

Eighteenth Constitutional Amendment

Federal and Provincial Roles and Responsibilities in Education

EIGHTEENTH CONSTITUTIONAL AMENDMENT:

FEDERAL AND PROVINCIAL ROLES AND RESPONSIBILITIES IN EDUCATION

TABLE OF CONTENTS

Introduction	5
Scheme of Presentation.....	7
BACKGROUND: EDUCATION GOVERNANCE IN PAKISTAN.....	8
The Interim Constitution 1947-1956(Government Of India Act 1935).....	8
The Constitution Of 1956.....	8
The Constitution of Second Republic 1962.....	9
The Interim Constitution of 1972.....	9
The Constitution of 1973	10
Policy Milieu.....	10
EDUCATION GOVERNANCE FRAMEWORK: PRE & POST EIGHTEENTH CONSTITUTIONAL AMENDMENT	12
Pre Eighteenth Amendment Framework:.....	12
Post Eighteenth Amendment Framework:	14
REDEFINED FEDERAL AND PROVINCIAL ROLES in EDUCATION.....	17
Redefining the Federal Role:	17
Impacts of the New Federal Role:.....	19
Implementing Article 25-A:	23
Provincial Role in Education	24
Party Positions on Revised Role of Federation and Provinces in Education	28
CONCLUSION AND RECOMMENDATIONS	30

INTRODUCTION

The Eighteenth Constitutional Amendment¹ has introduced a number of changes in the Constitution of Pakistan 1973. It has redefined the existing nature of relationship between the federation and the federating units in Pakistan. The revision in the framework of distribution of powers has profound impacts for the legislative jurisdictions and executive authorities at federal and provincial levels. The changes in the federal and provincial relations will also have financial implications and effects on the allocation of revenue resources between the governments. The amendment besides introducing changes in multiple Articles² of the constitution has also devolved forty seven subjects to the exclusive legislative and executive domain of the provinces. Education is one of the key subjects which are being devolved to the provincial mandate. The present change in the constitution entails a shift in the nature of relations between the federal and provincial governments' inasmuch as governance of education is concerned.

The enactment in the context of the education sector has brought a significant shift in the roles and responsibilities of the federation and the federating units. The jurisdictional change emerging as a result of the omission of the concurrent legislative list is noteworthy. It has delegated the key subjects of education policy, curriculum, planning and standards to the exclusive legislative and executive jurisdiction of the provinces. The incorporation of Article 25-A is another fundamental change introduced by the Eighteenth Constitutional Amendment. Education in Pakistan has always been considered as a fundamental right in all the policy documents as well as the late constitutions of 1956 and 1962. Even the constitution of Pakistan 1973 contained a number of provisions which acknowledged the right to education, however those provisions were not enforceable. The introduction of Article 25-A however makes it a justiciable right, obligating the state to provide free and compulsory education to the children of the age five to sixteen years.

¹ Constitution (Eighteenth Amendment) Act 2010, Act No X of 2010

² Constitution (Eighteenth Amendment) Act 2010 touches upon ninety eight (98) Articles and two schedules and has omitted/deleted two schedules as well.

In the context of distribution of powers between the federation and the provinces another significant development is the reconstitution of Federal Legislative list. The enactment places the standards in higher education, scientific and technical institutions, as well as research in the part two (II) of the list; thus placing these important subjects in the domain of Council of Common Interests³. The reconstitution effectively curtails unilateral federal decision making on the said subjects.

The subject of education in a federal framework holds a fundamental position for a variety of reasons most importantly being a medium to promote cohesion and a set of shared values. In case of Pakistan the issue becomes more important because of the dismal state of affairs in the education sector. The country is facing serious challenges of Access, Equity and Quality⁴. The reconfiguration of the governance framework will have perceptible impacts on the education sector. In this context the redefined roles of the federal and provincial governments have brought new challenges as well opportunities at both the tiers. The present change calls for a detailed examination of how the amendment has redefined the respective roles as well as how this shift will contribute in responding to the educational challenges currently faced by Pakistan.

The present study intends to inform the process of dialogue on the reconfigured federal framework among the public sector, civil society, academics and politicians by exploring the key changes introduced by the Eighteenth Constitutional Amendment in the education governance in Pakistan.

In this regard the paper provides a background to the present changes and delineates the new roles of federal government and the provinces. The paper also identifies challenges and opportunities for both federal and provincial governments in the changed scenario. The present study is based upon a review of relevant literature on education governance in

³ Article 153-154, Constitution of Islamic Republic of Pakistan 1973

⁴ Pakistan is facing serious educational challenge befittingly termed as an “*Education Emergency*” by the Task Force on Education. Moreover given the state of affairs the Federal Government has declared 2011 as the year of education.

federations as well as an exhaustive examination of the revised constitutional framework and the ensuing changes at federal and provincial level.

SCHEME OF PRESENTATION

The paper is divided in four sections; first section of the study provides a background tracing the institutional framework of education governance in Pakistan. The second part of the paper presents the changes introduced by the eighteenth constitutional amendment in respect of education. The third section of the study identifies prospective roles of federation and the federating units as a result of the eighteenth amendment. The paper concludes with a set of findings and recommendations in context of the prospective jurisdictional shift.

