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Abstract

Balochistan Province of Pakistan is gifted with enormous reserves of minerals owing to its unique geological condition. One of the most important mineral resource projects is the Reko Diq mining project which is one of the largest projects of its kind globally. The Reko Diq mineral resource located in the mineral-rich Tethyan belt was discovered by the Geological Survey of Pakistan (GSP) from 1960 to 1970. The estimated reserves of Reko Diq comprise 12.3 million tons of copper and 20.9 million ounces of gold. However, the Reko Diq project became embroiled in legal disputes and controversy when the Balochistan government, represented by the Balochistan Development Authority, signed agreements with foreign investment companies for gold and copper exploration in the area of Reko Diq at Chagai. This research paper examines the establishment of the Chagai Hills Exploration Joint Venture Agreement (CHEJVA), analyzes the Supreme Court's decision on Pakistan regarding Maulana Abdul Haq Baloch's case against the government of Balochistan, and highlights the arbitration proceedings of the International Centre for Settlement of Investment Disputes. The research also concludes that an American mineral company Broken Hills Proprietary (BHP), took advantage of the unstable political situation in Balochistan under the caretaker government in 1993. The Balochistan Mineral Rules, 2002, were enacted to grant undue relaxations favoring foreign companies. These issues significantly impacted the validity of the Reko Diq agreement. Consequently, this case created an impression that foreign investments are not secure in Pakistan, necessitating actions to protect their interests. Moreover, the Reko Diq case had various economic impacts on Pakistan and hindered the development of the province and the country. This research paper recommends reforms in the legal framework of the mineral sector and advocates for advanced equipment in exploration to create employment opportunities. Additionally, establishing a domestic dispute resolution forum is proposed as a more favorable approach for settling such disputes, rather than resorting to international jurisdictions.

Keywords: Balochistan, Reko Diq, Volcano, Copper-Gold mining, Balochistan Development Authority

1. Introduction

The word "Reko Diq" originates from the Balochi language and translates to "sandy peak" or "mountain." It is also the name of an ancient volcano. Geographically, Reko Diq is located in the District Chagai of Balochistan, in a desert area approximately 70 kilometers northwest of Naukundi. It is situated near the borders of Iran and Afghanistan. Previously, Reko Diq was known as Koh e Daleel. The Reko Diq area represents one of several volcanic centers in the Chagai volcanic mountain range, which stretches in an east-west direction across Balochistan between the Quetta to Taftan railway and the border shared with Afghanistan and Iran (Ahmed, 2017). In the late 1960s and early 1970s during their preliminary survey of mineralization in the Chagai District the Geological Survey of Pakistan (GSP) discovered extensive copper and gold deposits at Reko Diq. "Reko Diq is known to possess the world's largest copper and gold deposits with the capacity to produce 200,000 tons of copper and 250,000 ounces of gold for more than 50 years with a cumulative revenue of over 100 billion dollars" (Business Recorder, 2022).

The Reko Diq area is part of the Tethyan magnetic belt, "Located in the Chaghi District of Balochistan in Pakistan, Reko Diq is a large copper and gold deposit containing 12.3 million tons of copper and 20.9 million ounces of gold in inferred and indicated resources. A further 14 mineralized porphyry bodies are known to exist, with the potential to place Reko Diq as one of the world's largest undeveloped copper projects (Surbana Jurong). It comprises the two principal deposits of copper and gold known as the western Porphyries, designated as H14 and H15. Another deposit, referred to as Tanjeel, is designated as H13, H79, H8, and H35 (Decision on Jurisdiction and Liability, 2017). These reserves of copper and gold position Reko Diq as one of the largest mines in the world (Jamil, 2012).

"The deposits at Reko Diq include copper porphyry, with total mineral resources of 5.9 billion tons of ore with an average copper grade of 0.41% and gold grade of 0.22 grams per ton. The economically mineable portion of the deposits is calculated at 2.2 billion tons, with an average copper grade of 0.53% and gold grade of 0.30 grams per ton, with an annual production estimated at 200,000 tons of copper and 250,000 ounces of gold contained in 600,000 tons of concentrate" (*Maulana Abdul Haque Baloch and others V. Government of Balochistan through Secretary Industries and Mineral Development and others, 2013*)

The Reko Diq mining project is a \$3.3 billion investment project that aims to establish and operate a world-class copper and gold mine in the North West area of Balochistan. The project was initiated through the signing of the Chagai Hills Exploration Joint Venture Agreement (CHEJVA) 1993 by the Balochistan Development Authority (BDA) on behalf of the Balochistan government with BHP. Over time, the project was amended through additional agreements in 2000 and 2006 to transfer rights and involve other parties.

The Reko Diq project was initiated in 1993 and has continued since then. However, in 2011, the Balochistan government refused to grant permission for further exploration licenses in the Reko Diq area. Throughout the project's timeline, additional parties such as Mincor Resources, an Australian company, and Tethyan Copper Company were involved. The Reko Diq project has faced controversy from its inception due to legal deficiencies and contravention of Balochistan's mineral law. Consequently, multiple petitions challenging the validity of the agreement have been filed before Pakistan's superior courts.

