

*In the name of Allah,
the Most Beneficent,
the Most Merciful*

**HIGHER EDUCATION SECTOR IN POST
EIGHTEENTH CONSTITUTIONAL AMENDMENT
ERA: A NEW REGULATORY AND LEGISLATIVE
FRAMEWORK**



Submitted by:
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Supervised By:
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Quaid-e-Azam University, Islamabad

This thesis is submitted for partial fulfilment of the requirement of PhD Law degree.

DEPARTMENT OF LAW
FACULTY OF SHARIAH & LAW
INTERNATIONAL ISLAMIC UNIVERSITY,
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ISLAMABAD**

CERTIFICATE

It is certified that Mr. Quaisar Mahmood Farukh S/O Rana Dilbar Khan, bearing Registration No. 114-SF/PHDLAW/S19 student of PhD Law has completed his thesis titled: **‘HIGHER EDUCATION SECTOR IN POST EIGHTEENTH CONSTITUTIONAL AMENDMENT ERA: A NEW REGULATORY AND LEGISLATIVE FRAMEWORK** under my supervision and guidance.

I am satisfied with the quality of student’s research work and allow him to submit this thesis for evaluation and Viva Voce.

**Prof. Dr. HAFIZ AZIZ-UR-REHMAN
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Dedicated

To

The Only Lord of this universe

ALLAH Almighty (my Strength)

His Last Prophet

My Beloved Hazrat Muhammad (SAWW)

(My True Love)

And

Ahl-Bait, Sahaba (Companions of Holy Prophet SAW), Saliheen

And

My affectionate and loving Parents

Rana Dilbar Khan and Maqbool Akhtar (Maa G)

My Wife Eram Sarwar

And Daughters

Sara Fatima and Ayzel Fatima

Declaration

It is hereby declared that this dissertation is original and has never been presented in any other institution. It is also declared that any secondary information used in this dissertation has been duly acknowledged.

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We, the Supervisory Committee, certify that the contents and form of thesis submitted by Mr. Quaisar Mahmood Farukh have been found satisfactory and recommend that it be processed for evaluation by the Internal/External Examiner for the award of degree.

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Abstract

The Eighteenth Constitutional amendment is to be considered an important milestone as it restored federalism in true spirit, shifting substantial powers to provinces. In Post Eighteenth Amendment era higher education became a provincial subject, limiting the Federal HEC's role to maintaining standards. However, only two provinces have established their Higher Education Commissions with limited financial authority and powers; while others lag in creating regulatory structures, resulting in governance voids and jurisdictional conflicts. Various university acts have loopholes regarding appointment of vice-chancellors, leading to some appointments being nullified by higher courts due to procedural irregularities. The lack of clear rules for higher level appointments negatively impacts lower levels, necessitating a robust legislative framework. It is crucial to appoint permanent vice-chancellors for all vacant positions in Higher Education Institutions. Furthermore, the maintainability of writ petitions based on statutory and non-statutory rules has become a contentious issue in both public and private sector universities, complicating governance framework of Higher Education Institutions. One of the key challenges is the unclear delineation of responsibilities between Federal and Provincial government agencies. Likewise, the issue of autonomy of Higher Education commissions at Federal and Provincial level further aggravating the situation. The study showed that universities enjoy more substantive autonomy and less procedural autonomy; therefore, Federal HEC have to respect provincial HECs as mandated by Eighteenth Amendment while transferring powers pragmatically to provincial HECs. The lack of comprehensive policy reforms and insufficient intergovernmental coordination further hinder progress; therefore, the role of the National Finance Commission (NFC) in resource distribution and the Council of Common Interest (CCI) in mediating disputes between the federal and provincial governments cannot be ignored. The cooperation of all major stakeholders, including federal and provincial governments, university representatives, the National Finance Commission, and the Council of Common Interest, is essential for creating an effective and efficient regulatory and legislative framework. This collaboration is essential to address the current gaps and improve governance in higher education.

CHAPTER 1

INTRODUCTION TO RESEARCH

Chapter 1

Introduction to Research

1.1. Introduction to Research

In ancient times, people led simple lives, primarily dependent on agriculture to meet their needs, as noted by early anthropologists like Morgan,¹ Taylor,² and Rivers.³ This agricultural economy shaped society until the invention of the wheel sparked the Industrial Age.⁴ The subsequent invention of the computer ushered in the Digital Age in the 1970s. Today, we are in a knowledge-based economy, with significant investments in research, projects, and scholarships, especially in higher education.⁵ Higher education is a powerful tool for socio-economic and politico-legal development. However, without a robust regulatory framework, education cannot fulfill its potential in societal advancement. Developed countries have strong regulatory systems for higher education institutions, whereas third-world countries often lack the necessary framework to meet educational needs. A regulatory framework encompasses laws, regulations, decrees, and policies officially established by the government.⁶ In post Eighteenth Amendment era higher education in Pakistan became a provincial subject, limiting the Federal HEC's role to maintaining standards. However, only two provinces have established their Higher Education Commissions with limited power. Various university acts have loopholes regarding appointments of vice-chancellors, leading to some appointments being nullified by higher courts due to procedural non-compliance. The lack of clear rules for higher-level appointments negatively impacts lower levels, necessitating a robust legislative framework. It is crucial to appoint permanent vice-chancellors against all vacant positions in universities. An effective and efficient regulatory and legislative framework for the higher education sector should involve all major stakeholders, including the Federal Government, Provincial Governments, university representatives, the National Finance Commission and the

¹ Lewis Henry Morgan: anthropologist, kinship, social structure, Iroquois ethnography.

² Edward Tylor: English anthropologist, founder of cultural anthropology, evolutionism advocate

³ William Halse Rivers: English anthropologist, treated WWI shell shock, friend of Sassoon, kinship researcher, Torres Straits.

⁴ Adam Kuper, *The Invention of Primitive Society: Transformations of an Illusion* (New York: Berghahn Books, 1991).

⁵ Rukhsana Kalim and Suleman Aziz Lodhi, *The Knowledge-Based Economy: Trends and Implications for Pakistan* (Islamabad: Pakistan Institute of Development Economics, 2003).

⁶ John Simpson and Edmund Weiner, *The Oxford English Dictionary* (Oxford: Oxford University Press).

Council of Common Interest. This collaboration is essential to address the current gaps and improve governance in higher education.

The second chapter deals with the delineation of responsibilities between federal and provincial government agencies in pre and post 18th amendment era. The study revolves the impact of 18th amendment on responsibilities of Federal and Provincial governments as well as the Council of Common Interest. Previously, the provincial governments were not allowed to do legislations regarding Higher Education sector; however, in post 18th amendment era the responsibilities of respective provincial governments have been increased immensely. Likewise, the responsibilities of Council of Common Interest have been increased accordingly.⁷ Nonetheless, the Federal government has been showing reluctance when it comes to the transfer of power as mandated in 18th constitutional amendment. It was recommended that strengthening the capacity of provincial higher education commissions is essential so that they can effectively manage their expanded roles.⁸

The third chapter deals with the autonomy of higher education sector in pre and post 18th amendment era and types of autonomy have been elaborated to comprehend the type of autonomy is available to Higher Education Commissions including Higher Education Institutions and the type of autonomy ought to be available to these commissions and institutions as mandated in post 18th constitutional amendment. Courts are trying to safeguard the autonomy of higher education institutions while not interfering in internal matters of universities. Though, it was responsibility of the Federal and Provincial governments to comprehend their status yet Courts have to interfere to fill the gap and facilitated the governments to accomplish the task. The depth analysis of available data and study of case laws showed that no substantial powers have been transferred to provincial commissions; however, universities enjoy more substantive autonomy and less procedural autonomy.⁹

The fourth chapter deals with redefining the role of federal and provincial governments in pre and post 18th amendment era. For that purpose the Governance Framework of Higher Education is required to be critically examined while considering the components of

⁷ Mustafa Impex Case PLD 2016 SC 808

⁸ Prof Dr Atta-ur-Rehman vs Federation of Pakistan and others Constitutional Petition No 34/2011, disposed of on 22.01.2013

⁹ Prof. Dr. Azam Ali Khawaja. "Management and Governance: Roles and Responsibilities of Federal and Provincial Authorities; Appointment, Autonomy, and Accountability of HEI Managers." pp. 28-32.

governance i.e. transparency, accountability, rule of law, participation of all stakeholders, inclusiveness and autonomy of Higher Education Institutions. There are several judgements in which court directed to improve the governance of universities. It was suggested to develop multifaceted approach while strengthening the institutions and balancing the autonomy with accountability. Further, to strengthen the Governance Framework of HEI a collaborative and balanced approach that empowers the provincial commissions, involve all stakeholders and leverage the judiciary's role is needed.

In Fifth chapter laws regarding appointment of vice chancellors; Federal Higher Education laws; Provincial Higher Education laws; policies of universities have been critically examined with the powers and duties of vice chancellors. All land mark judgements i.e Dr Aurangzeb PLD 2017 Lahore 489, Dr. Akmal case have been appraised in which courts tried to resolve the deadlock among federation and provinces by following the idea of cooperative federalism. It was suggested to circumscribe the powers of Higher Education Commission within the limits ordained by laws and constitution. A panel of experts consisting upon topmost academicians should be constituted to advise the Chief Minister and Governor in matters of appointment at higher level. Moreover, political interference should be reduced to the minimum in running the affairs of university for greater accountability and transparency in the higher education sector.¹⁰ Moreover, the maintainability of writ jurisdiction in case of public sector universities has been critically examined. The maintainability of writ jurisdiction in case of public sector universities is actually an accountability mechanism as Public sector universities get public funds in the form of budget support.¹¹ These public institutions must be answerable before public as they are getting benefit of tax. The writ jurisdiction on the basis of statutory and non-statutory rules has become a bone of contention for university employees. No legislative mechanisms had been provided in post Eighteenth amendment era to address the grievances of university employees, therefore; courts had to fill the gap between Higher Education Institutions and their employees by interpreting the doctrine of Master and Servant sagaciously.¹² There is a dire need to devise an effective & efficient regulatory and legislative framework for higher education sector while taking on board all major stakeholders i.e. Federal Government, Provincial governments, representative of universities, National Finance Commission and Council of Common Interest.

¹⁰ PLD 2017 Lahore 489

¹¹ 2024 SCP 44

¹² 2024 SCP 44; 2022 PLC service 1028; Altaf Junior Clerk; Naimatullah case No. 4576, 4588, 4589 of 2017

The Seventh chapter deals with impact of National Finance Commission Award on sustainability of Higher Education Institutions. The study tries to encompass the reasons to stick with the 7th award and ultimately its effect on provincial autonomy and development of higher educational institutions. The study tried to dig out the causes and effects of non-implementation of 8th, 9th and 10th awards simultaneously. Theoretically, an increased provincial share of the divisible pool provides provinces with more financial capacity to invest in higher education; nonetheless, distribution of these funds depend upon provincial autonomy practically. The non-implementation of 9th award would have drastic consequences on provincial autonomy and higher education in shape of hampering quality of education and affecting students' ability to compete globally in research and development. The continuous use of an obsolete formula exacerbates inter-provincial discrepancies and regional inequalities. Provinces with greater financial requirements such as Baluchistan and Khyber Pakhtunkhwa suffer disproportionately leading to increasing regional conflicts and a lack of national unity.¹³ There is a dire need to devise formula of distribution of resources periodically to ensure equitable development, provincial autonomy and national cohesion. The share of higher education sector should not be compromised for socio-economic and politico-legal development of society¹⁴ as financially sustained higher education institutions would create competent researchers, timely completed infrastructure projects and technological advancement.¹⁵

The Eighth chapter deals with the Legislative Framework of Higher Education Institutions in India and United Kingdom. The First one has been selected as we got independence on same time. The second one has been chosen on the basis that from where we got independence. The Legislative Framework of above mentioned countries has been studied with respect to autonomy of higher Education Institutors, appointment of VCs and Presidents of Universities, delineation of responsibilities between Federation and federating units, Governance Framework of Higher Education Institutions. The study showed that a robust Legislative Framework for Higher Education Institutions would have positive impact on society.

¹³ Pakistan Institute of Development Economics (PIDE), National Finance Commission Awards in Pakistan: A Historical Perspective (Karachi: PIDE, 2007), 3.

¹⁴ Mehmood, Tariq. "The Impact of Higher Education on Economic Growth in Pakistan." MPhil thesis, Lahore School of Economics, 2013, 78-95.

¹⁵ Ibid

1.2. A Critical Analysis of HEC Ordinance 2002 and Amended Acts 2019, 2021 & 2023

Pakistan's approach to higher education governance underwent a radical change in 2002 with the passage of the Higher Education Commission (HEC) Ordinance. The University Grants Commission (UGC) was in charge of managing the nation's higher education institutions (HEIs) before the passage of this legislation.¹⁶ But in a fast growing higher education industry, the UGC was perceived as having insufficient authority to oversee, finance, and guarantee the quality of education. As a result, the HEC was created to consolidate authority over higher education in Pakistan during the General Pervez Musharraf era.¹⁷ The goal of this centralisation was to promote a higher education system that was more cohesive, standardised, and globally competitive. The HEC was granted extensive power to monitor accreditation and quality assurance, manage funding, regulate HEIs, and create policies pertaining to research and faculty development.¹⁸ The HEC Ordinance 2002's primary focus was on a centralized governance model, which gave the federal government authority over all issues pertaining to higher education nationwide. This action was in line with other reforms implemented under Musharraf's rule, which aimed to improve efficiency in areas like health and education and streamline governance. Under this structure, the HEC became a strong organization with a great deal of autonomy. It had the authority to establish academic standards for all universities, identify degree-granting organizations, and allot funds for research and development. In order to improve the general caliber of higher education, the HEC was also tasked with making sure Pakistani universities followed international norms. Prior to the 18th Amendment, the HEC's role in changing the face of higher education through programs like faculty development, international education scholarships, and research project assistance was one of its greatest accomplishments.¹⁹ Additionally, the commission was essential in advancing scientific research and innovation, which helped Pakistani universities become more globally recognized. The HEC was also in charge of allocating both foreign and federal funds, making it the main source of funding for Pakistan's higher education system. But there were disadvantages to the HEC's centralized power as well. Provincial governments became

¹⁶ University Grant Commission Act 1974

¹⁷ HEC Ordinance 2002

¹⁸ Section 10 of HEC Ordinance 2002

¹⁹ Subsection 1 of Section 10 of Ordinance

increasingly dissatisfied since they had little influence over higher education policy.²⁰ After the 18th Constitutional Amendment was passed in 2010, which significantly changed Pakistan's administration system by giving the provinces more authority, this discontent grew.²¹

A significant shift in Pakistan's political and administrative environment was brought about by the 18th Amendment to the Constitution. It aimed to transfer authority from the federal government to the provincial governments in a number of areas, such as education, agriculture, and health. The amendment's goal was to give the provinces more autonomy so they could customize policies to fit their particular requirements and situations. Higher education, however, turned into a contentious issue. Higher education was not directly stated, but general education was clearly transferred to the provinces.²² Rather, issues of "national importance," such as "standards in institutions for higher education and research, scientific and technical institutions," were set apart for the federal government by the Federal Legislative List (Part II), which placed them under the jurisdiction of the Council of Common Interests (CCI).²³ A complicated scenario resulted from this unclear separation of authorities. On the one hand, the federal HEC maintained its control over higher education by claiming that it was within its jurisdiction to establish standards for HEIs. However, provincial governments, especially those in Punjab and Sindh, contended that they ought to have the authority to create and oversee their own higher education institutions because education had been decentralized. In certain places, this resulted in policy stagnation, jurisdictional difficulties, and legal problems. The Court tried to sort out this issue in Dr Aurangzeb Alamger case by introducing Cooperative Federalism.²⁴ In theory, the CCI was intended to act as a platform for settling disagreements regarding shared governance between the federal and provincial governments. Its efficiency in resolving these conflicts has been questioned, though. The CCI took on the duty of establishing minimal requirements for higher education, with participation from both the federal and provincial governments. However, it was still unclear how exactly the federal HEC and provincial governments would share authority. Due to overlapping jurisdictions and inconsistent policy

²⁰ Rasool, Shafqat, Khuda Bukhsh, and Muhammad Shabbir Ali. "Impediments in the Quality Assurance of Higher Education Sector of Pakistan." *Global Social Sciences Review* 4, no. 4 (Fall 2019): 52–60. <https://doi.org/10.5281/zenodo.4387174>.

²¹ 18th Amendment of 2010

²² Zia, Tayyaba, Liu Bangfan, Muhammad Fayyaz Khokhar, Muhammad Sharif, Shamshad Akhter, and Muhammad Imtiaz Hussain. "Higher Education Policy in Pakistan: Challenges and Opportunities in Global Context." *Universal Journal of Educational Research* 8, no. 2 (2023): 208–218

²³ Entry 12 Part II Eighteenth Amendment

²⁴ PLD 2017 489 (Dr. Aurangzeb case)

implementation, this legal ambiguity has made it difficult to control higher education in Pakistan.²⁵

Amendments to the HEC Ordinance were proposed in 2019 and 2021 in response to these issues. The 2019 amendment limited the commission's autonomy by cutting the HEC chairperson's term from four to two years in an attempt to resolve some governance concerns. The amendment also changed the commission's makeup to improve government oversight and added stronger accountability procedures for the chairperson's removal. The federal government's intention to retain control over higher education policy in spite of provincial efforts for decentralization was reflected in these revisions, which marked a shift towards strict oversight of the HEC.²⁶ The 2021 amendment increased direct intervention from the federal government and the Ministry of Education, substantially reducing the autonomy of the HEC. Particularly when it came to finance and the establishment of national standards for higher education, the amendment gave the federal government additional authority over the commission's decision-making procedures.²⁷ This change signaled a reassertion of government power over higher education governance and represented a substantial break from the HEC's founding vision as an autonomous regulatory organization. The HEC had total authority over Pakistan's higher education system prior to the 18th Amendment. A consistent policy framework that applied to all HEIs in the nation was made possible by its centralized governance style. The central government's power was unquestioned, and provinces did not meddle in issues pertaining to higher education. This made it possible to implement higher education policy consistently, which some contend helped Pakistani universities become more high-quality and globally competitive during that time. The governance of higher education, however, got much more complicated following the 18th Amendment.²⁸ Power disputes and jurisdictional difficulties resulted from the devolution of powers to the provinces and the unclear allocation of duties between the federal HEC and provincial governments. The issue was made more difficult by the creation of provincial higher education authorities, especially in Punjab and Sindh, which resulted in policy disputes and irregularities in the nation's higher education governance.

²⁵ Ibid

²⁶ HEC Amended Act 2019

²⁷ HEC Amended Act 2021

²⁸ Zia, Tayyaba, Liu Bangfan, Muhammad Fayyaz Khokhar, Muhammad Sharif, Shamshad Akhter, and Muhammad Imtiaz Hussain. "Higher Education Policy in Pakistan: Challenges and Opportunities in Global Context." *Universal Journal of Educational Research* 8, no. 2 (2023): 208–218

The 2019 and 2021 amendments show an attempt to recentralize control over higher education, with the federal government aiming to keep control over important areas including funding and standard-setting.²⁹ The conflicts between provincial autonomy and federal supervision, however, have not been settled. The ability of the federal and provincial administrations to manage these overlapping jurisdictions will probably determine how higher education is governed in Pakistan in the future. To make clear the functions and duties of the federal HEC and provincial governments, more legislative actions might be required. Furthermore, it could be necessary for the CCI to take a more active part in resolving conflicts and making sure that a consistent and successful higher education strategy is upheld nationwide.³⁰

The HEC (Amendment) Acts 2023 have sparked mixed reactions, highlighting concerns about higher education governance in Pakistan. Critics argue that by increasing federal control over the HEC, the amendments undermine its independence and risk politicizing key decisions, such as appointing vice-chancellors, distributing funds, and setting academic standards. Supporters, however, view the changes as steps to improve accountability and fix inefficiencies. Yet, the amendments fail to address the broader issues of federal and provincial roles under the 18th Amendment, adding to governance challenges. Without a unified policy framework and stakeholder input, these changes risk deepening existing problems rather than resolving them.³¹

1.3. A Critical Analysis of Section 10 of HEC Ordinance and section 40 of Federal Universities Ordinance, 2002

To make my discussion more clear and unambiguous it is imperative to comprehend the importance of section 10 of HEC Ordinance and section 40 of Federal Universities Ordinance 2002. The comparative analysis of both sections will indicate loopholes in HEC before 18th Constitutional amendment. A critical analysis of section 40 of Federal Universities Ordinance would clear the whole picture.³² While analyzing both of the sections the concept of power and authority of HEC, autonomy and regulation made by HEC, the accountability mechanism & transparency while giving suggestions for improvement the whole structure of

²⁹ Published in Gazette of Pakistan 2019, Higher Education Commission (Amendment) Act, 2019

³⁰ Higher Education Commission (Amendment) Ordinance 2021

³¹ HEC amended Act 2023

³² Section 40 of Federal Universities Ordinance 2002, Published in Gazette of Pakistan

Higher Education would be presented. Before making a comparative analysis I would like to discuss the section 40 of the FU Ordinance 2002.

A key component of Pakistan's higher education system's governance structure, particularly for universities under federal control, is the Federal Universities Ordinance of 2002. This ordinance, which was enacted to simplify governance, sought to establish a uniform framework for a number of universities that were previously subject to separate Acts. Section 40 which grants the federal government the authority to send notifications to put specific universities under its control, is one of the ordinance's most important clauses. Although this clause has a lot of potential, it hasn't been put into practice very much. A deeper examination of the legislative framework, the state of its execution, and the connection between this ordinance and the current university-specific Acts is necessary to comprehend Section 40 and its ramifications. The Federal Universities Ordinance's Section 40 gives the federal government the power to formally notify universities that fall within its purview through the official Gazette. This implies that the government can choose which universities will be subject to this ordinance's regulations using this technique. The government has the authority to change the Schedule, which is attached to the ordinance, by adding new institutions or eliminating those that are already listed.³³ The law essentially establishes a framework for centrally governing universities, contingent upon the government's choice to include them in the ordinance through a formal legal process. Nevertheless, there isn't much proof that Section 40 has been actively or generally used, even if it is a provision. The federal government has not yet sent out any broad notices to put all of the universities on the Schedule under the purview of the Federal Universities Ordinance. Despite being a legally binding document, the ordinance's practical use is still restricted because Section 40 has not been completely operationalized through the necessary notifications. Consequently, universities listed in the Schedule, including Quaid-e-Azam University and Allama Iqbal Open University, continue to operate in accordance with their respective legislative acts, including the Quaid-e-Azam University Act of 1973. The Federal Universities Ordinance is officially in place but does not actively govern these universities because they continue to operate under their own governance structures, which were put in place long before the code took effect. As a result, the Federal Universities Ordinance is still in a relatively inert state. Although the legal structure is in place, the ordinance has not been completely implemented across the universities it was intended to

³³ Section 40 of Federal Universities Ordinance 2002, Published in Gazette of Pakistan

regulate since the required notifications to activate Section 40 have not been sent out. Because of this, there is now a legal limbo in which the law is in place but has no real impact on how the listed universities are run.³⁴ As a result, the ordinance has not superseded the separate legislative frameworks that were previously in place for these universities, which are still governed by their own Acts. This raises a crucial query: is it possible for the Federal Universities Ordinance and the several Acts that regulate institutions to coexist? If the federal government were to make the required notifications, the ordinance might theoretically work in tandem with the individual university Acts. As a result, a parallel governance structure would be established, in which institutions would retain some degree of autonomy under their respective legislative acts while the ordinance would offer general norms. This parallel framework hasn't been formed, though, because Section 40 hasn't been used properly. The Federal Universities Ordinance is not actively being implemented, there is no imminent conflict between these Acts and the universities' continued autonomy under their governing Acts. For instance, there has been no official announcement under Section 40 to place Quaid-e-Azam University under the purview of the Federal Universities Ordinance; instead, it runs under the Quaid-e-Azam University Act of 1973.³⁵ In a similar vein, other universities mentioned in the ordinance's Schedule are exempt from the ordinance's restrictions and are still able to operate in accordance with their own Acts. Universities now operate under a variety of laws and regulations, depending on whether they are subject to particular Acts or, in theory, the Federal Universities Ordinance, which is still unenforced. This has resulted in a fragmented governance structure.³⁶

Because it gives the federal government the authority to change the Schedule that is attached to the law, Section 40 of the ordinance is essential. The universities to whom the ordinance may be applicable are listed in this Schedule. Through a formal notification procedure, the government is able to add new universities to this list or delete existing ones. In this fashion, the ordinance's implementation begins with Section 40.³⁷ The ordinance cannot be applied effectively without this notification procedure. According to the clause, in order to change the Schedule—either by adding new universities or eliminating existing ones—the

³⁴ Section 40 of the Federal Universities Ordinance of Pakistan. Government of Pakistan, Islamabad, 2002.

³⁵ QAU Act 1973

³⁶ Rasool, Shafqat, Khuda Bukhsh, and Muhammad Shabbir Ali. "Impediments in the Quality Assurance of Higher Education Sector of Pakistan." *Global Social Sciences Review* 4, no. 4 (Fall 2019): 52–60.

³⁷ Federal Universities Ordinance, 2002, Ordinance No. CXXXIII of 2002, Gazette of Pakistan, Extraordinary, December 27, 2002.

federal government must publish a notice in the official Gazette. This implies that, based on its policy choices, the federal government may at any time place an institution under the ordinance's authority or remove it from it. Although this flexibility permits possible modifications to the way higher education institutions are governed, it also emphasizes how dependent the law is on governmental action to be carried out.³⁸ The ordinance cannot be regarded as a fully functional regulating framework in the absence of these notifications. The Federal Universities Ordinance's inert state is indicative of larger problems with Pakistan's higher education system. Although this law gives the federal government the legal right to consolidate control over universities, this power has not been fully utilized. As a result, the universities are now controlled by their own Acts and enjoy a degree of autonomy, with the ordinance remaining an underutilized legal tool in the background. In conclusion, Section 40 of the Federal Universities Ordinance of 2002 has the potential to establish a centralized system of governance for Pakistan's federal universities. However, because formal notifications under Section 40 have not been made, the ordinance has not been widely enforced. Because of this, universities continue to function in accordance with their own legislative acts, and the ordinance is essentially inert. A legal vehicle for centralized control is provided by the clause enabling the federal government to change the Schedule and bring universities under its authority; nonetheless, the ordinance has not emerged as a significant force in the governance of higher education in the absence of government action. The Federal Universities Ordinance is in a legal limbo until additional action is done, and the balance between individual university Acts and the ordinance is still up for debate.³⁹

Section 10 of the Higher Education Commission (HEC) Ordinance and Section 40 of the Federal Universities Ordinance 2002 both address essential aspects of governance in higher education in Pakistan, though they focus on distinct elements of this framework. The Higher Education Commission's independence and authority to regulate the nation's higher education system are covered in Section 10 of the HEC Ordinance. It gives the HEC the power to establish guidelines, control academic standards, and guarantee the growth of Pakistan's higher education establishments. This clause gives the HEC the authority to establish guidelines for curriculum development, research, and instruction. Additionally, it grants the HEC the

³⁸ Zia, Tayyaba, Liu Bangfan, Muhammad Fayyaz Khokhar, Muhammad Sharif, Shamshad Akhter, and Muhammad Imtiaz Hussain. "Higher Education Policy in Pakistan: Challenges and Opportunities in Global Context." *Universal Journal of Educational Research* 8, no. 2 (2023): 208–218

³⁹ Rasool, Shafqat, Khuda Bukhsh, and Muhammad Shabbir Ali. "Impediments in the Quality Assurance of Higher Education Sector of Pakistan." *Global Social Sciences Review* 4, no. 4 (Fall 2019): 52–60.

authority to evaluate university performance and make sure that academic and administrative standards are maintained.⁴⁰ In a nation where education is constitutionally recognized as a provincial matter, this clause is crucial in consolidating authority over the quality and standards of higher education under a federal organization. In reality, this has sparked continuous debates concerning the proper ratio of federal to provincial duties, particularly in the wake of the 18th Amendment's expansion of provincial autonomy. Section 40 of the Federal Universities Ordinance 2002, on the other hand, deals with the responsibility and financial management of federal institutions. It specifies that federal universities must maintain financial independence while yet answering to the federal government and following specific financial supervision guidelines. Guidelines for universities' financial management and reporting are included in this part, with an emphasis on accountable and transparent financial governance. This is intended to protect against financial mismanagement while allowing universities to function without direct government oversight of their daily financial choices.⁴¹ But because Section 40 calls for federal inspection, it establishes a degree of accountability that occasionally calls into question the actual degree of autonomy enjoyed by federal universities. In contrast, Section 40 of the Federal Universities Ordinance is more focused on financial autonomy within the larger framework set up by the HEC and the federal government, whereas Section 10 of the HEC Ordinance is more expansive and focusses on the overall regulatory authority over universities. The conflict between accountability and autonomy in Pakistan's higher education system is brought to light by the way these two components interact.⁴² The general authority granted to universities under Section 40 and the HEC's general authority established by Section 10 may overlap, particularly when it comes to financial and administrative issues.⁴³ The appropriate extent of the HEC's control over federally chartered institutions and their internal governance, particularly with regard to financial independence and self-governance, has been the subject of numerous legal challenges and discussions as a result of this overlap. In conclusion, Section 40 of the government Universities Ordinance stresses financial autonomy with government control for accountability, while Section 10 of the HEC Ordinance stresses a centralized approach to upholding quality and defining standards throughout the nation's higher education system. A recurrent problem in Pakistan's higher education policy landscape, these rules

⁴⁰ Federal Universities Ordinance, 2002, Ordinance No. CXXXIII of 2002, Gazette of Pakistan, Extraordinary, December 27, 2002.

⁴¹ Muhammad Nadeem Qureshi and Safdar A. Khan, *Higher Education in Pakistan: Issues and Challenges* (Karachi: Oxford University Press, 2024).

⁴² Naveed Ahsan, *the Future of Higher Education in Pakistan* (Lahore: Vanguard Books, 2023).

⁴³ Section 10 of HEC and 40 of FUO 2002

collectively highlight the difficult dynamic of striking a balance between institutional independence and regulatory control.⁴⁴

1.4. A Critical Analysis of Different Provisions of Acts of Sindh HEC, Punjab

HEC, Federal HEC with respect to their Powers and Functions

The Higher Education Commission Ordinance, 2002, a federal law that gives the body broad authority over higher education throughout Pakistan, established the Higher Education Commission of Pakistan (HEC). According to the ordinance's Sections 10 and 11, the HEC's duties include establishing minimum academic requirements, accrediting degree programs, managing funding distributions, and advising the federal government on matters pertaining to higher education policy.⁴⁵ The HEC can set standards, certify institutions, supervise degrees, aid in university development through grants and scholarships. The HEC is empowered to certify and recognize degrees and regulate both public and private universities to uphold quality standards under Section 11, which deals with accreditation and certification. According to legal experts like Dr. Imran Haider in "Higher Education Governance in Pakistan," these centralized authorities are meant to guarantee a consistent level of education across the country.⁴⁶ However, disputes across jurisdictions have arisen as a result of this centralized supervision, particularly when the 18th Amendment gave provincial authorities more authority over education. According to commentators, such as Mehmood Bukhari in "Federalism and Education Law in Pakistan," the Constitution's call for provincial autonomy may be in conflict with the HEC's extensive powers. Critics contend that the HEC's centralized authority over curriculum and standards restricts the provinces' capacity to adapt instruction to their own requirements. Supreme Court rulings that highlight the post-18th Amendment legislative autonomy of the provinces lend credence to this viewpoint.⁴⁷

The Punjab Higher Education Commission Act of 2014 established the Punjab Higher Education Commission (PHEC) to oversee and control Punjabi universities. However, the HEC's regulatory restrictions, especially those pertaining to funding and academic standards, limit the PHEC's power. The Act's Section 4 outlines the PHEC's duties, which include advising

⁴⁴ Ibid

⁴⁵ Section 10 and 11 of the HEC Ordinance

⁴⁶ Imran Haider, Higher Education Governance in Pakistan (Karachi: Oxford University Press, 2020), 45.

⁴⁷ Autonomy of Higher Education Institutions in Pakistan: A Case Study of University of Education, Lahore P 15-24 IISTE Public Policy and Administrative Research Vol 3, No 12, 2013

the provincial government on higher education, creating quality assurance standards at the provincial level, and creating policies for faculty development. The PHEC must match its operations with HEC standards, particularly with regard to accreditation, curricula, and financial grants, as stipulated in Section 6 of the Act, which deals with coordination with the HEC. According to legal experts like Muhammad Tauseef in "Education Law in Punjab," Section 6 restricts the PHEC's independence by requiring it to abide by HEC regulations.⁴⁸ They argue that this weakens the constitutional autonomy provided by Article 137, which gives provinces legislative responsibility over education, and limits the PHEC's capacity to create educational standards specific to Punjab's requirements. According to Tauseef, the Act's reliance on HEC standards could not be in line with the Constitution's spirit, which seeks to grant provinces legislative autonomy in areas like education.⁴⁹

The Sindh Higher Education Commission Act of 2013 created the Sindh Higher Education Commission (SHEC), which was tasked with promoting and regulating higher education in Sindh. In order to give Sindh greater authority over its educational institutions, this act was introduced after the 18th Amendment. According to Section 4 of the Act, SHEC is empowered to oversee and supervise institutions in Sindh, provide policy recommendations to the provincial government, and provide funding for higher education initiatives in the region.⁵⁰ Nonetheless, SHEC must function within the parameters set by the HEC, especially with regard to curriculum and accreditation, as stipulated in Section 9 of the Act, which describes SHEC's relationship with the HEC. In her article "Provincial Autonomy in Education Post-18th Amendment," Dr. Aneela Zuberi criticises Section 9, claiming that it contradicts the 18th Amendment's goal by bolstering HEC's overall power. Zuberi cites case law, such as the 2014 case "University of Sindh v. Federation of Pakistan," in which the Sindh High Court stressed the importance of provincial autonomy in matters pertaining to education. In order to respect the constitutional goal of provincial autonomy, the court's position favors a reasonable division of duties between HEC and SHEC.

When comparing the HEC⁵¹ to the PHEC⁵² and SHEC⁵³, it becomes clear that there is a persistent jurisdictional conflict because the provincial commissions are operationally

⁴⁸ Muhammad Tauseef, *Education Law in Punjab* (Lahore: Punjab Law Books, 2018), 75.

⁴⁹ Hoodbhoy, Pervez. "Pakistan's Reform Experiment." *Nature* 461, no. 7263 (September 3, 2009): 38

⁵⁰ Section 4 of Sindh Higher Education Commission Act 2013; Act XI of 2013

⁵¹ HEC Ordinance 2002

⁵² THE PUNJAB HIGHER EDUCATION COMMISSION ACT 2014, Act 1 of 2015

⁵³ Sindh Higher Education Commission Act 2013; Act XI of 2013

dependent on the HEC even though they are legally required to govern higher education within their respective jurisdictions. Legal scholars, including Justice (R) Asadullah Malik in "Constitutional Conflicts in Higher Education," contend that the extensive authority granted to the HEC by the 2002 Ordinance, especially with regard to funding and accreditation, prevents the provincial commissions from having true legislative autonomy. Funding is one of the main legal concerns. Due to their lack of separate revenue streams, the PHEC and SHEC are both dependent on the HEC for funding. To some extent Sindh government is providing funding to meet the needs of province. The situation in Punjab dismal. Legal challenges have been made to this financial reliance, with analysts like Ali Khan arguing that HEC's funding authority goes against the provincial fiscal autonomy protected by Article 160, which creates the National Finance Commission to guarantee fair funding distribution among the provinces. Khan contends that the NFC's mandate suggests that provinces ought to have greater authority over the money allotted to provincial institutions—a matter that federal education policy has not yet adequately addressed.⁵⁴ Accreditation and quality standards are another point of debate. The HEC Ordinance's Section 11 restricts the PHEC and SHEC's capacity to independently accredit programs by giving HEC sole control over accreditation. Article 142(b) of the Constitution grants the provinces the authority to enact laws on topics not on the federal legislative list. According to Syed Anwar's argument in "Federal Constraints on Provincial Education Reform," this violates that clause. Provincial supporters contend that local commissioners have to have the latitude to handle particular regional issues, even as federal authorities stress the significance of upholding uniform educational standards across the country. Conflict also arises in the domain of curriculum creation. The HEC Ordinance restricts the PHEC and SHEC's ability to adopt curricula that are appropriate for provincial needs by granting the HEC the authority to standardize curricula across the country. According to Dr. Rashid Mehmood's article "Provincial Sovereignty in Pakistan," Article 153, which creates the Council of Common Interests (CCI), may serve as a platform for resolving disputes between federal and provincial entities regarding curriculum standards. Mehmood contends that rather than using the HEC's exclusive power, curriculum policy should ideally be harmonized through CCI debates.⁵⁵

⁵⁴ Article 160 of Constitution of Pakistan 1973

⁵⁵ Ahmed, Muneer, and Shafei Moiz Hali. "Accountability in the Governance of Higher Education Institutions in Pakistan." *Journal of Contemporary Studies* 12, no. 1 (Summer 2023): 105-125

Despite the Constitution's guarantees of provincial sovereignty, the centralization of higher education regulation has resulted in inefficiencies and a decreased ability to respond to local educational requirements. Because of the HEC's centralized control, the PHEC and SHEC are both constrained in their ability to adequately handle their particular province issues. In accordance with Article 137 and the decentralization required by the 18th Amendment, scholars like Dr. Sara Ali in "Higher Education Federalism in Pakistan" suggest reforms that would define HEC's role in establishing national policy while granting provincial commission's financial and regulatory autonomy. The HEC Ordinance could need to be changed to provide provincial bodies more financial power in order to strike a balance between regional autonomy and national standards. The NFC might even be able to provide specific funding to provincial commissions directly. Furthermore, assigning the CCI some tasks, such as curriculum supervision and quality assurance, may make it easier for the HEC, PHEC, and SHEC to work together, allowing educational policies to better meet the needs of various geographical areas while preserving a unified national framework.⁵⁶

In conclusion, this comparison of the HEC, PHEC, and SHEC shows that a new regulatory framework that strikes a balance between the federal and provincial roles in higher education is required. The higher education system in Pakistan might become more responsive, effective, and egalitarian across all provinces if the current model is changed to acknowledge provincial rights while maintaining unified national standards.⁵⁷

1.5. Legislative Framework: Pre and Post Eighteenth Amendment Era

The 18th Amendment to the Constitution, which was passed in 2010, significantly changed the legislative framework for higher education in Pakistan by redefining the roles of the federal and provincial governments, particularly with regard to the regulation and governance of higher education. Prior to this amendment, the Concurrent Legislative List, which gave both the federal and provincial governments the authority to enact laws pertaining to education, included higher education. Because of this arrangement, the federal government had significant influence over education policy, even if the provinces had some say.⁵⁸ An important milestone was reached in 2002 when the Higher Education Commission (HEC), a federal agency tasked with modernizing Pakistan's higher education system, took the place of

⁵⁶ Autonomy of Higher Education Institutions in Pakistan: A Case Study of University of Education, Lahore

⁵⁷ Ibid

⁵⁸ Constitution (Eighteenth Amendment) Act, 2010, President's Assent Received April 19, 2010

the University Grants Commission (UGC). In order to guarantee uniform educational quality across the country, the Commission was given the authority to create national policies, authorize university charters, establish curriculum requirements, and distribute public monies to universities directly under the HEC Ordinance.⁵⁹ Particularly through programs for faculty development, research financing, and quality assurance, the HEC's centralized power helped to significantly raise academic and research standards. Pakistan's higher education measures, such as enrolment rates and research publications, grew as a result of these efforts. However, a major change was brought about by the 18th Amendment's ratification on April 19, 2010, which eliminated the Concurrent Legislative List and gave the provinces sole authority over a number of topics, including education. Although this amendment gave provinces the freedom to create policies that are suited to local educational, cultural, and socioeconomic needs, it omitted the word "higher education," which left room for debate over whether or not the federal government should still have some role in higher education management.⁶⁰ In line with the federal principle, this decentralization gave provinces more legislative power but also presented significant difficulties because they now had to set up systems for governance, funding, and quality control. Provinces started creating their own higher education commissions in reaction to this growing autonomy. For instance, the Sindh Higher Education Commission (SHEC) was established in 2013 and Punjab established the Punjab Higher Education Commission (PHEC) in 2014.⁶¹ These provincial organizations were created to oversee provincial financing and policy within each province while attending to local issues. Nonetheless, the federal HEC persisted in claiming its role, particularly with regard to national standards and degree recognition, contending that upholding a unified national framework was necessary for both international recognition and the mobility of staff and students. This resulted in a number of court decisions where the judiciary clarified the HEC's jurisdiction in the context of the 18th Amendment.⁶² For example, the Supreme Court held in *Federation of Pakistan v. Government of Sindh* (2015) that the federal HEC had the power to establish standards in higher education, particularly for degree recognition and certification, in order to guarantee uniformity throughout Pakistan. Although it permitted provinces to enact laws on their own on other areas of education, this ruling emphasized the federal HEC's crucial role in standard-setting.

⁵⁹ Section 10 of HEC Ordinance 2002

⁶⁰ Constitution (Eighteenth Amendment) Act, 2010, President's Assent Received April 19, 2010

⁶¹ THE PUNJAB HIGHER EDUCATION COMMISSION ACT 2014, Act 1 of 2015

⁶² PLD 2017 489 (Dr. Aurangzeb case)

The question of finance has made striking a balance between federal supervision and regional authority even more difficult. Even though education is now within the jurisdiction of the provinces, the federal government still gives the HEC a sizable amount of money to distribute among the nation's institutions. Even as provinces handle local educational issues, federal influence endures due to the continued need on federal funds, especially in less wealthy provinces with limited resources. Although provinces were given larger budgets by the 7th National Finance Commission (NFC) Award, which was announced in 2009, shortly before the 18th Amendment, many universities still depend on federal money to pay for their operating expenses.⁶³ These changes demonstrate the hybrid type of higher education governance that has developed in Pakistan, where provinces have authority over institutional management and regional educational policy but the HEC maintains jurisdiction over finance, accreditation, and standard-setting. As seen by disagreements over funding distributions for particular projects or institutional support, this hybrid system has created enduring difficulties, especially where federal and provincial objectives diverge. In the end, the federal HEC's role in preserving quality and uniformity highlights an effort to strike a balance between provincial autonomy and national standards, even if the 18th Amendment signaled a clear shift towards decentralization and provincial authority in education. This complex structure recognizes the advantages of localized management as well as the necessity of a single, industry-wide standard, reflecting the continuous attempts to modify and rethink higher education governance in Pakistan.⁶⁴

Crux of the discussion is that since Pakistan's inception, higher education has faced numerous challenges. Historically, no significant measures have been taken to promote it. The interim constitution (1947-1956) placed education under provincial control, and although the 1962 constitution shifted power to the central legislature, education remained largely a provincial matter. The 1973 Constitution saw the federal government play a dominant role in educational policy, planning, curriculum, and standards. Various education policies were developed through consultations with federating units, including notable documents like the 1947 National Educational Conference Report and subsequent policy proposals up to the 2009 National Education Policy. Early efforts, such as the 1947 and 1951 National Education Conferences, highlighted the need for trained teachers and expanded primary education, but

⁶³ "Distribution of Revenues and Grant-in-Aid Order, 2010," President's Order No. 5 of 2010, July 1, 2010, Pakistan Gazette.

⁶⁴ Ahmed, Muneer, and Shafei Moiz Hali. "Accountability in the Governance of Higher Education Institutions in Pakistan." *Journal of Contemporary Studies* 12, no. 1 (Summer 2023): 105-125

they failed to achieve desired results. The 1959 National Education Commission's report was a landmark, addressing higher education, vocational training, and teacher prosperity, and recommending structural changes like increasing graduation course duration from two to three years.⁶⁵ The 1974 establishment of the University Grants Commission (UGC) aimed to ensure uniform policies and coordination among universities, focusing mainly on funding and ethical standards. The creation of the Higher Education Commission (HEC) marked a significant shift, broadening the scope beyond grants to include ranking systems, syllabus design, recruitment processes, and PhD scholarships. The HEC's reforms aimed to improve Pakistani universities' international rankings and overall educational standards, in coordination with professional councils like the Engineering, Medical, Dental, and Bar Councils. The Punjab HEC aims to enhance the quality of higher education in Punjab by providing equitable access, fostering market-oriented skills, and bridging the gap between public and private institutions. PHEC has initiated faculty development programs, foreign scholarships, and post-doctoral fellowships to elevate academic standards and socio-economic relevance.⁶⁶ Conversely, the Sindh Higher Education Commission (SHEC) focuses on policy formulation, evaluation councils, financial review, and setting high standards for higher education to promote socio-economic development.⁶⁷ Both commissions, despite their established roles, face practical limitations and lacunas in their legislative frameworks.

1.6. The Need for a New Regulatory and Legislative Framework

Pakistan's governance was drastically altered by the 2010 due to 18th Amendment to the Constitution, which gave the provinces considerable authority over the central government. The amendment's goal was to increase provincial autonomy by giving provinces more authority over areas that were previously under federal control, like natural resources, health, and education. But in areas where national uniformity is essential, the devolution of power in the absence of a unified regulatory framework has led to a number of governance problems. The necessity for a new legal and regulatory framework that can more clearly define roles, resolve jurisdictional uncertainties, and advance uniform standards throughout all provinces is highlighted by this change in legislative authority.⁶⁸ A system like this may provide a balance

⁶⁵ Pakistan Institute of Development Economics (PIDE), National Finance Commission Awards in Pakistan: A Historical Perspective (Karachi: PIDE, 2007), 3.

⁶⁶ Section 4 deals Functions and 5deals with Powers of the Commission of PHEC Act 2014

⁶⁷ Section 4 deals with Functions, 5 deals with Powers, and Six deals Advisory under SHEC Act 2013

⁶⁸ Imran Haider, Higher Education Governance in Pakistan (Karachi: Oxford University Press, 2020), 45.

between national unity and provincial autonomy, which is necessary for efficient governance and the seamless operation of important sectors.

Ambiguity in jurisdiction and power is one of the main problems brought forth by the 18th Amendment. The amendment gave the provinces a lot of authority, but it didn't specify how the federal and provincial governments would work together, especially in areas like higher education that need a single national plan. Originally created as a federal regulatory organization, the Higher Education Commission (HEC) has been at the center of jurisdictional disputes as provinces have questioned its authority and pushed for separate state authorities.⁶⁹ Disparities in educational quality and institutional accountability result from this fragmented system, where various standards and policies are applied in different regions.

Additionally, it is becoming more and clearer that standards for higher education need to be consistent. Provinces have established their own Higher Education Commissions since the amendment, each with unique standards and procedures. Academic curriculum, degree recognition, and general educational quality could become inconsistent due to the absence of a centralized standard-setting body.⁷⁰ For example, problems with the accreditation and cross-provincial transferability of degrees have surfaced, affecting students' educational mobility and career prospects. In order to guarantee that all universities follow national standards without compromising provincial authority over administrative matters, a single legal framework might set up procedures for collaboration between federal and provincial entities. According to legal scholars, if properly coordinated, such a dual-layered regulatory framework may mimic successful federal systems like the United States, where academic excellence is maintained while maintaining both national and state standards in education.⁷¹

Financial autonomy and revenue sharing are still another major obstacle. Although the 18th Amendment gave the provinces more authority, it did not enhance their financial resources proportionately, therefore the provinces continued to depend on the federal government for funding. Although the provinces receive allocations from the National Finance Commission (NFC), these funds have frequently not been enough to support the expanded scope of

⁶⁹ Ibid

⁷⁰ Ahmed, Muneer, and Shafei Moiz Hali. "Accountability in the Governance of Higher Education Institutions in Pakistan." *Journal of Contemporary Studies* 12, no. 1 (Summer 2023): 105-125

⁷¹ Ibid

provincial responsibilities.⁷² Given this, numerous provincial governments have found it difficult to enact significant reforms in sectors like education and health. Legal experts contend that defining funding methods that provide provinces more financial autonomy and resource-generation capacities requires a stronger foundation. Reducing reliance on federal funding and encouraging more responsibility in resource use could be achieved by giving provinces the authority to raise and administer their own money.⁷³

Since the amendment, the absence of efficient dispute resolution procedures has also gained attention. Although it was created as a platform for settling conflicts between the federal and provincial governments, the Council of Common Interests (CCI) has frequently only been used to handle crises rather than actively avert them. For instance, disagreements about the HEC's and other regulatory organizations' authority have frequently been postponed or not satisfactorily settled, resulting in protracted misunderstandings and operational friction. Public administration and constitutional law experts contend that a revised framework may provide the CCI more authority to settle intergovernmental conflicts more quickly and efficiently, fostering better collaboration between federal and provincial entities.⁷⁴ One example of the difficulties in striking a balance between responsibility and autonomy is the governance of higher education institutions. In order to promote academic freedom, university governance must be sufficiently independent while still maintaining oversight to guarantee adherence to national standards. The nomination of vice-chancellors and other administrative positions is one area where provincial governments have occasionally meddled in university internal affairs, raising worries about political influence compromising institutional independence. By introducing merit-based rules for university appointments, a new framework might lessen political meddling and safeguard academic institutions' integrity.⁷⁵ By guaranteeing that competent individuals lead these institutions without excessive political interference, such norms would protect both the public interest and the autonomy of educational institutions, according to legal documents on university governance.

⁷² Pakistan Institute of Development Economics (PIDE), National Finance Commission Awards in Pakistan: A Historical Perspective (Karachi: PIDE, 2007), 3.

⁷³ Uddin, Fasih. "Analyzing the Seventh NFC Award and Its Implications." *Policy Perspectives* 7, no. 2 (July-December 2010): 115-126. London: Pluto Journals, 2010.

⁷⁴ Khan, Ali. "The Role of the Council of Common Interests in Higher Education Governance in Pakistan: A Pre-18th Amendment Perspective." *Pakistan Journal of Social Sciences* 29, no. 1 (2010): 75-88.

⁷⁵ PLD 2017 489

Theories like multilevel governance are useful in analyzing the fundamental structure of such a framework. Multilevel governance theory offers a model for shared authority across many levels of government, enabling decentralized cooperation. It has been used in federal systems such as those of Canada and Germany. This strategy might make it easier for Pakistani federal and provincial authorities to work together, resulting in a flexible governance framework that upholds national norms while honoring local authority. According to comparative federalism researchers, multilevel governance might be used in Pakistan to resolve conflicting roles and expedite decision-making across provincial and federal borders. Legal precedents and judicial evidence further highlight the necessity for a new regulatory and legislative framework.⁷⁶ The shortcomings of the current structure have been highlighted by the numerous legal issues that have emerged regarding the appointment of university vice-chancellors and the scope of provincial HEC jurisdiction. The need for clear legislative procedures to stop jurisdictional disputes from escalating into court is highlighted by the judicial involvement in these cases. Concerns over the caliber and acceptance of degrees across the country have also been raised by provincial HEC reports that have shown differences in adherence to quality criteria. This discrepancy affects Pakistan's standing as an academic nation internationally in addition to the educational experiences of its pupils. Greater equity and consistency could be promoted via a revised framework that harmonizes educational standards across jurisdictions.⁷⁷

Lastly, there are still issues with political interference in university administration. The necessity for open, independent processes that put institutional quality and integrity first has been highlighted by a number of instances of political meddling in university governance, such as the selection of vice-chancellors. Institutional independence would be strengthened by legal structures that guarantee merit-based nominations, prioritizing academic achievement over political goals. Given these difficulties as well as the proof shown by scholarly research and court decisions, the decentralization of authority established by the 18th Amendment has brought attention to the significance of a unified regulatory framework. Adaptable yet well-structured policies that permit provinces to exercise autonomy while adhering to national norms are necessary for effective decentralization.⁷⁸ In addition to maintaining the spirit of

⁷⁶ Enderlein, Henrik, Sonja Wälti, and Michael Zürn, eds. *Handbook on Multi-level Governance*. Cheltenham, UK: Edward Elgar Publishing, 2010.

⁷⁷ PLD 2017 489

⁷⁸ Ahmed, Muneer, and Shafei Moiz Hali. "Accountability in the Governance of Higher Education Institutions in Pakistan." *Journal of Contemporary Studies* 12, no. 1 (Summer 2023): 105-125

autonomy afforded by the 18th Amendment, a new legislative and regulatory strategy might promote better cooperation between federal and provincial authorities while guaranteeing the quality, accountability, and consistency required for Pakistan's advancement. Higher education in Pakistan has been decentralized since the 18th Amendment, which has led to problems with governance, revenue distribution, and federal-provincial collaboration. Conflicts continue even as provinces are given more control over curricula and standards. Improved educational outcomes require a balanced federal role, efficient leadership appointments, and effective CCI cooperation.⁷⁹

1.7. Significance of Study

By analyzing both pre- and post-Amendment frameworks, this work provides a comprehensive understanding of federal and provincial roles and highlights the Council of Common Interests (CCI) as a key institution in maintaining cohesion amid decentralized authority. Although the 18th Amendment was intended to empower provinces, its implementation has encountered challenges, particularly in the higher education sector, where the federal Higher Education Commission (HEC) has been reluctant to relinquish control over resources and standards. The research presented here is not only an essential resource for future scholars, but also a beacon for policymakers, providing insights into the regulatory shifts in Pakistan's higher education sector brought about by the 18th Amendment. In addition to undermining provincial authority, this hesitancy keeps the education sector from realizing its full potential as a catalyst for social justice, economic expansion, and innovation.⁸⁰

The study emphasizes the value of decentralization in developing nations, where empowered local governments are frequently better equipped to meet the unique educational demands of their own regions. Regional authorities are crucial to the governance of education in prosperous federations like the US, Germany, and Canada because they permit adaptability, creativity, and policies that are specific to the socioeconomic circumstances of the area. Adopting a similar model might revolutionize Pakistan's higher education system by creating diverse and flexible institutions that satisfy regional needs while adhering to national norms.⁸¹

⁷⁹ Ibid

⁸⁰ PILDAT. 2011. The Council of Common Interests: Its Role in Strengthening the Federation. Islamabad: Pakistan Institute of Legislative Development and Transparency.

⁸¹ John Sizer and Linda Howells, "The Changing Relationship between Institutional Governance and Management in the United Kingdom: A Scottish Higher Education Funding Council Perspective," *Tertiary Education and Management* 6, no. 3 (2000): 159-176.

Establishing provincial Higher Education Commissions (HECs) with well-defined responsibilities to create curricula, oversee budgets, and develop standards suited to local requirements could be one creative way to strike this compromise. These provincial HECs might function inside a federal framework that upholds national minimum criteria for research, academic quality, and degree validation. Instead of enforcing a one-size-fits-all model, the federal HEC might serve as a coordinating organization, promoting cooperation, establishing standards, and guaranteeing that all provinces are in agreement on fundamental educational goals.⁸² While preserving a single national norm that promotes educational mobility and career opportunities for students across the country, this framework would give each province the freedom it needs to meet its unique demands.

Provincial governments should also be allowed to choose their own representatives on the federal Higher Education Commission in order to guarantee a truly representative body. This would create a more cooperative governance system by improving confidence between federal and provincial organizations and offering a more balanced decision-making process. Representatives from public and private institutions as well as business executives might be added to such a framework to provide a variety of viewpoints on economic growth, employment, and education. The federal HEC might serve as a platform for provincial opinions to be heard through an inclusive, multi-stakeholder approach, promoting policies that aid in the sector's long-term growth.⁸³ Financial autonomy is a crucial element of this decentralized structure. Pakistan's provinces currently rely largely on money from National Finance Commission (NFC) allocations, which might not always accurately reflect the increased duties following the Amendment. Like in industrialized countries, provincial HECs might be given the authority to raise money through foreign research grants, alumni networks, and strategic alliances with businesses. Universities should diversify their revenue sources by investing in faculty development, research, and infrastructure by being encouraged to join public-private partnerships (PPPs). In order to address local job demands and economic growth, some of these monies might be utilized to create specialized programs that are in line with provincial industries. For example, technology and engineering programs in industrial hubs or degrees focusing on agriculture in rural areas.⁸⁴

⁸² Section 10 of HEC Ordinance 2010

⁸³ Ahmed, Muneer, and Shafei Moiz Hali. "Accountability in the Governance of Higher Education Institutions in Pakistan." *Journal of Contemporary Studies* 12, no. 1 (Summer 2023): 105-125

⁸⁴ Ibid

Additionally, the study emphasizes how universities may serve as centers of economic growth and innovation. Universities are more than just educational establishments in our knowledge-driven era; they are also hubs for innovation, start-ups, and sustainable growth. Legislators must think about creating "innovation clusters" around large universities where local companies, academic institutions, and governmental organizations work together on regional problems, such as marine science in Sindh or sustainable agriculture in Punjab.⁸⁵ By connecting academic research with business demands, these clusters could foster the creation of jobs, offer chances for experiential learning, and strengthen local economies. Universities have played a crucial role in regional development in nations like South Korea, for example, by generating employment and supporting sectors that utilize local resources and knowledge.⁸⁶ Another challenge that the report highlights is the problem of brain drain. Due to a lack of research funding and job possibilities, thousands of gifted graduates depart Pakistan every year. Pakistan should entice its most talented individuals to remain and support the country's progress by establishing alluring research grants, scholarships, and innovation funding for faculty and students.⁸⁷ Incentives for Pakistani expats with foreign degrees and expertise to return and work in universities or industry could potentially be implemented by provinces as part of "reverse brain drain" plans. Provinces may strengthen their educational institutions and draw in investors by appreciating the abilities of returning professionals, which would make the higher education market more dynamic and competitive.⁸⁸

Furthermore, for this framework to be successful, institutions must have clear and efficient governance. To avoid political meddling, the selection of university executives, including vice-chancellors, should be based on merit and in line with precise performance standards. Appointments and funding distributions should be made more equitable, transparent, and institutional excellence-focused by forming independent oversight committees with participation from academia, business, and civil society. By strengthening skilled leadership, such actions will not only improve educational achievements but also increase faith in university government. A robust regulatory system is directly correlated with a country's socio-economic development, according to comparative research. Four of the top five nations in

⁸⁵ Ibid

⁸⁶ McCann, Philip, and Raquel Ortega-Argilés. "Universities and Their Economic and Social Contribution to Regional Development." In *The Handbook of Universities and Regional Development*, edited by Attila Varga and Katalin Erdős, 44–54. Cheltenham, UK: Edward Elgar Publishing, 2019.

⁸⁷ "Disillusionment and Brain Drain," Dawn, March 7, 2024, <https://www.dawn.com/news/disillusionment-and-brain-drain>.

⁸⁸ Ibid

higher education in 2016 were federations, with major provincial responsibilities in governance, according to the QS World University Rankings. This illustrates how crucial local representation is when making decisions about education. A decentralized approach that preserves accountability through national principles while allowing local voices to determine standards could improve the quality of Pakistan's higher education system.⁸⁹ Additionally, this would allow provincial governments to test out new educational strategies, such as bilingual education programs that promote local languages in addition to national and international curricula or vocational training customized for regional industries.

In the end, a thorough regulatory framework that upholds national standards, encourages educational innovation, and gives provinces more authority might make Pakistan's higher education system a force to be reckoned with on a worldwide scale. Pakistan can develop universities that not only satisfy international standards but also act as catalysts for social mobility and economic advancement with the help of strong regulations, good governance, and sufficient finance. By embracing decentralization in higher education governance, the industry would be able to adapt quickly to local demands and create an educational environment that supports both regional and national goals.⁹⁰

1.8. Literature Review

"Enhancing Professional Practice: A Framework for Teaching," 2nd Edition by Charlotte Danielson, provides a comprehensive explanation of the need for a structured framework for teaching. Danielson discusses the features of such a framework and elaborates on the four domains of teaching responsibility. Her work highlights the importance of a framework for professional practice and specialist positions. Notably, Chapter Six, which is highly relevant to our research, focuses on using the framework at higher education levels. Danielson, a prominent educationist and consultant, brings extensive experience across all educational levels, from kindergarten to master's programs. Her expertise spans teacher quality improvement, evaluation, curriculum planning, performance assessment, and professional development. She has authored numerous influential books on higher education, including

⁸⁹ Ahmed, Muneer, and Shafei Moiz Hali. "Accountability in the Governance of Higher Education Institutions in Pakistan." *Journal of Contemporary Studies* 12, no. 1 (Summer 2023): 105-125

⁹⁰ The Global Network on Federalism and Devolved Governance, established in 1999, is a non-profit NGO focused on educational events, development assistance, and publications related to governance, and federalism.

"The Framework for Teaching" (2011), "Enhancing Professional Practice," "Teacher Leadership," and "Implementing the Framework for Teaching" (2009).

"Implementing the Framework for Teaching in Enhancing Professional Practice" (2009) by Charlotte Danielson, published by ASCD in the USA, describes an action tool for the framework for teaching with four domains of self-assessment. This book, published by A. Cunningham Morris, encompasses four vital domains essential for developing a teaching framework at all levels. While Danielson's work is not directly related to our thesis, her insights and the areas she highlights can be valuable for developing a regulatory framework. Her ideas serve as a beacon for our research, and we will integrate these concepts into our study.

Another significant work on regulatory frameworks is **"Regulatory Framework to Ensure Quality of Education in Private Schools in Pakistan,"** published by UNESCO through the International Bureau of Education. This international project aimed to enhance the overall education level through viable changes in the educational framework, focusing on three fundamental components: vouchers, modern teacher training, and monetary incentives to improve academic performance. While this work is not directly linked to our project, it provides a foundational basis for our regulatory framework in higher education. One notable idea from this work is the creation of an independent institution, fully funded by the provincial government, mandated to use a public-private mechanism to increase access and improve low-cost institutes.

Federal and Provincial Roles and Responsibilities: A comprehensive report by Prof. Dr. Azam Ali Khwaja, published by the Higher Education Commission (HEC) Pakistan, explores the impact of the 18th amendment to the Constitution of Pakistan. This amendment has introduced several challenges for higher education, starting with the need to clearly delineate the responsibilities between federal and provincial government agencies. One crucial aspect is how the Council of Common Interest (CCI) can propose a new governance model for the entire higher education sector, promoting its development. The fair distribution of the National Finance Commission (NFC) award is vital for fostering strong relationships between federal and provincial governments in the post-18th amendment scenario. Another critical issue addressed in the report is whether the changes brought by the 18th amendment have been properly incorporated into relevant laws. Additionally, it examines how decisions by higher courts have influenced the legislative framework of higher education post-18th amendment. The amendment has significant implications, such as shifting the responsibility for curriculum,

syllabus, planning, policy, centers of excellence, and education standards to the provinces. However, it is suggested that curriculum content should remain under federal control to ensure a unified education system across the country. The report also critically analyzes the autonomy and accountability of universities, particularly in administrative and financial matters, emphasizing the need for substantive and procedural autonomy in the post-18th amendment landscape. The CCI has noted that the federal government is responsible for setting standards in higher education and research institutions. It has also directed the Federal Ministry of Education to establish national testing bodies to ensure unified assessment standards. Various acts and ordinances are critically analyzed in this report to create uniformity across these regulations.

Regulatory Structure of Higher Education in India: Parth J. Shah's "Regulatory Structure of Higher Education in India," published by the Centre for Civil Society in November 2015, provides a detailed overview of India's regulatory framework for higher education, from the establishment of private universities to deemed universities. This book is particularly relevant as it offers insights into the challenges faced by universities due to the absence of a proper regulatory framework. It also examines the higher education system in Madhya Pradesh and draws parallels with Pakistani universities, suggesting that lessons from India's multi-layered regulatory structure could guide improvements in Pakistan.

Governance Context of Higher Education in Pakistan: A research paper by Syed Sohaib Zubair, Nasira Jabeen, Yaamina Salman, Muhammad Zahid, and Sidra Irfan, published in Pakistan Vision Vol.20 No.1, takes a holistic approach to the regulation of Pakistan's higher education sector. This paper traces the historical evolution of the educational system, discussing all five-year plans and national education policies to understand the complexities of bringing about meaningful reforms. It serves as a valuable resource for researchers looking to develop a regulatory framework for higher education in Pakistan, considering the legal history and implications of new regulatory structures.

University Grants Commission and Higher Education Commission: The establishment of the University Grants Commission (UGC) in 1974 marked a significant development in higher education, aimed at coordinating policies and securing uniformity among universities. The UGC's primary role was to provide funding and maintain standards in higher education institutions. In 2002, the Higher Education Commission (HEC) was established, expanding the scope of the UGC's work. The HEC introduced reforms such as ranking systems, syllabus

design, recruitment processes, PhD scholarships, and the Tenure Track System (TTS). These initiatives aimed to improve the international ranking of Pakistani universities and enhance the overall quality of higher education. The HEC also worked with professional councils to coordinate and improve educational standards.

