

# The 18th Constitutional Amendment: A step forward towards Provincial Autonomy in Pakistan

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## ABSTRACT

The 18th Constitutional Amendment marked a pivotal transformation in Pakistan's federal structure, significantly enhancing provincial autonomy. This article delves into the multifaceted impacts of the amendment, examining legislative, administrative, and fiscal dimensions of provincial autonomy. The legislative autonomy saw the abolition of the Concurrent List, reallocating 47 entries between federal and provincial jurisdictions, and empowering provincial assemblies with greater legislative authority. Administrative autonomy was reinforced through the amendment of Articles 147, 153, and 154, enhancing the role of the Council of Common Interests (CCI) and ensuring participatory federalism. The article also explores the enhancement of the Senate's role and the National Economic Council's (NEC) responsibilities in promoting balanced development and regional equity. Fiscal autonomy was significantly bolstered, with provinces receiving a larger share of financial revenues and gaining control over natural resources within their territories. This comprehensive analysis highlights the transformative impact of the 18th Amendment in decentralizing power, fostering cooperative federalism, and promoting provincial empowerment in Pakistan.

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## Introduction

The maximum portion of the 18th constitutional amendment dealt with the decentralization and enhancement of provincial autonomy in Pakistan. The 18th amendment aimed to give more independence and power to provinces over the center. The omission of the concurrent legislative list is a perfect example of the enhancement of provincial autonomy experience in Pakistan. This is just one example.

This chapter aims to examine the impact of the 18th amendment on provincial autonomy. Here the impact of provincial autonomy means to produce and discuss that change which has arisen from the Eighteenth Amendment amid Center-provinces. It is clear from the previous discussions that provincial autonomy does not separate the provinces from the federal

government or break the relationship between the central provinces, but it is the devolution of power from the center to the province (Muhammad Imran Ashraf, n.d.). The eighteenth amendment has provided the provincial autonomy to the provinces in the following ways:

### Legislative Provincial Autonomy

The legislature enacts the law for the better governance of the country. The legislative autonomy of a legislature means it has unfettered power to enact upon certain subjects.

The eighteenth amendment has omitted the concurrent list and mediation committee from the Fourth Schedule of the constitution. This omission is for the promotion of provincial autonomy.

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The amendment omitted the list and bifurcated the concurrent list into provincial and federal list. A total of 47 entries has been bifurcated among the Federal and Provincial Assemblies (Khan, 2020: 568) meaning thereby the provincial assemblies have the ultimate power to enact the legislations on these departments/ entries of the list (Hamid, n.d.).

Article 142 of the constitution envisages the parameters for the Central and Provincial assemblies to exercise their respective legislative capacity over the departments subject matter of their respective lists (Mahmood, 2018: 901). Parliament is empowered to enact only the subjects, subjects, and matters mentioned in the two parts of the federal legislative list and incidental or ancillary matters. Velayat Mejlis and Mejlis do not have the right to create legislation in any matter that is not listed in the Federal Legislative List.

Parliament has special powers to make laws relating to federation territories which are not part of any province. However, despite the omission of concurrent list three subjects are concurrently given to both Federal and Provincial Assemblies i.e. Criminal Law, Civil Law and Law of Evidence.

Federal laws take precedence over provincial laws when they address the same subject matter. Consequently, federal laws enacted under the Concurrent List prior to the Eighteenth Amendment will continue to override provincial laws, even in areas now exclusively governed by provincial legislation following the amendment. Under the Eighteenth Amendment, Parliament retains the authority to regulate matters not listed in the Federal Legislative List if one or more Provincial Assemblies pass resolutions granting such power.

**The same is analyzed as under**

**Changes to the Federal List**

The Federal List had two parts, first part has 59 items, and the other got 9 items. Part-I comprises of those 59 subjects which are exclusive domain of Federal government whereas the other part comprises of the joint subjects which are to be dealt through Council of Common Interest (CCI) by both Federal and Provincial Governments.

**The 18th Amendment made the following changes to the Federal List**

The four items i.e. i) The National planning and economic co-ordination ii) Major Ports, iii) Census and iv) extension of jurisdiction of the provincial police to other jurisdictions and provinces are shifted to Part II from Part Four new items were added to Part II of the Federal List: all regulatory authorities established under federal law, supervision and management of public debt, standards in higher education institutions as well as research, scientific and technical institutions, and inter-parliament coordination.

The following two items were shifted from the Concurrent List to Part II of the Federal List: electricity and legal, medical and other professions. One item (boilers) was shifted from the Concurrent List to the Federal List Part. Five items were removed from Part I of the Federal List: state lotteries, duties regarding the succession of properties, estate duty concerning property, capital gains, and the general sales tax on services.