BACKGROUND: EDUCATION GOVERNANCE IN PAKISTAN

Through the numerous phases of federalism in Pakistan education mostly remained in the provincial domain. The Constitution of Pakistan 1973 for the first time placed education related entries on the concurrent legislative list thus allowing a substantial federal role in Education; particularly in terms of policy, planning and curriculum development.

The Interim Constitution 1947-1956(Government Of India Act 1935)

Pakistan inherited federal structure of governance at the time of independence under the interim arrangement provided by the Indian Independence Act 1947⁵. The Act provided for the adoption of Government of India Act 1935 as the provisional constitutional framework. The Government of India Act 1935 (Adapted as *Pakistan (Provisional) Constitutional Order 1947*) served as the constitution of Pakistan till the adoption of First Constitution in 1956. Government of India Act 1935, provided three legislative lists namely; federal, concurrent and provincial legislative lists. Education was placed in the exclusive legislative and executive domain of the provinces⁶ vide *Entry 17* of the provincial legislative list. Any matter related to Education as policy, planning or curriculum was neither on the Federal Legislative List nor the Concurrent Legislative List⁷.

The Constitution Of 1956

The first Constitution of Pakistan was adopted in 1956 and provided for three legislative lists in the manner similar to the Government of India Act 1935. Education in the 1956

⁵ Indian Independence Act was enacted by the British Parliament on July 18th, 1947. The act provided the legal basis for setting up of two dominions of India and Pakistan.

⁶ *Entry 17*, Provincial Legislative List, VIIth Schedule, Government of India Act 1935 (Section 100-104, Part V Chapter I, of the Government of India Act 1935 dealt with division of powers between the centre and provinces, the list of subjects was given in the Seventh Schedule.)

⁷ The only entry in the federal legislative list dealing with education pertained to the Hindu University of Banaras and Muslim University Aligarh *Entry 13*, Federal Legislative List, VIIth Schedule, Government of India Act 1935

constitution was stipulated as the obligation of state. The directive principles of state policy in the Constitution of 1956 required the state to *remove illiteracy, provide free and compulsory primary education with in minimum possible time*. Article 106 of the constitution dealt with the distribution of powers between federal and provincial governments. The legislative jurisdiction by enumeration of the subjects was provided in the Fifth Schedule of the constitution. Education (including university education, technical education and professional training) was assigned to exclusive legislative domain of the provinces⁸.

The Constitution of Second Republic 1962

The Constitution of Second Republic was adopted in 1962. The Constitution provided for a Presidential form of government. Education featured prominently in the constitution as it was acknowledged as a fundamental right under Article 12(3), and Article 7(Principles of Policy Chapter 2). However in terms of distribution of powers, the 1962 Constitution moved away from the practice of provision of multiple legislative lists and provided only a single list of subjects on which the central legislature had the exclusive power to legislate⁹. The federal legislative list as provided in the third schedule of the constitution had 49 items and none dealt with Education thus delegating it to the provincial realm. The only entries related to education in the exclusive jurisdiction of central legislature as mentioned in the third Schedule of 1962 constitution were; *National Libraries and Museums*¹⁰, and *Central Agencies and Central Institutions for the promotion of special studies and research*¹¹

The Interim Constitution of 1972

The interim Constitution of 1972, continued with the previous tradition of division of subjects. It too provided three legislative lists i.e. Federal, Concurrent and Provincial¹². Education including higher education was conferred to the provincial mandate¹³.

⁸ Entry 20, Provincial Legislative List, Vth Schedule, Constitution of Pakistan 1956

⁹ Third Schedule, Matters With Respect To Which The Central Legislature Has Exclusive Power To Make Laws, *Constitution of the Second Republic 1962*

¹⁰ Entry 29, Third Schedule, Constitution of the Second Republic 1962

¹¹ Entry 30, Third Schedule, Constitution of the Second Republic 1962

¹² Fourth Schedule (Article 138), The Interim Constitution of the Islamic Republic of Pakistan 1972.

The Constitution of 1973

Education saw a major jurisdiction shift in 1973, when it was formally incorporated in the concurrent and federal legislative lists in the Constitution of Pakistan 1973. In the federal legislative list Part-I three entries dealt with education (Entries: 15, 16 & 17¹⁴). Whereas the concurrent list included important entries like education policy, planning, curriculum, syllabus, standards of education and Islamic Education¹⁵ thus empowering the federal government to play a dominant role in the affairs of education.