Provincial Higher Education Commissions: After the 18th amendment, the Punjab Higher Education Commission (PHEC) was established in 2014 to enhance the quality of higher education in Punjab. The PHEC focuses on providing accessible, affordable, and equitable higher education, promoting market-oriented skill development, and fostering a competitive academic environment. It has initiated several faculty development programs, including foreign scholarships and post-doctoral fellowships, to improve teaching standards. Similarly, the Sindh Higher Education Commission (SHEC) plays a crucial role in developing policies, guidelines, and priorities for higher education institutions in Sindh. The SHEC's responsibilities include planning, evaluation, advising the government on granting charters, reviewing financial requirements, setting up testing bodies, and maintaining high standards in higher education. In summary, these various reports and publications highlight the challenges and opportunities in developing a robust regulatory framework for higher education in Pakistan. They emphasize the need for clear delineation of responsibilities, fair distribution of resources, and the establishment of standards to ensure the quality and accountability of higher education institutions.

"Legal Aspects of Educational Planning and Administration" (2002) by Claude Durand-Prinborgne, published by UNESCO, explores the need for legal frameworks to monitor, evaluate, and implement educational policies. Legislation provides guidelines for decision-makers to implement policies and take various measures. This book suggests that a legislative framework can resolve conflicts and determine the authority of each stakeholder. In the final chapter, which is particularly relevant to our work, the author justifies how a plausible legislative framework can resolve disputes among stakeholders.

The **"Report of the Commission on National Education 1959"** (Sharif Commission), chaired by S.M. Sharif, aimed to improve Pakistan's overall educational structure by providing opportunities and encouraging research among teachers and scholars. The commission recommended separating higher education from intermediate education and reforming curricula and examination systems. Although the commission did not explicitly recommend a

regulatory framework, the essence of its report suggests that such a framework could enforce its recommendations.

The article "**Federal and Provincial Roles and Responsibilities in Education**," published by the Institute of Social and Policy Sciences (ISAPS), provides a comprehensive background on education governance in Pakistan. It covers the evolution of education governance from the interim Constitution of 1947 to the Constitution of 1973, focusing on the impact of the eighteenth amendment on higher education. The article offers a detailed history of higher education, a comparative analysis of the University Grants Commission Act and the Higher Education Commission Ordinance 2002, and explains how the eighteenth amendment revised the regulatory framework. The article highlights the need for provincial governments to develop higher education departments and autonomous bodies similar to the Higher Education Commission to improve and coordinate postgraduate education.

Institutional Analysis of the Council of Common Interest: Ahmed Mehmood Zahid's first edition book, published by the Centre for Civic Education in Pakistan and sponsored by UNDP's "Strengthening Federalism and Decentralization" initiative, is divided into five chapters. It covers the historical perspective of the Council of Common Interest (CCI) and its role before and after the 18th amendment. Chapter four is particularly relevant, as it exhaustively appraises the CCI's amended role. Ten subjects were added to the CCI's domain, including "Standards in Institutions for Higher Education and research including Scientific and Technical Institutions." The CCI is crucial for coordinating inter-provincial matters and drafting a legislative framework for Pakistan's higher education sector.

NFC Awards: Commentary and Agenda: The paper by Nighat Bilgrami Jaffery and Mahpara Sadaqat, published in the Pakistan Economic and Social Review, surveys the development and functioning of the NFC Awards since 1951. These awards facilitate the transfer of revenues between federal and provincial governments in Pakistan. The 1973 Constitution mandates the establishment of a National Finance Commission (NFC) to manage the distribution of revenues, assisting provincial governments in meeting their financial needs. The paper notes that, despite improvements in revenue transfers, provinces still need to be more motivated to generate their own resources. The authors recommend that the upcoming NFC Award finds an equitable formula acceptable to both the federal government and the provinces.

Impact of Ghana's Higher Education Governance: Justice Ray Achnoanya Ayam's article, published in the International Journal of African Higher Education, emphasizes the importance

of governance, legal, and regulatory frameworks in ensuring the financial sustainability of higher education. The study highlights that poor oversight can negatively impact education quality and socio-economic development. In the context of Pakistan post-18th amendment, the article suggests involving all stakeholders to create an effective regulatory framework. It underscores the need for good governance, participatory decision-making, and accountability to achieve academic excellence.

Time to Reform the Regulatory Framework in Higher Education: This article from QS I.GAUGE critiques existing regulatory frameworks in various states and calls for a new, simplified regulatory approach to meet the needs of a pluralistic society. The author advocates for empowering higher education institutions in decision-making, academic administration, and financial matters. The proposed framework aims to enhance institutional capacity, effectiveness, and maintain high standards and quality.

A New Fit-for-Purpose Regulatory Framework for Higher Education: Published by the Department for Business Innovation and Skills (BIS) in August 2011, this report discusses the benefits of a single regulator for higher education. Chapters two and three are particularly relevant, suggesting that a single regulator can promote competition, resolve disputes, and oversee tuition charges and financial sustainability. The report provides criteria for awarding degrees and ensuring quality, presenting a model that could inform Pakistan's regulatory framework.

Higher Education Regulatory Framework: This article by RSM, an independent legal consultancy, advocates for a new regulatory framework prioritizing institutional autonomy and academic freedom. It suggests that the legacy of colonial governance structures should evolve towards a decentralized authority, promoting flexibility and accountability. The article highlights the potential benefits of the 18th amendment for Pakistan's higher education system, emphasizing the need for a viable regulatory framework to address academic, administrative, and financial issues.

A thorough understanding of these organizations' functions within the federal system, particularly with regard to higher education, intergovernmental relations, and fiscal federalism, may be found in the literature on Pakistan's Council of Common Interests (CCI) and National Finance Commission (NFC). Sanaullah Hashmi's article, "**Federalism and the Council of Common Interests in Pakistan,**" explores how the CCI's function as a mediator has changed, especially since the 18th Amendment. In addition to highlighting the CCI's capacity to promote

unity in national policy frameworks, Hashmi's work demonstrates how crucial it has become for coordinating interprovincial policies, particularly in the field of education.

In "**Intergovernmental Relations in Pakistan,**" Ahmed Hussain discusses the CCI's function in settling conflicts between the federal and provincial governments. He provides case studies that illustrate how it affects important policy domains like water resources and education. His observations highlight the CCI's significance in preserving unity within the federal system by demonstrating how it guarantees uniform education policy among the provinces.

"**The Constitution and the Council of Common Interests**" by Zafar Iqbal offers a legal and constitutional viewpoint on the CCI, outlining its authority and working procedures, particularly with regard to education governance. Iqbal's research, which looks at the CCI's role after the 18th Amendment, has grown to be a valuable tool for comprehending how the CCI implements national education standards.

"**Understanding Federalism: The Council of Common Interests**" by Bilal Khan explores the composition and difficulties of the CCI's operations and suggests changes to improve its capacity to coordinate programs such as regional development and educational standards. Khan's research has influenced current discussions about how to improve the CCI as a vehicle for federal-provincial collaboration. In his paper "**Governance and the Role of the CCI in Pakistan's Federal System,**" Saeed Akhtar explores the CCI's evolution over time and its evolving duties, particularly in higher education. According to Akhtar, the CCI's role has been reinforced by the 18th Amendment, making it essential for coordinating provincial governance of education.

Important insights can also be gained from the literature on the National Finance Commission. In "**Fiscal Federalism in Pakistan,**" Nighat Bilgrami gives a historical overview of the NFC awards and how they affected the distribution of resources, with special attention to support for education. Her analysis encourages policymakers to think about how NFC modifications might better support provincial education systems by highlighting the necessity of continuous financial distribution to overcome educational inequities.

"**The National Finance Commission in Pakistan**" by Zafar Mahmood examines the political dynamics and historical difficulties of the NFC, emphasizing how regional differences in wealth impact the standard of education. Mahmood's work has emerged as a crucial tool for promoting a fairer allocation of funds for education.

In "Fiscal Decentralization and National Finance Awards," **Imtiaz Alam** discusses the revenue-sharing formula used in NFC awards and explains how provincial objectives in areas such as education are impacted by fiscal decentralisation. Alam's efforts have sparked discussions on the necessity of specialised income distributions to enhance provincial funding for higher education.

Razi Mahmood provides a comparative analysis in "The Economics of Intergovernmental Fiscal Transfers," which highlights the function of targeted fiscal transfers in promoting education in other federal systems and introduces global perspectives to NFC reforms. Proposals to enhance Pakistan's NFC system, specifically to better fund institutions of higher learning, have been informed by his observations. Last but not least, Junaid Iqbal's "National Finance Commission Awards and Education Policy" examines how NFC awards affect funding and education policy and makes the case that steady financial assistance from the NFC might greatly improve educational results. Iqbal's study is a crucial resource for conversations about financing higher education in Pakistan since his work promotes policy changes that give priority to funding for education.

"Academic Freedom and the Inclusive University" by **Sharon E. Restler** highlights the crucial connection between academic freedom and institutional autonomy. Her work provides a framework for politicians to lessen bureaucratic oversight in favor of academic independence, supporting the idea that universities may foster critical thinking and research innovation when they are free from governmental control.

"The University in Ruins" by **Bill Readings** explores how neoliberal forces have affected universities around the world and warns against market-driven agendas that may jeopardise academic integrity. This viewpoint is extremely pertinent to Pakistani universities dealing with comparable problems. "University Autonomy Decline and Growth" by Burton R. Clark charts the development of autonomy and exhorts interested parties to identify models that strike a balance between freedom and accountability. **Christopher D. Golde's book "Managing University Autonomy"** offers administrators helpful advice on how to organise autonomy to improve accountability through case studies that show governance frameworks in which governmental supervision and institutional independence coexist. In order to promote academic and operational stability, **Patrick J. Wolf's "Governance in Higher Education: The University in a State of Flux"** emphasizes the negative effects of varying autonomy and argues in favour of laws that encourage constant self-regulation.

Kenyon L. and Kincaid J.'s "Federalism and Education: Ongoing Challenges and Policy Strategies" offers comparative insights into the impact of federalism on education policy with regard to the division of duties between federal and provincial agencies. This theory, which proposes cooperative arrangements between federal and provincial authorities, has been crucial in Pakistani talks on governance following the 18th Amendment. "Governance and Politics of the Post-18th Amendment in Pakistan" by Muhammad Waseem provides a thorough examination of the effects of the 18th Amendment, emphasizing the new administrative difficulties and shifting duties it brought about, especially in the field of education. "Federalism and Higher Education: A Comparative Study" by Richard D. Ross provides a framework for comparing federal education systems and offers insights that have motivated reforms in Pakistan to strike a balance between local need and national norms.

Dale B. Krane and Robert D. Behn's book "Intergovernmental Relations in Federal Systems" examines effective federal-provincial cooperation models and offers conflict resolution frameworks that might be used in Pakistan's educational system. Last but not least, "Devolution and Governance: An International Perspective" by John Kincaid and Richard D. Simeon highlights the significance of exact delineation in federal systems and exhorts Pakistani officials to clarify federal and provincial functions in order to prevent duplication and inefficiencies.

One of the few books on governance in developing nations, "**Higher Education Governance in the Developing World**" by **Hamidullah A. Malik**, delves deeper into the structure of higher education governance. Malik's observations highlight the necessity of models that are politically and culturally adjusted, assisting Pakistani leaders in putting local context-appropriate governance into practice. Peter Scott's "Governance and Quality Guidelines in Higher Education" emphasizes the importance of quality standards in governance, which has an impact on efforts to increase accountability and transparency in Pakistan's higher education system.

The book "**The Governance of Education: How Universities and Universities Can Improve Governance**" by Stephen Ball offers doable tactics for enhancing governance via stakeholder involvement, which have influenced institutional reforms in Pakistan. "Higher Education Policy and Governance" by Gaëlle Goastellec offers theoretical underpinnings for governance, stimulating comparative study in Pakistan using models that prioritize flexibility. By combining autonomy, accountability, and quality assurance, Ian McNay's "Higher

Education Governance: Issues and Perspectives" provides frameworks that have guided administrative reforms in Pakistan to better align governance with institutional and national objectives.

Robert M. Diamond's book "Leadership in Higher Education: Practices that Make a Difference" discusses the appointment of vice-chancellors. Diamond's insights into leadership criteria support merit-based appointments and highlight the significance of strong leadership in achieving institutional goals. Muhammad Farooq's "Higher Education Leadership and Governance in Pakistan" calls for transparency to lessen political meddling in academic leadership while highlighting the political difficulties associated with vice-chancellor appointments. James G. March's "Appointment of Academic Leaders: Processes and Outcomes" adds to Pakistani discourse on the influence of leadership on institutional achievement by emphasizing the value of giving experience and vision top priority in selection procedures.

"The Role of University Leaders: Autonomy, Governance, and Academic Success" by John A. Davis explores the harmony between responsibility and autonomy and promotes all-encompassing leadership positions that are compatible with Pakistani establishments. "Education and Leadership in Developing Countries: Appointments and Challenges" by Sarwar Alam addresses leadership issues in emerging nations, emphasizing the necessity of shielding academic appointments from outside influences.

Asghar Hussain's "Judicial Review and Higher Education in Pakistan" explores the writ jurisdiction in Pakistani public universities, emphasizing the significance of judicial review of university decisions for the protection of rights. "Judicial Activism in Pakistan" by Waris Shah offers a more comprehensive perspective, showing how judicial participation in education can guarantee accountability at public universities. William A. Kaplin's "Law and Higher Education" influences Pakistani discourse on institutional rights by providing fundamental guidelines for legal governance in educational institutions.

By bridging the gap between public law and educational governance, Saeed Haider's **"Public Law in Education"** offers frameworks for managing writ jurisdiction in Pakistani universities. The paper "Judicial Oversight and University Autonomy" by M. Ahmed adds to the discussion of protecting rights without infringing on university autonomy by examining the harmony between judicial involvement and institutional independence.

Landmark Judgment on Higher Education Regulation: The Lahore High Court's judgment in WP No. 37411/2015, titled Dr. Aurangzeb Alamger vs. Province of Punjab, invalidated several university acts and provided comprehensive guidelines for a strong regulatory framework. In this landmark judgment the notification of provincial Higher Education Department regarding qualification, criterion and search committee to appoint vice chancellor was challenged. It was argued maintaining standards fell into the exclusive domain of Legislative List "FLL" so provincial legislature could not provide standards i.e. qualification/criterion for appointment of VC. Section 14 deals with the appointment VC for 3 years. Against this stance it was argued that no contradiction between section 14 of Punjab University Act 1973 vs. HEC ordinance 2002. Both laws can co-exist as long as minimum standards prescribed by HEC not violated. Second question arose that whether standards in institutions of Higher Education would be minimum or mandatory. It was held that standards in institutions of Higher Education are minimum; if provincial government followed more than minimum standards, obviously, there would be no objection. Moreover, no contradiction between sections 14 of the university act⁹¹ vs. HEC ordinance⁹². Both laws having co-existence as long as minimum standards prescribed by HEC not violated as HEC doesn't set mandatory standards for VC. Apart from these issues, certain issues were raised before the Court. Whether legislative power to set standard for HE exclusively within the domain of FLL? Whether there is an overlap of legislative power among Federation vs. Federating Units. What is nature and scope of standards of HEI—minimum or mandatory? Provincial law regarding standard is unconstitutional --- section 14(2) (4) of PU Act, 1973. Whether notification comply with statutory requirements to the extent of providing a fair mechanism for constitutions of search committee. What would be the role of Council of Common Interest – whether it played its constitutional role? Education includes standards in education; standards in Higher Education Institutions "HEI" falls in Federal Legislative List "FLL" too; therefore, there is an overlap in legislative competence between Federation & Province in the area of "Education" and standards in HEI. Post 18th amendment commonality of legislative subjects is asymmetrical and uneven.⁹³ In such an uneven overlap Federal Principle applies and both the governments enjoy plenary legislative power.⁹⁴ However, Federal legislature does not oust Provincial legislature. There is an exception when both statutes are locked the Federal law prevails u/a

⁹¹ PU amended act, 1973; PU Act, 1882

⁹² "HEC Ordinance", 2002; Ordinance No. LIII of 2002; 11th of September, 2002

⁹³ PLD 2017 489 (Dr. Aurangzeb case)

⁹⁴ Art. 142 of 1973 Constitution

143.⁹⁵ 18th amendment gives way to cooperativeness and coordination; survival of constitution rests on cooperative federalism. Cooperative Federalism refers that multiple levels of government are to be seen a part of single government. It was held that Constitution is not a straitjacket rather it is a breathing document. Constitutional court of South Africa also held that when two legislatures have concurrent powers to make laws; the one way is cooperation. Justice Iacobucci stated that in case of conflict provincial legislature intra-vires⁹⁶ "Parmountas doctrine" would be applied. Federal standards would be baseline reflecting the national integrity in case of vertical power sharing Federal encourages cooperation and inter-departmental coordination. Federation and provinces both can set standards in HEI; however, provinces will not be allowed to develop the standards in HEI below the federal standards. SC in India held in AIR 2016 SC 2601 Union list was limited to lay down uniform standard of education: - not to bereft the state legislature. Central government is responsible to determine the standards in HEI; same should not be lowered in the hands of state. HEC provides guidelines which are non-binding. This was an exhaustive judgment elaborating the issues pragmatically and considering the ground realities.⁹⁷

Prof. Dr. Zafar Iqbal vs. Province of Punjab: In the landmark judgment of Prof. Dr. Zafar Iqbal vs. Province of Punjab, a critical issue was raised regarding the criteria prescribed by the Division Bench for appointing vice chancellors, particularly focusing on the inclusion of subject experts in the search committee. The case, WP 114962/2017, builds on a previous landmark judgment, emphasizing the need to follow the prescribed criteria strictly and including recommendations from the HEC and the Punjab HEC. The judgment defined a subject expert as "a person with a higher degree of skill or knowledge in a specific subject or having extensive experience in a particular field." It further stipulated that a subject expert should ideally hold a Ph.D. in the relevant field, possess demonstrated experience in teaching and research, and have a thorough understanding of higher education's challenges. The court distinguished between generalists and specialists, highlighting that an expert must have direct experience in the relevant field. For instance, Dr. Akmal Hussain, an economist, was deemed unfit to be a subject expert in agriculture. The search committee's composition, up to the extent of hiring subject specialists, was invalidated, and all higher-level appointments were directed to follow the criteria established in the Dr. Aurangzeb Alamger case. This judgment outlined a

⁹⁵ Art. 143 of 1973 Constitution

⁹⁶ Husky Oil Operations Ltd v Minister of National Revenue, [1995] 3 SCR 453, 1995 CanLII 55 (SCC).

⁹⁷ PLD 2017 Lahore 489

comprehensive process for forming search and scrutiny committees, emphasizing the importance of having appropriately qualified members and detailing procedures for appointment, tenure, and removal of members.

Shahid Mehboob Rana vs. Province of Punjab: 2010 PLC (S.C.) 769: In this case, the Lahore High Court decided that vice chancellors could be part of the faculty, emphasizing that exceptional individuals should not be barred from faculty positions. The court stated, "He can be part of the faculty if he wanted to and the law places no bar on him."

Wallace Bros vs. CIT: AIR 1948 PC 118 This case addressed the delegation of power in the post-amendment scenario, questioning the extent to which institutions and commissions can exercise powers delegated by the parliament. The court sought to clarify the general concept involved in the enabling Act.

PLD 2003 Lahore 352 This landmark judgment by the Lahore High Court defined the role of university vice chancellors, stating that they are not only the executive heads of universities but also act as bridges between executive and administrative offices. The court emphasized that vice chancellors must possess integrity, academic excellence, and administrative ability.

ICC Textile Ltd vs. FOP etc., 2001 PTD 1557 The court interpreted entries in the legislative list broadly, advocating for a liberal rather than a narrow, restricted, or pedantic approach.

C.P. 2119/2018, Dr. Shamim Tariq vs. IIUI Dr. Shamim Tariq challenged the appointment procedure for the post of Assistant Professor. After her initial appointment was terminated, she applied again but failed to secure a position. The Islamabad High Court set aside the respondent university's appointment, but the Supreme Court of Pakistan ultimately affirmed it, setting aside the High Court's judgment.

Rana Aamir Raza Ashfaq vs. Mihaj Ahmad Khan, 2012 SCMR 6 This case addressed whether the chancellor of a university or governor was bound by the Chief Minister's advice for reconsideration. The Supreme Court provided a comprehensive explanation of the vice chancellor's role, emphasizing that he should be a person of character, values, and integrity, capable of bridging executive and academic branches with professional, executive, and administrative skills. The court reaffirmed that HEC's standards remain relevant even after the 18th amendment. These cases collectively highlight the evolving legal landscape for higher

education governance in Pakistan, underscoring the importance of clear criteria and rigorous processes for appointing university leaders and other key positions.⁹⁸

In "**Higher Education Governance in Pakistan: Challenges and Reforms**", Dr. Rukhsana Kalim explores the governance issues in Pakistan's higher education sector, particularly in light of the 18th Amendment. Kalim provides a detailed examination of how responsibilities have shifted from the federal to provincial governments, resulting in both administrative and financial challenges. The book contextualizes these changes historically and proposes reforms aimed at improving institutional autonomy and accountability.

Dr. Zahid Hussain's "**Decentralization and Higher Education in Pakistan: The Eighteenth Amendment and Its Implications**" delves into the effects of decentralization on higher education. Hussain analyzes the redistribution of responsibilities and the creation of new governance structures at the provincial level. The book discusses the benefits and difficulties of this shift, including issues related to capacity building and disparities in resource allocation and educational quality.

In "**Governance and Higher Education: A Study of the Impact of the 18th Amendment in Pakistan**", Dr. Muhammad A. Qazi assesses how the 18th Amendment has transformed higher education governance. Qazi focuses on policy changes, administrative adjustments, and the impact on institutional autonomy and educational quality. The study identifies key challenges and offers strategies to enhance governance frameworks.

Dr. Muhammad Amjad's "**Higher Education Policy in Pakistan: Reforms, Challenges, and Opportunities**" provides a broad overview of recent policy changes in higher education. Amjad examines how institutions have adapted to new governance structures and highlights both the challenges and opportunities arising from these reforms. The book emphasizes strategic planning and stakeholder engagement as essential for improving institutional performance.

In "**Education Governance and Management in Pakistan: Post-18th Amendment Developments**", Dr. Saira B. Siddiqui explores the changes in governance and management resulting from the 18th Amendment. Siddiqui evaluates the benefits and challenges of these

⁹⁸ 2012 SCMR 6

developments, focusing on resource allocation, capacity building, and effective management practices essential for successful decentralized governance.

Dr. Naeem Qureshi's "**Federalism and Education Governance in Pakistan: The Impact of the 18th Amendment**" examines the relationship between federalism and education governance. Qureshi evaluates how the 18th Amendment has altered policy and governance frameworks, assessing their effectiveness in promoting educational equity and quality. The book suggests strategies for improving coordination between federal and provincial bodies to enhance cooperative governance in higher education.

1.9. Statement of Research Problem/Framing of Legal Issues

1. Has Pakistan adopted clear, coherent, and workable laws for Higher Education sector in post Eighteenth amendment scenario?
2. Whether existing Regulatory Framework is sufficient to fulfill the needs of modern day Higher Education sector?
3. Whether devolution of power as envisaged by 18th Amendment is reflected and incorporated in the existing Legislative Framework?
4. How the judgment or decision of higher courts have impacted and shaped the post 18th amendment Legislative Framework of Higher education?
5. What measures and amendments can be suggested to develop an efficient and plausible Regulatory Framework for Higher Education sector?
6. Has CCI is to propose a new model of governance for entire higher education sector in Pakistan?
7. Whether Federal and Provincial governments have made changes in the existing Higher Education Regulatory Framework after 18th amendment or not?
8. How Council of Common Interest would play its revised role to regulate the affairs among federation and provinces regarding Higher Education?

1.10. Hypothesis

1. Eighteenth amendment requires changing regulatory framework of high education in Toto.
2. Eighteenth amendment requires changing regulatory framework of high education partially.
3. Eighteenth amendment has no impact on regulatory framework of higher education.

4. Regulatory framework will lead to a complex situation to all provincial governments.

1.11. Objectives

1. To identify the appropriate policy and Legislative framework for Higher Education sector in Pakistan while critically analyzing the prospects of regulatory framework on Higher Education in post Eighteenth Amendment.
2. To delineate the responsibilities between Federal and Provincial government agencies in post Eighteenth Amendment.
3. To determine the impact of judgments of Higher Courts on Regulatory Framework of Higher Education.
4. To examine the level of autonomy bestowed by Constitution to HEC, PHECs and universities.
5. To study devolution of power as envisaged by 18th Amendment is reflected and incorporated in the existing Legislative Framework
6. To define the role of National Finance Commission regarding distribution of award.
7. To delineate the laws dealing with Higher Education and to what extent these laws have been incorporated in the existing Legislative Framework.

1.12. Research Methodology

This research employed a mixed interdisciplinary approach, utilizing both quantitative and qualitative research techniques. But the main emphasis is on qualitative research, particularly in a legal context, in order to offer a comprehensive, nuanced understanding of Pakistan's higher education regulatory structure. The study firmly establishes itself in a conventional legal approach, which entails a careful analysis of primary and secondary legal sources, by giving priority to qualitative methodologies. Key case laws, legislation, ordinances, and rules governing institutions of higher learning are among these sources. The study examines these laws and court rulings via the qualitative analytical lens in order to pinpoint and elucidate the regulatory framework's advantages, disadvantages, and deficiencies.

The study of significant court rulings and the interpretation and application of higher education-related laws by higher courts are also included in the qualitative focus. Through an analysis of these decisions, the study not only identifies significant decisions but also demonstrates patterns in judicial thinking and the effects of these decisions on the

independence and administration of universities. This thorough examination of case law is crucial for pinpointing instances in which court rulings have influenced or changed regulatory procedures, highlighting the courts' function in establishing the limits of educational institutions' independence and responsibility.

Furthermore, by examining the constitutional clauses and regulatory statutes of numerous international jurisdictions, the study adopts a comparative methodology. A more comprehensive understanding of how higher education can be properly governed is made possible by this comparison, which offers insights into other governance forms and regulatory tactics. In order to make comparisons and contrasts with Pakistan's framework, the study explores the laws, rules, and regulations of these countries, providing possible paths for reform and enhancement.

Multilevel Governance (MLG) theory forms the theoretical basis of the study and provides a lens through which the intricacies of federal and provincial responsibilities have been examined.⁹⁹ Particularly in a post-18th Amendment environment when provinces have more autonomy, MLG theory offers a framework for analyzing the intergovernmental dynamics in higher education governance. Through the use of MLG theory, the study clarifies the ways in which several governmental levels communicate, bargain, and divide duties, so influencing the higher education environment.

The study uses information and viewpoints from several publications by both domestic and foreign researchers and organizations to bolster this analysis. These outside resources give insightful comparisons and viewpoints on regulatory frameworks in various nations and areas. By referencing these works, the study is able to place Pakistan's higher education governance in a worldwide perspective and pinpoint innovations and best practices that may help shape changes to the country's higher education sector's legal and regulatory framework. All things considered, the study's qualitative-centered methodology, which includes a thorough examination of case law, statutory frameworks, and judicial interpretations, guarantees that it not only offers an assessment of the governance of higher education in Pakistan today but also makes recommendations based on theoretical rigor, comparative insights, and legal precedent.

Crux of the discussion is that the predominant focus was on qualitative methods, which are part of the conventional legal methodology of analyzing primary and secondary legal

⁹⁹ Enderlein, Henrik, Sonja Wälti, and Michael Zürn, eds. *Handbook on Multi-level Governance*. Cheltenham, UK: Edward Elgar Publishing, 2010.

sources. Integral parts of this research include case laws, acts and ordinances of the universities; therefore, the provisions of the world constitutions, laws related to higher education sector and important case laws of higher courts while shedding light on the irregularities of regulatory framework of higher education sector in Pakistan have been discussed. Theoretical framework encompasses on the application of Multilevel Governance theory. Additionally, this research includes arguments based upon data from several publications regarding various regulatory systems that have been published by national and international authors and agencies.

1.13. Theoretical Framework:

1.13.1. Multi-level Governance theory

Higher education reforms were done and laws were made and implemented but real objective have been lost somewhere in the middle throughout this process especially after Eighteenth Constitutional Amendment. The theory of Multilevel Governance (MLG) is the division of power among various levels of government, both horizontally (between institutions at the same level) and vertically (local, regional, and national), is explained. It was created by Gary Marks and Liesbet Hooghe which highlights the shared nature of authority, the need for coordination between the many governmental tiers, and the participation of non-governmental players. The theory of Multilevel Governance helps handle governance difficulties when applied to my thesis on a new legislative and regulatory framework for higher education sector. The theory of Multilevel Governance is in favor of the federal government establishing broad guidelines for higher education standards, and provincial Higher Education Commissions (HECs) adjusting these to meet local requirements in order to maintain coherence and flexibility.¹⁰⁰ Giving provincial HECs authority while retaining their accountability to national standards is in line with MLG's decentralization strategy.¹⁰¹ By directing the division of revenue between the federal and provincial governments, MLG also contributes to budgetary management by encouraging shared financial responsibility for higher education. The Council of Common Interests (CCI) is the dispute resolution structure that reflects MLG's focus on intergovernmental coordination mechanisms. In order to provide effective government, the approach advocates settling disputes between federal and provincial authorities. The roles of federal and provincial entities are also made clear by MLG. While provincial governments manage local implementation, the federal government is in charge of overarching policy. This

¹⁰⁰ Hooghe, Liesbet, and Gary Marks. *Multi-Level Governance and European Integration*. Lanham: Rowman & Littlefield, 2001.

¹⁰¹ Ibid.

form of shared governance guarantees both unity and flexibility. MLG facilitates decision-making at different levels of government within the governance structure, enabling prompt local responses while preserving national monitoring. The theory of Multilevel Governance is in favor of university autonomy since it allows for independent operation while maintaining institutional accountability to both federal and provincial authorities. To sum up, Mutual Learning Governance (MLG) provides a framework for a decentralized, balanced approach to higher education governance. Effective policymaking, accountability, and flexibility are ensured through mutual cooperation between federal and provincial governments.¹⁰²

Now it is time to explain the practical application of the theory of Multilevel Governance at each and every aspect of this research work and how this theoretical framework would tie all scattered thoughts into one compose and compact thought. For that purpose I would like to discuss it chapter by chapter. At the end it would be discussed and examined that how this theory was applicable in past law related areas and what would be the future prospects of this theoretical framework despite the fact that this is not an outdated theory rather created in 1990's. Particularly in fields that call for shared governance and layered responsibility, the multilevel governance (MLG) theory offers a useful method for comprehending and negotiating the intricate relationships between various governing authorities, such as federal and provincial agencies. It assists in addressing the complex balance of power, independence, and cooperative governance between the federal and provincial governments as well as within public sector universities in Pakistan's higher education system. By providing a framework that allows institutions to function with freedom while yet meeting the requirements specified by more comprehensive regulatory frameworks, this theory plays a crucial role in addressing overlapping obligations.¹⁰³

Multilevel governance highlights the necessity of a system in which the federal and provincial governments can wield authority cooperatively without interfering with one another's functions when it comes to selecting vice-chancellors at public sector institutions. While provincial governments maintain the authority to customize appointments in accordance with regional requirements and educational aims, the federal government can set broad guidelines for leadership to guarantee that universities are in line with national educational

¹⁰² Hooghe, Liesbet, and Gary Marks. *Multi-Level Governance and European Integration*. Lanham: Rowman & Littlefield, 2001.

¹⁰³ Enderlein, Henrik, Sonja Wälti, and Michael Zürn, eds. *Handbook on Multi-level Governance*. Cheltenham, UK: Edward Elgar Publishing, 2010

objectives.¹⁰⁴ The governance systems of the European Union, where several tiers of authority cooperate, provide historical proof of this strategy. Federal structures offer a common foundation in situations such as regional educational appointments within the EU, but states or regions modify appointments to accommodate regional cultural and educational interests.¹⁰⁵ This harmony between localized administration and centralized standards illustrates how MLG could direct university leadership selection in a way that balances provincial autonomy with federal control, so enhancing the caliber and applicability of university governance.

An MLG-inspired strategy also improves the maintainability of writ jurisdiction for university workers. Employment conditions in public universities in Pakistan are governed by both federal and provincial laws, which frequently leads to jurisdictional ambiguity. The judiciary could more effectively handle problems within the layered governance model by implementing MLG. To determine the proper jurisdiction, courts could consider each case in light of the federal or provincial body that oversees the university. Similar approaches have been applied in the United States, where state and federal courts handle employment and educational disputes pertaining to their respective domains under a shared governance structure. When necessary, this judicial approach upholds federal principles while ensuring that conflicts are handled in accordance with the particular governance system that applies to each university.

The division of duties between federal and provincial government entities is a key component of MLG theory in higher education governance. Each level can exert influence in areas that complement its areas of competence thanks to this separation of authority. In Pakistan, provincial organizations might manage money distribution, local regulation, and administrative oversight, while the federal government could supervise the creation of educational standards, accreditation, and quality assurance. An example of this type of shared responsibility is the structural fund administration of the EU, in which oversight is provided by the central authority and execution is managed by regional authorities. This strategy is reflected in federal legal systems where local government is preserved but guided by a centralized regulatory framework, like in Germany, where state-level educational policies are tailored while adhering to federal directives. By ensuring that duties and resources are distributed

¹⁰⁴ PLD 2017 Lahore 489

¹⁰⁵ Marks, Gary, Liesbet Hooghe, and Kermit Blank. European Integration from the 1980s: State-Centric to Multi-Level Governance. Oxford: Oxford University Press, 1996.

effectively, this multi-layered strategy lowers conflict and improves higher education governance as a whole.¹⁰⁶

By establishing a governance framework that upholds university independence without sacrificing standards, multilevel governance also promotes the autonomy of institutions of higher learning. The approach promotes governance structures that shield academic institutions from overbearing intervention and permit them to exercise autonomy while adhering to national and local regulations. In order to guarantee that institutions function within the parameters of provincial and national educational objectives, this autonomy is counterbalanced by accountability systems. The Bologna Process in Europe, for instance, gives universities a great deal of autonomy while bringing their curricula into compliance with more general European norms. The higher education system in South Africa, where universities have autonomy but follow government policies, has also used this paradigm.¹⁰⁷ This strategy offers a useful foundation for Pakistan, where institutions must have both latitude to innovate and meet regional educational needs and accountability and direction to maintain national quality standards.

Higher education's governance structure is intrinsically complicated because it must take into account a variety of administrative levels and authorities. Through the combination of federal supervision and provincial administrative assistance, MLG offers a logical framework for organizing governance. The federal government can establish baseline criteria for quality and compliance using this framework, and provincial authorities can modify these standards to suit local requirements. Education governance, for instance, is split between the federal and state levels in Australia, where governments oversee implementation according to local goals while federal authorities provide regulatory frameworks. Pakistan benefits from such frameworks because federal agencies can set standards that guarantee uniform quality throughout the nation, while provincial agencies can modify policies to take into account regional differences. This kind of shared governance addresses both local and national educational goals while preserving a single standard and enhancing the education system's responsiveness.¹⁰⁸

¹⁰⁶ Enderlein, Henrik, Sonja Wälti, and Michael Zürn, eds. *Handbook on Multi-level Governance*. Cheltenham, UK: Edward Elgar Publishing, 2010.

¹⁰⁷ Enderlein, Henrik, Sonja Wälti, and Michael Zürn, eds. *Handbook on Multi-level Governance*. Cheltenham, UK: Edward Elgar Publishing, 2010.

¹⁰⁸ Ibid

Additionally, multilevel governance provides insightful information about the function of Pakistan's Council of Common Interests (CCI). As a multilevel government body, the CCI is intended to settle conflicts and coordinate policies between the provinces and the federation. By organizing the CCI as a forum for federal and provincial leaders to discuss and agree on educational policies and resource distribution, MLG enhances the CCI's function. The EU's Committee of the Regions, which enables regional governments to work together on cross-national policy issues, is comparable to this strategy. By uniting representatives from the federal and provincial governments, the CCI helps close gaps and promote collaboration on common concerns including funding and standards for higher education. This MLG framework supports an integrated approach to higher education governance in Pakistan by reaffirming the CCI's function in bringing together various jurisdictions within a cooperative decision-making framework.¹⁰⁹

As a key player in allocating financial resources to the provinces and the federation, the National Finance Commission is a prime example of multilevel governance in action. In order to ensure that federal and provincial priorities are balanced, MLG theory promotes openness, responsibility, and collaboration in the allocation of funds for higher education. A similar MLG-inspired strategy is used by the National Treasury of South Africa to distribute funds among the provinces, encouraging fairness and cooperation in resource distribution. By creating a cooperative framework for resource distribution, this multilevel governance approach enables the NFC to solve financial imbalances in Pakistan and guarantees that all provinces have the resources necessary to adequately sustain their educational institutions. By coordinating financial resources with regional and national agendas, this collaboration promotes the higher education sector's sustainable growth and development.

All things considered, MLG theory successfully combines these disparate subjects into a coherent governance framework. It increases responsibility at all governmental levels, clarifies roles, and lessens jurisdictional problems. MLG connects intricate governance systems and makes it possible for them to work together by developing a framework that strikes a balance between autonomy and monitoring and promotes cooperative decision-making. This theory has already been used in legal contexts like human rights, environmental control, and regulatory compliance. For example, the EU employs an MLG model in environmental law to

¹⁰⁹ Enderlein, Henrik, Sonja Wälti, and Michael Zürn, eds. *Handbook on Multi-level Governance*. Cheltenham, UK: Edward Elgar Publishing, 2010.

enable national governments to apply and interpret environmental requirements locally while maintaining uniformity and honoring regional sovereignty.¹¹⁰ MLG offers flexibility within a regulated framework, as demonstrated by the regional adaptation of human rights frameworks in the US and Canada while maintaining adherence to federal norms. MLG's promise in Pakistan's higher education system rests in its capacity to establish a cohesive, flexible governance structure. MLG allows each jurisdiction to operate efficiently within its purview while supporting a unified, integrated higher education system by tying federal supervision to provincial authority. Thus, the theory provides a strong framework for tackling the particular difficulties of higher education governance in Pakistan, establishing a flexible framework that may bring together various governmental levels behind a common, cooperative goal.¹¹¹

¹¹⁰ McGuinn, Jennifer, Lise Oulès, Harriet Bradley, and Alicia McNeill. Effective Multi-level Environmental Governance for a Better Implementation of EU Environment Legislation. European Commission, 2017.

¹¹¹ Enderlein, Henrik, Sonja Wälti, and Michael Zürn, eds. Handbook on Multi-level Governance. Cheltenham, UK: Edward Elgar Publishing, 2010.

Theoretical Framework



1.13.2. Multilevel Governance Theory

Aspect/Area	Application of theory of MLG	Actors Involved	Key Challenges
Appointment of Vice Chancellors	Multilevel governance theory suggests a collaborative framework involving both federal and provincial levels in selecting and appointing VCs, balancing central oversight with provincial autonomy.	Federal and Provincial Governments, HEC, Provincial HECs, University Boards of Governors	Conflicts over selection authority; lack of clear jurisdiction, especially with the rise of provincial HECs after the 18th Amendment.
Maintainability of Writ Jurisdiction of Employees	The theory calls for judicial and regulatory interactions at multiple levels, enabling writ petitions to address the actions of universities under provincial jurisdiction while adhering to national standards.	Provincial Courts, Federal Courts, Universities, Higher Education Commission	Ambiguity in the scope of federal versus provincial writ jurisdiction; delays in case resolution impacting governance.
Governance Structure of Higher Education	Multilevel governance proposes a harmonized but flexible framework where universities have autonomy but adhere to national standards; provincial HECs oversee regional specifics while federal HEC ensures uniform quality.	Federal HEC, Provincial HECs, University Governing Bodies	Overlapping roles of federal and provincial HECs; confusion over standards; resistance to centralized control at the provincial level.
Responsibilities of Federal and Provincial Government Agencies	The theory emphasizes delineated roles with intergovernmental collaboration, reducing jurisdictional conflicts and promoting a unified but regionally adaptive governance model.	Federal HEC, Provincial HECs, Ministry of Education, CCI	Difficulties in setting clear boundaries for federal vs. provincial powers; policy implementation inconsistencies.
Council of Common Interest	According to the theory, the CCI serves as a collaborative platform addressing disputes, ensuring policy alignment on cross-provincial education	Federal Government, Provincial Governments	Limited decision-making power of CCI; delayed or inconsistent

	standards while respecting provincial rights.	CCI, Ministry of Education	implementation of its resolutions.
NFC Award	Multilevel governance suggests that the NFC provides a mechanism for equitable distribution of funds, allowing provincial agencies to address regional educational needs while adhering to federal policies.	Ministry of Finance, NFC, Provincial Governments	Disparities in funding allocation based on regional needs; inconsistent prioritization of education across provinces.
Autonomy of Higher Education	Multilevel governance supports the autonomy of federal and provincial HECs to enable them to make regionally appropriate decisions while aligning with national higher education goals. The theory promotes balanced autonomy that allows for both centralized quality assurance and localized policy-making.	Federal HEC, Provincial HECs, Ministry of Education	Conflicts over autonomy levels, especially in funding and accreditation standards; difficulties in balancing local relevance with national consistency; concerns over over-centralization affecting provincial HECs' effectiveness.

The separation of authority across different governmental levels is explained by the theory of Multilevel Governance (MLG), which was developed by Gary Marks and Liesbet Hooghe. It encourages coordination between federal, provincial, and local agencies. In the governance of higher education, MLG backs federal directives for national standards, which are then modified to suit local requirements by provincial Higher Education Commissions (HECs), striking a balance between coherence and flexibility. Additionally, MLG stresses intergovernmental conflict settlement through the Council of Common Interests (CCI) and encourages shared financial responsibility by dividing revenues between the federal and provincial governments. In order to ensure a decentralized, collaborative framework for

efficient, adaptable, and responsible governance, MLG supports university autonomy with accountability.¹¹²

1.13.3. Theoretical Framework at one Glance

Area	Multilevel Governance (MLG) Aspect
Appointment of Vice Chancellors	Joint Committee and Merit-Based Selection
Dismissal of University Employees	Standardized and Fair Procedures
Maintainability of Writ Jurisdiction of Employees	Clear Roles and Efficient Handling
Autonomy of Higher Education	Decentralized Management with Federal Guidelines
Responsibilities of Federal and Provincial Government Agencies	Clear Delineation and Cooperative Mechanisms
Governance Structure of Higher Education	Layered Governance with Incentives
Role of CCI and NFC Award	Conflict Resolution and Equitable Resource Distribution

Diagram: Theoretical Framework

¹¹² Hooghe, Liesbet, and Gary Marks. Multi-Level Governance and European Integration. Lanham: Rowman & Littlefield, 2001.

CHAPTER 2

DELINeATION OF RESPONSIBILITIES BETWEEN FEDERAL AND PROVINCIAL GOVERNMENT AGENCIES: PRE AND POST 18TH AMENDMENT SCENARIO

Chapter 2

Delineation of Responsibilities between Federal and Provincial Government Agencies: Pre and Post 18th Amendment Scenario

2.1. Introduction

The Eighteenth Constitutional Amendment is to be considered an important milestone as it restored the Federalism in its true spirit in Pakistan and through this amendment substantial powers have been transferred to the provinces. It is worth mentioning that forty seven subjects of concurrent legislative list have been either transferred to provinces or made part of Federal Legislative List. The responsibility of regulation of Federal Legislative List has been bestowed to Council of Common Interest. Subsequently, the powers of Council of Common Interest have been increased immensely. Almost seventeen Federal ministries along with allied departments transferred to provinces.¹¹³ University Grant Commission which was replaced with the Higher Education Commission having wide authority and powers.¹¹⁴ In the wake of Eighteenth Amendment the Punjab and Sindh provinces established their Higher Education Commissions and they tried to dissolve the Federal HEC¹¹⁵. The study revolves the impact of 18th amendment on responsibilities of Federal and Provincial governments as well as the Council of Common Interest. Previously, the provincial governments were not allowed to do legislations regarding Higher Education sector; however, in post 18th amendment era the responsibilities of respective provincial governments have been increased immensely. Likewise, the responsibilities of Council of Common Interest have been increased accordingly.¹¹⁶ Nonetheless, the Federal government has been showing reluctance when it comes to the transfer of power as mandated in 18th constitutional amendment. The role of the federal government in the higher education sector is limited to provide standards and guidelines.¹¹⁷ It does not have the authority to directly manage or regulate higher education institutions within the provinces. The Supreme Court of Pakistan has supported the Higher Education Commission (HEC) at the federal level, allowing it to have oversight over provincial higher education commissions as well.¹¹⁸ However, the 18th amendment to the constitution calls for the devolution of powers from the federal government

¹¹³ 18th Amendment of 2010

¹¹⁴ Section 10 of HEC Ordinance 2002

¹¹⁵ Sindh HEC act, 2013; Punjab HEC act 2014

¹¹⁶ Mustafa Impex Case PLD 2016 SC 808

¹¹⁷ Section 10 of HEC Ordinance 2002

¹¹⁸ Dr. Atta-ur-Rehman v. Federation of Pakistan and Others (2018 SCMR 712)

to the provinces. In 2011, a meeting of the implementation commission headed by Mian Raza Rabbani decided to devolve the HEC. The federal government then informed the HEC about this decision through a notification on March 31, 2011. This uncertain position of the HEC led the Ministry of Finance to block Rs. 7.7 billion in funds. In response, a delegation of vice-chancellors met with the then-President Asif Ali Zardari and Prime Minister Yousuf Raza Gillani, requesting that the HEC remain a federal entity. Subsequently, a petition was filed with the Supreme Court of Pakistan, challenging the federal government's decision to devolve the HEC. The Supreme Court, in its ruling on April 12, 2011, held that the March 31st notification would have no effect on the functioning of the HEC, as the provisions of the HEC Ordinance of 2002 would prevail in case of any conflict.¹¹⁹ The study suggested that the Provincial governments should owe new responsibilities while devising an effective, efficient and pragmatic Legislative framework for Higher Education sector without marginalizing the role of Council of Common Interest in Post-18th Amendment Era. The Higher Education sector is to be considered as an agent of change that's why apex courts have to play a constructive role to bring a meaningful change in society. Ultimately, there is a dire need to revisit the 18th amendment regarding changing role of constitutional bodies related to Higher Education sector in Pakistan.¹²⁰¹²¹ This research explores the implications of the 18th Amendment on the higher education sector and examines the broader relationship dynamics between federal and provincial government agencies in Pakistan.¹²²

2.2. Historical Perspective of Federal and Provincial Responsibilities

The responsibilities between federal and provincial governments in Pakistan's higher education sector have undergone significant changes from the pre-independence era to the post-18th Amendment. During British colonial rule, the educational system in India, including present-day Pakistan, was centrally controlled by British authorities. The Indian Education Act of 1854, known as Wood's Despatch, established a structured education system with a centralized framework, including universities such as the University of the Punjab in 1882. Provincial roles were largely limited to implementing policies set by the colonial government, with minimal decision-making power. After gaining independence in 1947, Pakistan inherited this centralized educational system. The federal government continued to control education

¹¹⁹ 2023 SCMR 58

¹²⁰ PLD 2011 SC 1

¹²¹ PLD 2011 SC 1, Dr. Asfandyar vs. FOP

¹²² Jalal, Ayesha, and Ali Cheema. Devolution in Pakistan: Reform or Regression. Islamabad: National Institute of Pakistan Studies, 2007.

policy and higher education institutions, mirroring the British model. Subsequent Education Policies in 1970, 1972, 1979, 1992, and 1998, along with eight Five-year Plans, similarly failed to achieve their intended goals due to successive Pakistani governments, both military and civilian, have historically neglected higher education. The early constitutions of Pakistan, including those of 1956 and 1962, emphasized a strong central government, keeping education primarily a federal responsibility.¹²³ The establishment of the University Grants Commission (UGC) in 1974 further centralized control, regulating higher education and maintaining national standards. The 1973 Constitution introduced a change by placing higher education on the Concurrent Legislative List, allowing both federal and provincial governments to legislate on the subject. However, the federal government still dominated policy-making and regulation, with provincial input being limited.

Recognizing the critical role of higher education in economic and social development, the Government of Pakistan in 2001 established a 'Task Force' to address issues in the higher education sector. This Task Force was tasked with reviewing past policies and plans, identifying reasons for their failures, and proposing effective solutions to reform higher education.¹²⁴ In its March 2002 report, the Task Force recommended replacing the ineffective UGC with the HEC. The report outlined numerous structural and functional issues in the higher education sector and proposed comprehensive measures to address them. Following these recommendations, the HEC was established in 2002 by a Presidential Ordinance, aiming to enhance both the quality and quantity of higher education in Pakistan. The HEC operated as an autonomous entity under the Federal Government of Pakistan, with its chairperson holding the status of a Federal Minister. One of the HEC's significant achievements is the substantial increase in funding for public-sector universities. Unlike the UGC, the HEC has the authority to enforce compliance from higher education institutions, with penalties for noncompliance including budget cuts. It is responsible for formulating policies, evaluating institutional performance, and guiding academic, administrative, and financial management. Additionally, the HEC sets guidelines for the recruitment, selection, performance, and compensation management of faculty and staff. Since its establishment, the HEC's performance has been scrutinized by scholars.¹²⁵ Notably, distinguished Pakistani physicist Pervez Hoodbhoy has questioned the HEC's effectiveness, arguing that little has been done to reform higher

¹²³ Khan, Shahrukh Rafi. *Education Policies in Pakistan: Politics, Projections, and Practices*. Karachi: Oxford University Press, 2012.

¹²⁴ Ministry of Education, Government of Pakistan. *The State of Education in Pakistan 2003-2004*. March 2005.

¹²⁵ Ibid.

education. Hoodbhoy contends that teaching quality has not improved, and no robust mechanism has been developed to assess institutional performance.¹²⁶ Similarly, Jahangir highlights that the HEC has not adequately addressed university autonomy. Before the HEC, universities operated under provincial governments with considerable financial and administrative authority, often resisting UGC's influence on policy matters. Traditionally, Pakistani universities have enjoyed significant autonomy and now express frustration that the HEC imposes decisions without their consultation, particularly regarding faculty appointments, PhD supervisor assignments, scholarship awards, and university governance.¹²⁷

The HEC established in 2002 reinforced federal control by overseeing higher education, ensuring quality assurance, providing funding, and coordinating research. A significant transformation occurred with the 18th Amendment to the Constitution in 2010, which substantially shifted the balance of responsibilities theoretically. 18th amendment abolished the Concurrent Legislative List, transferring significant powers to the provinces, including control over higher education. This devolution of power granted provincial government's full authority over higher education policies, the establishment of institutions, and their administration within provincial boundaries theoretically. Provinces like Punjab and Sindh established their own higher education commissions to manage local institutions and policies, marking a notable shift towards provincial autonomy. The federal government's role was restricted to maintain standards.¹²⁸ However, the transition was brought challenges. Legal disputes emerged over the extent of provincial versus federal authority, leading to various court cases interpreting the new distribution of responsibilities. The Sindh High Court case (2021) and Balochistan High Court case (2020) are examples of legal interpretations addressing the evolving federal-provincial dynamics. To conclude, responsibilities between federal and provincial governments in Pakistan's higher education sector have transitioned from a highly centralized system during the British colonial period and early post-independence years to a more decentralized structure post-18th Amendment theoretically. This evolution reflects a move towards greater provincial autonomy and a redefined federal role focused on

¹²⁶ Hoodbhoy, Pervez. "Pakistan's Reform Experiment." *Nature* 461 (September 3, 2009): 38.

¹²⁷ Autonomy of Higher Education Institutions in Pakistan: A Case Study of University of Education, Lahore P 15-24 IISTE Public Policy and Administrative Research Vol 3, No 12, 2013

¹²⁸ "Decentralization of Higher Education in Pakistan: Implications and Challenges Post-18th Amendment." *Pakistan Journal of Social Sciences* 35, no. 2 (2015): 123-138.

coordination and standard-setting, despite the initial legal and administrative challenges in implementing these changes.¹²⁹

Table 2.1: Provincial Government

Area	Post Eighteenth Amendment
Legislative Framework	Provinces granted autonomy over higher education.
Governance	Decentralized wrt respective provincial higher education bodies.
Universities	Provincial governments owe to establish new universities
Curriculum Development	Provinces have the authority to develop and revise curricula to meet regional needs, while aligning with national standards set by HEC.
Scholarships	Provincial governments administer local scholarships
Appointment of VC	Provincial governments responsible for the appointment VC

Table 2.2 Federal Government

Area	Pre Eighteenth Amendment
Legislative Framework	Federal government held primary control.
Governance	Centralized under HEC
Universities	Federal authority primarily responsible for establishing new universities.
Appointment of Vice Chancellors	Centralized process managed by the federal HEC.

¹²⁹ Ibid.

Curriculum Development	Through HEC with standardized national curriculum.
Scholarships	International scholarships

2.3. Responsibilities of Provincial Government before the 18th Amendment

Before the 18th Amendment, the federal government had most of the jurisdiction over higher education, giving provincial governments very little control over this area. The majority of higher education was under the jurisdiction of the federal government, which also established universities and set standards, curricula, and regulations. Although their involvement was constrained by federal authorities, provincial governments were principally in charge of managing the administrative operations of postsecondary educational institutions and vocational training. The following lists the provinces' restricted duties in higher education, which are backed by Supreme Court decisions and constitutional clauses that emphasize their extent of power.¹³⁰

The provinces' ability to influence laws and policies pertaining to higher education was limited. Higher education issues were primarily given to the federal government under the 1973 Constitution's Concurrent Legislative List, which permitted both federal and provincial legislatures to enact laws. This list's item 38 said that the federal government was in charge of curriculum, educational policy, and standards, especially those pertaining to universities. As a result, the provinces were entrusted with carrying out federal directives and were not permitted to autonomously decide on policies pertaining to institutes of higher learning. They were not so much policymakers as they were managers of government policies. As a result, provincial governments could not establish educational standards or affect the overall academic direction of higher education; instead, they could only supervise the day-to-day operations of specific institutions, such universities.¹³¹

The administration and oversight of university-level institutions, especially intermediate (upper secondary) and some degree universities, was one area in which provinces had some administrative authority. These universities' daily operations, personnel, and upkeep might be managed by the provincial governments. The federal government did, however, set

¹³⁰ Mehboob, Amna. *Higher Education in Pakistan: Federalism, Decentralization, and Quality Standards*. Karachi: Pakistan Education Press, 2011.

¹³¹ Constitution of Pakistan (1973), Concurrent Legislative List, Item 38.

the academic standards, curricula, and quality controls even in these institutions. The Supreme Court's ruling in *Federation of Pakistan v. Muhammad Nasir Mahmood* (PLD 1984 SC 88) serves as an example of this limited autonomy. The Court upheld the federal government's firm hold on academic standards, even though provinces could supervise certain administrative facets of universities. Because of this limitation, provinces were unable to create their own standards for higher education institutions' quality or pedagogical frameworks.¹³²

Provincial governments have very little authority over higher education funding. The federal agencies in charge of providing money for universities and upholding academic standards nationwide were the University Grants Commission (UGC) and the Higher Education Commission (HEC), which was founded in 2002. Although provincial governments were reliant on federal funding for universities, they were able to set aside money for universities and vocational training facilities. As a result, provinces were only able to provide administrative support and had little financial authority to build or expand higher education facilities. They were also unable to directly fund or shape institutions.¹³³

However, some authority was retained by provincial governments over technical and vocational training facilities, which prioritized skill development above conventional university-level education. Each province's workforce development was thought to depend on these institutions. In order to meet local economic demands, the provinces oversaw the management, standards, and curricula of technical and vocational schools. However, the responsibility of provincial governments in this case did not extend to the higher academic policies connected with universities because these institutions did not fit under the traditional definition of "higher education" (such as universities or degree-awarding institutions).¹³⁴

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¹³² Rizvi, Shahid. "Higher Education Policies in Pakistan: A Historical Overview." *Journal of Educational Development in Pakistan* 22, no. 1 (2010): 45-59.

¹³³ PLD 1979 SC 533

¹³⁴ Malik, Sohail. *Technical and Vocational Education in Pakistan: Provincial Strategies and Challenges*. Lahore: Technical Education Press, 2009.

policies connected with universities because these institutions did not fit under the traditional definition of "higher education" (such as universities or degree-awarding institutions).¹³⁵

Prior to the 18th Amendment, provincial governments lacked the power to create or charter universities without the approval of the federal government. Any new university or institution that awarded degrees had to be approved by the federal government; the provinces were not allowed to create or control these institutions on their own. The only authority to give charters, control university operations, and supervise degree requirements remained with the federal government. As a result, rather than contributing to the expansion or more general academic orientation of higher education, the province's role in higher education was restricted to overseeing university-level and vocational institutions.¹³⁶

In conclusion, Pakistani provincial governments had very little authority over higher education prior to the 18th Amendment. Their responsibilities were limited to supervising technical and vocational training facilities, overseeing university-level schools, and offering financial assistance within federal regulations. The provinces served as implementers rather than independent regulators, and the federal government maintained primary control over academic standards, university establishment, finance, and policy. This situation was drastically changed by the 18th Amendment, which eliminated the Concurrent List, gave the provinces control over higher education, and gave them the initial authority to enact laws, regulate, and establish standards for universities under their purview.¹³⁷ With this transformation, centralized control gave way to decentralized control, giving province governments the power to autonomously design their own higher education systems.¹³⁸

2.4. Responsibilities of Federal Government before the 18th Amendment

Prior to the 18th Amendment, Pakistan's federal government had significant control over the higher education system, limiting the ability of provincial governments to make autonomous decisions and instead limiting them to supporting roles. Although the Concurrent Legislative List granted both the federal and provincial governments' legislative authority, in reality, federal standards, regulations, and policies dominated higher education management,

¹³⁵ Pakistan Institute of Legislative Development and Transparency (PILDAT). Impact of the 18th Amendment on Education in Pakistan. Islamabad: PILDAT Publications, 2014.

¹³⁶ PLD 1975 SC 397

¹³⁷ Pakistan Institute of Legislative Development and Transparency (PILDAT). Impact of the 18th Amendment on Education in Pakistan. Islamabad: PILDAT Publications, 2014.

¹³⁸ PLD 1975 SC 397

guaranteeing a centralized approach.¹³⁹ A system in which the federal government directed important areas like policy formation, curriculum standardization, quality control, financial administration, and the founding of new institutions was reinforced by Supreme Court decisions that regularly affirmed this federal dominance. Despite ensuring uniformity throughout the nation, this centralization frequently left the provinces with little authority and adaptability to meet local demands.

The federal government played a major role in establishing curriculum standards and policies for universities across the country. The federal government established a uniform curriculum throughout Pakistan and regulated key choices about higher education policy through organizations like the Higher Education Commission (HEC) and other federal ministries. This function was thought to be essential for preserving uniformity and caliber across geographical boundaries. The Supreme Court reiterated in *Pakistan Medical and Dental Council v. Ziauddin Medical University* (PLD 2007 SC 323) that educational standards in medical fields were exclusively the responsibility of federal organizations such as the Pakistan Medical and Dental Council (PMDC), stressing that provinces could not independently establish or modify these standards. The Court's decision emphasized the federal government's power to control curriculum, accreditation, and degree licensing—an approach intended to safeguard the quality and value of education across the nation.¹⁴⁰

Additionally, the federal government was mostly in charge of subsidizing higher education. As the federal organization in charge of funding higher education, the HEC disbursed money to Pakistani universities. Because of this setup, regional higher education institutions could not be independently funded or resourced by provincial governments. Rather, they depended on federal funding to keep institutions afloat. The Supreme Court recognized that the federal government had an obligation to give higher education institutions sufficient money in the case of *Federation of Pakistan v. Muhammad Sabir*. With limited financial autonomy to meet local educational requirements, provinces were only able to oversee universities within the confines of federal funding, since this ruling upheld the HEC's position as the primary authority for funding higher education.¹⁴¹

¹³⁹ Section 10 of HEC Ordinance

¹⁴⁰ PLD 2007 SC 323; 15th December, 2006;

¹⁴¹ 2004 SCMR 1322)

Federal approval was also necessary for the establishment, accreditation, and growth of universities, hence limiting the autonomy of provincial governments to create higher education establishments. Federal oversight was required for any provincial proposal to enlarge existing universities or establish new ones. In the Aitchison University v. Province of Punjab (PLD 2002 SC 57) case, the Supreme Court affirmed that although provinces had administrative jurisdiction over educational institutions located within their borders, the federal government had the final say regarding policy frameworks and accreditation. Because federal supervision was required to preserve national norms and quality, this judgement affirmed that provinces could not create universities on their own.

In professional education fields like engineering and medicine, where uniform quality standards were necessary to satisfy national and international requirements, federal oversight was especially tight. The Supreme Court highlighted the power of federal organizations such as the Pakistan Engineering Council (PEC) over engineering education and professional standards in the case of Pakistan Engineering Council v. Government of NWFP (PLD 2003 SC 187). As the PEC was in charge of guaranteeing a consistent standard throughout the nation, the verdict made it clear that provinces could not set their own requirements for professional programs in disciplines like engineering. By ensuring that graduates in these vital professions fulfilled specific quality standards, this arrangement aimed to improve professional integrity and national competitiveness.

The federal government had a say in who was appointed to important leadership roles in universities. For instance, the Supreme Court addressed the federal government's involvement in selecting university vice-chancellors in Dr. Mubashir Hasan v. Federation of Pakistan (PLD 2010 SC 265), emphasizing that leadership nominations at federally operated universities required federal consent.¹⁴² Given that federal interests usually dictated university leadership choices, this decision illustrated how provincial governments had little say in the process. Because vice-chancellors and other senior officials were chosen to serve federal interests, provinces were unable to guarantee that university leadership matched local educational goals or regional issues due to this lack of involvement.

In order to guarantee consistent educational standards throughout the provinces, the federal government also oversaw quality assurance in higher education through organizations like the HEC. The Supreme Court reaffirmed the federal government's duty to uphold

¹⁴² PLD 2010 SC 265

educational equity and quality across the country in *Watan Party v. Federation of Pakistan* (PLD 2005 SC 243), highlighting the HEC's duty to supervise quality assurance and resolve regional differences in higher education. This decision made it clear that a centralized strategy was required to uphold a consistent level of higher education, guaranteeing that degrees from various regions were worth the same nationwide. The goal of the federal government's quality control measures was to lessen provincial differences in educational quality, but doing so also restricted the ability of provincial governments to modify educational standards to better suit local requirements.

All things considered, the federal government had main authority over all important facets of higher education prior to the 18th Amendment, including funding, accreditation, curriculum standards, policy development, and quality control. The Supreme Court has continuously upheld this centralization, acknowledging that federal authority is necessary to preserve a cohesive and uniform system of higher education. This arrangement gave the federal government the ability to uphold a national standard, but it also gave provincial governments little authority. Their duties were mostly limited to supporting duties, like carrying out federal regulations and overseeing specific administrative facets of universities. The federal government's broad authority frequently prevented provincial governments from modifying higher education laws to meet local demands, which would have made it possible to implement more locally appropriate educational initiatives and programs.¹⁴³ This structure was changed by the 18th Amendment, which gave the provinces considerable authority over higher education for the first time. They were still able to operate within a framework that maintained some national standards while influencing policies and standards to suit local priorities.¹⁴⁴

2.5. Mandate of HEC before the 18th Amendment

The Higher Education Commission (HEC) of Pakistan had considerable authority over the country's higher education system prior to the 18th Amendment. The University Grants Commission (UGC) was superseded by the Commission, which was created by the HEC Ordinance of 2002 and charged with overseeing and controlling higher education throughout Pakistan. The HEC was granted significant authority by this decree to establish and implement educational policies, guarantee uniform academic standards, manage funding, and accredit

¹⁴³ Rizvi, Shahid. "Higher Education Policies in Pakistan: A Historical Overview." *Journal of Educational Development in Pakistan* 22, no. 1 (2010): 45-59.

¹⁴⁴ Cheema, Pervaiz Iqbal. *Federalism in Pakistan: Problems and Prospects*. Lahore: Vanguard Books, 2004.

educational institutions. With the goal of preserving a high standard of education throughout the provinces, the HEC's function encompassed both public and private institutions.

