



Vol. 3 No. 8 (August) (2025)

The 18th Constitutional Amendment and Provincial Autonomy in Pakistan: A Critical Analysis of Federalism and Decentralization

Khurram Shahzad

Advocate High Court

Dr. Shahid Rizwan (Correspondence Author)

Assistant Professor, College of Law, Government College University, Faisalabad

Dr. Shahida Naz

Assistant Professor, Department of English Linguistics, Government College University, Faisalabad

ABSTRACT

The 18th Constitutional Amendment, adopted in 2010, became one of the milestones of the constitutional and political development of Pakistan. Its purpose was to transform the federal order by transferring important legislative and administrative prerogative to the provinces. The amendment would help achieve old unanswered demands of provincial autonomy and province wise fair governance by ending periodic pressure on the termination of the Concurrent Legislative List and growing the role of the Council of Common Interests (CCI). There has been recognition among scholars of its symbolic and structural value; only little empirical work has been done on assessing its actual effects on federal-provincial relations and administrative performance. This paper attempts to critically analyze how much the 18th amendment has redefined federalism in Pakistan and led to substantive decentralization. The article employs a doctrinal approach to legal research that considers the constitutional text, judicial interpretations, legislative history and scholarly materials. This study points out a discrepancy between the theoretical potential of the amendment and its practical application that indicates that despite the changes in the constitutional parameters, the weaknesses of the institutions, intergovernmental tensions, and variances in the administration still act as a hindrance to the efficacy of the constitutional framework. The research adds to the overall discourse about federalism in growing democracies and indicates that more coordination practices, more pronounced division of duties, and capacity-building actions on provincial governance are needed (Shah, 2012; Ahmed, 2020).

Introduction

Multi-ethnic and multi-regional states have federalism as a provision that enables the legal separation of powers to rest on national and sub-national governments. Theoretically, it guarantees the participatory government, accommodates regional variation, and enhances efficiency in administration. An example is Pakistan, which under its 1973 Constitution is a federal republic although, historically, it has had great difficulties actualizing federalism. The dominating control of the central government over legislative and administrative issues resulted in continuous tensions between the central government and the



Vol. 3 No. 8 (August) (2025)

provinces especially the smaller provinces like Balochistan and Khyber Pakhtunkhwa (Waseem, 2010).

The most notable reform in that attempt to redress this imbalance was the passage of the 18th Constitutional Amendment, which took place in 2010, and which was to devolve powers to the provinces. It eliminated the Concurrent Legislative List, giving to the provinces a wide swath of subjects that included health, education, the environment, and labor. It also increased the sphere of the Council of Common Interests (CCI) and turned it into a permanent constitutional body to solve intergovernmental disputes. The amendment was to articulate historical resentments over over-centralization, facilitate egalitarian development, and a robust democratic rule at sub-national tier (Zahid, 2011).

In spite of its relevance, there has been a visible research gap in assessing the practical effects of 18th Amendment to provincial autonomy. Though the inherent literature recognizes the symbolic and legal essence of the reform, it does not always notice the implementation limitations, such as institutional essentialities, deficiency of coordinated regulations, and unequal coordinating features of provincial administration capacities (Nizamani, 2014). This paper seeks to fill this gap and seeks to provide a critical and systematic examination of the manner in which the amendment has changed the federal structure in Pakistan.

This research has three goals:

- In order to discuss the constitutional and structural amendments brought by the 18th Amendment.
- To assess how well it has performed in promoting provincial autonomy and capacity to govern.
- To establish legal, administrative and political issues that act as barriers to its complete realization.

The following is a set of research questions, which will inform these objectives:

- What changes has 18 th Amendment brought to Pakistani constitutional system of federalism?
- How well has it given the provinces control in actual governance?
- Which legal and institutional barriers prevent the successful introduction of the amendment?

Answering these questions, the study helps to expand the knowledge in the context of federal reform and decentralization within the context of the development of democratic values in Pakistan.

Methodology

This paper focuses on qualitative doctrinal legal method of research, which is a popular method of constitutional and legal research. The doctrinal approach is the approach which uses law rules, principles, structures contained in primary and secondary literature to develop and interpret the law in a constitutional and political perspective (McConville & Chui, 2007). This is one of the methods that find a convenient application in the study of the structural and functional implications of the 18th Constitutional Amendment in Pakistan.