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According to the terms of the Reko Diq project, the Balochistan Government was responsible for providing administrative support, necessary consents, approvals, NOCs, security clearance, and relaxation of certain rules specified in the Balochistan Concession Rules of 1970 and 2002. TCCP, on the other hand, was obligated to undertake the exploration work and cover the entire cost of infrastructure development in the Reko Diq area. As per the agreement, Balochistan was entitled to a 25% share, while Broken Hills Properties Minerals, an American company, held a 75% interest in the Reko Diq project (*Maulana Abdul Haque Baloch and others V. Government of Balochistan through Secretary Industries and Mineral Development and others, 2013*)

1.1. Statement of Problem

The Reko Diq case has gained significant attention in Pakistan and has been a subject of controversy since its discovery. It has been a prolonged legal battle involving the government of Balochistan, the Federal government, and foreign companies on the issue of validity, and rejection of the application of Tethyan Copper Company Pakistan (TCCP) exploration in the area of Reko Diq. The governments of Balochistan always try to hide this issue from the cognizance of its people. Recently, the International Centre for Settlement of Investment Disputes (ICSID) issued a substantial penalty against Pakistan in the Reko Diq case for violating the Australian and Pakistan Bilateral Treaty of 1998 on the promotion and protection of investment.

There is a need for a comprehensive study of the Reko Diq case to accurately depict its details, and controversies, and to shed light on the legal questions and their impacts on Pakistan.

1.2. Research Objective

The main objective of this research paper is to analyze the Reko Diq case in light of the (*Maulana Abdul Haq Baloch v. Government of Balochistan* (PLD 2013 SC 641) and the case of Tethyan Copper Company Actcama (TCCA) before the International Settlement for Investment Disputes (ABR/12/1). The paper aims to examine the impacts of these cases in Pakistan. Furthermore, the research paper will provide recommendations for reforms in the mineral sector of Balochistan.

The specific objectives of the research paper are as follows:

- Analyze the Chagai Hills Exploration Joint Venture Agreement (CHEJVA) of 1993 and assess its compliance with Pakistani laws.
- Discuss the reasons behind the Balochistan government's refusal to grant the lease of Reko Diq to the TCCA.
- Discuss the principles or doctrines adopted by the Supreme Court of Pakistan in this case.
- By accomplishing these objectives, this research paper aims to provide a comprehensive analysis of the Reko Diq case and its significant aspects.

1.3. Research Outcomes

This research paper is exclusively based on two landmark case laws concerning the Reko Diq deal. After conducting this research paper; this paper will be able to provide the following outcomes;

- This research paper will address the Reko Diq deal and its controversial history.
- This research paper will build a clear understanding for the public about the Reko Diq case
- This research paper also highlights legal questions which have been involved in the case of Reko Diq.
- This research paper will provide some recommendations on the mineral sector of the country that may be helpful if the higher authority considers them.

2. Literature Review

Previous studies on the Reko Diq case have primarily examined specific aspects of the deal, including its significance and criticism. The case gained significant attention after it was challenged in the superior judiciary of Pakistan in 2006. Scholars, legal experts, and politicians have made efforts to shed light on the Reko Diq deal. The existing literature on Reko Diq has focused on the following areas:

Chris Allbritton's article titled "Gold War in Pakistan Highlights Investment Risks" describes Reko Diq as a mountain rich in a wide variety of gold and copper deposits. The article highlights the potential of Reko Diq to meet the needs of Pakistan and emphasizes its significance as a major foreign investment in the mining sector (Allbritton, 2012).

The annual report of 2012 by Lake Resources N.L. provides a detailed study of Reko Diq, estimating it to contain 5.9 billion tons of copper and gold. The report explores the lifetime of the project, and various minerals present, and identifies specific areas within Reko Diq with potential mineral resources (Annual Report, 2012).

Esha Farooq's article "Reko Diq case: An integrity risk to the mining industry of Pakistan" highlights Pakistan's mineral-rich status, with Reko Diq being a significant reserve located in Balochistan province. The article discusses the involvement of four international mineral companies in Balochistan and examines the impact of the Reko Diq case on future foreign investments in Pakistan (Farooq, 2020).

Christopher Finnigan's article "Long Read: The Reko Diq Fiasco in Perspective: Pakistan Experience of international investment Arbitration" delves into Pakistan's negative experiences related to the Reko Diq case, which resulted in a massive penalty and discusses the factual background of the case. The article also analyzes the award of the ICSID in the Reko Diq case, which exceeded the IMF loan package (Finnigan, 2019; Audi et al., 2021).

Sana Ullah Baloch, a member of the Balochistan Provincial Assembly, critically analyzes the Reko Diq deal in his article "The Reko Diq Matter." He highlights that despite the abundance of natural resources, Balochistan suffers from poverty, economic instability, unemployment, and governance issues. The article thoroughly discusses the Reko Diq case, referencing the Supreme Court of Pakistan and the ICSID arbitration forum (Baloch, 2019).

Another article by Sana Ullah Baloch titled "Balochistan's El Dorado" compares the Reko Diq mineral resource to those in countries such as Africa, Congo, and Zimbabwe. The article draws parallels between the situations in Balochistan and those countries, criticizing the handling of the Reko Diq matter and making references to El Dorado, the mythical lost city of gold in America (Baloch, 2014).

