting an MoU was signed between the two governments. The project when approved would be financed between Government of Pakistan and the provincial government in the ratio of 65:35 while the O&M and recurring costs would be funded by the provincial government. The MoU was approved by CCI in a meeting held on 29-02-2016.

The provincial government submitted PC-I of "Chashma Right Bank Canal Project", which was examined by Ministry of Water and Power, they took out number of deficiencies which were conveyed to the provincial government. Despite various requests the provincial government has not been able to address the said deficiencies.

Ministry of Water & Power conveyed its concerns to the prime minister's office on 14-07-2017. The prime minister ordered on 24-07-2017 that the WAPDA shall carry out a comprehensive feasibility study of the Chashma Right Bank Canal project within the shortest time, at its own cost.

However, the provincial government submitted a concept clearance proposal of the project to the Ministry of Planning, Development and Reform which was considered and approved by CDWP on 19-10-2017. During the meeting, the provincial government conveyed that the objective of this concept paper is to include this project in the forthcoming meeting of the joint working group of CPEC.

12. Compensation for unutilized share of water of Khyber Pakhtunkhwa and construction of requisite infrastructure, attached as annexure H.

Demand number twenty-one, pertains to the grant of special concession to the industries located in the Khyber Pakhtunkhwa on account of war and conflict zone and concessions in custom duty, federal excise duty and sales tax on goods.

Provincial position: The provincial government demanded special concession to the industries on account of war and conflict zone and concession in custom duty, federal excise duty and sales tax on goods.

Federal position: The committee was informed that in the budget 2014-15 exemption of custom duty was allowed on import of plant, machinery and equipment for setting up of fruit processing and preservation units in the Malakand Division. Moreover, plant and machinery are also exempt from customs duty for setting up industries in FATA up to 30th June 2019. In the budget 2015-16, the following relief measures have been proposed for Khyber Pakhtunkhwa:

1. The Export Policy Order, 2013 has been amended vide SRO .805(1)/2015 dated 15.08.2015 allowing exports of perishable goods i.e. fruits, vegetables, dairy products and meat against the PKR.
2. DTRE rule has been amended vide SRO. 661(1)/2015 dated 08.07 .2015 and by virtue of said amendment the manufacturer-cum-exporters of ghee located in Khyber Pakhtunkhwa can now acquire raw materials for the manufacture and export of vegetable ghee not exceeding 1000 metric tons per month.

Five years income tax exemption has been granted under clause (126 L) of Part 1 of the Second Schedule to Income Tax Ordinance 2001 through the Finance Act 2015 to profits & gains of the industrial undertaking set up in Khyber Pakhtunkhwa & Balochistan w.e.f. 01-07-2015 to 30-06-2018.

The position has been stated, there are already exemptions of custom duties on imports of plants and machinery equipment and various other exemptions as stated above. A case of further exemptions, if any, may be made out to the CCI & NFC.

The committee recommends for the grant of status of special economic zones for exemption from income tax for ten years by the federal government and the facility under clause 86(A) of part-iv of the second schedule to the Income Tax Ordinance to start production by June 2019 may be extended up to June 2023.

Demand number twenty-two, pertains to load-shedding in the province.

Provincial position: The provincial government has said it has 13.5% shares in the power production, but it does not receive its full share; the provincial government should have received 2600 megawatt of electricity, but it didn't even receive 1800 megawatt.[13] The people of the area have to endure more than 8 hours load-shedding daily.[14]

The provincial government stated that it is keen to set up power houses in the province in order to overcome the load-shedding, but the federal government has refused to award Sovereign Guarantee to the province.[15]

The committee was informed by PESCO that there was no extra load-shedding and that there were technical shortcomings and due to these some of the feeders were not capable of

13. Figures provided by Senator Nauman Wazir.

14. Rana Mushtaq 'Federal government rejects 24 demands of KP' Daily Times 'https://dailytimes.com.pk/85442/federal-government-rejects-24-demands-of-kp/'

15. Ibid14

catering to the needs of the province apart from the low recovery of electricity bills and high transmission and distribution losses.

Federal position: The committee recommends that the load-shedding schedule may be shared with the provincial government on daily basis and the generation figures of electricity may also be shared with the provincial government. It further recommends that the development of infrastructure in the program depends on the availability of the resources.[16]

Demand number twenty-three, pertains to a request for the increase in funding in the next NFC award.

Provincial position: The provincial government demanded an increase in funding in the next NFC award.

Federal position: The committee feels that all the provinces including Khyber Pakhtunkhwa have equal representation and that the provincial government should make out a case for special funding with detailed justification to the NFC. Hence, the issue is not resolved yet.

The province claimed that with the positive nod of the federal, the province could stand on its own feet and the socio-economic conditions of the poor could be changed.

Demand number twenty-four, pertains to the request for extra land on lease which is in the possession of railways so that the provincial government could construct the mass transit system in Peshawar.

Provincial position: The provincial government requested for extra land from railways on lease to construct mass transit system in Peshawar.

Federal position: The Ministry of Railways informed the committee that the said land is needed for future development of railways. This matter was also taken up by the Standing Committee on Railways which took the following decision:

"The committee realized the limitation of railways to offer land for construction of mass transit system in Peshawar to the provincial government due to future expansive plan and finalization of preliminary design of project and start off work on ground. The committee members were of the view that the railways should take precedence over its land for utilization of its anticipated future needs. However, the committee emphasized that railways should allot extra land on lease to the provincial government if it remained available after intended railways expansion programmes under the CPEC. The committee suggested that the provincial government should work out an economically viable alternative plan for public transport system in addition to existing conceived mass transit system on railways land."

The committee feels that the Ministry of Railways has precedence for the use of said land but if there is extra land available it may be considered for allotment on lease for the construction of the mass transit system in Peshawar. It is recommended that the Ministry of Railways should expedite the completion of the concerned survey and to share its findings with the provincial government.[17]

The said committee endorses the decision of the Standing Committee on Railways.

All these resources the provinces are fighting over are the economic resources and the control over natural resources, however the important question is, how to solve these issues?

16. PESCO AT&C based load shedding program is enclosed as annexure I.

17. Response of ministry of railways is attached as annexure J.

Chapter 3: Lessons Learned

1. Innovation; the most important lesson learnt was innovation by the senate to serve as a bridge between the federal government and the provincial government, as it was not a practiced tradition that any provincial government was heard in the senate committee before.

2. Connecting senate with the provincial assembly: the senators are elected by the provincial assemblies i.e. there is no formal or informal mechanism to be the voice of the electoral college, in that way it was a unique connection.

3. The success story for the provincial government of Khyber Pakhtunkhwa was that even though the federal government was not responding to the provincial government, but they still had to submit written replies for each and everything in detail to the senate committee.

This particular case of asking for provincial autonomy is interesting because no other province has ever pleaded its case post to the 18th constitutional amendment from the federal government in such a formal and magnified way through the senate.

Under the 18th amendment, the provinces were assured to be given more autonomy, it has empowered the provinces by giving them constitutional rights over resources. The federal and provincial governments need to take every possible step to ensure that the 18th constitutional amendment is implemented in letter and spirit and its benefits transmitted to the common people.

Following the innovative art of communication between the provinces and the federal government, other provinces should also advocate their rights by communicating with the federal government through the House of Federation-The Senate.

The KP government complained that the federal government did not pay heed to their demands, so they were compelled to look for innovative mechanisms. The most important lesson learnt was innovation by the senate to welcome government of Khyber Pakhtunkhwa, though it was not their right to be heard in the senate.

Similarly, unsettled issues of resource redistribution and an unclear future of devolved subjects have brought about serious challenges for smooth operation of devolution in Khyber Pakhtunkhwa and other provinces. In order to ensure fulfillment of the promise of improved service delivery for common citizens, the politicians, bureaucracy, civil society as well as media will need to play a robust role. It will only be through collaboration amongst these stakeholders and a series of well-designed collaborative efforts that the process of devolution unfurled by eighteenth amendment can be taken to its logical success in Khyber Pakhtunkhwa and other provinces.

Two years have passed since the KP government placed the twenty-four demands before the federal government but till date most of the issues have not been resolved. The Senate as the House of Federation can communicate on behalf of the provinces and therefore it should take a step to help the provincial and the federal governments to come to a fair conclusion.

The federation and provinces need to internalize and operationalize what is offered and then work together to ensure that the benefits of devolution trickle down to the end consumers of governance, namely citizen of Pakistan. The trajectory of Pakistani federalism greatly depends on the functionality of forums like CCI, NEC, and NFC, and a commitment to broad federal-provincial inclusiveness.

This case study reflects that besides constitutional forums there is a space for democratic-parliamentary innovations.

Case Study on the Model of Communication

(Federal Government-Khyber Pakhtunkhwa Government)

Concerns in the Domains of Economy, Resources and Royalties

No.	Demands	Desired Action Taken	In Process/Pending	No Action
1	Payment of capped Net Hydel Profit (NHP) and arrears thereof	✓		
2	Uncapping of capped amount of NHP	✓		
3	payment of NHP arrears together with Mark thereupon	✓		
4	Operationalization of constitutional provision under Article 167 regarding provincial borrowing.	✓		
5	Allocation of 100mm CFD for thermal power generation in KP	✓		
6	Profit on petroleum products and their benefits not passed to the province		✓	
7	Payment of windfall levy on oil & gas		✓	
8	Collection and payment of royalty on LPG to the provinces		✓	
9	Share of KP in the CPEC		✓	
10	Increase in the UFG ratio should either be picked by gas companies or partially by consumers		✓	
11	Removal of moratorium from new gas connection and load extension for industries in KP		✓	
12	Providing Sovereign Guarantee for Hydro or other IPPs for projects above 50MW by PEDO	✓		
13	Allocation and utilization of Public Sector Development Programme (PSDP) and same should be non-lapsable		✓	
14	Waiver from approval of the CDWP and ECNEC on its financed projects			✓

15	Special financial package for war-on-terror, law and order situation, influx of IDPs and presence of the Afghan refugees	✓		
16	Facilitation in imposition and collection of provincial taxes such as infrastructure development cess and cross adjustment of sales tax on services.	✓		
17	Eclipsing provincial taxes through federal taxation like FED or advance/withholding tax		✓	
18	Financial assistance to meet additional cost of conflict and payments under damage need assessment		✓	
19	Inclusion of the chief secretary of KP in the list of invitees to ECC meetings			✓
20	Compensation for the un-utilized share of water of KP and construction of requisite infrastructure		✓	
21	Special concession to the industries located in KP on account of war/conflict zone, in customs duty, federal excise duty, sales tax and income tax		✓	
22	Load shedding in the KP province		✓	
23	Increase in funding in the next NFC award		✓	
24	Request for extra land on lease for construction of the mass transit system in Peshawar		✓	
Total		**8**	**14**	**2**

Summary of the

Ministerial Responses on the Twenty-Four Demands of the Khyber Pakhtunkhwa Province

Demand No.	Demands	Responses	Present Status/Decisions
1, 2 & 3	The demands pertain to the profit of Net Hydel Profit (NHP), It is the case of provincial government of KP that proportionate share of the provincial government under this head has not been received. The KP government in its additional comment suggested that uncapping by NEPRA was an interim arrangement and the permanent solution of the problem would be A.G.N Qazi Formula of 1991 as approved by the CCI and which needs to be implemented.	The CCI in its decision on the summary dated 24.12.1990, had decided that the methodology of calculation of net profit of bulk generation should be decided in accordance with the decision given by the A.G.N Committee and that the net profit up to the end of financial year 1990-91 should be adjusted against the deficit grant release to the provinces from 1973-74 onwards. In addition, thereto, an MoU has been signed through mutual agreement between the federal government and the provincial government. The committee is of the opinion that since the CCI has decided on the summary on the issue of calculation of net profits from bulk generation of electricity as proposed by the A.G.N Qazi January 1991. Subsequently, the CCI in its meeting dated February 29, 2016 decided the	Issue resolved. WAPDA paid at least Rs80 billion in outstanding net hydel profits to Punjab and KP, they paid Rs55 billion in Net Hydel Profits (NHP) to Punjab and Rs25 billion to KP; bringing an end to a conflict between the centre and the provinces.

Demand No.	Demands	Responses	Present Status/Decisions
		exact amount of NHP arrears and the rate at which regular NHP would be paid to the provincial government. It was decided by the CCI that WAPDA, apart from the payment of regular Net Hydel Profit (NHP) to the Government of KP, would also pay NHP arrears amounting to RS 70 billion for the period of ten years viz. FY2005-06 to FY 2014-2015. The CCI further decided that the said amount would be payable in four instalments i.e. RS 25 billion in FY 2015-2016 and RS 15 billion each in FYs 2016, 2017-18 and 2018-19. WAPDA filed its tariff petition on March 30, 2017 in NEPRA for the FY 2017-18 after incorporating NHP arrears payable to the governments of KP and Punjab as per the CCI's decision. NEPRA determines WAPDAs tariff on November 22, 2017 which was further clarified by NEPRA on WAPDA's request, vide letter dated December 14, 2017. In the said determination, NEPRA allowed recovery of the NHP arrears over a period of one year.	

Demand No.	Demands	Responses	Present Status/Decisions
4	This demand pertains to the grant by the federation for issuing the requisite sovereign guarantee on behalf of the provinces in case of provincially managed/supervised power plants. This matter was taken up by the provincial government with the Ministry of Finance in the National Economic Council which considered the proposal submitted by finance division regarding 'fixation of provincial debt raising sealing" and approved the provisions as contained in the proposals in para,10 of the said summary. Copy of the decision of the NEC is attached as Annexure 'C'.	The subject matter does not fall under the purview of Ministry of IPC, as the subject of sovereign guarantees is dealt by finance division. Therefore, the demand in original was forwarded to the finance division for submission of response to the Ministry of Parliamentary Affairs vide letter dated 18th December,2017 and to Parliamentary Affairs vide letter dated 12th January 2018. (copies enclosed). The CCI takes up the matter as and when it is referred to it in the shape of summary. The senate special committee disposed of the matter and stated that all provinces are empowered to obtain international loans from multilateral and bilateral Institutions through Economic Affairs Division, GOP. There is no limit on international borrowing by the provinces. The committee concluded that this demand would be deemed to have been resolved but in case there are problems in non-implementation, it can be taken up in the CCI.	The National Economic Council considered the summary dated 30th May 2015 submitted by the finance division regarding 'Fixation of Provincial Debt raising ceiling' and approved the proposal contained in para 10 of the summary. Hence, the matter has been resolved.

Demand No.	Demands	Responses	Present Status/Decisions
5	This demand pertains to allocation of 100mm CFD for gas power plants which was allocated by the ECC to private power infrastructure board in KP. The provincial government desires that the said allocation be made to them directly. The Ministry of Petroleum and Natural resources has stated that the allocation which was previously allocated to the private power and infrastructure board is now at the disposal of government of Khyber Pakhtunkhwa.	The Ministry of Petroleum and Natural resources informed that surplus gas of the province has already been allocated to the province. The surplus gas is available normally in the summer season while in the winter the gas demand exceeds the gas availability. The load running issue could be further avoided subject to additional exploration of gas in the province. In view of the above position, this demand would be deemed to have been addressed.	Matter resolved. However, it relates to petroleum division.
6	In relation to demand no.6, the provincial government stated that after the passage of the 18th constitutional amendment, the petroleum development levy does not form part of the federal divisible pool and that profit on the petroleum products and their benefits are not being passed on to the producing province. It was further stated that the issue in question related to the imposition of the federal excise duty on oil in terms of Article 161 (B) of the constitution and	It was stated that the imposition of federal excise duty on oil was being imposed by the finance division. The finance ministry was asked for its comments and the response was that it does not fall within their purview and that the relevant ministry is Ministry of Petroleum. The Ministry of Petroleum stated that it falls in the purview of finance division. It would be appropriate for this issue to be taken up before the NEC and the CCI. This was also the view taken by the Senate	Finance Division has intimated to Senate Secretariat on 25th August 2016 that under Rules of Business 1973 subject of "the Petroleum Products (Development Surcharges) Ordinance, 1961, and the rules made there under relate to Petroleum and Natural Resources Division. The Committee recommends that the finance division, FBR and Ministry of Petroleum and Natural Resources may resolve the issue in consultation with OGRA and the four provincial governments.