The research draws primarily on **primary legal documents**, including the **text of the Constitution of Pakistan (1973)** as amended, **parliamentary debates**, **reports of the Parliamentary Committee on**



Constitutional Reforms (PCCR), and judgments of the superior judiciary interpreting federal–provincial relations. Additionally, **secondary sources** such as academic books, peer-reviewed journal articles, expert commentaries, and institutional reports (e.g., from the Human Rights Commission of Pakistan, Pakistan Institute of Legislative Development and Transparency) are utilized to provide context, critique, and scholarly insight.

The focus of the analysis is on identifying the **legal and constitutional shifts** introduced by the 18th Amendment, as well as evaluating their **implementation and practical impact**. The research also engages with **theoretical concepts of federalism and decentralization**, drawing comparisons from other federations to provide a broader analytical framework.

While doctrinal research allows for detailed legal analysis, it has its limitations. This study does not include **empirical fieldwork or interviews**, and thus the evaluation of implementation challenges relies on existing reports, secondary data, and judicial/legislative documents. Moreover, the study is limited to **federal–provincial relations within Pakistan** and does not extend to local government or inter-provincial relations unless directly linked to the constitutional changes under the 18th Amendment.

Despite these limitations, this methodology is appropriate for a critical legal examination of constitutional reforms, enabling the study to assess whether the 18th Amendment has fulfilled its promise of promoting genuine provincial autonomy.

Literature Review

The 18th Amendment has generated considerable academic and legal commentary due to its far-reaching implications for Pakistan's constitutional order and intergovernmental dynamics. Scholars have approached the amendment from historical, political, and legal perspectives, reflecting both its transformative promise and the complexities of its implementation.

Historically, Pakistan's federal system has been marked by excessive centralization, often justified by national security concerns, ethnic fragmentation, and administrative expediency (Waseem, 2010). The creation of the **Concurrent Legislative List** under the 1973 Constitution allowed both federal and provincial legislatures to make laws on numerous subjects, but in practice, the federal government dominated these areas. This centralization led to chronic grievances, particularly among the smaller provinces, over resource allocation, political representation, and development priorities (Ziring, 2005; Sattar, 2012). There is universal consent in the literature that the 18th Amendment marked the turning point in the constitutional development history in Pakistan. It restored the supremacy of parliament, corrected the overcentralization adopted by the military governments, and marked an intent to federalism as it removed the Concurrent List (Shah, 2012; Ahmed, 2020). It also came up with reforms which increased provincial authority on major processes like education, health, and environment which directly impact welfare of the citizens.

Some writers such as Zafarullah and Mohmand (2013) have interpreted that the amendment provides a rare chance in extending democracy and balanced growth. Similarly, Cheema and Kukreja (2014) also note that the amendment plays a crucial role in enhancing the work of provincial governance and supporting ethno-regional diversity.



Vol. 3 No. 8 (August) (2025)

However, critical literature points to **gaps between constitutional theory and administrative reality**. Implementation remains uneven across provinces due to lack of capacity, institutional resistance, and ambiguity in federal–provincial coordination (Yusuf, 2015). Saeed and Piracha (2016) critique the absence of harmonized national standards in devolved sectors, which has resulted in policy fragmentation. Furthermore, the **Council of Common Interests (CCI)**, though made more powerful under the 18th Amendment, still suffers from underutilization and procedural delays (HRCP, 2018).

In judicial interpretation, courts have occasionally supported decentralization. In *Suo Motu Case No. 11 of 2011* (PLD 2012 SC 681), the Supreme Court upheld the sanctity of devolved subjects, yet it also maintained federal regulatory oversight in sensitive areas such as education and health, creating confusion over functional boundaries (Khan, 2014).

Comparative studies also highlight these tensions. Fiseha (2006) notes that in Ethiopia, mere legal devolution without institutional maturity results in fragmented governance. Chattopadhyay (2016), analyzing South Asia, underscores that decentralization must be accompanied by fiscal reform and local governance capacity. These works emphasize that **constitutional reform is only one pillar** of successful federalism.