Policy Milieu

As discussed in the foregoing sections that the subject of education has remained in provincial legislative jurisdiction and executive authority till 1973, when it was included in the concurrent legislative list. Nevertheless the federal government was frequently involved in macro planning since 1947. A review of the pre-1973 phase indicates a number of policy interventions by the federal government in Education. As education was not in the legislative or executive mandate of the federal government, the influence was exercised by virtue of the federal control over the provincial income. At national level following ten policy documents have been framed with varying degree of consultation and involvement of the federating units:

1. Report of the Pakistan National Educational Conference 1947
2. Report of the Second Pakistan Educational Conference 1951
3. Report of the National Commission on Education 1959
4. Proposals for New Education Policy 1969
5. New Education Policy 1970
6. Education Policy 1972-78

¹³ Entry 16, List II, Provincial Legislative List, Schedule IV, The Interim Constitution of the Islamic Republic of Pakistan 1972

¹⁴ Libraries, Museums and similar institutions controlled or financed by the federation, Institutes for professional, technical training or promotion of special studies, affairs of Pakistani students studying in foreign country. (Entries 15, 16, and 17, Federal Legislative List, Fourth Schedule, Constitution of Pakistan 1973)

¹⁵ Entry 38 and Entry 39, Concurrent Legislative List, Fourth Schedule, Constitution of Pakistan 1973

Eighteenth Amendment: Federal and Provincial Roles and Responsibilities in Education

7. National Education Policy 1979
8. National Education Policy 1992
9. National Education Policy 1998-2010
10. National Education Policy 2009

EDUCATION GOVERNANCE FRAMEWORK: PRE & POST EIGHTEENTH CONSTITUTIONAL AMENDMENT

Pre Eighteenth Amendment Framework:

In the aftermath of inclusion of education in the concurrent legislative list it has remained a joint function, federal as well as provincial. At federal level, Ministry of Education formulated policies, plans as well as the national curriculum, whereas the provinces developed their own planning and implementation schemes in the larger framework as envisaged in the national policies and curriculum.

The primary responsibility of development and coordination of national policies and plans of education rested with the Policy and Planning Wing of the federal ministry of education. The key roles as prescribed by the Rules of Business 1973 included; formulation of national policies, collection of vital statistics; diagnose system & performance issues, development of physical and financial norms at each level of education in terms of unit costs, students teacher ratio, physical facilities and general improvement in the learning environment, and proposing alternate strategies to maximize returns on investment made in education. It was also mandated to prepare and monitor implementation of PSDP, Medium Term Plan (MTP) and Perspective Plan (PP). Assist and coordinate with Provincial Education, Finance and Planning Departments and the District Governments, to develop education sector financing strategies and plans in line with clearly laid out educational outcomes¹⁶.

The formulation, evaluation and approval of curriculum have remained the mandate of Federal Bureau of Curriculum (Curriculum Wing) a constituent section of the Federal Ministry of Education. It was established under the *Federal Supervision of Curricula, Text Books and Standards Act 1976*¹⁷. The Federal Bureau of Curriculum has been supported by

¹⁶ Rules of Business 1973, as formulated under Article 70 (4), Entry 37, Concurrent Legislative List, Schedule IV, Constitution of Pakistan 1973; Entry 37 reads as, “*Curriculum, syllabus, planning, policy, centers of excellence, standard of education*”.

¹⁷ Section 3, Subsection 2 clause ‘a’ of *Federal Supervision of Curricula, Text Books and Standards Act 1976* reads as: (2)The Competent Authority may, for carrying out the purposes of this Act:

the Curriculum Bureaus in every province¹⁸. These bureaus provided the academic support to the Federal Bureau of Curriculum (Curriculum Wing). The authority of finalization of curriculum rested with the Federal Ministry.

In the early 1960's, the use of multiple textbooks was a common practice in Pakistan. This practice stopped after the creation of Provincial Textbook Boards in the government sector to develop textbooks for both public and private schools. The role of federal government was institutionalised after the introduction of curriculum in the concurrent list and enactment of *Federal Supervision of Curricula and Textbooks Act 1976*. Though the responsibility of textbook development was with the provincial or regional Textbook Boards, the mandate of final approval remained with the Curriculum Wing under Section 3 of the *Federal Supervision of Curricula, Text Books and Standards Act 1976*¹⁹. The *National Textbook Review Committee* a constituent committee of Federal Bureau of Curriculum was mandated with the evaluation and approval of the textbooks²⁰.

For the improvement, promotion, coordination and regulation of Higher Education, University Grants Commission (UGC) was established in 1974 through an act of parliament. UGC was replaced by the Higher Education Commission (HEC) in 2002. Besides improvement and development, HEC also played the role of regulator of Higher Education in Pakistan. Similarly the promotion, development and regulation of polytechnic and technical education was the responsibility of National Institute of Science and Technical Education (NISTE).

In order to ensure quality and uniformity across the country Inter-Board Committee of Chairmen (IBCC) was formed in 1976 under a notification from Ministry of education in

prepare or cause to be prepared schemes of studies, curricula, manuscripts of textbooks and schedules or strategy for their introduction in various classes of an institution in connection with the implementation of the education policy of the Federal Government

¹⁸ Mohammad Saeed; *Education System of Pakistan and the UK: Comparisons in Context to Inter-provincial and Inter-countries Reflections*; in *Bulletin of Education & Research* December 2007, Vol. 29, No. 2, pp. 43-57

¹⁹ Section 3, Subsection 2 clause 'b' of the Act reads as "approve manuscripts of textbooks produced by other agencies before they are specified in various classes of an institution;

²⁰ Khalid Mahmood; *Textbook Evaluation in Pakistan: Issue of Conformity to the National Curriculum Guidelines*, in *Bulletin of Education and Research*, June 2010, Vol. 32, No. 1 pp 15-36

1976. IBCC was established under a resolution by Federal Ministry of Education²¹. Another important institution functional under the auspices of the Federal Education Ministry has been the “*Interprovincial Education Ministerial Committee*”. The forum not only helped coordinate a uniform system of education in all the federating units but also had a fundamental role in the approval of scheme of studies.