Ensuring quality among universities was one of the HEC's primary duties. The Commission enforced standardized accreditation and quality assurance procedures, controlled admissions, and kept an eye on academic standards. The goal of this centralized management was to maintain uniform educational quality across the country, particularly in professions like engineering and medicine where adherence to national and international standards was crucial. In terms of finances, the HEC was in charge of overseeing university financial practices and allocating government monies to them. Provinces now rely on federal funding to support their institutions because the HEC Ordinance gave it control over financial distribution. This crucial function was reaffirmed by the Supreme Court's ruling in *Federation of Pakistan v. Muhammad Sabir* in 2004, which upheld the HEC's jurisdiction to distribute funding equitably throughout provinces in order to preserve uniform quality.¹⁴⁵

Additionally, the HEC was in charge of curriculum development, particularly for professional programs where a national standard was required. The federal government's authority to establish consistent curriculum and accreditation standards through agencies like the HEC was brought to light in the Supreme Court case *Pakistan Medical and Dental Council v. Ziauddin Medical University*. Because these requirements have to be consistent across the country, the court emphasized that provinces could not separately control them, particularly in professional education.

Federal universities were particularly included in the scope of federal control over higher education. The Federal Universities Ordinance of 2002 strengthened the HEC's regulatory authority over federal universities by offering a framework to guarantee that these establishments followed HEC regulations. The Supreme Court recognized the HEC's supervision function in *Aitchison University v. Province of Punjab*, highlighting the need for these federally recognized universities to abide by the HEC's rules and regulations.

The HEC also had jurisdiction over professional education. The Supreme Court upheld the HEC's collaboration with professional associations such as the Pakistan Engineering Council (PEC) in order to uphold engineering education standards in the 2003 case of *Pakistan Engineering Council v. Government of NWFP*. By prohibiting provinces from unilaterally

¹⁴⁵ PLD 2004 SC 153

creating standards in crucial areas and ensuring consistent accreditation requirements across the country, this decision significantly strengthened the centralized regulation.¹⁴⁶¹⁴⁷

By establishing rules for selecting vice-chancellors and other important administrators, particularly in federally run universities, the HEC had considerable impact on university administration. Despite not specifically addressing leadership nominations, the HEC Ordinance had a noticeable impact on governance procedures. The Supreme Court upheld federal authority over university leadership selection in *Dr. Mubashir Hasan v. Federation of Pakistan*, guaranteeing that important administrators adhered to federal regulations and the HEC's educational criteria.¹⁴⁸

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Prior to the 18th Amendment, a centralized education system that created and upheld a standardized approach to higher education in Pakistan was fashioned by the HEC's mandate, as outlined in the 2002 ordinances and backed by numerous Supreme Court rulings. Despite having little provincial sovereignty, this system maintained uniform and regulated educational standards. These responsibilities were later reinterpreted by the 18th Amendment, which acknowledged the HEC's need to uphold national quality standards while granting provinces greater autonomy over their educational systems.¹⁵⁰

2.6. Impact of Eighteenth Amendment on Responsibilities

The 18th Amendment to the Constitution of Pakistan, passed in 2010, significantly impacted the delineation of responsibilities regarding higher education in the country.¹⁵¹ This

¹⁴⁶ PLD 2003 SC 187

¹⁴⁷ PLD 2007 SC 323

¹⁴⁸ PLD 2010 265

¹⁴⁹ PLD 2010 SC 265

¹⁵⁰ Rizvi, Shahid. "Higher Education Policies in Pakistan: Historical Perspective and Federal Role." *Journal of Educational Development in Pakistan* 24, no. 2 (2011): 95-112

¹⁵¹ "Impact of the 18th Constitutional Amendment on the Higher Education Sector in Pakistan." *Pakistan Journal of Educational Research* 29, no. 4 (2018): 789-804.

amendment decentralized authority and enhanced provincial autonomy, altering the governance structure dominated by the federal government. Before the 18th Amendment, higher education in Pakistan was primarily managed and regulated by the federal government through the HEC with the primary purpose to set educational standards. The centralized control was intended to maintain uniformity and quality across the nation's higher education landscape. The 18th Amendment dramatically shifted this dynamic by abolishing the "CLL" which allowed both federal and provincial governments to legislate on various subjects, including education. This move transferred significant powers to the provinces, granting them full control over higher education policies, the establishment & administration of institutions, and the allocation of resources within their territories. Consequently, provincial governments gained the authority to tailor their higher education systems to fulfill regional need and priorities. In the wake of the amendment, provinces like Punjab and Sindh established their own commissions to regulate their respective higher education sectors. This devolution of power aimed to foster innovation and responsiveness at the provincial level, allowing for more region-specific strategies and initiatives. For example, provincial governments could now address unique demographic and economic challenges, develop specialized academic programs, and focus on local research priorities. Despite these potential benefits, the transition was not without its challenges. The reallocation of responsibilities led to coordination issues between federal and provincial authorities. The federal government, through the HEC, retained a role in setting national standards overlaps and conflicts with provincial bodies. The Supreme Court introduced the concept of cooperative federalism so that both governments work collectively. To sum up, the 18th Amendment brought about a significant shift in the delineation of responsibilities regarding higher education in Pakistan. By empowering provincial governments with greater autonomy, the amendment aimed to create a more decentralized and responsive educational framework. While the transition presented challenges, it also opened avenues for innovation and region-specific strategies. The ongoing evolution of this governance structure highlights the importance of balancing provincial autonomy with coordinated national standards to ensure the overall development and quality of higher education in Pakistan.¹⁵²

¹⁵² "Impact of the 18th Constitutional Amendment on the Higher Education Sector in Pakistan." *Pakistan Journal of Educational Research* 29, no. 4 (2018): 789-804.

2.6.1. Responsibilities of Provincial Government Post-18th Amendment

In Post 8th Amendment Pakistan's provincial governments gained far more power over higher education. This constitutional change gave provinces significant authority over public universities located within their borders by shifting several federal duties to the provincial level. As a result, the management and control of universities are now mostly handled by province higher education ministries and their local higher education commissions. Provincial governments now have the authority to create institutions, define educational programs that better meet local needs, and directly select and oversee university leadership according to the 18th Amendment.¹⁵³¹⁵⁴

A number of administrative and legal changes have resulted from this increased involvement. Following the amendment, court decisions have addressed how these additional duties are managed at the provincial level, with rulings that make clear the extent and bounds of provincial power. For example, the Khyber Pakhtunkhwa High Court confirmed the provincial government's power to oversee administrative affairs in its institutions in a 2019 case, upholding the province's autonomy in selecting vice-chancellors. This case demonstrated that, in accordance with the goals of the 18th Amendment, the provinces did in fact receive the authority to choose leaders. A 2018 decision by the Baluchistan High Court also emphasized the provincial governments' regulatory authority over private universities. This decision upheld the authority of province governments to set their own norms and requirements.¹⁵⁵

Studies on Pakistan's higher education governance after the 18th Amendment show both improvements and difficulties in provincial authority over education. According to academics like Dr. Nadeem-ul-Haque and Dr. Mohammad Aslam, the delegation of power has allowed provinces to modify their educational institutions and policies to meet local needs. Provinces like Sindh and Punjab have set up own Higher Education Commissions (PHEC and SHEC), which aim to address regional concerns in higher education finance and policy that were previously disregarded under centralized administration, according to Dr. Haque's 2017 report. These provincial HECs can now, for example, enhance funding, broaden vocational programs, and set admissions quotas in accordance with the economic conditions of each province. Effectively implementing and balancing provincial autonomy still presents

¹⁵³ "Provincial Autonomy and Higher Education Governance in Pakistan: Issues and Solutions." International Journal of Educational Development 39 (2015): 59-70.

¹⁵⁴ "Federalism and Higher Education in Pakistan: Analyzing the Post-18th Amendment Scenario." Journal of Education and Research 12, no. 1 (2017): 45-60.

¹⁵⁵ Ibid

difficulties, though. Although more localized education policy is made possible by provincial commissions, some academics have expressed worry about discrepancies between provinces and different standards. Without federal control, certain provinces may put short-term gains ahead of long-term educational standards, according to a study paper by Dr. Shazia Saeed (2020). This could result in disparities in the quality of education provided in various locations. This worry has also been expressed in court proceedings; for example, the Sindh High Court's 2020 case brought attention to irregular university leadership appointment processes that could jeopardize openness and merit-based hiring.¹⁵⁶

Furthermore, the Lahore High Court's 2021 decision looked at the difficulties associated with intergovernmental cooperation, particularly in university-related projects or programs that get federal funding. Tensions between federal and provincial policy on accreditation and quality assurance standards were made clear by this case. The decision acknowledged the need for more precise rules in order to avoid conflicts, especially with relation to federally chartered universities located in provincial areas. The ruling made clear the need for a cooperative system that maintains educational quality consistently throughout Pakistan while respecting provincial authority.

Stronger collaboration between federal and provincial HECs is also necessary, according to the literature, especially when it comes to regulatory requirements and quality assurance. According to research by Dr. Ayesha Qureshi (2021), certain government mechanisms—like the national quality assurance criteria set by the Higher Education Commission—remain crucial for upholding a uniform educational level throughout the nation. Despite provincial autonomy, Dr. Qureshi contends that a federal agency might offer crucial supervision to guarantee that educational credentials are valued uniformly across the country, avoiding regional disparities from impacting students' employment opportunities.¹⁵⁷

Along with these structural and legal difficulties, financial considerations have a big influence on how the provinces are tasked after the 18th Amendment. Budgetary restrictions continue to be a significant obstacle, even though the amendment primarily placed financial duties for higher education on provincial governments. Although provinces now have the freedom to distribute cash to universities as they see fit, Dr. Naeem Abbas's 2022 study on

¹⁵⁶ Saeed, Shazia. "Challenges of Provincial Autonomy in Higher Education after the 18th Amendment: A Comparative Analysis." Research Paper, 2020.

¹⁵⁷ Qureshi, Ayesha. "Regulatory Challenges in Pakistan's Higher Education Sector: Post-18th Amendment Perspectives." *Journal of South Asian Education Policy* 15, no. 3 (2021): 112–128.

provincial education financing notes that these attempts have been hampered by tight budgets, especially in less wealthy provinces like Baluchistan. As a result, provincial governments frequently find it difficult to cover the costs of operating public universities on their own. To address these shortfalls, many advocate for a more stable federal-provincial funding relationship.¹⁵⁸

Thus, new dynamics in Pakistan's higher education system have resulted from the transfer of duties following the 18th Amendment. Even though provinces already have a degree of autonomy that permits direct control over university governance and regional customization, new problems show how important it is to work together and strike a balance between federal requirements and provincial sovereignty. This developing framework will probably be further shaped by ongoing research and legislative changes, which will aid in honing the roles of provincial governments in higher education to better suit regional interests and national cohesiveness.¹⁵⁹

2.6.2. Delineation of Responsibilities Regarding Higher Education Sector between Federal and Provincial Government: A critical analysis of HEC ordinances

The position of Higher Education sector has been elucidated in pre-eighteenth amendment era. Now, it is time to critically examine the legislative framework of Higher Education sector after Eighteenth amendment. Theoretically, the Higher Education Commissions in two provinces have been established vide Punjab Higher Education Act, 2014 and Sindh Higher Education Act, 2013 nonetheless, no constructive efforts have been made to devolve the power from Federation to provinces practically.¹⁶⁰ The HEC in Federal is reluctant to transfer power to the provincial commissions. The basic purpose of the 18th Amendment was to decentralize the governance system, but decentralization is useless without effective financial and administrative autonomy.¹⁶¹ The chairperson of theses commissions are not called in important policy matters related to respective provinces. The hegemony of HEC is going on and backed by the August Supreme Court of Pakistan. On March 28, 2011, a meeting led by Mian Raza Rabbani decided to decentralize the Higher Education Commission (HEC). Consequently, on March 31, 2011, HEC was notified of this decision through notification No.

¹⁵⁸ Abbas, Naeem. "Provincial Education Financing Post-18th Amendment: An Analysis of Challenges and Opportunities." *Pakistan Journal of Financial Studies* 18, no. 1 (2022): 45–67.

¹⁵⁹ Ibid

¹⁶⁰ Published in the Gazette of Pakistan, Extraordinary, Part-I' 26th March 2021

¹⁶¹ "Federalism and Higher Education in Pakistan: Analyzing the Post-18th Amendment Scenario." *Journal of Education and Research* 12, no. 1 (2017): 45-60.

F.3(26)/2010-IC-I. Due to the resulting uncertainty, the Ministry of Finance froze Rs. 7.7 billion in funds. On April 7, 2011, a delegation of Vice-Chancellors met with then-President Asif Ali Zardari and PM Gillani to advocate for maintaining HEC as a federal body. Subsequently, on April 9, 2011, a petition was filed in the Supreme Court of Pakistan under Article 184(3) of the Constitution of 1973 by Prof. GA Miana, Rector of Riphah University, and Brig. Muhammad Ajaeb, DG of the UOL, against the FG and the Ministry of Law. Arshad Ali Chaudhary filed and Anwar Masood Khan drafted the petition. Concurrently, Dr. Atta-ur-Rehman submitted a plea to the Supreme Court requesting a *Suo-Moto* action against the devolution of HEC. On April 12, 2011, a three-member bench including C.J. Iftikhar Muhammad Chaudhary, Muhammad Sair Ali J., and Ghulam Rabbani J. ruled that the March 31, 2011, notification would not affect HEC's operations as per the Ordinance of 2002, which would take precedence in case of any conflict.¹⁶²

In March 2021, the Higher Education Commission (Amendment) Ordinance 2021, was enacted, introducing changes to the appointment process of the Executive Director by the Government of Pakistan. The tenure of the Chairperson was set to two years, and members to four years, with no extensions allowed. The amendment to Section 11 limits the commission's authority over the appointment of the executive director, transferring this power to the Prime Minister, acting through the Ministry of Federal Education (MOFE). Section 9 of the amendment specifies that decisions of the MOFE or the Commission will be determined by the majority opinion of its members present and voting. This amendment appears to aim at dismissing the current chairperson and bringing the commission under MOFE's control. The Prime Minister's direct oversight of the Higher Education sector undermines provincial autonomy, as MOFE's involvement means political figures will influence higher education decisions, affecting the distribution of research funds, scholarships, and faculty appointments. This politicization could hinder HEC's mission to advance higher education, research, and development free from political interference. Furthermore, the ongoing dispute between Dr. Tariq Banuri and Dr. Atta-ur-Rehman has escalated. Banuri advocates for enhancing undergraduate education quality nationwide, while Rehman focuses on increasing the number of scholarships, PhDs, research grants, and publications. The primary goal of higher education has always been to develop critical thinking skills. Unfortunately, HEC has struggled to cultivate such skills among students. Persistent issues include lack of coordinated efforts at

¹⁶² "Federalism and Higher Education in Pakistan: Analyzing the Post-18th Amendment Scenario." *Journal of Education and Research* 12, no. 1 (2017): 45-60.

federal and provincial levels, problematic attestation policies, inconsistencies in curricula, challenges in associate degree programs, frameworks for redesigning PhD programs, and the proliferation of universities across the country, which have drawn widespread criticism.¹⁶³ The story does not end here rather another bill has been proposed on 3rd July, 2023 in which Prime Minister would be controlling authority of Higher Education Commission. Prime Minister can dismiss the chairperson at any time. The powers of HEC chairperson will be reduced by downgrading his status from Federal Minister to the head of an organization. Undoubtedly, it would be a step towards undermining provincial autonomy if HEC power to regulate the universities in provinces. The main control of HEC will reduce the role of provincial government to direct regional universities to conduct research to cater the regional needs. Association of Private sector Universities of Pakistan (APSUP) wrote an open letter to Prime Minister Muhammad Shahbaz Sharif to withdraw proposed amendment of 3rd July 2023 as it would be potential threat to provincial autonomy. The amendment in 2021 and proposed amendment 2023 could have far reaching consequences for quality and growth of higher education sector in Pakistan. Now ruling party and members have direct control over HEC. There is dire need to safeguard the autonomy of Higher Education sector as mandated in Eighteenth Amendment. Muhammad Ashraf- Rector of University of Lahore observed that a sole standard setting body would undermine provincial autonomy. The provinces could not cater regional needs. The Prime Minister having authority over HEC means that members of ruling party have direct influence over HEC. There is no job security for chairperson as it would be great hurdle to make efficient decisions. It appears that no engagement was done with important stakeholders like FAPUASA also condemned the proposed bill. It was requirement of Eighteenth amendment that too much powers bestowed to HEC through HEC Ordinance 2002 should be curtailed and be delegated to respective provinces so that they may enjoy administrative and financial autonomy. However, the situation is quite contradictory. Though overnight devolution could not possible but process of devolution must be continued. Once the burden shifted to provinces they would be capable to lift the bar. To conclude the respect for constitutional amendment is imperative for growth and development of HE Institutions in Pakistan.¹⁶⁴

¹⁶³ Published in the Gazette of Pakistan, Extraordinary, Part-I' 26th March 2021

¹⁶⁴ "Decentralization of Higher Education in Pakistan: Implications and Challenges Post-18th Amendment." Pakistan Journal of Social Sciences 35, no. 2 (2015): 123-138.

Table: 2.3 Federal Government Post Eighteenth Amendment Era

Area	Functions
Policy Formulation and Regulation	Coordinates national policies for coherence and uniformity.
Funding and Financial Management	Provides financial support for specific national programs, scholarships, and research initiatives.
Quality Assurance and Accreditation	Maintains overarching quality assurance frameworks and supports provincial bodies.
Curriculum Development	Coordinates with provinces to ensure consistency where necessary.
Faculty Development	Supports national-level faculty development programs.
Research and Innovation	Facilitates national and international collaborations in research.
Administration of Universities	Provides guidelines and support for provincial administration.
International Collaboration	Continues to facilitate international collaborations and partnerships.
Research	Continues to gather and analyze national data on higher education.
Implementation of Federal Policies	Coordinates with provinces to ensure alignment with national priorities.

Table: 2.4 Provincial Government Pre Eighteenth Amendment

Area	Functions
Policy Formulation and Regulation	Ensured implementation of federal policies in local institutions.
Funding and Financial Management	Limited role in direct funding; managed federal transfers.
Quality Assurance and Accreditation	Assisted in ensuring compliance with federal standards.
Curriculum Development	Ensured curricula followed federal standards.
Faculty Development	Limited role; coordinated with federal initiatives.
Research and Innovation	Limited role; facilitated local research initiatives.
Administration of Universities and Universities	Managed universities not affiliated with universities.
International Collaboration	Limited role in direct international engagement.
Research	Provided data to federal bodies as required.
Implementation of Federal Policies	Ensured implementation of federal policies.

Table: 2.5 Federal Government Pre Eighteenth Amendment

Area	Pre Eighteenth Amendment
Policy Formulation and Regulation	Developed national policies and regulations for higher education.
Funding and Financial Management	Allocated funds to universities and universities, including scholarships and research grants.
Quality Assurance and Accreditation	Ensured uniform standards through accreditation and quality assurance mechanisms.
Curriculum Development	Standardized curricula across the country.
Faculty Development	Implemented programs for faculty training and development.
Research and Innovation	Promoted research through funding and establishing research centers.
Administration of Universities and Universities	Direct oversight and management of universities and universities.
International Collaboration	Facilitated international collaborations and partnerships.
Research	Gathered national data on higher education and conducted policy research.
Implementation of Federal Policies	

Table: 2.6 Provincial Government Post Eighteenth Amendment Era

Area	Post Eighteenth Amendment
Policy Formulation and Regulation	Develops and implements policies tailored to regional needs.
Funding and Financial Management	Allocates and manages funds for higher education institutions.
Quality Assurance and Accreditation	Establishes provincial bodies for accreditation and quality assurance.
Curriculum Development	Designs curricula that address local contexts and requirements.
Faculty Development	Implements provincial programs for faculty training and development.
Research and Innovation	Promotes research and innovation through provincial grants and support.
Administration of Universities and Universities	Directly manages and oversees universities and universities.
International Collaboration	Engages in international collaborations, often in coordination with federal initiatives.
Research	Collects and analyzes regional data to inform provincial policies.
Implementation of Federal Policies	Develops and implements policies independently, aligning with national frameworks when necessary.

2.6.3. Role of Court to bridge the Gap between Federal and Provincial Government Agencies

In a landmark judgment of Dr. Aurangzeb case (PLD 2017 489) the notification of provincial Higher Education Department regarding qualification, criterion, and search committee to appoint vice chancellor was challenged. It was argued maintaining standards fell into the exclusive domain of Legislative List “FLL” so provincial legislature could not provide standards i.e. qualification/criterion for appointment of VC. Section 14 deals with the appointment VC for 3 years. Against this stance it was argued that no contradiction between section 14 of PU Act vs. HEC ordinance. Both laws can co-exist as long as minimum standards prescribed by HEC not violated. Second question arose that whether standards in institutions of Higher Education would be minimum or mandatory. It was held that standards in institutions of Higher Education are minimum; if provincial government followed more than minimum standards, obviously, there would be no objection. Moreover, no contradiction between sections 14 of the university act¹⁶⁵ vs. HEC ordinance¹⁶⁶. Both laws having co-existence as long as minimum standards prescribed by HEC not violated as HEC doesn’t set mandatory standards for VC. Apart from these issues, certain issues were raised before the Court. Whether legislative power to set standard for HE exclusively within the domain of FLL? Whether there is an overlap of legislative power among Federation vs. Federating Units. What is nature and scope of standards of HEI—minimum or mandatory? Provincial law regarding standard is unconstitutional --- section 14(2) (4) of PU Act, 1973. Whether notification comply with statutory requirements to the extent of providing a fair mechanism for constitutions of search committee. What would be the role of Council of Common Interest – whether it played its constitutional role? Education includes standards in education; standards in Higher Education Institutions “HEI” falls in Federal Legislative List “FLL” too; therefore, there is an overlap in legislative competence between Federation & Province in the area of “Education” and standards in HEI. Following the 18th Amendment, the distribution of legislative subjects has become asymmetrical and uneven, leading to inconsistencies in the allocation of powers and responsibilities between federal and provincial governments.¹⁶⁷ In such an uneven overlap Federal Principle applies and both the governments enjoy plenary legislative power.¹⁶⁸ However, Federal legislature does not oust Provincial legislature. There is an exception when

¹⁶⁵ PU amended act, 1973; PU Act, 1882

¹⁶⁶ “HEC Ordinance”, 2002; Ordinance No. LIII of 2002; 11th of September, 2002

¹⁶⁷ PLD 2017 489 (Dr. Aurangzeb case)

¹⁶⁸ Art. 142 of 1973 Constitution

both statutes are locked the Federal law prevails u/a 143.¹⁶⁹ 18th amendment gives way to cooperativeness and coordination; survival of constitution rests on cooperative federalism. Cooperative Federalism refers that multiple levels of government are to be seen a part of single government. It was held that Constitution is not a straitjacket rather it is a breathing document. Constitutional court of South Africa also held that when two legislatures have concurrent powers to make laws; the one way is cooperation. Justice Iacobucci stated that in case of conflict provincial legislature intra-vires¹⁷⁰ “Parmountas doctrine” would be applied. Federal standards would be baseline reflecting the national integrity in case of vertical power sharing. Federal encourages cooperation and inter-departmental coordination. Federation and provinces both can set standards in HEI; however, provinces will not be allowed to develop the standards in HEI below the federal standards. SC in India held in AIR 2016 SC 2601 Union list was limited to lay down uniform standard of education: - not to bereft the state legislature. Central government is responsible to determine the standards in HEI; same should not be lowered in the hands of state. HEC provides guidelines which are non-binding. This was an exhaustive judgment elaborating the issues pragmatically and considering the ground realities.¹⁷¹

In another landmark judgment of Dr. Akmal Hussain case two main questions of law were raised before the court. First, search committee was constituted before the advertisement therefore a fresh advertisement should be made. Second, Dr. Akmal was not an expert. Therefore, a fresh search committee be constituted to re-initiate the appointment process. Three candidates were shortlisted and put up before Chief Minister. After perusing the available record the court concluded that Dr. Akmal is an economist instead of Agriculturalist. So a new search and scrutiny committee be constituted for fresh appointment. Furthermore, in this judgment court also directed the HED while presenting the guidelines regarding the constitution of the search and scrutiny committee. The search committee should be composed of three to five members who demonstrate high moral character and integrity. It is imperative for a candidate that he will be the citizen of Pakistan and having integrity and competency; must be sagacious righteous and honest; within forty to seventy five years; has declared his assets. Committee shall be responsible for appointment of new members, Chairperson to be elected amongst members, Member can resign to address the Governor. Member can be removed if he became incapacitated.¹⁷² Following the enactment of this legislation, the

¹⁶⁹ Art. 143 of 1973 Constitution

¹⁷⁰ Husky Oil Operations Ltd v Minister of National Revenue, [1995] 3 SCR 453, 1995 CanLII 55 (SCC).

¹⁷¹ PLD 2017 489

¹⁷² 2018 PLC Service 267

government shall nominate candidates for the search and scrutiny committee within 15 days. At least one of the nominees must be a woman. The list of recommended candidates will be publicly disclosed, and the public will be invited to submit comments and objections to the Secretary within 6 days. The Secretary shall then provide the list of nominees, along with the public feedback, to the Legislative Committee within 7 days. The Legislative Committee shall confirm or reject the nominees by a simple majority vote within 7 days, taking the public input into consideration. If the Legislative Committee does not take action, the nominees shall be presumed confirmed. The Secretary shall then submit the names of the confirmed or presumed confirmed candidates to the Governor for appointment within 1 day. If the Governor fails to make the appointments within 10 days of receiving the list, the nominees shall be automatically appointed, and the government shall issue the necessary notification. The provisions of Section 6, subsections (6) through (10), shall apply to the formation of this initial search and scrutiny committee. If the Legislative Committee rejects a candidate, it shall notify the Government of its decision, and the Government shall propose another. Suggestions of Higher Education Department and Higher Education Commission were also made part of in this case.¹⁷³

In Pakistan, the higher courts have issued a number of decisions involving the division of responsibilities in the higher education sector between the federal and provincial governments. In the matter of Dr. Asfandyar vs. Federation of Pakistan, the Supreme Court of Pakistan made one of the most significant judgements in this respect in 2013. The court ruled that the 18th Amendment had transferred responsibility for higher education to the provinces, and that the federal government could not intervene in the management and regulation of higher education institutions situated within the provinces. The Supreme Court also ruled that the federal government established the Higher Education Commission (HEC) to promote higher education across the country, but it was not authorized to build institutions.¹⁷⁴ In the case of Dr. Abdul Shakoor vs. Government of Punjab, the Lahore High Court ruled that the provincial government was responsible for governing and regulating higher education institutions within the province, and that the federal government had no authority to intervene in the affairs of provincial universities. The court also directed the provincial administration to ensure that the province's higher education met national requirements.¹⁷⁵ In Dr. Muhammad Aslam Khaki vs. Federation of Pakistan, the Islamabad High Court stated that education was a fundamental right

¹⁷³ 2018 PLC Service 267

¹⁷⁴ Dr. Asfandyar vs. Federation of Pakistan, PLD 2013 SC 1.

¹⁷⁵ Dr. Abdul Shakoor vs. Government of Punjab, PLD 2014 Lah 558.

of every person and that both the federal and provincial governments had a responsibility to safeguard and develop this right.¹⁷⁶ The Peshawar High Court ruled in Dr. Muhammad Ajmal Khan vs. Federation of Pakistan that education was a provincial subject following the 18th Amendment and that the federal government could not intervene in the management and regulation of higher education institutions within the provinces. The court also emphasized the importance of cooperation and coordination between the federal and provincial governments in the development of the education sector, as well as the establishment of a national education policy to ensure that Pakistan's educational quality meets international standards.¹⁷⁷

2.6.4. How Delineation between Federation and Provinces could rationally be revised

The delineation of responsibilities between the federal and provincial governments regarding the higher education sector in Pakistan is a complex issue that requires careful consideration and consultation with stakeholders. Nonetheless, there are several ways in which the current delineation of responsibilities could be revised in a rational manner. The federal and provincial governments should communicate with stakeholders, such as higher education institutions, faculty members, and students, to identify areas where the current division of duties is ineffective. This could aid in identifying areas where the federal and provincial governments' responsibilities should be revised in a more sensible manner. Both the federal and provincial governments should collaborate and coordinate their efforts to ensure that Pakistan's higher education system develops in a way that fits the needs of the country. This could entail developing a national education policy that outlines each level of government's tasks and responsibilities and provides a framework for cooperation and collaboration. The federal and provincial governments should invest in strengthening the capacity of higher education institutions and regulatory agencies to ensure that they have the resources and skills to manage and regulate the higher education sector effectively. This could include giving institutions and regulatory authorities with training and technical help, as well as investing in research and development. The federal and provincial governments should review existing higher education legislation to identify areas where adjustments are needed to clarify each level of government's powers and responsibilities. This could entail amending Pakistan's

¹⁷⁶ Dr. Muhammad Aslam Khaki vs. Federation of Pakistan, PLD 2015 Islamabad 218.

¹⁷⁷ Dr. Muhammad Ajmal Khan vs. Federation of Pakistan, PLD 2015 Peshawar 1.

Constitution or enacting new legislation to ensure that the federal and provincial governments' responsibilities are clearly defined and understood.¹⁷⁸

2.7. Future of Higher Education sector with changing responsibilities

The The 18th Amendment's changing regulatory environment, which transferred substantial power from the federal to provincial governments, would have a big impact on Pakistan's higher education system going forward. A more region-specific approach is made possible by this shift towards decentralization, which gives each province the ability to customize higher education policy to fit its unique social, economic, and cultural circumstances. Although this strategy has the potential to promote diversity and creativity in education, it also poses a number of difficulties for upholding national unity, regulatory coherence, and quality standards.

Creating strong regulatory frameworks in each province has become a significant problem as a result of this change. While decentralization gives provincial higher education commissions (PHECs) more autonomy, research by Dr. Nadeem ul Haque and Dr. Ammara Azhar (2021) shows that many provinces lack the knowledge and resources necessary to independently create appropriate regulatory standards. The federal Higher Education Commission (HEC) was in charge of quality control, accreditation, and policy-making prior to the 18th Amendment, which produced a comparatively uniform national norm. Provinces must now create their own regulatory frameworks as duties have been split up, but Dr. Haque's research cautions that without national coordination, regional standards may differ significantly, resulting in disparities in the quality of education.

The Sindh High Court's 2020 decision, which emphasized the necessity of a unified federal-provincial framework to guarantee that university degrees have consistent value throughout Pakistan, is one example of how courts have recognized these difficulties. Strong intergovernmental cooperation is being called for in response to these issues in order to harmonize standards without violating provincial authority. Many academics propose a cooperative model wherein provincial HECs are free to apply these criteria in a way that is acceptable for their respective regions, while the federal HEC offers guidance, advisory help, and quality benchmarks. According to Dr. Ayesha Qureshi's 2022 paper, this kind of

¹⁷⁸ "Provincial Autonomy and Higher Education Governance in Pakistan: Issues and Solutions." International Journal of Educational Development 39 (2015): 59-70.

cooperation might capitalize on the advantages of both governmental levels by fusing the resources and experience of the federal HEC with the knowledge of local demands from the provinces.¹⁷⁹ In 2021, the Lahore High Court reaffirmed the necessity of concerted efforts in higher education, holding that although provinces have legislative power, they should cooperate with federal institutions to guarantee academic standards are compatible. The Court's ruling represented a more comprehensive judicial viewpoint, highlighting the need for uniformity in educational standards throughout Pakistan in order to safeguard students' career prospects and uphold Pakistan's standing as a leading global educational destination.

Notwithstanding the regulatory obstacles, the enhanced independence also creates opportunities for experimentation and innovation, which could lead to a more varied and flexible environment in higher education. Provincial governments can react to regional socioeconomic demands more quickly and efficiently if they are given the authority to create policies that are tailored to local requirements. Provinces now have the chance to adopt distinctive educational models, such industry-specific specialized schools or technical and vocational education programs that meet the needs of the local labour market. According to prominent higher education reformer Dr. Sohail Naqvi, this localized approach enables more specialized solutions that better prepare students for the workforce, especially in underserved and rural areas.¹⁸⁰ His 2021 study on vocational training programs in Sindh demonstrates how locally controlled educational systems can provide graduates with the competencies required for developing, regionally tailored businesses. In this way, a higher education model that is more in line with Pakistan's varied economic and cultural environment can result from decentralized control.

The incorporation of technology and online learning, which has become increasingly significant, especially in the wake of the COVID-19 pandemic, is another important element affecting the future of higher education in Pakistan. Since provinces are now in charge of their own higher education programs, they can invest in technologically advanced solutions, giving instruction more freedom. As universities look for more affordable and inclusive options for an expanding student body, the epidemic compelled them to quickly embrace online and blended learning approaches, which have remained relevant. While federal measures have

¹⁷⁹ Qureshi, Ayesha. "Federal-Provincial Cooperation in Higher Education: Bridging the Gaps Post-18th Amendment." *Journal of Education Policy Studies* 12, no. 4 (2022): 55–72.

¹⁸⁰ Naqvi, Sohail. "Vocational Training and Regional Needs: A Sindh Case Study." *Higher Education Reform Journal* 8, no. 1 (2021): 23–39.

historically supported online education, provincial governments are now better positioned to grow these efforts, particularly in remote and rural areas, according to Dr. Shahid Siddiqui's 2022 research. With Sindh and Khyber Pakhtunkhwa already making progress in introducing online and hybrid programs suited to their regions, online learning provides a way to bring high-quality education to places that do not have physical facilities.¹⁸¹

Equitable access to technology is still a problem, though. It is challenging to properly implement online education in many areas, especially Baluchistan, due to inadequate technology resources and network problems. According to research by Dr. Sidra Anwar (2023), in order to guarantee that online learning helps students from all socioeconomic backgrounds, provincial governments would require significant assistance in developing digital infrastructure and offering reasonably priced internet access.¹⁸² In this case, a concerted federal-provincial effort would once more be advantageous; federal funding for national digital infrastructure might give provincial governments the support they need to increase access to online education. Last but not least, as provinces establish their own guidelines, court decisions have started to influence how autonomy and the requirement for uniformity in the industry are understood. In the Khyber Pakhtunkhwa High Court's 2019 decision, for example, the court emphasized that provinces have legitimate control over their educational administration and upheld the provincial government's right to independently select vice-chancellors for their universities. However, the Supreme Court later recommended that in order to maintain educational integrity, the eligibility requirements and selection procedures must meet a certain quality standard. This judicial tendency suggests that provinces are increasingly expected to responsibly exercise their authority, making sure that regional policies somewhat conform to national quality standards.

In conclusion, Pakistan is now headed towards a more locally responsive and possibly innovative educational system as a result of the decentralization of higher education duties. However, consistent quality standards, technology accessibility, and intergovernmental cooperation are still essential for the sector to prosper. A balanced approach, where provinces exercise autonomy with federal support and coordination, may be the best sustainable course of action, according to research and court decisions that have demonstrated both the benefits

¹⁸¹ Siddiqui, Shahid. "The Role of Online Education in Pakistan's Post-COVID Higher Education Landscape." *Pakistan Journal of Digital Learning* 5, no. 3 (2022): 45–62.

¹⁸² Anwar, Sidra. "Digital Divide in Higher Education: Challenges for Provincial Governments Post-18th Amendment." *Journal of Technology and Education in Developing Regions* 9, no. 2 (2023): 30–48.

and drawbacks of this new structure. A model of this kind would enable provincial administrations to promote educational advancement in a way that is not only inventive and inclusive but also in line with the overall objectives of Pakistan's national development.¹⁸³

2.8. Findings and Conclusions

The delineation of responsibilities between federal and provincial government agencies in Pakistan's higher education sector has undergone significant transformation following the 18th Amendment. Pre-18th Amendment, the federal government, primarily through HEC maintained substantial control over higher education. It regulated, funded, and set policies for universities nationwide, ensuring a unified framework aimed at maintaining quality and consistency. Provincial governments, on the other hand, had limited roles, focusing on the management & oversight of public universities within their regions, including the appointment of vice-chancellors and resource allocation. Post-18th Amendment, the landscape shifted dramatically, granting provincial government's enhanced autonomy & responsibilities. They now manage higher education policies, planning, and institutional oversight within their jurisdictions. This devolution of power allowed for more region-specific approaches to higher education, potentially fostering innovation and responsiveness to local needs. Provincial higher education departments and commissions now play pivotal roles in establishing and managing public universities, overseeing their funding, and ensuring quality standards are met. However, this shift has also introduced challenges, particularly concerning coordination and consistency across provinces.¹⁸⁴ The HEC's role has been redefined to focus on funding, quality assurance, and inter-provincial collaboration, but overlaps and conflicts have emerged, necessitating clearer delineation and cooperation mechanisms. Court rulings have underscored these evolving dynamics, highlighting the need for a balanced federal-provincial relationship that ensures both local autonomy and national coherence in higher education. Moving forward, establishing effective federal-provincial coordination councils, implementing performance-based funding, and enhancing capacity-building programs for administrators could further refine and improve this collaborative governance model.¹⁸⁵

¹⁸³ Mustafa Impex Case PLD 2016 SC 808

¹⁸⁴ Haque, Nadeem UI, and Ammara Azhar. "18th Amendment, Devolution of Power, and Institutional Autonomy of Higher Education in Pakistan." *Research Journal of Social Sciences and Economics Review* 3, no. 2 (2021): 57-68.

¹⁸⁵ PILDAT. *Impact of 18th Amendment on Education and Higher Education in Pakistan*. Islamabad: Pakistan Institute of Legislative Development and Transparency, 2019

2.9. Recommendations

To address the challenges and improve the delineation of responsibilities between federal and provincial government agencies in the higher education sector post-18th Amendment, several recommendations can be made. Enhancing coordination mechanisms between federal and provincial authorities is crucial. Establishing regular forums for dialogue and collaboration can help align policies and ensure consistent standards across the country. These forums should facilitate the exchange of best practices, address emerging issues, and develop joint strategies for national and regional priorities. Strengthening the capacity of provincial higher education commissions is essential to ensure they can effectively manage their expanded roles. Providing technical assistance can help them develop robust regulatory frameworks and improve institutional oversight. This support should include capacity-building initiatives for staff and the development of modern infrastructure and technology systems. Legislative framework should encompass roles and responsibilities of federal and provincial agencies. This can reduce overlaps and conflicts, ensuring that each level of government understands its specific duties. This framework should be based on consultations with stakeholders and legal experts. Developing a unified national quality assurance and accreditation system that respects provincial autonomy is vital. This system should set minimum standards for higher education institutions while allowing provinces to customize additional requirements based on regional needs. A national accreditation body, working in collaboration with provincial commissions, can oversee this system to maintain quality and consistency. Increasing federal funding support for provinces is necessary to ensure equitable development of higher education across the country. The federal government can establish targeted grants and funding programs that address specific regional challenges and priorities. Encouraging public-private partnerships in the higher education sector can supplement government efforts and resources.¹⁸⁶ These partnerships can drive innovation, provide additional funding and enhance the quality of education and research. Provinces should be encouraged to create policies that attract private investment while maintaining regulatory oversight. Regular monitoring and evaluation of the implemented policies and frameworks are essential to identify gaps and areas for improvement. Establishing independent bodies or committees to assess the performance of both federal and provincial agencies can ensure

¹⁸⁶ Haque, Nadeem Ul, and Ammara Azhar. "18th Amendment, Devolution of Power, and Institutional Autonomy of Higher Education in Pakistan." *Research Journal of Social Sciences and Economics Review* 3, no. 2 (2021): 57–68.

accountability and transparency. These evaluations should be shared publicly to foster trust and inform future policy decisions. The implementation of these recommendations can enhance the delineation of responsibilities between federal and provincial governments in the higher education sector by fostering a more efficient, equitable, and high-quality education system.

2.10. Summary of the Chapter

The 18th Amendment in Pakistan's Constitution marked a significant shift towards federalism by decentralizing powers, particularly in the higher education sector. It transferred 47 subjects from the Concurrent Legislative List to the provinces and enhanced the role of the Council of Common Interests (CCI) in regulating these subjects. This led to the devolution of 17 federal ministries to provinces, including the Higher Education Commission (HEC), which faced attempts at dissolution by Punjab and Sindh. The federal government, however, resisted fully transferring authority, leading to legal disputes over HEC's control. The Supreme Court ultimately supported federal oversight, maintaining the HEC's authority. Historically, Pakistan's higher education was centrally controlled, a legacy from British colonial rule. The 18th Amendment theoretically granted provinces more autonomy over higher education, yet this transition faced challenges, including court cases like those in Sindh and Baluchistan. Despite these issues, the amendment represents a critical evolution from centralized control to greater provincial autonomy in higher education, with the federal government focusing on maintaining standards. The amendment's full impact on higher education policy and federal-provincial relations continues to evolve, reflecting ongoing tensions between central authority and provincial independence.

CHAPTER 3

HIGHER EDUCATION COMMISSION AND THE QUESTION OF AUTONOMY

Chapter 3

Higher Education Commission and the Question of Autonomy

3.1. Introduction of Higher Education Commission and the Question of Autonomy

The condition of the higher education sector in Pakistan has been declining steadily since the country's inception. In the beginning autonomy was denied to provinces while negating the aspiration of Pakistan resolution regarding provincial autonomy. Likewise, six points¹⁸⁷ of Sheikh Mujib-ur-Rehman¹⁸⁸ and separation of East Pakistan was denial of provincial autonomy.¹⁸⁹ Pakistan has chequered constitutional politico-legal history revolving around centralization and decentralization of powers. On one hand military generals tried to exclude the role of political parties, while political elites laid emphasis on greater role of provincial autonomy as envisaged in Jukto Front¹⁹⁰, movement to restore democracy (MRD)¹⁹¹ and charter of Democracy (COD)¹⁹² on the other. A country's constitution could be placed under three categories i.e. legal constitutionalism, Political constitutionalism and constitution based on traditions.¹⁹³ Up till now Baluchistan, KP, GB and AJ&K have failed to establish an independent Higher Education Commissions. Prior to 18th amendment Education including Higher Education was made part of concurrent legislative list vide entry No. 38. In post 18 amendment era two commissions in Punjab and Sindh have been established but opposed by HEC practically. HEC did not bother to take on board the provincial commissions while making the decision of devolution of power as mandated in 18th amendment. Further, not to invite vice-Chancellor of Punjab and Sindh Higher Education Commissions in meetings aggravate the situation. While the Provincial Commissions Act specifies the inclusion of the

¹⁸⁷ The six-point formula proposed significant reforms: implementing a federal parliamentary system based on direct adult franchise, determining provincial representation in the federal legislature by population, limiting the federal government's authority to foreign affairs, defense, and currency, and establishing separate accounts and paramilitary forces for each wing or region.

¹⁸⁸ Sheikh Mujib-ur-Rehman played a bouncy role in Pakistan politics and rose to prominence by presenting a 6 Point formula.

¹⁸⁹ Syed, Humayun. Sheikh Mujib's 6-Point Formula: An Analytical Study of the Breakup of Pakistan. Karachi: Royal Book Company, 1995. Original edition by the University of Michigan. ISBN 9694071763, 9789694071763. Page 29.

¹⁹⁰ The United Front was a coalition of political parties in East Bengal that emerged victorious in the 1946 provincial elections, defeating the Muslim League and securing control of the East Bengal Legislative Assembly.

¹⁹¹ Movement for the Restoration of Democracy (MRD) was a political movement in Pakistan in the 1980s that opposed the military government of President Zia-ul-Haq.

¹⁹² A coalition between two political parties PML and PPP was signed in 2006.

¹⁹³ 2018, Annual report of Human Rights Commission Accessed on 23.06.2024 11:13 PM

HEC in the governing body; HEC did not take part in any activity since last six years. In 2011 Dr. Atta-ur-Rehman requested before the Supreme Court of Pakistan that HEC should remain intact and Supreme Court accepted the request.¹⁹⁴ Commissions at federal and provincial level need to take joint septs to curb the challenges and improve research work while balancing their constitutional and legal limitations. In this paper constitutional and legal role of HEC have discussed while elucidating the exhaustive role of Provincial Higher Education Commissions in post 18th amendment era. Moreover, the types of autonomy should have been elaborated to comprehend what type of autonomy is available to Higher Educations Commissions including Higher Education Institutions and what type of autonomy ought to be available to these commissions and institutions as mandated in post 18th constitutional amendment. Courts are trying to safeguard the autonomy of higher education institutions while not interfering in internal matters of universities. Though, it was responsibility of the Federal and Provincial governments to comprehend their status yet Courts have to interfere to fill the gap and facilitated the government to accomplish the task. There is a dire need to devise a legislative framework to shift the power from HEC to provincial commissions without disturbing the academia and students benefitting from HEC. We will also critically analyze the HEC ordinance with respect to powers of HEC and the acts of other Provincial bodies with respect to their powers and the role of courts in reshaping the existing Legislative Framework.

3.2. Framing of Legal Issues

Whether devolution of power regarding autonomy of higher education sector as envisaged by 18th Amendment is reflected and incorporated in the existing Legislative Framework.¹⁹⁵

Whether higher education commissions have become autonomous as mandated in amendment.

Whether the judgment or decision of higher courts have impacted and shaped the post 18th amendment legislative framework of higher education Institutions.

¹⁹⁴ PLD 2011 SC 1

¹⁹⁵ Report of the 18th Amendment to the Constitution: Issues and Challenges in Curriculum and Standards, Institute of Social and Policy Sciences, Islamabad (I-SAPS) ; pp1-4

3.3. Definition of Autonomy

Let's start by understanding the concept of autonomy, particularly in the context of the higher education sector. According to Black's Law Dictionary, autonomy refers to the political independence of a nation and the right to self-govern. In legal terms, it is associated with freedom, self-determination, self-rule, and sovereignty. The Oxford Dictionary defines autonomy as the ability to act and make decisions independently, while Webster's Dictionary describes it as the state of being self-governing. The autonomy of a university has been widely discussed and explored in literature, encompassing various aspects. It generally refers to the institution's freedom to govern itself through its own rules and regulations. Mahatma Gandhi similarly emphasized that institutional autonomy is about the freedom to function effectively and achieve academic excellence through self-administration. A common point of debate is the reduction of state control, with the perception that decreased reliance on government funding enhances institutional autonomy.¹⁹⁶ There are three approaches to overseeing the autonomy of institutions: delegation from central to lower tiers of government, delegation to a specialized intermediary body and delegation directly to the academic institution. In the case of an intermediary body, the central authority, particularly the Ministry of Education, delegates control over funding and operations to this body.¹⁹⁷ This perspective considers HEC as an intermediary that significantly influences the level of autonomy in universities.¹⁹⁸

3.4. The Concept of Substantive autonomy

To understand the HEC's role as a buffer body, it's essential to consider two types of institutional autonomy: Substantive and Procedural autonomy. Substantive autonomy allows universities or universities to set their own goals and programs, while procedural autonomy primarily concerns financial matters.¹⁹⁹ Curriculum design, a key component of substantive autonomy, falls under the National Curriculum Revision Committee (NCRC), which operates within the HEC's Academic Division. The NCRC is tasked with researching and analyzing existing syllabi and comparing them to curricula from advanced countries for each discipline. Final decisions are made by committees mainly composed of university teachers, and for

¹⁹⁶ A thing or person that reduces a shock or protects somebody/something against difficulties.

¹⁹⁷ Williams, Joanna. *Academic Freedom in an Age of Conformity: Confronting the Fear of Knowledge*. New York: Palgrave Macmillan, 2016.

¹⁹⁸ Marino, Stefano. *The Concept of Autonomy in Kant and Nietzsche*. Cambridge: Cambridge University Press, 2003.

¹⁹⁹ Prof. Dr. Azam Ali Khawaja. "Management and Governance: Roles and Responsibilities of Federal and Provincial Authorities; Appointment, Autonomy, and Accountability of HEI Managers." pp. 28-32.

professional degree programs, the relevant Accreditation Council must be involved. The implementation status of NCRC provided courses is uncertain, as many universities create and teach their own curricula. For instance, Dow University of Health Sciences recently advertised its integrated Modular Medical Curriculum developed by its faculty. Courses proposed by the NCRC or developed by universities are typically reviewed by the Board of Studies, the Faculty Board, and finally the Academic Council, chaired by the Vice-Chancellor. University Acts often specify that the institutions themselves determine their course of studies. Discussions indicate that the NCRC curriculum is not fully adopted by many universities, making it challenging to assess the true extent of institutional autonomy without knowing the acceptance level of the NCRC curriculum. Thus, universities may have partial autonomy.²⁰⁰

University research policies are usually available, and the HEC periodically directs universities to focus on priority areas, such as energy, water resources and food security. Nonetheless, research proposals in all fields were considered without specific funding allocations. Most universities lack internal research funding, relying primarily on HEC funds. The HEC supports research through programs like the National Research Program for Universities (NRPU), University-Industry-Technology Support Program, and donor funding. It also finances researcher capacity building, university research promotion, and research commercialization, resulting in universities being dependent on government funding and not fully autonomous. Regarding entrance standards, a few Accreditation Councils set the requirements that universities must follow, while other programs allow universities to determine their own admission criteria, which can vary. For example, admission in QAU based 10% of seats merit-based and rest allocated based on provincial quotas. As a federal university, it admits students from all over Pakistan. Conversely, Karachi University prioritizes candidates with Sindh domicile who completed matriculation in Karachi. Academic staff appointments are managed by the universities themselves. The recruitment process involves newspaper and website advertisements, application reviews by departmental chairs, deans, scrutiny committees and final interviews by the Selection Board, which includes two subject experts. Appointments for Lecturers and Assistant Professors follow this process, while Professors and Associate Professors are evaluated by three foreign experts approved by the Syndicate and the Vice-Chancellor. Final recommendations require Syndicate and Senate approval.²⁰¹ Lastly,

²⁰⁰ Prof. Dr. Azam Ali Khawaja. "Management and Governance: Roles and Responsibilities of Federal and Provincial Authorities; Appointment, Autonomy, and Accountability of HEI Managers." pp. 28-32.

²⁰¹ Gilabert, P. (2012). Substantive autonomy and the grounding of political freedom. *Philosophy and Public Affairs*, 40(3), 233-259.

university acts grant institutions the authority to conduct examinations and confer academic degrees, diplomas, and certificates, establishing them as autonomous bodies in this respect.²⁰²

3.5. The Concept of Procedural Autonomy

Previously, we examined autonomy in the higher education sector and the concept of substantive autonomy. Now, we will discuss procedural autonomy. According to Clause 10 (h) of the HEC Ordinance, one of the roles of the HEC is to assess the financial needs of public universities, approve funding based on their recurring annual requirements, development projects & research proposals and ensure that a substantial portion of these funds supports research and libraries. Given the limited resources of universities, they heavily depend on HEC for financial support. Funds are allocated based on evaluations conducted by the Finance and Planning Committee, a statutory body within the university, with final approval granted by the Syndicate. Financial management is overseen by the Treasurer, whose appointment is approved by the Chancellor. The Treasurer is responsible for budgeting, managing funds, and ensuring they are used as intended. Data on the status of Treasurer Position filled by government account department delegates, or temporarily held on an additional charge basis is insufficient but could provide insights into the financial management performance of the department. University statutes typically require an Audit Officer to conduct pre-audits on all transactions, with annual audits performed by federal and provincial audit departments where applicable. This indicates that universities have some degree of financial autonomy. Non-teaching staff appointments are managed by universities, often starting with requests from teaching departments and administrative sections. These requests are reviewed by a dedicated committees like Finance and Planning Committees. The issue lies not in the number of sanctioned posts but in the nature of their appointments: whether permanent, contractual, or temporary. Universities also handle their own purchasing and contracting activities. Conventionally, a Purchase Section manages these needs, with assistance from a Purchase Committee comprising senior academics and administrative personnel for teaching departments. The Tender Committee, supported by the Project Directorate, manages repairs, maintenance, and construction works, adhering to government regulations in both scenarios. Universities, overseen by Provincial Higher Education commissions are often considered the weakest link in the education system. To sum

²⁰² Ibid.

up, Universities possess significant autonomy in many substantive and procedural matters, which can be enhanced by providing opportunities to improve their managerial skills.²⁰³



Figure: 3.1 Substantive Autonomy

This figure shows that no substantive autonomy has been granted in the case of Research Policy.

²⁰³ Tyler, T. R. (2006). Procedural justice and legitimacy: A twenty-first century perspective. *Journal of Social Issues*, 62(2), 259-280.

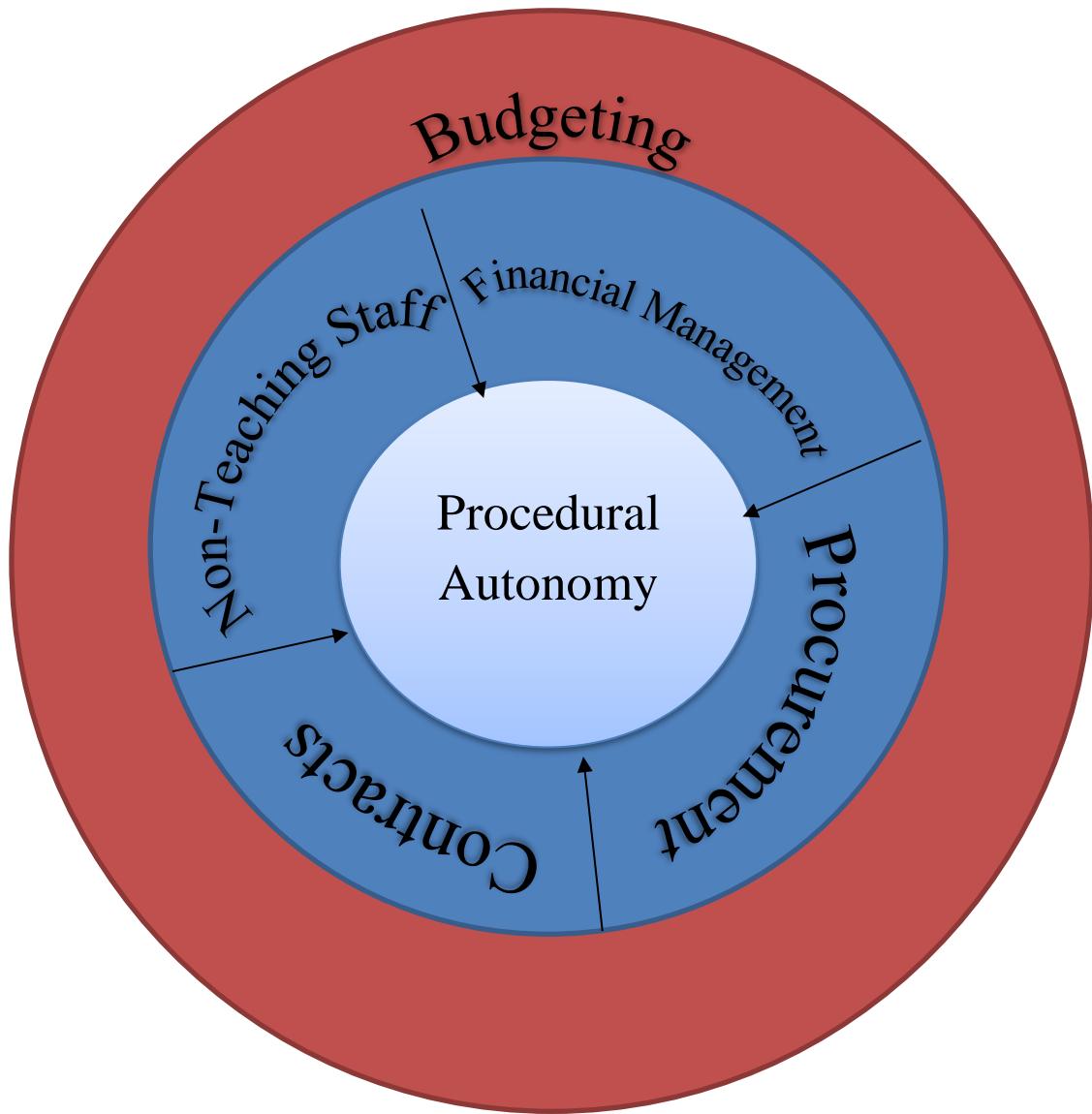


Figure: 3.2 Procedural Autonomy

The figure showed that no procedural autonomy has been granted to universities in Budgeting.

Source: Primarily idea was taken from the report of Dr. Azam Khawaja²⁰⁴

The depth analysis of available data and study of case laws showed that universities enjoy more substantive autonomy and less procedural autonomy. Nonetheless, universities did

²⁰⁴ Report of. Dr. Azam Ali Khawaja. "Management and Governance: Roles and Responsibilities of Federal and Provincial Authorities; Appointment, Autonomy, and Accountability of HEI Managers." pp. 28

not enjoy the autonomy in budgeting and research policy related issues. These issues having great importance for development of universities.

3.6. Legislative Framework of Higher Education Sector in Pre-Eighteenth Amendment Era

Pakistan has a long-standing history of unsuccessful reforms. Numerous education sector reforms have been introduced by successive governments, including the significant efforts of the Education Commission of 1959, which implemented large-scale educational changes known as the Sharif Report.²⁰⁵ Despite offering numerous practical recommendations, the Commission's objectives were not met due to political apathy and insufficient funding. Subsequent Education Policies in 1970, 1972, 1979, 1992, and 1998, along with eight Five-year Plans, similarly failed to achieve their intended goals.²⁰⁶ Successive Pakistani governments, both military and civilian, have historically neglected higher education.²⁰⁷ Recognizing the critical role of higher education in economic and social development, the Government of Pakistan in 2001 established a 'Task Force' to address issues in the higher education sector. This Task Force was tasked with reviewing past policies and plans, identifying reasons for their failures, and proposing effective solutions to reform higher education.²⁰⁸ In its March 2002 report, the Task Force recommended replacing the ineffective UGC with the HEC. The report outlined numerous structural and functional issues in the higher education sector and proposed comprehensive measures to address them. Following these recommendations, the HEC was established in 2002 by a Presidential Ordinance, aiming to enhance both the quality and quantity of higher education in Pakistan. The HEC operated as an autonomous entity under the Federal Government of Pakistan, with its chairperson holding the status of a Federal Minister. One of the HEC's significant achievements is the substantial increase in funding for public-sector universities. Unlike the UGC, the HEC has the authority to enforce compliance from higher education institutions, with penalties for noncompliance including budget cuts. It is responsible for formulating policies, evaluating institutional performance, and guiding academic, administrative, and financial management. Additionally, the HEC sets guidelines for the recruitment, selection, performance, and compensation

²⁰⁵ Jahangir, K. Management of Higher Education Reforms in Pakistan: An Implementation Perspective. PhD thesis, Utrecht School of Governance, University of Utrecht, 2008.

²⁰⁶ Ibid.

²⁰⁷ Ibid

²⁰⁸ Ministry of Education, Government of Pakistan. The State of Education in Pakistan 2003-2004. Islamabad: Ministry of Education, March 2005.

management of faculty and staff. Since its establishment, the HEC's performance has been scrutinized by scholars.²⁰⁹ Notably, distinguished Pakistani physicist Pervez Hoodbhoy has questioned the HEC's effectiveness, arguing that little has been done to reform higher education. Hoodbhoy contends that teaching quality has not improved, and no robust mechanism has been developed to assess institutional performance.²¹⁰ Similarly, Jahangir highlights that the HEC has not adequately addressed university autonomy. Before the HEC, universities operated under provincial governments with considerable financial and administrative authority, often resisting UGC's influence on policy matters. Traditionally, Pakistani universities have enjoyed significant autonomy and now express frustration that the HEC imposes decisions without their consultation, particularly regarding faculty appointments, PhD supervisor assignments, scholarship awards, and university governance.²¹¹

3.7. Legislative Framework of Higher Education Sector in Post-Eighteenth Amendment Era: A critical analysis of HEC Ordinances

In last paragraphs the position of Higher Education sector has been elucidated in pre-eighteenth amendment era. Now, it is time to critically examine the legislative framework of Higher Education sector after Eighteenth amendment. Theoretically, the Higher Education Commissions in two provinces have been established vide Punjab Higher Education Act, 2014 and Sindh Higher Education Act, 2013 nonetheless, no constructive efforts have been made to devolve the power from Federation to provinces practically.²¹² The HEC in Federal is reluctant to transfer power to the provincial commissions. The basic purpose of the 18th Amendment was to decentralize the governance system, but decentralization is useless without effective financial and administrative autonomy. The chairperson of theses commissions are not called in important policy matters related to respective provinces. The hegemony of HEC is going on and backed by the August Supreme Court of Pakistan. On March 28, 2011, a meeting led by Mian Raza Rabbani decided to decentralize the Higher Education Commission (HEC). Consequently, on March 31, 2011, HEC was notified of this decision through notification No. F.3(26)/2010-IC-I. Due to the resulting uncertainty, the Ministry of Finance froze Rs. 7.7 billion in funds. On April 7, 2011, a delegation of Vice-Chancellors met with then-President

²⁰⁹ Ibid.

²¹⁰ Hoodbhoy, Pervez. "Pakistan's Reform Experiment." *Nature* 461, no. 7263 (September 3, 2009): 38

²¹¹ Autonomy of Higher Education Institutions in Pakistan: A Case Study of University of Education, Lahore P 15-24 IISTE Public Policy and Administrative Research Vol 3, No 12, 2013

²¹² Published in the Gazette of Pakistan, Extraordinary, Part-I 26th March 2021

Asif Ali Zardari and PM Gillani to advocate for maintaining HEC as a federal body. Subsequently, on April 9, 2011, a petition was filed in the Supreme Court of Pakistan under Article 184(3) of the Constitution of 1973 by Prof. GA Miana, Rector of Riphah University, and Brig. Muhammad Ajaeb, DG of the UOL, against the FG and the Ministry of Law. Arshad Ali Chaudhary filed and Anwar Masood Khan drafted the petition. Concurrently, Dr. Atta-ur-Rehman submitted a plea to the Supreme Court requesting a *Suo-Moto* action against the devolution of HEC. On April 12, 2011, a three-member bench including C.J. Iftikhar Muhammad Chaudhary, Muhammad Sair Ali J., and Ghulam Rabbani J. ruled that the March 31, 2011, notification would not affect HEC's operations as per the Ordinance of 2002, which would take precedence in case of any conflict.

In March 2021, the Higher Education Commission (Amendment) Ordinance, 2021, was enacted, introducing changes to the appointment process of the Executive Director by the Government of Pakistan. The tenure of the Chairperson was set to two years, and members to four years, with no extensions allowed. The amendment to Section 11 limits the commission's authority over the appointment of the executive director, transferring this power to the Prime Minister, acting through the Ministry of Federal Education (MOFE). Section 9 of the amendment specifies that decisions of the MOFE or the Commission will be determined by the majority opinion of its members present and voting. This amendment appears to aim at dismissing the current chairperson and bringing the commission under MOFE's control. The Prime Minister's direct oversight of the Higher Education sector undermines provincial autonomy, as MOFE's involvement means political figures will influence higher education decisions, affecting the distribution of research funds, scholarships, and faculty appointments. This politicization could hinder HEC's mission to advance higher education, research, and development free from political interference. Furthermore, the ongoing dispute between Dr. Tariq Banuri and Dr. Atta-ur-Rehman has escalated. Banuri advocates for enhancing undergraduate education quality nationwide, while Rehman focuses on increasing the number of scholarships, PhDs, research grants, and publications. The primary goal of higher education has always been to develop critical thinking skills. Unfortunately, HEC has struggled to cultivate such skills among students. Persistent issues include lack of coordinated efforts at federal and provincial levels, problematic attestation policies, inconsistencies in curricula, challenges in associate degree programs, frameworks for redesigning PhD programs, and the proliferation of universities across the country, which have drawn widespread criticism.²¹³ The

²¹³ Published in the Gazette of Pakistan, Extraordinary, Part-I' 26th March 2021

story does not end here rather another bill has been proposed on 3rd July, 2023 in which Prime Minister would be controlling authority of Higher Education Commission. Prime Minister can dismiss the chairperson at any time. The powers of HEC chairperson will be reduced by downgrading his status from Federal Minister to the head of an organization. Undoubtedly, it would be a step towards undermining provincial autonomy if HEC power to regulate the universities in provinces. The main control of HEC will reduce the role of provincial government to direct regional universities to conduct research to cater the regional needs. Association of Private sector Universities of Pakistan (APSUP) wrote an open letter to Prime Minister Muhammad Shahbaz Sharif to withdraw proposed amendment of 3rd July 2023 as it would be potential threat to provincial autonomy. The amendment in 2021 and proposed amendment 2023 could have far reaching consequences for quality and growth of higher education sector in Pakistan. Now ruling party and members have direct control over HEC.²¹⁴ There is dire need to safeguard the autonomy of Higher Education sector as mandated in Eighteenth Amendment. Muhammad Ashraf- Rector of University of Lahore observed that a sole standard setting body would undermine provincial autonomy. The provinces could not cater regional needs. The Prime Minister having authority over HEC means that members of ruling party have direct influence over HEC. There is no job security for chairperson as it would be great hurdle to make efficient decisions. It appears that no engagement was done with important stakeholders like FAPUASA also condemned the proposed bill. It was requirement of Eighteenth amendment that too much powers bestowed to HEC through HEC Ordinance 2002 should be curtailed and be delegated to respective provinces so that they may enjoy administrative and financial autonomy. However, the situation is quite contradictory. Though overnight devolution could not possible but process of devolution must be continued. Once the burden shifted to provinces they would be capable to lift the bar. To conclude the respect for constitutional amendment is imperative for growth and development of HE Institutions in Pakistan.