Demand No.	Demands	Responses	Present Status/Decisions
	that the duty had to be imposed by the federal government. The ministries of the federal government have been unable to determine as to which ministry the subject pertains to. Since this issue pertains to the interpretation and application of Article 161-B of the Constitution of the Islamic Republic of Pakistan.	Standing Committee of Finance, Revenue, Economic Affairs, Statistics, Planning and Development and Privatization, which view is endorsed. This issue has also been discussed in a meeting on Senate Functional Committee on Devolution, held on 5th October 2016 and it was recommended that the finance division, FBR and Ministry of Petroleum and Natural Resources may resolve the issue in consultation with OGRA and the four provincial governments.	
7	This demand pertains to payment of windfall levy on oil and gas as per Petroleum Policy, 2012. It is stated by the representative of government of KP that after the 18th amendment there was joint and equal ownership of provincial and federal government on oil and gas resources and that the benefits of windfall levy may equally be divided amongst the federal and provincial governments. It was stated by the relevant Ministry that a draft summary seeking a decision of the Council of Common Interests has been initiated for imposition of windfall levy on oil.	The committee feels that this demand is more or less similar to demand No.6.It has been stated by the Ministry of Petroleum that at present no windfall levy has been collected and when it is collected it would be shared accordingly with the provinces as per the provisions of the law. In addition thereto, the summary has been initiated to the CCI for a decision and it would be appropriate to wait for the same.	After a decision by CCI, Petroleum Division will implement the CCI decision.

Demand No.	Demands	Responses	Present Status/Decisions
8	This demand pertains to collection and payment of royalty on LPG to the provinces. It is the contention of the provincial government that the LPG which is a colorless, odorless and environment friendly mixture of hydrocarbons, its royalty is liable to be paid in respect of petroleum inclusive of LPG @ 12.5% of the wellhead value. It is pertinent to state that in relation to the said demand the matter was raised before the Peshawar High Court that has held that the companies were liable to pay Royalty. Copy of the decision of the Peshawar High Court is filed as Annexure 'C'. It would be relevant to mention here that a reference was made to the law division by the Ministry of Petroleum and Natural Resources and the law division opined that the same did not apply to the royalty on LPG sale. Since, the opinion of the law division is vague and no appeal was filed against the decision of the Peshawar High Court as such the committee feels that the decision of the Peshawar High Court should also be placed at that forum.	The committee recommends that the decision of the Peshawar High Court be implemented (directed federal government to make immediate arrangement for the payment of royalty amount on LPG to the provincial government) but as a matter of abundant caution, since the Ministry of Law did not give a categorical opinion and if the issue continues to linger, the appropriate forum for the resolution of the same would be the CCI.	Still not decided, however, the appropriate forum for resolution would be the CCI.

Demand No.	Demands	Responses	Present Status/Decisions
	In May 2016, the Interprovincial Coordination Department had circulated a summary for the Council of Common Interests (CCI) for comments of various stakeholders and took the position that the non-implementation of the decision of the Peshawar High Court would amount to a violation of Article 204 of the constitution. Since the thrust of the provincial government was on implementation of the Peshawar High Court decision, as such the Ministry for further clarification sought the opinion of the law division in the context of the decision of the Peshawar High Court. But the Law division did not give any categorical and specific opinion as such.		
9	This demand pertains to the share of the provincial government in the China-Pak Economic Corridor (CPEC). This issue was raised by the chief minister of Khyber Pakhtunkhwa with the federal government and, according to the statement; projects amounting to Rs 5.627 billion pertaining to the provincial government have been included. It is further stated that a meeting of the	The committee recommends that the projects mentioned may be considered sympathetically for inclusion in the CPEC portfolio, keeping in view the share of the provincial government in the projects already allocated to KP from the CPEC.	It relates to the Ministry of Planning Development & Reform. Issue not settled yet.

Demand No.	Demands	Responses	Present Status/Decisions
	federal committee on CPEC was held on 10th May 2016, in which concerns of the provincial government were discussed and addressed and it was agreed that coordinating meetings would be held regularly to share information. According to the provincial government, since the portfolio of its projects is only US $2.7 billion, it has requested for inclusion of the following projects in the CPEC portfolio: a) 10 hydel power projects (capacity: 1698 MW cost: US $4979 million); b) Industrial Parks at Hattar,Rashakai and D.I.Khan-in principle, with equal number of Industrial Parks has to be established in other provinces; c) Improvement/widening of N-90 Khawazakhela-Besham road; d) Circular rail project; e) Trucking terminals; f) Abbottabad bypass road from Havalian to Abbottabad-Murree road dual carriageway.		

Demand No.	Demands	Responses	Present Status/Decisions
10	The provincial government requested that the effect that increase in UFG ratio should either be picked up by gas companies or partially by consumers. The petroleum ministry informed the committee that the subject matter of this demand was presented before the CCI/IPCC whose decision is still awaited. The committee, however, feels that the gas companies should take effective measures to control the menace of theft of gas in order to bring down UFG at allowable rates and over and above 4.5UFG benchmark fixed by OGRA should be picked up by the gas companies.	The committee feels that, in view of the facts and circumstances, that the gas companies should take effective measures to control the menace of theft of gas in order to bring down UFG at allowable rates, it would be appropriate for the gas companies to pick up the rates over and above the benchmark fixed by OGRA (i.e. 4.5UFG).This is subject to the decision taken by the CCI.	Issue not settled yet. Awaiting decision by the CCI. It relates to the petroleum division.
11	This demand pertains to the removal of moratorium from new gas connection and load-extension for industries in KP generally and a gas producing districts (Karak, Kohat and Hangu) in particular. The provincial government states that the federal government has placed a moratorium on new industrial connections and extension in load of the industrial connections since 2011.The notification of moratorium was stated to be for one year. The committee was informed by the	The committee recommends that the request for lifting a moratorium on charitable institutions may be considered sympathetically depending on the availability of additional gas.	Issue not resolved; awaiting CCI decision.

Demand No.	Demands	Responses	Present Status/Decisions
	relevant ministry that the ratio of UFG is alarmingly high in some districts of the province and that the oil and gas producing districts of KP are more than ten thousand MMCFD per annum and that the provincial government should take appropriate measures to reduce the same in this regard. It is pertinent to mention that currently there is no gas load management and that the additional gas produced from the province has already been allocated. Further issue of UFG and GTS are presently also pending before the CCI whose decision is still awaited.		
12	This demand pertains to providing sovereign guarantee by the federal government for the hydro or other IPPs owned by the KP Government for projects above 50 MW by PEDO. It has been stated that as per the approved power generation policy 2015, the Government of Pakistan would issue sovereign guarantee for the development of hydropower plants which are initiated by the provincial government.	The issue is liable to be addressed in view of the statement of the Ministry of Water & Power and Power Generation Policy 2015.	In order to determine demand, supply and future sources of power generation, a 'National Electricity Plan' along with a new "Energy Policy" is being finanlised in collaboration with the provinces which is expected to be announced soon. Once the said plan is announced, the new 'Energy Policy' may entail the issuance of GOP's Sovereign Guarantees to the power generation projects (including hydropower projects) initiated by the Provinces/AJK and GB.

Demand No.	Demands	Responses	Present Status/Decisions
			No proposal has been received by Pakistan Power and Infrastructure Board (PPIB) from KP Government for issuance of Sovereign Guarantee for hydro or other IPPs owned by the KP government for projects above 50 MW. Only one small hydropower project proposal of 1.7MW on Machai Canal has been received by PPIB so far which along with any other proposals, if received will be processed in line with the National Electricity Plan and Energy Policy. As reported by PPIB, the matter stands resolved. It relates to the power division.
13	This demand pertains to releases of adequate allocation and utilization of Public Sector Development Programme (PSDP) in KP and same should be non-lapsable. The Ministry of Planning, Development & Reforms informed the Committee that allocations for funding of public sector development programs are based on the available fiscal space and that the PSDP allocations should not be enhanced	The committee recommends that the Ministry of Planning and Development may be pleased to consider sympathetically and on priority basis the projects proposed by the provincial government during the mid-year review meetings of PSDP subject to availability of funds. The committee recommends that the PDR Division may release the PSDP funds.	The Ministry of Planning and Development would consider the said request for the identified projects during the mid-year review meetings of PSDP subject to availability of additional resources or saving on other projects

Demand No.	Demands	Responses	Present Status/Decisions
	without availability of additional resources. However, it was stated that the provincial government could take up cases through the concerned sponsoring ministeries giving justification for enhancement in the allocation and that the Ministry of Planning and Development would consider the said request for the identified projects during the mid-year review meetings of PSDP subject to availability of additional resources or saving on other projects. .	1. In the federal PSDP 2017-2018, 133 development projects located in the KP province are being finance related to various sectors of economy such as national highways, motorways, water resources, energy, higher education, health and industry and commerce. The aggregate cost of these projects is Rs 1848 billion. Of this amount Rs 323 billion has been spent up to June 2017.An allocation of Rs 95 billion has been made for these projects in the PSDP 2017-2018 and out of this amount, Rs 30 billion stands released for these projects during first half of the year which is about 32%. 2. Some of the mega projects being executed in KP are listed in the Annex-E. 3. It also stated that for the fiscal year 2016-2017, Rs 87 billion were released to the projects located in the province against allocated amount of Rs 66 billion. This could be possible due to excess disbursement of foreign aid over the budget estimates.	

Demand No.	Demands	Responses	Present Status/Decisions
14	This demand pertains to the request of the provincial government for waiver from approval of the CDWP and ECNEC on its financed projects. The ministry of P&D has stated that in the third quarter releases were 100 percent.	The request of the provincial government for waiver is forwarded to the appropriate forum. 1. As per the procedure by the ECNEC for processing and approval of development projects from sponsoring ministries/divisions/ provinces are coordinated by the Ministry of Planning, Development and Reform for approval by the CDWP/ECNEC based on financial competency. CDWP is empowered to approve projects costing up to Rs 3.00 billion. The projects exceeding this limit are recommended to ECNEC by CDWP for approval. The Provincial P&D departments are empowered to approve development projects up to Rs10 billion from their own resources other than water sector projects provided no federal funding or external financing of more than 25% of the total cost involved. 2. CDWP frequently meets to consider development projects sponsored by Ministeries /Divisions. During the period of April 2014 till March 2015, CDWP considered 322 projects and	Not approved.

Demand No.	Demands	Responses	Present Status/Decisions
		approved 155 projects costing Rs 130.66 billion in its fifteen meetings. In these meetings five projects sponsored by the Government of Khyber Pakhtunkhwa were approved by the CDWP. ECNEC during the same period considered 66 projects and approved 61 projects costing Rs.1426.171 billion in its eight meetings. Out of these projects one project was sponsored by the Government of KP. 3. At present no project of the provincial government is pending for ECNEC. Two projects were pending for consideration of CDWP, one is near completion. i. Construction of Koto HPP Lower Dir which is under construction and will be completed in 2019. ii. Work is under progress on Daral Khwar HPP, Swat (Revised) 4. On the basis of the above facts, demand for waiver to Khyber Pakhtunkhwa finances projects from approval of CDWP and ECNEC is not supported on the basis of prescribed procedure.	

Demand No.	Demands	Responses	Present Status/Decisions
15	This demand pertains to special financial package for KP security on various grounds including war on terror, law and order situation, influx of IDPs and presence of Afghan Refugees etc. The committee was informed that in view of the situation in the province, Rs. 114billion was provided to the Home Secretary, Government of Khyber Pakhtunkhwa and a new special force for borders with Afghanistan and front line may also be setup.	The committee recommends that the chief secretary the provincial government, the home secretary and the Inspector General of Police make out the case for the special package with concrete reasons with proper justification. The committee also recommends special consideration to such a package, keeping in view the fact that the Khyber Pakhtunkhwa province is on the frontline on the war-on-terror, the influx of IDPs and the presence of very large number of the Afghan refugees	Under the 7th NFC award, 1% from divisional pool resources are being transferred to the provincial government on account of war-on- terror (up to June 2017) an amount of Rs 161.80 billion was transferred. Finance division has not received any proposal of special financial package from the provincial government. However, request of special package when received from the provincial government shall be placed before NFC for consideration.
16	This demand pertains to the facilitations in imposition and collection of provincial taxes, such as infrastructure development cess, cross development of sales tax on services. It is stated on behalf of the provincial government that the collection of cess could not commence for the reason that the contractor for collection required approval of the FBR.	The committee was initially informed that MoU would be signed between the Ministry of Finance and the Government of KP but then subsequently, the committee was informed about the present status according to which sub-clause-(d) of clause 14 of section 2 of the Sales Tax Act 1990 was omitted through the Finance Act 2016. In view of the said omission, there is no need for signing of a MoU since the Finance Act had deleted the said provision.	This issue relates to FBR. However, as per the recommendation of the Committee the matter stands resolved. The Government of KP acknowledged that collection of Infrastructure cess through WeBOC System had started since May 2016 and therefore, the matter stands settled. The provincial government has acknowledged that SRO 814(I)/2016, dated 02.09.2016 has been issued

Demand No.	Demands	Responses	Present Status/Decisions
			providing for adjustment of sales tax under KP Finance Act, 2013. Regarding demand for signing of MoU, akin to other provinces, it is submitted that an MoU between KPRA and FBR has been signed on 23rd November 2016.
17	The Government of KP has stated that after the 7th NFC Award and 18th amendment, the provinces had the right to impose taxes on capital gains and services and as such the provinces had accordingly legislated and imposed different taxes on these subjects. It was further stated that the federal government had also imposed certain withholding taxes through amendments in the Income Tax Ordinance like sales tax on marriage halls. It is submitted that these issues were substantially raised and decided in the case of Messer's Elashi Cotton Mills Ltd v/s Federation of Pakistan as reported in PTD-1997, page 1555 and PLD-1997. Page 582.	The committee feels that this issue needs to be settled in accordance with observations and directives made by the Supreme Court and further it could be taken up in the CCI keeping in view, the judgement of the Supreme Court as the basis. A copy of the judgement is attached herewith marked as Annex 'F'. It is pertinent to mention here that this tax be levied in all the four provinces across the board. Reference may be made to the same and if the issue still persists, it is recommended that the provincial government and the Ministry of Finance may raise this issue in the CCI. That the question of cross judgement of sales tax on services for which the MoU is presiding with the FBR may be expedited at the earliest.	Finance Division has already informed senate secretariat on 25-05-2016 that issue relates to FBR for taking it to CCI. The Government of KP earlier raised the objection that the provincial government had imposed sales tax on certain services which were subject to various withholding taxes and had demanded withdrawal of withholding income tax on these services. FBR had submitted that the federal government has the right to levy income tax under the authority of Entry No.47 of part-1 of fourth Schedule to the Constitution. It is submitted that advance tax under section 236C and 236K of the Income Tax Ordinance, 2001 is levied on the sale and purchase of immovable property. Advance income tax at the time of registration of motor vehicles is chargeable under section 234. Similarly,

Demand No.	Demands	Responses	Present Status/Decisions
			advance income tax U/S 236 is chargeable from the person arranging function in marriage/wedding halls/restaurants etc. All the above advance taxes are adjustable against income tax liability of the person engaged in property transactions, purchase of vehicles and holding functions in a tax year and cannot be treated as an infringement upon efforts of provincial authorities to collect their taxes.
18	This demand pertains to financial assistance to meet additional cost of conflict and payments under the damage need assessment.	It has been stated that in June 2009 the World Bank and the Asian Development Bank along with the KP government had conducted a damage need assessment in the militancy-hit Malakand Division in that the damage need assessment of the provincial government was Rs. 68.68 billion. The prime minister in a meeting of the Strategic Oversight Council held on 5th May 2009 has directed the release of Rs. 17 billion in that only Rs. 2 billion has been released so far	The KP government may submit this case to the Economic Affairs Division for financing by the donor. Finance Division supports the case of the provincial government.