Despite extensive legal and political discourse, few studies offer a **comprehensive evaluation of the amendment's long-term outcomes** in governance, provincial empowerment, and intergovernmental coordination. This research seeks to bridge that gap by examining not only the formal constitutional changes, but also their practical effectiveness more than a decade after their passage.

Results / Analysis

The 18th Constitutional Amendment fundamentally reshaped Pakistan's federal structure by initiating a large-scale decentralization process. Passed with cross-party consensus in 2010, the amendment introduced over 100 changes to the 1973 Constitution, impacting approximately 36% of its articles (PILDAT, 2012). This section analyzes key changes brought by the amendment and evaluates their impact on provincial autonomy and federal–provincial relations.

1. Abolition of the Concurrent Legislative List

Perhaps the most consequential reform was the elimination of the **Concurrent Legislative List** under Article 70. Prior to the amendment, the center had legislative control over more than 47 subjects, including education, health, environment, and labor—many of which directly impacted provinces. The **18th Amendment abolished this list**, transferring these subjects to the exclusive domain of the provinces. This change was aimed at eliminating jurisdictional overlap and empowering provincial legislatures to formulate policies more aligned with local needs (Shah, 2012).

Following this change, provinces began to legislate independently. For example, **Punjab and Sindh** developed their own education and labor laws, while **Khyber Pakhtunkhwa (KP)** passed legislation on environmental governance and industrial regulation. However, in practice, legislative overlaps and federal reluctance to relinquish control have led to confusion, particularly in sectors like higher education and healthcare (Ahmed, 2020).



2. Strengthening the Council of Common Interests (CCI)

To manage post-devolution coordination, the 18th Amendment reinforced the **Council of Common Interests (CCI)** through Article 154. The CCI was mandated to meet quarterly and given a broader mandate to resolve intergovernmental disputes. However, critics argue that the CCI remains underutilized and lacks institutional independence. According to HRCP (2018), the CCI failed to meet regularly during certain years, and major policy issues—such as water distribution and energy sharing—often remained unresolved due to political tensions.

Moreover, the Secretariat of the CCI cannot offer policy inputs with technical personnel and analytical muscle because it is not equipped to handle thick disputes adequately. In its Workers Welfare Fund Case (2016) decision, the Supreme Court emphasized the constitutional power of the CCI, yet it made evident that its ruling role was characterized by ambiguity, which created some inconsistencies in its practical operation.

3. Sector Specific Outcomes: Education, Health and Higher Education

After amendment, provinces set strategies to localize education policies. Punjab created the Punjab Curriculum and Textbook Board Act (2015), and the Khyber Pakhtunkhwa Education Act (2017) was passed in KP. However, due to differences in institutional capacity, unequal outcomes have been witnessed. Punjab representing the locus of positive change with better infrastructure and human resource, recorded gains on literacy and enrollment. On the contrary, Balochistan still suffers shortages of teachers, lack of monitoring, and poor school facilities (Saeed & Piracha, 2016).

Hospitals, vaccination programs and health education are now run in every province. Nonetheless, the COVID-19 pandemic revealed flaws in coordination. The effort by the federal government to release standardized health protocols was countered by the provinces, especially by Sindh, as it required tougher measures than the center. This indicated the lack of proper emergency responses within the devolved system (Ahmed, 2021).

Higher education In higher education, a dispute has arisen between the Higher Education Commission (HEC) and provincial counterparts such as the Sindh Higher Education Commission, resulting in legal and regulatory confusion. Even though education is a devolved subject, the federal HEC still seeks to provide oversight, which brings about litigation and administrative paralysis (Khan, 2014).

4. Resource Management and Natural Assets

The 18th Amendment amended **Article 172(3)** to clarify that provinces have joint ownership of natural resources within their territories. While this was hailed as a win for provinces like Balochistan and KP, in practice, disputes over resource revenues and licensing persist. Balochistan continues to express dissatisfaction over revenue sharing from Sui gas fields and the Reko Diq mining project, accusing the center of violating the constitutional spirit of devolution (Nizamani, 2014).