3.8. Role of Court to safeguard the autonomy of Higher Education Sector in Pakistan

There are several judgments in which courts decided not to interfere in the internal affairs of public sector universities. There are so many other landmark judgments of Supreme Court of Pakistan in which Court decided that no interference will be made in the internal

²¹⁴ HEC Amended Act 2021; HEC Amended Ordinance 2023

affairs of university. For ready reference we would like to quote the relevant paragraph from judgment. “The judgment highlights that the process of regularization is a policy matter and falls under the Executive's prerogative. Courts should refrain from interference unless a policy violates fundamental rights. Citation: The court cites the concept of institutional autonomy and refers to the Magna Charta Universitatum 2020 (Para 7).”²¹⁵ Likewise in other cases Court also endorsed the same idea not to interfere in the affairs of educational institutions by holding that courts are neither equipped with such expertise, nor do they possess the relevant experience that would allow for interference in such policy matters. Further it was decided that under this autonomous realm, educational institutions are entitled to deference when making any decisions related to their mission. At the same time, any transgression by Courts would amount to the usurpation of the power of another, which would be against the spirit of art.7 of the Constitution as it is not the role of the Courts to interfere in policy decisions.²¹⁶

However, in another landmark judgment of Irfan Ullah vs FOP through Higher Education, Islamabad. The court concluded that when service rules established by statutory bodies under statutory authority are violated and there is no adequate remedy, these violations can be enforced through writ jurisdiction. However, if the conditions of service for employees of a university are governed by internally issued rules rather than those framed under the statute, any violations cannot be enforced through writ jurisdiction instead subject to the Master and Servant doctrine. In all public sector universities created by statutory bodies and regulated by statutory rules, the principle of natural justice must be observed in disciplinary proceedings, unless the appointments are purely contractual.²¹⁷ In another landmark judgment the “Functional Test” has been elucidated. Functional Test has direct nexus with statutory and non-statutory rules. Statutory rules are rules which are framed under a statute or with government approval. Candidly speaking, it could not be possible for parliament to make laws and rules for each and every department; therefore, power is delegated to other corporations to make rules to run their functions smoothly. Functional Test has been endorsed and further developed in case of Munda Eleven Cricket club vs FOP that it is not solely depends upon whether framing of rules required approval of government rather it depends the nature and efficacy of such rule and regulations. It was decided that when rules and regulations are dealt with instructions for

²¹⁵ 2024 SCP 44

²¹⁶ 2024 SCP 44 in the case titled as: Vice Chancellor Agriculture University, Peshawar Versus Muhammad Shafiq, etc. (In CP 2270/2019)

²¹⁷ WP No. 2838-P/2021 with IR titled as Irfan Ullah vs FOP Date of Decision 10.11.2022

internal control and management, they would be non-statutory rules. The same “Functional Test” was also discussed and endorsed in Aown Abbas Bhatti vs FOP case.

In another case the petitioner was awarded major penalty i.e. dismissal from services. The court observed that the petitioner had an alternative and effective remedy available vide sec. 17 of the Act²¹⁸ which provides for revision before the Chancellor So it was decided to avail that remedy²¹⁹ which provides for revision before the Chancellor so it was decided to avail that remedy. Vires of Pakistan Medical mission act was challenged. Issue of regularization of services in Pakistan Medical Mission. Guidelines were provided in this case: All employees appointed under Pakistan Medical Commission Ordinance 2020 are governed by non-statutory rule; therefore, no vested right to continue services and PMC Ordinance is intra-vires to Constitution. In another case the lecturer of MUST was dismissed from service on the basis of serious allegations: breach of trust, misuse of authority, violation of examination rules, and harassment of female students. An inquiry committee found the petitioner guilty. The Court decided not to interfere in the administrative matters of university dismissed the petition.²²⁰

In a landmark judgment the Supreme Court of Pakistan held that academic freedom encompasses not only the liberty of thought, expression, and association within the university but also the university's right to make decisions about educational and disciplinary matters. A university's role is to foster an environment conducive to speculation, experimentation, and creativity, maintaining 'the four essential freedoms': who may teach, what may be taught, how it shall be taught, and who may be admitted to study. The court emphasized that democracy, human rights, and the rule of law can only be sustained if higher education institutions, their staff, and students enjoy academic freedom and institutional autonomy. Genuine democracy requires that the higher education and research community be able to inquire freely. Higher education institutions should embody democratic culture, which in turn promotes democratic values in society. Universities must have their academic, administrative, and disciplinary autonomy respected to produce free thinkers and leaders. So, the Court decided the bench mark for all higher educational institutions that they have sufficient autonomy to make their decisions

²¹⁸ PEEDA

²¹⁹ PEEDA, 2006.

²²⁰ 2024 MLD 130;2023 PLC Service 75; 2012 PLC (C.S.) 1366; 2019 SCR 226; Azad Jammu and Kashmir Interim Constitution, 1974, Article 44.;2014 PLC (C.S.) 386; 2011 SCMR 842; PLD 2010 SC 969; 2023 PLC Service 103
PLD 2020 Islamabad 130;

independently.²²¹ Court also clarified that higher courts can have jurisdiction where there is a justiciable dispute or violation of constitution or law.²²²

In another case the Lahore High Court held that universities have the right to make their own decisions about academic matters, and that the government should not interfere in these decisions.²²³ Similarly, in the case of Dr. Amir-ullah Marwat vs. University of Peshawar (2016), the Peshawar High Court held that universities have the right to make their own decisions about faculty appointments, and government has no right to interfere in these decisions.²²⁴ In terms of private universities, Pakistan's Higher Education Commission (HEC) has created a regulatory framework for the development of private universities in the country and private universities must meet certain requirements and criteria; they are also subject to frequent inspections of HEC to verify conformity.²²⁵ In another case the court ruled that no intervention should be made in administrative issues of university.²²⁶ Generally, Courts are not interfering in the internal matters of public sector universities. Courts generally defer to educational institutions' internal governance²²⁷ with the exception that Court intervened when minimum requirements of natural justice or legal principles are violated; another exception is that Court made intervention when a fundamental right is infringed.²²⁸ As a general rule the writ jurisdiction is available as an alternative remedy.²²⁹

3.9. Whether role of HEC should be constricted? How?

Before we proceed further to highlight whether the role of Federal HEC should be circumscribed, it depends upon the performance and achievements of HEC since its establishment. Examining the Federal Higher Education Commission's (HEC) accomplishments and influence on Pakistan's higher education system is a necessary first step in determining whether or not its function should be limited. The growth of higher education institutions from 57 in 2004 to over 200 by 2022 is only one example of the noteworthy accomplishments the HEC has made since its founding. The number of students enrolled has also climbed from 137,000 to 600,000. Additionally, the number of PhDs produced in Pakistan

²²¹ 2022 PLD 92 dated 04.01.2022 in Civil Petition No. 3429 of 2021 by Supreme Court of Pakistan case titled as Khyber Medical University case.

²²² 2022 PLD 92

²²³ Dr. Shazia Qureshi v. University of Punjab (2016); Writ Petition No. 2993/2016

²²⁴ Dr. Amir Ullah Marwat vs. University of Peshawar (2016); Writ Petition No. 1174-P/2015.

²²⁵ Ibid

²²⁶ Dr. Asadullah vs FOP; PLD 2002 SC 939

²²⁷ PLD 2021 SC 745; Yasir Nawaz v. Higher Education Commission

²²⁸ Fakheryar Khan v. Agriculture University, Peshawar, PLD 2016 Peshawar 266

²²⁹ 2011 SCMR 1813

has increased from 3,000 in the first 55 years of the country's history to almost 4,000 in the previous 15 years. Furthermore, the HEC has awarded more than 1,000 PhD scholarships to both domestic and foreign universities. A 1,000-fold increase in citations indicates a significant increase in research productivity, which is reflected in the rise in academic research output.²³⁰ Despite constitutional pressure to decentralize authority to the provinces, the Supreme Court of Pakistan has ruled to maintain the HEC, and international organizations including the World Bank, USAID, British Council, and Royal Society have complimented the HEC's work.

The devolution of some federal authorities to the provinces, including those pertaining to higher education, is required under the Eighteenth Amendment to the Constitution. This modification raises an important question: should the HEC continue to have the capacity to guarantee uniformity and quality throughout the nation, or should its role be reduced and more authority be transferred to the provincial level? The Eighteenth Amendment, which was passed in order to increase provincial autonomy, requires the decentralization of areas that have historically been under federal jurisdiction, such as education. In addition to being against constitutional provisions, the HEC's failure to distribute its responsibilities as specified in this amendment also inhibits provinces from customizing higher education to meet their unique needs. By enabling provincial organizations to handle region-specific requirements, curricula, and employment difficulties, regional autonomy can improve educational achievements. Giving provinces more authority over their higher education regulations may also encourage innovation because regionalized strategies may better suit regional labor markets and cultural norms.²³¹

Even with these theoretical benefits, it is not practical or wise to devolve power suddenly. It is difficult to quickly reproduce the intricate networks for international partnerships, accreditation, and quality assurance that the federal HEC has established at the provincial level. There has been little to no planning for a systematic transfer of responsibility, and there is currently no provincial law to replace the federal HEC's duties. If responsibilities were transferred too soon, this disparity might result in disparities in educational standards, administrative inefficiencies, and even a drop in the caliber of higher education.²³²

²³⁰ HEC Annual report 2022

²³¹ Autonomy of Higher Education Institutions in Pakistan: A Case Study of University of Education, Lahore P 15-24 IISTE Public Policy and Administrative Research Vol 3, No 12, 2013

²³² *ibid*

A smooth and balanced transition requires an efficient long-term policy that makes sure the advantages of provincial autonomy don't jeopardize educational access and standards. A policy like that would give provincial HECs precise criteria, specify how they relate to the federal HEC, and set rules for preserving uniformity in standards. Furthermore, since unstable administrations frequently impede long-term planning and implementation, political stability is essential to accomplishing these goals. In Pakistan's past, political unrest has hindered the development of consensus, hampered reform initiatives, and diverted attention from maintaining policy continuity. Research indicates that in order to bring about significant changes, higher education reform necessitates sustained funding, leadership, and policy frameworks.

Research on decentralized higher education systems, like those in the US and Canada, offers important new perspectives. While individual states or provinces maintain considerable influence over higher education legislation, these systems frequently have central accrediting agencies to guarantee that educational quality stays consistent across the country. A similar paradigm, in which the Federal HEC maintains control over standards and accreditation while provincial HECs manage curriculum development and localized efforts, would be advantageous in Pakistan.²³³ Both regional autonomy and the quality of education can be protected with this hybrid strategy. Pakistan can be subject to legal challenges and charges of constitutional violations if the devolution process is not carried out in accordance with the Eighteenth Amendment. Aspirations for a more federated Pakistan, where regions have more authority over their affairs, are reflected in the amendment. Without modification, maintaining a centralized HEC runs the risk of legal ramifications as well as eroding public confidence in the constitutional process and governance.²³⁴

Restricting the Federal HEC's role should be viewed as a calculated shift towards shared governance rather than an abrupt loss of power. A phased strategy would preserve federal quality control while enabling provincial HECs to progressively increase capacity. In order to accomplish this transformation and create regulations that guarantee seamless collaboration between the federal and provincial HECs, a stable political climate will be essential. In summary, the role of the Federal HEC should be reinterpreted to allow for regional autonomy

²³³ Shah, M. A., and Khan, S. A. *The Federal Structure of Pakistan: Legal Implications and Reform in Higher Education*. Lahore: University of Punjab Press, 2019.

²³⁴ Arif, G. M. *Pakistan's Higher Education Reforms: Challenges and Opportunities*. Islamabad: Pakistan Institute of Development Economics, 2021.

without compromising the caliber of education or its reputation abroad.²³⁵ In addition to upholding constitutional objectives, this change would help Pakistan's higher education system become more specialized, robust, and responsive to local needs.

A cooperative model with incremental transitions can be utilized to progressively limit the Higher Education Commission's (HEC) role without upsetting institutions that depend on it. First, representatives from the federal HEC, provincial HECs or equivalents, officials from the education ministry, and specialists in higher education might form a National Higher Education Transition Committee (NHETC). By establishing roles, deadlines, handling legal and logistical concerns, and assisting with capacity-building initiatives at the provincial level, this group would supervise and direct the progressive transfer of HEC's responsibilities to provincial authorities.²³⁶ To guarantee a steady transition of responsibility, a staged timeframe that lasts five to 10 years could be put into place. The federal HEC would continue to have major responsibility during the first phase, with provinces taking on roles in non-academic domains such as infrastructure and local money distribution. In the following stage, the federal HEC may hand over some academic responsibilities to the provincial HECs, including curriculum development, faculty recruiting practices, and governance requirements. Eventually, provincial entities may take over duties like quality assurance, research financing, and certification, freeing up the federal HEC to concentrate on coordination.

A National Quality Assurance and Accreditation Council (NQAAC) might serve as a national standard-setting organization, offering broad criteria for quality assurance and accreditation, in order to guarantee uniform standards throughout provinces. In order to preserve quality without centralization, this council, which was first run by the federal HEC, would eventually switch to a collaborative model with provincial representation. The development of provincial HECs' capabilities would require federal funding for a smooth transition. With training programs and workshops to build skills in curriculum development, quality assurance, research funding, and faculty development, federal funds might bolster each provincial body's administrative, technical, and human resource capacities. Scholarships and research funding must also be gradually decentralized. The federal HEC would initially be in charge of research financing, but as provincial organizations create grant and scholarship arrangements, a pilot program would let each province HEC handle certain award

²³⁵ Decentralization in Education: A Review of the Literature and the Pakistani Context. Washington, DC: World Bank, 2020.

²³⁶ Ibid

administration on its own. The federal HEC would be able to concentrate on oversight and interprovincial cooperation while provincial entities would have more authority over funds as they acquire administrative experience. Policy alignment would be facilitated by a digital platform that allows provincial and federal HECs to collaborate and share information. This platform would facilitate continuous communication to assist coordinated management of higher education and act as a repository for policies, standards, and best practices.

Federal HEC would continue to be in charge of certain national-level tasks, such as setting minimum academic requirements, supervising foreign partnerships, and administering federal funds. This strategy will guarantee that, even as provincial organizations oversee local administration and policy, Pakistan's universities maintain their compliance with international norms. The NHETC might carry out yearly evaluations to evaluate the success of the transition, adjusting to resolve issues and guarantee that standards stay high. Universities, students, and faculty would all be involved in a feedback mechanism that would gather firsthand knowledge and enable the committee to make any required adjustments. Working with the NHETC to design legislation that guarantees provincial bodies have a clear mandate for autonomy, quality assurance, and funding sources, each province would require a legal framework to outline the duties and authority of its HEC. With this arrangement, the Federal HEC's function might be progressively diminished, resulting in a decentralized, well-balanced higher education system that honors both national and regional standards.²³⁷

3.9.1. The Role of HEC with Respect to International Best Practices: A Comparative Analysis

The functions of the HEC are detailed in the HEC Ordinance of 2002, particularly in section 10. Before the Eighteenth Amendment, the HEC's primary duties included formulating policies and guidelines as per sections 9, 10, and 11 of the Ordinance. Its main role was to develop policies that promoted Pakistan's socio-economic development. The HEC was also responsible for setting guidelines for the minimum criteria and qualifications for appointments, promotions, and salaries, in consultation with the Finance Division. Another significant duty was to foster national and international research collaborations. Additionally, the HEC provided guidance to institutions on creating curricula that adequately covered basic and applied sciences, social sciences, humanities and engineering & technology. Section 9 specified that the HEC would appoint an Executive Director for a four-year term, with meetings

²³⁷ Ibid-----

to be held twice annually. This framework defined the HEC's role before the Eighteenth Amendment was implemented.²³⁸

In Post-18th amendment era initially no major changes took place due to decision of Supreme Court of Pakistan to continue its working till further orders and that the powers of HEC will not be shifted. However, in upcoming years the commissions in other provinces were also established with minimum financial autonomy. Later on, an amended ordinance in 2021 was promulgated in which amendments were made regarding appointment of Executive Director by the Government of Pakistan and tenure of Chairperson was fixed for two years and members for four years with the condition that no further extension shall be given to them.²³⁹ The amendment to Section 11 reduces the commission's authority in appointing the executive director, transferring this power to the Prime Minister, who will make the appointment through the Ministry of Federal Education (MOFE). Furthermore, Section 9 of the amendment stipulates that "all decisions of the Ministry of Federal Education (MOFE) or the Commission shall be determined by the majority opinion of its members present and voting." This revised ordinance appears to aim at dismissing the chairperson and bringing the commission under MOFE's control. The Prime Minister's direct oversight of the Higher Education sector undermines provincial autonomy. MOFE's involvement in HEC matters implies that politicians will be making decisions regarding higher education.²⁴⁰

Then there comes the court of law to safeguard the autonomy by not interfering in the internal affairs of educational institutions. In a famous case law the petitioner was awarded major penalty i.e. dismissal from services. The court noted that the petitioner had an alternate and efficacious remedy available under section 17 of the Act,²⁴¹ which provides for revision before the Chancellor so it was decided to avail that remedy. Vires of Pakistan Medical mission act was challenged. Guidelines regarding issue of regularization of services in Pakistan were provided in this case that all employees appointed under Pakistan Medical Commission Ordinance 2020 are governed by non-statutory rule; therefore, they do not have vested right to continue services and PMC Ordinance is intra-vires to Constitution. In another case the lecturer of Mir University of Science & Technology was dismissed from service on the basis of serious

²³⁸ Shah, M. A., and Khan, S. A. *The Federal Structure of Pakistan: Legal Implications and Reform in Higher Education*. Lahore: University of Punjab Press, 2019.

²³⁹ Published in the Gazette of Pakistan, Extraordinary, Part-I' 26th March 2021 Ordinance LIII of 2002

²⁴⁰ Shah, M. A., and Khan, S. A. *The Federal Structure of Pakistan: Legal Implications and Reform in Higher Education*. Lahore: University of Punjab Press, 2019.

²⁴¹ PEEDA.

allegations: breach of trust, misuse of authority, violation of examination rules, and harassment of female students. Consequently, an inquiry committee found the petitioner guilty. The Court decided not to interfere in the administrative matters of university dismissed the petition.²⁴²

Education reforms around the world have increasingly granted higher education institutions more autonomy to achieve their goals more effectively. There is a noticeable trend towards transferring control from Ministries of Education (MOE) to independent or intermediary bodies. Paradeise, Reale, Bleiklie, and Ferlie (2009) observe that the UK has a strong tradition of university autonomy compared to other nations. In the UK, universities are not directly controlled by the MOE but are supported by it. Since the early 1980s, the UK has transitioned from strong bureaucracies to a New Public Management (NPM) governance style in higher education.²⁴³ Similar reforms have been seen across Europe: Sweden has devolved power from the central government to individual institutions, Denmark has shortened course durations, and Germany has amended laws to grant more autonomy to its higher education institutions. In Asia, Malaysia has restructured higher education institutions to be less hierarchical, China has delegated powers from the federal to provincial governments, and countries like Pakistan and India have transferred powers to intermediary bodies, a trend now emerging in other regions.²⁴⁴

3.10. Findings and Conclusions

Federal HEC has failed to devolve the power to the provincial Higher Education Commissions as mandated by Eighteenth Constitutional Amendment. The basic purpose of the 18th Amendment was to decentralize the governance system, but decentralization is useless without effective financial and administrative autonomy. The question of autonomy arises when power has been shifted to respective provinces. Till date, only two provinces have established their commissions but no substantial powers have been shifted to these commissions so question of autonomy could not be arisen. Secondly, the courts are safeguarding the autonomy of Higher Education Institutions while having limited interference in Educational institutions. On the other hand, no major shift has been changed in HEC

²⁴² 2024 MLD 130;2023 PLC Service 75; 2012 PLC (C.S.) 1366; 2019 SCR 226; Azad Jammu and Kashmir Interim Constitution, 1974, Article 44.;2014 PLC (C.S.) 386; 2011 SCMR 842; PLD 2010 SC 969; 2023 PLC Service 103

PLD 2020 Islamabad 130;

²⁴³ Paradeise, Catherine, Emanuela Reale, Ivar Bleiklie, and Ewan Ferlie. University Governance: Western European Comparative Perspectives. Dordrecht: Springer, 2009.

²⁴⁴ "Autonomy of Higher Education Institutions in Pakistan: A Case Study of University of Education, Lahore." IISTE Public Policy and Administrative Research 3, no. 12 (2013): 15-24.

ordinance as mandated by 18th constitutional amendment. Universities need to adopt a pragmatic legislative framework and regulatory mechanism to address the grievances of staff and students. An autonomy at higher education sector will create a healthy environment where all institutions and commission enter into a healthy competitive environment. This would be fruitful not only for students, teachers, staff and other members but also for society at national and international level. Succinctly, the primary objective of 18th constitutional amendment was to empower provincial Higher Education Commissions but higher courts are supporting Federal HEC to remain intact and have strong hold over provincial commissions. The courts are also supporting the institutional autonomy while not interfering in the internal affairs of universities. No doubt, there are a lot of achievements associated with HEC but still there is a dire need to circumspect the role of HEC gradually at Federal level while empowering the provincial HEC's with true letter and spirit as it is requirement of law and Constitution as mandated in 18th amendment. Upshot of the discussion is that as soon as FHEC will not accept the existence of PHEC's the situation would be dismal. Ultimate goal is to restore status of PHEC as practiced in developed countries. There is a dire need to circumspect the role of FHEC as mandated in 18th amendment. Likewise, PHEC's should have limitations to make decisions while living in a legislative framework elucidated in respective acts. In case of blockage the article 143 of constitution should be helpful to sort out the issue. While exercising their powers the provincial higher education commissions should not go beyond their powers and they need to restrict themselves in a regulatory and legislative framework along with their ancillary institutions. With the transfer of power to provincial Higher Education Commissions a robust accountability mechanisms should be developed at commission level. All stakeholders including but not limited to FHEC, PHEC's, universities, government, CCI, ECC, IPC should enter into a meaningful dialogue to cater the existing problem i.e. Hegemony of Federal HEC over provincial Commissions and without delegating its power to provincial HEC's neither meaningful change could be brought nor constitutional supremacy could be maintained in society.

3.11. Recommendations

There is a fear that when power and authority would be transferred to provincial commission, they will fail to deliver accordingly; therefore the HEC at Federal level should not shift its powers and funds to provincial commissions immediately. One should not forget that there are certain committees in National Assembly and Senate to have checks and balances on the autonomy of Higher Education Institutions. Like Standing Committees on Federal

Education and Professional Training would have a strong check on all issues related to higher education sector in Pakistan. When commissions will be established in all provinces these committees would have a strong check on all actions performed by these commissions. In case of any discrepancy penal action may be taken against these bodies. So, HEC at Federal level should not be fearful regarding failure to perform of these commissions. Secondly, there is a judicial check which is available all the time in shape of writs under art. 184(3) & 199 of the Constitution. Candidly speaking courts are not entertaining the cases related to internal affairs of university. But in case of violation of fundamental rights writ jurisdiction is available all the time. Writ jurisdiction is also available to cope with the extraordinary circumstances. Apart from above mentioned checks there are certain internal Checks in shape of internal investigation committees as an independent accountability mechanisms to address the grievances.

3.12. Summary of the Chapter

The current study tries to comprehend whether the devolution of power as envisaged by the 18th amendment is reflected and incorporated in the existing Legislative Framework of Higher Education. Theoretically, 18th amendment strengthened the federal structure where federating units are empowered to make their own decisions without external interference; however, practically Apex Courts are backing the HEC to have strong hold on provincial commissions while enjoying the absolute authority in the name of cooperative Federalism. The study revolves the changing role of HEC at Federal level and new emerging role of HECs at provincial levels. The study revolves the role of Higher Courts in impacting and reshaping the existing regulatory framework. The conclusions showed that universities enjoy more substantive autonomy and less procedural autonomy; therefore, HEC have to give respect to other Provincial HECs as mandated by Eighteenth Amendment while transferring powers pragmatically to provincial HECs.

CHAPTER 4

REDEFINE FEDERAL AND PROVINCIAL ROLE IN HIGHER EDUCATION

Chapter 4

Redefine Federal and Provincial role in Higher Education

4.1. Introduction

To redefine the role of federal and provincial higher education sectors in post Eighteenth Amendment it is necessary to comprehend the Governance Framework of Higher Education in Pakistan and revised role of Council of Common interest. The council of common interest is a constitutional body with the primary objective to resolve the dispute among federation and provinces amicably. The role, composition, functions and working of council will be discussed separately. Undoubtedly, the Higher Education can play an important role for socio-economic and politico-legal development of society. In the beginning the governance structure had its roots in British Colonial era.²⁴⁵ In post-independence era the governance mechanism evolved with the development and management of Higher Education Institutions.²⁴⁶ In Post Eighteenth Amendment the Supreme Court directed the governments in the case of Dr. Aurangzeb Alamger to observe international standards while devising the governance framework for Higher Education institutions.²⁴⁷ This study encompass the analysis of various five year plans and educational policies having far reaching consequences. This study also encompass the transition from University Grant commission to Higher Education Commission and Provincial Commissions in Punjab in the wake of Eighteenth Amendment. The journey of Higher Education was not a smooth ride rather colonial mentality became part and parcel of this structure. Due to multiple reasons such as poor accountability mechanism, lack of transparency, misuse of power the higher education remained a neglected sector because much change had not been observed since the beginning of Pakistan.²⁴⁸ The analysis showed that Malaysia got independence from 1957 from Japan but they wiped out the remaining of Colonialism from their Higher Education sector. The study also encompass the factors responsible for failure of governance and policy guidelines accordingly. Pakistan got

²⁴⁵ Jadoon, Z., Nasira Jabeen, and A. Rizwan. "Federal Agencies in Pakistan: Autonomy and Control of State Agencies." In *Comparing States and Agencies*, edited by K. Verhoest, S. Van Thiel, G. Bouckaert, and P. Laegreid, 372-380. London: Palgrave Macmillan, 2012.

²⁴⁶ Sohaib Zubair Syed, Nasira Jabeen, Yaamina Salman, Muhammad Zahid, and Sidra Irfan. "Governance Context of Higher Education Sector of Pakistan." *Pakistan Vision* 20, No. 1

²⁴⁷ PLD 2017 Lahore 489

²⁴⁸ Jadoon, Z., Nasira Jabeen, and A. Rizwan. "Federal Agencies in Pakistan: Autonomy and Control of State Agencies." In *Comparing States and Agencies*, edited by K. Verhoest, S. Van Thiel, G. Bouckaert, and P. Laegreid, 372-380. London: Palgrave Macmillan, 2012.

independence from British Raj with the very weak governance structure and limited resources to run the affairs of all department; therefore, Pakistan inherited the Governance Framework with the lack of accountability, lack of transparency, no rule of law, misuse of power and rejection of reform initiatives, bureaucratic maladministration and administrative inefficiencies with respect to HEIs.²⁴⁹ Despite the structured governance frameworks, higher education in Pakistan faces numerous challenges: inadequate funding, political interference, lack of transparency and accountability, quality assurance issue, misalignment with local needs, judicial intervention, resistance to change, capacity building programs, negating the participation of important stakeholders, bureaucratic and administrative inefficiencies create hindrance for effective functioning of HEIs. To address these challenges, there have been ongoing reforms aimed at decentralizing administrative powers, institutional autonomy, technology integration, stakeholders engagement, enhance quality assurance, federal and provincial coordination, international collaboration, reform initiatives, focused on research and innovation, improving transparency in governance, improve accountability mechanism, fostering a culture of academic excellence and wipe out the colonial mentality from Higher Education sector along with the integration of technology in administrative and academic processes is desired to enhance efficiency and accountability.²⁵⁰ The advent of digital platforms for admissions, examinations and faculty evaluations is a step towards modernizing the governance framework. Moreover, collaborations with international universities and research bodies are being encouraged to uplift the academic standard of universities in Pakistan. In the beginning of 21st century the concept of Good Governance was introduced with the condition that rule of law should prevail and role of government should be limited to run the affairs of Higher Education Institutions. A new concept of autonomy of Higher Education was introduced and court showed reluctance to entertain the cases of university employees while announcing the no interference policy for universities. Courts in Pakistan played a constructive role to give autonomy to HEI consequently bring a meaningful change in society. A reasonable higher education institution adapts itself to the world around it and an unreasonable expects the world to change according to its ideas. To change the governance Framework the holistic approach is needed to train university staff and management on modern lines.²⁵¹ It is pointed

²⁴⁹ Haque, M. Shamsul. "New Directions in Bureaucratic Change in Southeast Asia: Selected Experiences." *Journal of Political and Military Sociology* 26, no. 1 (1998): 97.

²⁵⁰ Khalid, Khawaja Muhammad. *Indigenous Model of Higher Education Reforms in Pakistan: Higher Education Quality Assurance Initiatives*. Lahore: University of the Punjab, 2011.

²⁵¹ Lakha, Shamsh Kassim. *Higher Education: A Pathway to Development*. Karachi: Oxford University Press, 1998.

out that the governance framework suffered in public sector institutions due to lack of political will, political appointments, induction of trustee and governors, polarization of Senate and Syndicate and appointment of university leadership solely at the discretion of Chancellor. The Chancellor is most often is himself a political figure. The highest rank in military goes to military officers, the highest rank in bureaucracy goes to bureaucrats, likewise the highest rank in judiciary goes to Judges. Unfortunately, the highest rank in universities goes to either Assistant Commissioners (PAS) group or military Commissioned Officers who just started their career.

A reasonable higher education institution adapts itself to the world around it and an unreasonable one expects the world to change according to its ideas.

4.2. The Concept of Governance

Governance includes ensuring institutions authority, collaboration to assign sources, manage & monitor societal activity and to strengthen the institutions to achieve its objectives.²⁵² The traditional governance based upon social, cultural, political and historical settings along with elders involvement, holistic viewpoint, sovereignty and customary law. Scope of traditional governance was limited to the extent of handling local matters, promoting social harmony and preserving cultural integrity.²⁵³ Accountability is a broader term includes transparency, accountability mechanism, workload policy, research environment and performance of hiring regular faculty. The issue of good governance should be taken seriously while strategizing, contextualizing, and proper planning with the change in management, operation, style and evaluation system.²⁵⁴

4.3. Historical Perspective of Governance Framework for Higher Education

The Indian Universities Act of 1904 centralized the control restricting institutional autonomy and emphasizing the production of bureaucrats and professionals to support colonial rule rather than fostering independent research. After gaining independence, Pakistan inherited this British system. In 1974, the University Grants Commission was established to manage

²⁵² McGrath, Stephen Kaith, and Stephen Jonathan Whitty. "Redefining Governance: From Confusion to Certainty and Clarity." *International Journal of Managing Projects in Business* 8, no. 4 (2015): 755-787.

²⁵³ Accountability in the Governance of HEI in Pakistan

²⁵⁴ Lakha, Shamsh Kassim. *Higher Education: A Pathway to Development*. Karachi: Oxford University Press, 1998.

universities and uphold educational standards.²⁵⁵ The 1950s and 1960s saw efforts to expand higher education. Prior to Pakistan's independence in 1947, British colonial policies heavily influenced the governance of higher education in the country. Legislative Background showed that the higher Education was part of Concurrent and Federal Legislative List according to the Constitution of Pakistan, 1973. However, the 18th amendment changed the whole scenario as 102 articles were amended in Constitution of Pakistan 1973. Higher Education became provincial subject while responsibility of maintaining standards rests with the Federal government through Federal Legislative List. Consequently, Punjab HEC and Sindh HEC were established through enactment of parliament. Practically speaking these commissions have not been transferred substantial powers since their existence. Even the existence of Sindh HEC was challenged but case has not been decided yet. On the other side the commissions in Khyber Pakhtunkhwa and Baluchistan governments are governing universities through Higher Education Department and independent HECs have not been established as mandated in Eighteenth amendment.²⁵⁶ HEC was established in 2002 on recommendation of task force. Due to lack of accountability mechanism Pakistan remained outside from Quacquarelli Symonds popularly known as QS rankings. Primarily commission focused on enhancement of research culture to improve QS ranking. All stakeholders: university administration, faculty members, students supporting staff, could play an effective role for robust accountability mechanism. Throughout this journey the HEC the two chairpersons Dr. Atta-ur-Rehman and Dr. Tariq Banuri tried to impose their thoughts and ideas. Dr. Atta-ur-Rehman tried to focus on quantity such as number of universities, number of scholarships, research grants should be increased and more and more students get benefits from this scheme. Dr. Tariq Banuri focused on quality to improve Higher Education institutions. In vision 2025 Government of Pakistan focuses on human resource development for indigenous and international market.²⁵⁷

4.4. Governance Framework of Provincial Government: Pre Eighteenth Amendment Era

Before 18th Amendment Pakistan's higher education system was heavily centralized with the federal government holding the reins. Established in 1974 the University Grants Commission served as the key regulatory body, guiding policies, financing and quality control

²⁵⁵ University Grant Commission Act, 1974

²⁵⁶ Qazi, Muhammad A. Governance and Higher Education: A Study of the Impact of the 18th Amendment in Pakistan. Cambridge Scholars Publishing, Newcastle upon Tyne.

²⁵⁷ <https://www.pc.gov.pk/uploads/vision2025/Pakistan-Vision-2025.pdf>

across the provinces. The federal government through the UGC and the Ministry of Education set the curriculum, regulations and educational standards, leaving provincial governments with a limited role.²⁵⁸ Provinces had some responsibilities, like establishing universities and managing secondary schools and vocational training but they were largely constrained by federal oversight. Their primary function was to implement federal directives with little room to shape higher education according to regional needs. While they managed local educational expenditures and were involved in hiring university staff, they lacked the autonomy to tailor funding or programs to the unique demands of their regions. This centralized system often led to mismatches between the federal policies and the actual needs of diverse provinces. Regions with different socioeconomic conditions struggled to address their specific educational challenges under a one-size-fits-all federal framework. The limited provincial involvement stifled innovation and adaptability, resulting in disparities in the quality of higher education and inequities in resource distribution across the country.²⁵⁹

4.5. Governance Framework of Provincial Government: Post Eighteenth Amendment Era

Eighteenth Amendment was a milestone to achieve federalism in true spirit; consequently, 102 articles of Constitution were amended vide said Amendment. The Governance framework saw a significant change as power was transferred from Federation to provinces and universities were given more autonomy to sort out the issues. Several responsibilities from the federal government to the provinces were shifted aiming to make the governance of higher education more responsive to regional needs. The provincial governments were empowered to make their own independent commissions with unlimited powers to regulate the affairs of universities theoretically. The philosophy behind decentralization is reduction of regional differences, fulfillment of regional needs, effective educational policies for socio-economic and politico-legal development of respective provinces. University Grant Commission was replaced with HEC and HEC was devolved in the wake of 18th Amendment. However, Supreme Court of Pakistan intact the status of HEC on the request of the then Chairperson Dr. Atta-ur-Rehman. The main objective of decentralization was greater independence of provinces while HEC would be responsible to

²⁵⁸ University Grants Commission Act 1974

²⁵⁹ Usman, Sidra. "Governance and Higher Education in Pakistan: What Roles Do Boards of Governors Play in Ensuring the Academic Quality Maintenance in Public Universities versus Private Universities in Pakistan?" International Journal of Higher Education 3, no. 2 (2014): 38-51.

maintain Standards for HEIs. The dispute arise when provincial governments published an advertisement mentioning criteria for appointment of vice chancellor. The issue was challenged before court in case of Dr. Aurangzeb that the setting standards falls within the jurisdiction of federal government and provincial government cannot set the standards. The honorable court decided that setting standards falls within the jurisdiction of HEC however HEC is responsible to set minimum standards and provinces can set higher standards set by the HEC. Moreover, provinces would have more powers to allow establishment of universities, controlling them, make policies for opening of new universities, guarantee quality assurance and managing international collaboration and scholarships.²⁶⁰ Challenges also arose with the transfer to provincial control. Building the administrative competence required for provinces to properly oversee higher education presented challenges. During the changeover period, there were a number of problems, including overlapping roles, inconsistent policy execution and regional differences in educational quality. The issue of overlapping of jurisdiction has been resolved by the Court in Dr. Aurangzeb PLD 2017 Lahore 489 while presenting pragmatic approach to sort out the issue. The court decided that in case of dead lock among federation and provinces the federation will prevail as described by article of 143 of Constitution of Pakistan 1973.²⁶¹ Furthermore, because provincial higher education institutions continued to rely mostly on federal funds, their financial autonomy was restricted. There were moments when this reliance made it difficult for the provinces to carry out their plans and strategies in their entirety.²⁶² It was imperative to strike a balance between provincial power and federal oversight to keep regional policies from jeopardizing the nation's goals for higher education. To address these challenges, it is imperative to build provincial competency, improve collaboration between federal and provincial institutions, ensure that governance structures are both responsive and comply with national standards. Encouraging transparency, ensuring accountability, increasing stakeholder participation are necessary for effective decentralized governance. By striking a balance between local autonomy and national coherence, Pakistan's higher education governance in the post-18th Amendment era aims to develop a system that can better fulfil the diverse requirements of the region while upholding strong educational standards.²⁶³

²⁶⁰ Hussain, Zahid. *Decentralization and Higher Education in Pakistan: The Eighteenth Amendment and Its Implications*. Routledge, London.

²⁶¹ PLD 2017 Lahore 489

²⁶² Hussain, Zahid. *Decentralization and Higher Education in Pakistan: The Eighteenth Amendment and Its Implications*. Routledge, London.

²⁶³ Hussain, Zahid. *Decentralization and Higher Education in Pakistan: The Eighteenth Amendment and Its Implications*. Routledge, London.

Table 4.1: Governance Framework of Higher Education Pre and Post 18th Amendment Era

Component	Pre Eighteenth	Post Eighteenth
Transparency	Centralized decisions; limited public access to information	Improved transparency with provincial control; public information more accessible
Accountability	UGC/HEC accountable to federal government; limited institutional accountability	Enhanced accountability with provincial oversight; shared responsibility with federal HEC
Participation	Limited stakeholder involvement; top-down approach	Increased stakeholder involvement at provincial level; local input considered
Rule of Law	Centralized legal framework for higher education	Decentralized legal framework; provincial laws aligned with federal regulations
Effectiveness and Efficiency	Mixed efficiency; centralized bureaucracy	Varies by province; efforts to streamline processes; mixed effectiveness
Equity and Inclusiveness	Persistent regional disparities despite federal efforts	Enhanced focus on regional needs; policies to address equity and inclusiveness at provincial level
Strategic Vision	National-level strategic plans by federal government	Provincial strategic plans aligned with national priorities; local adaptations
Quality Assurance	UGC/HEC setting national standards	Provincial HECs with oversight from federal HEC; localized quality assurance
Autonomy of Institutions	Limited autonomy with some improvements under HEC	Increased autonomy at provincial level; institutions have more control over internal matters
Funding	Federally controlled through UGC/HEC	Mixed funding sources; provincial and federal contributions

Curriculum Design	Standardized by federal authorities	Provincial adaptation of curricula with federal guidelines
Research and Development	Increased focus with federal initiatives by HEC	Provincial initiatives supported by federal HEC; enhanced local research efforts

4.6. Higher Education Governance Framework of Federal Government in Post 18th Amendment Era: Theory and Practice

Theoretically, the Higher Education Commissions in two provinces have been established vide Punjab Higher Education Act, 2014 and Sindh Higher Education Act, 2013 nonetheless, no constructive efforts have been made to devolve the power from Federation to provinces practically.²⁶⁴ The HEC in Federal is reluctant to transfer power to the provincial commissions. The basic purpose of the 18th Amendment was to decentralize the governance system, but decentralization is useless without effective financial and administrative autonomy.²⁶⁵ The chairperson of these commissions are not called in important policy matters related to respective provinces. The hegemony of HEC is going on and backed by the August Supreme Court of Pakistan. On March 28, 2011, a meeting led by Mian Raza Rabbani decided to decentralize the Higher Education Commission; consequently, on March 31, 2011, HEC was notified of this decision through notification No. F.3(26)/2010-IC-I. Due to the resulting uncertainty, the Ministry of Finance froze Rs. 7.7 billion in funds. On April 7, 2011 a delegation of Vice-Chancellors met with then-President Asif Ali Zardari and Prime Minister Yousuf Raza Gillani to advocate for maintaining HEC as a federal body. Subsequently, on April 9, 2011, a petition was filed in the Supreme Court of Pakistan under Article 184(3) of the Constitution of 1973 by Prof. GA Miana, Rector of Riphah University, and Brig. Muhammad Ajaeb, DG of the UOL, against the FG and the Ministry of Law. Arshad Ali Chaudhary filed and Anwar Masood Khan drafted the petition. Concurrently, Dr. Atta-ur-Rehman submitted a plea to the Supreme Court requesting a *Suo-Moto* action against the devolution of HEC. On April 12, 2011, a three-member bench including C.J. Iftikhar Muhammad Chaudhary, Muhammad Sair Ali J. and Ghulam Rabbani J. ruled that the March 31, 2011, notification would not affect

²⁶⁴ Published in the Gazette of Pakistan, Extraordinary, Part-I' 26th March 2021

²⁶⁵ "Federalism and Higher Education in Pakistan: Analyzing the Post-18th Amendment Scenario." *Journal of Education and Research* 12, no. 1 (2017): 45-60.

HEC's operations as per the Ordinance of 2002, which would take precedence in case of any conflict.²⁶⁶

In March 2021, the Higher Education Commission (Amendment) Ordinance 2021 was enacted, introducing changes to the appointment process of the Executive Director by the Government of Pakistan. The tenure of the Chairperson was set to two years, and members to four years, with no extensions allowed. The amendment to Section 11 limits the commission's authority over the appointment of the executive director, transferring this power to the Prime Minister, acting through the Ministry of Federal Education (MOFE). Section 9 of the amendment specifies that decisions of the MOFE or the Commission will be determined by the majority opinion of its members present and voting. This amendment appears to aim at dismissing the current chairperson and bringing the commission under MOFE's control. The Prime Minister's direct oversight of the Higher Education sector undermines provincial autonomy, as MOFE's involvement means political figures will influence higher education decisions, affecting the distribution of research funds, scholarships and faculty appointments. This politicization could hinder HEC's mission to advance higher education, research and development free from political interference.²⁶⁷ Furthermore, the ongoing dispute between Dr. Tariq Banuri and Dr. Atta-ur-Rehman has escalated. Banuri advocates for enhancing undergraduate education quality nationwide, while Rehman focuses on increasing the number of scholarships, PhDs, research grants and publications. The primary goal of higher education has always been to develop critical thinking skills. Unfortunately, HEC has struggled to cultivate such skills among students. Persistent issues include lack of coordinated efforts at federal and provincial levels, problematic attestation policies, inconsistencies in curricula, challenges in associate degree programs, frameworks for redesigning PhD programs and the proliferation of universities across the country, which have drawn widespread criticism.²⁶⁸ The story does not end here rather another bill has been proposed on 3rd July, 2023 in which Prime Minister would be controlling authority of Higher Education Commission. Prime Minister can dismiss the chairperson at any time. The powers of HEC chairperson will be reduced by downgrading his status from Federal Minister to the head of an organization. Undoubtedly, it would be a step towards undermining provincial autonomy if HEC power to regulate the

²⁶⁶ "Federalism and Higher Education in Pakistan: Analyzing the Post-18th Amendment Scenario." *Journal of Education and Research* 12, no. 1 (2017): 45-60.

²⁶⁷ Amjad, Muhammad. *Higher Education Policy in Pakistan: Reforms, Challenges, and Opportunities*. Oxford University Press, Karachi.

²⁶⁸ Published in the Gazette of Pakistan, Extraordinary, Part-I 26th March 2021

universities in provinces. The main control of HEC will reduce the role of provincial government to direct regional universities to conduct research to cater the regional needs. Association of Private sector Universities of Pakistan (APSUP) wrote an open letter to Prime Minister Muhammad Shahbaz Sharif to withdraw proposed amendment of 3rd July 2023 as it would be potential threat to provincial autonomy. The amendment in 2021 and proposed amendment 2023 could have far reaching consequences for quality and growth of higher education sector in Pakistan. Now ruling party and members have direct control over HEC. There is dire need to safeguard the autonomy of Higher Education sector as mandated in Eighteenth Amendment. Muhammad Ashraf- Rector of University of Lahore observed that a sole standard setting body would undermine provincial autonomy. The provinces could not cater regional needs. The Prime Minister having authority over HEC means that members of ruling party have direct influence over HEC. There is no job security for chairperson as it would be great hurdle to make efficient decisions. It appears that no engagement was done with important stakeholders like FAPUASA also condemned the proposed bill. It was requirement of Eighteenth amendment that too much powers bestowed to HEC through HEC Ordinance 2002 should be curtailed and be delegated to respective provinces so that they may enjoy administrative and financial autonomy. However, the situation is quite contradictory. Though overnight devolution could not possible but process of devolution must be continued. Once the burden shifted to provinces they would be capable to lift the bar. To conclude the respect for constitutional amendment is imperative for growth and development of HE Institutions in Pakistan.²⁶⁹

Table 4.2: Governance Framework in Post Eighteenth Amendment: Theory and Practice

Component	Theory Post Eighteenth	Practice Post Eighteenth
Transparency	Policies and decisions should be clear and accessible to the public.	Transparency varies; some provinces have made strides, but others struggle with opaque processes.
Accountability	Institutions and leaders should be held responsible for their actions and outcomes.	Mixed results; accountability mechanisms exist but are often weak and inconsistently enforced.

²⁶⁹ "Decentralization of Higher Education in Pakistan: Implications and Challenges Post-18th Amendment." Pakistan Journal of Social Sciences 35, no. 2 (2015): 123-138.

Participation	Stakeholders, including faculty, students, and staff, should be involved in governance.	Increased stakeholder involvement in theory, but actual participation is often limited and uneven.
Rule of Law	Governance should adhere to established laws and regulations.	Provincial laws align with federal regulations, but enforcement is inconsistent across regions.
Effectiveness and Efficiency	Resources should be used optimally to achieve educational objectives.	Efficiency varies widely; some provinces have streamlined processes, while others face bureaucratic delays.
Equity and Inclusiveness	Policies should ensure fair treatment and opportunities for all stakeholders.	Efforts to address regional disparities are ongoing, but significant inequities remain in practice.
Strategic Vision	Long-term planning should align with national and provincial priorities.	Strategic plans are developed but often lack effective implementation and follow-through.
Quality Assurance	Provincial HECs should maintain high educational standards.	Quality assurance mechanisms are in place, but their effectiveness varies across provinces.
Autonomy of Institutions	Higher education institutions should have significant control over their operations.	Increased autonomy in theory, but political interference and funding issues limit true autonomy.
Funding	Mixed funding sources should adequately support institutions.	Funding remains a challenge; reliance on federal funds persists, and provincial contributions vary.
Curriculum Design	Provinces should adapt curricula to meet local needs while adhering to federal guidelines.	Curriculum adaptation occurs, but disparities in quality and relevance are common.
Research and Development	There should be strong support for local research initiatives.	Research output has improved in some areas, but overall support and funding for R&D are inconsistent.

4.7. Governance Framework of HEIs: An Appraisal to the Jurisprudence of Courts

Several landmark case laws by Pakistani courts have directed improvements in the Governance Framework of the higher education sector. Universities' employment procedures are coming under more scrutiny as a result of the Supreme Court's emphasis on merit and transparency in the Dr. Mobashir Hassan v. Federation of Pakistan case.²⁷⁰ This example served as a reminder of how important it is for educational institutions to run their operations using open, merit-based procedures. The Supreme Court made a decision about the post-18th Amendment duties allocation between the federal and provincial governments in the matter of HEC v. Province of Punjab. The court made it clear that although the provinces were in charge of overseeing education, the HEC nonetheless held some general jurisdiction to guarantee consistent national standards of quality.²⁷¹

Determining the roles and responsibilities within the framework of decentralized education and fostering a balance between national monitoring and provincial autonomy were made possible by this crucial decision. The case of Salman Akram Raja v. Government of Punjab centered on the responsibility of educational institutions and the rights of students. In its ruling, the Lahore High Court emphasized the importance of institutions being accountable to their students and mandated that universities make sure degrees and transcripts are issued on schedule. The idea that educational institutions should put their students' interests and rights first was reaffirmed by this decision.²⁷² The Supreme Court tackled the problem of nepotism and political meddling in university governance in Sheikh Rashid Ahmed v. Public at Large. The necessity for nominations based on merit and professional qualifications rather than political connections was brought to light when the court ordered the removal of politically nominated vice-chancellors who did not meet the necessary requirements. The independence and integrity of university governance were strengthened in large part because of this case.²⁷³ The Sindh High Court considered university autonomy in a major case, Mehran University of Engineering and Technology Jamshoro v. Federation of Pakistan the court ruled that in order to preserve universities' academic and administrative autonomy, they must be let to function freely from excessive intervention from outside parties. This decision enhanced educational

²⁷⁰ PLD 2010 SC 265.

²⁷¹ PLD 2017 Lahore 489

²⁷² PLD 2013 SC 188

²⁷³ PLD 2022 SC 1.

institutions' autonomy by enabling them to make choices that are optimal for advancing their academic goals.²⁷⁴

Finally, the Islamabad High Court rendered a verdict regarding academic staff involvement in university decision-making bodies in the Federation of All Pakistan Universities Academic Staff Association v. Federation of Pakistan case. The court highlighted the need for academic staff to be involved in governance systems, emphasizing the need of inclusive and participatory governance in higher education. The case for increased faculty participation in university administration was made in large part because of this decision. Together, these cases demonstrate the Pakistani judiciary's commitment to promoting accountability, transparency, meritocracy, autonomy and inclusive involvement in higher education. The best interests of students and society are served by educational institutions that run efficiently and fairly thanks to the courts' constant reinforcement of good governance standards.

There are several judgments in which courts decided not to interfere in the internal affairs of public sector universities to boost up Good Governance. There are so many other landmark judgments of Supreme Court of Pakistan in which Court decided that no interference will be made in the internal affairs of university. For ready reference we would like to quote the relevant paragraph from judgment. “The judgment highlights that the process of regularization is a policy matter and falls under the Executive's prerogative. Courts should refrain from interference unless a policy violates fundamental rights. Citation: The court cites the concept of institutional autonomy and refers to the Magna Charta Universitatum 2020 (Para 7).”²⁷⁵

Likewise in other cases Court also endorsed the same idea not to interfere in the affairs of educational institutions by holding that courts are neither equipped with such expertise, nor do they possess the relevant experience that would allow for interference in such policy matters. Further it was decided that under this autonomous realm, educational institutions are entitled to deference when making any decisions related to their mission. At the same time, any transgression by Courts would amount to the usurpation of the power of another, which would

²⁷⁴ PLD 2022 SC 396.

²⁷⁵ 2024 SCP 44

be against the spirit of art.7 of the Constitution as it is not the role of the Courts to interfere in policy decisions.²⁷⁶

However, in another landmark judgment of Irfan-Ullah vs FOP through Higher Education Islamabad. The court concluded that when service rules established by statutory bodies under statutory authority are violated and there is no adequate remedy, these violations can be enforced through writ jurisdiction. However, if the conditions of service for employees of a university are governed by internally issued rules rather than those framed under the statute, any violations cannot be enforced through writ jurisdiction instead subject to the Master and Servant doctrine. In all public sector universities created by statutory bodies and regulated by statutory rules, the principle of natural justice must be observed in disciplinary proceedings, unless the appointments are purely contractual.²⁷⁷ In another landmark judgment the “Functional Test” has been elucidated. Functional Test has direct nexus with statutory and non-statutory rules. Statutory rules are rules which are framed under a statute or with government approval. Candidly speaking, it could not be possible for parliament to make laws and rules for each and every department; therefore, power is delegated to other corporations to make rules to run their functions smoothly. Functional Test has been endorsed and further developed in case of Munda Eleven Cricket club vs FOP that it is not solely depends upon whether framing of rules required approval of government rather it depends the nature and efficacy of such rule and regulations. It was decided that when rules and regulations are dealt with instructions for internal control and management, they would be non-statutory rules. The same “Functional Test” was also discussed and endorsed in Aown Abbas Bhatti vs FOP case.

In another case the petitioner was awarded major penalty i.e. dismissal from services. The court observed that the petitioner had an alternative and effective remedy available vide sec. 17 of the Act²⁷⁸ which provides for revision before the Chancellor So it was decided to avail that remedy²⁷⁹ which provides for revision before the Chancellor so it was decided to avail that remedy. Vires of Pakistan Medical mission act was challenged. Issue of regularization of services in Pakistan Medical Mission. Guidelines were provided in this case: All employees appointed under Pakistan Medical Commission Ordinance 2020 are governed by non-statutory rule; therefore, no vested right to continue services and PMC Ordinance is

²⁷⁶ 2024 SCP 44 in the case titled as: Vice Chancellor Agriculture University, Peshawar Versus Muhammad Shafiq, etc. (In CP 2270/2019)

²⁷⁷ WP No. 2838-P/2021 with IR titled as Irfan Ullah vs FOP Date of Decision 10.11.2022

²⁷⁸ PEEDA

²⁷⁹ PEEDA, 2006.

intra-vires to Constitution. In another case the lecturer of MUST was dismissed from service on the basis of serious allegations: breach of trust, misuse of authority, violation of examination rules, and harassment of female students. An inquiry committee found the petitioner guilty. The Court decided not to interfere in the administrative matters of university dismissed the petition.²⁸⁰

The Pakistani Supreme Court upheld in a historic ruling that academic freedom encompasses not only individual liberty but also the university's right to make decisions about curriculum and disciplinary actions. The court upheld what it called "the four essential freedoms"—the right to decide who may teach, what may be taught, how it should be taught, and who may be admitted—and stressed that universities must foster an atmosphere that encourages speculative thinking, experimentation, and creativity. The ruling underscored that sustaining democracy, human rights, and the rule of law depends on ensuring that higher education institutions, along with their staff and students, are afforded academic freedom and institutional autonomy. For there to be a true democracy, research and higher education institutions must be free to pursue their interests. Higher education institutions should embody democratic culture, which in turn promotes democratic values in society. Universities must have their academic, administrative and disciplinary autonomy respected to produce free thinkers and leaders. So, the Court decided the bench mark for all higher educational institutions that they have sufficient autonomy to make their decisions independently.²⁸¹ Court also clarified that higher courts can have jurisdiction where there is a justiciable dispute or violation of constitution or law.²⁸²

In another case the Lahore High Court held that universities have the right to make their own decisions about academic matters, and that the government should not interfere in these decisions.²⁸³ Similarly, in the case of Dr. Amir-ullah Marwat vs. University of Peshawar (2016), the Peshawar High Court held that universities have the right to make their own decisions about faculty appointments, and government has no right to interfere in these decisions.²⁸⁴ In terms of private universities, Pakistan's Higher Education Commission (HEC)

²⁸⁰ 2024 MLD 130;2023 PLC Service 75; 2012 PLC (C.S.) 1366; 2019 SCR 226; Azad Jammu and Kashmir Interim Constitution, 1974, Article 44.;2014 PLC (C.S.) 386; 2011 SCMR 842; PLD 2010 SC 969; 2023 PLC Service 103

PLD 2020 Islamabad 130;

²⁸¹ 2022 PLD 92 dated 04.01.2022 in Civil Petition No. 3429 of 2021 by Supreme Court of Pakistan case titled as Khyber Medical University case.

²⁸² 2022 PLD 92

²⁸³ Dr. Shazia Qureshi v. University of Punjab (2016); Writ Petition No. 2993/2016

²⁸⁴ Dr. Amir Ullah Marwat vs. University of Peshawar (2016); Writ Petition No. 1174-P/2015.

has created a regulatory framework for the development of private universities in the country and private universities must meet certain requirements and criteria; they are also subject to frequent inspections of HEC to verify conformity.²⁸⁵ In another case the court ruled that no intervention should be made in administrative issues of university.²⁸⁶ Generally, Courts are not interfering in the internal matters of public sector universities. Courts generally defer to educational institutions' internal governance²⁸⁷ with the exception that Court intervened when minimum requirements of natural justice or legal principles are violated; another exception is that Court made intervention when a fundamental right is infringed.²⁸⁸ As a general rule the writ jurisdiction is available as an alternative remedy.²⁸⁹

Table 4.3: Role of Court in Governance Framework of Higher Education Sector

Components	Role of Courts
Transparency	Courts can mandate disclosure of information and ensure compliance with transparency laws.
Accountability	Courts can hold institutions and leaders accountable through judicial review and enforcement of regulations.
Participation	Courts can ensure stakeholder rights are protected and that participatory processes are followed.
Rule of Law	Courts ensure laws and regulations are properly implemented and adhered to.
Effectiveness and Efficiency	Courts can address inefficiencies by adjudicating cases of mismanagement and ensuring compliance with administrative laws.
Equity and Inclusiveness	Courts can enforce anti-discrimination laws and ensure policies promoting equity are implemented.
Strategic Vision	Courts can ensure that strategic plans comply with legal requirements and are implemented as intended.

²⁸⁵ Ibid

²⁸⁶ Dr. Asadullah vs FOP; PLD 2002 SC 939

²⁸⁷ PLD 2021 SC 745; Yasir Nawaz v. Higher Education Commission

²⁸⁸ Fakheryar Khan v. Agriculture University, Peshawar, PLD 2016 Peshawar 266

²⁸⁹ 2011 SCMR 1813

Quality Assurance	Courts can oversee the enforcement of quality standards and address complaints related to educational quality.
Autonomy of Institutions	Courts can protect institutional autonomy by adjudicating cases of undue interference.
Funding	Courts can ensure that funding allocations comply with legal standards and address grievances related to funding.
Curriculum Design	Courts can review curricular disputes and ensure that curriculum changes meet legal and educational standards.
Research and Development	Courts can uphold policies supporting research and development and address any legal issues hindering R&D activities.

4.8. Implications of Governance of Higher Education Sector: Challenges and Prospects

The whole journey of Governance Framework of HEIs faced numerous challenges including but not limited to inadequate funding, political interference, economic instability, bureaucratic inefficiencies, maladministration, lack of transparency and accountability, quality assurance issues, misalignment with local needs, judicial intervention, non-availability of technology needs, resistance to change, capacity building and stakeholders management. These challenges could be addressed through decentralization and provincial autonomy, institutional autonomy, technological integration, enhanced quality assurance, stakeholders management, judicial check, parliamentary checks, the check of media and civil society, international collaboration, focused on research and innovation, last but not the least reform initiatives at Higher Education institutions.²⁹⁰²⁹¹

A widespread problem that makes it difficult for HEIs to carry out research, deliver high-quality instruction and make infrastructure investments is inadequate funding. Political meddling in which choices are motivated by party agendas rather than the institution's need for instruction, frequently makes this financial deficit worse. An additional degree of complication

²⁹⁰ Kalim, Rukhsana. Higher Education Governance in Pakistan: Challenges and Reforms. Pakistan Institute of Development Economics, Islamabad.

²⁹¹ Amjad, Muhammad. Higher Education Policy in Pakistan: Reforms, Challenges, and Opportunities. Oxford University Press, Karachi.

is introduced by economic instability, since varying economic conditions can result in erratic funding and resource distribution. Academic and administrative operations at HEIs are hampered by bureaucratic inefficiency and poor management. These problems frequently coexist with a lack of accountability and transparency, which erodes confidence in the institution's governance. Given that many HEIs find it difficult to achieve the criteria necessary to provide a high-quality education, quality assurance is still a major challenge.²⁹² This is frequently the result of educational offers that are out of step with community demands, leaving students unprepared for issues facing the community or the labor market. Although judicial involvement is occasionally required to guarantee adherence to legal requirements, it can also undermine HEI autonomy by creating an atmosphere in which administrative and academic choices are unduly impacted by legal concerns. There is a gap between the actual and potential states of education due to HEIs' inability to stay up with global educational trends and developments due to the lack of requisite technologies. Any large institution faces resistance to change, and higher education institutions are no exception. There are several potential causes of this resistance, such as the administration, academics, and even students, who can be hesitant to adopt new rules or methods. Lack of attention to capacity building, which is crucial for staff professional development and the institution's overall growth, results in a workforce unprepared to face the demands of modern education. Another crucial area where many HEIs fall short is stakeholder management. A supportive and dynamic learning environment can only be established via efficient communication with employers, teachers, students, alumni, and the larger community. HEIs risk isolating themselves from the requirements and expectations of the people they serve if they don't practice effective stakeholder management. To tackle these obstacles, a multifaceted strategy is needed. Local governance institutions can be strengthened by decentralization and provincial autonomy, enabling more flexible and situation-specific decision-making. Institutional autonomy is also essential since it allows higher education institutions to function freely from excessive judicial or political intervention. In order to modernize educational administration and delivery and increase the effectiveness and efficiency of HEIs, technological integration is required.²⁹³ To guarantee that educational standards are fulfilled and upheld, improved quality assurance systems are required. This entails conducting routine evaluations and applying top techniques from prosperous establishments. Collaborative decision-making processes, frequent discussions, and open

²⁹² Qazi, Muhammad A. *Governance and Higher Education: A Study of the Impact of the 18th Amendment in Pakistan*. Cambridge Scholars Publishing, Newcastle upon Tyne.

²⁹³ Ibid

communication are all necessary for effective stakeholder management. Essential monitoring can be provided by the judicial and legislative systems, as well as by the media and civil society, to make sure that HEIs run honorably and responsibly. International cooperation can help HEIs remain competitive in a globalized environment by bringing fresh viewpoints, resources, and innovative opportunities. Knowledge advancement and the creation of fresh approaches to societal problems depend heavily on research and innovation. Lastly, in order to solve systemic problems and foster an atmosphere that supports growth and quality, HEIs must implement extensive reform activities.²⁹⁴

The governance of higher education in Pakistan has shifted from a centralized to a decentralized system post-18th Amendment, aiming to tailor education policies to local needs through Provincial Higher Education Commissions. This change enhances institutional autonomy, allowing universities to innovate and align programs with regional demands, yet it also highlights disparities in provincial capacities and resources.²⁹⁵ Effective governance requires balancing autonomy with accountability to prevent mismanagement. Stakeholder involvement and judicial oversight are critical for ensuring relevant policies and maintaining system integrity. Challenges include coordination between federal and provincial bodies, capacity building, and preventing politicization. Technological investments are needed to enhance governance processes. By addressing these issues, Pakistan can develop a responsive and high-quality higher education system that meets diverse regional needs.²⁹⁶

4.9. Findings and Conclusion

The governance framework of higher education in Pakistan is deeply rooted in the colonial era, which continues to present numerous challenges. Despite having structured systems, the sector grapples with significant issues, such as inadequate financing, political interference, bureaucratic inefficiencies, and administrative flaws. These obstacles hinder the growth and quality of higher education, making it difficult for institutions to meet global standards. Pakistan's higher education system inherited a centralized control system from British colonial authority, influencing its administrative processes and institutional governance. Although the system has evolved, many colonial-era components still persist,

²⁹⁴ Kalim, Rukhsana. Higher Education Governance in Pakistan: Challenges and Reforms. Pakistan Institute of Development Economics, Islamabad.

²⁹⁵ Lakha, Shamsh Kassim. Higher Education: A Pathway to Development. Karachi: Oxford University Press, 1998.