As a result, the revised Federal List is now comprised of fifty-one items in Part I and eighteen items in Part II. It is important to note that the expansion of Part II did not diminish provincial powers; rather, it is a consequence of the reduction of Part I and

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the elimination of the Concurrent List. Since Part II involves shared responsibilities between the federation and provinces, adding subjects to this part enhances the provincial role in matters that remain under federal jurisdiction (Rana, 2020: 70).

The updated Federal List Part I includes subjects of supra-provincial significance, such as defense, military, naval and air force operations, local self-government in cantonment areas, external affairs, implementation of treaties and agreements, nationality, citizenship and naturalization, migration to and from Pakistan, posts and telegraphs, currency, foreign exchange, nuclear energy, quarantine, copyrights, national highways, federal surveys, the State Bank of Pakistan, federal institutions like the Federal Ombudsman and the Federal Public Service Commission, various institutions within the federal territory, and federal taxation. Except for the federal institutions and taxation mentioned, most subjects in Part I have implications for the provinces, making a case for transferring some of these subjects to Part II, thus allowing greater provincial involvement. Potential candidates for further decentralization include cantonment areas and posts and telegraphs with local self-government.

The amended Federal List Part II contains significant subjects such as railways, mineral oil and natural gas, development of industries, federal corporations, industries and projects, the Council of Common Interests (CCI), major ports, census, economic coordination, all regulatory authorities established under federal law, electricity, legal, medical and other professions, and inter-parliament coordination (ibid: 71).

### **Abolition of the Concurrent List**

Another key component of the Fourth Schedule was the Concurrent List, which included forty-seven subjects on which both the Federal and Provincial Governments could legislate. Nationalist political parties from smaller provinces had consistently called for the abolition of this list and the transfer of its subjects to provincial control (ibid). It was widely believed that the framers of the 1973 Constitution had a verbal agreement to abolish this list after ten years, though no formal or informal written record exists to support this claim (Rabbani, 2011:140).

The Eighteenth Amendment ultimately abolished the Concurrent List. As previously mentioned, two subjects were transferred to Part II of the Federal List, and one subject was moved to Part I. The remaining forty-four subjects automatically devolved to the provinces as residual subjects. These subjects now fall exclusively under provincial jurisdiction and include criminal law, criminal procedure, civil procedure, evidence and oath, marriage and divorce, adoption, bankruptcy, arbitration, contracts, transfer of property, preventive detention, arms and firearms, explosives, opium, drugs and medicines, poisons and dangerous drugs, mental illness, environmental illness and pollution, population planning and social welfare, labor welfare, trade unions, shipping and navigation on inland waterways, newspapers, books and printing presses, evacuee property, Islamic education, zakat, tourism, and auqaf.

This shift significantly expanded provincial responsibility and authority. Provinces were now required to legislate on these subjects, even if that meant adopting the existing federal legislation with necessary modifications. Previously, provinces had largely depended on the

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Federal Government for legislation, policy, and regulation. However, these subjects were no longer within the federal domain, requiring provinces to create their own laws, rules, and policies. Article 270AA, introduced through the Eighteenth Amendment, ensured the continuation of existing laws, regulations, and notifications to prevent a legal vacuum following the abolition of the Concurrent List.

Additionally, provinces had to build the capacity to manage these new responsibilities effectively. In many cases, federal legislation had also established federal institutional infrastructure, which now either had to be maintained under a different framework within the federation or recreated at the provincial level. Several examples of these changes will be discussed in the next section (Rnan, 2020: 71).

### **Administrative Provincial Autonomy**

The administrative autonomy in the context of the Eighteenth Amendment deals with two key components: the relationship between the Federation and the Provinces, and the special provisions for resolving conflicts either between the Federation and the Provinces or among the provinces themselves. To bolster provincial autonomy in administrative terms, several measures were adopted under the Eighteenth Amendment (Majeed et al, 2021:217).

The Eighteenth Amendment ensures effective provincial participation in decision-making processes at the central level. Article 147 empowers a Provincial Government to delegate its functions to the Federal Government, thus acknowledging provincial autonomy while allowing for cooperation with the Federal Government (Rabbani, 2011).

In its commitment to participatory federalism, the Eighteenth Amendment revised Articles 153 and 154 to enhance the role of the Council of Common Interests (CCI). The 1973 Constitution had already established the CCI to formulate and regulate policies for the Federation on various subjects, including water and power. Decisions made by the CCI are binding unless modified by Parliament at the request of the Federal Government (PLD 2013 Lahore 659).