Demand No.	Demands	Responses	Present Status/Decisions
		The finance ministry has held various meetings with the provincial government and it has been decided that a comprehensive plan covering all sectors for the reconstruction of war damaged economy of the province and that the plan after its approval from the competent forum will be placed before EAD for exploring funding for the donors/development partners. This will address the issue pertaining to this demand with the recommendation that the commitments made by the federal government to the provincial government may be implemented.	
19	This demand refers to the inclusion of the chief secretary of Khyber Pakhtunkhwa in the list of invitees to ECC meetings.	Inclusion of the chief secretaries in the list of invitees in ECC meetings may be considered at the appropriate forum. In accordance with rule 17(2) of the Rules of Business, 1973, the composition and terms of reference of a Cabinet Committee are laid down by the "cabinet or the prime minister". Accordingly, the matter was submitted to the prime minister for consideration. It has been observed that there is no provision in the Rules of Business, 1973 to include Chief	The ECC is a committee of the cabinet. The matters relating to cabinet committees are dealt with by cabinet division. Hence, has to be considered at the appropriate forum.

Demand No.	Demands	Responses	Present Status/Decisions
		Secretaries of the provinces as 'members' of the ECC. However, they are being invited as 'special invitees' on need basis in the meetings of the ECC, in cases where provincial governments are stakeholders or where input of the provinces is required.	
20	This demand pertains to compensation for the un-utilized share of water of Khyber Pakhtunkhwa and construction of requisite infrastructure. The committee was informed that MOU was signed and the PC-1 has been prepared The Ministry in its comments has stated that the PC-1 was received in the Ministry on 04.08.2016 and it was forwarded to the irrigation department of the provincial government on 07.01.2016. It has been further stated that the replies of the provincial government has been received by the ministry.	The committee recommends that the approval for the concern PC-1 may be expedited and thereafter appropriate alternate allocations be made. It relates to the Ministry of Water Resources.	It relates to the Ministry of Water resources. In February 2016, a meeting held under the chairmanship of federal minister for Finance, Revenue, Economic Affairs, Statistics and Privatization to deliberate upon the pending issues between the Government of Pakistan and the provincial government. In the meeting an MoU was signed between the two governments. The project when approved would be financed between Government of Pakistan and Government of KP in the ratio 65:35 while the O&M and recurring costs would be funded by the provincial government. The MOU was approved by CCI in a meeting held on 29-02-2016.

Demand No.	Demands	Responses	Present Status/Decisions
			The provincial government submitted PC-I of "Chashma Right Bank Canal Project", which was examined by Ministry of Water and Power, they took out number of deficiencies which were conveyed to the government. Despite various requests the provincial government has not been able to address the said deficiencies. Ministry of Water & Power conveyed its concerns to prime minister's office on 14-07-2017. the prime minister ordered on 24-07-2017 that WAPDA shall carry out a comprehensive feasibility study of the Chashma Right Bank Canal project within the shortest time, at its own cost. However, the provincial government submitted the concept clearance proposal of the project to Ministry of Planning, Development and Reform which was considered and approved by CDWP on 19-10-2017.During the meeting the provincial government conveyed that objective of this concept paper is to include this project in forthcoming meeting of Joint Working Group of CPEC.

Demand No.	Demands	Responses	Present Status/Decisions
21	This demand pertains to the grant of special concession to the industries located in KP on an account of war and conflict zone and concessions in custom duty, federal excise duty and sales tax on goods. The committee was informed that in the Budget 2014-15 exemption of custom duty was allowed on import of plant, machinery and equipment for setting up of fruit processing and preservation units in Malakand Division. Moreover, plant and machinery are also exempt from customs duty for setting up industries in FATA up to 30th June 2019. In Budget 2015-16, the following relief measures have been proposed for the provincial government: 1. The Export Policy Order, 2013 has been amended vide SRO .805(1)/2015 dated 15.08.2015 allowing exports of perishable goods i.e. fruits, vegetables, dairy products and meat against Pak currency. 2. DTRE rule has been amended vide SRO. 661(1)/2015 dated 08.07	The committee recommended for the grant of status of special economic zones for exemption from income tax for ten years by the federal government and the facility under clause 86 (A) of Part (iv) of the second schedule to the Income Tax Ordinance to start production by June,2019 may be extended up to June,2023 Hence, special concession to the industries located in KP on account of war/conflict, in the following taxes: custom duty, federal excise duty and sales tax on goods.	a) Regarding exemption from income tax to industries set up in special economic zones, it is submitted that exemption from income tax to the income of a zone enterprise as defined in the Special Economic Zones Act 2012 for a period of 10 years is already available under clause (126E) of Part-1 of Second Schedule to the Income Tax Ordinance 2001.At the same time, it is submitted that federal board of revenue is not the competent authority to grant status of special economic zones to an industrial estate. b) As acknowledged by the Government of KP; profits and gains derived by a taxpayer located in areas of KP FATA, PATA affected by war-on-terror were granted exemption from income tax for a period of three years starting from tax year 2010 through insertion of clause (126F) of Part-1 of the Second Schedule to the Income Tax Ordinance, 2001. Likewise, 50% reduction in sales tax liability was granted to taxpayers of areas

Demand No.	Demands	Responses	Present Status/Decisions
	.2015 and by virtue of said amendment the manufacturer-cum-exporters of ghee located in the province can now acquire raw materials for the manufacture and export of vegetable ghee not exceeding 1000 metric tons per month Five years Income Tax exemption has been granted under clause (126 L) of Part 1 of the Second Schedule to Income Tax Ordinance 2001 through Finance Act 2015 to profits & gains of the industrial undertaking set up in KP & Balochistan w.e.f. 01-07-2015 to 30-06-2018. The position has been stated, there are already exemptions of custom duties on imports of plants and machinery equipment and various other exemptions as stated above. A case of further exemptions if any may be made out for the CCI & NFC.		affected by war on terror and this concession remained available from 10.03.2010 to 12.06.2013 Extension of above exemptions as demanded by the provincial government up to 30.06.2023 is not supported in view of improved law and order situation in the province and also for the reason that extension of such exemptions will be distinctly disadvantageous to taxpayers of other areas of the country. At the same time, it is submitted that in order to compensate losses incurred due to war- on-terror certain other advantages/tax concessions have been provided to the industries of KP details of which are as under: Vide Finance Act 2015, clause (126L) has been added whereby profits and gains derived by a taxpayer from an industrial undertaking set up between 1stday of July 2015 to 30th day of June 2018, the whole of KP have been granted exemption from Income Tax for a period of five years starting from the day commencement of their commercial operations.

Demand No.	Demands	Responses	Present Status/Decisions
			Therefore, exemption for a period of five years starting from the date of commencement of commercial operations of an industrial undertaking has already been granted. Exemption from customs duty has been granted on import plant, machinery and equipment for setting up of fruit processing and preservation units in the Malakand Division and import of plant, machinery and equipment for setting up industries in FATA up to 30th June 2019 were exempted from whole of customs duty vide S.No.25 and 26 of part-I of the Fifth Schedule to the Customs Act, 1969 respectively. Similarly, exemption from sales tax has been granted in respect of plant, machinery and equipment imported for setting up fruit processing preservation units in Malakand Division up to 30th June 2019 under S.No.115 and 116 of Table-1 of the Sixth Schedule to the Sales Tax Act, 1990. DTRE rules have been amended vide Customs SRO.661 (I)/2015, dated 08/07/2015 where under manufacturers-

Demand No.	Demands	Responses	Present Status/Decisions
			cum-exporters of ghee located in province can now acquire raw materials for the manufacture and export of vegetable ghee not exceeding 1000 metric tons per month. This concession in the DTRE rules has been given to industries located in KP on account of war-on-terror. Extension of all above benefits proves that demands of the provincial government regarding tax concession have been met to a great extent. c) Exemption from probe under section 111 of the Income Tax Ordinance, 2001 available to investment within the meanings of clause (86) (a) of Part-IV of Second Schedule to the Income Tax Ordinance, 2001 has already been extended from 30th June 2017 to 30th June 2019 through Finance Act,2016. Further extension as demanded by the provincial government is not supported at this time. d) Reply to this recommendation has already been submitted in above paras. However, specific reply is juxtaposed hereunder:

Demand No.	Demands	Responses	Present Status/Decisions
			Regarding exemption from income tax to industries set up in special economic zones, it is submitted that exemption from income tax to the income of a zone enterprise as defined in Special Economic Zones Act, 2012 for a period of 10 years is already available under clause (126E) of Part-1 of Second Schedule to the Income Tax Ordinance 2001.At the same time, it is submitted that Federal Board of Revenue is not the competent authority to grant status of Special Economic Zones to an industrial estate. Exemption from probe under section 111 of the Income Tax Ordinance, 2001 available to investment within the meanings of clause (86)(a) of Part-IV of Second Schedule to the Income Tax Ordinance, 2001 has already been extended from 30th June,2017 to 30th June 2019 through Finance Act,2016. Further extension recommended by the convener of the senate special committee on twenty-Four demands of KP is not supported at this time.

Demand No.	Demands	Responses	Present Status/Decisions
22	This demand pertains to load-shedding in the KP province. The committee was informed by PESCO that there was no extra load shedding and that there were technical shortcomings and due to these some of the feeders were even not capable of catering to the needs of the province apart from the low recovery of electricity bills and high transmission and distribution losses.	The committee recommends that the load-shedding schedule may be shared with the provincial government on daily basis and the generation figures of electricity may also be shared with the provincial government. It further recommends the development of infrastructure in the program is depending on the availability of resources.	PESCO AT&C based load shedding program is enclosed as Annexure-I. Load shedding is being carried out on AT&C (Aggregate Technical & Commercial Loss) based results. The areas where line losses are less & revenue collection is high, less load shedding is carried out in those areas. Following steps are taken to eradicate electricity theft & boost up recoveries from running and disconnected defaulters: 1. Proper installation and securing of metering equipment. 2. Shifting of metering equipment outside the consumer premises. 3. Surveillance and checking of the premises. 4. Implementation of MMR (Mobile Meter Reading) & AMR (Automated Meter Reading) systems. 5. Awareness campaign of public through media. 6. PESCO police stations have been established & working to control the theft of electricity in District Peshawar, Charsadda, Mardan,

Demand No.	Demands	Responses	Present Status/Decisions
			Bannu, DI Khan, Tank & Lakki to lodge FIRs raids towards recoveries Progressive distribution losses 12/2016 =30.9% 12/2017 =34.2% Progressive recovery 12/2016= 88.7% 12/2017 = 91.2 %
23	This demand pertains to a request for the increase in funding in the next NFC award.	The committee feels that all the provinces including KP have equal representation and that the provincial government should make out a case for special funding with detailed justification in the NFC.	The government of KP may take the matter to NFC.
24	This demand pertains to the request for extra land on lease which is in the possession of railways so that the provincial government could construct the mass transit system in Peshawar. The Ministry of Railways informed the committee that the said land is needed for future development of railways. This matter was also taken up by the Standing Committee on Railways which take the following decision:	The Ministry of Railways informed the committee that the said land is needed for future development of railways. This matter was also taken up by the Standing Committee on Railways; the committee feels that Ministry of Railway has precedence for the use of land but if there is extra land available it may be considered for allotment on lease for the construction of the mass transit system in Peshawar.	It is recommended that the Ministry of Railways should expedite the completion of the concerned survey and to share its findings with the provincial government of KP.

Demand No.	Demands	Responses	Present Status/Decisions
	"The committee realized the limitation of railways to offer land for construction of mass transit system in Peshawar to Khyber Pakhtunkhwa government due to future expansive plan and finalization of preliminary design of project and start off work on ground. The committee members were of the view that railways should take precedence over its land for utilization of its anticipated future needs. However, the committee emphasized that railways should allot extra land on lease to provincial government if it remained available after intended railways expansion programmes under CPEC. The committee suggested that provincial government should work out an economically viable alternative plan for public transport system in addition to existing conceived mass transit system on railways land." The said committee endorses the decision of the Standing Committee on Railways.	It is recommended that the Ministry of Railways should expedite the completion of the concerned survey and to share its findings with the provincial government. The committee feels that the recommend tips made above especially those with financial implications may be considered for inclusion in the budget 2017-18 The committee also feels the need to emphasize that schemes duly approved should be completed in time so as to avoid the escalation in the cost which has been witnessed in a number of projects The members of the special committee who attended the meeting on February 20th, 2017 unanimously endorsed the recommendations made by it in relations to the 24 demands.	

Bibliography

Journals

- Rana Mushtaq, Federal government rejects 24 demands of Khyber Pakhtunkhwa.
- Pakistan Institute for Parliamentary Services: National workshop on federalism and devolution of Powers for members of parliament; Constitutional forums for resolving federal-provincial issues in Pakistan.
- Report of the Senate Special Committee on twenty-four demands made by government of Khyber Pakhtunkhwa.
- Zafarullah Khan, Federal-Provincial Conflict and Constitutional Mechanisms for Resolution.
- The Implementation Commission, Inter-Provincial Coordination Division.
- Implementation of the 18th Constitutional Amendment.
- 18th Amendment Constitutional Reforms in Pakistan. 'Devolution of Power, revisiting 18th Amendment.
- Tariq Ahmed Saeedi, Wapda pays Rs80bln in net hydel profits to Punjab, KPK, March 6, 2018.
- Senate body discusses 24 KP demands with Centre, November 14, 2016.
- Parvez Jabri, Senate body discusses 24 demands of KP government, April 14, 2016.
- Mohammad Ashfaq, KP lawmakers to stage sit-in outside Parliament House, May 08, 2015.
- 24 Khyber Pakhtunkhwa demands discussed, November 25, 2016.
- Khyber Pakhtunkhwa tables 24 demands before federation, 04 March 2016.
- Special Committee on the Twenty-Four Demands made by Khyber Pakhtunkhwa.
- 24 demands made by KP government to federal government, 24 Nov 2016.
- CT Report, Senate body discusses 24 demands from KP, November 24, 2016

Cases:

- Peshawar High Court: Case regarding payment of royalty, WP No 1520-P/2012.
- Supreme Court of Pakistan: Messer's Elashi Cotton Mills Ltd v/s Federation of Pakistan; PTD-1997, page 1555 and PLD-1997. Page 58.