²⁹⁶ Kalim, Rukhsana. Higher Education Governance in Pakistan: Challenges and Reforms. Pakistan Institute of Development Economics, Islamabad.

highlighting the need for reforms to address contemporary issues. Post-independence efforts, including the establishment of the University Grants Commission in 1974 and the Higher Education Commission in 2002 aimed to enhance higher education but were consistently hampered by political interference and insufficient funding. The 18th Amendment in 2010 marked a significant shift in governance, decentralizing responsibilities to provincial governments with the intention of aligning education policies with regional needs. This move, while empowering provinces through the creation of Provincial Higher Education Commissions (PHECs), also introduced complexities, such as disparities in provincial capacities, which led to unequal progress and exacerbated educational inequities. Institutional autonomy has allowed universities more control over academic programs, financial management, and operations. While this autonomy encourages innovation and responsiveness to educational trends and labor market demands, it also risks mismanagement and declining educational standards without robust accountability mechanisms. Allegations of nepotism and financial misappropriation in some universities underscore the need for greater oversight. Stakeholder involvement, including engaging faculty, students, industry representatives, and local communities in decision-making processes, is critical for effective governance. However, achieving genuine stakeholder involvement remains a challenge, often hindered by top-down decision-making. Additionally, judicial oversight plays a pivotal role in maintaining transparency, meritocracy, and fairness in the sector, as demonstrated by notable cases.²⁹⁷

Pakistan's higher education system is at a crossroads, shaped by its colonial past and evolving through significant governance changes like the 18th Amendment. Despite the decentralization efforts, challenges such as inadequate financing, political interference, and administrative inefficiencies continue to hinder progress. There is an urgent need to devise a comprehensive governance framework that incorporates all major stakeholders—university administration, faculty members, students, supporting staff, and student representatives—to address these issues effectively. To move forward, Pakistan must focus on building human resources, infrastructure, and technology. The use of digital platforms for quality assurance, data collection, and performance monitoring can enhance efficiency and transparency in higher education governance. Moreover, international collaboration and a commitment to academic excellence are essential strategies for progress. By fostering a culture of good governance,

²⁹⁷ 2024 SCP 44 in the case titled as: Vice Chancellor Agriculture University, Peshawar Versus Muhammad Shafiq, etc. (In CP 2270/2019)

transparency, and research, Pakistan can revitalize its higher education sector, ensuring it adapts to the changing global landscape rather than expecting the world to adapt to it.

4.10. Recommendations

A reasonable higher education institution adapts itself to the world around it and an unreasonable expects the world to change according to its ideas. To change the governance Framework the holistic approach is needed to train university staff and management on modern lines. It was pointed out that the governance framework suffered in public sector institutions due to lack of political will, political appointments, induction of trustee and governors, polarization of Senate and Syndicate and appointment of university leadership solely at the discretion of Chancellor. The Chancellor is most often is himself a political figure. The highest rank in military goes to military officers, the highest rank in bureaucracy goes to bureaucrats, likewise the highest rank in judiciary goes to Judges. Unfortunately, the highest rank in universities goes to either Assistant Commissioners (PAS) group or military Commissioned Officers who just started their career. A diversified strategy is necessary to improve the governance of higher education in Pakistan after the 18th Amendment.²⁹⁸ For Provincial Higher Education Commissions (PHECs) to successfully supervise and govern universities, they require funding and authority. This entails making investments in infrastructure, technology, and human resources in addition to implementing thorough quality assurance procedures and routine employee training. Institutional self-governance is essential. In order to promote creativity and responsiveness to regional requirements, universities ought to have more authority over their academic offerings, financial operations, and administrative procedures. Defined rules, performance standards, and impartial oversight organizations are necessary to strike a balance between oversight and autonomy. Involving stakeholders is essential. To guarantee pertinent and advantageous policies, inclusive governance structures should include members from the local community, academia, business, and students. This encourages accountability and pushes for ongoing development.²⁹⁹ The Governance and accountability are closely connected with each other. The accountability is an important element to improve Governance Framework for Higher Education Institutions because the governance framework would be incomplete without strong accountability mechanism. The

²⁹⁸ Qureshi, Naeem. *Federalism and Education Governance in Pakistan: The Impact of the 18th Amendment*. Sage Publications, New Delhi.

²⁹⁹ Siddiqui, Saira B. *Education Governance and Management in Pakistan: Post-18th Amendment Developments*. Palgrave Macmillan, London.

parameters of good governance for Higher Education Institutions including but not limited to transparency, conducive research environment, fund for university employee, hiring permanent faculty, other appointments lower to high level.³⁰⁰

4.11. The Council of Common Interest: an Overview

The purpose of this study is to comprehend the changing role and responsibilities between Federation and Federating units regarding higher education sector. For that purpose, it is necessary to comprehend the role of council of common interest as dispute is inevitable when question arises regarding distribution of resources. Now I would like to discuss the changing role and responsibilities of Council of Common Interest. On top of that, the responsibilities of the council has been increased enormously as number of Provincial representative has been increased; enhanced decision making authority on matters of National Importance. The Council is authorized to determine the criteria for distribution of funds as the Council has given vast authority to resolve the conflicts arising from legislation on subjects included in the Concurrent Legislative List. Undoubtedly, the principle function of Council of Common Interest is to resolve the dispute between federation and provinces 153 of the Constitution. No one can deny the fact that the conflict is inevitable whenever there is an issue of distribution of resources. The Council of Common Interest is a constitutional body in Pakistan specifically designed to resolve the dispute between federation and provinces.³⁰¹ Prior to the Council inter-provincial council was set up u/s 135 of the Government of India Act, 1935. The same idea was made part of the first constitution of 1956. However, this idea was removed from 1962 Constitution. Finally, Zulfiqar Ali Bhutto established the Interprovincial coordination Committee in 1972 and Interprovincial Council (IPC) in 1973. Later on, General Zia-ul-Haq preferred the Interprovincial council over the Council of Common Interest as IPC was easily controlled by the Central government. Article 153 and 154 of the Constitution of Islamic Republic of Pakistan, 1973 deals with the rules and functions of Council of Common Interest. The council has been played key role in higher education sector including but not limited to formulation of policy and setting of standards; inter-provincial coordination; allocation of funds & resources; harmonization of policies & supervision; ultimately resolve disputes in all matters ancillary to higher education sector.³⁰² We will be discussing what major

³⁰⁰ Ahmed, Muneer, and Shafei Moiz Hali. "Accountability in the Governance of Higher Education Institutions in Pakistan." *Journal of Contemporary Studies* 12, no. 1 (Summer 2023): 105-125

³⁰¹ Council of Common Interests. Annual Report 2020-21. Islamabad: Secretariat of Council of Common Interests, Government of Pakistan, 2021.

³⁰² Article 153, 154 of Constitution of Pakistan 1973

achievement the Council has been achieved regarding Higher Education Sector. Moreover, the study encompasses the implementation mechanism to enforce the decisions made by the Council. The implementation mechanism would be elucidated that the appropriate federal and provincial authorities are informed of the CCI's decisions regarding higher education, and they subsequently work together to assign duties and responsibilities for their implementation. The Higher Education Commission (HEC) and provincial education commissions frequently work together on this, allocating resources as needed. Regular reports to the CCI are used to track progress and address any obstacles or hold-ups. In order to make sure goals are reached and that the decision is implemented effectively at the federal and provincial levels, the CCI may later assess the decision's impact and take additional steps as necessary. If the decision of Council is not carried out, reports are used to highlight the problem and this issue brought up at the following meeting. The CCI can issue directives with deadlines, engage in mediation or negotiation to overcome difficulties, or take the issue to a higher level of authority, such as the President or Prime Minister. If someone consistently disobeys, legal action may be taken. Accountability tools, including warnings or penalties, can be applied to accountable officials to make sure that CCI rulings are adhered to strictly and that objections are taken into consideration. The study encompasses the recommendation including but not limited to regular meetings, clearer jurisdictional boundaries, increased transparency, capacity building initiatives and strengthen enforcement mechanism. In this chapter, we will also be discussing what task council has failed to accomplished as it has limited influence on academic institutions. Furthermore, it has also failed to engage all main stakeholders to devise an efficient policy regarding higher education sector. Moreover, it has also failed to maintain equilibrium between provincial autonomy and National interest. However, the council should ensure an effective implementation of higher education policies across the provinces. On top of that there is a dire need to engage all major stakeholder particularly universities, faculty members, industry representatives, students union's leaders, HEC, Provincial HECs to make The council should remove all financial constraints faced by the provinces. By doing all this council of common interest can play an effective role for the betterment of society.³⁰³

³⁰³ PILDAT. 2011. The Council of Common Interests: Its Role in Strengthening the Federation. Islamabad: Pakistan Institute of Legislative Development and Transparency.

4.12. An Overview of the Historical Development and Evolution of Interprovincial Coordination Mechanisms with special Reference to Higher Education Sector in Pakistan

The Inter Provincial Council (IPC), which was founded in accordance with Section 135 of the Government of India Act, 1935, introduced the notion of interprovincial cooperation to South Asia. Designed to settle conflicts between provinces and coordinate policies on common interests including public health, education, and agriculture, this was the first intergovernmental conference. However, because the federal portion of the Act's implementation is still lacking, it never managed to function.³⁰⁴

The IPC was incorporated into Pakistan's constitution when the country gained its independence. The IPC was incorporated into Article 130 of the 1956 Constitution; however, subsequent modifications eliminated the IPC's capacity to settle interprovincial conflicts, therefore diminishing its efficacy. The IPC was entirely eliminated from the 1962 Constitution, signifying a trend away from official intergovernmental coordinating institutions. The Council of Common Interests (CCI) was established as a new intergovernmental forum for addressing issues pertaining to the areas mentioned in the Federal Legislative List Part-II in the 1973 Constitution, which did not contain the IPC or any equivalent body.³⁰⁵

Even though the CCI was established, Zulfiqar Ali Bhutto immediately after taking office in 1971 established the IPCC. Because the IPCC allowed for more centralized control, which suited his political inclinations, Bhutto seemed to prefer it over the CCI. The IPCC carried on with sporadic operations, reflecting the governing governments' inclinations. The IPCC's adaptable and unconstitutional nature was demonstrated by its repeated resuscitations and restructurings, most notably under Benazir Bhutto in 1989 and Nawaz Sharif in 1992. In particular, the IPCC was frequently involved in arranging for provincial collaboration on federal policies related to resource allocation, gender development, and law enforcement. In 2010, the Federal Legislative List, Part-II, was amended to include "Interprovincial Matters and Coordination," which redefined interprovincial coordination. This amendment acknowledged the significance of the IPC in promoting interstate harmony and settling disputes between provinces, while also formalizing its role. Following its reorganization in 2006, the IPC issued mission and vision statements that highlighted its role in fostering policy dialogue,

³⁰⁴ Section 135 of the Government of India Act, 1935

³⁰⁵ Federal Legislative List Part-II in the 1973 Constitution

resolving smaller province complaints, and fostering trust between the provinces and the federation. The usefulness of the IPC and IPCC is called into doubt because of their lack of transparency and the federal government's disproportionate influence in these forums, despite the fact that they held more meetings than the CCI prior to the 18th Amendment. Despite having constitutional backing, the CCI convened fewer meetings than the IPCC, which is indicative of its restricted role.³⁰⁶

Pakistan's historical experience with interprovincial coordination demonstrates the intricate relationship that exists between political inclinations, constitutional requirements, and the changing demands of federal-provincial cooperation. A propensity towards centralized control is suggested by the preference for organizations like the IPCC over those with constitutional mandates like the CCI, particularly under leaders like Zulfiqar Ali Bhutto. Formalizing interprovincial coordination was made possible by the 18th Amendment, but there are still obstacles to overcome before these forums can really represent the interests of all provinces, especially the smaller ones. In a federal system like Pakistan's, preserving the balance of power and promoting national cohesion require the creation of an extensive and open system for intergovernmental coordination.³⁰⁷

It is pertinent to mention here that in pre-18th amendment era it was not necessary to meet once in a ninety days; however, in post 18th amendment era it has become mandatory to meet once in ninety days. Consequently, overall 50 meetings of the Council have been conducted since 2010 to 2024 and 12 of them were conducted in since 1947 to 2010 years in pre-18th amendment era. In British India, a federal system was formed by the Government of India Act, 1935, which delineated distinct lists of topics for the federal and provincial administrations. This statute, which predated the need for organizations such as the CCI in an independent Pakistan, set the foundation for federal coordination even though the CCI did not yet exist. The 1956 Constitution acknowledged the necessity of collaboration between the federal and provincial administrations following Pakistan's independence in 1947, but it did not create the CCI. The CCI was not included in the 1962 Constitution, which was introduced by President Ayub Khan and reflected the centralized government of the time. The formal establishment of the CCI as a constitutional body tasked with resolving disputes pertaining to

³⁰⁶ Siddiqui, Raza. "Comparative Federalism and the Role of the Council of Common Interests in Pakistan." *Asian Journal of Comparative Politics* 5, no. 3 (2021): 150-168.

³⁰⁷ Khan, Irfan, and Bakhtiar Khan. "Dispute Resolution Mechanism in Pakistan: An Analysis of the Council of Common Interests After the 18th Constitutional Amendment." *Pakistan Journal of Humanities & Social Sciences Research* 3, no. 2 (December 2020)

federal and provincial concerns in the 1973 Constitution represented a key turning point. The CCI's structure and duties were outlined in Articles 153 and 154, and Article 155 gave it the authority to resolve disagreements over the allocation of water amongst provinces. Succinctly, one of the most important constitutional changes in Pakistan's history, the 18th Amendment was ratified in 2010 with the goals of enhancing provincial autonomy and decentralizing power. Significant alterations were made to the CCI's role and operations by this amendment. It required the CCI to meet more regularly, at least once every ninety days, and reorganized it to include equal participation from all provinces. A greater range of topics, including those moved from the Concurrent Legislative List to the provinces, are now under the purview of the CCI's increased role. Transparency and accountability were further increased by requiring the CCI to produce an annual report to both chambers of Parliament. This modification greatly expanded the CCI's responsibilities, solidifying its position as an essential organization for preserving Pakistan's federal-provincial relationship. The CCI and the higher education industry saw significant changes in 2010 with the ratification of the 18th Amendment. It required more regular meetings and reorganized the CCI to guarantee equal representation from all provinces. A greater range of subjects, particularly those pertaining to higher education that had been transferred from the Concurrent Legislative List to the provinces, were brought under the purview of the CCI. Furthermore, the CCI was mandated to provide yearly reports to Parliament, which improved accountability and openness in the governance of higher education. At the moment, the CCI is essential in handling matters pertaining to higher education that call for collaboration between the federal and local governments. In order to maintain higher education's responsiveness to local and national demands, this involves overseeing policy implementation, financing, and instructional standards.³⁰⁸

4.13. Inter-Provincial Government relations in Post-18th Amendment Era:

Challenges and Prospects

The 18th Amendment, which greatly increased regional sovereignty and reinforced Pakistani federalism, is regarded as a historic accomplishment. Their significance has been emphasized by the wealth of literature written since the 18th Amendment and the 7th NFC Award were passed. When taken as a whole, these changes signified a significant transfer of political and economic authority from the federal government to the provinces. In Pakistan's

³⁰⁸ Ahmed, Naeem. "Council of Common Interests: Balancing Power in Pakistan's Federalism." *Pakistan Journal of History and Culture* 40, no. 1 (2020): 45-60.

history of intergovernmental relations, the political collaboration and understanding shown by the federal government and the leaders of all four provinces during the passage of these changes was unique. With this cooperation, the nation entered a new phase of interprovincial harmony and coordination.

Additionally, the 18th Amendment strengthened the Council of Common Interests' (CCI) authority and reorganized it, giving it more clout in Pakistan's federal structure. The increased function of the CCI following the amendment has been examined by academics such as Zahid Mehmood Ahmed (2013) and Zafrullah Khan (2015), who have emphasized the agency's ability to settle conflicts both within and between the provinces as well as between the federal government and the provinces. In managing interprovincial issues and promoting coordination, the Inter-Provincial Coordination Committee (IPCC) and the Inter-Provincial Coordination Division (IPC) are the main entities covered in this section.³⁰⁹

The 18th Amendment introduced "inter-provincial matters and coordination" as a new category under Section 13 of the Federal Legislative List Part II. This amendment empowered the Council of Common Interests (CCI) with oversight over these matters. Additionally, Article 154(3) of the Amendment mandated the establishment of a permanent secretariat for the CCI, independent from the Cabinet Division. However, on March 4, 2010, following recommendations from the Ministry of Inter-Provincial Coordination (IPC), the Prime Minister directed that all secretarial functions for the CCI and the Inter-Provincial Conference be moved from the Cabinet Division to the IPC Division.³¹⁰

An inconsistency arises here: the CCI became a wing within the IPC Division in the Federal Secretariat, Islamabad, yet the Constitution indicates that the CCI should regulate policies related to interprovincial coordination. This raises questions about whether the CCI's placement within the IPC Division is a temporary measure until a separate secretariat is established, as required by Article 154(3), or if this arrangement is intended to be permanent. According to the IPC Division's official Year Book for 2009–10, the Prime Minister appointed the IPC Division as the CCI's permanent secretariat in accordance with Article 154(3), as stated in a notice published by the Cabinet Division on March 4, 2010. Nevertheless, the notice makes no mention of Article 154(3) or the establishment of a permanent secretariat for the CCI, merely

³⁰⁹ Anatol Lieven, *Pakistan: A Hard Country* (London: Penguin Books, 2011).

³¹⁰ Pasha, Hafiz A., ed. *Federalism in Pakistan: An Analysis of the 18th Constitutional Amendment*. Karachi: Oxford University Press, 2016.

mentioning the transfer of secretarial duties from the Cabinet Division to the IPC Division. Because of this, a lot of constitutional scholars believe that the existing setup is just temporary and may be altered by a similar announcement from the prime minister.³¹¹

The IPC Division was greatly affected by the 18th Amendment, which resulted in the 1973 incorporation of its initial set of rules into the Rules of Business, which became operative on April 2, 2010. The workload and significance of the Division increased significantly when the CCI and Inter-Provincial Conference wings were transferred from the Cabinet Division to the IPC Division. The IPC was also appointed as the secretariat for the powerful seven-member Implementation Commission on May 4, 2010, which was led by Senator Mian Raza Rabbani and charged with carrying out the 18th Amendment.³¹²

After the 18th Amendment, the IPC Division—which was formerly a tiny branch of the Cabinet Division and has since become a minor independent division—grew considerably. When examining the organizational structure of the IPC Division before and after the change, this increase becomes clear. One Federal Minister, one Secretary (BPS-22), one Joint Secretary (BPS-20/21), one Deputy Secretary (BPS-19), and three Section Officers (BPS-17) were the only positions specified in the organizational chart of the 2008–09 Year Book, for example. The division is much larger and has a significantly greater personnel according to the present arrangement. However, as of right now, the IPC Division has a Minister of State in addition to a full-fledged Federal Minister who is in charge of interprovincial matters and coordination, according to the most recent organizational chart that can be acquired from the IPC official website. The number of bureaucratic employees has also increased significantly. The IPC Division currently has eighty-eight BPS-16 and above officers sanctioned in total (IPC Year Book, 2013–14). The division is made up of one Secretary (BPS 22), two Additional Secretaries (BPS-21), four Senior/Joint Secretaries (BPS/20/21), seven Deputy Secretaries (BPS-19), and fourteen Section Officers (BPS-17/18). Prior to the 18th Amendment, the IPC Division could only appoint up to 10 BPS-16 and higher officers. Likewise, the IPC Division's authorized strength in its entirety has risen from 42 in the financial year 2008-09 to 254 in the financial year 2013-14.³¹³

³¹¹ Lieven, Anatol. *Pakistan: A Hard Country*. London: Penguin Books, 2011

³¹² Burki, Shahid Javed. *The Politics of Governance in Pakistan: Federalism, Devolution, and Development*. New York: Palgrave Macmillan, 2015.

³¹³ Mahmood, Khalid. *Pakistan's Federalism: A Historical and Institutional Analysis*. Islamabad: National Institute of Pakistan Studies, 2018.

4.14. Council of Common Interests (CCI) - Pre and Post 18th Amendment

Aspect	Pre 18th Amendment	Post 18th Amendment
Role	Inter-governmental disputes, Coordination mainly in limited sectors	Broadened to include more sectors especially higher education sector, regular oversight of federal provincial issues
Composition	Federal and Chief Ministers, Less Frequent meetings	Federal and chief Ministers with equal representation, mandatory quarterly meetings
Decisions	Limited scope, Fewer sectors involved, Less Frequent and often delayed	Expanded scope covering a wide range of subjects, Mandatory quarterly meetings. Decisions require consensus or majority vote. More structured and timely for policy formulation and implementation.
Implementation	Inconsistent, Many decisions lacked follow up	More robust mechanism for ensuring decisions are enforced, annual reporting to parliament

4.15. Role of CCI in Pre-18th amendment Era Regarding Higher Education Sector

The council played an important role in pre 18th amendment era while devising an effective policy of coordination, setting standards & guidelines, allocation of resources, to resolve dispute amicably and to devise pragmatic strategy for development of Higher Education sector. The Council serves as a forum for coordination and dialogue which offered a platform for discussing and harmonizing policies, programs and activities. For higher

education, the Council assisted in developing national standards and regulations. It also aimed to guarantee uniformity and high standards across the nation's educational initiatives, curriculum designs, and accreditation procedures. The Council determined the distribution of funds & resources among the provinces, taking into account the multiple factors such as population, socio-economic indicators, and educational needs. The CCI served as a forum for addressing disagreements and conflicts between the federal and provincial governments regarding issues of higher education. In order to resolve contentious issues and keep peace in the industry by promoting conversation, bargaining, and the development of consensus.³¹⁴³¹⁵

4.16. Significant Changes in the Role of CCI Regarding Higher Education Sector

Aspect	Pre 18th Amendment	Post 18th Amendment
Higher Education Sector	Higher education was primarily under federal control through HEC	The power to enact laws pertaining to higher education has been given to provinces by the devolution of higher education to their governments. As a result, HEC now has less authority over universities in the province and a redefined role.
Impact on Policy Making	Uniform policies across the country, with less input from provinces.	Provinces can now tailor higher education policies to meet local needs. Increased diversity in educational approaches and policies.
Governance and Administration	Centralized administration through the federal HEC.	Decentralized administration with provinces establishing their own higher education bodies. Enhanced provincial involvement and ownership of higher education institutions.
Functions	Formulating and regulating policies on	Same functions as pre-amendment but with enhanced authority and scope. Greater

³¹⁴ Khan, Ali. "The Role of the Council of Common Interests in Higher Education Governance in Pakistan: A Pre-18th Amendment Perspective." *Pakistan Journal of Social Sciences* 29, no. 1 (2010): 75-88.

³¹⁵ Rehman, Syed. "Institutional Frameworks and Higher Education Governance: A Study of Pakistan's Council of Common Interests Before the 18th Amendment." *Asian Journal of Comparative Politics* 4, no. 2 (2018): 110-125.

	matters in Part II of the Federal Legislative List. Exercising supervision and control over related institutions.	autonomy and empowerment of provinces in decision-making. Devolution of more subjects to the provincial level.
Procedure	Meetings were held infrequently. Decisions were often centralized with the federal government having significant control.	Mandatory quarterly meetings. Decisions require consensus or majority vote. More structured and regularized process for policy formulation and implementation.

4.16.1. Summary of the Tables.

Devolution of Authority: Following the 18th Amendment, there was a notable transfer of power from the federal to the provincial governments in the field of higher education. Provinces now have increased influence over higher education finance, operations, and policy decisions thanks to this devolution. Flexibility and Autonomy: Provinces now have the freedom to create and carry out higher education policies that are tailored to their own requirements and conditions, which has resulted in a more varied and maybe more adaptable higher education system. The Higher Education Commission's function has been redesigned to provide provinces more influence and administration over higher education institutions that fall under their purview. This reduces the Commission's overall control over the sector.

4.17. Role of CCI in Post-18th Amendment Era and implementation of Decisions

Apart from the above mentioned role the Council played consultative role, along with dispute resolving agency and resource allocation the role of Council has increased in shape of provincial autonomy, provincial representation and provincial policy formulation. The Eighteenth amendment has brought a significant changes when it comes to role of Council of Common Interest. The amendment has increased provincial autonomy, provincial representation, and resource allocation. The Council worked for inter-provincial coordination and collaboration. The Council also tried to resolve the issue of distribution of resources, fiscal federalism, and interpretation of Constitutional provisions. The council discusses the issues

related to Education, health, agriculture, and economic development. An equitable distribution of resources is the principle function of Council. The Council also implements its decisions and policies. It ensures federalism, provincial autonomy and intergovernmental cooperation as mandated in 18th amendment. While discussing the implementation mechanism in Council it is imperative to comprehend that although Council implemented its decisions directly. Nonetheless, there are coordinating committees to enforce the decisions of council. The decision of Council is legally binding and deviance is not allowed as per mandate of Constitution of 1973.³¹⁶

4.17.1. Composition of Council of Common Interest and Rules of Procedure

The Council of Common Interests' (CCI) responsibilities, protocols, and organizational structure are outlined in Article 154 of Pakistan's 1973 Constitution. One important institutional tool for addressing and regulating the issues listed in Part II of the Federal Legislative List is the CCI. This section of the Constitution covers a number of topics that call for cooperation between the federal and local administrations. Formulating and enforcing regulations pertaining to these issues, together with supervising and monitoring the operations of affiliated institutions, are the main responsibilities of the CCI. The CCI must be formed within thirty days of the Prime Minister taking office, according to the Constitution. This condition makes sure that the Council starts working on its important tasks right away and doesn't put off starting those tasks too long. A permanent secretariat is also necessary for the CCI to serve its administrative and operational needs. At least once every ninety days, the Council is planned to meet in order to guarantee regular oversight and participation. In order to address any urgent issues that may come up, the Prime Minister is able to call extra meetings on an urgent basis upon a province's request. Within the CCI, decisions are decided by majority vote, which reflects a democratic process of decision-making. Until such rules are established by legislation from the Majlis-e-Shura (Parliament), the Council is free to set its own procedural rules. The Majlis-e-Shura still has the authority to give the CCI legally binding instructions, either generally or on particular topics, which the Council is required to abide by. If the Federal Government or Provincial Governments are not happy with the decisions made by the CCI, they can bring the matter before the Majlis-e-Shura in a joint sitting. The Majlis-e-Shura's decision is final. By keeping accountability and monitoring in place and striking a

³¹⁶ Burki, Shahid Javed. *The Politics of Governance in Pakistan: Federalism and Devolution*. New York: Palgrave Macmillan, 2019.

balance between federal and provincial interests, this framework makes sure that the CCI functions within a defined legal and procedural framework.³¹⁷

4.18. A Critical analysis on the Role of Council of Common Interest

I would like to trace the answer of the most important question that whether Council has played its role effectively regarding Higher Education sector and what was the land mark issue regarding higher education resolved by the Council amicably. There has been much discussion over the Council of Common Interests' (CCI) efficacy in Pakistan in relation to the field of higher education. The 18th Amendment, which increased the Council's powers and placed higher education more squarely within its jurisdiction, has made the CCI's position more and more significant. It is crucial to examine the CCI's actions as well as the particular cases in which it participated in topics pertaining to higher education in order to determine whether or not it fulfilled its job properly. The CCI was intended to serve as a platform for settling interstate conflicts, particularly those involving higher education. Its capacity to arbitrate disputes over finance, policy, and resource allocation between the federal and local governments demonstrates its efficacy in this field. But the CCI hasn't always performed well.³¹⁸ On the one hand, technology has given people a forum to talk about important topics and stop possible disputes from being worse. However, the CCI has occasionally come under fire for its tardiness and sporadic inaction, especially when it comes to handling difficult issues in higher education. The debate over the Higher Education Commission's (HEC) devolution after the 18th Amendment was one of the most important topics the CCI tackled in the field of higher education. The 2010 passage of the 18th Amendment sought to decentralize authority and grant provinces greater autonomy. This involved giving provincial governments authority over a number of duties that had previously been under federal jurisdiction. But the HEC's devolution—which left it in charge of governing, funding, and establishing standards for higher education throughout Pakistan—became a divisive topic. At first, the federal government opposed HEC devolution, claiming that national higher education standards and regulations had to be uniform. Conversely, the provinces advocated for increased authority over postsecondary education inside their own regions. This conflict was brought to the attention of

³¹⁷ Siddiqui, Raza. "The Council of Common Interests: Composition, Rules, and Procedural Insights." *Asian Journal of Comparative Politics* 5, no. 1 (2021): 95-110.

³¹⁸ Mahmood, Khalid. *The Council of Common Interests: An Analysis of Its Role and Effectiveness*. Islamabad: National Institute of Pakistan Studies, 2018.

the CCI.³¹⁹ Following careful consideration, the CCI determined that the HEC should remain a federal organization, acknowledging that a centralized authority was required to guarantee consistency in higher education standards throughout Pakistan. Simultaneously, the CCI supported greater provincial involvement in issues related to higher education, especially when it comes to putting policies that take into account local requirements. The compromise reached by the CCI in maintaining federal oversight of the HEC while still recognizing the roles of the provinces represented the challenges of managing higher education in a federal system. This resolution is frequently considered as a seminal illustration of how the CCI successfully mediated a potentially contentious topic by striking a balance between provincial autonomy and federal interests. The HEC devolution case serves as evidence that the CCI can be a crucial mediator in disputes involving higher education. The Council's capacity to arbitrate a settlement ensured that Pakistan's higher education governance remained flexible but coherent by striking a balance between regional autonomy and national norms.³²⁰ Furthermore, the CCI's intervention in this matter averted a potential major upheaval in the field of higher education, where uniform national regulations are essential to upholding standards and quality throughout the nation. This case is sometimes cited as proof that, in spite of difficulties, the CCI may be a useful instrument for settling international disputes in higher education. Although the efficiency of the CCI in the higher education sector as a whole has been questioned, the way the Council handled the HEC devolution problem stands out as an obvious example of how well the Council performed its duties. Through the careful balancing act between federal monitoring and provincial autonomy, the CCI was able to address a complex issue that could have caused serious problems for Pakistan's higher education system's governance. This example offers compelling evidence that, when it functions with a dedication to cooperation and compromise, the CCI can, in fact, carry out its intended purpose in the higher education sector.

4.19. Impact of Changing Powers and Responsibilities of the Council of Common Interests on the Higher Education Sector in Pakistan after the 18th Amendment

In Pakistan, a constitutional body called the Council of Common Interests (CCI) was created to encourage interprovincial cooperation and settle differences between the provinces.

³¹⁹ Farooq, Ayesha. "Critical Perspectives on the Council of Common Interests: Role, Challenges, and Reforms." *Public Administration Review* 82, no. 2 (2021): 400-415.

³²⁰ Ahmad, Rehman. "The Council of Common Interests: A Critical Assessment of Its Role in Pakistan's Federal System." *Pakistan Journal of Political Science* 13, no. 1 (2022): 85-100.

The CCI's authority and duties underwent significant changes as a result of the 18th Amendment to the Pakistani Constitution, which was passed in 2010. One of the key sectors was Higher Education Sector impacted directly by these changes. This study intends to investigate the effects of the CCI's new function on Pakistan's higher education sector in post 18th Amendment scenario. Prior to the amendment, the federal government had more influence over a number of sectors including higher education and education in general.³²¹ The 18th Amendment, however, brought about a devolution of powers that transferred numerous duties from the central government to the provinces. The CCI's functions and responsibilities for directing and coordinating the higher education sector were changed as a result of this transfer of authority. The 18th Amendment's increased authority and responsibilities for the CCI have had both beneficial and adverse effects on the sector of higher education. On the one hand, increased provincial autonomy and decision-making authority have been made possible by the devolution of powers to the provinces, enabling them to tailor higher education programs to meet local needs and goals. This decentralization could promote innovation, alleviate regional inequalities, and take into account the unique needs of each province. The 18th Amendment has also improved the CCI's ability to coordinate and harmonize provincial higher education standards. The CCI gives provinces a forum to discuss sector-wide issues, exchange information, and share best practices. Through this cooperation, strong quality assurance systems may be created, research and innovation may be encouraged, and educational institutions may share resources and experience. But the CCI's expanded authority and the provinces' transfer of power also pose certain difficulties for the higher education industry. Maintaining uniformity and consistency in higher education standards and policies across the nation is one of the fundamental concerns. While allowing for customization, provincial sovereignty also raises questions regarding possible differences in degree quality, certification, and recognition. To encourage mobility, national integration, and the integrity of educational credentials, it is essential to harmonize standards and ensure certification equivalency. Allocating resources and maintaining financial stability present additional difficulties. Provinces are now in charge of setting their own budgets and allocating resources for higher education as a result of the devolution of powers. This encourages local control and responsibility, but it also presents problems for provinces with constrained budgets, potentially resulting in inequalities in funding and infrastructure among different provinces. In this

³²¹ Khokhar, Rafiq A. Higher Education Governance in Pakistan: Post-18th Amendment Reforms. Islamabad: Pakistan Institute of Development Economics, 2020.

situation, the CCI's responsibility in ensuring fair resource distribution and correcting regional inequities becomes crucial. Additionally, better coordination and collaboration among provincial governments, academic institutions, and other stakeholders are required due to the CCI's expanding powers and duties. To handle problems and guarantee a unified higher education system across the nation, the CCI's role in enabling inter-provincial coordination and resolving disputes becomes essential. Initiating projects and programs at the national level that call for cooperation and coordination across provinces, such as the creation of national research institutions or the implementation of national policies on certain educational challenges, can also be greatly aided by the CCI.³²²

4.20. Recommendation

Following the 18th Amendment, it is advised that the CCI and the IPCC collaborate and explicitly delineate their respective tasks to guarantee efficient operations, given the substantial overlap in their respective functions. Major policy decisions pertaining to intergovernmental issues between the provinces and the federation should be the primary focus of the CCI, which is comprised of the Prime Minister and the four Chief Ministers as ex-officio members. As for the IPCC, it may be in charge of carrying out the CCI's decisions due to its high-level bureaucratic representation. Furthermore, the IPC should handle any intergovernmental matters that are not addressed by the Federal Legislative List Part II's eighteen items. Section 13, "Interprovincial Matters and Coordination," can be used to escalate these issues to the CCI if the IPC is unable to settle them. We offer the following specific proposals to enhance the function of the Council of Common Interests (CCI) in Pakistan's higher education sector: Establish a mandate for frequent, targeted CCI meetings that address higher education in particular to encourage prompt resolution of interprovincial disputes. To avoid jurisdictional problems, clearly identify the roles and duties of the federal and provincial governments in higher education. Incorporate members from academia, HECs, provincial HECs, and business into CCI discussions to develop policies that address a range of demands. Provide a strict tracking mechanism to make sure that all governmental levels are held accountable for the implementation of CCI rulings. Enable uniform execution of education programs by addressing budgetary gaps among provinces and facilitating equitable resource

³²² Burki, Shahid Javed. *Federalism and Higher Education in Pakistan: The Post-18th Amendment Era*. New York: Palgrave Macmillan, 2022.

distribution. Establish a fair structure that combines national requirements with provincial authority to guarantee a unified higher education strategy throughout Pakistan.

4.21. Conclusion

This study observes that despite the existence of both the CCI and IPC since 1973, they have played a minimal role in addressing intergovernmental issues in Pakistan. The central government has largely dominated these forums, and the provinces' voices have not been sufficiently represented. The structure and functioning of the IPC, in particular, have faced challenges that have prevented it from fulfilling its intended role. The study also notes that the IPC has undergone various changes and has become more empowered after the 18th Amendment. However, the Amendment has also raised questions about the future role and relevance of the IPC. It is hoped that this study will spark a serious discussion on the IPC division's role in enhancing intergovernmental relations in Pakistan. Furthermore, the recommendations made in this study should be given proper consideration, and a complementary role should be established for both the CCI and the IPC division. This would enable them to work together constructively in resolving intergovernmental issues and fostering interprovincial harmony and understanding between the provinces and the federation. To conclude, the Council of Common Interests (CCI) is an important player in Pakistan's higher education system, especially when it comes to striking a balance between national and local interests. Although the CCI has achieved progress in formulating policies and allocating resources, obstacles still need to be addressed to guarantee efficient execution, distinct jurisdictional demarcations, and fair involvement from stakeholders. The CCI can more effectively manage these complications by emphasizing frequent meetings, clear role descriptions, thorough monitoring, and inclusive decision-making. The CCI can better address inter-provincial discrepancies and advance a united approach to higher education by fortifying its operational framework and financial support mechanisms. The CCI may make a substantial contribution to Pakistan's efforts to create a coherent and just system of higher education by implementing these steps.

4.22. Summary of the Chapter

The governance framework of higher education in Pakistan is deeply rooted in colonial-era structures, which continue to present significant challenges to the sector. Inadequate funding, political interference, and bureaucratic inefficiencies are among the major obstacles

faced by institutions. While efforts have been made to reform the system, such as the introduction of the 18th Constitutional Amendment, which decentralized authority by transferring responsibilities to the provinces and establishing Provincial Higher Education Commissions (PHECs), these reforms have not fully resolved underlying issues. Disparities between provinces and administrative hurdles continue to hinder the overall progress of higher education. One of the key developments in recent years has been the increase in institutional autonomy for universities. While this has allowed greater control over internal matters, it has also led to concerns regarding mismanagement and the declining quality of education in some institutions. To address these challenges, a holistic governance approach is required, involving the participation of all stakeholders, including federal and provincial governments, educational institutions, and civil society. Improved accountability and transparency are essential to ensure that autonomy does not result in inefficiencies or lowered standards. The role of the Council of Common Interests (CCI) is crucial in this context, as it serves as a platform for resolving federal-provincial disputes, particularly in areas like education policy and funding distribution. To modernize the governance framework, it is essential to focus on capacity-building for university staff, leveraging technology for better administration, and fostering international collaborations. These measures can help Pakistan's higher education sector break free from colonial legacies, improve governance, and enhance the quality of education to meet contemporary demands.

CHAPTER 5

AN APPRAISAL TO THE JURISPRUDENCE OF HIGH COURTS AND SUPREME COURT REGARDING APPOINTMENT AT HIGHER EDUCATION LEVEL

Chapter 5

An Appraisal to the Jurisprudence of High Courts and Supreme Court Regarding Appointment at Higher Education Level

5.1. Introduction of the Regulations and Process of appointment of VC

The importance of visionary leadership at Higher Education learning institutions cannot be ignored as leadership shapes the future of these institutions consequently, empowers generations to face challenges with confidence. Higher Education institutions deals with the infrastructure and superstructure of research and allied facilities.³²³ These institutions cannot be beneficial without having a futuristic legal framework. Unfortunately, the legal framework regarding appointment of vice chancellor was missing after Eighteenth Constitutional Amendment in the Constitution of Pakistan 1973 and before pronouncement of judgement of Lahore High Court, Lahore in Dr. Aurangzeb Aalamghir vs. Province of Punjab³²⁴ case. University Grants Commission Act, 1974 which was repealed by the Higher Commission Ordinance, 2002 (the Ordinance) did not provide mechanism to appoint the topnotch position of vice chancellor. Meanwhile, Federal Universities Ordinance, 2002 which was followed by the Higher Education Commission Ordinance, 2002 had the provision regarding the appointment of vice chancellor. Later on, after Eighteenth Constitutional Amendment the decision in Dr. Aurangzeb Aalamghir case paved the way to resolve a deadlock among federation and provinces. The Court decided that the Higher Education Commission at Federal level would be responsible to set standards for Higher Education Institutions as enunciated in Federal Legislative List Entry No. 38 and respective provinces would implement and execute these standards with true letter and spirit.³²⁵ The crux of the case is that After Eighteenth Constitutional Amendment in Constitution of Pakistan 1973 the Punjab province assumed that the Education had become a provincial subject. Consequently, amended the law i.e. the Public Sector Universities (Amendment) Act, 2012 and announced the vacancies while laid down the criterion for appointment of vice-chancellor. The Court gave its verdict that no provincial government could formulate the criterion for appointment of vice-chancellor as it falls in the

³²³ Siddiqui, Shahid; Chapter: 6 deals with Higher Education ; “Education Policies in Pakistan; Politics, Projections and Practices”; Second Edition; Published in June, 11, 2022 Oxford University Press; 1st Edition 2016; ISBN: 97801907078971269

³²⁴ PLD 2017 489

³²⁵ 18th Amendment as passed on 20th of April, 2010 vide Act X of 2010

exclusive domain of Federal Higher Education Commission (HEC). Court also directed that the HEC should examine the advanced standards prevalent in other countries for selection of vice-chancellors. At the moment, the Higher Education institution are suffering from academic stagnation due to stereotypical selection of their leaders. Further, a visionary leadership can get rid of the malaise of stagnation afflicted to our universities. Though, it was responsibility of the Federal and Provincial governments to comprehend their powers yet Court has to interfere to fill the gap and facilitated the government to accomplish the task. The Court also decided that the members would have strong credibility & integrity while having sound knowledge of respective field.³²⁶ The Honorable Court has attempted to cure the malaise of stagnation afflicted to our universities now it is turn of government to implement this judgment with true letter and spirit to rejuvenate the Higher Education institutions.³²⁷ Recently, the directions given by the Honorable Court have been made part of the Higher Education Amendment Act 2021. In March, 2024 a writ petition u/a 184 (3) of the Constitution filed by All Pakistan University BPS teachers Association (APUBTA) before Supreme Court of Pakistan that 64 higher education institutions don't have permanent vice chancellors. As per official record in Sindh 6 universities don't have permanent Vice Chancellors. Likewise, 2 universities in Balochistan don't have permanent Vice Chancellors. Punjab and Khyber Pakhtunkhwa further aggravated this situation as 32 universities in Punjab out of 50 & 24 out of 34 universities in Khyber Pakhtunkhwa don't have permanent Vice Chancellors.³²⁸ This malpractice can cause severe harm to the whole structure of higher education as temporary appointments would be puppet in the hands of politicians on one side and could not be beneficial to improve the prevailing system in universities. In this paper, we critically examined the laws dealing with the appointment of Vice Chancellors before Eighteenth Amendment and laws which are functional right now. There were lacunas in prevailing laws and courts tried to fill the gap to some extent by making judicious decisions as mandated by Eighteenth amendment of Constitution of Pakistan 1973.

³²⁶ PLD 2017 489

³²⁷ Ibid

³²⁸ Sabih Ul Hussnain, March, 26, 2024, the article published in the Friday Times; CPLA of 2024 in Supreme Court

5.2. Framing of Legal Issues

Whether devolution of power regarding appointments at higher level as envisaged by 18th Amendment is reflected and incorporated in the existing Legislative Framework.³²⁹ Whether the judgment or decision of higher courts have impacted and shaped the post 18th amendment legislative framework of higher education Institutions.

5.3. Historical Perspective of Higher Education Laws

While discussing about the historical perspective of laws related to “higher education institutions” it would be unfair to ignore the system of Higher Education presented and implemented by Thomas Babington Macaulay (1800-1859) – a poet, politician and a prominent British historian who presented the Education system for Indian Sub-continent with the name of “Minute on Education” 1835³³⁰ which was implemented through different reforms and policies by British Colonial Administration. The reforms introduced by Thomas Babington Macaulay were: the establishment of universities in big cities, English as a medium of instruction, for that purpose induction of English speaking teachers, the devaluing the indigenous education and focusing on western sciences, literature and philosophy. Unfortunately, these reforms are prevalent in our existing Higher Education system. Secondly, appointment of vice chancellors were made through different acts of universities. Lord Curzon’s Act, 1904 introduced guidelines for appointment of vice chancellors.³³¹ Likewise, the universities in big cities like University of Calcutta³³² 1857, University of Madras³³³ 1857, and University of Bombay 1857 had their own rules for appointment of vice chancellors.³³⁴ Since the inception of Pakistan in 1947 universities had their own regulations to appoint vice chancellors. The upcoming tables’ shows that right of Education was recognized but it was not justiciable in pre and post-independence era. Moreover, no specific provision was present dealing with the right of Education specifically that show the lack of interest in this sector. Further, Higher Education remained in provincial legislative list, concurrent legislative list and

³²⁹ Report of the 18th Amendment to the Constitution: Issues and Challenges in Curriculum and Standards, Institute of Social and Policy Sciences, Islamabad (I-SAPS) ; pp1-4

³³⁰ The Hon. T. B. Macaulay's February 2, 1835, Bureau of Education Minute. Selections from Part I of the Educational Records (1781-1839). H. Sharp served as editor. Superintendent, Government Printing, Calcutta, 1920. Reissue. National Archives of India, Delhi, 1965, pp107-117.

³³¹ Indian Universities Act 1904

³³² The Calcutta University Act, 1857 Dated: 24 January, 1857

³³³ University of Madras Act 1857 passed on 5th of September by the Act of Legislative Council of India

³³⁴ University of Bombay act, 1857 consequent upon the Woods Education Dispatch

finally after Eighteenth Amendment it has become a provincial subject. Nonetheless, the maintaining standards rests with the Federal Higher Education Commission.

Table 5.1: Pre Independence Status of Education and Higher Education

Subject	Law	Status
Education	Government of India Act 1935	The right of Education was Recognized
Higher Education	Government of India Act 1935	Provincial Leg. List

Table 5.2: Post-Independence Status of Education and Higher Education

Subject	Law	Status
Education	Independence Act 1947	The right of Education was Recognized
Higher Education	Independence Act 1947	Provincial Legis. list

Table 5.3: Constitutions of 1956, 1962 and 1972

Subject	Law	Status
Education	Constitution	The right of Education was Recognized
Higher Education	Constitution	Provincial Legis. list

Table 5.4: Constitution of 1973

Subject	Law	Status
Education	Constitution	The right of Education was Recognized
Higher Education	Constitution	Concurrent Legislative list

Table 5.5: Eighteenth Amendment

Subject	Law	Status
Education	25-A of Constitution	The right of Education was Recognized and Justiciable
Higher Education	Constitution	Federal Legislative list Maintaining Standards

Source: Primarily idea was taken from the report of Dr. Khawaja which he mentioned in his report Management and governance of higher education institutions.³³⁵

It could be concluded that on one side amendment brought a significant change in the status of education but a lot of ambiguities has created regarding maintaining of standards in Higher Education. To bridge the gap which has created after 18th amendment the court has played its role by determining the status of every government.

Before we start a debate on the issue of contradictory judgments of apex court on the issue of reshaping the legislative framework of Higher Education sector it is imperative to elaborate the prevailing laws regarding appointment of vice chancellors; Federal Higher Education laws; Provincial Higher Education laws; policies of universities. Then, we would be

³³⁵ Report of Prof. Dr. Khawaja, "Management and Governance (Federal/Provincial roles and responsibilities; HEI managers, appointment, autonomy, and accountability)." accessed 20.08.2021

able to comprehend whether the interference of higher courts would be beneficial to revamp the legislative framework for Higher Education sector.

5.4. Laws related to the appointment of VC

The top notch position at university is the post of Vice-Chancellor therefore, it is time to elucidate the relevant laws regarding appointment of vice-chancellors. This position would determine the future of universities as Vice-Chancellor would be considered the Prime Minister of University and have direct impact on selection at university. Higher Education Commission was established in September, 2002³³⁶ and soon after that The Federal Universities Ordinance, 2002 was enacted with the purpose of establishing and restructuring the universities that the Federal Government had established.³³⁷ Section 11 of the Federal Universities Ordinance, 2002 deals with the method to appoint and remove the VCs. The Senate's proposal would guide the Chancellor's regarding appointment of the VC. The Senate will form a search committee. Two members of the Senate, two Chancellor Nominees, and two eminent educators will make up this search committee. The two teachers shall be selected by the Senate as prescribed by the Statute. The search committee will continue to function until the vice-chancellor is appointed. The Senate will evaluate the search committee's nominee and forward it to the Chancellor in priority order. It is pertinent to mention here that Chancellor may decline the appointment made by the Senate. The Vice-Chancellor will be appointed for a period of five years that is renewable. Section 13 of the Universities Act 2012³³⁸ sets out the qualifications and criterion for the appointment of VCs. The Punjab HEC Act, 2014, Section 7, outlines the procedure for appointing vice chancellors. It requires that the Punjab Higher Education Commission develop policies and guidelines for that purpose, and that it oversee the selection process to ensure that it is fair, transparent, and merit-based. Section 12 of the KPU Act, 2012³³⁹ sets out qualifications and criterion for the appointment of vice chancellors at universities in Khyber Pakhtunkhwa. The section also sets out the process for the selection of vice chancellors, which includes the formation of a search committee, the advertisement of the position, the review of applications and interviews of shortlisted candidates. Candidly speaking it is also naked truth no proper procedure has been devised for appointing the vice chancellor after 18th amendment.

³³⁶ "Higher Education Commission Ordinance, 2002"; Ordinance No. LIII of 2002; 11th of September, 2002

³³⁷ Report of Prof. Dr. Khawaja, "Management and Governance (Federal/Provincial roles and responsibilities; HEI managers, appointment, autonomy, and accountability)." accessed 20.08.2021pp, 35-46

³³⁸ The Public Universities Amendment Act, 2012; LX of 2012

³³⁹ "The Khyber Pakhtunkhwa Universities Act, 2012"; dated the 18th May, 2012

5.5. Appointing Authorities of Vice Chancellors in all provinces of Pakistan

A complicated interaction between provincial legislation, administrative procedures, and changing governance dynamics is demonstrated by the appointment of Vice Chancellors (VCs) in public sector universities throughout Pakistan, especially in the years following the 18th Amendment. The legal and administrative systems of each province differ significantly, as do the functions of search committees, chief ministers, and governors. Nonetheless, the majority of provinces share characteristics, such as the participation of search committees and the chief ministers' final say. In Punjab, a search committee is established by the Higher Education Department to begin the process of selecting VCs. On the basis of merit, academic standing, and administrative experience, this committee finds and suggests qualified applicants. A key role is played by the Chief Minister of Punjab, who chooses a candidate from the recommendations and sends the governor the approved selection. Although their position is primarily symbolic, the Governor formally appoints the VC as the ceremonial Chancellor of public universities. This framework reflects Punjab's centralized approach to higher education governance by giving the Chief Minister significant authority.³⁴⁰

The appointment procedure in Sindh was drastically changed by legislative amendments brought about by the Sindh Universities and Institutes Laws (Amendment) Act, 2018, which gave the Chief Minister Final say over VC selection. The Chief Minister is the ultimate decision-maker and receives the search committee's recommendations, which were created to guarantee openness and meritocracy. This legal change emphasized the provincial government's intention to have more control over university matters while downplaying the governor's role and reducing it to a ceremonial endorsement. These modifications are in line with Sindh's larger post-18th Amendment plan to increase provincial autonomy in the management of higher education.³⁴¹ The Governor of Balochistan still serves as the Chancellor and the official person who appoints VCs. A search committee makes recommendations, and although the governor plays a more significant role than in Sindh and Punjab, the chief minister's influence cannot be completely disregarded. Although less obvious, the Chief Minister's influence may be felt indirectly through the search committee's makeup or other executive avenues, which could influence the selection process's outcome. This arrangement

³⁴⁰ Report of Prof. Dr. Khawaja, "Management and Governance (Federal/Provincial roles and responsibilities; HEI managers, appointment, autonomy, and accountability)." accessed 20.08.2021

³⁴¹ Sindh Universities and Institutes Laws (Amendment) Act, 2018, Act No. 20 of 2018, Government of Sindh.

maintains a balance between the changing trend of provincial power over higher education and traditional governance approaches.³⁴²

Khyber Pakhtunkhwa (KP) VC appointments are governed by the Khyber Pakhtunkhwa Universities Act, 2012, which has seen significant amendments in recent years.³⁴³ The amendments in 2016 and 2020 centralized authority over VC appointments with the provincial Chief Minister, aligning KP's governance model with broader trends in Pakistan. The Governor, as the ceremonial Chancellor, has a nominal role in the process, while a search committee assesses potential candidates and submits its recommendations to the Chief Minister, who makes the final decision. These legislative amendments reflect the KP government's strategy to consolidate control over university leadership, emphasizing the Chief Minister's role as the primary decision-maker.

The different approaches to university governance in Pakistan are emphasized by the differences in VC appointment procedures between provinces. The ancient government paradigm is still present in Punjab and Balochistan, where the governor's position as chancellor still has some importance, but to differing degrees.³⁴⁴ Sindh and KP, on the other hand, have shifted to models that specifically give Chief Ministers more authority, diminishing the Governor's function to a ceremonial one. These provincial variations are a reflection of larger changes in Pakistani higher education governance brought about by the 18th Amendment's devolution of powers. A trend towards centralized decision-making within provincial frameworks is shown by the increasing participation of provincial governments in higher education, especially in Sindh and KP. This change frequently seeks to improve provincial autonomy, guarantee more authority over university administration, and match regional priorities with higher education governance. But it also calls into question institutional autonomy, the distribution of power, and the possibility of appointment politicization. The dynamic interaction between tradition and reform in Pakistan's higher education governance landscape is exemplified by the changing legislative and administrative frameworks in each province.

³⁴² Report of Prof. Dr. Khawaja, "Management and Governance (Federal/Provincial roles and responsibilities; HEI managers, appointment, autonomy, and accountability)." accessed 20.08.2021

³⁴³ KP Act 2012

³⁴⁴ Report of Prof. Dr. Khawaja, "Management and Governance (Federal/Provincial roles and responsibilities; HEI managers, appointment, autonomy, and accountability)." accessed 20.08.2021

5.6. Appointing Authorities of Vice Chancellors in all provinces of Pakistan in a Tabulated Form

Province	University	Chancellor
Federal	All Federal Universities (e.g., Quaid-i-Azam University, Islamabad, Allama Iqbal Open University, IIUI)	President of Pakistan
Punjab	University of the Punjab, Lahore	Governor of Punjab
	University of Engineering and Technology (UET), Lahore	Governor of Punjab
	Lahore University of Management Sciences (LUMS)	Chancellor appointed by the Board of Trustees
	King Edward Medical University, Lahore	Governor of Punjab
	University of Agriculture, Faisalabad	Governor of Punjab
Sindh	University of Sindh, Jamshoro	Governor of Sindh
	Aga Khan University, Karachi	Chancellor appointed by the Aga Khan University Board
	Liaquat University of Medical and Health Sciences, Jamshoro	Governor of Sindh
Khyber Pakhtunkhwa	University of Peshawar	Governor of Khyber Pakhtunkhwa
	Khyber Medical University, Peshawar	Governor of Khyber Pakhtunkhwa
	University of Science and Technology, Peshawar	Governor of Khyber Pakhtunkhwa
Balochistan	University of Balochistan, Quetta	Governor of Balochistan
	Balochistan University of Engineering and Technology, Khuzdar	Governor of Balochistan
Azad Jammu & Kashmir	Azad Jammu and Kashmir University, Muzaffarabad	President of Azad Jammu & Kashmir
Gilgit-Baltistan	Karakoram International University, Gilgit	Governor of Gilgit-Baltistan

5.7. Critical Analysis of Search Committee Laws

In Pakistan, the formation of search committees for the appointment of vice chancellors (VCs) is subject to a complicated legal and regulatory environment, particularly for federal universities. Although the Higher Education Commission (HEC) offers guidelines, it should be noted that these are merely recommendations and are not required. Given that Section 40 of the Federal Universities Ordinance, which might formally enact these principles, has not been announced, this leaves a gap in enforceable legal authority. In this regard, search committees are typically established in accordance with certain university acts, ordinances, and provincial laws, which are then augmented by official announcements and administrative procedures. The HEC's binding authority over federal universities is limited in the event that no notification is made in accordance with Section 40 of the Federal Universities Ordinance. As a result, search committees are typically set up in accordance with certain university charters or laws that apply to all federal universities. The governing bodies of the university or the Chancellor, who may act through the Ministry of Education or another appropriate federal authority, are normally given the authority to appoint search committees by the pertinent provisions in these statutes. In accordance with customs and practices, the Ministry of Federal Education and Professional Training frequently provides administrative instructions or recommendations to form search committees. These have administrative authority over the selection process even though HEC does not support them as necessary regulations.³⁴⁵

Although the system varies from province to province, it is often regulated by higher education statutes or provincial university acts that outline the steps for selecting VCs, including the creation of search committees. In Punjab, search committees are established by the Punjab Higher Education Department in accordance with the Punjab Higher Education Commission Act and the statutes of specific universities. The Governor formally approves the recommendations made by these committees for VC appointments, which are typically overseen by the Chief Minister of Punjab.³⁴⁶ According to the Sindh Universities and Institutes Laws (Amendment) Act, 2018, the chief minister of Sindh has the last say in decisions regarding VC appointments, however the provincial government is empowered to establish search committees. According to the 2016 amendments to the Khyber Pakhtunkhwa

³⁴⁵ Sindh Universities and Institutes Laws (Amendment) Act, 2018, Sindh Assembly, 2018

³⁴⁶ Report of Prof. Dr. Khawaja, "Management and Governance (Federal/Provincial roles and responsibilities; HEI managers, appointment, autonomy, and accountability)." accessed 20.08.2021

Universities Act, 2012, the provincial government forms search committees,³⁴⁷ and the Chief Minister ultimately selects VCs, with the Governor serving only as a ceremonial representative. Although the procedure is less centralized than in KP and Sindh, the governor, in his capacity as Chancellor, normally forms search committees in accordance with university acts, and the governor then reviews and approves the proposals. In every situation, the HEC's principles are not legally binding, even though they are frequently adhered to as a matter of practice to guarantee uniformity in standards.³⁴⁸ Therefore, federal guidelines serve as an advising framework until they are codified in a formal law or notification, and search committees function in accordance with the unique legislative rules of each institution or provincial law.

5.8. Issue of Funding in Public Sector Universities in Pakistan

The Sindh Higher Education Commission (Sindh HEC), which was founded following the 18th Amendment, has certain distinctions from the federal Higher Education Commission (HEC), which is the main source of funding for public sector universities in Sindh. In contrast to other provinces, Sindh's universities are supported by both the federal and Sindh HECs, but the latter's budget is far lower. Because Punjab, Khyber Pakhtunkhwa (KP), and Balochistan lack a provincial commission with comparable financing resources, they mostly rely on the federal HEC, making this dual process unique. While the federal HEC continues to be the main source of funding, the Sindh HEC permits smaller-scale, regionally tailored programs and initiatives that are partially financed by the provincial budget.³⁴⁹

Higher education in every province is still primarily funded by the federal HEC, which allocates cash according to factors including student population, research output, and infrastructure needs. In Sindh, this federal involvement has occasionally resulted in jurisdictional issues with the Sindh HEC over control of financing and program implementation, although it is constant across the country. Since they lack distinct provincial commissioners with funding authority, provinces like Punjab, KP, and Balochistan usually rely on federal funds without the same arguments as Sindh.³⁵⁰ The province government can launch programs and scholarships, award smaller grants, and carry out faculty development initiatives unique to Sindh's universities thanks to the Sindh HEC—allocations that the federal HEC

³⁴⁷ KP Universities Act 2012 Amended in 2016

³⁴⁸ PLD 2017 489

³⁴⁹ Zaman, R. (2021). Higher Education in Pakistan: Challenges and Reforms. Lahore: Punjab University Press.

³⁵⁰ Education Reforms in Pakistan and Their Impact on Provincial Autonomy, Pakistan Institute of Development Economics, 2019.

typically does not provide. The federal HEC is more directly responsible for university-specific funding in other provinces without comparable provincial commissions. While adherence to federal HEC policies is more prevalent in Punjab, KP, and Balochistan, the provincial government of Sindh has occasionally sought more financial control and autonomy over its universities. The federal HEC continues to be the main source of funding for universities throughout Pakistan, even if the Sindh HEC offers an extra degree of supervision and assistance. The biggest difference in Sindh is the presence of the Sindh HEC, which permits some degree of regional funding and projects but ultimately works in tandem with federal HEC money, which continues to be the most significant across all provinces.³⁵¹

5.9. Powers and duties of Vice Chancellor (VC): Pre and Post 18th Constitutional Amendment

VCs selection was a herculean task for public sector as well as for private sector universities. There is no proper appointment method after Eighteenth Constitutional Amendment to fulfil the most powerful as well as the highest position at university level. That's why a petition has been filed before Supreme Court to direct government regarding appointment of vice-chancellors in sixty four institutions in Pakistan.³⁵² Obviously, when the highest position would be fulfilled through political biasedness and without merit; there would be higher chances of perishing the meritocracy at all levels. It is the responsibility of VC to guarantee the strict observance of statutes, rules, regulations, and the conditions of the University Act. In an emergency, the vice chancellor may take any action that falls under the purview of any authority but is not otherwise within his or her purview. The Vice Chancellor may appoint teachers and officers, direct them to take on assignments related to exams, administration, or any other university-related activity, authorize funds for unanticipated expenses not included in the University budget, make appointments, discipline teachers, officers, or other university employees, and assign any of the Vice Chancellor's powers to a teacher or officer of the University. Each year, VC is required to compile an annual report that includes details on the previous academic year, including all pertinent information about the University's finances, administration, research, and academic programs. The Vice Chancellor is required to present the University's annual report to the Syndicate within three months after

³⁵¹ HEC Annual Report 2023

³⁵² Sabih Ul Hussnain, March, 26, 2024, the Friday Times CPLA of 2024

the conclusion of the academic year.³⁵³³⁵⁴ To conclude, the vice-chancellor is to be considered the most powerful person enjoys absolute authority according to the acts of universities.³⁵⁵

5.10. Appointment method and powers of VCs in developed countries: A Comparative analysis

The laws, rules, and regulations regarding appointments at higher levels in different countries vary widely. However, there are some common themes and differences in the appointment processes across different countries, which can be compared as follows: In most developed countries, the criterion for appointments at higher levels are based on merit, academic excellence, leadership & managerial skills, research and scholarly publications. Usually, there is a focus on transparency and fairness in the selection process, as well as on the qualifications and experience of the candidates.³⁵⁶ In contrast, in some developing countries like Pakistan, appointments at higher levels may be influenced by political considerations, personal connections, or other non-merit-based factors as in a famous case court declared the appointment of vice chancellor null and void and ordered to re-initiate the whole process.³⁵⁷ In developed countries, the appointment process is usually formalized and transparent, with clear criterion and procedures for the selection of candidates. There may be a search committee or an independent body that oversees the selection process, and the candidates required to undergo interviews or other selection tests. In developing countries like Pakistan, the appointment process may be less formalized, with ad-hoc decision-making and less transparent procedures: there is no mechanisms to fulfill the vacant positions immediately and there are so many positions at higher level are vacant. Similarly, highest positions are to be fulfilled on temporary basis. In March, 2024 a writ petition has been filed before Supreme Court of Pakistan by All Pakistan Universities BPS Teachers Association (APUBTA) that 64 Higher Education Institutions don't have permanent vice chancellors; therefore, they prayed that Government should be directed to make appointments on urgent basis without compromising the merit and

³⁵³ "GCWU Sialkot Act", 2012;(Act VII Of 2013); 5th January, 2013

³⁵⁴ Section 10 of The Federal Universities Ordinance, 2002; Ordinance CXX of 2002; Promulgated on November 13,2002

³⁵⁵ Section 10 of The Federal Universities Ordinance, 2002; Ordinance CXX of 2002; Promulgated on November 13,2002

³⁵⁶ Sahn, Parth J. "The Regulatory Structure of Higher Education in India" Working paper, International Growth Centre: Centre for Civil Society, 2015. F-35110-I.

³⁵⁷ 2018 PLC Service 267; Dr. Akmal Hussain case

transparency.³⁵⁸³⁵⁹ In developed countries, there is usually a greater emphasis on institutional autonomy and governance, with universities and other higher education institutions having more control over their own affairs. In contrast, in some developing countries, like Pakistan there is a tendency to make appointments at higher level on ad-hoc basis so that higher level officials can be controlled by politicians easily.³⁶⁰³⁶¹ In developed countries, there is usually a greater emphasis on diversity and inclusivity in the appointment process, with efforts to promote gender, ethnic, and cultural diversity among candidates. In contrast, in some developing countries like Pakistan, appointments at higher levels may be dominated by a narrow elite group, with little effort to promote diversity and inclusivity.³⁶² In developed countries, there is usually a greater emphasis on public accountability mechanisms in the appointment process, with mechanisms for public scrutiny and oversight of the selection process. In contrast, in some developing countries like Pakistan, the appointment process may be less transparent and subject to less public scrutiny.³⁶³ Not only this but Supreme Court also denied to hear the cases of universities and their employees on the basis of statutory and non-statutory rules. The Supreme Court also declared that the relationship of university and its employees is a relationship of Master and Servant. The available remedy is compensation only. Those who have removed from service by the university shall not be reinstated to their positions.