The Provinces besides their supporting roles in curriculum and policy formulation implemented and administered education affairs in their respective areas. All the provinces have similar administrative structures; Department of Education with Secretaries as administrative head of the organisation, supported by a provincial directorate as well as divisional and district formations. Punjab and Khyber Pakhtunkhwa have separate departments for School (*Elementary & Secondary*) and Higher Education, whereas in Sind and Baluchistan all the functions are performed by single Department of Education. Education management and direction is mainly done at district level, under the administrative supervision of Provincial Directorates and Provincial departments of education.

Post Eighteenth Amendment Framework:

Eighteenth Constitutional Amendment has revised the existing framework of distribution of powers between federal government and the federating units. Education has been shifted to the legislative and executive jurisdiction of the provinces. The new framework has reconfigured the federal and provincial relationship in terms of education governance. The significant changes altering the governance framework include the following:

Introduction of Article 25-A:

The amendment has inserted a new Article in the chapter dealing with fundamental rights in the Constitution of 1973. Article 25-A²² obligates the state to provide free and compulsory quality education to children of the age group five to sixteen years. However the manner and method of the provision is made contingent upon law

“The State shall provide free and compulsory education to all children of the age of five to sixteen years in such a manner as may be determined by law”

Article 25-A, Chapter-I, Constitution of Pakistan 1973

²¹Notification No.F.5-5/90-JEA(CW). Later on a new resolution was issued in 1987 for the establishment of IBCC; Resolution No.F.10-11/86-CEI dated 30-6-1987.

²² Section 9 of the Constitution (Eighteenth Amendment) Act, 2010 (10 of 2010) w. e .f. April 19, 2010

Removal of the Concurrent Legislative List:

The concurrent legislative list which included the subjects in the shared legislative jurisdiction of Federation and provinces has been omitted²³. The omission has resulted in delegation of a number of subjects to the legislative and executive jurisdiction of the federating units. In context of education the two key entries of concurrent list which stand devolved include:

- Entry 38: Curriculum, syllabus, planning, policy, centers of excellence, standard of education. &
- Entry 39: Islamic Education²⁴

New Entries in Federal Legislative List Part II:

Part II of the Federal Legislative list²⁵, which is in the mandate of reconstituted and more empowered Council of Common Interest (Article 153-154), has been reconfigured. A number of new entries have been inserted; the entries which have direct bearing on Education include the following:

- Entry 6: All regulatory authorities established under a federal law
- Entry 12: Standards in institutions of Higher education and research, scientific and technical institutions
- Entry 13: Interprovincial matters and Coordination.

Omission of Sixth & Seventh Schedule²⁶:

The enactment has omitted Sixth and Seventh Schedules altering Article 268(2) and Article 270(A) of the constitution. The VIth schedule provided a list of thirty five (35) statutes which could not be altered or repealed without the prior sanction of the President of Pakistan. As a result of the omission of VIth Schedule the condition of prior sanction

²³ Section 101(3) of the Constitution (Eighteenth Amendment) Act, 2010 (10 of 2010), omitted the Concurrent Legislative List and entries thereto from 1 to 47 (both inclusive), from the Fourth Schedule.

²⁴ Article 70 (4), Entry 37 & 38, Concurrent Legislative List, Schedule IV, Constitution of Pakistan 1973.

²⁵ Section 101(2)(i)(ii) of the Constitution (Eighteenth Amendment) Act, 2010 (10 of 2010), renumbered entries 4, 5, 6, 7 and 8 as entries “14, 15, 16, 17 and 18, respectively and inserted the said new entries 4 to 13 in Part II of the Federal Legislative List of the Fourth Schedule.

²⁶ Article 268 (2) Schedule VI; Entry 16, and Article 270 A (6), Schedule VII, Entry 6, 7, & 8.

of President to alter or repeal “*The privately managed Schools and Colleges (Taking over) Regulation 1972* has been revoked²⁷.

The VIIth schedule was introduced in the Constitution through Eighth Constitutional Amendment in 1985²⁸. It provided cover to eight (8) Presidential Orders and one (1) Presidential Ordinance as these could only be amended in a manner necessary for a constitutional amendment. Of these nine statutes three education related statutes included; *Agha Khan University Order 1983*, *The National College of Textile Engineering (Governing Body and Cess) Order, 1985*, and *The Lahore University of Management Sciences Order 1985*. As a result of the Eighteenth Constitutional Amendment²⁹ the protection has been removed and the stated enactments can be amended as an ordinary piece of legislation.