The CCI plays a crucial role in resolving disputes between provinces and between the provinces and the Federation regarding matters specified in Article 154. The Council is accountable to Parliament, which can issue binding directives through the Federal Government (PLD 2017 Lahore 489).

Legislative subjects under Part II of the Federal Legislative List require coordinated intergovernmental policies, and the CCI is responsible for formulating and regulating these policies. The Council supervises and controls related institutions, acting as an intergovernmental forum to prevent conflicts between provincial and federal policies. This promotes cooperative federalism and strengthens provincial autonomy by embedding participatory federalism into national governance. These policies, backed by constitutional authority, must be considered by the legislature when legislating on subjects in Part II of the Federal Legislative List to ensure provincial autonomy and federalism are reflected in proposed legislation, in accordance with Article 142 (Khan, 2020).

These amendments were necessary to ensure participatory federalism and accommodate new items added to Part II of the Federal Legislative List. This framework facilitates joint policy formation and

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management by Federal and Provincial Governments on matters listed in Part II.

The Eighteenth Amendment also clarified the membership and duties of the National Economic Council (NEC). The Constitution outlines the formation and responsibilities of the NEC, which include formulating and regulating policies on matters in Part II of the Federal Legislative List and supervising related institutions. The NEC reviews the country's overall economic condition and advises both Federal and Provincial Governments on financial, commercial, social, and economic policies. It ensures balanced development and regional equity, guided by the Principles of Policy.

Additionally, the Federal Government must consult with the Provincial Government before constructing a hydroelectric power plant in that province, addressing past provincial complaints about the construction of unnecessary stations. Any disputes regarding electricity between the Federal and Provincial Governments are to be resolved by the CCI, providing a constitutional mechanism for conflict resolution (Rabbani, 2011).

## **Province vs Federation**

### **Strengthening Provinces**

The provincial role in governance was significantly enhanced through various amendments. For instance, Article 157 was amended to mandate the Federal Government to consult the concerned Provincial Governments before making any decisions about constructing hydroelectric power stations within a province. Any disputes in this area can now be referred to the Council of Common Interests (CCI) for resolution.

Article 147 was also modified, adding a proviso that if a Provincial Government entrusts any of its functions to the Federal Government, it must seek ratification for such an act from the Provincial Assembly within 60 days. This aligns with the broader effort to strengthen the CCI by amending Articles 153 and 154, which deal with the Council's composition and functions. Previously, the CCI comprised four members from the Federal Government and the provincial chief ministers, chaired by the Prime Minister if he was a member, or another Federal Minister who is a member of the Council. The amendment made the Prime Minister a member and the chairman of the CCI, and it became mandatory for the Federal Government to constitute the Council within 30 days of the Prime Minister taking the oath of office.

The composition of the National Economic Council (NEC) was also specified, comprising the Prime Minister, four members nominated by the Prime Minister, the provincial chief ministers, and four members nominated by the chief ministers (one by each Chief Minister). The Prime Minister acts as the chairman of the NEC, which is responsible for reviewing the country's overall economic condition and advising the Federal and Provincial Governments on financial, economic, and social policies.

A significant contribution of the 18th Amendment was the strengthening of the Senate, which represents provincial assemblies in the federal Parliament, thereby increasing provincial influence. For instance, under Article 91(4), the Cabinet was previously collectively responsible only to the National Assembly. The amendment made the Cabinet responsible to both the National Assembly and the Senate.

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Additionally, the President was previously able to issue an ordinance even when the Senate was in session; an amendment to Article 89 now expressly prohibits the issuance of an ordinance when either House of Parliament is in session. Since legislation can be initiated in either House, it became logical to propose legislation in the House that was in session rather than using the ordinance route.

Moreover, the Senate was given equal representation in the parliamentary committee responsible for finalizing the Judicial Commission's recommendations for the appointment of judges, with both the treasury and the opposition required to nominate two members from each House.

The 18th Amendment also addressed situations where recourse to the Senate was warranted under the 1973 Constitution but the matter was placed before a joint sitting of Parliament, effectively subsuming the Senate's dissenting view under the National Assembly's numerical majority. The amendment required such matters to be placed before both Houses separately. For example, the presidential proclamation of emergency and any order suspending a fundamental right during an emergency under Article 233 must now be placed before each House for approval within 10 days of the proclamation. The National Economic Council was also made responsible to both Houses of Parliament through the insertion of a new clause in Article 156.

Furthermore, amendments to Articles 29, 153, and 171 required several important reports (such as the Report on the Principles of Policy, the Report of the Council of Common Interests, and the Report of the Auditor General of Pakistan) to be presented to both Houses of Parliament, instead of just the National Assembly (Rana, 2020).