5.11. Balancing Centralized and Collegial Approaches for Appointing vice chancellor

In a similar fashion, we would like to highlight the method for appointing VCs in public sector institutions as we have already discussed the powers of Vice Chancellor so it is time to discuss the appointment method of this prestigious position in Pakistan. After that we would be able to critically analyze what is role of Vice Chancellor in reshaping the legislative framework of Higher Education sector in Pakistan. And what are loophole in our existing legislative framework and how to make an effective legislative framework by overcoming

³⁵⁸ Sabih Ul Hussnain, March, 26, 2024, the Friday Times CPLA/2024 “SC urged to ensure lawful appointment of vice chancellors in varsities”

³⁵⁹ 2018 PLC Service 1; 2018 PLJ 610; Muhammad Hussain Cheema case

³⁶⁰ Sabih Ul Hussnain, March, 26, 2024, the Friday Times Retrieved on 23.05.2024 at 11:25 PM

³⁶¹ 2018 PLJ 610

³⁶² 2017 PLC Service 1376

³⁶³ 2016 PLJ 670

these loopholes.³⁶⁴ Curt has tried to fill the gap through its decisions so the power should not be concentrated in one hand to exploit the others.³⁶⁵

Higher Education Commission was established in September, 2002³⁶⁶ and soon after that The Federal Universities Ordinance, 2002 was enacted with the purpose of establishing and restructuring the universities that the Federal Government had established.³⁶⁷ Section 11 of the Federal Universities Ordinance, 2002 deals with the method to appoint and remove the VC. The Senate's proposal would guide the Chancellor's regarding appointment of the VC. The Senate will form a search committee. Two members of the Senate, two Chancellor Nominees, and two eminent educators will make up this search committee. The two teachers shall be selected by the Senate as prescribed by the Statute. The search committee will continue to function until the vice-chancellor is appointed. The Senate will evaluate the search committee's nominee and forward it to the Chancellor in priority order. It is pertinent to mention here that Chancellor may decline the appointment made by the Senate. The Vice-Chancellor will be appointed for a period of five years that is renewable. Note that some specific university acts (like the University of Punjab Act, 1972) did have provisions permitting the appointment of a search committee to choose a vice chancellor before this ruling, but those provisions involved a higher level of bureaucracy than the current system. The Senate will evaluate the search committee's nominees, and the Chancellor will be presented with a shortlist of three applicants ranked in order of merit. The Chancellor has the right to reject any recommendation and ask for the advice of a fresh panel. The Search Committee will continue to work until the Chancellor names the Vice Chancellor for a five-year term that is after presenting a recommendation to the Senate.³⁶⁸

A decision was adopted at the 2nd Chancellors meeting on May 11, 2006, allowed for the appointment of a Search Committee to select the Vice Chancellor and Rector of all public universities. It was mandated that the province's governor set up a search committee for the selection of the VC. But on July 31, 2006, the Senate Standing Committee on Education, Science, and Technology raised concerns about the decision's legitimacy. The legal provision under which the Chancellors Committee operates; there is no provision for a search committee

³⁶⁴ Aman, Karim. "Role of HEC in Promoting and Facilitating Educational Research in Pakistani Universities." Karachi: Institute for Educational Development, 2011.

³⁶⁵ 2020 PSC Civil 530; Chancellor MUST vs Dr. Iqrar

³⁶⁶ HEC Ordinance 2002; Ordinance No. LIII of 2002; 11th of September, 2002

³⁶⁷ Report of Prof. Dr. Khawaja, "Management and Governance (Federal/Provincial roles and responsibilities; HEI managers, appointment, autonomy, and accountability)." accessed 20.08.2021pp, 35-46

³⁶⁸ Ibid

in any university ordinances or acts; which legal provisions permit the creation of a search committee to be interpreted as a change to the Act itself. The HEC stated that search committee procedures do not violate the relevant university's statute and that chancellors are free to appoint a vice chancellor in whatever way they deem fit under existing law.

A change from the past was the appointment of VC by a Committee. An open (vacancies announced through advertisement), competitive, merit-based system was implemented for the first time in the nation.³⁶⁹ The requirement of law³⁷⁰ that the Senate appoint the Search Committee caused a significant issue during the early phases of the Search Committee procedures' implementation. The Act has not been amended to accept the Ordinance, and none of the 7 institutions specified in the Schedule of the Ordinance have a Senate. The Higher Education Commission had to conduct the Search Committee procedure since there was no Senate. As evidenced by the appointment of VCs at three universities (QAU, AIOU, and IIUI), the formation of a search committee to choose candidates for vice chancellor in universities situated in capital territory appears to have led to conflict between HEC and Federal Ministry. The Ministry reassembled the Search Committee after it had started evaluating applications with the HEC Chairman serving as Convener. The procedure for appointing vice chancellors through a search committee has been implemented in all provinces. A disagreement between the Governor and CM on the appointment of the vice chancellor at the Bahauddin Zakria University Multan led to an important development. The Chief Minister's ideas were rejected by the Chancellor, who suggested a different name. The Supreme Court finally had to rule in 2011 that the Governor is bound by the Chief Minister's advice.³⁷¹ In several institutions, changes have been made to the acts of universities that have this effect. The Search Committee recommends names in order of merit, with the exception of Punjab, where only names not listed in order of merit are to be forwarded.

In KP and Punjab, the Higher Education Department is handling the procedure administratively. In Baluchistan, the Governor secretariat is in-charge, whereas the Chief Minister secretariat is active in Sindh. The search committee is often made up of the university senate, and in Baluchistan the governor makes the appointments. Delays in appointments are happening for unknown causes and are negatively affecting the institutions. There are

³⁶⁹ Report of Prof. Dr. Khawaja, "Management and Governance (Federal/Provincial roles and responsibilities; HEI managers, appointment, autonomy, and accountability)." accessed 20.08.2021pp, 35-36

³⁷⁰ Sec 11 of Federal Universities Ordinance 2002

³⁷¹ Civil Petition No. 1017-L of 2011

numerous cases where the VC has been asked to continue working after his term has expired.³⁷² Section 12 of KPU Act, 2012 addressed appointment method of VC. The following amendments to Section, 12 were made in the KPU amended Acts of 2015 and 2016. The Academic Search Committee will recommend three candidates, and the Chancellor will select one of them as Vice Chancellor at the government's request.³⁷³ According to provision 12 (2) of the act a committee of academic experts would be formed on the suggestion of the government to recommend applicants for VC's position. The Academic Search Committee's convener and chairperson, who must be a renowned academic with at least fifty international publications, will be nominated by the Chief Executive of the Province. Following that, two of Pakistan's most renowned edutonist who have held positions in academic administration as chairman, dean, vice chancellor, etc., outside of Khyber Pakhtunkhwa well-known scholar or researcher from the region of Khyber Pakhtunkhwa who has further expertise collaborating with governmental and commercial institutions. The academic search committee's secretary will be the secretary of Khyber Pakhtunkhwa's Higher Department.

The committee was once composed of ten members, however after the amendment, there are now just five members left. Four pages of the amendment act contain the following: the necessary qualifications, the desired experience, the expected abilities and competencies, the leadership skills, the interpersonal communication skills, and the collaboration skills. As with the original Act, general universities required a PhD in any discipline in the various courses, and the CM, as in Punjab, would advise the Governor. Moreover, the VC's three-year term would be renewable for an additional year in accordance with how successfully the performance was assessed in relation to the KPIs that the government would set. It's the ideal way, according to faculty members—including QEC administrators, as most of them are also actively involved in teaching.

According to survey conducted by Prof. Azam Ali Khawaja eight more instructors (19%) do not disagree but want the situation to get better. They discussed the need for transparency and came to that conclusion. Overall, majority (75%) is in favor of having a Search Committee to select a VC. Additionally, in their comments, all 9 VCs and 7 registrars agreed that the method was suitable. According to report 1.56% of the faculty members who participated in the survey, which also included QEC officials because the majority of them are

³⁷²2018 PLC Service1

³⁷³Report of Prof. Dr. Khawaja, "Management and Governance (Federal/Provincial roles and responsibilities; HEI managers, appointment, autonomy, and accountability)." accessed 20.08.2021

also active in teaching, though it was the best approach. Despite wanting change, 8 more teachers (19%) do not disagree. They acknowledged the need for transparency during the conversation. A search committee should be used to appoint VCs, according to the majority (75%) of respondents. Furthermore, in their comments, all 9 venture capitalists and 7 registrars agreed that the procedure was proper.³⁷⁴

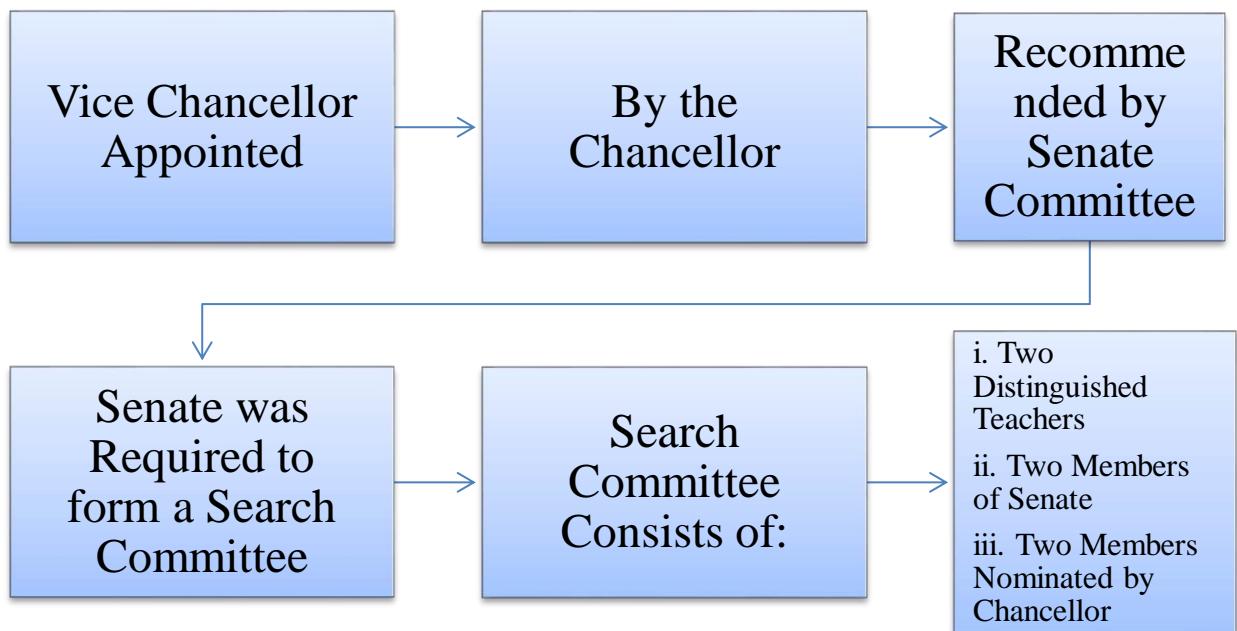


Diagram: **Appointment of Vice Chancellor**

³⁷⁴ Report of Prof. Dr. Khawaja, "Management and Governance (Federal/Provincial roles and responsibilities; HEI managers, appointment, autonomy, and accountability)." accessed 20.08.2021

5.12. An appraisal to the Judgments of Apex Courts of Pakistan regarding Appointment of Vice-Chancellor

In a landmark judgment Dr. Khattak was appointed VC for three years; thereafter, provincial government appointed a new Vice-Chancellor through notification to look after the affairs of university after completion of tenure. Petitioner challenged the notification of provincial government by arguing that there is no provision in KP University Act, 2012 which support the notification. The petitioner further contended that the impugned notification may be revoked because of sub-section 3 of section 12-A, which states that the Pro Vice-Chancellor will be considered the Acting Vice-Chancellor at the expiration of the Vice-Chancellor's tenure. The Court ruled that the Pro Vice-Chancellor would serve as acting Vice-Chancellor in the event of the Vice-Chancellor's absence, which would result in a number of administrative and budgetary challenges. Therefore, notification is beneficial and stopgap arrangements to safeguard the interest of public. Further, the writ of quo-warranto can be lodged against a usurper.³⁷⁵ The petitioner has failed to establish the look after charge was handed over to the usurper and against the law; petitioner has no right to espouse the cause of extension. Moreover, Vice-Chancellor cannot claim vested right to be appointed for another term of three years.³⁷⁶

In another landmark judgment of Dr. Aurangzeb case the notification of provincial Higher Education Department regarding qualification, criterion, and search committee to appoint vice chancellor was challenged. It was argued maintaining standards fell into the exclusive domain of Legislative List “FLL” so provincial legislature could not provide standards i.e. qualification/criterion for appointment of VC. Section 14 deals with the appointment of VC for 3 years. Against this stance it was argued that no contradiction between section 14 of PU Act vs. HEC ordinance. Both laws can co-exist as long as minimum standards prescribed by HEC not violated. Second question arose that whether standards in institutions of Higher Education would be minimum or mandatory. It was held that standards in institutions of Higher Education would be minimum; if provincial government followed more than minimum standards, obviously, there would be no objection. Moreover, no contradiction between sections 14 of the university act³⁷⁷ vs. HEC ordinance³⁷⁸. Both laws having co-existence as long as minimum standards prescribed by HEC not violated as HEC doesn't set

³⁷⁵ 2023 SCMR 162; Civil Petition No. 3944 of 2019; 18.10.2022;

³⁷⁶ Civil Petition No. 3944 of 2019; Supreme Court of Pakistan

³⁷⁷ PU amended act, 1973; PU Act, 1882

³⁷⁸ “HEC Ordinance”, 2002; Ordinance No. LIII of 2002; 11th of September, 2002

mandatory standards for VC. Apart from these issues, certain issues were raised before the Court. Whether legislative power to set standard for HE exclusively within the domain of FLL? Whether there is an overlap of legislative power among Federation vs. Federating Units. What is nature and scope of standards of HEI—minimum or mandatory? Provincial law regarding standard is unconstitutional --- section 14(2) (4) of PU Act, 1973. Whether notification comply with statutory requirements to the extent of providing a fair mechanism for constitutions of search committee. What would be the role of Council of Common Interest – whether it played its constitutional role? Education includes standards in education; standards in Higher Education Institutions “HEI” falls in Federal Legislative List “FLL” too; therefore, there is an overlap in legislative competence between Federation & Province in the area of “Education” and standards in HEI.³⁷⁹ However, Federal legislature does not oust Provincial legislature. There is an exception when both statutes are locked the Federal law prevails u/a 143.³⁸⁰ 18th amendment gives way to cooperativeness and coordination; survival of constitution rests on cooperative federalism. Cooperative Federalism refers that multiple levels of government are to be seen a part of single government.³⁸¹ It was held that Constitution is not a straitjacket rather it is a breathing document. Constitutional court of South Africa also held that when two legislatures have concurrent powers to make laws; the one way is cooperation. Justice Iacobucci stated that in case of conflict provincial legislature intra-vires³⁸² “Parmountas doctrine” would be applied. Federal standards would be baseline reflecting the national integrity in case of vertical power sharing Federal encourages cooperation and inter-departmental coordination. Federation and provinces both can set standards in HEI; however, provinces will not be allowed to develop the standards in HEI below the federal standards. SC in India held in AIR 2016 SC 2601 Union list was limited to lay down uniform standard of education: - not to bereft the state legislature. Central government is responsible to determine the standards in HEI; same should not be lowered in the hands of state. HEC provides guidelines which are non-binding. This was an exhaustive judgment elaborating the issues pragmatically and considering the ground realities.³⁸³

Contrarily in another landmark judgement the Court decided that the President is not bound to follow the advice of Prime Minister while acting as chancellor of university. Similarly

³⁷⁹ Art. 142 of 1973 Constitution

³⁸⁰ Art. 143 of 1973 Constitution

³⁸¹ Art. 142 of 1973 Constitution

³⁸² Husky Oil Operations Ltd v Minister of National Revenue, [1995] 3 SCR 453, 1995 CanLII 55 (SCC).

³⁸³ PLD 2017 489

the Governor is not bound to follow the advice of Chief Minister while acting as chancellor of university. Rather they are bound to follow the acts and statutes of the respective universities.³⁸⁴ The Assistant Attorney General contends that the Statute's provisions, rather than Article 48(1), bind the President in his capacity as Chancellor. In this instance, the President used the power granted to him by the proviso in section 11(3) to reject appointments and look for a new panel. The court cites a number of Supreme Court rulings, such as Dr. Zahid Javed, which establish that the advice of the Prime Minister or Chief Minister does not always bind the President or Governor when they are acting in their capacity as persona designata. The court maintains the idea that the president or governor may be independently granted authority, responsibilities, and activities by statute. He argued that the learnt Lahore High Court had decided in Dr. Shahid Mehboob Rana v. Province of Punjab through Secretary and 2 others (2010 PLC (C.S) 769) and Tahir Riaz Chaudhry v. Chancellor, University of the Punjab, Lahore (PLD 2013 Lahore 476), as well as the learnt Balochistan High Court in Dr. Ilyas and others v. Government of Balochistan through Chief Secretary (PLD 2022 Balochistan 58), that the Chancellor is bound by the Chief Minister's advice. The learnt Supreme Court of Azad Jammu and Kashmir ruled in The Chancellor, Mirpur University of Science and Technology/President Azad Government of the State of Jammu and Kashmir v. Dr. Iqrar Ahmed Khan (2021 PLC (C.S.) Note 3) that the President was bound by the Prime Minister's advice when selecting the Vice-Chancellor of Mirpur University of Science and Technology. After hearing both of the parties court decided that If the president rejects the PM or CM's suggestion, they must document their reasoning. He said that in the current case, the petitioner was ranked first on the shortlist based on merit and that the President had not provided any justification for rejecting the Prime Minister's recommendation to name him vice chancellor. He cited Dr. Razia Sultana v. Professor Dr. Ghazala Yasmeen Nizam (2016 SCMR 992), Dr. Iqrar Ahmad Khan v. Government of the Punjab through Secretary Agricultural Department, Lahore and others (2020 PLC (C.S.) 1087), Professor Dr. Ghazala Yasmeen v. Chancellor Shaheed Banazeer Bhutto Women University, Khyber Pakhtunkhwa (2016 PLC (C.S.) 686), and Dr. Iqrar Ahmad Khan v. Dr. Muhammad Ashraf (2021) as support for these claims.³⁸⁵

³⁸⁴ 2023 MLD 1273; Dr. MUHAMMAD NAEEM KHAN---Petitioner Versus FEDERATION OF PAKISTAN through Secretary, Ministry of Kashmir Affairs and Gilgit-Baltistan and others---Respondents

³⁸⁵ 2023 MLD 1273

Appointment of Dr. Ashraf was challenged. ICA set aside the judgment of Single Bench by holding that Dr. Ashraf was appointed as vice-chancellor without lawful authority. The salient points are that Dr. Ashraf was appointed as vice chancellor for a period of three years. After completion of his tenure he applied again for the post of VC. After thorough deliberation and investigation the search committee recommended the name of Dr. Ashraf for the post of VC. However, Chancellor while using his prerogative appointed another candidate as VC alleging that Dr. Ashraf failed to fulfill his financial responsibilities diligently as one hundred sixty four Audit Paras were pending. Supreme Court ruled that this reason is not sufficient and as per result of search committee he should be considered to be the most suitable candidate for the post of vice chancellor as he obtained highest marks by search committee. Further, it was also highlighted that the obiter dicta of Supreme Court is also binding on all high courts in Pakistan.³⁸⁶

Dr. Muhammad Iqbal Zafar challenged the appointment of pro VC for a period of 3 years. The condition for a period of 3 years or superannuation is against the law. Court decided in ICA that Dr. Iqbal Zafar was beneficiary of notification and enjoyed the post of Pro Vice Chancellor for one year. However, the provisions of the University of Agriculture Faisalabad Act, 1993 are not contradictory with each other and in case of clash between two provisions section 41 of the Act will prevail. Therefore, he cannot claim appointment as his vested right.³⁸⁷

In another landmark judgment two main questions of law were raised before the court. First, search committee was constituted before the advertisement therefore a fresh advertisement should be made. Second, Dr. Akmal was not an expert. Therefore, a fresh search committee be constituted to re-initiate the appointment process. Three candidates were shortlisted and put up before Chief Minister. After perusing the available record the court concluded that Dr. Akmal is an economist instead of Agriculturalist. So a new search and scrutiny committee be constituted for fresh appointment. Furthermore, in this judgment court also directed the HED while presenting the guidelines regarding the constitution of the search and scrutiny committee. The search committee should be composed of three to five members who demonstrate high moral character and integrity. It is imperative for a candidate that he will be the citizen of Pakistan and having integrity and competency; must be sagacious righteous and honest; within forty to seventy five years; has declared his assets. Committee shall be

³⁸⁶ 2021 SCMR 1509; PLD 1966 Dacca 296; PLD 1978 Lahore 1235

³⁸⁷ 2019 PLC Service 63

responsible for appointment of new members, Chairperson to be elected amongst members, Member can resign to address the Governor. Member can be removed if he became incapacitated.³⁸⁸ Following the enactment of this legislation, the government shall nominate candidates for the search and scrutiny committee within 15 days. At least one of the nominees must be a woman. The list of recommended candidates will be publicly disclosed, and the public will be invited to submit comments and objections to the Secretary within 6 days. The Secretary shall then provide the list of nominees, along with the public feedback, to the Legislative Committee within 7 days. The Legislative Committee shall confirm or reject the nominees by a simple majority vote within 7 days, taking the public input into consideration. If the Legislative Committee does not take action, the nominees shall be presumed confirmed. The Secretary shall then submit the names of the confirmed or presumed confirmed candidates to the Governor for appointment within 1 day. If the Governor fails to make the appointments within 10 days of receiving the list, the nominees shall be automatically appointed, and the government shall issue the necessary notification. The provisions of Section 6, subsections (6) through (10), shall apply to the formation of this initial search and scrutiny committee. If the Legislative Committee rejects a candidate, it shall notify the Government of its decision, and the Government shall propose another. Suggestions of Higher Education Department and Higher Education Commission were also made part of in this case.³⁸⁹

A candidate was appointed VC of the University; on completion of his tenure; he was again appointed Vice-Chancellor on temporary basis. Another candidate was appointed as Pro Vice-Chancellor. Petitioner submitted that Vice-Chancellor could not be given extension even on temporary basis u/s 14(8) of the Act. U/s 15-A (2) read with 14(a). It was held that Section 14 of the Act deals with the VC. An eligible person till the age of 65 can be appointed as VC by the Chancellor. On completion of his tenure, he may complete for another tenure of three years. However, in absence of VC the Pro Vice-Chancellor shall perform the functions of VC if Pro VC is also absent than Chancellor shall make arrangements as deem fit for that time. Moreover, PLD 2017 Lahore 825 in which it was held that the Pro Vice Chancellor shall step into the shoes of VC and start performing the functions by operation of law in case the office of Vice-Chancellor falls vacant. After deliberation and thorough investigation court Id that the appointment notification has been automatically superseded when Pro VC has assumed the charge. Furthermore, Vice-Chancellor was assigned to perform the duties as a stoppage

³⁸⁸ 2018 PLC Service 267

³⁸⁹ 2018 PLC Service 267

arrangements. Court also defines the difference between duties and functions. Duties means limited role assigned by the law; however, functions include full fledge power assigned by the Act.³⁹⁰

Brief facts of the case are that the appointment of VC was challenged by holding that in the absence of VC and “Pro Vice-Chancellor” the chancellor can make arrangements. However, in presence of Pro Vice-Chancellor if Vice-Chancellor’s office remain vacant; the pro VC shall perform the functions of VC u/s 13(a) of the Act. Act means King Edward Medical University Act. The learned Counsel for the respondent submitted that chancellor can assign any person any duty u/s 9(7) (b) read with u/a 4B of Constitution. General Powers u/s 9(7) assigned to chancellor cannot have override effect special powers. In the light of above mentioned circumstances the notification issued by the Government of Punjab is set-aside and Pro Vice-Chancellor is directed to assume the functions of Vice-Chancellor u/s 13(9) of King Edward Medical University Act.³⁹¹

Zafar Iqbal Vice-Chancellor was sent on forced leave and Registrar was suspended. Zafar Iqbal was appointed Vice-Chancellor u/s 12(4) of “FUUAST” Ordinance, 2002. It was alleged that some staff members along with chairman of HEC started negative campaign against Vice-Chancellor; consequently, VC was directed from Chancellor to form a committee; the main purpose of that search committee was to appoint members illegally on the whims of chancellor and chairman HEC. Meanwhile “Vice-Chancellor” the “Petitioner” sent on forced leave. Therefore, he challenged the 26th meeting; appointment of new members; involvement of Higher Education Commission illegally. It was further alleged that meeting of senate was convened in violation of Rule 29(3) (ii) (iii) (iv) of the Rules of meeting of Senate and section 29 of the Ordinance. “When a statute provides a procedure for doing of a thing in a particular manner that thing should be done in that manner and in no other way or it should not be done at all”. In another case PLD 2010 Karachi 236 court held that “what cannot be done directly cannot be done indirectly and that what is not possessed can neither be confessed nor delegated”. Similarly, 2013 SCMR 1707, where the action of statutory authority in a service matter is in disregard of the procedure requirement and is violative to the principle of natural justice, it can be inferred with in writ jurisdiction. The counsel for respondent submitted his arguments by contended that complaints were received against Vice-Chancellor about

³⁹⁰ 2018 PLC Service 1; 2018 PLJ 610 ; Muhammad Hussain Cheema

³⁹¹ 2018 PLJ 820; W.P No. 32046 of 2017 Date of Order 16-08-2017; Iftikhar Ahmad Vs. King Edward University

corruption, mis-management and irregularities. Therefore, the President of Pakistan “The Chancellor” referred the matter to HEC to constitute a committee u/s 10(1) (b) of HEC Ordinance, 2002. Meanwhile, petitioner filed a writ petition so committee has to stop its function. The Chancellor’s counsel submitted that to hold two senate’s meetings is a statutory obligations u/s 17 (5) of the Act. Under section 11 (2) there was no bar on Vice-Chancellor to convene a meeting. Even, when chancellor directed him to convene a meeting; he failed to fulfill his legal obligation. In these circumstances, the petition was dismissed.³⁹²

A landmark judgment in which court decided the importance of judicial review of administrative decision to check the legality of such power; to ensure to citizens an impartial determination of their dispute with officials; to safeguard their rights from unauthorized encroachment. Court also decided that absolute power was not assigned to chancellor rather search committee recommended the name of three persons and Razia Sultana was one of them. Section 12(1) gives discretion to KPU Act 2012 to appoint any person as Vice-Chancellor.

In another case petition filed by the chancellor was accepted by the Supreme Court of AJ&K. Nonetheless, SC not reinstated the newly appointed VC Dr.Iqrar on his previous position as Dr. Iqrar failed to join after lapsing 9 days. Chancellor issued notification in favor of another candidate Dr. Habib-ur-Rehman. But SC cancelled that notification as notification was issued without obtaining approval from Chief Executive.³⁹³

To the extent of appointment of Vice-Chancellor the apex courts tried to fill the gap through its judgments and successfully make stopgap arrangements for Higher Education Sector in Pakistan. Nonetheless, there are sixty four Higher Education Institutions don’t have permanent vice-chancellors. There is dire need that courts have to play their role constructively. Unlike the issue of appointing the VC in universities of Pakistan the courts in Pakistan are declining to hear the cases of universities and its employees by holding that employees and universities have relationship of Master and servant. Therefore, servants cannot claim the entitlement of job as their vested right. The only remedy available in shape of claiming damages.

³⁹² 2017 PLC Service 1376; 08-12-2015; Constitutional petition No. 6662 of 2014 D-51 of 2015; Zafar Iqbal vs. FUUAST Karachi

³⁹³ 2020 PSC Civil 530; Chancellor Mir Pur University of Science & Technology vs Dr. Iqrar; Dated 05.11.2019

5.13. Findings and Conclusion

To sum up, all landmark judgements regarding appointment of vice chancellor have been discussed and critically examined. No proper legislation regarding Higher Education sector has been made after Eighteenth Constitutional Amendment in Constitution of Islamic Republic of Pakistan, 1973. A vacuum had been created after Eighteenth amendment and the courts tried to fill the gap to some extent. Although, courts are making contradictory judgments yet to some extent gap has been filled by the courts. For plausible Legislative and regulatory framework all major stakeholders i.e. Federal Government, Provincial governments, representative of universities, National Finance Commission, Council of Common Interest should be made part to devise an effective and efficient regulatory and legislative framework for higher education sector. All major stakeholders should work exclusively in their domains. First and foremost, the vice-chancellor against all vacant posts at Higher Education Institutions should be appointed permanently. For that purpose, a panel of experts consisting upon topmost academicians should be constituted to advise the Chief Minister and Governor in matters of appointment at higher level. A candidate should have vast experience of administration and research having considerable impact factor at International level. A mid-term review of the progress made by the university so that the Vice-Chancellor may be made accountable for his actions.³⁹⁴ To maintain the uniform standards of education and effective monitoring of such standards and curriculum by the HEC is essential for safeguarding the future of education.³⁹⁵ Supreme Court also endorsed the all lawful actions taken by the Higher Education Commission and directed both of the governments to render their fullest cooperation in enforcing such measures and standards.³⁹⁶ However, the role of HEC should be circumscribed within the ambit of law to have a plausible regulatory and legislative framework for Higher Education sector in Pakistan. While elucidating the legislative framework in developed countries it was noted that there is a concept of cooperative federalism and both federation and federating units are cooperating with each other while enjoying their domains. The issue of appointment of vice chancellor shall be followed strictly according to the judgments of apex courts. To address all challenges, it is imperative to lay the foundation of consistent guidelines and thorough procedures for the appointment of vice chancellors, and to make sure that these guidelines and

³⁹⁴ Virk, H.S. "Title of Article." Current Science 81, no. 6 (September 25, 2001).

³⁹⁵ Ehrmann, Stephen C. (Author) Jillian Kinzie (Foreword) "Pursuing Quality, Access, and Affordability: A Field Guide to Improving Higher Education" Published by Stylus Publishing LLC March 2021, Printed in USA (2021)

³⁹⁶ PLD 2021 SC 745

procedures are to be followed consistently in all universities.³⁹⁷ Last but not the least, the political interference should be reduced to the minimum in running the affairs of university. This approach would pave the way for greater accountability and transparency in the higher education sector.

5.14. Recommendations

To address the issue of appointment of vice chancellor it is imperative to devise Policy guidelines for universities to make more effective, efficient and transparent laws. Obviously, there are lacunas in university laws; there comes the responsibility of courts to interfere to satisfy the aggrieved parties while making true interpretation. To the extent of appointment at higher level courts tried to fill the gap. All this happened due to non-availability of legislative framework after Eighteenth Amendment; therefore, there is dire need to devise a plausible regulatory and legislative framework. Another suggestion is that an Independent judicial mechanism for accountability within university premises should be made comprised of honest and trustworthy persons equipped with the sound knowledge of law and rules of equity. Regular meetings of syndicate and search committees for promotion and appointments should be conducted and this could be possible when appointment of vice chancellors should be made immediately. Currently till May, 2024 64 Higher Education Institutions don't have permanent vice chancellors in Pakistan. The vacant position at the highest level causes drastic consequences. The powers of Higher Education Commission should be circumscribed within the limits ordained by laws. Universities should have their own governing legislation and Legal framework of universities should define qualification, experience and expertise for all appointments and removals. One suggestion may be added that the responsibility to hire staff and officers at university level should be bestowed to an independent commission like Federal Public Service Commission and Public Service commissions in other provinces. This practice could be fruitful for Higher Education Institutions in Pakistan.

5.15. Summary of the Chapter

The Higher Education in Pakistan has become a provincial subject and the role of Federal HEC has been limited to the extent of maintaining Standards in the wake of Eighteenth Amendment. But practically only two provinces have established their Higher Education

³⁹⁷ Danielson, Charlotte. Enhancing Professional Practice: A Framework for Teaching. 2nd ed. Alexandria, Virginia: Association for Supervision and Curriculum Development ASCD 2009

Commissions with limited power. On the other hand, there are lacunas in different acts of universities regarding appointment of vice chancellors and some appointments have been declared null and void by higher courts due to non-fulfilment of procedural formalities. Absence of opaque rules and regulations for appointment at higher level would have negative consequences at lower level; therefore, there is a dire need to devise a legislative framework for appointment at higher level. First and foremost, the vice-chancellor against all vacant posts at Higher Education Institutions should be appointed permanently. For plausible Legislative and regulatory framework all major stakeholders i.e. Federal Government, Provincial governments, representative of universities, National Finance Commission, Council of Common Interest should be made part to devise an effective and efficient regulatory and legislative framework for higher education sector.

Chapter 6

Maintainability of Writ Jurisdiction in Case of Public Sector Universities in Pakistan

Chapter 6

Maintainability of Writ Jurisdiction in Case of Public Sector Universities in Pakistan

6.1. Introduction

The maintainability of writ jurisdiction in case of public sector universities is actually an accountability mechanism as Public sector universities get public funds in the form of budget support. These public institutions must be answerable before public as they are getting benefit of tax. Recently, Supreme Court of Pakistan in its verdict categorically cleared that there is a relationship of Master and servant between University and its employees and the only remedy available is to claim damages in shape of compensation, while negating the rule of equity, fairness and justice.³⁹⁸ Prior that application of this doctrine was limited to the domestic employees working in houses in United Kingdom. The philosophy behind the doctrine of Master and Servant was that if an aristocrat did not want to continue the services of their barber, cook or washerwoman, the aristocrat could not be compelled to reinstate the services of these household employees. Unfortunately, the Supreme Court of Pakistan applied this doctrine of Master and Servant on employees of public sector universities in Pakistan without elucidating the difference between “Institutional Services” and “Personal Services”. Supreme Court of Pakistan gave its verdict that employees of Public Sector Universities have no relief except claiming of damages in shape of compensation and they will not be entitled to reinstate at their position.³⁹⁹ Consequently, the Higher Courts are not entertaining most of the time the writ petitions of university employees and the lower courts are not granting the injunctions to them on usual basis. Moreover, the Courts are differentiating the rules of Public sector universities into statutory and non-statutory basis by applying the “Functional Test”.⁴⁰⁰ It seems that courts are showing reluctance to entertain the cases of public sector universities and leaving them on the whims of high officials. In the case of Muhammad Tariq vs. University of Agriculture Faisalabad the court held that it could not interfere in the internal affairs of the university, including matters related to admissions and examinations. In another case of Muhammad Aslam vs. University of Agriculture Faisalabad the court held that the appointment of a vice

³⁹⁸ 2021 SCMR 730

³⁹⁹ 2022 PLJ 85 ; 2018 PLC Service Note 104

⁴⁰⁰ 2022 PLC service 1028

chancellor was a matter within the sole discretion of the university's governing body; therefore, courts will not interfere in the internal matters of public sector universities as these public sector universities have non-statutory rules and there exist master and servant relationship between Public Sector Universities and their employees.⁴⁰¹

6.2. Framing of Legal Issues

1. Whether Court has tried to fill the gap between Higher Education Institutions and their employees by interpreting master and servant doctrine.
2. Whether Court has tried to fill the gap between Higher Education Institutions and their employees by misinterpreting the notion of master and servant.
3. Whether judgments or decisions of higher courts have impacted and shaped the post 18th amendment legislative framework of Higher education Sector in Pakistan.

6.3. The concept of statutory and non-statutory Rule

Before proceed further it is imperative to comprehend the concept of Statutory and non-statutory rules. Then we would be able to critically analyze the role of court to fill the gap between employer and employee particularly the employees of public sector universities in Pakistan. There are several land mark judgments of apex courts elucidating statutory and non-statutory rules. A few of them we would like to elaborate while critically examining the ground realities attached with this notion. In a landmark judgment⁴⁰² a few important questions of law were raised and answered by the Honorable Court i.e. Muhammad Tahir Nawaz Cheema case in which the Honorable court clarifies the statutory and non-statutory rules exhaustively which were already elaborated in PIAC case.⁴⁰³ The court introduced “Function Test” for determining the statutory and non-statutory rules. The “Function Test”⁴⁰⁴⁴⁰⁵ includes three most important points. The functions placed upon the institutions are those of the state, which involve the exercise of sovereign power; control of the institutions is in the hands of the government; and, last but not least, the state provides funding to manage its affairs. This function test was reaffirmed by so many other important judgments like Abdul Wahab vs HBL⁴⁰⁶ and Pir Imran

⁴⁰¹ 2024 MLD 130

⁴⁰² 2023 PLC SERVICE 662; Writ Petition No.5801 of 2022; Date of Decision: 12/05/2022

⁴⁰³ PLD 2010 SC 676

⁴⁰⁴ 2013 SCMR 1383; 2015 SCMR 1257; 2013 SCMR 1707; 2019 SCMR 1

⁴⁰⁵ 2015 SCMR 1257; 2013 SCMR 1707; 2019 SCMR 1; 2013 SCMR 1383

⁴⁰⁶ 2013 SCMR 1383; 2019 SCMR 1

Sajid case.⁴⁰⁷⁴⁰⁸ In another land mark judgment the August Supreme Court elaborated the statutory rules that to check the validity of statutory rules that rules have statutory force the determining factor will be the force under which they have been framed.⁴⁰⁹ Statutory rules have been defined in so many different ways like an “exercise of the delegated legislative power by the rule-making authority”.⁴¹⁰ It was held that statutory regulations have three traits including rules framed by the statutory body framed underneath the authority or powers conferred within the statute and having governmental approval.⁴¹¹ Prior to the function test it was categorically clarified by the August Supreme Court in 1984 in Cadet University case⁴¹² that “rules could not be regarded as statutory but mere instructions for guidance unless approved by the government”.⁴¹³ Later on , the Court broaden the scope of statutory rules by adding mere government approval is not sufficient rather it depends upon the nature and efficacy of the rules to determine their status.⁴¹⁴

6.4. Impact of Statutory and non-statutory rules on employees of Public Sector Institutions

The main legal question in Muhammad Tahir Nawaz Cheema's case is how statutory regulations affect workers' rights.⁴¹⁵ According to the legislation, workers of statutory bodies, whose terms of service are controlled by internal guidelines as opposed to formal guidelines established by statute, are typically not able to enforce any violations of such guidelines. Since these internal rules are not statutory, they do not have the same legal standing as official statutory regulations. There are some significant exceptions to this rule, though. One exception is when the statutory body itself disobeys its own service standards or regulations, which are duly enacted and governed by the relevant statute. In situations such as these, where there is a breach of the statutory norms and no appropriate or effective remedy available, employees may be able to challenge the violation legally. When natural justice principles or procedural safeguards are disregarded when handling service-related issues, this constitutes another noteworthy exception. Legal action could be appropriate if an employee's rights have been

⁴⁰⁷ 2013 SCMR 1707

⁴⁰⁸ PLD 2005 SC 806

⁴⁰⁹ 2023 PLC Service 662

⁴¹⁰ 2010 SCMR 1495; State life Insurance case

⁴¹¹ 2013 SCMR 642

⁴¹² PLD 1984 SC 170

⁴¹³ 2017 SCMR 2010

⁴¹⁴ PLD 2016 SC 377; 2017 SCMR 571

⁴¹⁵ 2023 PLC Service 662

violated without following the proper procedures. When the law is broken, whether it comes from a statute or a court ruling, the "master and servant" rule does not apply. This expands the exception to include not just statutory laws but also legal standards like court precedents. As a result, employees can seek a remedy if their legal rights or statutory protections are violated, even if internal rules are unclear. This approach helps ensure that employees' rights are protected in certain cases, even within statutory bodies, when basic legal principles are ignored.⁴¹⁶

6.5. Limited Judicial Interference in Educational Institutions

There are so many other landmark judgments of Supreme Court of Pakistan in which Court decided that no interference will be made in the internal affairs of university.⁴¹⁷ For ready reference we would like to quote the relevant paragraph from judgment.⁴¹⁸ "The judgment highlights that the process of regularization is a policy matter and falls under the Executive's prerogative. Courts should refrain from interference unless a policy violates fundamental rights. Citation: The court cites the concept of institutional autonomy and refers to the Magna Charta Universitatum 2020 (Para 7)."⁴¹⁹

Likewise in other cases Court also endorsed the same idea not to interfere in the affairs of educational institutions by holding Courts lack the skills and experience necessary to intervene in such policy problems. Further it was decided that under this autonomous realm, educational institutions are entitled to deference when making any decisions related to their mission. At the same time, any transgression by Courts would amount to the usurpation of the power of another, which would be against the spirit of art. 7 as it is not the role of the Courts to interfere in policy decisions.⁴²⁰

However, in another landmark judgment of Irfan Ullah vs FOP through Higher Education, Islamabad it was concluded by the court if service rules framed by statutory bodies under statutory powers having no adequate remedies, they can be enforced through writ

⁴¹⁶ 2024 SCP 44; WP No.7372/2022 in the case titled as Syeda Samar Kazmi v. FOP; WP No.7717/2022; WP No.9569/2022; Mazhar Hussain Jami v. FOP; WP No.11130/2022; Rana Natasha Shoaib Awan vs FOP;

⁴¹⁷ 2024 SCP 44; C.Ps No.2270, 4783 and 4784 of 2019, C.Ps No.1228 to 1230, 1295 to 1298, 1555, 1781 to 1783, 1807, 456-P and 496-P of 2020, C.P.5871/2021, C.P.5872/2021, C.P.2291/2022, C.P.2782/2022, C.P.3811/2022 to C.P.3813/2022 and C.P.1438/2019.

⁴¹⁸ 2024 SCP 44

⁴¹⁹ 2024 SCP 44

⁴²⁰ 2024 SCP 44 in the case titled as: Vice Chancellor Agriculture University, Peshawar Versus Muhammad Shafiq, etc. (In CP 2270/2019)

jurisdiction. If the terms of employment for employees of a statutory body are governed only by internal rules and not by regulations framed under the statute, any violations of those internal rules cannot typically be challenged through writ jurisdiction. Instead, such matters would fall under the principle of the master-servant relationship. Additionally, the court has determined that in public employment governed by statutory rules, the principles of natural justice must be followed during disciplinary proceedings. The only exception to this is if the employment is purely based on a contractual agreement, where different rules may apply.⁴²¹⁴²² In another landmark judgment the “Functional Test” has been elucidated. Functional Test has direct nexus with statutory and non-statutory rules. Statutory rules are rules which are framed under a statute or with government approval. Candidly speaking, it could not be possible for parliament to make laws and rules for each and every department; therefore, power is delegated to other corporations to make rules to run their functions smoothly.⁴²³ Functional Test has been endorsed and further developed in case of Munda Eleven Cricket club vs FOP⁴²⁴ that it is not solely depends upon whether framing of rules required approval of government instead it depends upon nature and efficacy of rules and regulations. It was determined that when a university develops rules and regulations that provide instructions for its internal control and management processes, those would be classified as non-statutory rules.⁴²⁵ The same “Functional Test” was also discussed and endorsed in Aown Abbas Bhatti vs FOP case.⁴²⁶

6.6. Rule of Public Sector University

Whether a rule of Public Sector University can be Non-statutory in nature when university was established by the act of Parliament. The debate surrounding statutory and non-statutory rules has entered an interesting phase, with courts delving deeper into the distinction between the two. A well-established principle has emerged that contract employees do not have vested right to be regularized.⁴²⁷ This principle has been endorsed in several notable cases, such as the VC of BB University case.⁴²⁸⁴²⁹ In Asif Abbasi case the university's counsel argued that the rules framed by the university are non-statutory in nature therefore the writ petition is not

⁴²¹ 2013 SCMR 1707

⁴²² WP No. 2838-P/2021 with IR titled as Irfan Ullah vs FOP Date of Decision 10.11.2022

⁴²³ WP No. 3320/2022; 2024 PLC Service 170

⁴²⁴ PLD 2017 Lahore 802

⁴²⁵ PLD 2017 Lahore 802

⁴²⁶ PLD 2018 Lahore 435

⁴²⁷ 2013 SCMR 13; 2016 MLD 95

⁴²⁸ 2016 MLD 95

⁴²⁹ Writ Petition No.1598-P/2018 Altaf Junior Clerk vs Peshawar University

maintainable. The honorable court acknowledged that the university is a public sector entity receiving funds from the Government of Sindh, pursuant to Section 47(2) of the Sindh Act No. III of 1977. The government exercises powers in connection with the affairs of the university, including the appointment of the Vice-Chancellor.⁴³⁰ The court relied on the Supreme Court's judgment in Civil Appeal No.654/2010 Shafique Ahmed Khan v NESCOM which provided guidance on the test for determining whether rules or regulations are statutory or non-statutory. The character and effectiveness of such laws or regulations—rather than just whether their draughting needs federal government approval—are more important considerations. In issues of critical importance, the court must determine whether the relevant rules or regulations address guidelines for internal control or management, or whether they are more comprehensive and enhance the current statute. While the latter is thought to be statutory, the former are regarded as non-statutory.⁴³¹

The below tables showed that in how many cases the employees of public sector organizations have been deprived off to be reinstated at their position and how many times courts have accepted the writs of public sector university's employees in Pakistan. We articulated the available data while mentioning the tendency of courts to accept or reject the writ petitions between employees and public sector higher education institutions in Pakistan. Broadly speaking, there are several issues going on between public sector universities and their employees including but not limited to reinstatement of contractual as well as permanent employees, disciplinary proceedings against employees, service matters, recruitment, promotion and termination of employee. The researchers would like to discuss a few of them to show the tendency of courts and implementation of statutory & non-statutory rules.

⁴³⁰ 2017 SCMR 347; Paragraph No 7; Zaman case.

⁴³¹ 2017 SCMR 347

Table 6.1: Statutory Rules Enunciated by Courts

CATEGORIZATION OF CASES	CASE LAWS	ISSUE INVOLVED/ DECISION OF CASE
WP No. 2477 of 2021 regarding wrongful termination/ dismissal titled Muhammad Azad vs Vice-Chancellor Mirpur University Of Science And Technology	2024 MLD 130 2023 PLC Service 75 2012 PLC (C.S.) 1366 2019 SCR 226 Azad Jammu and Kashmir Interim Constitution, 1974, Article 44. 2014 PLC (C.S.) 386 2011 SCMR 842 PLD 2010 SC 969 2023 PLC Service 103 PLD 2020 Islamabad 130	The petitioner was awarded major penalty i.e. dismissal from services. The court observed that the petitioner had an alternative and effective remedy available vide sec. 17 of the Act. ⁴³² Which provides for revision before the Chancellor So it was decided to avail that remedy. Vires of Pakistan Medical mission act was challenged. Issue of regularization of services in Pakistan Medical Mission. Guidelines were provided in this case: All employees appointed under Pakistan Medical Commission Ordinance 2020 are governed by non-statutory rule; therefore, no vested right to continue services and PMC Ordinance is intra-vires to Constitution. In another case the lecturer of MUST was dismissed from service on the basis of serious allegations: breach of trust, misuse of authority, violation of examination rules, and harassment of female students. An inquiry committee found the petitioner guilty. The Court decided not to interfere in the administrative matters of university dismissed the petition.
Regularization of Contractual Employees Petition accepted Farmanullah vs Gomal University	2024 SCMR 527 2017 PLC Service Note 116 WP No.960-D/2016 WP No320-D/2014 WP No.22-D/20147 2016 SCMR 1375 WP No.25-D/2017	The petitioners were initially appointed on a fixed pay/contract basis for a period of six months, with subsequent extensions granted periodically. Despite the fact that their services were aligned with budgetary sanctioned posts, they have continued to be employed on a contract basis within the respondents' university. The court highlighted that similar fixed pay employees in comparable situations had been assimilated into sanctioned budgetary positions. Consequently, the court directed the respondents to regularize the petitioners' employment.

⁴³² Punjab Employees Efficiency, Discipline and Accountability Act, 2006.

Table 6.2: Non-Statutory Rules Enunciated by Courts

CATEGORIZATION OF CASES	LAWS	ISSUE INVOLVED/ DECISION OF CASE
Writ Petition No. 2477 of 2021 regarding wrongful termination/ dismissal Muhammad Azad vs Vice-Chancellor Mirpur University Of Science And Technology	2024 MLD 130 2023 PLC Service 75 2012 PLC (C.S.) 1366 2019 SCR 226 Azad Jammu and Kashmir Interim Constitution, 1974, Article 44. 2014 PLC (C.S.) 386 2011 SCMR 842 PLD 2010 SC 969 2023 PLC Service 103 PLD 2020 Islamabad 130	The petitioner was awarded major penalty i.e. dismissal from services. The court observed that the petitioner had an alternative and effective remedy available vide sec. 17 of the Act, ⁴³³ which provides for revision before the Chancellor So it was decided to avail that remedy. Vires of Pakistan Medical mission act was challenged. Issue of regularization of services in Pakistan Medical Mission. Guidelines were provided in this case: All employees appointed under Pakistan Medical Commission Ordinance 2020 are governed by non-statutory rule; therefore, no vested right to continue services and PMC Ordinance is intra-vires to Constitution. In another case the lecturer of MUST was dismissed from service on the basis of serious allegations: breach of trust, misuse of authority, violation of examination rules, and harassment of female students. An inquiry committee found the petitioner guilty. The Court decided not to interfere in the administrative matters of university dismissed the petition.
Regularization of Contractual Employees Petition Dismissed Vice-chancellor Bacha Khan University Charssada vs Tanveer Ahmad Sadiq Amin vs Bacha Khan University Charssada	2024 PLC Service 323 2022 PLC Service 85 2021 SCMR 977 2021 PLC Service 1295 PLD 2011 SC 132 2005 SCMR 642 CP No. 670-671/2020	Supreme Court emphasized it is prerogative of employer to decide term and conditions of employment. The appointing authority may renew the contract. There is no inherent right for contractual employees to claim regularization. In another case court observed that institutional autonomy must be respected. Regularization could not be effective retrospectively. Therefore, the claim of employees regarding regularization and ante-Date regularization dismissed.

⁴³³ The Punjab Act on Employee Efficiency, Discipline, and Accountability (2006)

Reinstatement of Employment Abbas Vs KP Govt. Ali Hassan vs FOP through MOD	2022 PLJ 85 2018 PLC Service Note 104	Principal of Government University failed to reinstate the employee and offered lump sum pension benefits. Court decided that the jurisdiction of court is not abridged when order is illegal
Promotion Mrs. Jehan Ara vs Gomal University	2023 PLC Service 938 Constitutional Petition No. 922 to 926 & 928 2017 PLC Service 1342 2017 PLC Service Note 99	Peshawar High Court, DI Khan Bench accepted the petition in 2017 PLC Service Note 99 and directed the university to promote the employee. It was decided that promotion is not a vested right rather it is discretion of competent authority. The notification which was issued by VC on pressure of Joint action Committee was declared null and void. The issue of eligibility and fitness was decided by the court exhaustively.
Pension and Gratuity benefits Abdul Shakoor v. AIOU through Vice-Chancellor Muhammad Rafiq vs Vice-Chancellor, Allama Iqbal Open University Muhammad Rafi v. FOP Ijaz Saleem Retired Private Secretary Bs-18, Mirpur vs Vice-Chancellor Mirpur University Of Science And Technology Multan Shah vs Vice-Chancellor University Of Malakand	2020 PLC (C.S.) 1050 2023 PLC SERVICE 277 WP No.1079 of 2021 2023 PLC SERVICE 1143 2021 SCMR 730 2021 PLC (C.S.) 1226 2018 SCMR 736 PLD 2007 SC 35 2005 SCMR 292 PLJ 2014 Peshawar 225 2024 PLJ 47 2021 SCMR 730 2018 SCMR 736 PLD 2007 SC 35 2005 SCMR 292	<p>It would be considered as involvement in the internal affairs and policy matters of AIOU. However, the Court directed AIOU to expeditiously decide the pensionary benefits issue, considering the observations and in accordance with the law. The decision was to be communicated to the petitioner and this Court within one month. Court also acknowledges the pensionary benefits as fundamental right to life.</p> <p>Recognizing the invocation of constitutional jurisdiction against a public authority for service regulations violation, even if non-statutory.</p> <p>The Court directed MUST to release the petitioner's entire pension, including contributions from the Electricity Department, leave encashment, and other outstanding dues. The university was also ordered to issue a Pension Payment Order (PPO) in the petitioner's favor. Similarly, in another case court directed the University of Malakand to count the contractual service for pensionary benefits. In the case of Muhammad Rafique the Court directed AIOU to expeditiously decide the pensionary benefits & award of pensionary benefits timely.</p>

New Appointment Razi Rizwan vs Vice-Chancellor, Gomal University	2024 PLC SERVICE 302 2013 SCMR 264 Civil Appeal No. 160 of 2018	Court directed to appoint the candidate who fulfilled the whole procedure. Though He/she stood second on merit list but the top positon candidate intended not to join the post of Game Supervisor. In the case of Dr. Akhtar Nawaz Gomal university withdraw the notice of appointment of Professors. However, court declared the withdrawal notification as illegal. In the case of Muhamad Iqbal Khan who was appointed as Assistant Professor in Gomal university by the syndicate on recommendation of selection Board. Later on, the Governor/Chancellor of the university set aside the decision of the Syndicate. Applicant challenged the order and prayed the court to restore the order of Syndicate. Court accepted the petition. In this case (1995 CLC 510) the issue of qualification for appointment of Lecturer Law and Assistant Professor Law was discussed at Length. In another case the process of appointment at university was challenged, the court dismissed the petition, finding that the selection process was fair, transparent, and without mala fide. The appellant was appointed as a Lecturer but contested the appointment of Assistant Professors, alleging pre-planned appointments and discrepancies in qualifications. After hearing both of the parties the Court found no merit due to acquiescence and non-impleadment of university as a necessary party. The petitioner challenged the appointment of two Assistant Professors appointed by Punjab University by alleging that appointment was made without fulfilling the codal formalities. The Court dismissed the WP being devoid of merit.
New Admission/cancellation Liaqat University Of Medical And Health Sciences (LUMHS) Jamshoro vs	2024 PLJ 347 2024 SCMR 443 WP No. 205-M of 2021 2023 PLD 40 2017 YLR Note 429	Admission was refused by the Gomal University on the basis of new regulations adopted by the Syndicate. Court accepted the petition and directed the university to allow the petitioners to complete degree. A case involved a dispute over a university's cancellation of a student's admission due to a fake mark sheet. It was

Muhammad Ahsan Shakeel	2021 PLC (C.S.) 1168 2020 SCMR 2129 2017 YLR 353 PLD 2019 SC 509 1992 MLD 2029 WP No. 4660-P/2020 PLD 1979 SC 32 2012 SCMR 6 2015 SCMR 445 2015 MLD 220 PLD 2011 Lahore 555 2005 SCMR 961 PLD 2001 SC 219	decided that Courts should generally defer to universities' decisions on internal governance and discipline matters. However, court accepted the petition and upheld LUMHS's cancellation of the student's admission due to the fake mark sheet. The Court emphasized the importance of maintaining high standards in medical education and universities' right to regulate admissions. The admission of an MBBS student was denied. The court directed to get the admission in MBBS. General rule is that no interference would be made in policy matters of educational institutions. However, court would assume jurisdiction in case of involvement of law point. In another case university cancelled the admission due to non-fulfillment of prerequisite degree on time even after extended time. The court concluded that the petitioners did not complete their studies within the permissible time frame as per university regulations. The petition lacked substance, and the court dismissed it without regular hearing.
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The available data and relevant case laws showed that there is no clear roadmap to address the grievances of university employees had been devised after Eighteenth Amendment. The courts are deciding the cases on the basis of statutory and non-statutory rules. However, no benchmark has been decided yet to demarcate what rules are statutory and what are non-statutory. Due to non-availability of a clear road map courts are assuming jurisdiction and declining jurisdiction on same issues; therefore, there is dire need to devise the plausible legislative framework for HEI. Since 1984 courts are defining statutory rules without elucidating a clear legal framework. Primarily, it was decided by the court that rules of public sector universities are statutory when approved by the government. Later on, it was added that approval is not sufficient rather it depends upon efficacy to determine the status of rules. Generally, Courts are not interfering in the internal matters of public sector universities. Courts generally defer to educational institutions' internal governance (Yasir Nawaz v. Higher Education Commission, PLD 2021 SC 745). Exception: Court intervention when minimum requirements of natural justice or legal principles are violated (Yasir Nawaz v. Higher

Education Commission, PLD 2021 SC 745). Another exception: Court intervention when a fundamental right is infringed (Fakheryar Khan v. Agriculture University, Peshawar, PLD 2016 Peshawar 266). As a general rule the writ jurisdiction available when there is no adequate alternative remedy.⁴³⁴ After examining the cases thoroughly, we reached to the conclusion that courts has demarcated the rules of public universities into statutory and non-statutory basis. For that purpose the “Functional test”⁴³⁵ has been introduced in which three conditions mentioned supra has been prescribed for rules to be called statutory rules otherwise rules would be non-statutory if failed to fulfill all three conditions. Further, it gave its verdict that if power has been delegated to any public sector institutions then rules framed by respective institution could be considered as non-statutory rules. There is dire need to devise the plausible regulatory and legislative framework for higher education sector in post Eighteenth Amendment era.

6.7. Doctrine of “Master and Servant”: A critical analysis

Master and Servant is a legal doctrine that governs the relationship between autonomous statutory bodies and their employees. Due to application of Master and Servant doctrine the professors and staff of public sector universities are at the mercy of their employers. Further, the verdict of Supreme Court of Pakistan in Naimatullah case⁴³⁶ paved the way for chaos and anarchy among officers and officials of the university. Consequently, the high courts are not entertaining the cases between universities and their employees on the basis of non-statutory rules of public sector universities as envisaged in case of Munda Eleven Cricket club vs FOP⁴³⁷ and the lower courts are not granting injunctions to university employees. Succinctly stated that petitioners were appointed at university on contract basis where they served for thirteen years and approached the court for regularization of their service. Court ordered that they did not have vested right to be regularized under KPU Act⁴³⁸ by relying upon “*ratio decidendi*” of august court regarding contractual employees. There is no inherent right for contractual employees to claim regularization due to master and servant relationship between Peshawar University and their employees. There are at least twenty cases⁴³⁹ in which common question of law was answered by the Justice Roohul Amin Khan in original WP

⁴³⁴ 2011 SCMR 1813

⁴³⁵ 2013 SCMR 1383; 2015 SCMR 1257

⁴³⁶ 2022 PLC service 1028; Altaf Junior Clerk; Naimatullah case No. 4576, 4588, 4589 of 2017

⁴³⁷ PLD 2017 Lahore 802

⁴³⁸ KPU Act 2012 amended in 2015 & 2016

⁴³⁹ WP Nos 3258, 4893-P/2018; WP Nos.5195, 5274,6055,7281-P /2019; WP Nos. 2281,2610,3176,3504/2020 Date of Decision 12.01.2021

No.1598-P/2018.⁴⁴⁰ The Court applied Master and Servant rule without differentiating “Personal Services” from “Institutional Services”⁴⁴¹ particularly in case of public sector institutions. In another case it was stated that there is no vested right to be regularized for contractual employees; they have remedy only in shape of compensation.⁴⁴² Moreover, they do not have right to approach the High Court for regularization and no automatic right of regularization for contractual employees as well as no vested right for contractual employee.⁴⁴³ Likewise, no vested right of regularization; reinstatement; continuation and extension for contractual employee under umbrella of master and servant doctrine.⁴⁴⁴ The new term was coined in shape of statutory and non-statutory rules. Many rules of statutory corporations and public sector institutions like universities have been declared as non-statutory, consequently, depriving their employees to file writ petitions before higher foras.⁴⁴⁵ On same footing, the courts subordinate to High Courts are not granting injunctions to university employees. The top officials of universities have been vested unchecked power where university employees are turning into personal fiefdom and they have been reduced into minions. This doctrine lacks solid statutory foundation. The proponent of this theory argued that a contract between a university and its employees is a contract to render personal services. Therefore, this contract cannot be specifically enforced under section 56(f) of Specific Relief Act, 1875 nor its breach can be prevented through injunction. Fallaciously, personal services are intermingled with the institutional services by the Courts without apprehending that personal services rendered to natural persons instead of juridical persons. The basic idea behind this doctrine was that if an aristocrat did not want to take the services of his barber, cook, and washerwoman, he could not be compelled to do so.⁴⁴⁶ The application of master and servant doctrine is complete misreading of foundational text of English Law. The depth study of this doctrine would realize that this doctrine was meant to be a private law doctrine. William Blackstone commentaries upon laws of England published in 1765, chapter XIV deals with the rule of “Master and Servant”.⁴⁴⁷ A fair reading of Blackstone revealed that the doctrine of Master and Servant was meant to be a doctrine of “Private Law” not public law. Fallaciously, the interpretation of this doctrine by

⁴⁴⁰ 2022 PLC service 1028

⁴⁴¹ 2022 PLC service 1028; Altaf Junior Clerk; Naimatullah case No. 4576, 4588, 4589 of 2017; Supreme Court of Pakistan

⁴⁴² 2017 SCMR 1979; 2013 SCMR 304; 2005 SCMR 642

⁴⁴³ 2016 MLD 95; 2013 SCMR 13; 2013 SCMR 304

⁴⁴⁴ CP NO. 4504 of 2017

⁴⁴⁵ 2022 PLC service 1028; Altaf Junior Clerk; Naimatullah case No. 4576, 4588, 4589 of 2017

⁴⁴⁶ Carolyn Steedman, *Master and Servant: Love and Labor in the Industrial Age* (Cambridge: Cambridge University Press, 2007), ISBN: 9786511618949

⁴⁴⁷ William Blackstone commentaries upon laws of England published in 1765, chapter XIV

Pakistani judges and lawyers have gone such a disingenuous twist showing post-colonial despotic mindset, even Blackstone will be shocked. On positive side the lower judiciary should grant injunctions to the employees of public sector universities. No doubt that the higher froas are overburdened but it does not mean to deprive the major chunk of youth and masses working at public sector universities. The Pernicious doctrine of Master and servant which is devoid of solid legal foundation need to be revisited.⁴⁴⁸

6.8. Findings and Conclusion

Regarding maintainability of writ jurisdiction in the case of public sector universities the courts have tried to implement the rule of Master and servant on university employees, which was applicable at domestic level to sort out the disputes of domestic servants in United Kingdom. In this paper, the historical perspective of statutory and non-statutory rules with reference to Master and Servant doctrine as interpreted by the Supreme Court have been elucidated. Gradually, this concept was broadened by the Supreme Court. However, recently the Courts most of the time declined their jurisdiction to entertain the cases of university employees on the basis of statutory and non-statutory rules. This could have drastic consequences as there is a chaos among university employees. There is no better remedy then to file a suit before the Court. If this remedy would be snatched, people will take law into their own hands. On one side those who hold power would manipulate their employees consequently, employees would suffer and there is possibility of rebellion. All landmark judgements regarding employees of universities have been discussed and critically examined. No proper legislation in Higher Education laws has been made after Eighteenth Constitutional Amendment to address the grievances of employees of universities. A vacuum had been created after Eighteenth amendment and the courts tried to fill the gap to some extent. For plausible Legislative and regulatory framework all major stakeholders i.e. Federal Government, Provincial governments, representative of universities, National Finance Commission, Council of Common Interest should be made part to devise an effective and efficient regulatory and legislative framework for higher education sector. The role of HEC should be circumscribed within the ambit of law to have a plausible regulatory and legislative framework for Higher Education sector in Pakistan. To address all challenges, it is imperative to lay the foundation of consistent guidelines and thorough procedures for the appointment and dismissal are to be

⁴⁴⁸ Umer Gillani, 24.08.2021, on Opinion page of the News ; 2021

followed in all universities.⁴⁴⁹ Last but not the least, the political interference should be reduced to the minimum in running the affairs of university. This approach would pave the way for greater accountability and transparency in the higher education sector. We mentioned earlier, there is no specific section of the law that deals with the doctrine of master and servant in many countries, including Pakistan, USA, UK, Japan, India, and Malaysia. The principles of master and servant are based on common law principles that have developed over time recognized and applied by the courts in employment disputes. However, there are various labor laws and regulations in each country that govern the employment relationship between employers and employees, and provide for the rights and obligations of both parties. To conclude, the true interpretation of the doctrine of Master and servant according to the rules of equity and justice would pave the way to restore the confidence of officials on apex courts. A new regulatory and legislative framework should encompass the remedy for university officials with strong accountability mechanisms so that no one could take law into their own hands. The lower judiciary should grant injunctions to the employees of public sector universities. The high courts should not deprive university employees to file writ petitions. The universities should have a strong accountability mechanisms to address the grievances of university employees. For that purpose an independent judicial body consists of independent persons equipped with sound knowledge of law be arranged. The Pernicious doctrine of Master and servant which is devoid of solid legal foundation needs to be revisited. This approach would pave the way to build the confidence of officers of university on judiciary; ultimately may lead to greater accountability and transparency in the higher education sector. No plausible remedy for employees if higher fora restricted their jurisdiction; therefore, in the absence of any rule courts should not decline their jurisdiction and if could not possible to issue writ due to over burdensome may suggest alternate remedies in shape of Alternate Dispute Resolution mechanisms (ADR) backed by the Courts.