Education - Pre & Post 18th Amendment

Subject	Pre-18 th Amendment					Post 18 th Amendment
	GOI Act 1935 (PPCO 1947)	1956 Constitution	1962 Constitution	1972 Interim Constitution	1973 Constitution	
Right to Education	Recognised but not Justiciable	Recognised but not Justiciable	Recognised but not Justiciable	Recognised but not Justiciable	Recognised but not Justiciable	Article 25-A , Education a justiciable right
Education(Policy and Planning)	Provincial Legislative List	Provincial Legislative List	Provincial Legislative List	Provincial Legislative List	Concurrent Legislative List	Provincial Legislative List
Curriculum	Provincial Legislative List	Provincial Legislative List	Provincial Legislative List	Provincial Legislative List	Concurrent Legislative List	Provincial Legislative List
Higher Education	Provincial Legislative List(<i>Except two universities</i>)	Provincial Legislative List	Provincial Legislative List	Provincial Legislative List	Concurrent Legislative List	Federal Legislative List Part-II (<i>Standards</i>)

²⁷ Section 102 of the Constitution (Eighteenth Amendment) Act, 2010 (10 of 2010), omitted the Sixth Schedule.

²⁸ Section 20 of the Constitution (Eighth Amendment) Act, 1985 (18 of 1985) November 11, 1985.

²⁹ Section 102 of the Constitution (Eighteenth Amendment) Act, 2010 (10 of 2010), omitted the Seventh Schedule.

REDEFINED FEDERAL AND PROVINCIAL ROLES IN EDUCATION

Eighteenth Constitutional Amendment has a phenomenal impact on the education sector in terms of the respective roles at federal and provincial levels. The enactment has introduced a number of changes which have modified the education governance framework. The new framework has reconfigured the federal and provincial relationship in terms of education governance. Emerging scenario will result in a rearticulation of the federal role in the education sector and will significantly enhance the roles and responsibilities of the provinces. The new roles of the federal and provincial governments are shaped by two key features of the amendment i.e. introduction of Article 25-A, and removal of the concurrent legislative list. The shift will result in significant implications for federal as well as the provincial governments.

Redefining the Federal Role:

The most notable change at federal level is considerable limitation of the federal role consequent to the omission of the Concurrent legislative list. The key roles of planning, policy, curriculum, standards, etc. have been moved from the shared jurisdiction to the exclusive mandate of the provinces. Most of the constitutional provisions mandating a federal role in education vis-à-vis provinces were in the concurrent legislative list. The federal legislative list contained only two entries relating to education i.e. entry 16 and entry 17. Entry 16 related to “*Federal agencies and institutes for ...research, for professional or technical training, or for the promotion of special studies*” and Entry 17 covered “...Pakistani students in foreign countries and foreign students in Pakistan”. These two entries have remained unchanged, thus the primary role of federation will be positioned on the basis of these two entries.

Besides the entries in part-I two new entries have also been included in the federal legislative list part-II which is in the mandate of Council of Common Interests³⁰ by the eighteenth constitutional amendment i.e. entry 7 and entry 12. Entry 7 of the FLL-II, previously in part-I of the federal legislative list as entry 32, vests in the domain of Council of Common Interests the subject of “National planning and national economic coordination including planning and coordination of scientific and technological research”. Council of Common Interest is also empowered by the entry 12 of FLL-II to manage the “Standards in institutions for higher education and research, scientific and technical institutions”.

The future role of federal government will be based upon the following functions: Inter governmental coordination, Administration of education in the federal capital and the territories under the federal control, coordination for implementation of international treaties,

³⁰ **Article: 153 Council of Common Interests:** *(As amended by Section 54(i) of the Constitution (Eighteenth Amendment) Act, 2010 (10 of 2010))*

- (1) There shall be a Council of Common Interests, in this Chapter referred to as the Council, to be appointed by the President.
- (2) The Council shall consist of—
 - (a) the Prime Minister who shall be the Chairman of the Council;
 - (b) the Chief Ministers of the Provinces; and
 - (c) three members from the Federal Government to be nominated by the Prime Minister from time to time.]
- (4) The Council shall be responsible to Majlis-e-Shoora (Parliament) and shall submit an Annual Report to both Houses of Majlis-e-Shoora (Parliament).

Article 154: Functions and rules of procedure of CCI: *(As amended by Section 55(i) of the Constitution (Eighteenth Amendment) Act, 2010 (10 of 2010))*

- (1) The Council shall formulate and regulate policies in relation to matters in Part II of the Federal Legislative List and shall exercise supervision and control over related institutions.]
- (2) The Council shall be constituted within thirty days of the Prime Minister taking oath of office.
- (3) The Council shall have a permanent Secretariat and shall meet at least once in ninety days: Provided that the Prime Minister may convene a meeting on the request of a Province on an urgent matter.
- (4) The decisions of the Council shall be expressed in terms of the opinion of the majority.
- (5) Until [Majlis-e-Shoora (Parliament)] makes provision by law in this behalf, the Council may make its rules of procedure.
- (6) [Majlis-e-Shoora (Parliament)] in joint sitting may from time to time by resolution issue directions through the Federal Government to the Council generally or in a particular matter to take action as [Majlis-e-Shoora (Parliament)] may deem just and proper and such directions shall be binding on the Council.
- (7) If the Federal Government or a Provincial Government is dissatisfied with a decision of the Council, it may refer the matter to [Majlis-e-Shoora (Parliament)] in a joint sitting whose decision in this behalf shall be final.

education of Pakistani students in foreign countries, professional studies, standards in higher education, research and implementation of the constitutional prescription of free and compulsory education as envisaged by Article 25-A. Revised constitutional mandate of the federal government is presented in the following table.