Websites:

- https://www.thenews.com.pk/print/288768-wapda-pays-rs80bln-in-net-hydel-profits-to-punjab-kpk
- https://dailytimes.com.pk/85442/federal-government-rejects-24-demands-of-kp/
- https://pakobserver.net/kp-meeting-finalises-24-demands-for-centre/
- https://www.dawn.com/news/1180732
- https://pakobserver.net/24-kp-demands-discussed/
- http://dunyanews.tv/en/Pakistan/325948-Khyber-Pakhtunkhwa-tables-24-demands-before-federal
- https://www.suchtv.pk/pakistan/kp-fata/item/34546-khyber-pakhtunkhwa-tables-24-demands-before-federation.html
- http://www.senate.gov.pk/uploads/books/committeejournal/Demands_KPK.pdf
- https://timesofislamabad.com/24-Nov-2016/24-demands-made-by-kpk-government-to-federal-government
- https://www.brecorder.com/2016/04/14/290515/senate-body-discusses-24-demands-of-kpk-government/
- http://www.customstoday.com.pk/senate-body-discusses-24-demands-from-kp/

Annexures

Annexure-A

The composition of the Committee is as under:

1. Senator Syed Muzaffar Hussain Shah	Convener
2. Senator A.Rehman Malik	Member
3. Senator Muhammad Talha Mehmood	Member
4. Senator Saleem Mandviwala	Member
5. Senator Mir Israrullah Khan Zehri	Member
6. Senator Col (R) Syed Tahir Hussain Mashhadi	Member
7. Senator Sardar Fateh Muhammad Muhammad Hassani	Member
8. Senator Taj Haider	Member
9. Senator Sardar Muhammad Yaqoob Khan Nasir	Member
10. Minister Incharge for Cabinet Division	Ex-officio Member
11. Minister for Water and Power	Ex-officio Member
12. Minister for Petroleum and Natural Resources	Ex-officio Member
13. Minister for Planning Development & Reforms	Ex-officio Member
14. Minister for Railways	Ex-officio Member
15. Minister for Finance Revenue, Economic Affairs, Statistics and Privatization	Ex-officio Member

Annexure-B

Case No.CCI-1/2/91

Dated: 12-1-1991.

Payment of net profit of electricity from hydel generation to the Provinces.

EXISTING DECISION	AMENDED DECISION
I. The methodology of calculation of net profits from bulk generation of electricity proposed by Mr. A G.N. Kazi Committee should be adopted.	The methodology of calculation of net profits from bulk generation at hydel stations proposed by Mr. A.G.N.Kazi's Committee should be adopted for the past and future calculations.
II. The net profit up to the end of financial year 1990-91 should be adjusted against the deficit grants released to the Provinces from 1974-75 onward. For the current year (1990-91), some adhoc payment may be made to the Province of NWFP to relieve its budgetary deficit to the extent possible.	The net profit up to the end of financial year 1990-91 should be adjusted against the deficit grants released to the Provinces from 1973-74 onward. Out of the total amount payable to the Provinces some on account payment may be made to the Province of NWFP during the current financial year to relieve its budgetary deficit to the extent possible. Balance amount may be paid when the accounts for the year 1990-91 have been finalized.

Annexure-C

PESHAWAR HIGH COURT, PESHAWAR

FORM OF ORDER SHEET

Date of Order or Proceedings	Order or other Proceedings with Signature of Judge.
1	2
30.05.2013.	WP No. 1520-P/2012.
	Present: M/S. Col. Hussain Afridi, Investigating Officer NAB, M. Irfan, I.O NAB, Muhammad Jamil Khan, DPGA NAB, Mr. Shumail Ahmad Butt, Advocate for Provincial Government, Misbahul Mustafa Advocate for OGRA, Muhammad Iltaf Deputy Director, Azizullah Khan Deputy Director, Ghazi Khan Law Officer Ministry of Petroleum & Natural Resources, Col. Khalid Mehmood G.M. Pan Gas alongwith Mr. Abdul Latif Afridi, Advocate.
	Mr. Abdur Razzaq, AAG for Provincial Government.
	Mr. Muhammad Jamil Qamar, Standing Counsel for Federation.
	Barrister Syed Mudasser Ameer, Advocate on behalf of Mr. Athar Minallah, Advocate for OGDCL.
	*****
	DOST MUHAMMAD KHAN, CJ. The Investigating Officer NAB has submitted report on the summary of losses inflicted on the public exchequer amounting to Rs. 1015.475 Millions which is placed on record. The learned DPGA NAB stated at the bar that comprehensive enquiry has been made in the subject matter and because of the illegalities and irregularities committed much l[oss has] been caused to the public exchequer, therefore.

be allowed to conduct open investigation into the matter and if from the evidence to be collected, further case is made out or further improvement is made in the case then, reference would be filed in due course and in the laid down manner.

2. As the desired result, asked by the court, has been achieved and because under the provisions of the NAB Ordinance the local NAB Investigators are at liberty to investigate into the matter and conclude the same in the laid down manner, therefore, the permission of the court would be merely superfluous, however, they may proceed accordingly because the matter was initiated on the court order, however, keeping in view the quantum of losses shown so far, the case should be entrusted to senior investigator of high integrity and the same be concluded in a reasonable period.

3. The previous order of the court issued to the Chief Secretary Government of KPK that for the amount of royalty having been paid or to be paid in future, proper task force should be constituted and established consisting

of technocrats and high profile expert who shall prepare a feasibility report regarding the Social Development Projects in the gas & oil producing areas of Kohat District and District Karak, of course, the elected representatives may participate in the final proceedings but all social development projects in the area be executed and carried out according to the experts report and not on the strength of the opinion of the elected representatives or any committee, whatever it may be.

Needless to remark that the share of the gas & oil producing areas in the social sector development projects from the royalty must be according to the long standing practice and criteria laid down in that regard, both nationally and internationally.

If the royalty amount has not been paid on LPG to the Provincial Government by OGRA or OGDCL, as the case may be, the Federal Government is directed to impress upon both the authorities / functionaries to make immediate arrangement for the payment of royalty amount on LPG to the Provincial Government and its payment be

imp
Royalty must be paid to the provincial government

made on periodical basis without any unnecessary delay.

Petition stands disposed of accordingly.

CHIEF JUSTICE

JUDGE

3/5

1/6/13

Annexure-D

Following projects have been included in CPEC portfolio;

S, No	Project	Status
		Transport Infrastructure
1.	**Construction of Havelian – Thakot (KKH)**	• Length : 120 km • PC-I Cost: PKR 136.659 B • EPC Cost: PKR 133.98 B • Completion: 42 Months (December, 2019) • Havelian-Mansehra section (39 km) by April-2018
2.	**Western Route-Hakla - Yarik (DI Khan) Motorway**	• Length: 285 km • PC-I Cost: PKR 129 Billion • Construction work is in progress since September 2016 • Completion: End of 2018
3.	**DI Khan (Yarik) – Zhob (N-50)**	• Length: 210 km (04 Lanes Highway) • Est. Cost: PKR 81 Billion (Land Cost Included) • 6th JCC recommended financing of the project • Loan application forwarded to Chinese side through EAD • PC-I Approved • Detailed design completed • Framework agreement shared with Chinese Side
4.	**Gilgit – Shandor – Chitral CPEC Link Road**	• Length:354 km (02 Lanes Highway) • Est. Cost: 45.0 Billion • Detailed Design and Feasibility Study Completed • PC-I Under Process
5	**Up gradation of Pakistan Railway's Main line (M-1) and Havelian Dry Port**	• Project to be implemented in SINDH-PUNJAB-KP • Estimated cost: US$ 8.2 B • Framework Agreement signed • Feasibility completed • Groundbreaking is expected in 2018
6.	**The Greater Peshawar Region Mass Transit – The Circular Rail Project**	• Govt. of Khyber Pakhtunkhwa is establishing a commuter Rail Network of approximately 123.83 km length under CPEC • MOU, for feasibility of the project, was signed b/w GoKP and China Construction Communication Co. Ltd (CCCC) in

		Aug 2016 • Pre- feasibility study completed in Feb, 2017 • Detailed Feasibility study completed in June, 2017, which is being followed by technical evaluation
	Energy	
7	**Sukki Kinari Hydro Project**	• Project Cost: US$1956.22 M USD • Financial Close achieved on 31-12-2016 • EPC Contractor mobilized to initiate construction activities at site • Commercial Operation Date: 2022
8	**Development of hydro projects along the north Indus River**	• Mechanism to be finalized on development of hydro projects along the north Indus River • MoU on Roadmap for Studies of Hydropower planning signed during Belt and Road Forum
	Industrial Cooperation	
9	**Special Economic Zone at Rashakai**	• Feasibility shared with Chinese Side. • JCC agreed to promote the construction of Rashakai SEZ at the earliest.
	Fiber Optical Cable	
10	**Cross Border Optical Fiber Cable**	• Work commenced in October 2015 • Work on 450km/ 820km segment completed • 287.6 Km (35) is passing through KP • Completion is planned in August 2018.
	Projects under implementation/construction through PSDP to enhance connectivity for CPEC in KP	
11.	Dualization of Gandhi Chowk to Sarai Naurang + Domail to Rangeen Abad) Old Bannu Road N-55	
12.	Dualization of Indus Highway Remaining Portion (128KM) (Kohat Sarai Gambila)	
13.	Rehabilitation of D. I Khan Mughal Kot (50 KM) N-50	
14.	Up gradation/Dualization of Western Route link from Kohat via Jhand	
15.	Zhob Mughal Kot 81 KM, N50	

Annexure-E

Mega Projects Located in Khyber Pakhtunkhwa

(Rs Million)

PSDP S#	Project Name	Cost	Expenditure Upto June, 2017	Throw-forward	Allocation 2017-18
COMMUNICATIONS DIVISION (NATIONAL HIGHWAY AUTHORITY)					
86	Construction of Burhan-Havelian Expressway (E-35) 59.1 Km	30494.150	27045.286	3448.864	3000.000
87	Construction of Chitral - Garam Chashma Road Project (67 km)	8314.360	0.000	8314.360	1000.000
88	Construction of Chitral-Ayun-Bumborate Road Project (48 km)	4758.170	40.000	4718.170	1000.000
89	Construction of Expressway from Besham to Khwaza Khela (62 Km)	20000.000	10.000	19990.000	3000.000
110	Dualization of Indus Highway Remaining Portion (128 KM) (Kohat Sarai Gambila)	30130.000	0.000	30130.000	8000.000
116	Improvement and Widening of Chakdara Chitral Section of N-45 (141 KM) Korean Exim Bank	17423.000	1013.363	16409.637	950.000
137	Rehabilitation of D.I Khan Mughal Kot 50 km Section N-50 (FERP Phase-II)	4025.846	400.000	3625.846	1500.000
141	Thakot to Havelian 118 KM (Construction) (Phase-I) (CPEC)	136659.660	34873.913	101785.747	21250.000
142	Thakot to Havelian 118 KM (Land) (Phase-I) (CPEC)	6858.000	6057.167	800.833	800.833
COMMUNICATIONS DIVISION (NATIONAL HIGHWAY AUTHORITY)					
237	Development of University of Dir, Sheringal	1709.187	425.000	1284.187	300.000
242	Establishment and Upgrading of Core Engineering Departments in Mardan Campus of Khyber Pakhtunkhwa University of Engineering & Technology (UET), Peshawar	1336.725	300.000	1036.725	250.000
246	Establishment of COMSATS Institute of Information Technology Campus at Abbottabad	861.269	650.000	211.269	211.269
277	IT Industrial Innovation and Research Centre and Strengthening of Islamia College Peshawar	1385.985	300.000	1085.985	300.000
278	Jalozai Campus of NWFP University of Engineering & Technology (UET), Peshawar	6565.272	4880.643	1684.629	250.000
288	Provision of academic and allied facilities at University of Malakand	922.302	385.000	537.302	200.000
290	Provision of Basic Academic and Allied Facilities at University of Swabi	1001.274	540.000	461.274	200.000
INTERIOR DIVISION					
537	Provision of Security Infrastructure in Malakand, Swat & other Conflicts Areas of Khyber Pakhtunkhwa.	2970.407	573.846	2396.561	1000.000
POWER DIVISION					
875	Tarbela Fourth Extension Hydro Power Project (1410 MW) (Swabi)	83601.040	66911.000	16690.040	5933.000
877	Warsak Hydroelectric Power Station 2nd Rehabilitation (242.96 MW)	22254.230	1812.532	20441.698	500.000

(Rs Million)

PSDP S#	Project Name	Cost	Expenditure Upto June, 2017	Throw-forward	Allocation 2017-18
893	220KV Chakdara S/S ADB Tranche-IV.	3230.000	2807.410	422.590	750.000
WATER RESOURCES DIVISION					
1075	Construction of 20 Nos. Small Dams in Khyber Pakhtunkhwa	3600.000	2952.240	647.760	400.000
1087	Gomal Zam Dam Project Dera Ismail Khan / South Waziristan Agency.(local-7698.118M,Provincial-2206M,FEC-10721.882M) Total Cost= Rs 20626 M	20626.000	15993.257	4632.743	5.000
1107	Remodeling of Warsak Canal System in Peshawar & Nowshera District.	12147.430	3961.280	8186.150	130.000
		420874.307	**171931.937**	**248942.370**	**50930.102**

Annexure-F

3.PRT 15-Jul-2016 10:42 Page 1(14)

===
RAHMAT ULLAH MALIK's COMPUTERISED DIRECT TAX LAW Page 1
===
003 009 SUPREME COURT OF PAKISTAN SUPREME COURT OF PAKISTAN

Elahi Cotton Mills Ltd v. Federation of Pakistan (1)
NO: CA 307-324 YEAR: 1996 DECIDED ON 04/06/1997
CITATION: DTPSC0224 ; 76TAX5 ; 1997PTD1555 ; 1997PTCL260 1997PLD582

Income Tax Ordinance, 1979 -- Sections 14, 40, 35, 80C, 80CC, 80C(4), 80C(5), 80D --

Fourth Schedule., Legislative List, Part I, Entry 47, 52 and Article 25 --

Constitution of Pakistan (1973), Articles 8, 18, 23, 24, 25, 71 and 77 --

Economic Reforms Act, (XII of 1992), Section 6 and Schedule --

Presumptive tax -- Imposition -- Question of vires -- Legislative power -- Legislature empowered to impose tax within the frame work of the constitution -- Whether presumptive tax imposed in consonance with Entry 52 of the Federal Legislative List -- Held Yes -- Whether rates of taxes are confiscatory or expropriatory -- Held no -- Whether provisions based on reasonable classification -- Held yes -- Words, ``income'' and ``in lieu of'', meaning of --

Conflict between provisions -- Business loss -- Carry forward -- Entitlement to claim of business loss or carry forward the same -- Whether entitlement affected by leving minimum tax -- Held no

Applicablity -- Turnover -- Sales tax and Central Excise -- Exemption available to undertakings under clauses 118C, 118D, 118E of Part I of the Second Schedule -- Whether exemption also available from the levy of minimum tax -- Held yes -- Whether amount of sales tax and Central Excise should be excluded from turnover -- Held yes -- Whether treatment available retrospectively -- Held yes --

Charge of tax -- Excess profit -- Burden to prove -- Protection -- Income earned by an assessee on account of excess profit -- Whether protection of sub-section (4) available -- Held yes -- Onus to prove the transaction on the assessee -- Failure to discharge the onus -- Whether sub-section (5) could be invoked -- Held yes --

Taxation -- Power of taxation rests on necessity, it is an essential and inherent attribute of sovereignty belonging as a matter of right to every independent State or Government --

Provisions with regard to taxation in the Constitution -- General words used in such provisions cannot be construed in isolation but the same are to be construed in the context in which they are

3.PRT 15-Jul-2016 10:42 Page 2(14)