In an article published by The News International, Sana Ullah Baloch argues that Pakistan incurred significant financial losses in the Reko Diq case due to the government's irresponsibility and failure to defend the case adequately at the international arbitration forum. He also criticizes the ICSID and its susceptibility to influence from multinational companies (Baloch, 2021).

Hassan, in his article "The Reko Diq billion dollars mystery," states that Reko Diq has been the center of controversy since its discovery, with the initial agreement being legally flawed and against public interests (Hassan, 2015).

Mohammad Waqas Gujjar in his article "Analysis on the Decision of Supreme Court and ICSID in the Case of Reko Diq" analyses the decision of the Supreme Court of Pakistan in this case based on the doctrines of Separability and Unidroit under Article 3.2.7 of the Rome Unification of Private Law on Commercial Contract, addressing gross disparity (Gujjar, 2020).

Jeffrey D. Sachs, in his article "How World Bank Mugged Pakistan," provides a critical analysis of the ICSID award in the Reko Diq case. He argues that the ICSID is an inadequate forum for dispute settlement, influenced by international companies, and suggests that the award in the Reko Diq case was unjustifiable (Sachs, 2019).

The decision of the Balochistan High Court on Maulana Abdul Case, the decision of the Supreme Court of Pakistan, and ICSID decisions were also consulted during the literature review.

2.1. Background of the project

The historical background of the Reko Diq project can be traced back to 12 July 1993 when Chagai Hills Exploration Joint Venture Agreement was signed. The government of Balochistan through the Balochistan Development Authority signed the agreement with the Broken Hills Proprietary (BHP) Company. BHP initially submitted a proposal draft to the BDA for the joint venture agreement to the BDA and the Balochistan Government on May 8, 1991. The BDA recommended the agreement and forwarded it to the secretary of Industries, Commerce, and Mineral Resources government of Balochistan, as well as to the Law Department, to assess its legality and validity on May 29, 1991 (Decision on Jurisdiction and Liability, 2017). The Secretary approved the draft conditionally subject to consultations with the Finance and Law Departments, allowing BDA to discuss the details with BHP. BDA referred the Draft of the agreement to the Chima and Ibrahim Law firm for expert opinion. The law firm suggested an amendment to the draft of the agreement in case of the creation of a joint venture company of BDA and BHP.

A meeting was held on December 4, 1991, between attorney of BHP, Chima, and Ibrahim Law to discuss the draft of the agreement. The main issues between parties were the relaxation of the Rules of 1970, related to royalties, arbitration, taxation, exploration programs, the area of interest, and the operating committee. These issues were resolved through consultations between both parties. On April 28, 1992, the Ministry of Science and Technology through the National Centre for Technology Transfer informed the Chairman of the BDA that approval from the federal government was not necessary, and the Balochistan government, as empowered by the constitution of Pakistan, had the authority to make decisions regarding minerals (*Decision on Jurisdiction and Liability*, ARB/12/1, ICSID, 2017).

The Chairman of the BDA submitted the final draft of the agreement to the Caretaker Chief Minister of Balochistan for approval and signing. The Chairman of the BDA also enclosed brief information on the background of the agreement and negotiations. The joint venture agreement was made conditionally, according to the conditions the BDA had six months to sign the agreement. If the agreement failed to be approved by the provincial and federal governments within the specified period, it would cease to exist. The agreement was approved by a Federal Government Employee i.e. Chief Secretary of Balochistan on July 27, 1993, and finally signed by the Governor of Balochistan, through the BDA as its agent, with BHP Company on July 29, 1993. This agreement is known as the Chagai Hills Exploration Joint Venture Agreement. The CHEJVA involved the exploration and mining of gold and copper in the Reko Diq region. After the agreement, on December 8, 1996, the government of Balochistan granted 10 prospecting licenses to BHP. However, BHP believed that the agreement suffered from various legal ambiguities, leading the company to express its concerns to the Balochistan government through the BDA, requesting an addendum (Maulana Abdul Haq Baloch and others v Government of Balochistan, 2013).

In March 2000, the Government of Balochistan, through the BDA as its agent, and the first mining company BHP signed the first addendum to the CHEJVA. This addendum allowed the parties the right to transfer and assign their interests, either wholly or partly, to a third party. Subsequently, BHP entered into an alliance with Mincor Company, a Western Australian company.

"Later in 2000, a novation agreement added the Government of Balochistan to the joint venture agreement. An 'Option Agreement' was also executed and relying on one of the clauses contained in CHEJVA, namely, Article 14 'Assignment', Mincor option was created in favour of Mincor NL, a company incorporated in Western Australia, enabling it to enter into an Alliance Agreement under clause 3 of the Option Agreement. The Mincor Option gave a sole and exclusive right to Mincor or its nominee to enter into alliance with BHP to explore the region. On 24.10.2000, Tethyan Copper Company (TCC), as a nominee of Mincor, exercised the Mincor Option and executed an Alliance Agreement on 19.04.2002". (Khurram, 2021)

On June 23, 2000, BHP and the Governor of Balochistan, acting on behalf of the Balochistan province through the BDA, entered into a Deed of Waiver and Consent for BHP's transactions with Mincor Resources. The Chagai Hills Exploration Joint Venture Agreement is based on two contracts: the main agreement and an optional agreement that formed the alliance with BHP. The purpose of the optional agreement in 2000 was to include Mincor Company as part of the CHEJVA to work at Reko Diq and fulfill the tasks of the BHP Company. Under the optional agreement, Mincor became a shareholder alongside BHP. Furthermore, another mining company, TCC Company, was added to the CHEJVA through Mincor, appointing Tethyan Copper Company (TCCA) as a nominee on October 24, 2000. TCCA was the third foreign company to become a party to the Reko Diq agreement.