Education Related Entries in the Revised Federal Legislative List³¹

FLL-Part-I (Article 70 (4))	FLL-Part-II (Article 70 (4)) (Mandate of Council of Common Interest)
“Libraries, museums, and similar institutions controlled or financed by the Federation” (Entry 15)	“National planning and national economic coordination including planning and coordination of scientific and technological research” (Entry 7)
“Federal agencies and institutes for ...research, for professional or technical training, or for the promotion of special studies” (Entry 16)	“Standards in institutions for higher education and research, scientific and technical institutions” (Entry 12)
“...Pakistani students in foreign countries and foreign students in Pakistan” (Entry 17)	“Inter-provincial matters and coordination”(Entry 13)

Impacts of the New Federal Role:

The new role will have significant legal and administrative impacts. Foremost being the dissolution of the Federal Ministry of Education. The prospective consequences for education in the backdrop of the eighteenth amendment need to be determined not only in the context of the newly introduced changes but also the modalities and procedures laid down in the first phase of devolution.

Relocation of the Subordinate & Allied Organisations of Ministry Of Education

The present constitutional arrangement does not require for the transfer/delegation of certain functions being performed by the Ministry of Education, therefore the devolution will necessitate repositioning a number of subordinate³², attached and

³¹ Article 70(4), Schedule IV, Constitution of Pakistan 1973

³² Federal Directorate of Education, Federal Board of Intermediate & Secondary Education (FBISE), National Book Foundation (NBF), National Education Foundation (NEF), Urdu Dictionary Board (UDB), National College of Arts, Private Education Institutes Regulatory Authority (PEIRA)

allied organizations³³. It is pertinent to emphasize that the said repositioning should be undertaken meticulously so as to ensure the organic relationship between the retained functions in the revised institutional arrangement.

Administration of Education in the Federal Territories:

At the moment there are three key bodies working under the mandate of Ministry of Education which cater for a number of educational requirements for the federal Capital, areas under federal jurisdiction and education establishments in the cantonments across country. These include the *Federal Board of Intermediate and Secondary Education*, *Federal Directorate of Education* and Private Education Institutions Regulatory Authority (PEIRA). The disbanding of the Ministry will require a legal and administrative solution to resolve the issue. Private Education Institutions Regulatory Authority is a body which is meant for Islamabad Capital Territory only; its placement under the Ministry of Education was already argued upon, as regulator of a subject cannot be placed under the administrative control of the same Ministry. According to the Rules of Business 1973, regulation as a function comes under the domain of Cabinet Division. The existing regulatory bodies PEMRA, OGRA etc. are administratively under the cabinet division, therefore PEIRA should also be placed under the Cabinet Division.

Curriculum and Supervision of Standards:

Curriculum and standards have now been effectively devolved to the provincial domain, thus resulting in the closure of the Federal Bureau of Curriculum as far as the provinces are concerned. If the federal government wants to retain it for the capital territory and the federally controlled areas, then it will require significant changes in the existing institutional and legal framework.

³³Academy of Educational Planning & Management, National Institute of Science & Technical Education, Pakistan Academy of Letters, Inter-Board Committee of Chairman, Islamabad, Sindh Madrassa-tul-Islam, Karachi, Dawood College of Engineering and Technology, Karachi Pakistan National Commission for UNESCO, Islamabad, Urdu Science Board, Lahore National Museum of Science and Technology, Lahore National Educational Equipment Centre, Lahore, National Education Assessment System, Islamabad Centres of Excellence, Centres of Excellence, Area & Pakistan Study Centres

Inter-Government Coordination

The Federal Ministry of Education was performing the role of inter-governmental coordination on education through two key institutions; Inter Provincial Education Ministerial (IPEM) and Inter Board Committee of Chairmen (IBCC). However the prospective devolution of Ministry of Education will result in abolition of both the bodies, reason being IPEM is not a statutory body and will require statutory provision for its continued functioning. Similarly IBCC was established by a resolution of the Ministry of Education³⁴ and in case of Ministry's dissolution there will be no legal provision for IBCC to function. In the amended framework the role of coordination has been assigned to CCI under entry 7 in FLL-II. In the backdrop of devolution of education the function of coordination will assume utmost importance, and it would be logical that both these organs are placed under the Ministry of Interprovincial Coordination.

Pakistan Task Force on Education

The Task Force on Education was mandated by the Prime Minister of Pakistan in October 2009, with a fundamental objective of implementation of the National Education Policy 2009. The devolution of the function of policy to the provinces calls for a review of the scope of work and terms of reference of the Task Force

Federal Role- The International Interface

The federal role in this context has two dimensions; first deals with the international treaties and agreements and their implementation and the other is more academic in nature, as it undertakes bilateral academic engagements with universities across the world. Moreover it is also responsible for establishment as well as keeping functional number of chairs in a number of universities in the world. On both the counts making a decision will be of utmost importance. The first role can be assigned to the Foreign Affairs Division, however the management of academic interface will require serious deliberation on part of the federal government. At the moment there are 14 chairs³⁵ at

³⁴The body was formed in 1976 under a notification from Ministry of education in 1976. Notification No.F.5-5/90-JEA(CW). Later on a new resolution was issued in 1987 for the establishment of IBCC; Resolution No.F.10-II/86-CEI dated 30-6-1987.