===
RAHMAT ULLAH MALIK's COMPUTERISED DIRECT TAX LAW Page 2
===

employed so as to derive the colour and contents from the context -- Approach, while interpreting such provisions in the Constitution, has to be dynamic, progressive and oriented with the desire to meet the situation which has arisen effectively -- Interpretation cannot be narrow and pedantic but the Court's efforts should be to construe the same broadly, so that it may be able to meet the requirement of ever changing society --

Preamble -- Legislative Lists in the Constitution -- Object -- Construction -- Such lists cannot be construed narrowly but the same are to be given liberal construction --

Fourth Schedule., Legislative Lists -- Taxation -- Legislature, in view of wide variety of diverse economic criteria, which are to be considered for the formulation of a fiscal policy, enjoys a wide latitude in the matter of selection of persons, subject-matter, events, etc. for taxation -- With all such latitude certain irreducible desiderata of equality shall govern classification for differential treatment in taxation laws as well --

Laws relating to economic activities -- Principles of interpretation --

Judicial self-restraint -- Matters respecting utilities, tax and economic regulation -- Good reasons available for judicial self-restraint, if not judicial deference to the legislative judgment --

Equality before law -- Taxation -- Legislature is competent to classify persons or properties into different categories subject to different rates of tax -- If the same class of property similarly situated is subject to an incidence of taxation, which results in inequality amongst holders of the same kind of property, it is liable to be struck down on account of infringement of the fundamental right to equality --

Taxation -- State does not have to tax everything in order to tax something and is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably --

Taxation -- Discrimination -- Validity -- Tests of the vice of discrimination in a taxing law are less rigorous -- If there is equality and uniformity within each group founded on intelligible differentia having a rational nexus with the object sought to be achieved by the law, the Constitutional mandate that a law should not be discriminatory is fulfilled --

Taxation -- Fundamental rights -- Policy of a tax, in its operation may result in hardships or advantages or disadvantages to individual assessees which are accidental and inevitable but simpliciter such a situation will not constitute violation of any

15-Jul-2016 10:42

Page 3(14)

RAHMAT ULLAH MALIK's COMPUTERISED DIRECT TAX LAW

Page 3

of the fundamental rights --

Principles to be kept in view by Court detailed --

Constitutionality of a legislation -- Determination -- Principles

Expression ``income'' as used in Entry 47, Part I of Federal Legislative List of the Fourth Schedule of the Constitution of Pakistan -- Construction --

Taxation -- Income Tax Ordinance (XXXI of 1979), Preamble and Section 2(24) -- ``Income'' -- Concept -- What is not ``income'' under the Income Tax Ordinance can be made income by a Finance Act -- Exemption granted by the Income Tax Ordinance can be withdrawn by the Finance Act or the efficacy of that exemption may be reduced by the imposition of a new charge, of course, subject to Constitutional limitations --

Income -- Question, whether a particular kind if receipt is income or not would depend for its answer on the peculiar facts and circumstances of the case -- Principles --

Income -- Personal income -- Distinction --

Deeming provision in taxing statute -- Object and efect --

Statute enacting that something shall be deemed to have been done which in fact and in truth was not done -- Effect -- Duty of Court illustrated --

Legal fiction -- Scope -- Legal fictions are limited for a definite purpose, they cannot be extended beyond the purpose for which they are created --

Concept -- Income-tax is a tax on a person in relation to his income -- Such tax is imposed on a person (natural or artificial) in relation to his income --

Taxation -- Extent -- Validity -- Any legislation whereby either the prices of markettable commodities are fixed in such a way as to bring them below the cost of production and thereby make it impossible for a citizen to carry on his business or tax is imposed in such a way so as to result in acquiring property of those on whom the incidence of tax fell, then such legislation would be violative of the fundamental rights to carry on business and to hold property as guaranteed in the Constitution -- Taxing power is unlimited as long as it does not amount to confiscation and that the Legislature does not have the power to tax to the point of confiscation --

Fundamental rights and principles of policy -- Word ``reasonable'' -- Defination --

3.PRT

15-Jul-2016 10:42

Page 4(14)

RAHMAT ULLAH MALIK's COMPUTERISED DIRECT TAX LAW

Page 4

Taxation -- Direct tax -- Indirect tax -- Distinction --

Levy of building tax on the basis of covered area without reasonable classification -- Validity --

Taxation -- Equality of circumstances -- ``Subject-matter of tax'' and standard by which the amount of tax is measured -- Distinction --

Taxation -- Denial of statutory relief to assessee without showing some basis fair and rational and without having nexus to the subject sought to be achieved by the Legislature, would tantamount to denial of equal treatment --

Taxation -- Tax has to be levied on the basis of ability to pay

Theory of reading down -- Applicaton -- Theory of reading down is a rule of interpretation which is resorted to by Courts when they find a provision read literally seems to offend a fundamental right or falls outside the competence of the particular Legislature --

Taxation -- Legislature has the prerogative to decide the questions of quantum of tax, the conditions subject to which it is levied, the manner in which it is sought to be recovered -- If, however, a taxing statute is plainly discriminatory or provides no procedural machinery for assessment and levy of the tax or that is confiscatory, the Court may strike down the impugned statute as un-Constitutional --

Interpretation -- Taxation -- Rule of interpretation that while interpreting an entry in a Legislative List it should be given widest possible meaning, does not mean that Parliament can choose to tax as income an item which, in no rational sense, can be regarded as a citizen's income -- Item taxed should rationally be capable of being considered as the income of a citizen --

Charge of tax -- Before charging tax, an assessee must be shown to have received income or the same has arisen and accrued or deemed to be so under the statute -- Any amount which cannot be treated like that is not an income and, therefore, cannot be subject to tax --

``Tax on gross revenue'' and ``tax on income'' -- Distinction --

Taxation -- Legislature, particularly in economic activities, enjoys a wide latitude in the matter of selection of persons, subject-matters, events etc. for taxation -- Presumption is in favour of the validity of the legislation -- Burden to prove that the same is invalid is on the person who alleges it --

Taxation -- Power to levy taxes is a sine qua non for a State -- Conditions --

3.PRT

15-Jul-2016 10:42

Page 5(14)

RAHMAT ULLAH MALIK's COMPUTERISED DIRECT TAX LAW

Page 5

Provisions of Sections 80-C and 80-CC of the Income Tax Ordinance, 1979 fall within the category of presumptive tax while Section 80-D of the said Ordinance is founded on the theory of minimum tax -- Legislature has the option instead of invoking Entry 47 of the Fourth Schedule., Legislative List, Part I of the Constitution of Pakistan for imposing taxes on income, it can impose the same under Entry 52 of the said list on the basis of capacity to earn in list of Entry 47 but cannot adopt both the methods in respect of one particular tax -- Imposition of presumptive tax under Sections 80-C and 80-CC of the Income Tax Ordinance, 1979 being in substitution of the normal method of levy and recovery of the income-tax, same is in consonance with Entry 52, Fourth Schedule., Legislative List, Part I of the Constitution of Pakistan (1973) -- Expression ``in lieu of'' -- Connotation --

``In lieu of'' -- Meaning --

Carry forward of business loss -- Assessee can carry forward loss under Section 35 of the Income Tax Ordinance, 1979 from year to year in view of non obstante clause in Section 80-D of the said Ordinance --

While computing the annual turnover of an assessee, the amounts of sales tax and excise duty charged in terms of paras. 3 and 4 of C.B.R. Circular No. 3 of 1996, dated 18-3-1996 would be excluded --

Notification -- Executive Order/notification, which is detrimental or prejudicial to the interest of a person, cannot operate retrospectively -- Beneficial Executive Order/ notification, issued by an executive functionary can be given retrospective effect --

Imposition of minimum tax under Section 80-D, Income Tax Ordinance, 1979 -- Validity -- Section 80-D of the Ordinance falls within the legislative competence under Entry 47 read with Entry 52 of Fourth Sched., Legislative List, Part I of the Constitution of Pakistan (1973) and there is no infirmity in Section 80-D of the Ordinance --

Term ``tax on income'' -- Definition of term ``tax on income'' is not exhaustive and does not provide guideline as to the import and scope of Entry 47 of the Fourth Schedule., Legislative List, Part I for the Constitution of Pakistan --

Taxation -- Validity -- Power to tax cannot be used to embarrass and destroy the business/occupation which are sine qua non for the prosperity of the people and the country -- Taxes should not be expropriatory and confiscatory in nature and should not be imposed in such a way so as to result in acquiring properties of those to whom the incidence of taxation fell and if that is so,

3.PRT

15-Jul-2016 10:42

Page 6(14)

RAHMAT ULLAH MALIK's COMPUTERISED DIRECT TAX LAW

Page 6

then such legislation whould be violative of fundamental rights to carry on business or to hold properties as guaranteed by the Constitution --

Provisions of Sections 80-C, 80-CC and 80-D, Income Tax Ordinance, 1979 are not confiscatory and expropriatory in nature and thus not violative of fundamental rights -- Question, as to whether a particular tax is confiscatory or expropriatory is to be determined with reference to the actual earning or earning capacity of an average prudent successful entrepreneur in a particular trade or business -- Fact that a particular assessee has suffered loss/losses during certain assessment years, is not germane to the said question --

Minimum tax on income -- When there is no turnover of an assessee during a particular assessment year, he is not liable to pay any tax under Section 80-D, Income Tax Ordinance, 1979 -- If, however, there is one transaction amounting to Rs. 1,00,000 in a year, liability of assessee under Section 80-D would be to pay Rs. 500 i.e. half per cent. of the turnover in the assessment year involved -- Principles --

Taxation -- Equality, before law -- Classification -- Reasonableness -- Reasonable classification does not imply that every person should be taxed equally -- Reasonable classification is permissible provided same is based on an intelligible differentia which distincts persons or things that are grouped togather from those who have been left out and that differentia must have rational nexus to the object sought to be achieved by such classification -- Requirements of classification when fulfilled --

Taxation -- Validity -- Once the Court finds that a fiscal statute does not suffer from any Constitutional infirmity, it is not supposed to entangle itself with the technical questions as to the scope and modality of its working etc. -- Such questions pre-eminently deserve to be decided by the Government which possesses expert's services and the relevant information which necessitated imposition of the tax involved unless the same suffers from any legal infirmity which may warrant interference by the Court --

Taxation -- Validity -- Court while examining a fiscal statute should not be carried away with the fact that the same may be disadvantageous to some of the taxpayers -- If such a fiscal statute is beneficial to the country on the whole, the individual's interest should yield to the national interest --

Taxation -- Minimum tax -- Equality before law -- Classification -- Reasonable classification -- Provision of Sections 80-C, 80-CC and 80-D, Income Tax Ordinance, 1979 are based on reasonable classification as they are founded on an intelligible differentia which destinguishes persons covered thereunder with the other

..RT)

15-Jul-2016 10:42

Page 7(14)

RAHMAT ULLAH MALIK's COMPUTERISED DIRECT TAX LAW

Page 7

co-tax-payers -- Said provisions have also rational nexus to the object sought to be achieved by such classification i.e. broadening the tax base and to recover the minimum tax --

Minimum tax -- Exemption -- Validity -- Mere reduction in the rate of tax payable under Sections 80-C and 80-CC, Income Tax Ordinance, 1979 by the Central Board of Revenue will not, by itself, be sufficient to warrant an inference that the same was not legally done or was prompted by mala fide reason to favour someone --

Tax on income of contractors -- Equality before law -- Classification -- Reasonable classification -- Charge of tax at lower rate from foreign contractors -- Validity -- foreign contractors constitute a class themselves and, therefore, there cannot be any comparison between a foreign contractor and a local contractor for the purpose of determining the question of reasonableness --

Imposition of minimum tax -- Assessees who fulfil the conditions of the notifications referred in the Schedule to Section 6, Economic Reforms Act, 1992 are entitled to protection --

Object, scope and application of Section 80-C, Income Tax Ordinance, 1979 --

Provisions of Section 35, Income Tax Ordinance, 1979 and other provision of the Ordinance which are not inconsistent with Section 80-D of the said Ordinance continue to apply even to the cases covered by the latter provision --

No conflict exists between subsection (4) and sub-section (5) of Section 80-C, Income Tax Ordinance, 1979 and same are to operate accordingly --

Sub-section (1) of Section 80-C of the Ordinance imposing tax on income of certain contractors and importers on the basis of the amount referred to in sub-section (2) thereof -- That was received by or accrued or arose or was deemed to accrue or arise to any person being a resident -- The Whole of such amount shall be deemed to be income of the said person and tax thereon shall be charged at the rates specified in the First Schedule --

Vires of -- Whereas the said sub-section laying down that ``notwithstanding anything contained in this Ordinance (1979) or any other law for the time being in force where no tax was payable by a Company resident in Pakistan or the tax payable be less than one-half per cent. of the amount representing it turnover from all sources -- The aggregate of the turnover shall be deemed to be income of the said Company and tax thereon shall be charged in the manner specified in sub-section (2) --

Leave to appeal granted to consider whether the imposition of

3.PRT

15-Jul-2016 10:42

Page 8(14)

RAHMAT ULLAH MALIK's COMPUTERISED DIRECT TAX LAW

Page 8

income tax on the basis of turn over alone without giving an opportunity to the assessee to have his liability to tax subsequently adjusted with reference to his actual income was a permissible exercise of legislative power of taxation as enjoyed by the Federal legislature in pursuance of Entry 47 of the Federal Legislative List Part 1 of the Constitution -- It was also ordered that as the above question would have bearing upon the validity of Section 80-C, Section 80-CC and Section 80-D of the Ordinance and would involve the construction of the Constitution notice to issue to the learned Attorney General required by R.I.O.XXVII CPC --

The same impugned -- The said presumptive tax introduced through the impugned provisions of the Ordinance (1979) after carrying out extensive exercise with the object to eliminate the evasion of tax and the corrupt practices obtaining in respect of the levy and collection of taxes inasmuch as the committee comprising the representatives of the business community and the official representatives in its report on increasing exports had suggested the presumptive income tax at the rate of half percent of FOB export proceeds for value added exports and one per cent. for other exports to be deducted at source and therefore it was wrong to urge that the above provisions were arbitrary and expropriatory or confiscatory --

This Court was of the view that the basic questions involved in the instant cases were as under:--

(i) Whether the newly incorporated Sections 80C, 80CC and 80D in the Ordinance had been competently enacted?

(ii) Whether these Sections or any of them were/was violative of any of the fundamental rights or any other law?

(iii) Whether Entry 52 of the Fourth Schedule Part 1 to the Constitution could be pressed into service in substitution of Entries 44,47, 48 and 49 thereof and not in conjuction?

(iv) Whether there was any conflict between the provisions of the Protection of Economic Reforms Act (1992) and the impugned provisions of the Ordinance which of them shall prevail?

(v) Whether there was any conflict between sub-section (4) and sub-section (5) of Section 80C? If so, how it was to be reconciled.

(vi) Whether CBR was enforcing the aforesaid provisions retrospectively and/or discriminately?