6.9. Recommendations

To address the grievances of university employees it is imperative to devise Policy guidelines for universities to make more effective, efficient and transparent laws. Obviously, there are lacunas in university laws; there comes the responsibility of courts to interfere to satisfy the aggrieved parties while making true interpretation. To the extent of appointment at

⁴⁴⁹ Danielson, Charlotte. *Implementing the Framework for Teaching: Enhancing Professional Practice*. Alexandria, VA: Association for Supervision and Curriculum Development (ASCD), 2009.

higher level courts tried to fill the gap to some extent; however, on other issues courts are not entertaining the cases by making narrow interpretation of master and servant doctrine. All this happened due to non-availability of legislative framework after Eighteenth Amendment; therefore, there is dire need to devise a plausible regulatory and legislative framework. Another suggestion is that an Independent judicial mechanism for accountability within university premises should be made comprised of honest and trustworthy persons equipped with the sound knowledge of law and rules of equity. Without true interpretation the chaos among officers and officials of the university may lead to rebellion. Universities should have their own governing legislation while defining qualification, experience and expertise for all appointments and removals. Public sector universities should not be escaped from judicial accountability because without strong accountability mechanisms situation could not be better at Higher Education Institutions. For smooth functioning there should be a strong accountability mechanisms so that no one could take law into their own hands. The lower judiciary should grant injunctions to the employees of public sector universities wherever is needed. No doubt that the higher courts are overburdened but it does not mean to deprive the major chunk of youth and masses working at public sector universities. The Pernicious doctrine of Master and servant which is devoid of solid legal foundation need to be revisited.

6.10. Summary of the Chapter

The maintainability of writ jurisdiction in case of public sector universities is actually an accountability mechanism as Public sector universities get public funds in the form of budget support. These public institutions must be answerable before public as they are getting benefit of tax. The writ jurisdiction on the basis of statutory and non-statutory rules has become a bone of contention for university employees. No legislative mechanisms had been provided in post Eighteenth amendment era to address the grievances of university employees, therefore; courts had to fill the gap between Higher Education Institutions and their employees by interpreting the doctrine of Master and Servant sagaciously. There is a dire need to devise an effective & efficient regulatory and legislative framework for higher education sector while taking on board all major stakeholders i.e. Federal Government, Provincial governments, representative of universities, National Finance Commission and Council of Common Interest.

CHAPTER 7

Impact of NFC Award on Financial Sustainability of Higher Education Institutions

Chapter 7

Impact of NFC Award on Financial Sustainability of Higher Education Institutions

7.1. Introduction of National Finance Commission Award

The National Finance Commission is a constitutional body established vide article 160 of the Constitution played a pivotal role to distribute financial resources among federation and federating units. This distribution is necessary to ensure fiscal federalism with the objective to enhance equitable development among federation and provinces. Primarily the objective of Commission is to announce and implement NFC award while considering the demographic realities of the country. The primary function of commission is to make recommendations regarding revenue distribution between federation and provinces of net proceed of tax including income tax, sales tax, tax on import export, tax on sale purchase, goods manufactured and excise duty on cotton.⁴⁵⁰ Usually, this award is to be revised periodically but due to political instability, economic instability, provincial differences, administrative ineligibilities, inefficiencies of bureaucracy, the lion's share of federal government are a few hindrances to revise this award since 18th constitutional amendment. The share of province shall not be less than the share given to provinces in previous award.⁴⁵¹ Finance ministers in province and federation shall monitor the implementation of award as per article 160 of constitution. Further, the recommendations of NFC together with an explanatory memorandum as to action taken there on shall be put up before Senate, National Assembly and Provincial assemblies. Undoubtedly, the fair and just distribution of resources needs extensive efforts, deliberations and negotiations. In the beginning the sole criteria to distribute award was population but with the passage of time the criteria became more complex while including revenue collection, population density and poverty.⁴⁵² The criteria was devised to lessen regional disparities by providing more resources to less develop and more sparsely populated areas. The study tries to encompass the reasons to stick with the 7th award and ultimately its effect on provincial autonomy and development of higher educational institutions. In this research we tried to dig out the causes and effects of non-implementation of 8th, 9th and 10th awards subsequently. Theoretically, an increased provincial share of the divisible pool provides provinces with more

⁴⁵⁰ Article 160 of Constitution sub articles 1,2, 3

⁴⁵¹ Article 160 of Constitution sub article 3 (A)

⁴⁵² Uddin, Fasih. "Analyzing the Seventh NFC Award and Its Implications." *Policy Perspectives* 7, no. 2 (July-December 2010): 115-126. London: Pluto Journals, 2010. <https://www.jstor.org/stable/42909279>.

financial capacity to invest in higher education; nonetheless, distribution of these funds depend upon provincial autonomy practically. The non-implementation of 9th award would have drastic consequences on provincial autonomy and higher education in shape of hampering quality of education and affecting students' ability to compete globally in research and development. The continuous use of an obsolete formula exacerbates inter-provincial discrepancies and regional inequalities. Provinces with greater financial requirements such as Baluchistan and Khyber Pakhtunkhwa suffer disproportionately leading to increasing regional conflicts and a lack of national unity. There is a dire need to devise formula of distribution of resources periodically to ensure equitable development, provincial autonomy, and national cohesion. The share of higher education sector should not be compromised for socio-economic development of society⁴⁵³ as financially sustained higher education institutions would create competent researchers, timely completed infrastructure projects and technological advancement. These higher education institutions with proper funding would pave the way to make progress by leaps and bounds in all fields of life.

7.2. Historical perspective to Distribute Revenues: Pre and Post-Independence

The distribution of resources in what is now Pakistan has changed dramatically over the last century reflecting the shifting political and constitutional situation of the region. During the British colonial period, financial arrangements were primarily structured to benefit the colonial government with little regard for the equal distribution of resources across different regions. The Government of India Act 1935 paved the way for financial devolution by introducing the concept of provincial autonomy and establishing separate federal and provincial subjects including revenue generation methods.⁴⁵⁴ The revenue-sharing system between the federal and provincial governments was initially based on the 1935 Government of India Act in which sales tax was the responsibility of provincial government while it was duty of federal government to collect income tax and divided with the provinces on 50/50 basis. The Centre also collected and used other taxes such as custom duties. Pakistan followed this pattern with minimal changes during its early years of independence. The provinces' portion of the income tax was kept at 50% and distributed as follows: 45% to East Pakistan, 27% to Punjab, 12% to Sindh, 8% to NWFP, and the balance to Baluchistan and states joining

⁴⁵³ Mehmood, Tariq. "The Impact of Higher Education on Economic Growth in Pakistan." MPhil thesis, Lahore School of Economics, 2013, 78-95.

⁴⁵⁴ Government of India Act 1935. Act of Parliament. 26 Geo. 5 & 1 Edw. 8 c. 2. London: His Majesty's Stationery Office, 1935.

Pakistan.⁴⁵⁵ The Raisman formula⁴⁵⁶ was enacted in March 1952 with the Federal and provincial budgets onwards were prepared on same pattern. After the formation of West Pakistan, the first Award, issued in 1961 under Ayub Khan's Martial Law, distributed the divisible pool--primarily composed of 70 % of sales tax and 50 % of income tax--on the basis of population, 54 % to East Pakistan and 46 % to West Pakistan. This distribution remained constant till 1964 Award. However, with the division of one unit in July 1970, the 46 % share given to West Pakistan was divided among the provinces based on the 1961 Population Census: Punjab 56.6 %, Sindh 23.5 %, NWFP 15.5 %, and Baluchistan 4.5 %. The distribution remained unchanged even after the country's breakup in December 1971 and the provinces continued to receive their share in the same proportions. The 1962 Constitution, enacted during military administration, preserved the principle of the NFC but had limited practical application.⁴⁵⁷

The first NFC under the 1973 Constitution was established in 1974, and it recommended the inclusion of income tax, sales tax, and export duty in the divisible pool, their distribution between the center and provinces at 20:80 ratio, and the allocation of provinces' shares based on the 1971 Population Census, with Punjab receiving 56.5%, Sindh 23.5%, NWFP 11.39% and Baluchistan 3.86%. Baluchistan and NWF received annual grants of Rs. 50 million and Rs. 100 million respectively to compensate for their bad financial positions. President Ziaul Haq established the Second NFC award in 1979 that time Finance Minister was Ghulam Ishaq Khan. No meeting was held therefore criteria from the 1974 Award was used. Following the 1981 Census, the provinces received their share based on the new population proportion: Panjab 57.97%, Sindh 23.34%, NWFP 13.39%, and Baluchistan 5.30% in 1982. The Third NFC was established in 1985 by Finance Minister Dr. Mahbubul Haq. The Commission was unable to finish its recommendations, and the 1974 Award continued to be used to distribute earnings until 1990. The Fourth NFC formed in 1990 by Finance Minister Sartaj Aziz suggesting divisible pool be expanded by incorporating excise duty on sugar and tobacco, as well as income tax, sales tax, and export duties. Customs duty remained with the federal government. The federal and provincial governments continued to divide the pool at 20:80 percent each. Despite recommendations from certain provinces to alter the criterion, population remained the primary reason for provincial distribution. The award led to a

⁴⁵⁵ Uddin, Fasih. "Analyzing the Seventh NFC Award and Its Implications." *Policy Perspectives* 7, no. 2 (July-December 2010): 115-126. London: Pluto Journals, 2010

⁴⁵⁶ Pakistan Institute of Development Economics (PIDE). *National Finance Commission Awards in Pakistan: A Historical Perspective*. Karachi: PIDE, 2007, 3.

⁴⁵⁷ Uddin, Fasih. "Analyzing the Seventh NFC Award and Its Implications." *Policy Perspectives* 7, no. 2 (July-December 2010): 115-126. London: Pluto Journals, 2010. <https://www.jstor.org/stable/42909279>.

significant boost in provincial revenues. Caretaker Prime Minister Malik Meraj Khalid formed the Fifth NFC in 1996, and Finance Minister Shahid Javed Burki served as its Chairman. The Commission made two fundamental changes: first, it combined all taxes into a divisible pool including income tax, wealth tax, capital value tax, sales tax, export duty, custom duty and excise duty and the net proceeds from crude oil royalties and the development surcharge on natural gas were distributed to provinces. Second, because all revenues were transferred to the divisible pool, the sharing ratio between the federal and provincial governments was drastically altered, from 20:80 to 62.5:37.5. The Award also introduced matching grants to encourage provinces to generate resources on their own and revised the provinces' divisible pool ratios based on the 1998 Population Census to Punjab 57.88 %, Sindh 23.28 %, NWFP 13.54 %, and Baluchistan 5.3 % effective July 2002. Importantly, the Award included specific funding for NWFP and Baluchistan in light of their financial difficulties. President General Pervez Musharraf constituted the Sixth NFC in 2000, led by Finance Minister Shaukat Aziz, which met several times but failed to reach consensus recommendations, owing to provinces' insistence on a larger share of revenues and diversification in distribution criteria. Thus, revenues were dispersed on the same basis as before. President General Pervez Musharraf created the Seventh NFC in 2005 under Prime Minister Shaukat Aziz, who was also the Finance Minister.⁴⁵⁸ This Commission also failed to reach an agreement on crucial topics such as increasing the contribution of provinces and modifying the distribution criterion. To resolve the deadlock, the provincial chief ministers authorized the President to announce August Award under Article 160(6) of the Constitution, which revised the provincial share in the divisible pool to 45 percent for the first financial year and 50 percent with subsequent annual increases of one percent. The subsidies/grants to the provinces were also boosted. The PPP-led government revived and reconstructed the Seventh NFC in July 2009.⁴⁵⁹ The summary of all NFC awards is that the first big NFC Award under the 1973 Constitution was announced in 1974, with population as the primary determinant for resource distribution. This formula stayed mostly unaltered for several decades, despite frequent evaluations and modifications. However, the changing economic situation and growing provincial demands for a more equitable distribution of resources prompted additional adjustments. The 1991 NFC Award was a significant milestone since it adopted a multi-factor formula that took into account population,

⁴⁵⁸ Pakistan Institute of Development Economics (PIDE). National Finance Commission Awards in Pakistan: A Historical Perspective. Karachi: PIDE, 2007, 3.

⁴⁵⁹ Uddin, Fasih. "Analyzing the Seventh NFC Award and Its Implications." *Policy Perspectives* 7, no. 2 (July-December 2010): 115-126. London: Pluto Journals, 2010

revenue generation, and backwardness.⁴⁶⁰ This method sought to address regional inequities more effectively. Subsequent Awards in 1996 and 2006 continued to refine the distribution criteria, gradually increasing the provincial share of the divisible pool. The 7th NFC Award represented a watershed moment in Pakistan's fiscal federalism. This award boosted the provincial share from 47.5% to 56% while also including a number of resource allocation measures, such as poverty, tax collection, and inverse population density, in addition to population. This comprehensive strategy sought to provide a more fair and equal allocation of resources, taking into account the particular requirements and challenges of each province. Throughout this process, constitutional modifications and legislative laws have played an important role in establishing the distribution system. The 18th Amendment to the Constitution, passed in 2010, expanded provincial autonomy by devolving key federal topics to the provinces, necessitating revisions to budgetary transfers and resource distribution systems. The distribution of revenue among federation and provinces as mandated 18th amendment is need of the hour; so federal government should fulfill its responsibilities in this regard.⁴⁶¹

This table depicts the evolution of the NFC Awards, emphasizing the criteria utilized for resource allocation and the trend towards a more balanced and diversified approach in subsequent awards.

Table 7.1.: Criteria of NFC

Awards	Years	Criteria	Remarks about Criteria
1st NFC	1951	Population based	Federal control with population as the sole criterion.
2nd NFC	1961	Population	Continuation of the population-based formula.
3rd NFC	1974	Population	Maintained the population-based approach.
4th NFC	1990	Population (100%)	Introduced a fixed percentage of divisible pool for provinces.
5th NFC	1996	Population (100%)	Similar to previous awards focused solely on population.

⁴⁶⁰ Pakistan Institute of Development Economics (PIDE). National Finance Commission Awards in Pakistan: A Historical Perspective. Karachi: PIDE, 2007, 3.

⁴⁶¹ Shafiq-ur-Rehman, Nasrullah Khan, and Shahzad Ali Gill, "Fiscal Decentralization in Pakistan: 7th NFC Award as Case Study," *Public Policy and Administration Research* 4, no. 6 (2014): 1-8.

6th NFC	2006	Population (82%), Poverty (10.3%), Revenue Generation (5%), Inverse Population Density (2.7%)	First major shift introducing multiple criteria for resource distribution.
7th NFC	2009	Population (82%), Poverty (10.3%), Revenue Generation (5%), Inverse Population Density (2.7%)	Continued with the multi-criteria formula introduced in the 6th NFC.
8th NFC	2015	Proposed similar criteria as the 7th NFC	Discussions remained inconclusive; no formal award was announced.
9th NFC	Ongoing (since 2021)	Proposed to include criteria focusing on needs and capacities	Discussions are still ongoing aiming to address modern economic realities.

Primarily Idea was taken from the report of Fiscal Decentralization in Pakistan by Shafiq-ur-Rehman.

Population was main factor initially while distribution of revenue. Poverty was introduced in the Sixth NFC to address regional inequities. Revenue Generation was included to incentivize and reward provinces that generate more revenue. The fourth NFC included a fixed percentage share for provinces i.e. 37.5% of the divisible pool. The fifth NFC maintained a fixed proportion while emphasizing regional sovereignty. The 6th NFC and 7th NFC award of introduced a more complicated model that reduced population dominance and included other socio-economic criteria. Post-7th NFC award focused on provincial autonomy in budget allocation especially higher education but no constructive measures have been taken in this regard.⁴⁶²

7.3. NFC award and Higher Education sector in Pakistan

NFC Award is an important components of Pakistan's fiscal federalism ensuring a fair allocation of financial resources between the federal government and provinces. This framework would have a substantial impact on a variety of sectors including higher education which is crucial for the country's socio-economic development. Primarily the objective of Commission is to announce and implement NFC award while considering the demographic

⁴⁶² Shafiq-ur-Rehman, Nasrullah Khan, and Shahzad Ali Gill, "Fiscal Decentralization in Pakistan: 7th NFC Award as Case Study," *Public Policy and Administration Research* 4, no. 6 (2014): 1-8.

realities of the country.⁴⁶³ Usually, this award is to be revised periodically but due to political instability, economic instability, provincial differences, inefficiencies of bureaucracy and the lion's share of federal government are a few hindrances to revise this award since 18th constitutional amendment. Historically, resource allocation in Pakistan has progressed from a centralized model inherited from the British colonial period to a more balanced strategy aiming at reducing regional disparities in society.⁴⁶⁴ Early fiscal arrangements were essentially population based; however, with the passage of time additional elements such as inverse population density, tax collection and poverty were included to ensure a more equitable distribution. The 7th NFC Award of 2009 was particularly transformational boosting the province portion of the divisible pool and incorporating an array of indicators to improve the distribution process. The Award had an impact on an array of sectors with higher education being one of the most influenced by these fiscal policies.⁴⁶⁵ Higher education in Pakistan governed primarily by federal financing and oversight. However, the devolution of certain responsibilities to the provinces, particularly following the 18th Amendment has resulted in substantial changes to higher education's governance and financial arrangements. Prior to the 18th Amendment, Pakistan's higher education institutions (HEIs) relied heavily on federal funding with HEC playing a key role in disbursing funds and setting standards. The HEC was responsible to promote reforms, enhancing quality and extending access to higher education across the country. Federal financing was critical to advance these programs and the HEC's budget frequently reflected the general budgetary health and priorities described in the NFC Awards. With the devolution of higher education in true letter and spirit provinces would have more control in managing and funding their higher education institutions, allowing them to better correspond with local objectives and requirements. This transformation would increase provincial governments' responsibilities to allocate enough resources to higher education, a task that is inextricably tied to the financial allocations established by the NFC Awards. In contrast, nations suffering governance issues or prioritizing other sectors may struggle to provide adequate support to their HEIs. Despite devolution the HEC continues to play an important role in establishing national standards, accrediting institutions and funding crucial initiatives. The coordination between federal and provincial financing led by the NFC Awards continues to be a defining aspect of Pakistan's higher education system. One of the major

⁴⁶³ Article 160 of the Constitution of Pakistan 1973

⁴⁶⁴ Pakistan Institute of Development Economics (PIDE). National Finance Commission Awards in Pakistan: A Historical Perspective. Karachi: PIDE, 2007, 3.

⁴⁶⁵ Uddin, Fasih. "Analyzing the Seventh NFC Award and Its Implications." *Policy Perspectives* 7, no. 2 (July-December 2010): 115-126. London: Pluto Journals, 2010

problems in this dynamic environment is maintaining higher education accessible and of high quality across all jurisdictions. Resource allocation disparities can increase regional inequities, necessitating efficient collaboration between federal and provincial administrations.⁴⁶⁶

I would like to draw a table in upcoming pages to demonstrate that how Higher Education sector remained a neglected sector generally while distribution of resources and in post Eighteenth Amendment particularly. The gloomy picture will depict that no specific share has been highlighted in different NFC awards to boost up Higher Education sector in Pakistan.

Table 7.2: Distribution of Resources

Awards	Distribution of Resources	Higher Education
1st NFC 1951	Population-based distribution	Not explicitly defined
2nd NFC 1961	Population-based distribution	Not explicitly defined
3rd NFC 1974	Population-based, including other criteria	Not explicitly defined
4th NFC 1990	Population-based with provincial shares	Higher education allocations were part of provincial budgets, no specific share highlighted.
5th NFC 1996	Population-based with minor adjustments	Provinces allocated part of their share to higher education, specific focus unclear.
6th NFC2006	Population (82%), Poverty (10.3%), Revenue Generation (5%), Inverse Population Density (2.7%)	Not explicitly defined, but provincial autonomy increased in budget allocation.
7th NFC2009	Population (82%), Poverty (10.3%), Revenue Generation (5%), Inverse Population Density (2.7%)	Increased provincial shares allowed more funds to be potentially allocated to higher education, but no specific focus.
8th NFC2015	Proposed similar criteria as the 7th NFC	Not applicable
9th NFC2021	Under discussion; focus on updated criteria including needs and capacities	Expected to increase focus on social sectors, including higher education, but specific allocations not finalized.

⁴⁶⁶ Shafiq-ur-Rehman, Nasrullah Khan, and Shahzad Ali Gill, "Fiscal Decentralization in Pakistan: 7th NFC Award as Case Study," *Public Policy and Administration Research* 4, no. 6 (2014): 1-8.

Primarily data was obtained from the Official website of National Finance Commission and Budget of previous years.

7.4. Impact of NFC award on Financial Sustainability of Higher Education

Institutions

The NFC Award in Pakistan has a significant impact on the economic condition of numerous sectors including Higher education. The primary function of commission is distribution of revenues among federation and provinces.⁴⁶⁷ Obviously this distribution is vital for financial sustainability of Higher Education Institutions. The comparative analysis of NFC award in pre and post Eighteenth Amendment era will provide a unique perspective on how NFC award has influenced the financial sustainability of Higher Education Institutions.⁴⁶⁸ The most important question arises here is that whether under the facts and circumstances the financial sustainability is necessary for higher education institutions in Pakistan?⁴⁶⁹ Before we proceed further, we should have a look at the notion of development then we would be able to comprehend that financial sustainability of higher education institutions is vital for growth and development of these institutions. The development is very exhaustive term that include political development, economic development, social development, cultural development, institutional development, individual development and above all these developments are closely connected with each other. The unfair distribution of revenue would have direct impact on Higher Education institutions and institutional development in province as well as federation in shape of compromise on quality of education, reduction in research grant for faculty & students, hampering faculty recruitment process; delays in infrastructure project and technological advancement. After analysing the whole situation the answer would be in affirmative as financial sustainability is prerequisite for growth and development of Higher Education institutions. Prior to Eighteenth Amendment the HEC was responsible to regulate funds and quality assurance of institutions.⁴⁷⁰ The provincial institutions were also dependent on federal government funding through HEC to run the affairs of respective institutions in a smooth way.⁴⁷¹ In this arena the HEC introduced education reforms to enhance the capability

⁴⁶⁷ Article 160 of Constitution

⁴⁶⁸ The State of Pakistan's Economy. Karachi: 2020

⁴⁶⁹ Arshad Ali, "National Finance Commission Award: A Way Forward," Reflections, no. 1 (2010): page 1-5

⁴⁷⁰ Section 10 of the HEC Ordinance

⁴⁷¹ Section 10 of HEC Ordinance 2002

of Higher Education institutions. The two big personalities Dr. Tariq Banuri and Dr. Atta-ur-Rehman had contradictory methodologies to initiate and implement reforms in HEIs. Dr. Banuri concentrated to improve quality of education including research & development on the other side Dr. Atta was of the view to enhance quantity of Higher education institutions including but not limited to establishment of new universities, provision of scholarships and enhancement of infrastructure. Primarily Dr. Atta was of the view to enhance number of universities so that more students could approach to university education; number of scholarships would be increased to deserving students. In a broader aspect the Reforms introduced by both of them were in favor of Higher Education sector. The centralized finance model ensured consistency in policy implementation and resource allocation, allowing smaller provinces with little budgetary resources to benefit from national programs.⁴⁷² This helped to reduce regional inequities and created a generally steady funding environment for higher education institutions. The pre Eighteenth Amendment Era was not devoid of challenges like lack of funding, dependence on tuition fees and cost of Higher Education increased, that's why institutions had failed to raise revenue.

The Eighteenth amendment was a milestone to achieve federalism in true letter and spirit as power was transferred to provinces particularly Higher Education sector. Theoretically, provincial governments were empowered to make laws, policies and revenue generating resources for higher education sector. But practically funds have not been transferred due to multiple reasons. The first reason is that independent Higher Education commissions have not been established in all provinces as mandated in Eighteenth constitution. The second reason is that when commissions have not been established it means no question arises regarding funds and dream of provincial autonomy would not come true. The third reason is that the Supreme Court is backing the Federal HEC to have strong hold on provincial commissions in Punjab and Sindh.⁴⁷³ In all mentioned circumstances the task of sustainability of institutions financially could not be achieved. While the NFC Awards have increased provincial shares, funding for higher education remains insufficient to meet growing demands. Rapid population growth, higher enrollment rates and need for innovation require substantial financial investments. Fiscal constraints prevent effective funding, leaving many institutions

⁴⁷² Shafiq-ur-Rehman, Nasrullah Khan, and Shahzad Ali Gill, "Fiscal Decentralization in Pakistan: 7th NFC Award as Case Study," *Public Policy and Administration Research* 4, no. 6 (2014): 1-8.

⁴⁷³ Farukh, Quaisar Mahmood, and Hafiz Aziz-ur-Rehman. 2024. "Autonomy of Higher Education Sector in Post-18th Constitutional Amendment Era: Challenges and Prospects." *Global Political Review* IX (II):83-95. doi: 10.31703/gsssr.2024(IX-II).08. Accessed on 28.07.2024 5:32 AM

struggling financially and reliant on tuition fees, which burdens students & their families exacerbates inequality.⁴⁷⁴ Following the 18th Amendment, the financial sustainability of Pakistan's higher education depends on effective fund mobilization and strategic planning. Universities must adopt sound financial practices, diversify revenue streams and seek external funding through grants and alumni contributions. Developing financial planning and administration skills at all levels is crucial to ensure NFC Award resources improve the quality and accessibility of higher education. The next question would be to mitigate the negative impacts of NFC award in post Eighteenth award. For that purpose several methods can be used to reduce the NFC Award's detrimental effects on higher education institutions. Managing financing sources is critical, including increasing revenue from tuition fees, research grants and commercial operations. Efficiency and cost management strategies can assist maximize available resources. Public-private partnerships provide additional financial support while also allowing the business sector to contribute experience and innovation. Policy changes are required to address the financial sustainability of HEIs. Revising the NFC Award criteria as per demand of 2024 onwards to take into account the unique needs of higher education can result in a more equitable distribution of money. Increased total expenditure on emergency basis in higher education is critical to the country's progress. Ensuring equitable distribution of money among provinces can help to decrease gaps and promote standardized quality of Higher Education.

7.5. Reasons to Stick with the 7th NFC Award: Challenges and Prospects

It is time to discuss the main features of 7th NFC award to comprehend the reasons due to which federal and provincial governments had to stick with that award. The salient features of 7th award were: reduction in collection of charges from 5% to 1%; provincial share increased from 47.5% to 56%; and 57.5 in 2011-12 onwards; federal share decreased from 52.5 to 44% and 42.5 2011-12 onwards; provinces allowed to charge, levy and impose tax on services; last but not the least provinces will not get the less share than that of previous one. The other reasons included were: the downsizing of Federal government and allied ministries; visualization that provincial governments will generate additional revenue.⁴⁷⁵ To sum up, the award implemented in 2010 significantly increased the share of federal revenues allocated to

⁴⁷⁴ Iftikhar Ahmed, Usman Mustafa, and Mahmood Khalid, National Finance Commission Awards in Pakistan: A Historical Perspective (Islamabad: Pakistan Institute of Development Economics, 2007).

⁴⁷⁵ Pakistan Institute of Development Economics (PIDE). National Finance Commission Awards in Pakistan: A Historical Perspective. Karachi: PIDE, 2007, 3.

provinces from 47.5% to 57.5%. This boost was crucial for provincial budgets allowing them more resources for development. The 7th NFC Award also introduced a formula where 82% of the distribution was based on population while the remaining based on poverty, revenue collection and inverse population density. This formula particularly benefited populous provinces like Punjab and Sindh ensuring they received a larger portion of the funds.

In a broader spectrum the political instability, economic instability, sectarianism, vested interest of political elites, inefficiencies of bureaucracies, ethnicity; to have a look at vested interest of federal and provincial governments could be a few reasons to stick with the 7th NFC Award. Further, Provinces could plan and implement their budgets more successfully without having to deal with unexpected changes in funding allocations. Furthermore, renegotiating a new NFC Award entails difficult talks and potential confrontations between the federal and provincial governments.⁴⁷⁶ By maintaining the status quo, the government was able to bypass these unpleasant arguments and focus on other critical matters. Economic constraints also had an impact. Pakistan had huge fiscal deficits and debt obligations, making it difficult for the federal government to consider boosting provincial participation under a new NFC Award. Updating the NFC Award to reflect contemporary socio-economic realities presents substantial obstacles. Changes in population dynamics, poverty levels and regional developmental needs necessitate a robust formula based on political will and consensus of all stakeholders. Achieving a fair and agreed-upon methodology can result in lengthy delays and disagreements. To rely on the seventh NFC Award there is a dire need for provinces to strengthen their financial management and revenue production capabilities. While greater shares brought more funds, efficient utilization and accountability of these monies remained essential concerns. Furthermore, the existing formula's dependence on population may not adequately address the needs of less populous but more disadvantaged regions. A revamped award could better address these gaps and promote equitable development across all provinces. The government's decision to continue with the 7th NFC Award was motivated by a desire for financial stability, avoidance of political conflict and economic pragmatism in the face of adversity. While this method gave immediate gains in terms of predictability and fiscal decentralization, it also delayed crucial revenue-sharing formula modifications that may rectify current socio-economic inequities and promote more balanced regional development in Pakistan.

⁴⁷⁶ A. H. Khan, Addressing Pakistan's Fiscal Challenges: Lessons for D-8 Countries (WORLD SCIENTIFIC eBooks, 2023), 197–228, https://doi.org/10.1142/9789811247811_000.

The prospects of the 7th NFC Award in Pakistan depends upon consensus among the provinces on revenue-sharing formulas, lessening disparities and promote equitable development. There is a dire need to devise a new regulatory framework for taxation in Pakistan by negotiating with political elites and by taking all major stakeholders including FBR officials, PRA officials, presidents of Chambers of Commerce, Finance ministry, Accountant General, Chartered Accountant, judges having expertise in taxation and accounting on board to successfully implement the 9th or 10th National Finance Commission Award with true letter and spirit.

7.6. Inability to Pronounce awards after 7th NFC Award

Political conflicts, economic and financial instability, budgetary constraints, vested interest of political elites coupled with administrative and bureaucratic inefficiencies all contributed to Pakistan's inability to proclaim the 8th, 9th, and 10th National Finance Commission Awards; as a result, the 7th NFC Award continues to threaten fiscal federalism and resource allocation.⁴⁷⁷ Political tensions arise as the federal and provincial governments work to reach an agreement, each wanting to maximize their share of federal revenues. Economic challenges such as high public debt, budget deficits, revenue generation and expenditure management, limit the federal government's willingness to adjust the incentive.⁴⁷⁸ Furthermore, bureaucratic delays in data collection and policy development worsen the problem. The 7th NFC Award increased the province portion of the divisible pool and included several revenue distribution indicators, which pleased the majority of stakeholders.⁴⁷⁹ Nonetheless, depending on this obsolete methods exacerbates regional disparities because resource allocations do not account for contemporary economic realities or population shifts. This stagnation undermines fiscal federalism, lowers regional financial sovereignty and creates inefficiencies in resource utilization. To solve these challenges, collaborative talks and the formation of a neutral advisory council in cooperation with FBR officials, PRA officials, the Ministry of Finance, Chambers of Commerce Pakistan, judges having knowledge of tax laws and researchers for unbiased analysis are required. Improving provincial fiscal capabilities requires strong administrative structures and best practices in financial management. Introducing flexibility into the NFC Award system, allowing for periodic adjustments based

⁴⁷⁷ A. H. Khan, Addressing Pakistan's Fiscal Challenges: Lessons for D-8 Countries (WORLD SCIENTIFIC eBooks, 2023), 197–228, https://doi.org/10.1142/9789811247811_000

⁴⁷⁸ Ibid

⁴⁷⁹ Uddin, Fasih. "Analyzing the Seventh NFC Award and Its Implications." *Policy Perspectives* 7, no. 2 (July–December 2010): 115–126. London: Pluto Journals, 2010. <https://www.jstor.org/stable/42909279>.

on key indications can help to ensure responsiveness to changing conditions. Long-term growth requires a renewed commitment to fairness and fiscal prudence, as well as investments in essential sectors like education, healthcare, and infrastructure.⁴⁸⁰ Finally, addressing the issue of announcing new NFC Awards requires the collaboration of all stakeholders, improved financial management, a pragmatic Legislative Framework for Taxation, a commitment to equitable resource allocation, all of which contribute to balanced and sustainable development in Pakistan's many areas.

7.7. Share of Federal Government Taking in 7th NFC and Probable Share in 10th NFC Award

The 7th NFC Award marked a significant shift by allocating 44% of the divisible pool to the federal government and 56% to the provinces based on criteria such as population, poverty, tax revenue, and inverse population density for equitable distribution.⁴⁸¹ Predicting the exact federal share of the next 10th NFC Award is challenging owing to ongoing talks and changing economic and political conditions. However, various factors will influence the federal share of the 10th NFC Award. While talking about historical Trends the Provinces have consistently sought a larger share, demonstrating their desire for fiscal autonomy. Economic challenges like Fiscal deficits, a huge public debt and revenue generation capacity have a significant impact on the distribution model. Secondly the Developmental Needs: Provinces with high poverty rates or underdeveloped will argue for increased funding to address imbalances. Demographic trends: since the last award will have an impact on negotiations, since provinces experiencing significant growth require greater resources. Political Dynamics: Collaboration and discussion between the federal and provincial governments will be critical to reaching an agreement. While the federal government won 44% of the 7th NFC Award, the federal share of the prospective 10th NFC Award would be determined by extensive negotiations that weighed economic, political, and social factors to meet the needs of the federal and provincial governments.⁴⁸² Based on these principles, it is plausible to expect that the share of federal government would be slightly lower from 44% to 40%. Likewise, the share of Punjab

⁴⁸⁰ A. H. Khan, Addressing Pakistan's Fiscal Challenges: Lessons for D-8 Countries (WORLD SCIENTIFIC eBooks, 2023), 197–228, https://doi.org/10.1142/9789811247811_000

⁴⁸¹ Pakistan Institute of Development Economics (PIDE). National Finance Commission Awards in Pakistan: A Historical Perspective. Karachi: PIDE, 2007, 3.

⁴⁸² A. H. Khan, Addressing Pakistan's Fiscal Challenges: Lessons for D-8 Countries (WORLD SCIENTIFIC eBooks, 2023), 197–228, https://doi.org/10.1142/9789811247811_000

would decrease due to demographic changes; however, the share of Khyber Pakhtunkhwa would be increased due to merger of FATA.

7.8. The Non-Implementation and Non-Pronouncement of the 9th NFC Award

The National Finance Commission (NFC) Awards are critical to Pakistan's equitable allocation of financial resources between the federal government and the provinces. The much-anticipated 9th NFC Award, which promised big improvements, has yet to be implemented or declared, generating much alarm. This essay examines the background and context of the 9th NFC Award, as well as the opinions of important stakeholders and the implications for provincial budgets, using particular instances to demonstrate the ramifications. NFC Awards are constitutionally mandated means for distributing federal money to provinces, which help to preserve fiscal balance and promote growth. The 9th NFC Award was supposed to address new economic concerns and regional inequities, but its release has been postponed.⁴⁸³

The 8th NFC Award, which had been slated for 2015 after the 7th NFC Award expired in 2014, was never officially announced.⁴⁸⁴ As a result, the distribution formula established for the 7th NFC Award is still in use.⁴⁸⁵ The delays are caused by a variety of factors including but not limited to political conflicts, economic instability, administrative inefficiencies, non-provision of data from bureaucracy and problems in reaching an agreement on revenue-sharing formulas. The federal government's financial limits along with the provinces' desire for larger share sizes, have compounded the situation. The primary stakeholders are the federal and provincial governments, educational institutions and policy experts. The federal government contends that economic difficulties like as the fiscal imbalance and a huge public debt necessitate a deliberate strategy to revenue distribution. They argue that increasing provincial shares without addressing these bigger issues will exacerbate financial instability. On the other hand, province administrations believe that the 9th NFC Award's postponement jeopardizes their development plans and financial independence. They feel that an upgraded NFC Award is required to accommodate the particular demands of each province and ensure equitable development throughout the country. Educational institutions and policymakers are also concerned. The delayed payment has created financial concern for universities and universities

⁴⁸³ A. H. Khan, Addressing Pakistan's Fiscal Challenges: Lessons for D-8 Countries (WORLD SCIENTIFIC eBooks, 2023), 197–228, https://doi.org/10.1142/9789811247811_000

⁴⁸⁴ Sabir, Muhammad, and Farhan Zaidi. "Efforts in Provincial Taxation in Pakistan." *Pakistan Economic and Social Review* 55, no. 1 (2017): 43-64. Department of Economics, University of the Punjab.

⁴⁸⁵ Sabir, Muhammad, and Farhan Zaidi. "Efforts in Provincial Taxation in Pakistan." *Pakistan Economic and Social Review* 55, no. 1 (2017): 43-64. Department of Economics, University of the Punjab

that rely substantially on government support. Policy experts fear that the extended negotiations and lack of a new award erode trust in the fiscal system and impede long-term planning.

Non-implementation of the 9th NFC Award has had a substantial impact on provincial finances. The 7th NFC Award assigned 57.5% of federal tax receipts to the provinces, with Punjab receiving 51.74%, Sindh 24.55%, and Khyber Pakhtunkhwa 14.62%, and Baluchistan 9.09%.⁴⁸⁶ However, the socioeconomic landscape has shifted, necessitating revisions to the distribution criteria. For example, the most significant merger of the Federally Administered Tribal Areas (FATA) with Khyber Pakhtunkhwa (KP) has enhanced KP's developmental needs. Without an updated NFC Award, KP continues to function under an antiquated fiscal framework that does not take into account FATA integration and associated expenditures. Specific examples demonstrate the extensive implications of the postponed NFC Award. Baluchistan, the least developed province, is facing significant financial constraints, limiting its ability to build infrastructure and public services. The delayed grant exacerbates these issues, as the province is unable to get the additional funds it need. In Sindh, which is home to Pakistan's largest city, Karachi, the delay has an impact on urban growth and public services. The provincial government's ability to fund large-scale projects and raise living conditions is jeopardised, resulting in public unhappiness and governance concerns. The federal government's fiscal limits, along with provincial demands for larger shares, have resulted in a complicated negotiation environment. Continuing to apply the antiquated 7th NFC Award criteria exacerbates existing disparities and stifles regional growth. In conclusion, the non-implementation and non-pronouncement of the 9th NFC Award have serious consequences for Pakistan's financial system and province development. The delay has an impact on financial distributions, provincial planning, and educational institutions, emphasizing the urgent need for a modernized and equitable revenue-sharing mechanism. Achieving unanimity on the 9th NFC Award is critical for addressing changing socioeconomic realities, promoting regional justice, and ensuring Pakistan's long-term stability and development. Obviously the Federal government and Punjab the biggest province by population have to compromise while negotiating with other provinces.

⁴⁸⁶ Uddin, Fasih. "Analyzing the Seventh NFC Award and Its Implications." *Policy Perspectives* 7, no. 2 (July-December 2010): 115-126. London: Pluto Journals, 2010. <https://www.jstor.org/stable/42909279>.

7.9. Possible Effects on the Higher Education Sector

The delay in implementing the 9th NFC Award has significantly affected Pakistan's higher education sector. This delay impacts funding and resource allocation, institutional growth, and student outcomes. It's essential to explore the short-term, long-term, and broader effects of this delay. Adequate budget provisions for higher education is crucial for maintaining and improving education quality in Pakistan. Budget allocations have been a contentious issue, with provincial governments often arguing that they do not receive enough funds to meet their educational needs. The proposed 9th NFC Award aimed to address these issues by providing a fairer distribution of resources.⁴⁸⁷ However, relying on the 7th NFC Award criteria has led to stagnant budget allocations that fail to keep up with inflation and the growing student population. Comparing funding levels before and during the period when the 9th NFC Award was anticipated reveals a lack of budget growth, causing significant financial strain on higher education institutions. This strain has notably impacted university infrastructure and development projects. Without the expected increase in funding, many universities have had to delay or cancel planned expansions and modernizations, including building new campuses, renovating existing ones, and investing in advanced technology and research centres. Inadequate research funding has also stifled innovation and academic excellence, as programs dependent on cutting-edge research struggle to maintain standards and many potential initiatives have been abandoned due to financial constraints. This not only lowers educational quality but also limits Pakistan's ability to compete globally in research and development. Student outcomes have also been affected by the financial shortfall. Budgetary constraints have limited access to higher education by reducing the number of scholarships and financial aid available to students from low-income families. Additionally, when institutions are forced to cut costs by eliminating academic positions, increasing class sizes and reducing resources for student support services, the quality of education suffers. These measures can decrease academic achievement and create a less engaging educational experience, affecting students' future prospects and the country's human capital development.⁴⁸⁸ In the short term, the financial pressures on provincial budgets are evident. Provinces already struggling to meet their financial obligations now face even tougher challenges. Higher education institutions which rely on provincial funding are grappling with operational issues such as maintaining daily

⁴⁸⁷ NFC award by Noor-ul-Haq

⁴⁸⁸ Uddin, Fasih. "Analyzing the Seventh NFC Award and Its Implications." *Policy Perspectives* 7, no. 2 (July-December 2010): 115-126. London: Pluto Journals, 2010

operations, paying staff salaries and covering utility bills. These financial difficulties can lead to delays in the academic calendar and a decline in the quality of services provided to students. The long-term consequences could be even more severe. Persistent budget shortfalls could significantly degrade educational standards, resulting in a lower quality of graduates entering the workforce and diminishing the country's intellectual resources. An underfunded education system may lead to a brain drain, where talented individuals seek opportunities abroad, exacerbating the country's development problems. The economic and social impacts of an underfunded higher education sector are profound, as education is a key driver of economic growth, social mobility, and national progress. The broader implications include effects on national development and human capital formation. A well-funded and strong higher education sector is essential for producing skilled professionals, fostering innovation, and driving economic growth. Achieving consensus on the 9th NFC Award is crucial for ensuring the long-term sustainability and success of Pakistan's higher education system, and by extension, the country's overall socioeconomic development.⁴⁸⁹

7.10. Findings and Conclusion

After the 18th Amendment provinces are now responsible for maintaining fiscal discipline. Therefore, it's essential to build their capacity to manage financial resources effectively. Currently, the federal government holds the exclusive right to levy taxes which limits the provinces' ability to generate additional revenue. Provinces should be given the authority to impose indirect taxes on goods and services within their jurisdictions to reduce their dependence on federal tax revenue. With limited and unpredictable financial resources, both federal and provincial governments find it challenging to undertake significant projects for the social uplift of marginalized and deprived communities. Hence, there should be efforts to enhance tax collection and expand its scope. The resources promised to the provinces in the 7th NFC Award should be transferred immediately specially to less developed areas. This would provide provinces with the necessary fiscal space to implement socio-economic development programs and deliver social services promptly.⁴⁹⁰

Secondly Pakistan's economy has been hampered by a deteriorating law and order situation. Billions of rupees are spent on combating militants and maintaining order, while

⁴⁸⁹ <https://www.dawn.com/news/1822745>

⁴⁹⁰ A. H. Khan, *Addressing Pakistan's Fiscal Challenges: Lessons for D-8 Countries* (WORLD SCIENTIFIC eBooks, 2023), 197–228

internal conflicts deter both local and foreign investment. It is crucial to stabilize the law and order situation to attract investment. Political leaders must set aside their differences and develop a coherent policy to address this issue. Pakistan's National Finance Commission (NFC) Award, a key system for distributing financial resources between the federal and provincial governments, has been crucial since the country's founding. However, delays in implementing future NFC Awards, especially the anticipated 9th NFC Award after the 18th Constitutional Amendment, have had significant impacts, particularly on higher education. This delay has revealed issues in budget management and broader effects on national unity, regional development and educational outcomes. The 18th Constitutional Amendment in 2010 increased provincial autonomy, giving provinces more control over areas like education. This change aimed to help provinces better address local needs and priorities, especially in higher education. However, the amendment also stressed the need for a fair and timely NFC Award to ensure provinces have the necessary funds to handle their new responsibilities.⁴⁹¹

If the 9th National Finance Commission Award is not issued and implemented as soon as possible, it will have serious consequences for Pakistan's higher education sector. It could lead to decreased funding for universities, which could impede research, infrastructure development and access to quality education. This financial strain could exacerbate educational disparities, undermine academic standards and impede the country's overall socioeconomic progress. The impact of this delay goes beyond financial issues, affecting regional equality in education. Provinces with fewer resources struggle to maintain educational standards and increase access to higher education. This disparity not only limits educational opportunities but also perpetuates socioeconomic inequalities leading to regional dissatisfaction and political instability. Additionally, the delayed NFC Award has fostered mistrust between provinces and the federal government. The prolonged discussions and failure to agree on a new award formula have strained intergovernmental relationships and tested the principles of cooperative federalism. Provinces with significant development needs feel marginalized, as fiscal authority remains centralized. This situation threatens national unity, as effective fiscal federalism is essential for maintaining harmony in a diverse country like Pakistan.⁴⁹²

To address the issues caused by the delayed NFC Award, a multifaceted approach is needed. First, federal and provincial stakeholders must show political will and reach a

⁴⁹¹ Iftikhar Ahmed, Usman Mustafa, and Mahmood Khalid, *National Finance Commission Awards in Pakistan: A Historical Perspective* (Islamabad: Pakistan Institute of Development Economics, 2007).

⁴⁹² Ibid

consensus to finalize and implement the 9th NFC Award. The process should focus on fair resource distribution, considering population changes, poverty levels, and regional development needs. Transparent and inclusive negotiations, supported by technical expertise and independent review, are essential to overcome political deadlock and find fair solutions. Second, improving financial management and accountability at both federal and provincial levels is crucial.⁴⁹³ This involves adopting international best practices in financial reporting, conducting regular audits, and ensuring transparency in budget allocations and expenditures. Strengthening the capacities of higher education institutions is also vital for better governance, operational efficiency, and fostering innovation and research. Third, diversifying funding sources for higher education through models like public-private partnerships (PPPs), endowment funds, and alumni donations can reduce reliance on government budgets and provide long-term financial stability. These partnerships can bring additional resources and encourage knowledge exchange and industry involvement, enhancing the relevance and quality of higher education programs. In conclusion, the delay in implementing the 9th NFC Award underscores the need for effective fiscal federalism in Pakistan. The higher education sector, crucial for national development and human capital growth, needs equitable and sustainable funding to thrive. Addressing the challenges caused by the delay requires collaborative efforts to improve transparency, accountability, and institutional capacity. It also requires creating an environment that fosters dialogue, cooperation, and shared responsibility between federal and provincial governments. Only through these efforts can Pakistan's higher education sector effectively contribute to socioeconomic progress and national unity in the future.

7.11. Recommendations

Fiscal autonomy is only meaningful if a province has a viable economic foundation from which to generate revenue. Given their relatively solid economic bases, Punjab and Sindh have reaped major benefits from fiscal devolution. KP and Baluchistan do not have that economic base. It is consequently necessary to account for the two provinces' lack of economic base in the next NFC horizontal income sharing formulation. The NFC Awards play a vital role in ensuring fair distribution of resources between Pakistan's federal government and provinces. The delay in implementing the 9th NFC Award has significant consequences, especially for higher education institutions. This essay explores solutions in financial management, capacity building to address these challenges, concluding with a summary of findings, policy

⁴⁹³ Pakistan Institute of Development Economics (PIDE). National Finance Commission Awards in Pakistan: A Historical Perspective. Karachi: PIDE, 2007, 3.

implications and innovative contributions. The NFC Awards aim to provide equitable financial distributions to provinces, fostering development and addressing regional disparities. However, the delay in the 9th NFC Award has created financial strain, particularly in higher education. To ensure timely implementation of NFC Awards, several measures are recommended.⁴⁹⁴

First, setting a clear timeline for negotiations and announcements can prevent delays. This timeline should include deadlines for key milestones to ensure accountability at every level. Second, establishing a permanent NFC Secretariat can facilitate continuous dialogue and technical support, allowing issues to be resolved more efficiently. This Secretariat should include representatives from both federal and provincial governments to ensure fair decision-making. Modifying the NFC Award structure can also address current issues. Introducing a more dynamic methodology that considers changing socioeconomic factors is essential. For example, calculations should account for population growth, poverty rates, and regional development needs. Implementing performance-based incentives can motivate provinces to enhance governance and service delivery, rewarding those that achieve specific targets in education, healthcare, and infrastructure. Additionally, increasing the emphasis on backwardness and poverty in the formula can ensure that underdeveloped regions receive adequate support, promoting equitable development. Improving financial transparency and accountability is crucial for effective financial management. Adopting international best practices in financial reporting and auditing can enhance transparency and make it easier to monitor fund usage. Regular audits by independent agencies can ensure accountability and prevent resource wastage. Creating a centralized online platform for financial information can provide real-time updates on budget allocations and expenditures, promoting transparency and public trust. Innovative funding solutions for higher education can help address financial challenges. Diversifying funding sources is key to reducing reliance on government funds. Encouraging private sector investment through public-private partnerships (PPPs) can bring new resources and expertise to the higher education sector. These partnerships can be used to build infrastructure, conduct research, and provide scholarships. Establishing university endowment funds can offer a steady income stream, ensuring long-term financial stability. Increasing alumni donations and corporate sponsorships can also help diversify funding sources and strengthen the financial health of higher education institutions. Building institutional capacity is essential for effective governance and service delivery. Investing in

⁴⁹⁴ A. H. Khan, *Addressing Pakistan's Fiscal Challenges: Lessons for D-8 Countries* (WORLD SCIENTIFIC eBooks, 2023), 197–228

training and professional development for administrative and academic staff can enhance their skills and capabilities, leading to better institutional performance. Adopting modern management practices and technologies can also improve operational efficiency. For example, integrating management information systems (MIS) can aid in decision-making and resource allocation. Fostering a culture of innovation and continuous improvement can drive institutional growth, ensuring that universities remain competitive and relevant.⁴⁹⁵

Encouraging public-private collaborations in higher education has numerous benefits. These partnerships can leverage the strengths of both sectors, fostering innovation and efficiency. Involving the private sector in curriculum development can ensure that academic programs align with industry needs, improving graduate employability and contributing to economic growth. Collaborating with private companies to establish research and development centres can drive technological innovation and address national and global challenges. Private sector involvement in governance can bring fresh perspectives and expertise, enhancing institutional management. In conclusion, the delay in implementing the 9th NFC Award has serious implications for Pakistan's higher education sector. Addressing these challenges requires a multifaceted approach, including policy reforms, improved financial management, and capacity building. Timely execution of NFC Awards can ensure equitable resource distribution, promoting provincial development. Enhancing financial transparency and accountability can prevent resource misuse and build public trust. Innovative funding strategies can diversify revenue streams and reduce dependence on government funds. Strengthening institutional capacity can improve governance and service delivery, leading to educational excellence. Public-private collaborations can provide additional resources and expertise, driving innovation and efficiency. These recommendations can help tackle current challenges and foster long-term growth in Pakistan's higher education sector.⁴⁹⁶

7.12. Summary of the Chapter

The National Finance Commission (NFC) is vital for distributing financial resources between Pakistan's federal and provincial governments, promoting equitable development and fiscal federalism. However, delays in implementing the 9th NFC Award, particularly after the 18th Amendment, have strained provincial autonomy and hindered higher education. Provinces

⁴⁹⁵ Ibid

⁴⁹⁶ Uddin, Fasih. "Analyzing the Seventh NFC Award and Its Implications." *Policy Perspectives* 7, no. 2 (July-December 2010): 115-126. London: Pluto Journals, 2010

like Baluchistan and Khyber Pakhtunkhwa, with greater financial needs, suffer disproportionately, exacerbating regional inequalities and conflicts. The delay impacts the quality of education, research, and infrastructure, widening socioeconomic disparities. The chapter recommends timely NFC Awards with a dynamic distribution formula considering regional disparities, transparency in financial management, and diversified funding for higher education. Strengthening provincial financial autonomy, improving governance, and fostering public-private partnerships are essential for sustainable growth. The chapter underscores the need for cooperative federalism and timely fiscal reforms to ensure national unity and progress in Pakistan's higher education sector.

CHAPTER 8

INTERNATIONAL BEST PRACTICES WITH RESPECT TO REGULATORY FRAMEWORK OF HIGHER EDUCATION SECTOR

- 1. Regulatory Framework of Higher Education in India**
- 2. United Kingdom Regulatory Framework of Higher Education**

CHAPTER 8

INTERNATIONAL BEST PRACTICES WITH RESPECT TO REGULATORY FRAMEWORK OF HIGHER EDUCATION SECTOR

8.1. CASE STUDY OF INDIA: REGULATORY FRAMEWORK OF HIGHER EDUCATION

8.1.1. Introduction

The Higher education sector in 2024 has become a source of socio-economic, politico-legal, socio-cultural development and interfaith dialogue among nations. Due to its wider scope, the Higher Education Institutions have become the center of excellence to promote interfaith harmony, international culture and international standards of excellence and growth through Higher Education Institutions; ultimately changing the world into the global village. One of the largest higher education system in India dominated by private players who account for 60% of the total institutions and 64% of enrollment of students. Indian Higher Education comprised of three tiers: Universities, Universities and Council which creates a crucial connection with the regulatory framework where accrediting bodies are essential in upholding standards and quality for HEI.⁴⁹⁷ The study tries to comprehend the important issues attached with the Higher education sector: the appointment of vice chancellor, the autonomy and Accountability of Higher Education Institutions vide section 12 of the University Grant Commission Act 1956, delineation of responsibilities between union and states vide article 246 of Constitution of India 1950⁴⁹⁸, the dispute resolution mechanism under article 263 of the Constitution, the distribution of revenue via Finance Commission vide article 243 (I)(a)(i)(ii)(iii) of the constitution and the governance framework of higher education sector.⁴⁹⁹ The challenges faced by the higher education institutions including but not limited to inadequate funding, political interference, insufficient autonomy, resistance to change, lack of stakeholders involvement and quality assurance issues. The prospects include several promising developments like institutional autonomy, decentralization, technological integration, stakeholders' engagement, center-province coordination, capacity building

⁴⁹⁷ Riddhi Ambavale and Shefali Dani, "Governance in Indian Education System: An Overview," International Journal of Advanced Research in Management and Social Sciences 4, no. 2 (February 2015): 155-65.

⁴⁹⁸ It came into force on 26th January, 1950.

⁴⁹⁹ University Grant Commission Act 1956; University Grant Commission Act 1956

trainings, international collaborations, reforms initiatives and focused on research and innovation. There are multiple regulatory bodies: University Grant Commission, All India Council for Technical Education (AICTE), National Medical Commission (NMC), Bar Council of India (BCI) and National Council for Teacher Education (NCTE) overlapping jurisdiction and conflicting regulations. This cause hindrance and confusion in smooth functioning of Higher Education Institutions.⁵⁰⁰ The study encompasses regulations govern higher education research in India that it is transparent, complex and hard to navigate. The study also encompasses the broad rules that govern the three tier structure of Higher Education Institutions and reforms needed to make governing structure better. The conclusion showed that India's higher education system needs significant improvement compared to both developing and developed countries. Currently, only about 13% of students in India pursue higher education, whereas in other countries, this percentage ranges from 28% to 90%. Despite India's ambition to rank third globally in education by 2030, the reality has been different.⁵⁰¹ In the year 2000, only two Indian universities were listed among the top 500 globally, compared to one from China. However, there has been gradual progress.⁵⁰² In recent years, India has made substantial changes to its higher education system: offering broader access to affordable, high-quality university education across various disciplines, institutional autonomy, clear responsibilities between center and provinces. With a more structured and student-focused approach, India has significantly improved its enrollment numbers and overall outcomes. Additionally, India has initiated wide-ranging reforms to enhance the faculty-student ratio by making academic careers more attractive, increasing opportunities for doctoral students at research institutions and decoupling academic qualifications from teaching skills. These efforts are part of a broader strategy to elevate the quality of higher education in the country. Since information is a powerful tool, it has always been one of the key things keeping humans alive. Any economy that wants to see exponential growth in its economy must boost skill-based activities through a prospective, dynamic, and dynamic system of higher learning. There is a consensus that changes are necessary. With the passage of time, commerce, capitalization, population migration and the economy has expanded dramatically; consequently, reforming higher education has become necessary. Considering the shortcomings in the majority of the essential components of India's higher education system, including funding, quality,

⁵⁰⁰ Riddhi Ambavale and Shefali Dani, "Governance in Indian Education System: An Overview," International Journal of Advanced Research in Management and Social Sciences 4, no. 2 (February 2015): 155-65.

⁵⁰¹ Higher education in India: Vision 2030

⁵⁰² Federation of Indian Chambers of Commerce and Industry (FICCI). FICCI Higher Education Summit 2013. New Delhi: Federation of Indian Chambers of Commerce and Industry, 2013.

accessibility and governance, a tactical paradigm change in the framework of policies and general operations is required. Based on their management, universities that provide their own degrees are divided into five categories: Central Universities, State Universities, Private Universities, Institutions Deemed to be Universities, and Institutes of National Importance. Degrees are granted by universities in the name of the university that they are connected. Furthermore, fifteen professional councils, such as MCI and AICTE, oversee the courses offered by the universities and universities. Generally speaking, the University Grants Commission (UGC) is the regulatory body to look after the overall working and functions. Succinctly, in India the field of higher education is intricate and multidimensional, shaped by a wide range of laws involving both the federal and state governments. Due to the dynamic character of educational governance in India, historical, political and social variables have affected this framework's evolution. The selection of vice-chancellors, judicial oversight, and the distribution of revenues between federal and state governments, institutional autonomy, governance frameworks, and financial considerations are just a few of the framework's many facets that are examined in this study.⁵⁰³

8.1.2. A critical analysis of Regulations and process of the appointment of Vice Chancellor in India

In India, the selection of Vice-Chancellors is a crucial step in the administration of universities. VC wield considerable power and sway, influencing the administrative and scholarly landscape of higher education. But there are many obstacles in the way of selecting VCs, such as claims of political meddling, hold-ups and opaqueness. This study explains the legal framework that controls the appointment of VCs, highlights the difficulties and shortcomings in the current legislation and offers suggestions and opportunities for a more open and efficient appointment procedure. Along with other state university acts and statutes, the University Grants Commission (UGC) Act of 1956 largely governs the selection of vice-chancellors at Indian institutions. The section 12 of University Grant Commission Act 1956 describe the procedure of appointing VC, which usually entails a search committee comprised of renowned academics, has the responsibility of suggesting a group of candidates to the university's chancellor, who is typically the state governor.⁵⁰⁴ The VC is then chosen by the Chancellor from this list. Likewise, section 11(2)(3) of Central Universities Act, 2009 describes

⁵⁰³ Riddhi Ambavale and Shefali Dani, "Governance in Indian Education System: An Overview," International Journal of Advanced Research in Management and Social Sciences 4, no. 2 (February 2015): 155-65.

⁵⁰⁴ University Grants Commission (UGC) Act of 1956

the appointment of VC through search committee which comprised of the nominee of the visitor, nominee by the Executive Council, and nominee by the UGC. Finally, VC is chosen by the Chancellor. The same procedure is followed in other state universities Acts regarding appointment of topnotch position of vice chancellor in India: Section 11 & 13(2) of Maharashtra Public University Act 2016; section 8 of West Bengal University Laws Amendment Act, 2011; section 11 of Tamil Nadu university Laws amendment Act, 2017; section 7(2) of Banaras Hindu University Act 1915; section 10 of Aligarh Muslim University Act 1920; section 7 of University of Delhi Act 1922. In Panjab University (Chandigarh) the VC is appointed by the President of India, who is the Chancellor of the university. A search committee recommends a panel of names to the President for final approval. The President of India serves as the Chancellor and his decision is final.

There are loopholes in the regulations and process of appointment of vice chancellor: political interference, lack of transparency, over centralization, ambiguous eligibility criteria, delayed in appointments, unclear qualifying requirements. These problems impair the institutions' legitimacy and have an impact on how they operate. Comprehensive reforms are required to address these issues: merit base appointments, autonomy of public sector universities, improving transparency, accountability, strengthening the role of search committee, the permanent appointment of vice chancellors in public sector universities, decentralizing the appointment process and putting in place legal measures to stop political interference in appointing process. By assisting in the selection of Vice Chancellors based on merit and academic qualifications, these actions will help to enhance India's higher education system as a whole by closing these gaps, India can make sure that its institutions are run by unbiased, capable leaders who can foster innovation and academic brilliance, thereby advancing the country's socio-economic, politico-legal socio-cultural and educational progress.⁵⁰⁵

8.1.3. Autonomy and Accountability of Higher Education Institutions in India: Challenges and Prospects

In India, the autonomy of higher education institutions (HEIs) is essential for promoting academic achievement, creativity and overall growth. However, striking a balance between accountability and autonomy can be difficult, particularly in a country with as complicated and diverse an educational system as India. The capacity of higher education institutions (HEIs) to

⁵⁰⁵ Prof. (Dr.) Rajbir Singh Dalal vs Chaudhary Devi Lal University

rule themselves, make decisions about faculty recruitment, academic programs and financial management without excessive intervention is referred to as autonomy. In order to support academic freedom and institutional innovation, higher education institutions (HEIs) must have more autonomy, according to the University Grants Commission (UGC) and the National Education Policy (NEP) 2020. Establishing globally competitive schools with the ability to determine their own educational agendas is thought to require this autonomy. Even with the emphasis on autonomy, there are still a number of issues. The autonomy of higher education institutions is frequently threatened by centralized decision-making, frequent changes in higher education policies and political interference in the selection of vice chancellors. Furthermore, institutions' capacity to innovate and remain independent is hampered by budgetary limitations and an excessive reliance on government support. While autonomy is important, accountability makes sure that institutions continue to answer to the public, faculty and students, among other stakeholders. In order to improve accountability, the NEP 2020 proposes measures like audits, performance review, and accreditation. To guarantee that these procedures do not inhibit institutional creativity or result in an overabundance of bureaucratic control, they must be executed properly. NEP 2020 highlights that academic, administrative and financial autonomy shall be attained by all higher education institutions (HEIs) by 2035. Section 10.10 of the National Education Policy 2020 calls for the creation of a single regulatory body, the Higher Education Commission of India (HECI) which will be tasked with regulating through four verticals: funding through the Higher Education Grants Council (HEGC), standards-setting through the General Education Council (GEC) and regulation through the National Higher Education Regulatory Council (NHERC). The goal of this system is to give higher education institutions (HEIs) greater autonomy while maintaining strong accountability through funding and accrediting procedures. The 2018 UGC (Universities Grouping for Award of Graded Autonomy) Regulations. According to their performance, universities can be graded differently thanks to this rule. Higher grading institutions are given more latitude in terms of academic, administrative and financial decisions, including launching new programs and forming partnerships with other academic institutions. In the future, the legislative structure will need to be improved in order to provide strong accountability procedures and offer more precise autonomy guidelines.⁵⁰⁶ The future of higher education in India depends on improving financial independence, decreasing political meddling and fortifying institutional governance.

⁵⁰⁶ UNESCO, *World Guide to Higher Education: A Comparative Survey of Systems, Degrees and Qualifications*, 3rd ed. (Paris: UNESCO Publishing, 1996).

In conclusion, finding the correct balance between autonomy and responsibility is still a difficult but vital work for legislators and educational leaders, even if these elements are critical to the development of HEIs.

8.1.4. Delineation of Responsibilities between Union and State Governments

India is a federation where power is divided into union and state governments. The Constitution of 1956 elucidates the responsibilities between union and states. The seventh schedule of Constitution of India deals with list I the union list that also includes the Higher Education. The List II deals with the state list that deals with police, health and agriculture. The List III deals with the concurrent list which shows that union and states both can make legislation on these issues. The education is included in the concurrent list. According to entry 66 in List I the central government set standards through the University Grant Commission and States are responsible for implementing these standards and managing state universities.⁵⁰⁷ The entry 32 of the state list encompasses the responsibility of state to regulate universities. . The Central Universities Act of 2009 saw the establishment of several universities by the Central. There are 34 universities in the state of Madhya Pradesh in which 11 are private, 18 are state, 3 are deemed-to-be universities, and 2 are central universities. Over the past twenty years, the state has emerged as a center for higher education, with a significant increase in both the number of institutions and students. Some of the state's institutions are frequently ranked among the biggest in India in terms of enrolled students. Together with the corresponding State Universities Act and the Madhya Pradesh Universities Act, 1973, which provide a certain common structure to be followed by State Universities, the UGC determines the regulatory framework of these universities. The Central Government's specialized councils have the authority to control state-run establishments. A central statute gives the All India Council on Technical Education (AICTE) unique authority to oversee relevant universities in the fields of technical education, engineering, and architecture. The Madhya Pradesh Private University Regulatory Commission oversees the state's private universities in addition to the previously described regulatory framework. The Madhya Pradesh Private Universities (Establishment and Operation) Act, 2007 gave rise to the Commission's creation in 2007.