³⁵ Quaid-e-Azam Distinguished Professorship at Columbia University, USA, Quaid-e-Azam Studies Chair, University of California, Berkeley, USA. Quaid-e-Azam Fellowship, Cambridge University, UK. Allama

different international universities. The modalities for selection and keeping these chairs functional will be a key issue to be addressed. Keeping in view the mandate of the Ministry of Interprovincial Coordination the function can be assigned to the Ministry so as the selection for these chairs have equal representation from all the federating units.

Higher Education:

Higher Education and standards were not mentioned in the legislative lists (Federal or Concurrent) prior to the Eighteenth Amendment. The amendment places the standards in higher education in the mandate of Council of Common Interests by placing it in the federal legislative list part-II³⁶. With the devolution of the key functions of policy, planning and curriculum this will leave only the standards of Higher Education at federal level. The revision implies a significant rationalization of Higher Education Commission as the performance of a single role ordained in the constitution may not justify the mandate of HEC.

Special Study Centres

The constitution only provides for the devolution of centers of excellence (entry 38), though Area Study Centres and Pakistan Study Centres were created in most of the public sector Universities under the federal legislation in 1972, 1974 and 1976 respectively³⁷. The controlling ministry for these was Ministry of Education. These are not specifically mentioned in the amendment either; however the rational choice would be the transfer of these centers to the respective universities. Similar is the case of Sheikh Zaid Islamic Centres. These centers were established under an MoU

Iqbal Fellowship, Cambridge University, UK. Allama Iqbal Fellowship, Humboldt University, Germany. Chair in Urdu and Pakistan Studies, Al-Azhar University, Cairo, Egypt. Chair in Urdu and Pakistan Studies, Ain Shams University, Cairo, Egypt. Chair in Urdu and Pakistan Studies at Kazakh Albai Khan University of International Relations and World Languages, Almaaty, Kazakhstan. Chair in Urdu and Pakistan Studies, Ankara University, Turkey. Chair in Urdu and Pakistan Studies, Tehran University, Iran. Chair in Urdu and Pakistan Studies, Tribhuvan University, Katmandu, Nepal. Chair in Urdu and Pakistan Studies at Jordan University, Amman, Jordan. Chair in Urdu and Pakistan Studies at Peking University, Beijing, China. Chair in Urdu and Pakistan Studies at Baptist University, Hong Kong.

³⁶ Entry 12, FLL-II; Standards in institutions for higher education and research, scientific and technical institutions

³⁷ Area Study Centres Act 1972, & Pakistan Study Centres Act 1976

between the governments of United Arab Emirates and Pakistan. The administrative control of these centers needs to be shifted to the respective universities as well. Nonetheless to materialize these prospective changes administrative as well as legal revisions will be required.

Implementing Article 25-A:

The enactment of the eighteenth amendment will have effect on a number of existing educational statutes and implementation of devolution plan will unearth new requirements to be incorporated in the existing statutory framework. In context of Article 25-A there are multiple implications ranging from framing of new laws to interpretation of the constitutional provision. These include

- a. *National Legislation on Right to education with mirror legislations* in the provinces. The case of Consumer Protection legislation, freedom of information legislation as well as the National Calamities Act³⁸ are notable examples in this regard
- b. *Legislation under Article 144³⁹ of the Constitution*: Though in present political circumstances this is not a likely option, however the enormity of challenge and necessity of generating a national response can motivate the federal as well as provincial governments to opt for this provision. Article 144 empowers the federation to legislate on behalf of the provinces. National Disaster Management Ordinance⁴⁰ was issued by invoking this article.
- c. *Interpreting the Provision*: There are number of important considerations which will be required to be taken into account during the framing of law for right to quality education. The most important being the ambiguity arising out of the age mentioned in the constitutional provisions (i.e. 05-16 years). If compared with the

³⁸ *National Calamities (Prevention and Relief) Act 1958*

³⁹ **144. Power of [Majlis-e-Shoora (Parliament)] to legislate for two or more Provinces by consent:**

(1) If two or more Provincial Assemblies pass resolutions to the effect that [Majlis-e-Shoora (Parliament)] may by law regulate any matter not enumerated in either List in the Fourth Schedule, it shall be lawful for [Majlis-e-Shoora (Parliament)] to pass an Act for regulating that matter accordingly, Article 144, Part V Chapter 1, Constitution of Islamic Republic of Pakistan 1973 P58

³⁹ ... but any act so passed may, as respects any Province to which it applies, be amended or repealed by Act of the Assembly of that Province Article 144, Part V Chapter 1, Constitution of Islamic Republic of Pakistan 1973 P58

⁴⁰ National Disaster Management Ordinance 2006, Ordinance No XL of 2006, December 21, 2006

field evidence it will be evident that this age cohort includes students at tertiary/post secondary level. How this discrepancy will be dealt is a moot point.

- d. Defining Liability for Compulsory Education: Another consideration in context of legislation for Article 25-A would be defining the liability. The existing laws (compulsory primary acts) place liability of non attendance of schools on parents. However the regional and international examples suggest otherwise too. As for example the Right to Education Act of India places the liability on the concerned state official instead of the parents.