Therein -- Vires of -- In the context of questions (i) and (iii) above it would be instructive to reproduce Entries 44, 47, 48, 49

15-Jul-2016 10:42

Page 9(14)

...MAT ULLAH MALIK's COMPUTERISED DIRECT TAX LAW

Page 9

and 52 of the Fourth Schedule of the Constitution (1973) --

The power of taxation of rests on necessity it is an essential and inherent attribute of the sovereignty belonging as a matter of right to every independent State or Govt. -- Since such power is contained in the Constitution of Pakistan (1973) our approach while interpreting the same should be dynamic, progressive and oriented with the desire to meet the situation which may have arisen effectly -- Held that: The interpretation cannot be narrow and pedantic but the Court's efforts should be to construe the same broadly so that it may be able to meet the requirements of ever changing society -- The general words cannot be construed in isolation but the same are to be construed in the context in which they are employed -- In other words their colour and contents are derived from their context --

In a Federal Constitution that we have in Pakistan, the legislative power is distributed between the Provincial and Federal Legislatures -- With this view legislative lists are prepared -- The entries contained therein indicate the subjects on which a particular legislature is competent but they do not provide any restriction as to the power of the legislature concerned -- It can legislate on the subject mentioned in an entry so long as it does not transgress or encroach upon the power of the other legislature and also does not violate any fundamental right as the legislative power is subject to constraints --

It is also well-settled proposition of law that an entry in a legislative list cannot be construed narrowly or in a pedantic manner but it is to be given liberal construction --

Incorporation of therein -- In Pakistan before enacting the impugned Sections 80C, 80CC and 80D, the question as to how to eliminate the malpractices obtaining in taxation system, was attended to not only at the official level but also by the representatives of the business community -- Held that: Not only in Pakistan ut also in India, presumptive tax had been levied -- It was also evident that the concept of presumptive tax and/or minimum tax was projected by the eminent authors -- The same had been adopted in some other countries of the world including USA, Israel, France, Colombia, Bolivia and Thailand --

Taxing power as extending to confiscation -- It has been broadly stated that the power to tax has no limits and carries with it inherently the power to embarass and destroy a business such fact alone would not invalidate the tax -- It is also held that the taxing power is virtually unlimited only as long as it does not amount to confiscation and that the legislature does not have the power to tax to the point of confiscation --

``Reasonable'' The term reasonable is a relative generic term difficult of adequate definition -- Ordinary word in common use

3.PRT

15-Jul-2016 10:42

Page 10(14)

RAHMAT ULLAH MALIK's COMPUTERISED DIRECT TAX LAW

Page 10

and familiar to the average person in fact the dictionaries give a number of meanings for the word and it has various shades of meaning, and the particular shade is to be determined according to the context and circumstances of each particular case --

--``reasonable'' is defined as meaning ``agreeable to reason, conformable to reason, governed by reason --

It is also defined as meaning just: proper: fair: equitable and in addition the term had been construed as meaning honest, Reasonable is further defined as meaning ordinary or usual not immoderate or excessive, not capricious, arbitrary or confiscatory --

The word reasonableness is defined as that the general rule is that the question of the reasonableness of an act otherwise within Constitutional bounds is for the legislature exclusively and that in ordinary cases the Courts have no revisionary power concerning it nor any power to substitute their opinion for the judgment of the legislature -- Mere unreasonableness does not necessarily render a statute unconstitutional --

According to Economics, 8th Edition by Paul A. Samuelson -- Every one realises the importance of income -- The expression clothes make the man would be more nearly right if it were ``income makes the man'' that is to say if you know but one fact about a man knowledge of his income will probably reveal most about him -- Then you can roughly guess his political opinion, his tastes, and education, his age, and even his life expectancy -- Not only it materialistic activities but its non-materialistic activities -- The things convert existence into living, must suffer, education, travel recreation, and charity, to say nothing of food, warmth and shelter --

incorporation therein -- Held that: From the various case laws and the treatises inter alia the following principles of law are deducible:--

Incorporation of -- Vires discussed -- Held that: A perusal of above sub-paras (i) to (xxx) of para 31 indicates that the same do not advance the case of the appellants -- Further held: That on the contrary they reinforce the principles of law that the Legislature particularly in economic activities enjoys a wide latitutde in the matter of selection of persons subject-matters, events etc., for taxation -- The presumption is in favour of the validity of the legislation -- The burden to prove that the same is invalid is non the person who alleges it -- That one can urge that the general observations contained in sub-paras (xxxi) to (xxxiv) of para 31 lend support to some extent to the appellants' case -- However, it should not be overlooked that in none of the cases from the judgments of which the above observations were lifted the question as to whether there can be presumptive tax or the minimum tax in view of entry 47 and entry 52 of the

3.PRT 15-Jul-2016 10:42 Page 11(14)

RAHMAT ULLAH MALIK's COMPUTERISED DIRECT TAX LAW Page 11

Legislative list was in issue -- In this view -- of the matter it would be inappropriate to apply the tests traditionally prescribed by the Income Tax Act and/or any other statute --

Incorporation of -- Vires discussed thereof -- Keeping in view the case law, the treatises and the legal inferences, as drawn, this Court reverts to the question of vires of impugned Sections -- It may again be observed that the power to levy taxes is a sine qua non for a State -- It is in fact an attribute of soveriengty of State -- It is a mandatory requirement of a State -- As it generates financial resources which are needed for running a State and for achieving the cherished goal namely to establish a welfare State -- Held that : In this view of the matter the Legislature enjoyes plenary power to impose taxes within the framework Constitution -- It has prime faci power to tax whom it choose, power to exempt whom it chooses, power to impose such conditions as to liability or as to exemption as it chooses also long as they do not exceed the mandate of the Constitution -- It is also apparent that the entries in the Legislative List of the Constitution are not powers of legislation but only fields of legislative heads -- The allocation of the subjects to the lists is not by way of scientific or logical definition but by way of mere simple enumeration of road catalogue -- A single tax may derive it sanction from one or more entries and many taxes may enanate from one single entry --

It is well-settled proposition of law that an entry in the legislative list must be given a very wide and liberal interpretation -- The word ``income'' is susceptible as to include not only what is in the ordinary parlance it conveys or it is understood, but what is deemed to have arisen or accrued --

Incorporation therein -- Vires of -- Held that: In the view of this Court the Sections 80C, 80CC and 80D of the Ordinance fall within the category of presumptive tax as under the same the persons covered by them pay a pre-determined amount of presumptive tax in full and final discharge of their liability in respect of the transactions on which the above tax is levied -- Further held: This Court is inclined to hold that presumptive tax is in fact akin to capacity tax i.e, capacity to earn -- In this view of the matter this Court shall have to read Entry 47 in conjunction with Entry 52 which provides taxes and duties on production capacity of any plant, machinery, undertaking, establishment or installation in lieu of the taxes or duties specified in Entries 44, 47, 48 and 49 or in lieu of any one or more them -- Since under entry 52 tax on capacity in lieu of taxes mentioned in Entry 47 can be imposed the presumptive tax levied under/Sections 80-C and 80CC of the Ordinance is in consonance with the above two Entries if read in conjunction --

Words ``in lieu of '' meaning of -- According to Black's Law Dictionary it means instead of in place of, in substitution of it

3.PRT 15-Jul-2016 10:42 Page 12(14)

RAHMAT ULLAH MALIK's COMPUTERISED DIRECT TAX LAW Page 12

does not mean ``in addition to''--

Incorporation of -- If the Entry 52 was to be construed keeping in view the meaning of the expression ``in lieu of '' it becomes evident that the Legislature has the option instead of invoking Entry 47 for imposing taxes on income it can impose the same under Entry 52 on the basis of capacity to earn in lieu of Entry 47 but it cannot adopt both the methods in respect of one particular tax-Since under Sections 80C and 80CC the imposition of presumptive tax is in substitution of the normal method of levy and recovery of the income tax the same is in consonance with entry 52 --

Incorporation of -- These impugned Sections contain deeming provisions -- Held that: This is not a new concept or alien to the Ordinance -- Prior the incorporation of the impugned provisions in the Ordinance there were already a number of such provisions -- However, Sections 80C and 80CC cannot be equated with Section 80D as the same is founded on different basis -- It may be observed that Section 80D is based on the theory of minimum tax -- It envisages that every individual should pay a minimum tax towards the cost of the Govt --

The non obstante clause in Section 80-D is for the purpose of liability to pay minimum tax of half per cent. on the annual turn over -- This will exclude any provision of the ordinance which may be inconsistent therewith --

Incorporation of -- The imposition of minimum tax under/Section 80D is designed and intended to achieve the objectives -- The rate of half percent of minimum tax adopted under/Section 80D seems to be on the basis of the minimum rate of tax suggested by the Reports Enhancement Committee -- Held that: In the view of this Court the above provision falls within the legisaltive competence under Entry 47 read with Entry 52 --Further held: That the approach of this Court while interpreting the Constitution should be dynamic progressive and oriented with the desire to meet the situation effectively -- Applying the above rule of interpretation this Court do not find any infirmity in the impugned Section 80D of the Ordinance --

Incorporation of -- Vires of the impugned Sections -- Held that: The burden to show that the impugned taxes are confiscatory or expropriretory was on the appellants -- This Courts was of the view that they had failed to bring on record any reliable material on the basis of which it could be concluded that the same were confiscatory or exprpriatry -- Appeal dismissed --

(IN THE SUPREME COURT OF PAKISTAN)

ELAHI COTTON MILLS LTD. AND OTHERS

Annexure-G

F/A

Implementation Status on Demand No. 18

The Relief, Rehabilitation & Settlement Department, Government of Khyber Pakhtunkhwa has informed that the following decision of the Special Committee of Senate on 24 demands of Government of Khyber Pakhtunkhwa has been communicated which pertains to shortfall arising from the difference in commitments made by donors (Including Federal Government) and Damaged Needs Assessment (DNA) carried out in militancy affected areas of Malakand Division in 2009:-

"Khyber Pakhtunkhwa Government may submit the case to Economic Affairs Division for financing by the Donors. Finance Division supports the case of KP Govt."

2. Government of Khyber Pakhtunkhwa has also informed that in pursuance of the above decision, projects amounting to Rs. 65,120.00 million (US$ 651.20 million) as per below details may be shared with donors/development partners for financing:-

S#	Project/Plan	US$ in million	PK. Rs in million
i.	Abu Dhabi Fund for Development (committed) (ADFD)	200.00	18000.00
ii.	UAE Pakistan Assistance Programme (Phase-II&III) (UAE)	52.23	4700.34
iii.	2015 Earthquake Recovery Plan	317.97	31797.00
iv.	Chitral Floods 2015: Recovery Needs Assessment and Action Framework	81.00	8075.531
	Total	**651.20**	**65120.00**

3. Aforementioned in view, as per serial No. (i) "Abu Dhabi Fund for Development (committed)", Abu Dhabi Fund vide its communication of 25th January, 2012, selected following four projects out of 24 proposals for economic feasibility study:-

Sr. #	Description	Estimated Cost (Million Dollar)
i.	Reconstruction of Madian to Kalam Road	45
ii.	Swat Expressway	40
iii.	Reconstruction of Public Schools and colleges	40
iv.	Construction of University of Swat.	75

4. PDMA / PaRRSA was requested by this Division on 8-2-2012 to undertake the required economic feasibility study of the above four projects. On 24-5-2012, PDMA / PaRRSA forwarded the economic feasibility study of the two projects listed at Sl. No. iii & iv in para-3 above with the statement that the project "Reconstruction of Madian to Kalam Road" had already been completed through the funding of Asian Development Bank loan and Abu Dhabi Fund may be requested to divert the amount of US$ 45 million of this project to the project listed at Sl. No. ii "Swat Express Way" costing US$ 40 million in order to fully cover the costs which was increased due to the revised scope of the project.

5. Economic Affairs Division had conveyed the economic feasibility study of the two projects carried out by the PDMA / PaRRSA on 01-06-2012 with the request to divert the amount of already completed project i.e. "Reconstruction of Madian to Kalam Road" to "Swat Express Way" elevating its allocation to US$ 85 million due to its revised scope. The response from Abu Dhabi side is awaited.

6. Meanwhile, during the 11th Session of Pak-UAE JMC held in November, 2013 it was informed that ADFD *"allocated US$ 100 million out of US$ 270 million (commitment made by UAE in 2009 donor conference) to United Arab Emirates Pakistan Assistance Programme (UPAP) for financing of projects (i.e. Road and Transportation, Health sectors) UPAP has already selected the project covering those sectors. In this regard, an MoU was signed between ADFD and UPAP in September, 2013 for 1st phase of assistance".*

7. A letter in this regard was sent to Ministry of Foreign Affairs seeking the status/ progress of the aforementioned projects and confirmation of the information at para 6. In response of Ministry of Foreign Affairs stated that our mission at UAE has conveyed that *"it is not appropriate to convey our i_ :orance of progress on UAE projects being undertaken in collaboration with Pakistan Army to a foreign Government without first checking up the matter with our own agencies. The Mission has recommended that EAD may establish contact with the UAE-Pakistan Assistance Programme (UPAP) in Pakistan to obtain the latest status of implementation of on-going projects".*

8. Economic Affairs Division had approached Engineer-In-Chief-Branch, GHQ, Rawalpindi as well as Relief Rehabilitation & Settlement Department, Government of Khyber Pakhtunkhwa on 9th August, 2017 for obtaining clarity on the issue and avoiding fund duplication. In response, Engineer-In-Chief-Branch, GHQ, Rawalpindi has furnished list of projects completed in militancy affected areas of KPK and FATA under UAE Pakistan Assistance Programme (UPAP). According to which they have completed following projects:-

I. Phase-I Projects

Sr. No.	Sector	Numbers of completed Projects
a.	Road	1
b.	Bridges	2
c.	Education	53
d.	Water supply Schemes	64
e.	Health	7
	Total	**127**

Note: Total Cost of the projects = US$ 111.57 million

II. Phase-II Projects

Sr. No.	Sector	Numbers of completed Projects
a.	Road	1
b.	Cadet Colleges	3
c.	Vocational Training Centre	4
d.	Water Supply Schemes	12
	Total	**20**

Note: Total Cost of the projects = US$ 76.20 million

9. List of projects is attached at **Annex-I**

10. Economic Affairs Division has forwarded list of completed projects to Government of Khyber Pakhtunkhwa requesting them to inform Economic Affairs Division as to what extent the projects implemented under UPAP fulfill the requirements for financing of projects demanded by Khyber Pakhtunkhwa Government. Moreover, they have been asked to indicate the unimplemented projects alongwith their financial plan and approval of competent forum (i.e. CDWP etc.) for taking up the case with the potential donor.

11. Loan agreement for an amount of Saudi Riyals 270 million (US$ 72 million) was signed between Economic Affairs Division and Saudi Fund for Development (SFD) on 29th December, 2011 to restore militancy affected areas of Khyber Pakhtunkhwa (KPK) and Federally Administered Tribal Areas (FATA). A Project Coordination Unit (PCU) was formed under the FATA Secretariat to coordinate all the related activities in this regard. The loan was declared effective in January 23, 2012.

12. In the light of discussions held between Secretary Finance and Secretary EAD at that time, it was decided that the project would be a grant for KPK Govt. from Federal Government and repayment liabilities were taken by Federal Government.

13. The Projects have not been started so far due to restive conditions in the area which scared away the civil contractors. Pak-Army was entrusted with the role for execution of the projects especially in FATA region. Accordingly, the project was divided into following three components for implementation:

(i) National Highway Authority was assigned to complete road sector project i.e Rehabilitation and Widening of Chakdara – Fatepur Section (82 km);

(ii) In case of Social Sector/building projects in **Malakand area**, PDMA/PaRRSA, Govt. of Khyber Pakhtunkhwa was assigned to execute the projects;

(iii) 45 Engineering Division and FWO as Executing Agencies for construction of buildings and roads projects respectively in **FATA region.**

14. With regard to Road Section, NHA has revised the scheme enhancing the scope of work from 35 Km to 82 Km within same allocation renamed as "Rehabilitation and Widening of Chakdara – Fatepur Section (82 km) of National Highway N-95 amounting US $ 33.90 million. The PC-I of the project has been approved by Provincial Steering Committee headed by Secretary P&D Department Govt. of KPK on November 05, 2015. As per Cabinet Division's letter dated 17-2-2010, Malakand region projects were exempted from CDWP/ECNEC approval. The list of revised schemes was sent to SFD on 10th September, 2015 for approval. The revision of scope of work of project section has been approved and the required amendments in the subject loan agreement have been made by SFD. SFD has recently shared the approval of award of consultancy services for Detailed Design Review and Construction Supervision for the road component. NHA has accordingly been requested to award the contract.