2.2. Exploration License

On May 18, 2002, the exploration licenses EL-5 is granted to the joint venture by the government of Balochistan for a period of three years. the exploration licenses EL-5 covered an area of 973.75 square kilometers in the Reko Diq region. This license expired on February 20, 2005. Another exploration license was granted on April 9, 2005, but the exploration area was reduced to 482.72 square kilometers for three years. This license commenced on February 21, 2005, and expired on February 20, 2008. The third license was granted on December 1, 2007, covering an area of 435.02 square kilometers for a three-year period until 2011 (*Decision on Jurisdiction and Liability*, ARB/12/1, ICSID, 2017).

2.3. Establishment of Tethyan Copper Company (TCCA)

On June 26, 2000, Mincor Resources established TCCA as a registered company under the Cooperation Law of Western Australia. In May 2006, after registration, it was acquired by Atacama Copper Company of New South Wales, Australia, which was owned by a London-based company Antofagasta. In 2006, Antofagasta sold 50% of Atacama shares to Canada based world's largest gold mining company Barrick Gold Corporation, (agency, 2020). On July 11, 2005, BHP confirmed that TCCA had fulfilled all its obligations under the alliance agreement. Then, on November 23, 2006, TCCA paid \$ 60 million to BHP to terminate the agreement with the Balochistan government. Following the alliance between TCCA and BHP, the liabilities of BHP and Mincor Resources Company were terminated in 2005, and TCCA became the exclusive and absolute party in the CHEJVA. This alliance was established through the Novation agreement between BHP, TCCA, Mincor, and BDA in 2006. Under the Chagai Hills Exploration Joint Venture Agreement, TCCA held a 75% interest, while the Balochistan government was entitled to a 25% interest in the Reko Diq project.

2.4. Local and Chinese Companies

In January 2009, the Metallurgical Group Copper Company (MCC) of China was invited to submit a proposal to join the Balochistan government for the Reko Diq project while TCCA was carrying out exploration and mining activities in the area. The Chinese company entered into an agreement with the Balochistan government meanwhile the Tethyan Copper Company Pakistan (TCCP) submitted a feasibility report and a mining lease application on February 15, 2011, for further exploration in the Reko Diq area, limited to 100 kilometers. This application was submitted to the Licensing Authority established under the CHEJVA 1993. However, on September 21, 2011, the Licensing Authority issued a notice and rejected the application of TCCP. This decision confirmed that the Balochistan government was not interested in granting further exploration rights in the Reko Diq area to TCCP and TCCA. At the same time, the case of Reko Diq was pending before the Supreme Court of Pakistan, which stayed the proceedings and ordered the authority to decide on the application. Additionally, Dr. Samar Mubarakmand, the Chairman of NESCOM, presented suggestions to the federal government regarding Reko Diq, proposing that Pakistan itself should initiate exploration activities in the area (Decision on claimants' request for provisional measures, ARB/12/1 ,ICSID, 2012).

2.5. Relaxation of Rules

The relaxation of rules under the BMCR, 1970 raised significant questions of the validity of the agreement. On January 30, 1994, the Balochistan government in the violations of laws granted various relaxations under the BMCR, 1970, which included exploration areas, exclusive rights, mining leases, royalties, and other provisions.

The Reko Diq case began in 2006 when petitions were filed before the Supreme Court of Pakistan challenging the validity of the Reko Diq agreement. The second stage started when the Balochistan government rejected the application of TCCP for a further exploration license, resulting in significant losses for TCCP. Initially, TCCP invoked the jurisdiction of the administrative appeal constituted under the CHEJVA, but the administrative appeal also rejected TCCP's claim. Subsequently, the aggrieved party, TCCA, invoked the jurisdiction of two forums, namely the International Centre for Settlement of Investment Disputes (ICSID) and the International Chamber of Commerce (ICC), citing violations of the Pakistan Australia Bilateral Treaty of 1998 on the promotion and protection of investments. TCCA sought specific performance and compensation from the state of Pakistan.

2.6. Petition against relaxation of rules

The Reko Diq agreement, signed between the Balochistan government and foreign mining companies for exploration in the Reko Diq region, failed to bring about advantageous outcomes for the province and the country. From the beginning, the deal faced criticism from political parties, lawyers, social activists, and academia. Consequently, constitutional petitions were filed in 2006 and 2007 before the superior courts of Pakistan, challenging the validity of the CHEJVA agreement. The petitioners alleged that all agreements related to Reko Diq were illegal, unconstitutional, and against the public interest. They claimed that the main objectives of the agreement were corruption and abuse of power. Among the petitions, one notable petitioner was Maulana Abdul Haq Baloch, a former member of the National Assembly of Pakistan and a member of Jamat-e-Islami Pakistan (Siddiqui, 2017).