5. Fiscal Constraints and Provincial Capacity

Though provinces gained legislative and administrative control, **financial autonomy remains constrained**. The **NFC Award of 2009**—still in effect today—does not account for the expanded responsibilities post-amendment. Provinces remain heavily dependent on federal transfers, with limited capacity to raise their own revenues. This dependency undermines effective planning and long-term development strategies (Zafarullah & Mohmand, 2013).

Only Punjab has taken modest steps toward internal revenue generation through property tax reforms and digitalization. Other provinces lag behind due to political resistance and poor tax administration.

6. Judicial Interpretation and Constitutional Support

The superior courts have played a mixed role in supporting the amendment. In *Suo Motu Case No. 11 of 2011* (PLD 2012 SC 681), the Supreme Court upheld the constitutional status of devolved subjects. However, in other cases, such as disputes over health regulation and licensing authorities, the judiciary has leaned toward central oversight, blurring the line between federal coordination and interference (Khan, 2014).

These contradictions reflect broader tensions within Pakistan's constitutional culture, where legal decentralization often clashes with entrenched bureaucratic and political centralism.

Discussion

The 18th Constitutional Amendment was heralded as a transformational step towards decentralization in Pakistan. It introduced structural changes that, on paper, strengthened the country's federal nature. However, a deeper analysis of its implementation reveals a more complex and uneven reality. This discussion explores the implications of these findings, connects them to theoretical frameworks of federalism, draws comparisons from other federal states, and evaluates the systemic challenges that continue to limit the full realization of provincial autonomy in Pakistan.

1. Federalism in Theory vs. Federalism in Practice

The ideally so-equipped federalism is intended to make both unity and diversity balanced with the role of the local government to solve regional issues without losing the national cohesiveness (Watts, 2008). The 18th Amendment was aimed at bringing Pakistan back to this pattern by making the constitutional transfer of power. Nevertheless, even with this constitutional devolution, old forms of centralised bureaucracy, and resource allocations with institutional stasis have contributed to decoupling constitutional theory and practical governance (Shah, 2012).

Unlike mature federations such as the United States or Germany, where state-level institutions have developed over centuries and possess robust administrative frameworks, Pakistan's provinces have historically lacked the technical capacity, fiscal independence, and institutional infrastructure to manage broad portfolios like health, education, and environment (Cheema & Mohmand, 2020). Consequently, while the amendment restructured the legal framework, it did not simultaneously reform the institutional and financial machinery required to make devolution effective.



2. Coordination and Overlapping Responsibilities

The **abolition of the Concurrent List** was intended to clarify jurisdictional boundaries and eliminate overlap. However, the actual transition process has revealed persistent **confusion in functional responsibilities** between federal and provincial institutions. This is particularly evident in sectors such as education, higher education regulation (e.g., disputes involving the Higher Education Commission), environmental standards, and healthcare (Nizamani, 2014; Ahmed, 2021).

The **Council of Common Interests (CCI)** was intended to act as a key coordinating body post-devolution. Although the 18th Amendment made it a permanent institution and required quarterly meetings, its performance has been inconsistent. Critics argue that the CCI lacks the independence, technical capacity, and political will to resolve inter-provincial and federal-provincial disputes effectively (HRCF, 2018). For instance, major decisions are often delayed due to political disagreements, and smaller provinces have alleged that the CCI favors the federal center or dominant provinces like Punjab.

These coordination issues undermine the essence of federalism and decentralization. As Elazar (1987) explains, successful federations depend not only on the division of powers but also on **mechanisms of cooperative federalism** that ensure effective dialogue, negotiation, and mutual accountability among tiers of government.

3. Fiscal Federalism and Resource Imbalance

Another major challenge is the **lack of fiscal autonomy** for provinces. While administrative and legislative authority has increased post-18th Amendment, **financial control remains largely centralized**. The provinces depend heavily on the **National Finance Commission (NFC) Award**, which governs resource distribution from the federal divisible pool. However, the NFC Award has not been revised since 2009 and fails to reflect the expanded provincial mandates introduced in 2010 (Zafarullah & Mohmand, 2013).