15. A list of schemes to be implemented in Khyber Pakhtunkhwa was shared with the Saudi Fund for Development (SFD) on 6th May 2014. Later on, PDMA/PaRRSA informed that some of the projects pertaining to Malakand region, indicated in previous list were already being implemented by other donors. Therefore they desired to amend the list of projects. As proposed, an amended list of projects was again sent to SFD on September 10, 2015 **(Annex-II)** which had been approved by SFD. PC-Is of the schemes have been approved by relevant forums and procurement of the Schemes is underway.

16. FATA Secretariat has shared new schemes for FATA region after taking its approval from 11 Corps of Army and Apex Committee by **(Annex-II).** All these schemes (except a 62 Km Bara-Tirah Road) have been approved by SFD. The approval of road component is under process in SFD. PC-Is of the projects are being finalized. M/s PEPAC has been approved as Consultant for Design and M/s AID as consultant for Supervision by SFD.

17. There is an issue of "Service Charges" @ 2.5% of the Project cost for implementing FATA Schemes (roughly US$ 0.8Million / PKR 80 Million) being demanded by E-in-C Branch. During a meeting held in GHQ on February 22, 2017, it was decided that FATA Sectt and TDP Secretariat will settle the modalities for the charges between them.

18. It was further decided in the above referred meeting held in General Head Quarter (GHQ) that payment would be made directly to contractor by Executing Agency from its own sources, which in turn would be reimbursed by SFD. However, this mode requires mobilization advance. It was decided that mobilization advance would be incorporated in PC-Is by FATA Secretariat.

19. The Post-Crises Need Assessment (PCNA) for KP/FATA was prepared by ADB, WB, UN and EU with the objective of producing a helpful, pragmatic, coherent and sequenced peace building strategy that delivery an agreed vision for the border areas of Pakistan. The total reconstruction requirement is US$ 2.7 billion.

20. The Khyber Pakhtunkhwa (KP), Federally Administered Tribal Areas (FATA) and Balochistan Multi-Donor Trust Fund (MDTF) was established in 2010 as one of the financing mechanisms to address the recommendations of the Post-Crises Need Assessment (PCNA). So far 13 donors contributed to the Multi Donor Trust Fund (Phase-I) and pledged US$ 256.6 million. Amount paid by donors in the trust fund is US$ 238.1 million **(Annex-III)** plus US$3.7m investment income. MDTF activities are implemented across three programmatic streams: (i) improving local services and community support, (ii) growth and job creation, and (iii) policy reforms and governance support. At a higher level and in supporting the needs identified in the PCNA, the MDTF seeks to enhance state-citizen trust.

21. The following projects were launched Under MDTF in KP:

US$ in million

Project Name	Approval Date	Cost	Disbursement	Status
KP Emergency Road Recovery Project	23-10-2011	26.100	26.100	Completed on 31-12-15
Revitalizing Health Services in KP	12-4-2012	10.200	5.700	Completed on 31-12-2015
Competitive Industries Project for KP	17-09-2013	9.000	4.930	Completed on 31-12-2015
Governance Support Project for KP	12-9-2012	5.200	5.200	Completed on 30-06-2016
KP Southern Area Development Project (KP-SADP)	06-2-2013 & 31-3-2017	22.000	14.760	Initial project was approved at a cost of US$12 million which was extended till 31-12-2018 with AF 4.0 M under R-II.
Economic Revitalization of KP	11-10-2011 & 31-3-2017	20 .000	15.000	Initial project was approved at a cost of US$ 8 million which was extended till 31-12-2020 with AF of US$ 12 million.
KP Governance & Policy	05-23-2017	10 .000	2.900	On-going Completion date 31-12-20
Total		**102.500**	**74.590**	

22. The following projects were launched Under MDTF in FATA:

US$ in million

Project Name	Approval Date	Cost	Disbursement	Status
FATA Urban Centre Project	12-4-2012	8.000	6.786	Completed on 30-09-2015
FATA Emergency Road Recovery Project	10-12-2012	16.000	15.981	Completed on 31-12-2015
Governance Support Project for FATA	12-9-2012	5.300	5.300	Completed on 30-06-2016
Economic Revitalization of FATA Project	11-10-2011 & 31-3-2017	19 .000	8.630	Initial project was approved at a cost of US$ 12 million which was extended till 31-12-2020 with AF of US$7 million
FATA Rural Livelihood and Community Infrastructure Project	12-4-2012 & 31-3-2017	20.100	12.34	Initial project was approved at a cost of US$12 million which was Extended till 31-12-2018 with AF 8.1 M under R-II.
FATA Governance & Policy	01/18/2017	14 .000	0.730	On-going Completion Date 31-12-2020
Total		**82.400**	**49.767**	

Annexure-H

herewith marked as Annexure. H

20) This demand pertains to compensation for un-utilized share of water of Khyber Pakhtunakhwa and construction of requisiteinfrastructure. The committee was informed that MOU was signed and the PC-I has been prepared.

The Ministry in itscomments stated that the PC-I was received in the Ministry on 04.08.2016 andits was forwarded tothe irrigation department of KPK on 07.01.2016. It has been further statedthat the replies of the KPK government have been received by the Ministry,

The Committee recommendsthat the approval for the concerned PC-I may be expedited and thereafter appropriate alternate allocation be made.

<u>CHASHMA RIGHT BANK CANAL (LIFT-CUM-GRAVITY.</u>

1.	Location	:	District D.I.Khan in Khyber Pakhtunkhwa.
2.	Off-take Point	:	Right Bank of Chashma Barrage.
3.	Head Capacity	:	2613 Cusecs
4.	Command Area	:	286, 140 Acres
5.	Water Requirement	:	1.187 MAF
6.	Length of Feeder Canal	:	39 Canal Miles
7.	Main Canal	:	73 Canal Miles
8.	Flood Carrier Channels	:	201 Canal Miles
9.	Distributaries	:	167 Canal Miles

Pumping Station

10.	Capacity	:	2533 Cusecs
11.	Designed Lift	:	64 Feet.
12	Project Cost	:	Rs. 119.6 billion

<u>BACKGROUND</u>

Detailed Engineering Design & Tender Documents of the project were prepared by WAPDA in February 2004 through a joint venture of consultants lead by M/S National Development Consultants. The PC-I was accordingly prepared at an estimated cost of Rs. 25.339 billion and submitted to the Planning Commission through Ministry of Water & Power for approval in October 2004. CDWP considered the PC-I in March 2005. Pursuant to the directions of CDWP PC-I was modified in September 2008 in which the cost was updated to Rs. 39.123 billion. The modified PC-I was

	reconsidered by the CDWP in October 2008. In the said meeting of CDWP the PC-I was returned on the request of Ministry of Water & Power for revalidating the cost estimates. WAPDA subsequently updated the costs based on the market rates and submitted the PC-I at an updated estimated cost of Rs 61.067 billion in December 2008. The same updated PC-I was considered by CDWP in March 2010. The PC-I was cleared in principle for submission to ECNEC, however a committee was constituted under the Deputy Chairman Planning Commission to deliberate on the issues relating to financing, engineering and economics of the project. It is however important to mention that the said committee did not convene till November 2014 when the Planning Commission finally returned the PC-I on account that the cost estimates, priorities and availability of financing may have changed during the period. Subsequently, in February 2016 a meeting was held under the chairmanship of Federal Minister for Finance, Revenue, Economic Affairs, Statistics and Privatization to deliberate upon the pending issues between the Government of Pakistan and the Government of Khyber Pakhtunkhwa. In the said meeting an MOU was signed between the two governments **(Annex-A)**, wherein it was, inter-alia, decided that: "The feasibility of the project would be redone by Ministry of Water & Power, Government of KPK in coordination with the Planning & Development Division. The project, when approved, would be financed between Government of Pakistan and Government of KPK in the ratio of 65:35, while the OM and recurring costs of the project would be funded by Government of KPK.". The aforesaid MOU was approved by the Council of Common Interests (CCI) in its meeting held on 29-02-2016 **(Annex-B)**. In the said meeting it was inter-alia decided by the CCI that:

	"The Government of Khyber Pakhtunkhwa will present the new PC-I of the "Chashma Right-Bank Lift Irrigation Canal" project with 65% and 35% contribution by the Federal Government and Government of Khyber Pakhtunkhwa respectively. The Government of Khyber Pakhtunkhwa will be responsible for the O&M of this project." In accordance with the decisions made in the MOU, and subsequent meeting of CCI, Government of Khyber Pakhtunkhwa prepared and submitted the PC-I. The estimated cost of the project given in the PC-I is Rs. 119.600 billion with 65% and 35% contribution by the Federal Government and Government of Khyber Pakhtunkhwa, respectively. According to the proposed design the canal will off take from Chashma reservoir upstream of the existing headrace channel of Chashma Hydropower Station. At the off take point a new head-regulator structure will be constructed with a capacity to draw 2613 cusecs. This discharge will be carried by 39 miles long gravity canal whereon the water will be lifted to 64 feet height through a proposed pumping station and delivered into the main canal. The main canal has been proposed to be 73 miles long. Distribution system of the project comprises 25 distributaries and 24 minors. It will provide 1.187 million acre-feet of water for perennial irrigation of 286,140 acres of land. Government of Khyber Pakhtunkhwa submitted the PC-I of "Chashma Right Bnak Canal (Lift-Cum Gravity) Project" costing Rs. 119.6 billion on 04-08-2016. Ministry of Water & Power examined this PC-I and pointed out a n number of deficiencies which were conveyed to the Govt. of Khyber Pakhtunkhwa (KP) from time to time. Despite various requests, the Govt. of KP has not been able to address the said deficiencies. Ministry of Water & Power conveyed its concerns on this PC-I to Prime Minister's Office by Ministry of Water & Power on 14-07-2017. The Prime Minister's Office intimated on 24-07-2017 that the Prime Minister of Pakistan has been pleased to order as

	follows: WAPDA shall be tasked to carry out a comprehensive feasibility study of the Chashma Right Bank Canal project within the shortest possible time, at its own cost. The study shall be done through a Consultant with an established track record working on such projects, having requisite in-house human resource expertise for doing the job; and, In view of above mentioned directions of Prime Minister's directions, Ministry of Water & Power requested WAPDA on 28-07-2017 to furnish PC-II for feasibility study of this project. However, Government of Khyber Pakhtunkhwa submitted Concept Clearance Proposal of the project to Ministry of Planning, Development and Reform which was considered and approved by CDWP on 19-10-2017. During the meeting, Govt. of KP conveyed that objective of this concept paper is to include this project in forthcoming meeting of Joint Working Group of CPEC.

Annexure-I

2
RESTD

LIST OF UPAP PH-I PROJS

Ser	Title of Project	Location	Agency
	Road		
1.	HH Sheikh Khalifa Bin Zayed Al-Nahyan Road	Old Wana - Angoor Adda)	SWA
	Bridges		
1.	HH Sheikh Khalifa Bin Zayed Al-Nahyan Bridge	(Old Gammon)	Swat
2.	HH Sheikh Zayed Bin Sultan Al-Nahyan Bridge	(Old Shamozai)	Swat
	Education Projects		
1.	GPS (Govt Primary School)	Qalagai, Swat	Swat
2.	GPS (Govt Primary School)	Fazal Abad, Barikot, Swat	Swat
3.	GGPS (Govt Girls Primary School)	Ganajir Kishwara, Swat	Swat
4.	GGPS (Govt Girls Primary School)	Fazal Abad, Kanju, Swat	Swat
5.	GPS (Govt Primary School)	Mingora, Banar No.1, Swat	Swat
6.	GPS (Govt Primary School)	Nazar Abad	Swat
7.	GPS (Govt Primary School)	Takhta Band, Qambar, Swat	Swat
8.	GGPS (Govt Girls Primary School)	Ali Grama, Hazara, Swat	Swat
9.	GPS (Govt Primary School)	Ningolai, Swat	Swat
10.	GPS (Govt Primary School)	Bara Durishkehla	Swat
11.	GGPS (Govt Girls Primary School)	Syed Abad, Swat	Swat
12.	GGMS (Govt Girls Middle School)	Haryani, Swat	Swat
13.	GHS (Govt High School)	Nazar Abad	Swat
14.	GPS (Govt Primary School)	Bandhai, Swat	Swat
15.	GHS (Govt High School)	Behrain, Swat	Swat
16.	GHS (Govt High School)	Ningolai, Swat	Swat
17.	GHS (Govt High School)	Kishwara, Swat	Swat
18.	GHS (Govt High School)	Sher Palam	Swat
19.	GHS (Govt High School)	Tando Daag No.4, Swat	Swat
20.	GHS (Govt High School)	Angro Dherai	Swat
21.	GHS (Govt High School)	Qambar, Swat	Swat
22.	GHS (Govt High School)	Odi Gram, Swat	Swat
23.	GHS (Govt High School)	Bara Durishkehla	Swat
24.	GHS (Govt High School)	Dheri (Dera)	Swat

Docu ID: ZNPTJL APPROVED By **GSO-1 (Army Coord) Lt Col Umer Saeed Afridi** on 07 Nov 2017

Note: Computer Generated Documents Do Not Require Signature.

RESTD

3
RESTD

Ser	Title of Project	Location	Agency
25.	GHS (Govt High School)	Bandhai, Swat	Swat
26.	GHS (Govt High School)	Mingora, Angaro Derai, Banr No.1	Swat
27.	GHS (Govt High School)	Tunwarsak, Daggar, Buner	Buner
28.	GGHS (Govt Girls High School)	Kala Kaly, Swat	Swat
29.	GGHSS (Model School) (Govt Girls High Secondary School)	Odi Gram, Swat	Swat
30.	GGHS (Govt Girls High School)	Totano Bandai	Swat
31.	GGPS (Govt Girls Primary School)	Mera Mai, Swat	Swat
32.	GGMS (Govt Girls Middle School)	Ala Abad Gullibagh, Swat	Swat
33.	GGHS (Govt Girls High School)	Korai Matta	Swat
34.	GGPS (Govt Girls Primary School)	~~Kalam, Swat~~	Swat
35.	GHSS (Govt High School Secondary)	Baidara, Swat	Swat
36.	GPS (Govt Primary School)	Baidara, Swat	Swat
37.	GHSS (Govt High School Secondary)	Charbagh, Swat	Swat
38.	GGPS (Govt Girls Primary School)	Korai Matta	Swat
39.	GGPS (Govt Girls Primary School)	Bagh Nasim Abad Gadezi	Buner
40.	GHS (Govt High School)	Jowar, Dogar	Buner
41.	GPS (Govt Primary School)	Malik Pur, Buner	Buner
42.	Re-construction of Govt Technical & Vocational Centre for Women	Mingora, Swat	Swat
43.	Re-construction of Govt Girls Degree College	Saidu Sharif, Swat	Swat
44.	Re-construction of Govt Jehanzeb Post Graduate College	Saidu Sharif, Swat	Swat
45.	Re-construction of of Govt Girls College	Barikot, Swat	Swat
46.	Re-construction of of Govt Degree College for Boys	Jowar, Swat	Swat
47.	Re-construction of Govt Polytechnic Institute	Timurgarah, Dir	Dir
48.	Up gradation of Govt Technical Institute to College of Technology	Khar, Bajaur	Bajaur
49.	Construction of Phase-II Cadet College	Warsak	Peshawar
50.	Cadet College	Wana,	SWA
51.	Govt Girls Degree College	Laddha	SWA
52.	Model School	Wadudia, Saidu Sharif	Swat
53.	Model School	Wana	SWA
	Health Projects		
1.	Paramedic Institute	Saidu Sharif	Swat
2.	Sheikh Khalifa Bin Zayed Al-Nahyan Model Hosp	Saidu Sharif, Swat	Swat

Docu ID: ZNPTJL APPROVED By CSO-1 **(Army Coord) Lt Col Umer Saeed Afridi** on 07 Nov 2017
Note: Computer Generated Documents Do Not Require Signature.