Another important issue that in case of conflict of legislation among union and state the union law will prevail u/a 254 of the Constitution of India.⁵⁰⁸ In order to increase cooperation

⁵⁰⁷ The Constitution of India 1956

⁵⁰⁸ The Constitution of India 1956

between union and state governments National Education Policy 2020 has been implemented but for implementation to be effective, roles and dispute resolution procedures must be clearly defined. The NEP 2020 aims to radically transform India's higher education system. To ensure the successful implementation of educational reforms, it emphasizes enhanced collaboration between the union and state governments. NEP 2020 suggests establishing a single regulatory body for higher education, excluding legal and medical education, to optimize governance and ensure consistency in standards and quality across the country. Institutional autonomy, which grants universities the freedom to independently oversee their administrative and academic operations, is a cornerstone of higher education governance. Various states and organizations have varying degrees of this autonomy. Transparent guidelines on the allocation of responsibilities and regular reviews of policy implementation can help address conflicts and improve the efficiency of the higher education system. Issues such as funding, governance structures and academic freedom are often affected by the level of autonomy granted to institutions. The Constitution clearly outlines the Union and state governments' respective roles with relation to higher education.⁵⁰⁹ State governments are essential to set standards for higher education institutions and implementation of these standards is the responsibility of states. Effective governance and the advancement of higher education in India depend on the dynamic interactions between states and union governments.

8.1.5. Governance Framework of Higher Education Sector in India: Challenges and Prospects

India inherited the Governance Framework from United Kingdom with the lack of accountability, lack of transparency, no rule of law, misuse of power and rejection of reform initiatives, bureaucratic maladministration and administrative inefficiencies with respect to HEIs.⁵¹⁰ Further, higher education in India faces numerous challenges: inadequate funding, political interference, lack of transparency and accountability, quality assurance issue, misalignment with local needs, judicial intervention, resistance to change, capacity building programs, negating the participation of important stakeholders, bureaucratic and administrative inefficiencies create hindrance for effective functioning of HEIs. To address these challenges, there have been ongoing reforms aimed at decentralizing administrative powers, institutional autonomy, technology integration, stakeholders engagement, enhance quality assurance,

⁵⁰⁹ Ibid

⁵¹⁰ M. Shamsul Haque, "New Directions in Bureaucratic Change in Southeast Asia: Selected Experiences," *Journal of Political and Military Sociology* 26, no. 1 (1998): 97

federal and provincial coordination, international collaboration, reform initiatives, focused on research and innovation, improving transparency in governance, improve accountability mechanism, fostering a culture of academic excellence and wipe out the colonial mentality from Higher Education sector along with the integration of technology in administrative and academic processes is desired to enhance efficiency and accountability.⁵¹¹ The specific governance structures are largely determined by individual universities in accordance with their own statutes and the laws of the respective state governments; while this autonomy allows universities to customize their governance models to their unique contexts, it also results in significant variation in governance practices across the nation. The University Grants Commission provides broad guidelines that influence the formation and functioning of these bodies. This structure is not without its difficulties. Transparency in these governing organizations' decision-making processes is one of the main problems. Decisions are made without taking consultation with stakeholders. The efficient administration of universities can also be hampered by inefficiencies in the decision-making processes, such as delays in the implementation of policies or administrative roadblocks. Disagreements between various governing bodies, like those between the university board and the academic council, can also obstruct efficient governance and result in delays and a lack of consistency in institutional policies. A reasonable higher education institution adapts itself to the world around it and an unreasonable expects the world to change according to its ideas. To change the governance Framework the holistic approach is needed to train university staff and management on modern lines. It was pointed out that the governance framework suffered in public sector institutions due to lack of political will, political appointments, induction of trustee and governors, polarization of Senate and Syndicate and appointment of university leadership solely at the discretion of Chancellor. The Chancellor is most often is himself a political figure. To enhance creativity and responsiveness to regional needs, universities should be granted greater authority over their academic programs, financial operations, and administrative procedures.⁵¹² Achieving a balance between oversight and autonomy requires well-defined rules, performance standards, and impartial oversight bodies. It is also crucial to involve stakeholders from the local community, academia, industry, and student body in governance structures. This inclusion fosters accountability and encourages continuous improvement. Effective

⁵¹¹ Khawaja Muhammad Khalid, Indigenous Model of Higher Education Reforms in Pakistan: Higher Education Quality Assurance Initiatives (Lahore: University of the Punjab, 2011).

⁵¹²Riddhi Ambavale and Shefali Dani, "Governance in Indian Education System: An Overview," International Journal of Advanced Research in Management and Social Sciences 4, no. 2 (February 2015): 155-65.

governance in higher education is inherently linked to accountability; without strong accountability mechanisms, governance frameworks lack effectiveness. Key elements of good governance include transparency, a supportive research environment, adequate funding for university employees, the hiring of permanent faculty, and structured appointments across all levels. These parameters ensure that governance is robust and that institutions can fulfill their educational needs effectively.⁵¹³

8.1.6. Role of Courts in Reshaping the Legislative Framework of India

In the landmark judgment of Kerala Supreme Court Case (2024) the state government of Kerala recently appealed to the Supreme Court the national president's ruling to not give his consent to amendments that were being proposed to university legislation. Reducing the state governor's influence in the selection of vice chancellors was the goal of these modifications, which some said was essential to preserving institutional autonomy. This case demonstrates the conflict between the federal government and state governments over authority over university governance, particularly between those states that do not support the ruling Bharatiya Janata Party (BJP). The current legal disputes highlight how important it is to understand how political influence affects institutional autonomy in higher education.⁵¹⁴ In another case of Manipur University Case 2022 the Supreme Court addressed concerns about Manipur University's reservation practices when it became a central university rather than a state university. The court's decision upheld the precise reservation standards that were in place prior to the university's conversion, highlighting the significance of preserving some institutional policies in the face of administrative adjustments.⁵¹⁵ This issue also highlights more general concerns about autonomy, namely how institutions should handle governance and policy transitions between various administrative controls.⁵¹⁶ In the case titled as Kalyani Mathivanan vs. K.V. Jeyaraj 2015 the Supreme Court made it clear that, in terms of upholding educational standards, universities—including state universities—must comply with the UGC norms. The Court declared that any decision made by a university's governance or appointment committee that violates UGC rules may be overturned. This ruling upholds the UGC's position as the primary regulating body responsible for maintaining standards at all universities while also honoring the independence of individual schools. The Supreme Court affirmed university

⁵¹³ Shah, Parth J. Regulatory Structure of Higher Education in India. New Delhi: Centre for Civil Society, November 2015. Submitted to the International Growth Centre.

⁵¹⁴ Supreme Court of India, [Kerala State Government vs. Union of India, (2024)].

⁵¹⁵ Manipur University Case 2022

⁵¹⁶ Citation: Supreme Court of India, Kshetrimayum Maheshkumar Singh v. Manipur University (2022), SCC Online.

autonomy in "Dr. S.P. Dubey vs. The State of Madhya Pradesh" (1996), holding that the state government could not choose a Vice-Chancellor on its own without adhering to the UGC guidelines and university statutes' prescribed selection procedures. This case brought to light the significance of following established protocols and the UGC's role in establishing guidelines for these appointments.⁵¹⁷ In 1998, the Supreme Court ruled in "The Chancellor, Masters & Scholars of the University of Oxford vs. Narendra Nath Pandey" that the appointment of a Vice-Chancellor without the search committee's advice was illegal. In order to preserve the integrity and independence of higher education institutions, the Court underlined the necessity of an open and merit-based selection procedure. The Supreme Court made clear that although private universities are free to establish their own admission standards, they must do so within the bounds of existing laws to avoid profiteering and guarantee that the admissions process is based on merit and is transparent. This story shows how governance must strike a careful balance between autonomy and regulation.

8.1.7. Finance Commission vide article 280 of constitution: A comparative Analysis

Finance Commission of India was established as an entity with constitutional mandate u/a 280 of the Constitution of India. Its main responsibility is to make recommendations regarding how tax income should be divided between the federal government, the states, and the individual governments. The Commission's autonomous operations guarantee a fair and open procedure for allocating resources. A new Finance Commission is appointed every five years to study and modify the revenue-sharing formula in light of the state of the economy. In India, the Finance Commission follows a five-year cycle that allows for regular reviews and modifications to the revenue-sharing arrangement. This consistency aids in meeting the changing financial requirements of the federal and state governments. It also offers suggestions on how to strengthen fiscal restraint, increase state Consolidated Funds, and give grants-in-aid to the states.⁵¹⁸ For instance, the 15th Finance Commission (2021–2026) gave careful thought to how to improve public health spending and encourage prudent financial management. In India, the federal government usually accepts the recommendations of the Finance Commission and promptly puts them into effect. The procedure is open and transparent, and comprehensive findings are released to the public for review and well-informed discussion. The Indian Finance Commission reaps the advantages of substantial research and institutional backing. To get input for its proposals, it interacts with a range of stakeholders, such as state governments, specialists,

⁵¹⁷ "Dr. S.P. Dubey vs. The State of Madhya Pradesh" (1996),

⁵¹⁸ The Constitution of India 1956

and civil society. The process of consultation aids in the formulation of comprehensive and knowledgeable advice. The Finance Commission of India, which was founded in accordance with Article 280 of the Constitution, is essential to the fiscal federalism of the nation since it makes recommendations for the allocation of tax income between the federal and state governments.⁵¹⁹ Its autonomous and cyclical operation, usually every five years, guarantees an open and methodical process for modifying the revenue-sharing arrangement in accordance with the prevailing economic circumstances. It is essential to have this regular review cycle in place in order to meet the changing budgetary requirements of state and federal governments. As an illustration of its wider scope than only revenue sharing, the 15th Finance Commission (2021–2026) placed a strong emphasis on improving public health spending and promoting responsible financial management. On the other hand, a number of obstacles prevent Pakistan's National Finance Commission (NFC), which was created in accordance with Article 160 of the country's constitution, from operating effectively. The NFC is in charge of the vertical allocation of funds between the federal and provincial governments, however its operations are frequently postponed because of administrative and political squabbles. The Finance Commission's recommendations are often adopted and carried out swiftly in India, but Pakistan's NFC awards have been delayed, with large intervals between awards, which has created uncertainty in provincial budget planning. The Finance Commission of India has a wider purview, covering not just the allocation of revenue but also grants-in-aid and initiatives aimed at improving state-by-state budgetary discipline. Its recommendations are well-informed and balanced because it draws from significant research and actively collaborates with stakeholders, including state governments, experts, and civil society. However, Pakistan's NFC places more of an emphasis on revenue distribution than it does on more comprehensive fiscal management techniques. Furthermore, Pakistan's NFC has come under fire for being opaque and for allowing political negotiating to have an effect that might result in less equitable decisions. In contrast, India's Finance Commission is known for operating with a high degree of transparency.

⁵¹⁹ Article 280 of Indian Constitution

8.2. Regulatory Framework of Higher Education in India and Pakistan: A Comparative Analysis

8.2.1. Appointment of Vice-Chancellors

Depending on whether the institution is state-run or centrally controlled, central and state government officials frequently have an impact on the selection of vice chancellors in India. The method used by central universities is typically more standardized, with the Vice-Chancellor being appointed by the President of India, who also serves as the Visitor of these institutions, on the basis of suggestions made by a search committee that also serves as a selection committee. On the other hand, the appointment procedure at public universities is frequently influenced by politics and might differ greatly. The intricacies and tensions surrounding these appointments between state and federal governments have been brought to light by recent court interventions, such as the Kerala verdict by the Supreme Court.⁵²⁰

In Pakistan no legislative framework was provided after the Eighteenth Amendment however in 2016 court tried to resolve the issue of appointment of vice chancellor in the case of Dr. Aurangzeb Alamger case. In this landmark judgment on the appointment of Vice Chancellors (VC), the Court addressed the challenge to a provincial Higher Education Department's notification regarding qualifications, criteria, and the search committee for VCs. It was argued that maintaining standards falls under the Federal Legislative List (FLL), meaning provincial legislatures couldn't set VC standards. The Court held that both federal and provincial laws could coexist if the Higher Education Commission's (HEC) minimum standards were not violated. The ruling emphasized cooperative federalism, allowing provinces to set higher, but not lower, standards than those prescribed by the HEC.⁵²¹

8.2.2. Autonomy of Higher Education Sector

There exists a wide range of autonomy among higher education institutions in India. Though rules imposed by organizations like the University Grants Commission can limit financial and administrative autonomy, central institutions generally have greater autonomy, especially in academic concerns. Conversely, state universities frequently see more political meddling, particularly in places where the education system is politicized. Debates over these

⁵²⁰Riddhi Ambavale and Shefali Dani, "Governance in Indian Education System: An Overview," International Journal of Advanced Research in Management and Social Sciences 4, no. 2 (February 2015): 155-65.

⁵²¹ PLD 2017 Lahore 489

institutions' autonomy usually revolve around striking a balance between institutional independence and governmental control.⁵²²

Courts in Pakistan tried to preserve the autonomy of higher education institutions. There are several judgments in which courts decided not to interfere in the internal affairs of public sector universities. There are so many other landmark judgments of Supreme Court of Pakistan in which Court decided that no interference will be made in the internal affairs of university. For ready reference we would like to quote the relevant paragraph from judgment. "The judgment highlights that the process of regularization is a policy matter and falls under the Executive's prerogative. Courts should refrain from interference unless a policy violates fundamental rights. Citation: The court cites the concept of institutional autonomy and refers to the Magna Charta Universitatum 2020 (Para 7)." ⁵²³ Likewise in other cases Court also endorsed the same idea not to interfere in the affairs of educational institutions by holding that courts are neither equipped with such expertise, nor do they possess the relevant experience that would allow for interference in such policy matters. Further it was decided that under this autonomous realm, educational institutions are entitled to deference when making any decisions related to their mission. At the same time, any transgression by Courts would amount to the usurpation of the power of another, which would be against the spirit of art.7 of the Constitution as it is not the role of the Courts to interfere in policy decisions.⁵²⁴

8.2.3. Delineation of Responsibilities between Federal/Union and State/Provincial Governments

The Constitution of 1956 elucidates the responsibilities between union and states. The seventh schedule of Constitution of India deals with list I the union list that also includes the Higher Education. The List II deals with the state list that deals with police, health and agriculture. The List III deals with the concurrent list which shows that union and states both can make legislation on these issues. The education is included in the concurrent list. According to entry 66 in List I the central government set standards through the University Grant Commission and States are responsible for implementing these standards and managing state universities. The entry 32 of the state list encompasses the responsibility of state to regulate

⁵²² Shah, Parth J. Regulatory Structure of Higher Education in India. New Delhi: Centre for Civil Society, November 2015. Submitted to the International Growth Centre.

⁵²³ 2024 SCP 44

⁵²⁴ 2024 SCP 44 in the case titled as: Vice Chancellor Agriculture University, Peshawar Versus Muhammad Shafiq, etc. (In CP 2270/2019)

universities. Further National Educational Policy has been devised to implement these standards set by Union government.

In Pakistan the Dr. Aurangzeb case (PLD 2017 489) addressed the delineation of responsibilities between the Federation and provinces concerning higher education standards. The Court ruled that maintaining educational standards falls under the Federal Legislative List (FLL), but provincial laws can coexist with federal laws as long as they meet or exceed the minimum standards set by the Higher Education Commission (HEC). The judgment emphasized cooperative federalism, allowing both the Federation and provinces to set standards for Higher Education Institutions (HEIs), with federal standards serving as the baseline. Provincial laws cannot set standards lower than the federal minimum.

8.2.4. Governance Framework

Higher education in India is governed by a multi-tiered structure comprising administrative bodies, university boards, and academic councils. While the UGC offers broad recommendations, individual universities—especially central universities—have considerable discretion in choosing their own governance arrangements. Effective management is occasionally compromised by the fact that state university governance is sometimes more vulnerable to political interference. India's higher education governance framework, inherited from the UK, faces challenges such as political interference, lack of transparency, and administrative inefficiencies. Despite structured frameworks, issues like inadequate funding, quality assurance, and resistance to change persist. The University Grants Commission provides broad guidelines, but governance practices vary significantly across universities. To address these challenges, reforms focus on decentralizing powers, enhancing institutional autonomy, improving transparency, and integrating technology. Effective governance requires balancing oversight with autonomy, involving stakeholders, and strengthening accountability mechanisms to foster creativity, responsiveness to regional needs, and continuous improvement in the higher education sector.⁵²⁵

The governance framework of Pakistan's higher education sector is marked by ongoing tensions between federal and provincial authorities. Despite the 18th Amendment's intent to decentralize governance, the Federal Higher Education Commission (HEC) retains significant control, resisting power devolution to provincial commissions established under the Punjab

⁵²⁵ Riddhi Ambavale and Shefali Dani, "Governance in Indian Education System: An Overview," International Journal of Advanced Research in Management and Social Sciences 4, no. 2 (February 2015): 155-65.

and Sindh Higher Education Acts. The 2021 HEC Amendment Ordinance further centralized power by transferring the appointment authority of the Executive Director to the Prime Minister, reducing the Chairperson's tenure and status, and placing the commission under the Ministry of Federal Education's (MOFE) control. This centralization undermines provincial autonomy and risks politicizing higher education, with implications for funding, scholarships, and research. Proposed amendments in 2023 seek to further diminish the HEC Chairperson's role, exacerbating concerns over federal dominance. Critics, including private university associations, warn that these changes could hinder the quality and regional responsiveness of higher education, contrary to the devolution aims of the 18th Amendment.⁵²⁶

8.2.5. Finance Commission

The Finance Commission of India, established under Article 280 of the Constitution, plays a crucial role in fiscal federalism by recommending the distribution of tax revenue between the federal and state governments. Operating autonomously on a five-year cycle, it ensures transparency and adaptability to changing economic conditions.⁵²⁷ The 15th Finance Commission (2021–2026) emphasized public health spending and fiscal management. Unlike India's transparent and research-backed process, Pakistan's National Finance Commission (NFC), under Article 160, faces delays due to political and administrative challenges, focusing mainly on revenue distribution, often lacking broader fiscal management and transparency.

8.2.6. Recommendations

Both India and Pakistan should place a high priority on strengthening institutional autonomy by making sure that important appointments, like vice chancellors, are made on the basis of merit and are independent of political influence in order to fortify their higher education sectors. This autonomy would be protected by the creation of independent oversight boards that include members from business, academia, and civil society. It is imperative that the roles and duties of the federal, state, and local governments be more clearly defined. While Pakistan must define the HEC's role in the wake of the 18th Amendment to ensure smooth governance, India can avoid overlap and conflicts by fine-tuning the roles of the UGC and state education authorities. University governance structures need to be made more effective and open. Regular audits, open decision-making procedures, and the adoption of more robust accountability mechanisms can all help achieve this. Prioritizing higher education in revenue-

⁵²⁶ HEC Amended Ordinances 2002, 2019, 2021

⁵²⁷ Article 280 of Constitution of India

sharing formulae is imperative for Finance Commissions in both nations. They should ensure that institutions in impoverished regions receive sufficient support. This has the potential to close the access and quality gap in education. Lastly, official dispute resolution processes between the federal, state, and local governments ought to be set up. Examples of this include mediation councils and special education tribunals. By ensuring that disagreements are resolved amicably and quickly, these organizations would facilitate better coordination and governance within the higher education industry.

8.2.7. Conclusion

India's higher education system is at a critical juncture, facing both significant challenges and promising opportunities. The current framework, shaped by a complex interplay of federal and state regulations, suffers from issues such as political interference, inadequate funding, lack of autonomy, and governance inefficiencies. Despite these obstacles, recent reforms, including the National Education Policy 2020, emphasize the importance of institutional autonomy, transparency, and stakeholder engagement to enhance the quality and accessibility of higher education. The role of regulatory bodies, judicial oversight, and finance commissions is crucial in this evolving landscape. To fully realize its potential, India must address these challenges through comprehensive reforms that ensure merit-based leadership appointments, balanced governance, and effective collaboration between union and state governments. By doing so, India can transform its higher education sector into a global leader, driving socio-economic, cultural, and technological progress on both national and international stages.

8.3. Case Study of United Kingdom: Regulatory Framework of Higher Education

8.3.1. Introduction

The UK has been a leader in higher education (HE) sector policy reforms, with a strong focus on promoting effective financial management, robust internal governance, greater public accountability, greater institutional autonomy, transparency and enhanced performance.⁵²⁸ The UK has a long history of sustained HE reforms, often driven by new public management (NPM) discourses and central government funding cuts.⁵²⁹ Before the 1900s, universities in the UK were considered autonomous institutions focused on producing and sharing knowledge for its own sake.⁵³⁰ This traditional view emphasized that academic freedom and autonomy were essential for universities to fulfill their roles in society.⁵³¹ As a result, academic opinion was considered "supreme," and UK HEIs were generally successful in resisting external pressures.⁵³² The higher education (HE) sector worldwide has undergone and continues to experience significant changes and reforms.⁵³³ The international HE environment is now characterized by larger student populations, reduced government funding, strict regulation, increased national and international competition, diverse stakeholders and the widespread adoption of neo-liberal economic principles, particularly New Public Management (NPM) techniques.⁵³⁴ These developments have placed a greater focus on financial imperatives, operational efficiency, strong internal governance, and the emphasis on "accountability" and "transparency".⁵³⁵ HEIs were typically structured with collegial or faculty governance models,

⁵²⁸ Collins G. Ntim, "Governance Structures, Voluntary Disclosures and Public Accountability: The Case of UK Higher Education Institutions," "Accounting, Auditing & Accountability Journal," Accounting, Auditing & Accountability Journal 30, no. 1 (2017): 65-118, <https://doi.org/10.1108/AAAJ-10-2014-184>.

⁵²⁹ Ron Dearing, Higher Education in the Learning Society: Report of the National Committee of Inquiry into Higher Education (London: Her Majesty's Stationery Office, 1997).

⁵³⁰ Michael Shattock, "Governance and Management in Universities: The Way We Live Now," Journal of Education Policy 14, no. 3 (1999): 271-82.

⁵³¹ Bob Bennett, "The New Style Boards of Governors—Are They Working?" Higher Education Quarterly 56, no. 3 (2002): 287-302.

⁵³² John Dearlove, "A Continuing Role for Academics: The Governance of UK Universities in the Post-Dearing Era," Higher Education Quarterly 56, no. 3 (2002): 257-75.

⁵³³ Brian Salter and Ted Tapper, "The External Pressures on the Internal Governance of Universities," Higher Education Quarterly 56, no. 3 (2002): 245-56.

⁵³⁴ Terry Melville-Ross, "Leadership, Governance, and Management," Perspectives: Policy and Practice in Higher Education 14, no. 1 (2010): 3-6.

⁵³⁵ Jim Hordern, "Skills Governance and the Workforce Development Programme," Journal of Higher Education Policy and Management 35, no. 1 (2013): 54-65.

where senior academics made strategic decisions and led the institution.⁵³⁶ In theory, there was a two-tier governance structure, with a senate composed of academics and a governing council with broader policy and administrative powers.⁵³⁷ However, in practice, the council's role was often limited to approving decisions.⁵³⁸ The governance model of UK HEIs remained largely unchallenged until 1919 when the University Grants Committee (UGC) was established to oversee university status and funding.⁵³⁹ More direct external control began with the Robins Report in 1963, which recommended expanding the HE sector by upgrading technical institutes and universities to HEIs.⁵⁴⁰ This report introduced a neo-liberal approach to higher education, viewing it as an economic resource necessary for national development.⁵⁴¹ The Robins Report led to the establishment of polytechnics, which offered vocational and professional courses distinct from traditional academic programs.⁵⁴² However, polytechnics were still under local council control, leading to bureaucratic interference.⁵⁴³ The Jarratt Report in 1985 focused on improving efficiency in universities, suggesting that they should be run as business-like public corporations with a unitary governing board consisting mainly of independent members with industrial or commercial experience.⁵⁴⁴ This report aimed to reduce the influence of academics in governance and increase the role of lay members. The recommendations of the Jarratt Report were enacted into law through the Education Reform Act (ERA) of 1988, which transferred control of polytechnics from local authorities to HE corporations, leading to a two-tier HEI system.⁵⁴⁵ The Further and Higher Education Act (FHEA) of 1992 merged the polytechnic and university funding councils into a single body, the Higher Education Funding Council for

⁵³⁶ John Sizer and Linda Howells, "The Changing Relationship between Institutional Governance and Management in the United Kingdom: A Scottish Higher Education Funding Council Perspective," *Tertiary Education and Management* 6, no. 3 (2000): 159-76.

⁵³⁷ Michael Shattock, "Governance and Management in Universities: The Way We Live Now," *Journal of Education Policy* 14, no. 3 (1999): 271-82.

⁵³⁸ John Dearlove, "A Continuing Role for Academics: The Governance of UK Universities in the Post-Dearing Era," *Higher Education Quarterly* 56, no. 3 (2002): 257-75.

⁵³⁹ Bob Bennett, "The New Style Boards of Governors—Are They Working?" *Higher Education Quarterly* 56, no. 3 (2002): 287-302.

⁵⁴⁰ Robin Middlehurst, "Changing Internal Governance: A Discussion of Leadership Roles and Management Structures in UK Universities," *Higher Education Quarterly* 58, no. 4 (2004): 258-79.

⁵⁴¹ John Sizer and Linda Howells, "The Changing Relationship between Institutional Governance and Management in the United Kingdom: A Scottish Higher Education Funding Council Perspective," *Tertiary Education and Management* 6, no. 3 (2000): 159-76.

⁵⁴² Ibid

⁵⁴³ Ibid

⁵⁴⁴ Melvyn Knight, "Governance in Higher Education Corporations: A Consideration of the Constitution Created by the 1992 Act," *Higher Education Quarterly* 56, no. 3 (2002): 276-88.

⁵⁴⁵ John Sizer and Linda Howells, "The Changing Relationship between Institutional Governance and Management in the United Kingdom: A Scottish Higher Education Funding Council Perspective," *Tertiary Education and Management* 6, no. 3 (2000): 159-76.

England (HEFCE), and granted university status to polytechnics. These reforms made HEIs more responsive to the country's economic needs but also led to a rapid increase in student numbers, putting pressure on public funding.⁵⁴⁶ Reports such as those by Nolan (1995/1996), Dearing (1997), Lambert (2003), and Browne (2010) have focused on reforming HE governance and funding, emphasizing the need for efficiency, accountability, autonomy, delineation of responsibilities among England and Scotland, Northern Ireland, Wales and value for money. The Nolan Report (1995/1996) highlighted the principles of good governance in public life, including in HEIs. The Dearing Report (1997) called for a reduction in the size of governing boards and proposed a mixed funding system of government grants and student fees, ending free higher education in the UK. The Lambert Report (2003) recommended a formal code of governance for all HEIs, with financial penalties for non-compliance. Following the 2007/2008 financial crisis, the Browne Report (2010) introduced full tuition fees with a cap of £9,000 and reformed the funding system, aiming to create a market-like environment in HE to improve quality and reduce costs (Melville-Ross, 2010; Taylor, 2013b). This has led to greater external regulation and scrutiny, with HEIs being held accountable for teaching quality, research outcomes, and overall performance. The implementation of the Browne Report (2010) on UK HE funding, following the 2007/2008 global banking crisis and subsequent funding cuts in 2010, has raised concerns about the financial sustainability, efficiency, and competitiveness of UK universities.⁵⁴⁷ These changes have led to a focus on how HEIs voluntarily disclose information in their annual reports as a means of ensuring external accountability and transparency, as well as the role of governance structures in enhancing public accountability. Succinctly, world-class universities including Imperial University London, Cambridge, and Oxford are located in the United Kingdom. These universities are renowned for their worldwide impact and broad range of academic offerings. Universities and Further Education Institutions: In addition to universities, a large number of universities and further education establishments offer higher education programs, frequently emphasizing the development of skills and vocational training. Degree Structure in Scotland, undergraduate degrees are awarded after four years, as opposed to the usual three years. Postgraduate doctoral programs normally take three to four years to finish, while master's degrees often last one year. The Teaching Excellence and Student Outcomes Framework (TEF) is one of the new regulatory frameworks for higher education that the Office for Students (OfS) implemented with the Higher Education

⁵⁴⁶ John Dearlove, "A Continuing Role for Academics: The Governance of UK Universities in the Post-Dearing Era," *Higher Education Quarterly* 56, no. 3 (2002): 257-75.

⁵⁴⁷ (UUK, 2011)

and Research Act of 2017. The Quality Assurance Agency (QAA) was established as one of the major changes to university governance brought about by the Education Reform Act of 1988. The Further and Higher Education Act of 1992 governed the founding of new universities and established the guidelines for financing and overseeing UK higher education establishments. Higher education institutions are required by the Equality Act of 2010 to uphold equality and prohibit discrimination based on age, disability, gender, and race. In an effort to increase accountability and openness, the Freedom of Information Act of 2000 mandates that public entities, including universities, grant access to specific information they own.⁵⁴⁸

8.3.2. Key Factors Elevating the Governance Framework of United Kingdom Higher Education

Several factors contribute to the success of the UK's higher education sector, setting it apart from others. However, I will focus on six key elements that significantly enhance the UK's higher education system.

Element 1: Accountability The governing body holds collective responsibility for institutional activities and decisions, particularly those with significant reputational impacts. It ensures that the institution complies with legal and regulatory requirements, governance instruments, and public funding conditions. Members must uphold public life standards and take accountability for institutional affairs, with all members sharing equal legal responsibilities. Transparency in operations and separation of roles between the governing body and the Executive is crucial.

Element 2: Sustainability The governing body, in collaboration with the Executive, sets the institution's mission, strategic direction and values. It ensures that resources support institutional aims, meets academic standards, and manages risks effectively. The governing body monitors performance against the strategic plan, ensuring compliance with funding conditions and promoting academic governance, sustainability, and student interests. It must uphold academic freedom and meet legal responsibilities for freedom of speech.

Element 3: Reputation governing body members must act ethically, adhering to public life principles, and the institution's ethical framework. They must avoid conflicts of interest and ensure decision-making is free from external pressures. The governing body should maintain effective communication with stakeholders, oversee the Students' Union, and ensure

⁵⁴⁸ John Dearlove, "A Continuing Role for Academics: The Governance of UK Universities in the Post-Dearing Era," *Higher Education Quarterly* 56, no. 3 (2002): 257-75.

transparent complaint handling. If remuneration for governing body members is permitted, it must align with the institution's values and legal requirements.

Element 4: Inclusion and Diversity The governing body fosters a culture of ethical behavior, equality, inclusivity, and diversity within the institution and its operations. It ensures compliance with equality legislation and promotes inclusivity in decision-making. The governing body regularly reviews its own composition, encourages diversity, and leads by example.

Element 5: Effectiveness The governing body ensures governance structures are robust and agile, regularly reviewing performance against the Code. The Secretary provides operational and legal advice, ensuring informed decision-making. The governing body should have a balanced composition and an effective sub-committee structure. It promotes a culture of intelligent questioning and strategic focus. There must be arrangements for leadership continuity, independent governance review, and member fitness evaluation. Induction and ongoing development for members are essential.⁵⁴⁹

Element 6: Engagement The governing body ensures that the institution's activities align with the interests of students and stakeholders, maintaining independence and academic integrity. It promotes effective communication, transparency in reporting, and engagement with local communities. Partnerships should be carefully assessed for benefits and risks, with strong governance and risk management practices in place.⁵⁵⁰

8.3.3. Historical background of Higher Education laws in United Kingdom

Throughout the past century, a number of important legal and policy developments have had a substantial impact on the development of higher education in the UK. In order to consistently distribute public funds to universities, the government formed the University Grants Committee (UGC) in 1919, the year after World War I.⁵⁵¹ With some degree of institutional autonomy preserved, this signaled the start of state intervention in higher education. The Education Act of 1944, which expanded the pool of students eligible to attend

⁵⁴⁹ John Sizer and Linda Howells, "The Changing Relationship between Institutional Governance and Management in the United Kingdom: A Scottish Higher Education Funding Council Perspective," *Tertiary Education and Management* 6, no. 3 (2000): 159-76.

⁵⁵⁰ *Ibid*

⁵⁵¹ University Grants Committee, *Report of the University Grants Committee* (London: Her Majesty's Stationery Office, 1919).

universities by offering free secondary education, laid the groundwork for the expansion of higher education. The act's primary focus was on primary and secondary education.⁵⁵²

Higher education expansion attempts continued in the postwar era. Future educational strategies will be influenced by the 1946 Barlow Report, which stressed the need of increasing the number of students studying science and technology to meet the demands of a contemporary economy. In response to mounting economic pressures, the Robbins Report of 1963 promoted higher education expansion and stated that all eligible citizens should have access to it. New universities were established as a result of this report, and government financing for higher education was expanded.

Margaret Thatcher's UK government expanded its involvement in higher education during the 1980s. Significant reforms were brought about by the Education Reform Act of 1988, which eliminated the distinction between universities and polytechnics and created a more cohesive higher education system with more financial accountability.⁵⁵³ This growth was maintained by the Further and Higher Education Act of 1992, which established Higher Education Funding Councils to supervise the distribution of public monies and permitted polytechnics to become universities.⁵⁵⁴

There has been a change in higher education towards marketization in the twenty-first century. The Teaching and Higher Education Act of 1998 imposed tuition fees on students, making them responsible for a portion of their educational expenses. The Higher Education Act of 2004 carried on this trend by allowing universities to charge variable tuition and creating the Office of Fair Access (OFFA) to guarantee equal access to higher education. The Office for Students (OfS) was established as a regulator and the Teaching Excellence Framework (TEF) was introduced to evaluate teaching quality as part of the Higher Education and Research Act of 2017, which increased the sector's competitiveness.⁵⁵⁵

The UK government has been working to improve higher education policy in order to address student welfare, economic concerns, and global challenges in recent years. The sector is always changing, as seen by the ongoing conversations over the sustainability of tuition prices and the effects of Brexit on higher education. One of the key themes in the UK's higher

⁵⁵² Education Act of 1944, 7 & 8 Geo. 6, c. 31 (London: Her Majesty's Stationery Office, 1944).

⁵⁵³ Education Reform Act of 1988, 1988 c. 40 (London: Her Majesty's Stationery Office, 1988).

⁵⁵⁴ Further and Higher Education Act of 1992, 1992 c. 13 (London: Her Majesty's Stationery Office, 1992).

⁵⁵⁵ Higher Education and Research Act of 2017

education development continues to be striking a balance between institutional autonomy, government monitoring, and market forces.

8.3.4. Factors Contributing High Academic Performance of World Class Institutions: Oxford, Cambridge and Harvard

There are multiple factors contributing in the Academic performance of world class institutions including but not limited to selective admissions, expert faculty, rigorous academic culture, extensive resources, collaborative & competitive environment, strong institutional support, global network & opportunities, and Holistic development. Further, historical prestige and academic tradition, intensive teaching methods, interdisciplinary & research opportunities, global network and intellectual exchange, emphasis on individual initiative, mentorship and alumni influence and cultural climate and intellectual climate.⁵⁵⁶

The lengthy reputation of Harvard and the centuries-old traditions of Oxford and Cambridge have fostered an intellectual culture firmly anchored in quality. Because these universities have long been hubs for intellectual discussion and thought, rigor in the classroom is not just encouraged but also expected. The burden of their historical legacies forces both teachers and pupils to uphold extraordinarily high standards.

The tutorial (or supervision) system at Oxford and Cambridge offers a highly individualized and intensive kind of instruction. Students must present and defend their work in weekly or biweekly meetings with eminent academics in their discipline. This approach honed critical thinking and communication abilities while also expanding comprehension. Harvard uses the case approach and discussion-based learning, which pushes students to apply theoretical knowledge to real-world situations. This is especially evident in its law and business schools.

Early in a student's academic career, these universities provide ample chances for research and promote multidisciplinary study. While students at Harvard benefit from the university's extensive research institutes and global initiatives, those at Oxford and Cambridge frequently have access to research projects and specialized libraries linked to their particular university. Being exposed to state-of-the-art research stimulates creativity and improves academic achievement.

⁵⁵⁶ University Grants Committee, Report of the University Grants Committee (London: Her Majesty's Stationery Office, 1919

Owing to their international reputation, Oxford, Cambridge, and Harvard draw a varied student and faculty population from all over the world. This diversity fosters a lively exchange of viewpoints and ideas that enhances the educational process. Additionally, these institutions are a part of large international networks that enable partnerships with top research centers, universities, and businesses throughout the world, giving students access to chances for study and employment across borders.

Students at these universities are encouraged to follow their own academic interests with a high degree of autonomy, as part of a culture that values intellectual independence. Because of their independence and easy access to a multitude of materials, students are able to thrive in specialized fields and produce innovative work. Assuming responsibility for one's own education encourages self-control and a more involved approach to learning.

Beyond official schooling, mentoring is important. Educators frequently act as mentors, assisting students in developing both academically and professionally. Furthermore, the impact of a strong alumni network reinforces students' academic and professional paths by offering them exclusive chances for internships, research positions, and career growth.⁵⁵⁷

These universities foster an intellectual environment where conversation, debate, and creativity are commonplace. It is not only required of students to think critically, debate ideas, and participate in academic discourse, but it is also highly encouraged. Students are driven to high levels of academic accomplishment by the cultural capital associated with attending elite institutions, which also instills in them a sense of responsibility to make important contributions to their disciplines and society.⁵⁵⁸

8.4. A Comparative Analysis of Regulatory Framework of Higher Education sector in United Kingdom and Pakistan

8.4.1. Appointment of Vice Chancellor in Universities

In the United Kingdom, the appointment of Vice-Chancellors is predominantly managed by the internal mechanisms of individual universities, with a focus on qualifications, openness, and autonomy from political sway. Governing bodies, sometimes known as search committees, are usually made up of senior academics, outside members, and occasionally

⁵⁵⁷ Robin Middlehurst, "Changing Internal Governance: A Discussion of Leadership Roles and Management Structures in UK Universities," *Higher Education Quarterly* 58, no. 4 (2004): 258-79.

⁵⁵⁸ Ibid.

student representatives. Their role is to oversee the process and make sure that the VC chosen is in line with the institution's strategic objectives.⁵⁵⁹

In Pakistan, the appointment of Vice-Chancellors often involves significant influence from federal and provincial authorities, with political considerations sometimes playing a role. The process can vary between provinces and institutions, leading to inconsistencies and, at times, political interference. The landmark Aurangzeb Alamgir case highlighted the tension between federal standards set by the Higher Education Commission (HEC) and provincial autonomy, emphasizing the need for a balance that maintains academic standards while respecting provincial rights.⁵⁶⁰

8.4.2. Autonomy of Higher Education Institutions

UK universities have a great deal of autonomy, especially when it comes to financial management, academic governance, and strategic planning. Because of a long history of self-governance and little government interference, these institutions are able to remain true to their distinctive objectives while adjusting to the ever-changing landscape of education. Accountability has been strengthened without compromising autonomy according to the Higher Education and Research Act of 2017 and the Teaching Excellence and Student Outcomes Framework (TEF) that the Office for Students (OfS) developed.⁵⁶¹

Courts in Pakistan tried to preserve the autonomy of higher education institutions. There are several judgments in which courts decided not to interfere in the internal affairs of public sector universities. There are so many other landmark judgments of Supreme Court of Pakistan in which Court decided that no interference will be made in the internal affairs of university. For ready reference we would like to quote the relevant paragraph from judgment. "The judgment highlights that the process of regularization is a policy matter and falls under the Executive's prerogative. Courts should refrain from interference unless a policy violates fundamental rights. Citation: The court cites the concept of institutional autonomy and refers to the Magna Charta Universitatum 2020 (Para 7)."⁵⁶² Likewise in other cases Court also endorsed the same idea not to interfere in the affairs of educational institutions by holding that courts are neither equipped with such expertise, nor do they possess the relevant experience

⁵⁵⁹ Oliver Fulton, "Higher Education Governance in the UK: Change and Continuity."

⁵⁶⁰ PLD 2017 Lahore 489

⁵⁶¹ Collins G. Ntim, "Governance Structures, Voluntary Disclosures and Public Accountability: The Case of UK Higher Education Institutions," "Accounting, Auditing & Accountability Journal," Accounting, Auditing & Accountability Journal 30, no. 1 (2017): 65-118, <https://doi.org/10.1108/AAAJ-10-2014-184>.

⁵⁶² 2024 SCP 44

that would allow for interference in such policy matters. Further it was decided that under this autonomous realm, educational institutions are entitled to deference when making any decisions related to their mission. At the same time, any transgression by Courts would amount to the usurpation of the power of another, which would be against the spirit of art.7 of the Constitution as it is not the role of the Courts to interfere in policy decisions.⁵⁶³

8.4.3. Governance Framework of Higher Education Institutions

A strong framework serves as the foundation for the governance of UK universities, with a governing council or board of trustees in charge of accountability, financial management, and strategic oversight. This structure adheres to the ideals of New Public Management (NPM) by fostering accountability, openness, and operational efficiency. Governance reforms have been influenced by reports like the Jarratt Report (1985), the Dearing Report (1997), and the Browne Report (2010), which highlight the need for a more business-like approach to university management while maintaining academic independence.

The governance framework of Pakistan's higher education sector is marked by ongoing tensions between federal and provincial authorities. Despite the 18th Amendment's intent to decentralize governance, the Federal Higher Education Commission (HEC) retains significant control, resisting power devolution to provincial commissions established under the Punjab and Sindh Higher Education Acts. The 2021 HEC Amendment Ordinance further centralized power by transferring the appointment authority of the Executive Director to the Prime Minister, reducing the Chairperson's tenure and status, and placing the commission under the Ministry of Federal Education's (MOFE) control. This centralization undermines provincial autonomy and risks politicizing higher education, with implications for funding, scholarships, and research. Proposed amendments in 2023 seek to further diminish the HEC Chairperson's role, exacerbating concerns over federal dominance. Critics, including private university associations, warn that these changes could hinder the quality and regional responsiveness of higher education, contrary to the devolution aims of the 18th Amendment.

8.4.4. Delineation of Responsibilities between Central and Provincial Governments

In the UK, the roles of the central and devolved governments are well defined. Since education is a devolved topic, England, Scotland, Wales, and Northern Ireland are free to create their own educational policies as long as they support the main goals of the country. This

⁵⁶³ 2024 SCP 44 in the case titled as: Vice Chancellor Agriculture University, Peshawar Versus Muhammad Shafiq, etc. (In CP 2270/2019)

method preserves the coherence of the national framework for higher education while enabling customized instructional tactics that address local needs.⁵⁶⁴

In Pakistan the Dr. Aurangzeb case (PLD 2017 489) addressed the delineation of responsibilities between the Federation and provinces concerning higher education standards. The Court ruled that maintaining educational standards falls under the Federal Legislative List (FLL), but provincial laws can coexist with federal laws as long as they meet or exceed the minimum standards set by the Higher Education Commission (HEC). The judgment emphasized cooperative federalism, allowing both the Federation and provinces to set standards for Higher Education Institutions (HEIs), with federal standards serving as the baseline. Provincial laws cannot set standards lower than the federal minimum.⁵⁶⁵

8.4.5. Finance Commission

The UK does not have a dedicated Finance Commission for education; instead, financial organizations such as Research England and the Higher Education financial Council for England (HEFCE), which has been replaced by the Office for Students, manage the distribution of cash to universities. By ensuring that financing is in line with research output, performance measures, and strategic objectives, these organizations foster accountability, sustainability, and efficiency. Unlike United Kingdom transparent and research-backed process, Pakistan's National Finance Commission (NFC), under Article 160, faces delays due to political and administrative challenges, focusing mainly on revenue distribution, often lacking broader fiscal management and transparency.⁵⁶⁶

8.4.6. Governance Framework, Appointment method and powers of Vice Chancellor in UK, USA, Malaysia and Japan: A Comparative analysis

The laws, rules, and regulations regarding appointments at higher levels in different countries vary widely. However, there are some common themes and differences in the appointment processes across different countries, which can be compared as follows: In most developed countries, the criterion for appointments at higher levels are based on merit, academic excellence, leadership & managerial skills, research and scholarly publications. Usually, there is a focus on transparency and fairness in the selection process, as well as on the

⁵⁶⁴ Martina Vukasovic and Jeroen Huisman, "The Governance of Higher Education in Europe: A Comparative Analysis," European Journal of Education 47, no. 2 (2012): 234-48.

⁵⁶⁵ PLD 2017 Lahore 489

⁵⁶⁶ Barr, N. (2004). "Higher Education Funding: An International Comparison." Higher Education Review, 36(1), 5-28.

qualifications and experience of the candidates.⁵⁶⁷ In contrast, in some developing countries like Pakistan, appointments at higher levels may be influenced by political considerations, personal connections, or other non-merit-based factors as in a famous case court declared the appointment of vice chancellor null and void and ordered to re-initiate the whole process.⁵⁶⁸ In developed countries, the appointment process is usually formalized and transparent, with clear criterion and procedures for the selection of candidates. There may be a search committee or an independent body that oversees the selection process, and the candidates required to undergo interviews or other selection tests. In developing countries like Pakistan, the appointment process may be less formalized, with ad-hoc decision-making and less transparent procedures: there is no mechanisms to fulfill the vacant positions immediately and there are so many positions at higher level are vacant. Similarly, highest positions are to be fulfilled on temporary basis. In March, 2024 a writ petition has been filed before Supreme Court of Pakistan by All Pakistan Universities BPS Teachers Association (APUBTA) that 64 Higher Education Institutions don't have permanent vice chancellors; therefore, they prayed that Government should be directed to make appointments on urgent basis without compromising the merit and transparency.⁵⁶⁹⁵⁷⁰ In developed countries, there is usually a greater emphasis on institutional autonomy and governance, with universities and other higher education institutions having more control over their own affairs. In contrast, in some developing countries, like Pakistan there is a tendency to make appointments at higher level on ad-hoc basis so that higher level officials can be controlled by politicians easily.⁵⁷¹⁵⁷² In developed countries, there is usually a greater emphasis on diversity and inclusivity in the appointment process, with efforts to promote gender, ethnic, and cultural diversity among candidates. In contrast, in some developing countries like Pakistan, appointments at higher levels may be dominated by a narrow elite group, with little effort to promote diversity and inclusivity.⁵⁷³ In developed countries, there is usually a greater emphasis on public accountability mechanisms in the appointment process, with mechanisms for public scrutiny and oversight of the selection process. In contrast, in some developing countries like Pakistan, the appointment process may

⁵⁶⁷ Saha, Parth J. "The Regulatory Structure of Higher Education in India" Working paper, International Growth Centre: Centre for Civil Society, 2015. F-35110-I.

⁵⁶⁸ 2018 PLC Service 267; Dr. Akmal Hussain case

⁵⁶⁹ Sabih Ul Hussnain, March, 26, 2024, the Friday Times CPLA/2024 "SC urged to ensure lawful appointment of vice chancellors in varsities"

⁵⁷⁰ 2018 PLC Service 1; 2018 PLJ 610; Muhammad Hussain Cheema case

⁵⁷¹ Sabih Ul Hussnain, March, 26, 2024, the Friday Times Retrieved on 23.05.2024 at 11:25 PM

⁵⁷² 2018 PLJ 610

⁵⁷³ 2017 PLC Service 1376

be less transparent and subject to less public scrutiny.⁵⁷⁴ Not only this but Supreme Court also denied to hear the cases of universities and their employees on the basis of statutory and non-statutory rules. The Supreme Court also declared that the relationship of university and its employees is a relationship of Master and Servant. The available remedy is compensation only. Those who have removed from service by the university shall not be reinstated to their positions.⁵⁷⁵

8.4.7. Recommendations

Strengthen the autonomy of higher education institutions in Pakistan by reducing political interference in the appointment of Vice-Chancellors and other key administrative roles. Implement a transparent, merit-based selection process similar to the UK model, where governing bodies play a central role in these appointments. The UK's approach emphasizes institutional autonomy, ensuring that universities can operate independently while maintaining alignment with strategic goals.⁵⁷⁶ This could lead to more effective governance and academic excellence in Pakistan's institutions. Adopt a governance framework for Pakistani universities that mirrors the UK's balance of academic freedom with robust financial oversight. Introduce a unitary board structure with a mix of independent members with industry experience and senior academics to enhance accountability and operational efficiency. The UK's governance reforms, particularly those inspired by the Jarratt and Dearing Reports, have created a more business-like yet academically free environment. Implementing similar reforms could enhance the governance of higher education institutions in Pakistan. Introduce accountability mechanisms similar to the UK's Teaching Excellence and Student Outcomes Framework (TEF) to ensure quality in teaching and research. This could include performance-based funding and regular audits of university governance practices. The focus on accountability and transparency in the UK has improved the quality of higher education. Pakistan could benefit from similar measures to ensure that universities meet their educational objectives and serve the public interest effectively. Develop a more sustainable financial model for Pakistani universities that combines government funding with student fees, private sector partnerships, and endowments, similar to the UK's mixed funding system. The UK's approach to financial management, particularly the reforms introduced by the Browne Report, has helped create a more sustainable

⁵⁷⁴ 2016 PLJ 670

⁵⁷⁵ Dearlove, John. "A Continuing Role for Academics: The Governance of UK Universities in the Post-Dearing Era." *Higher Education Quarterly* 56, no. 3 (2002): 257-275.

⁵⁷⁶ Ibid

higher education system.⁵⁷⁷ Adopting a similar model in Pakistan could help institutions better manage financial pressures while maintaining quality. Implement policies that promote diversity and inclusivity in the governance and academic environment of Pakistani universities, drawing on the UK's commitment to equality and inclusivity in decision-making and governance. Diversity and inclusion are key strengths of the UK's higher education sector. Promoting these values in Pakistan could enhance the academic environment and broaden access to higher education. Clearly delineate the responsibilities between federal and provincial governments in Pakistan's higher education sector, ensuring that standards are maintained while allowing for regional flexibility, similar to the UK's approach to devolved governance in education. The UK's model of devolved governance allows for tailored educational policies while maintaining national standards. Clarifying roles in Pakistan could reduce conflicts and improve the effectiveness of higher education governance.

8.4.8. Conclusion

The comparison between the higher education systems of the United Kingdom and Pakistan reveals several critical areas for potential reform and improvement in Pakistan's higher education sector. The UK's regulatory framework, characterized by strong institutional autonomy, effective governance structures, and a balanced approach to funding and accountability, offers valuable insights for Pakistan. To enhance the governance and performance of its higher education institutions, Pakistan could benefit from adopting a more transparent and merit-based approach to the appointment of Vice-Chancellors. Emphasizing institutional autonomy while maintaining rigorous financial oversight and accountability mechanisms could improve the effectiveness and efficiency of Pakistani universities. Moreover, introducing a mixed funding model and promoting diversity and inclusivity within universities could strengthen the sector's sustainability and responsiveness to societal needs. Clear delineation of responsibilities between federal and provincial authorities, along with a commitment to upholding academic standards, is essential for creating a more cohesive and functional higher education system. By learning from the UK's experiences and adapting its successful practices, Pakistan has the opportunity to reform its higher education sector in ways that promote greater institutional excellence, accountability, and overall quality, ultimately benefiting students, faculty, and the broader society.

⁵⁷⁷ Vukasovic, M., & Huisman, J. (2012). "The Governance of Higher Education in Europe: A Comparative Analysis." European Journal of Education, 47(2), 234-248

8.5. Summary of the Chapter

The regulatory frameworks of higher education in the United Kingdom and Pakistan exhibit significant differences, with lessons for potential reforms in Pakistan. In the UK, Vice-Chancellors are appointed through a merit-based, transparent process overseen by independent governing bodies, with an emphasis on institutional autonomy. In contrast, Pakistan's appointments are often influenced by political factors, leading to inconsistencies and interference. UK universities enjoy greater autonomy in governance, supported by frameworks like the Higher Education and Research Act 2017, ensuring accountability and academic freedom. Conversely, in Pakistan, federal and provincial tensions persist despite the 18th Amendment, with the Higher Education Commission (HEC) retaining centralized control. The 2021 HEC Amendment further centralized power, raising concerns about federal dominance over provincial autonomy. In terms of funding, the UK uses a mixed model with government funding, private partnerships, and student fees, managed by organizations like the Office for Students. Pakistan's National Finance Commission, however, faces delays and lacks a broad fiscal management system. Recommendations for Pakistan include reducing political interference in Vice-Chancellor appointments, adopting a transparent, merit-based system similar to the UK model, and promoting institutional autonomy. Additionally, clear delineation of responsibilities between federal and provincial governments, as in the UK's devolved governance model, could reduce conflicts. Introducing accountability mechanisms, fostering diversity, and implementing a sustainable financial model would also improve Pakistan's higher education governance, aligning it with international best practices.

CHAPTER 9

SUMMARY, FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

Chapter 9

Summary, Findings, Conclusions and Recommendations

In this final chapter, we summarize the entire thesis, distilling insights from each chapter's data. Here, under the title "Findings," we present the key outcomes derived from our thorough analysis. These findings highlight the core insights unearthed through our research. Building upon these insights, we then draw our conclusions, connecting the dots to form a cohesive understanding of the subject matter. Following the conclusions, we provide practical suggestions, aimed at leveraging the findings for future endeavors or further research. This structured approach ensures that each piece of the puzzle is clearly articulated, culminating in a comprehensive overview that encapsulates the essence of the entire thesis.

9.1. Summary of the Study

Eighteenth amendment can be instrumental when it comes to revamp the regulatory and legislative framework for Higher Education sector. Theoretically, Higher Education has become a provincial subject and the role of Federal Higher Education Commission has been limited to the extent of maintaining Standards. But practically only two provinces have established their Higher Education Commissions with limited power. On the other hand, there are lacunas in different acts of universities regarding appointment at higher level. And some appointments have been declared null and void by higher courts due to non-fulfilment of procedural formalities. Similarly maintainability of writ jurisdictions on the basis of statutory and non-statutory rules before Apex Courts has become a bone of contention in the case of public and private sector universities. It has become an uphill task to comprehend what type of autonomy should be bestowed to provincial and Federal Higher Education Commissions. With the passage of time new Higher Education Institutions are increasing and no pertinent/ concrete procedure has been devised for recruitment at higher level. Absence of opaque rules for appointment at higher level would have negative consequences at lower level. There is a dire need to devise a legislative framework for opaque and obviously on merit, appointment at higher level while defining the type of autonomy to be bestowed to Higher Education Commissions at Federal and Provincial level. Furthermore, when revamping the legislative and regulatory framework for higher education, it is impossible to overlook the crucial responsibilities that the National Finance Commission (NFC) in resource distribution and the Council of Common Interest (CCI) play in mediating the disputes. Since the NFC guarantees

fair resource distribution, any reform should take into account how it will affect the provinces' financial independence. The higher education industry may also be impacted by disagreements about the boundaries of duties between the federal and provincial governments, particularly in relation to matters like tax collection and funding distribution. A new legislative framework is required in this situation, one that fills the gaps created by earlier legislation, particularly with regard to institutional autonomy and VCs appointments. To establish a more unified and efficient governance system, the framework should incorporate all pertinent parties, such as the federal government, province governments, university representatives, and organizations like the NFC and CCI. In order to meet the shared obligations of the federal and provincial governments and guarantee that governance issues in higher education are addressed at several levels, the Multilevel Governance Theory can be a helpful model. The study suggests that the CCI's position be made clearer, with an emphasis on its duties in higher education and resource distribution, in order to enhance the current system. It also emphasizes how important it is for university governance to be transparent, meritocratic, involve stakeholders, and integrate technology. In order to make the VC appointment process fair and transparent, efforts should also be made to close its flaws. Last but not least, although the 7th NFC Award has helped to keep the budget in balance, the distribution needs to be improved and made to better represent the requirements of the provinces, especially when it comes to financing for higher education. Both federal and provincial roles must be carefully considered when addressing university autonomy and financial distribution. The new legislative framework encompasses the lacunas in previous regulatory frameworks and the role of higher courts in reshaping the framework for higher education after Eighteenth amendment. While transferring the power the role of Council of Common Interest cannot be marginalized and resources cannot be distributed fairly without National Finance Commission Award. The responsibilities between federal and provincial governments should be delineated exhaustively. Federal Government has to sacrifice the share in upcoming awards as it would probably get 40% from 44%. The reasons to stick with 7th award included the vested interest of political elites, political instability, economic instability, the tax collection by provinces and inefficiencies of bureaucracies. To sum up, all major stakeholders i.e. Federal Government, Provincial governments, representative of universities, National Finance Commission, Council of Common Interest should be made part to devise an effective and efficient regulatory and legislative framework for higher education sector.

9.2. Findings of the Study

1. No significant changes have been made to the HEC ordinance despite the 18th Amendment mandate.
2. Despite the decision of Courts in Different cases particularly in Dr Aurangzeb case the role of HEC is to be considered as mandatory in nature instead of taking it as directory in case of dealing with universities.
3. Courts support the autonomy of Higher Education Institutions with minimal interference.
4. No substantial powers have been transferred to these commissions, preventing true autonomy.
5. Accountability should be maintained through clear guidelines and independent oversight bodies.
6. Before the 18th Amendment, the Federal government, through the Higher Education Commission (HEC) has centralized control over higher education.
7. The HEC regulated, funded and established policies for universities across Pakistan.
8. Despite the 18th amendment role of HEC has not been limited rather its role has been recentralized instead of Decentralized through HEC amended Act 2019, 2021 and recently in HEC Amended Act 2023 while giving huge powers to Politicians to interfere in matters related to HEC.
9. Provincial governments had limited roles in higher education management.
10. Responsibilities of provincial governments in Post Eighteenth Amendment Era included managing public universities, appointing vice-chancellors and allocating resources.
11. After the 18th Amendment, provincial governments gained enhanced autonomy over higher education but to the extent of internal affairs.
12. Each province began managing higher education policies, planning and oversight within its jurisdiction.

13. This shift allowed for region-specific approaches, fostering innovation and responsiveness.
14. Provincial higher education departments and commissions now established and manage public universities with limited powers and resources.
15. Provincial authorities oversee funding and ensure quality standards are maintained.
16. The shift introduced challenges in coordination and consistency across provinces.
17. Overlaps and conflicts emerged, necessitating clearer delineation and cooperation mechanisms.
18. Court rulings have highlighted the need for a balanced federal-provincial relationship and Court introduced the concept of Cooperative Federalism.
19. The Federal HEC has not devolved power to provincial Higher Education Commissions as mandated by the 18th Amendment.
20. Effective decentralization requires both financial and administrative autonomy.
21. Only two provinces have established their Higher Education Commissions.
22. The 18th Amendment devolved powers from the federal to provincial governments, shifting governance of higher education to be more responsive to local needs.
23. Provincial Higher Education Commissions (PHECs) were created to oversee universities within their jurisdictions.
24. This allowed provinces to tailor education policies and quality assurance mechanisms.
25. Strengthening provincial commissions is crucial, requiring investments in human resources, infrastructure and technology.
26. Universities should have more control over academic programs, financial management and operations.
27. Inclusive governance structures should incorporate voices from faculty, students, industry representatives, and local communities.

28. Courts have partially filled the legislative gap but with some contradictory judgments.
29. Proper legislation for higher education has not been enacted since the 18th Amendment.
30. A solid regulatory and legislative framework is necessary for effective higher education governance.
31. Many universities have vacant vice-chancellor posts that need to be permanently filled.
32. A panel of top academicians should advise on vice-chancellor appointments.
33. Candidates for vice-chancellor positions should have significant administrative and research experience.
34. Mid-term reviews of university progress should be conducted to hold vice-chancellors accountable.
35. Vice-chancellors should be responsible for their actions and university performance.
36. The HEC must monitor and maintain uniform standards and curriculum.
37. Political interference in university affairs should be reduced.
38. Greater accountability and transparency in the higher education sector should be promoted.
39. Collaboration between federal and provincial governments, universities, National Finance Commission, and Council of Common Interest is needed to create an effective regulatory and legislative framework.
40. Federalism has not been restored in true spirit
41. Federal Government is stick with 7th NFC award due to tax collection by respective provinces, equitable share of less developed provinces, and provincial autonomy
42. Federal Government has to sacrifice his share from 44% to 40% in case of 9th or onward NFC award.

9.3. Conclusions

1. Universities should adopt a regulatory and legislative framework to address grievances for university employees in post Eighteenth Amendment Era.
2. Higher Education Institutions should have autonomy for research and budget purposes to foster a competitive and healthy environment.
3. The 18th Amendment's primary goal was to empower provincial Higher Education Commissions.
4. The Federal HEC must acknowledge and empower provincial HECs to fulfill constitutional requirements.
5. Robust accountability mechanisms should be developed at the provincial commission level.
6. All stakeholders, including HEC, Provincial HECs, government bodies, representative of universities and persons having expertise should engage in meaningful dialogue.
7. Federal HEC's hegemony over provincial commissions should be circumscribed as mandated in 18th amendment and duly endorsed by Court.
8. The powers of HEC has been described as directory in nature as per section 10 of the Ordinance as duly endorsed by the Courts.
9. Effective decentralization requires clear financial and administrative autonomy.
10. Provinces need to manage financial resources effectively post-18th Amendment.
11. Provincial governments should have the authority to levy indirect taxes on goods and services.
12. Stabilizing the law and order situation is essential to attract both local and foreign investments.
13. The transfer of resources promised to provinces under the 7th NFC Award should be expedited like India has reached towards the 15th Award.

14. Providing provinces with fiscal space is necessary for implementing socio-economic development programs.
15. Federal Government has to sacrifice his share for greater benefit.
16. Delays in implementing the 9th NFC Award can lead to reduced funding for universities.
17. Financial strain from delays exacerbates educational disparities and undermines academic standards.
18. The mistrust between provinces and the federal government caused by the delayed NFC Award should be addressed.
19. Fair resource distribution should consider population changes, poverty levels, and regional needs.
20. Reliance on government budgets should be reduced by exploring public-private partnerships, endowment funds and alumni donations.
21. Additional resources and industry involvement can enhance the relevance and quality of higher education programs.
22. Judicial checks are always available through writs under Articles 184(3) and 199 of the Constitution.
23. Courts typically avoid interfering in university internal affairs but can address fundamental rights violations.
24. Penal actions can be taken against provincial commissions in case of any discrepancies.
25. Internal investigation committees should act as independent accountability mechanisms to address grievances.
26. The Federal HEC should not fear provincial commissions' failure to perform.
27. Multiple layers of oversight and accountability mechanisms are in place to ensure effective governance.

28. Inclusive governance structures should incorporate voices from faculty, students, industry representatives, and local communities.
29. Courts should enforce laws promoting transparency, meritocracy, and fairness.
30. Judicial intervention is crucial for addressing corruption, nepotism, and protecting student and faculty rights.
31. Effective communication and collaboration between federal HEC and PHECs should be facilitated.

9.4. Recommendations

1. Clearly define roles and responsibilities of federal and provincial government agencies.
2. To ensure the Autonomy and accountability of Higher Education Institutions.
3. To have better Governance Framework it is necessary to have rule of law, sustainability, reputation, inclusion and diversity, effectiveness, engagement of stakeholders for Higher Education sector in post 18th amendment era.
4. The Appointment of Vice Chancellors on permanent basis at Higher Education Institutions as directed by the Courts.
5. To address the issue of maintainability of writ jurisdictions in case of public sector universities sagaciously.
6. The clear role of National Finance Commission regarding distribution of revenues through NFC award as mandated in Constitution. The award must be revised after 5 year while considering the changing circumstances.
7. The have a look at the revised role of Council of Common Interest u/a 153 of Constitution of Pakistan 1973.
8. Implement performance-based funding to incentivize improvements.
9. Enhance capacity-building programs for administrators at provincial levels.
10. Provide technical assistance and capacity-building initiatives for provincial higher education commissions.

11. Develop robust regulatory and Legislative Frameworks to improve institutional oversight while keeping in mind the international best practices.
12. Establish targeted grants and funding programs to address specific regional challenges.
13. Use digital platforms for quality assurance, data collection, and performance monitoring.
14. Foster public-private partnerships to attract private sector investment in higher education.
15. The Higher Courts have to differentiate the institutional services from personal services while deciding the case of university employees.
16. All major stakeholders including but not limited to Federal Government, Provincial Governments, National Finance Commission, Council of Common Interest, representative from universities should be made part to devise an effective and efficient regulatory and Legislative Framework for Higher Education sector in Post 18th Amendment.

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2023 PLC Service 103

PLD 2020 Islamabad 130

2024 SCMR 527

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PLD 2010 SC 969

2023 PLC Service 103

PLD 2020 Islamabad 130

2024 PLC Service 323

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