In contrast, countries like India and Canada have more dynamic fiscal federalism models where sub-national governments have greater control over taxation and local revenue generation. In Pakistan, the provincial inability to raise sufficient funds limits their capacity to implement social programs or maintain infrastructure, leading to uneven service delivery and development disparities (World Bank, 2020). The lack of synchronization between fiscal devolution and functional devolution has been one of the major weaknesses of Pakistan's federal reform.

4. Capacity Gaps and Asymmetrical Federalism

Provinces in Pakistan vary widely in their administrative capabilities. Punjab, with more developed institutions and resources, has been able to absorb devolved responsibilities more effectively than provinces like Balochistan or Khyber Pakhtunkhwa. This creates what scholars describe as **asymmetrical federalism**, where sub-national units within the same federation operate with significantly different capacities and policy outcomes (Chattopadhyay, 2016).

In health and education, for example, provincial outcomes differ drastically. Punjab has developed its own education boards and curriculum authorities, while other provinces struggle to provide basic services due to weak



Vol. 3 No. 8 (August) (2025)

bureaucracies, poor planning, and lack of trained personnel (Saeed & Piracha, 2016). This disparity not only creates governance inequality but also undermines the credibility of the devolution process itself.

Furthermore, **federal ministries** in some cases have resisted full devolution, either by continuing to issue policy guidelines in devolved sectors or by creating **parallel regulatory authorities** that dilute provincial jurisdiction (Yusuf, 2015). This bureaucratic resistance reflects deeper institutional conservatism that favors central control over democratic decentralization.

5. Political Economy of Devolution

Devolution does not occur in a vacuum; it is deeply influenced by political incentives, power dynamics, and historical legacies. In Pakistan, political centralization has been historically reinforced by military regimes, patronage politics, and ethnic-nationalist tensions (Waseem, 2010). Even after the 18th Amendment, central political elites often attempt to **reassert control through informal networks, administrative interference, or legislative ambiguity**.

Moreover, political instability at the federal level has hindered sustained attention to intergovernmental reforms. The lack of a national consensus on federalism, particularly in terms of shared standards and performance benchmarks, limits the strategic coordination necessary for effective decentralization (PILDAT, 2012). As a result, federalism remains more **fragmented than cooperative**, leading to policy inconsistency and inefficient public service delivery.

6. Comparative Federalism: Lessons for Pakistan

Comparative experiences provide useful insights. **India**, for instance, has a quasi-federal structure with a strong center, but its **Finance Commission** is regularly updated, and institutions like the Inter-State Council play a mediating role in center–state relations (Kukreja & Singh, 2013). In the **United States**, federalism is supported by independent state legislatures, robust judicial oversight, and the Tenth Amendment, which provides states with residual powers. Meanwhile, **Ethiopia**, despite being a federation by name, has faced challenges due to the politicization of ethnic federalism, which offers lessons on the risks of decentralization without adequate safeguards and institutional maturity (Fiseha, 2006).

For Pakistan, the most relevant lesson is that **constitutional devolution must be accompanied by administrative, fiscal, and political reforms** to function effectively. Merely amending the constitutional text without reforming governance structures creates a federalism that is symbolic but ineffective.

7. Need for Institutional Reforms and Policy Recommendations

Based on the challenges identified, several reforms are necessary to improve the functionality of federalism in Pakistan post-18th Amendment:

- **Revise the NFC Award** to align with new provincial responsibilities and incentivize local revenue generation.



- **Strengthen the CCI** with technical expertise, independent research wings, and greater transparency in its deliberations and decisions.
- **Enhance provincial administrative capacity** through investment in civil service reform, training, and digital governance infrastructure.
- **Establish interprovincial forums** to promote best practices, harmonize standards, and encourage peer learning across provinces.
- **Reform the federal ministries** to fully respect the constitutional boundaries of devolved subjects and avoid parallel policy frameworks.

Political Resistance and Elite Capture

Despite the transformative legal potential of the 18th Amendment, its success has been limited by **political resistance and elite capture**—factors often overlooked in legal analyses of constitutional reform. Political decentralization, in theory, is expected to enhance democratic participation and make governance more responsive. However, in practice, decentralization in Pakistan has sometimes resulted in **power merely shifting from one set of elites to another**, rather than being democratized or made more accountable (Cheema, Khan, & Myerson, 2010).