RESTD

8 601
70

4
RESTD

Ser	Title of Project	Location	Agency
3.	Cat A Agency Hosp	Khar, Bajaur	Bajaur
4.	Cat D Hosp	Toi Khula	SWA
5.	Model Health Facility	Tairza	SWA
6.	Sheikha Fatma Bint Mubarak Model Hosp	Sholam	SWA
7.	Model Health Facility	Laddha	SWA
	Water Supply Schemes		
1	Water Supply Scheme	Madyan	Swat
2	Water Supply Scheme	Khnona Cham Shangal	Swat
3	Water Supply Scheme	Sijbunar	Swat
4	Water Supply Scheme	Ashoran Kalam	Swat
5	Water Supply Scheme	PHE Colony, Saidu Sharif	Swat
6	Water Supply Scheme	Kuz Drush Khela	Swat
7	Water Supply Scheme	Kotlay	Swat
8	Water Supply Scheme	Saidu Sharif	Swat
9	Water Supply Scheme	College Colony	Swat
10	Water Supply Scheme	Dakorak	Swat
11	Water Supply Scheme	Chamgarai	Swat
12	Water Supply Scheme	Jura	Swat
13	Water Supply Scheme	Tehsil Matta	Swat
14	Water Supply Scheme	Shahgram	Swat
15	Water Supply Scheme	Shah Pur	Swat
16	Water Supply Scheme	Gat	Swat
17	Water Supply Scheme	Bahrain	Swat
18	Water Supply Scheme	Gwalerai	Swat
19	Water Supply Scheme	Nagawa	Swat
20	Water Supply Scheme	Shahoo Kalam	Swat
21	Water Supply Scheme	Bajauro Talash (Zone-I)	Lower Dir
22	Water Supply Scheme	Bajauro Talash (Zone-II)	Lower Dir
23	Water Supply Scheme	Ziarat - Anangorai	Lower Dir
24	Water Supply Scheme	Sarai Payeen	Lower Dir
25	Water Supply Scheme	Khalozai	Bajaur
26	Water Supply Scheme	Bahlolai & Surrounding, Khar	Bajaur
27	Water Supply Scheme	Badi Samoor, Khar	Bajaur
28	Water Supply Scheme	Daber Shah Sarai	Bajaur
29	Water Supply Scheme	Shinkotaj	Bajaur
30	Water Supply Scheme	Bera Miana	Bajaur
31	Water Supply Scheme	Chamyar Jower	Bajaur
32	Water Supply Scheme	Berkalan, Mamund	Bajaur
33	Water Supply Scheme	Kitkot Lagharai	Bajaur

Docu ID: ZNPTJL APPROVED By GSO-1 (Army Coord) Lt Col Umer Saeed Afridi on 07 Nov 2017

Note: Computer Generated Documents Do Not Require Signature.

RESTD

5

RESTD

Ser	Title of Project	Location	Agency
34	Water Supply Scheme	Malangai	Bajaur
35	Water Supply Scheme	Ghakhi	Bajaur
36	Water Supply Scheme	Saparai	Bajaur
37	Water Supply Scheme	Umarai	Bajaur
38	Water Supply Scheme	Tarakai, Khar	Bajaur
39	Water Supply Scheme	Janat Shay, Khar	Bajaur
40	Water Supply Scheme	Mandal, Salarzai	Bajaur
41	Water Supply Scheme	Ghakhi, Salarzai	Bajaur
42	Water Supply Scheme	Kassai, Salarzai	Bajaur
43	Water Supply Scheme	Dagform, Utman Khel	Bajaur
44	Water Supply Scheme	Mano Dehrai M. Akeer, Utman Khal	Bajaur
45	Water Supply Scheme	Pani Kheln	SWA
46	Water Supply Scheme	Wana Bazar and adjoining areas	SWA
47	Water Supply Scheme	Lower Camp Wana	SWA
48	Water Supply Scheme	Dog New Abadi	SWA
49	Water Supply Scheme	Kari Kot Bazar and adjoining areas	SWA
50	Water Supply Scheme	Kachkai	SWA
51	Water Supply Scheme	Kalosha	SWA
52	Water Supply Scheme	Angoor adda Bazar and adjoining areas	SWA
53	Water Supply Scheme	Zalai	SWA
54	Water Supply Scheme	Splay Poran	SWA
55	Water Supply Scheme	Gul Kach Bazar and adjoining areas	SWA
56	Water Supply Scheme	Khan Kot upper area	SWA
57	Water Supply Scheme	Shakai	SWA
58	Water Supply Scheme	Kotkai	SWA
59	Water Supply Scheme	Sararogha Bazar and adjoining areas	SWA
60	Water Supply Scheme	Shelkh	SWA
61	Water Supply Scheme	New Sarwekai	SWA
62	Water Supply Scheme	Ghundakai Sarina Jalal Khel	SWA
63	Water Supply Scheme	Reshawai	SWA
64	Water Supply Scheme	Michi Khel Khaisora	SWA

Docu ID: ZNPTJL APPROVED By GSO-1 (Army Coord) Lt Col Umer Saeed Afridi on 07 Nov 2017

Note: Computer Generated Documents Do Not Require Signature.

RESTD

6
RESTD

✓ 60
10

LIST OF UPAP PHASE-II PROJS

Serial	Title of Project	Location	Agency
	Road		
1.	Pak Emirates Friendship Road	Miranshah – Razmak – Makeen	NWA
	Education Projects		
1.	Cadet College	Warsak	Peshawar
2.	Cadet College	Wana	SWA
3.	Cadet College	Spinkai Raghzai	SWA
	Women Vocational Training Centre		
1.	Women Vocational Training Centre	Khar	Bajur
2.	Women Vocational Training Centre	Chakdara	Lower Dir
3.	Women Vocational Training Centre	Chitral City	Chitral
4.	Women Vocational Training Centre	Booni	Chitral
	Water Supply Schemes		
1.	Water Supply Scheme	Badisai	Mohmand
2.	Water Supply Scheme	Dawat Kor	Mohmand
3.	Water Supply Scheme	Ghallany Miagan	Mohmand
4.	Water Supply Scheme	Ghazi Kor	Mohmand
5.	Water Supply Scheme	Kalu Khel	Mohmand
6.	Water Supply Scheme	Navi Kaliay	Mohmand
7.	Water Supply Scheme	Sultan Khel	Mohmand
8.	Water Supply Scheme	Surdag	Mohmand
9.	Water Supply Scheme	Ato Khel	Mohmand
10.	Water Supply Scheme	Nakai Killi	Mohmand
11.	Water Supply Scheme	Issori	NWA
12.	Water Supply Scheme	Haider Khel	NWA

Docu ID. ZNPTJL APPROVED By GSO-1 (Army Coord) Lt Col Umer Saeed Afridi on 07 Nov 2017
Note: Computer Generated Documents Do Not Require Signature.

RESTD

PESCO Load Shedding Schedule (from 01-01-2018)

S No	AT&C	Category	Current Duration	Domestic Feeders	Independent Feeders	Industrial Feeders	Total Feeders
1	Below 10%	I	0	169	79	127	375
2	10.1% ~ 20%	II	2	126	0	0	126
3	20.1% ~ 30%	III	2	79	0	0	79
4	30.1% ~ 40 %	IV	4	95	0	0	95
5	40.1% ~ 60%	V	6	160	0	0	160
6	60.1% ~ 80%	VII	8	108	0	0	108
7	80.1% & Above	VIII	12	36	0	0	36
			Total	773	79	127	979

Annexure-J

APPROVAL OF THE RECOMMENDATIONS OF THE SPECIAL COMMITTEE ON TWENTY FOUR DEMANDS MADE BY THE GOVERNMENT OF KHYBER PAKHTUNKHWA

A meeting of Senate Special Committee on 24 Demands made by the Government of Khyber Pakhtunkhwa was held on 24th November, 2016 during the meeting of a report on the demand was presented by Syed Muzafar Hussain Shah convener of the committee. Against the item No. 24 of report Government of Khyber Pakhtunkhwa has suggested the following for consideration by a special committee:-

> **"Government of KP is already in active consultation with Pakistan Railways for utilizing facility under Rail Track Leasing Policy. Pakistan Railways has shown informal inclination to accommodate KP under the aforementioned policy for circular train operations within Peshawar Valley, subject to detailed feasibility of proposal.**
>
> **However, facilitation under the concerned Policy of Pakistan Railways for intra-city rail service in Peshawar City has been made dependent on completion of Peshawar- Jalalabad Rail Track. Special Committee may like to advise Ministry of Railways to expedite completion of concerned survey and also to share its findings with Government of KP".**

In this regard, the response of the Ministry of Railways was presented during various meetings which is summarized as under:-

i. The route of proposed corridor for development of Rapid Bus Transit System for Peshawar is as under:

   Starting from Nasirpur -Peshawar City - Peshawar Cantt- University town- Hayatabad and Terminating at Karkhano Market.

   The part of proposed corridor i.e. from Nasirpur to Peshawar Cantt is part of up-gradation of ML-1 under CPEC whereas the remaining part of proposed Bus Corridor falls under Peshawar – Thorkhum section of existing network.

ii. At present the feasibility study of Peshawar Jalalabad link under regional connectivity framework is underway M/s Umar Munshi Associates, Karachi has been awarded contract for conducting the feasibility study.

iii. The "Up-gradation of Mainline-1 and establishment of a dry port near Havelian" is a priority project under the China Pakistan Economic Corridor Framework and it has already been approved as an "Early Harvest Project" by the Joint Cooperation Committee (JCC) of the two governments. At present, the process for undertaking 'preliminary design' of the project has been initiated with the help of Chinese government.

iv. The five year project envisages the up gradation of the entire mainline from Karachi to Peshawar, including Taxila to Havelian, enabling trains to operate at speeds of 160 kmph. The existing limit is 110 kmph. An important aspect of the up gradation process is the doubling and electrification of track between Peshawar and Lahore; with grade separation and complete isolation of the track through fencing. Higher speed would require sufficient space between the two running lines.

Contd-page-2

-2-

v To achieve speeds of 160 kmph, realignment of the existing track would be required at some places, necessitating the provision of additional land along the right of way. Moreover, construction of overhead bridges in place of the level crossings would also require additional land.

vi. The project has been planned in phases, with the doubling of track between Peshawar and Rawalpindi taken as a priority project in Phase I. To cater for future traffic increase, PR is also considering the construction of a dedicated freight corridor in the long term.

vii. It may be added, that regional connectivity is an important aspect of CPEC framework, therefore, PR has asked the Consultant to also undertake the feasibility of up grading the existing line between Peshawar and Torkham so that the fast train facility can be extended to the people of FATA and beyond.

viii. *The matter* was discussed in the Senate **Standing Committee on Railways meeting held on 12th May 2016.** The recommendations / decision of the committee contained in the minutes of the meeting are as under:

"The Committee realized the limitation of Railways to offer land for construction of Mass Transit System in Peshawar to KPK government due to future expansive plan and finalization of preliminary design of project and start of work on ground. The Committee Members were of the view that Railways should take precedence over its land for utilization of its anticipated future needs. However, the Committee emphasized that Railways should allot extra land on lease to KPK government if it remained available after intended Railways expansion programmes under CPEC. The Committee also suggested that KPK government should work out an economically viable alternative plan for public transport system in addition to existing conceived Mass Transit System on Railways land".

ix. The Senate Special Committee on Twenty four Demands made by the Government of Khyber Pakhtunkhwa, in its report has endorsed the above recommendation/decision of Senate Standing Committee on Railways.

x. The feasibility study of Peshawar Jalaabad link under regional connectivity framework is underway. Moreover, the review of preliminary design of Phase-I of ML-I is in process and is expected to be completed shortly. Pakistan Railways would be in better position to ascertain the requirements of additional land on completion of these works.

xi. The Government of Khyber Pakhtunkhwa in pursuance of recommendations of the Senate Standing Committee on Railways and endorsement of same by the Senate Special Committee on 24 Demands has worked out alternative plan for public transport system and its execution is in progress. The route will cross railway track at five locations. Pakistan Railways is facilitating the Provincial Government Authorities and Rs. 443 million has been demanded for crossing 5-flyovers over railway track/ land, out of which Rs. 118.9 million are received so far. Remaining amount is awaited. Consequently, the original plan of KPK Government which involves railway land is no more relevant.

About the Author and PIPS team

This paper is the result of efforts done by Ms Farahnaz Khan, PIPS researcher and consultant on devolution. This paper is closely and comprehensively supervised by the worthy Executive Director, Pakistan Institute for Parliamentary Services (PIPS) Mr Zafarullah Khan while coordination and editing is done Mr Muhammad Rashid Mafzool Zaka, Director General (Research & Legislation), PIPS

Disclaimer:

The views expressed in the paper are that of the researcher and consultant; and are not necessarily those of the Friedrich-Ebert-Stiftung and Pakistan Institute for Parliamentary Services

Imprint

1st Floor, 66-W, Junaid Plaza, Jinnah Avenue,
Blue Area, P.O Box 1289, Islamabad, Pakistan
Phone: +92 51 2803391-4 | Fax: +92 51 2803395
Website: http://www.fes-pakistan.org
Facebook: Friedrich-Ebert-Stiftung, Pakistan
Twitter @FES_PAK

Responsible:
Rolf Paasch | Resident Director
Sidra Saeed | Programme Officer

&

Attaturk Avenue (Service Road), F-5/2, Islamabad, Pakistan
Phone: +92-51-9091000 | Fax: +92 51 9091507
Website: https://pips.gov.pk/
Email: research@pips.gov.pk

Friedrich-Ebert-Stiftung (FES) is the oldest political foundation in Germany. The foundation is named after Friedrich Ebert, the first democratically elected president of Germany.

The Friedrich Ebert Stiftung established its Pakistan Representative Office in 1990. FES focuses on enhancing dialogue for mutual understanding and peaceful development in its international work. Social justice in politics, economy and in the society is one of our leading principles worldwide. In Pakistan, FES has been carrying out various activities to strengthen the democratic culture through deliberative processes and informed public discourse; promoting and advocating social justice as an integral part of economic development through economic reforms and effective labour governance & enhancing regional cooperation for peace and development in recent years.

Pakistan Institute for Parliamentary Services

The Pakistan Institute for Parliamentary Services (PIPS) is an exclusive and independent, first of its kind research and capacity building facility for members of the National Parliament and provincial assemblies, established through an Act of Parliament on December 15, 2008. Since commencement of full-fledged activities in 2012, PIPS is promoting research, providing legislative, capacity building and outreach services to 1256 parliamentarians and legislators, over 5000 parliamentary functionaries as well as disseminating the knowledge about parliamentary and constitutional democracy through seminars, conferences and other outreach activities. It is setting up satellite parliamentary resource centers in four provincial assemblies. In a short span, the institute has developed a young vibrant team of professional researchers, lawyers and subject experts, committed to its cherished slogan: Dedicated to Parliamentary Excellence in Pakistan

ISBN: 978-969-9675-14-0