Following the Addendum 2 or Novation agreement to the Chagai Hills Exploration Joint Venture Agreement, where BHP Company exclusively transferred its exploration rights to TCC Company and the Balochistan government granted relaxations of certain rules under the Balochistan Mineral and Concession Rules 1970. Maulana Abdul Haq Baloch filed Constitutional Petition No. 892 of 2006 in the High Court of Balochistan. The main focus of the petition was to question the legality of the Chagai Hills Exploration Joint Venture Agreement and the validity of the relaxations granted under the BMCR, 1970 by the government of Balochistan. Additionally, it raised concerns about BHP Company's failure to complete the exploration work within the specified timeframe. These were significant allegations filed against the government of Balochistan. The petitioner sought the following reliefs from the honorable High Court of Balochistan:

1. To declare all transactions, including the granting of licenses, relaxations under the BMCR, 1970, and the transfer of rights through optional and Novation agreements to the respondents, as illegal and unconstitutional.
2. To order that the Reko Diq case be resolved in accordance with applicable laws and rules, specifically Pakistani law.

3. To order investigations and inquiries to ascertain allegations of corruption, abuse of power, and the sale of natural resources for personal interests.

In response, the government of Balochistan, the respondent, rejected the petitioner's allegations regarding the Reko Diq agreement. The government of Balochistan stated that the petitioner has mala fide intention, as the Reko Diq agreement would enhance Balochistan's economic infrastructure and contribute to the development of other sectors in the region. The respondent further claimed that the agreement was made in compliance with mineral laws and rules.

2.7. Court Judgment

After carefully hearing both parties, the High Court of Balochistan ruled against the petitioner. The court declared that all agreements, transactions, and relaxations under the BMCR, 1970 were legal, lawful, and made in accordance with the law. Consequently, the petition of Maulana Abdul Haq Baloch, Petition No. 892 of 2006, was dismissed on June 26, 2007.

2.8. Supreme Court of Pakistan

The High Court of Balochistan had passed its decision against the petitioner; the petitioner invoked the appellate jurisdiction of the Supreme Court of Pakistan and filed a civil petition for leave to appeal No. 796 of 2007 against the decision of the High Court of Balochistan. The petitioner filed the constitutional petition under Article 184(3) of the Constitution of Pakistan 1973, questioning the legality of CHEJVA and the grant of a license to BHP/TCC on the grounds of violations of law and rule. It was alleged that there was a risk of potential loss of mineral resources in the Reko Diq region. The Supreme Court of Pakistan accepted the Civil Petition for Leave to Appeal and scheduled it for a hearing.

2.9. Court Decision

In 2013, the Supreme Court of Pakistan passed a landmark decision in the case of Maulana Abdul Haq Baloch. A three-member bench, including former Chief Justice of Pakistan Mr. Iftikhar Choudhary, was constituted for this case. The court determined the validity of all agreements pertaining to the Reko Diq and declared the Chagai Hills Exploration Joint Venture Agreement (CHEJVA) void and unconstitutional on the grounds of public policy. The court concluded that the agreement was made merely with the objective of corruption (Myirski, 2014). The Supreme Court assumed that foreign companies had fraudulently entered into agreements with the Government of Balochistan (GOB) and took advantage of the political instability in the province, which was under the control of a caretaker government. The court further held that all agreements related to the Reko Diq were in violation of Pakistani laws (Darr, 2019).

The Supreme Court held that the CHEJVA, Optional, and Novation agreements were executed contrary to the provisions of the Mineral Development Act 1948, Mining Concession Rules 1970, Contract Act, and Transfer of Property Act 1882. Consequently, they were declared void (*Abdul Haq Baloch v. Govt of Balochistan through Secretary Industries and Mineral Development and others*, 2013).

The Supreme Court deemed the Reko Diq case unlawful due to its involvement in a massive corruption scandal and violation of public policy. The court opined that an international tribunal should not have jurisdiction over a case based on corruption, fraud, and misrepresentation (*Abdul Haq Baloch v. Govt of Balochistan through Secretary Industries and Mineral Development and others*, 2013). The court cited the case of *World Duty-Free v. Kenya*, where the International Centre for Settlement of Investment Disputes (ICSID) rejected a World Bank claim for payment by the president of Kenya due to fraud and corruption (*World Duty-Free v. Kenya*, 2006). The Supreme Court asserted its jurisdiction to invalidate agreements tainted by corruption, empowered by the UN Convention against Corruption. Furthermore, the court referred to the principle of judicial review, citing the *Tata Cellular v. Union of India* case, which highlighted the authority's accountability for exceeding its powers or acting abusively (*Tata Cellular v. Union of India*, 1994). The Balochistan government was found to have acted beyond its powers, solely for the sake of corruption, resulting in a detrimental situation for Pakistan.

Additionally, the Supreme Court ruled that the agreement was against host state law, rendering it void and ultra vires. In the *Inceysa v. El Salvador* case, the tribunal held that contracts in violation of host state law do not benefit from international protection through treaties or other rights granted to them.

Furthermore, the Supreme Court of Pakistan established its jurisdiction to decide the Reko Diq matter based on various assumptions, including the applicability of Pakistani law to regulate the CHEJVA. Therefore, the Supreme Court deemed itself the appropriate forum to address the issue (Innayyat Ullah, 2014).