In several provinces, **provincial political elites have used devolved powers to consolidate patronage networks**, allocate resources selectively, and reinforce their local dominance. For example, in Sindh and Balochistan, reports suggest that devolution has facilitated the rise of rent-seeking behaviors in health, education, and local development sectors, where funding and appointments are controlled by politically connected individuals rather than based on merit or institutional performance (Nizamani, 2014). This elite capture undermines the intent of the 18th Amendment by substituting one form of centralized control with localized authoritarianism.

Moreover, **provincial resistance to empowering local governments** further reveals the limits of the decentralization process. While the 18th Amendment devolved powers from the center to the provinces, it left the status of **local governments** to the discretion of provincial legislatures under Article 140A. As a result, provinces have often delayed or weakened local government systems, preferring centralized provincial control over devolved grassroots structures (Yusuf, 2015). The reluctance to hold local elections, dissolve elected local bodies prematurely, or restrict their fiscal powers reflects a broader trend of **centralization at the provincial level**, contradicting the very spirit of multilevel federalism.

This phenomenon echoes experiences in other developing federations where decentralization fails due to the **absence of institutional accountability mechanisms** and the **dominance of political clientelism**. Comparative studies of Nigeria and Ethiopia also demonstrate that without checks on local elite power, federalism may reinforce inequality rather than mitigate it (Fiseha, 2006; Suberu, 2009).

Thus, the success of the 18th Amendment must not only be measured by legal change but by whether it has resulted in **democratic deepening** and **service delivery improvements**. Until structural reforms are introduced to ensure transparency, accountability, and local empowerment, decentralization risks being co-opted by vested interests—undermining the very objectives of provincial autonomy.



Conclusion

The 18 th constitutional amendment has become one of the strongest legal-political initiatives in the democratic development in Pakistan since the adoption of the 1973 Constitution. It sought to revive the federalism promoted by the architects of the Constitution by destroying years of centralism notably in the repeal of the Concurrent Legislative List and the part of a number of matters to provincial legislatures. The amendment also rearranged intergovernmental mechanisms by improving status and role of the Council of Common Interests (CCI) or stretching out to create a more participatory and responsive kind of governance.

This study has indicated that the 18th Amendment has already been successful in transforming the constitutional structure of Pakistan, in writing, but it has not been applied fully and equally in reality. A high priority among the challenges is the absence of administrative capacity on the part of the provincial governments, the imprecise allocation of responsibilities, CCI failure, and the absence of modernized fiscal plans in line with devolved powers. Also, political stasis and institutional resistance that is still experienced by the federal bureaucracy acts to block the complete fulfillment of the provincial autonomy.

The literature and contrasting examples also prove that constitutional devolution can never succeed on its own. It would have to be supported by capable institutions, viable fiscal structures and a culture of constructive federalism. Unless there is intergovernmental coordination, some common standards in the service delivery procedure, and some equalization to manage the variations in the provinces, decentralization can only worsen the current inequality and inefficiencies.

Pakistan should enhance the intergovernmental institutions including the CCI, and reform the National Finance Commission (NFC) Award, and invests in the capacity-building of provinces to deliver effective governance at a sub-national level. The implementation gap can also be closed by clear constitutional sectoral duty frameworks accompanied by accountability schemes adjudicated on the bases of performance. Also, working towards the establishment of an effective interprovincial network as well as policy convergence system will allow provinces to learn off of each other and cement the unity of the nation.

To sum up, the 18 th Amendment contains great potential of delivering a more decentralized, accountable and equitable Pakistan. Nonetheless, this potential cannot be actualized through legal change alone, but it also needs institutional maturity, political will, and sustained constitutional innovativeness. The ultimate success of the federal project in Pakistan depends not only on the written words of that constitution but also the willingness and ability of Pakistani institutions and the national leaders to bear the spirit of federalism into being not only in writing but in deed as well.

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Vol. 3 No. 8 (August) (2025)

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Vol. 3 No. 8 (August) (2025)

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