## **Fiscal Provincial Autonomy**

The financial autonomy aspect deals with the fair distribution of revenue and property between the federal government and the provinces. The National Finance Commission (NFC), like the National Economic Council, plays a critical role in advising and making recommendations to the President on financial matters. The NFC's mandate is outlined in Article 160, ensuring that a province's share in any NFC award is not less than its share in the previous award. Both the Federal and Provincial Finance Ministries monitor the award's implementation biannually, submitting reports to both Houses of Parliament and the Provincial Assemblies (Mahmood, 2018).

The Eighteenth Amendment was introduced to increase the devolution of financial revenues from the Federation to the Provinces, aiming to prevent past inequalities where certain provinces experienced significant reductions in financial resources (Rabbani, 2011). This autonomy extends to natural gas and hydroelectric power, (PLD 2012 Sindh 50) ensuring that provinces benefit directly from resources like oil and gas found within their territories (PLD 2014 SC 350).

Borrowing rules are addressed in Article 167, allowing provinces to borrow within set limits determined by their respective Provincial Assemblies. However, they cannot borrow without the Federal Government's consent if there's an outstanding loan guaranteed by the Federal Government. Foreign borrowing is under federal control due to the Federal Government's oversight of foreign trade and exchange.

The ownership of property is divided into public and ownerless categories. Public

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property, including natural resources, is owned by the people of Pakistan through their governments and state-controlled entities. Ownerless property, like lands and minerals, vests in the government. After the Eighteenth Amendment, resources within the continental shelf or ocean beyond territorial waters belong to the Federal Government, while resources within provinces or adjacent territorial waters are jointly owned by the provinces and the Federal Government. This change acknowledges provincial rights and the sharing of natural resource proceeds.

Fiscal autonomy has been significantly enhanced, with provinces now receiving more than 50% of the Federal Divisible Pool and gaining control over the General Sales Tax on services. These constitutional provisions provide provinces with autonomous financial sources and expand their fiscal capacity.

### **Enhanced share in Natural Resources**

The 18th Amendment made significant strides in recognizing provinces as rightful beneficiaries of their natural resources, particularly within Pakistani territorial waters. An amendment to Article 172 limited the Federal Government's ownership to resources in the continental shelf or beyond territorial waters, leaving resources within territorial waters for provincial exploration and development. Moreover, any new discoveries of resources within provinces or adjacent territorial waters would be jointly owned by the Federal and Provincial Governments, promoting collaboration in resource management.

The National Finance Commission (NFC), a vital institution for resource distribution, saw enhancements through the 18th Amendment. Provinces' shares in NFC awards were safeguarded not to be less than

their previous shares, and the NFC's reports were required to be presented to both parliamentary houses and provincial assemblies, bolstering transparency and provincial representation.

A significant change was the allocation of net proceeds from federal excise duty on oil at well-heads directly to provinces where these resources were located, rather than into the Federal Consolidated Fund. This mirrored the existing practice for natural gas, ensuring provinces benefited directly from their resources. The shift of sales tax on services to provincial control further empowered provinces financially (Rana, 2020).

Under Article 167, provinces gained the ability to raise loans and provide guarantees against their Consolidated Funds, addressing a longstanding demand for financial autonomy. Oversight by the National Economic Council, which includes provincial representation, ensured responsible borrowing practices while granting provinces greater financial flexibility.

### **Conclusion**

The 18th Constitutional Amendment represents a significant milestone in Pakistan's journey towards enhanced provincial autonomy and decentralized governance. By abolishing the concurrent legislative list and redefining the federal and provincial legislative competencies, the amendment has empowered provincial assemblies with greater legislative authority. This decentralization has allowed provinces to enact laws tailored to their unique socio-economic contexts, fostering a more responsive and localized legislative environment.

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The administrative changes introduced by the 18th Amendment have strengthened the role of provinces in national governance. The enhanced functions of the Council of Common Interests (CCI) and the National Economic Council (NEC) ensure that provincial voices are integral to policy formulation and dispute resolution, promoting cooperative federalism. This participatory approach to governance not only resolves conflicts more effectively but also embeds a culture of collaboration between federal and provincial governments.

Fiscal autonomy, a critical component of the 18th Amendment, has been significantly advanced. Provinces now

have a more substantial share of financial resources, with the devolution of financial revenues and control over the General Sales Tax on services. The amendment's provisions for natural resource management ensure that provinces directly benefit from their resources, promoting equitable economic development. The ability of provinces to borrow and manage their finances independently further strengthens their economic stability and development potential.

In sum, the eighteenth amendment has strengthened the ways of provincial autonomy. The decentralization of power has enhanced the provincial autonomy in Pakistan.

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