The Supreme Court of Pakistan also discussed various doctrines and principles applicable to the case. One significant doctrine was the Unidroit doctrine, which highlighted how foreign mineral companies took advantage of the undue political instability in Balochistan in 1993 and entered into an illegal contract. This doctrine is mentioned in Article 3.2.7 of the Rome International Commercial Institute. According to this doctrine, international commercial contracts cannot be enforced when one party unfairly and unduly exploits the other. Another important doctrine adopted by the Supreme Court was the doctrine of Separability, established by the United States Supreme Court in *Prima Paint Corp. v. Flood and Cooklin Manufacturing Co.* The court determined that the arbitration clause is separable from the main contract, following an international custom. Furthermore, as Pakistan is a signatory state of the New York Convention, if an agreement is void, the arbitration clause becomes invalid.

The Supreme Court also determined the validity of the CHEJVA based on the relaxations granted in violation of the Balochistan Mineral Concession Rules, 1970. Relaxations can only be granted under Rule 98 of BMCR, 1970, in cases of individual hardship and loss. However, in this case, the Balochistan government granted various relaxations under the BMCR in the Reko Diq area without any legitimate grounds of individual hardship, solely to favor the BHP Company. The court declared this a critical reason for deeming the CHEJVA void and unlawful (Farooq, 2020; Ali & Zulfiqar, 2018).

Moreover, the Supreme Court of Pakistan considered the issue of non-registration of the CHEJVA within Pakistan, concluding that it was void due to the non-registration under Article 17 of the Registration Act. The entitlement to the rights of license and lease under Rule 14 of BMCR is contingent on proper registration. However, BHP failed to register under the Registration Act. Furthermore, the Supreme Court of Pakistan analyzed that the ICSID cannot proceed with the case against Pakistan since Pakistan was not a party to the CHEJVA and related agreements. All agreements were made solely between the Balochistan government and BHP and TCCA companies.

In conclusion, various constitutional petitions filed under Article 184(3) of the Constitution of Pakistan were consolidated into one case, the Maulana Abdul Baloch case (PLD 2013 SC 641), in which the Supreme Court of Pakistan determined the validity of the Reko Diq agreements. The court presumed that these agreements were against public policy and based on corruption. Therefore, on January 7, 2013, the Supreme Court declared all agreements related to the Reko Diq void, illegal, and unconstitutional under state law.

3. Impacts of the Reko Diq Case

The Reko Diq dispute comprises two significant cases handled by different legal forums. The domestic resolution took place in the Supreme Court of Pakistan, while the international resolution occurred at the International Centre for Settlement of Investment Disputes, based on distinct laws, principles, and international standards set by international law. The Reko Diq case addresses various unresolved questions pertaining to the Reko Diq deal.

From the Reko Diq case, it becomes evident that the BHP international mineral company entered into the CHEJVA agreement with the Balochistan government through the BDA, taking advantage of the imbalanced situation in Balochistan at the time when the CHEJVA was signed in 1993. The caretaker government, which lacked the authority to enter into such agreements, was in control of Balochistan at that time. It is fair to say that this entire case arose due to mismanagement by Balochistan, as the government did not give due attention and acted negligently. The mishandling of Balochistan's affairs resulted in litigation both within Pakistan and in the international forum of arbitration. The CHEJVA agreement itself was questionable on various grounds, leading to conflicts and contradictions that remained unresolved until the end of 2021.

Furthermore, the CHEJVA agreement granted unreasonable relaxations to BHP and TCCA, in violation of the provisions of the Balochistan Mineral Concession Rules 1978. These relaxations were granted solely to support the foreign companies involved in the Reko Diq project. The BDA failed in its duty and acted negligently, causing trouble for Pakistan. The BDA adopted the wrong mechanisms and policies by signing the CHEJVA and other agreements related to Reko Diq. The case also raised questions about the authority of a caretaker government to enter into such agreements and why the Balochistan government agreed to a 50% share interest. These important questions were raised by the Supreme Court of Pakistan in the case of Maulana Abdul Haq Baloch, but the respondent party failed to provide satisfactory answers.

Moreover, after the Reko Diq agreement, the Balochistan government provided significant support to BHP and TCCA companies by granting those relaxations under the Balochistan Mineral Concession Rules 1978. These relaxations included exclusive mining rights, assignment of exploration areas, and other important benefits that were granted in violation of the BMCR 1978 and other mineral laws of the state. In addition, the Balochistan government enacted new mineral rules in 2002, which applied exclusively to BHP and TCCA. When these relaxations were granted, foreign companies directly assigned and transferred their interests to other foreign mineral companies to purchase their legal rights in the Reko Diq area. The transfer of exclusive rights from BHP to Tethyan Copper Company occurred when the Balochistan government enacted the 2002 mineral rules. However, the Balochistan government failed to question the transfer or prosecute the BHP Company for not completing the work within a specific timeframe.

The most important analysis of the case of Reko Diq has settled the question of a joint venture agreement. It is a general provision of law that on joint venture can be established in favor of the foreign company if it is not registered under the law of the host state; therefore, BHP Company had no right to enter a joint venture agreement with the Balochistan government. This joint venture agreement was made in contradiction to Pakistani law. Furthermore, the supreme court of Pakistan has dealt with the question of the validity of the agreement and drawn its conclusion that all agreements relating to the Reko Diq are illegal and ultra-vires that were made based on corruption and the doctrine of separability do not affect the decision of the Supreme Court. On the assumption of the supreme court of Pakistan, that the International Centre for Settlement of Investment Disputes has no jurisdiction to decide the Reko Diq matter and the decision of the Supreme Court is binding to the foreign company and the ICSID but the Supreme Court while passing its decision does not overlook to the Article 41 of ICSID convention which provides a general rule for the independence of the tribunal which clarifies that it is an independent body and domestic court decision are not binding to the decision of domestic courts, therefore it has jurisdiction to deal with the private matter concerning directly to the investments.

Furthermore, another significant question was a rise on the part of the ICSID forum whether this forum is an accurate and independent forum to resolve the matters of investments. In answer to this question, the ICSID tribunal has been influenced by international companies which are more powerful than the state. The example was seen in Indonesia was interested to ban open-pit mining and in the case of El Salvador where international companies become free from their liabilities through the ICSID forum. In the same way, the case of the Reko Diq tribunal consisted of inexperienced persons about the laws of Pakistan, and without the interpretation of Pakistani law, an inaccurate manner made Pakistan liable for the violation of Australia Pakistan Bilateral Treaty 1998 on the promotion and protection of investment. on the other hand, the ICSID tribunal has become subject to controversy on the part of the appellate system where there is no systematic appellate forum of ICSID only the right to revision or annulment of award exists so in the case of Reko Diq Pakistan had applied but all went in vain.

The Reko Diq case has brought numerous impacts on the part of Pakistan as well as on the Reko Diq project. The first and foremost impact of the Reko Diq case was that had affected the image of Pakistan at the international level and the international foreign companies had built a negative perception of Pakistan on the part of investment and restrained itself from future agreements.

The Reko Diq case has affected the integrity of Pakistan at many levels. First of all, an international arbitral tribunal affected the sovereignty of Pakistan by declaring its superior court's decision ineffective. The case has created an adverse effect not only on the mining industry but on the whole of Pakistan.

"A wrong impression has been floated in the world for the mining sector, which can greatly harm the economy of Pakistan. As the Mining sector holds great importance with regard to the economy. This case has not only affected the mining industry or Balochistan, but it changed the scenario for all the sectors of Pakistan. The award given by ICSID worth more than 5 billion dollars cannot be paid because of the economic condition" (Iqbal, 2020).

Another impact was made on the part of Pakistan by the decision of ICSID which has set aside the decision of the Supreme Court of Pakistan declaring the decision invalid and has no binding in the case of Reko Diq. So, the sovereignty of Pakistan has been affected by the award of ICSID. Furthermore, the Reko Diq case brought drastic causes on the Reko Diq project which has been the subject of legal Battle and the matter remains pending before the court of law and on development has been done on the part of the project due to this the mineral sector of Balochistan failed to develop and obtains the goals of province or the state. On the other hand, it also brought the state economic challenges because the International Centre for Settlement of Investment Disputes passed a penalty of more than 5 million dollars. It becomes a question mark on the economy of Pakistan whether Pakistan can pay such a penalty. Developing countries can't pay such a heavy penalty. On the contrary, the Supreme Court 2013 judicial activism was at its peak, so the former Chief justice of Pakistan passed a lengthy judgment on the case of Reko Diq which has created discouragement for foreign investors to the investment in Pakistan, on the other hand, the award of ICSID created a loose situation for Pakistan. The award of ICSID had brought Pakistan into two different Positions; if Pakistan paid the compensation the whole country's economy will be collapse and if not pay the compensation for damages, it will create a perception that Pakistan is not safe for investment. The Reko Diq case has built a presumption to the investment that foreign investments are not secure in Pakistan which may be revoked at any time through the judiciary. Finally, the researchers concluded that it was one of those issues, which taught Pakistan a great lesson with regard to international affairs.

4. Conclusion

The Reko Diq mineral resource was discovered by the (GSP) from 1960 to 1970 and is the fifth largest mineral resource in the world which is part of the Tethyan belt known for the best and vast variety of mineral resources.

The Reko Diq agreement was signed by the Balochistan Government and its agent BDA, empowered by the (GOB) to enter a joint agreement with BHP Company in 1993. This agreement was known as Chagai Hills Exploration Joint Venture Agreement and it was amended two times, 2000 and 2006.

Under this agreement, the Government of Balochistan agreed with the 25% interest shares in the project, and BHP and other companies held 75% interest shares and 2% royalties for Balochistan. The amendments to the CHEJVA had brought changes to CHEJVA whereas BHP companies purchased its exclusive rights to the TCCA Company. The TCCA became an exclusive party in 2006 through the Novation Agreement where TCCA had purchased the right with the consideration of 60 million.

Controversy arose when the first mining company failed to complete its task, leading to the second amendment and the inclusion of a new party. In 2006, the validity of the agreements related to Reko Diq was challenged through constitutional petitions and miscellaneous applications filed before the superior courts of Pakistan, citing violations of public interest and the country's laws. In 2013, the Supreme Court of Pakistan declared all agreements relating to Reko Diq void, illegal, and unconstitutional, primarily due to violations of law, corruption, and the foreign company taking advantage of the political instability in Balochistan through fraudulent means.

The Reko Diq agreement contained legal defects, including relaxations granted to the Balochistan Government under the Balochistan Mineral Concession Rules (BMCR) of 1970 without specifying such rules, in violation of Section 5 of the Mineral and Oilfield Act 1948. Another legal defect was the informal method used by the Balochistan Government to directly sign the agreement without passing any tender, advertisement, or public notification. Additionally, the Balochistan Government enacted the Balochistan Mineral Rules (BMR) in 2002 with the objective of favoring mineral companies.

The Reko Diq case turned into an international arbitration dispute when the TCCA Company's application was rejected by the licensing authority. The TCCA invoked the jurisdiction of the International Centre for Settlement of Investment Disputes (ICSID) based on violations of the Pakistan-Australia Bilateral Treaty of 1998, the foreign investment treaty, and the CHEJVA. The TCCA filed claims for specific performance and compensation for losses from the Reko Diq project. After a prolonged legal battle, the ICSID recently awarded \$5.9 million as a compensatory amount against Pakistan.

The Reko Diq case had various impacts on Pakistan, tarnishing its international image and creating a negative perception among international investment companies. It also resulted in economic losses as Pakistan incurred significant expenses on legal fees and accommodations for international lawyers defending the case before such forums.

5. Recommendations

Based on the findings of the research the following recommendations are suggested:

Legal Reforms: Implement comprehensive reforms in the legal framework governing the mineral sector to address loopholes and ensure transparency, accountability, and fairness in agreements and regulations. This includes revising the Balochistan Mineral Rules and other relevant laws to prevent undue relaxations that may favor foreign companies over local interests.

Domestic Dispute Resolution Forum: Establish a dedicated domestic dispute resolution forum equipped with legal expertise in mining and investment laws to swiftly and fairly resolve disputes related to mineral exploration and exploitation (Ramzan et al., 2023). This would provide a more accessible and efficient alternative to international arbitration, promoting confidence among investors and stakeholders.

Enhanced Oversight: Strengthen regulatory oversight mechanisms to monitor foreign investment activities in the mineral sector, ensuring compliance with contractual agreements, environmental standards, and social responsibilities. Regular audits and inspections can help prevent exploitation and mitigate negative impacts on local communities and the environment.

Technology and Employment: Invest in advanced exploration equipment and technology (Akram et al., 2021; Ramzan et al., 2023) to enhance the efficiency and accuracy of mineral exploration processes. This not only facilitates the discovery of untapped mineral reserves but also creates employment opportunities for local communities, contributing to socio-economic development and reducing dependency on foreign investors.

Community Engagement and Benefits: Prioritize meaningful engagement with local communities affected by mining activities and ensure they receive fair compensation, employment opportunities, and benefits from resource extraction projects. This can be achieved through community development programs, revenue-sharing agreements, and initiatives aimed at improving infrastructure, educational reforms (Akram & Yang, 2021; Akram, 2020; Ramzan et al., 2023), and healthcare in mining areas. Such measures foster social acceptance, minimize conflicts, and promote sustainable development.

Transparency and Accountability: Institute mechanisms to enhance transparency and accountability in the negotiation and implementation of mining agreements. This includes publicly disclosing the terms of agreements, financial transactions, and environmental impact assessments to ensure stakeholders have access to relevant information and can hold both government authorities and foreign investors accountable for their actions.

Capacity Building and Training: Invest in capacity building programs and training initiatives for local government officials, teachers (Li & Akram, 2023) regulatory bodies, and community leaders to enhance their understanding of mining laws, regulations, and best practices. This empowers them to effectively participate in decision-making processes, negotiate fair deals, and advocate for the rights and interests of local communities.

Environmental Protection Measures: Enforce stringent environmental protection measures to mitigate the adverse impacts of mining activities on ecosystems, water resources, and air quality. Implementing robust monitoring and enforcement mechanisms, as well as requiring companies to adopt sustainable mining practices and rehabilitation plans, helps minimize environmental degradation and safeguard natural resources for future generations.

Diversification of Economy: Encourage diversification of the provincial economy beyond reliance on mineral resources by promoting investments in other sectors such as agriculture, tourism, and renewable energy. This reduces the vulnerability of the economy to fluctuations in global commodity prices and creates alternative sources of employment and revenue generation, contributing to long-term economic stability and prosperity.

Public Participation and Consultation: Institutionalize mechanisms for meaningful public participation and consultation in decision-making processes related to mining projects. This includes conducting public hearings, engaging with civil society organizations, and soliciting feedback from affected communities to ensure their voices are heard and their concerns are taken into account in project planning and implementation.

Socio-Economic Development: Prioritize the socio-economic development of Balochistan and other resource-rich provinces by earmarking a portion of mineral revenues for local infrastructure projects, social services, and community development initiatives. This helps address the grievances of local communities, reduce socio-economic disparities, and promote inclusive growth and prosperity.

Policy Coordination: Foster closer coordination and collaboration between federal and provincial governments to ensure alignment of policies and regulations governing the mineral sector. This minimizes jurisdictional conflicts, streamlines decision-making processes, and creates a conducive environment for investment and development in Balochistan and other mineral-rich provinces.

Revenue Sharing: Advocate for a fair and transparent revenue-sharing mechanism between the provincial and federal governments to ensure that Balochistan receives an equitable share of the revenues generated from mineral resources extracted within its territory. This helps alleviate poverty, fund development projects, and improve the quality of life for residents in mining-affected areas.

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