Provincial Role in Education

Introduction of Eighteenth Amendment has significantly redefined the role of provinces. The magnitude of devolved functions and the existing administrative capacity of the provinces is a serious challenge. In the context of education, there has been a phenomenal delegation of powers, and the Provinces will have to perform a wider variety of functions within the available fiscal space, capacity and without receiving additional resources in the near future.

Old Status	New Status
Curriculum, syllabus: –Federal & Provincial Joint Function	Transferred to Provinces
Planning, Policy: Federal & Provincial Joint Function	Transferred to Provinces
Centres of Excellence, Area Study Centres, Pakistan Study Centres and Sheikh Zaid Islamic Centres-Federal	Transferred to Provinces
Standards of education. Federal & Provincial Joint Function	Transferred to Provinces Beyond Grade 12 transferred to Part II of F.L.L. Entry 12. (CCI)
Islamic Education. Federal & Provincial Joint Function	Transferred to Provinces

The key roles devolved at the provincial tier as result of the eighteenth amendment include the following:

- a. Policy
- b. Planning

- c. Curriculum, Syllabus
- d. Standards of Education
- e. Centres of Excellence
- f. Islamic Education
- g. Area Study Centres
- h. Pakistan Study Centres
- i. Higher Education

The devolution of these function pose a host of challenge for the provinces, necessitating a number of changes. In this regard the key challenges include the following;

Implementation of Article 25-A

The foremost challenge for the provinces would be of the implementation of the provision of free and compulsory education to children aged 5-16. In order to be compliant with the constitutional provision, they need to undertake a comprehensive legislation. Most of the provinces⁴¹ had the compulsory primary education acts, but considering their performance on that context it would be a real challenge with multiple repercussions to respond to. There can be multiple solutions for the legislation; either a new legislation or amending the existing legislations on provision of free and compulsory primary education. It would be important for the provincial law departments that prior to undertaking this task they, in consultation with the education departments consider all the available options as well as regional and international models for legislation on right to education. These can be the reference point for the respective legislation. A number of options discussed in the foregoing section on federation have considered number of options; the same will be applicable to the provincial scenario as well.

Curriculum & Standards of Education-Challenges and Opportunities

The devolution of curriculum provides a significant set of opportunities to the provinces in regards to introducing changes which could not only make their curriculum more competitive but bring it in consonance with their particular culture and environment. In this regard the roles of Bureaus of Curriculum need special attention. The fundamental reason for this would have been that as to date these bureaus were only working as the

⁴¹ Baluchistan is the only province which does not have the compulsory primary legislation

field formations of the federal curriculum wing. Now they will be required to harness professional expertise for the preparation of curriculum from grade 1 to 12. On the legal side provinces will be required to legislate for the supervision of curricula, text books and standards. In this regards various options could be explored such as adaptation of the existing federal law⁴² or drafting a new law which should be suitable to the circumstances of each province.

Administrative and Legislative Measures for Special Study Centres:

A number of functions devolved to the provinces require new legislation or a change in the existing legislations. It would be important in the context of the Centers of Excellence, Area Study Centres and Pakistan Study Centres. The centers were created in a number of Universities in Pakistan in pursuance of, Centres of Excellence Act 1974, Area Study Centres Act 1975 and Pakistan Study Centre Act 1976 respectively. At the moment there are 12 Centres of Excellence, Six (06) Area Study Centres and Six (06) Pakistan Study Centres in the provinces. After devolution, the provinces will be required to undertake legislation or adapt the existing legislations in context of their peculiar circumstances. Similarly the transfer of the administrative control of Sheikh Zaid Islamic Centres will entail special administrative measures.

Issue of Human Resource:

The human resource/Civil Servants at the moment employed in the ministries to be devolved pose another important challenge for the provinces. To deal with this the provincial governments have two options; First, absorption of in province employees along with assets and institutions Second, Refusal to accept the former federal employees. Every province needs a strategy for resolution of this issue. In case of first option, it will be a tedious process for the provinces to redesign their provincial service structure and absorption of the federal employees. Similarly the second option will have its demerits as well, such as hiring of a large number of staff to perform the ordained functions.

⁴² Federal Supervision of Curricula, Textbooks and standards of Education Act 1976

Administrative Measures for Strengthening of Education Departments

The transfer of new functions will call for reconfiguration of the provincial education departments. Especially new sections/wings for policy and planning have to be established. The phenomenal transfer of powers, coupled with drafting of new laws will necessitate revision of rules of business as well. In context of the delegation of new responsibilities the provincial education department's business with regards, to BISEs, Text Book Boards, Public Schools & Colleges, and Cadet Colleges and Education Foundations will also be redefined. The education departments will require revision in the light of new focus, objectives and goals. Proposed amendments in the rules of business will require the approval of the provincial Cabinet.

Private Sector Education

One of the key areas which will require a renewed focus from the provincial education departments will be their role vis-à-vis private sector. Taking account of the educational challenge the departments need to think of taking a strategic position for engaging with private sector either as co-service provider or as standard setting and regulator to create space for itself to focus on policy and curriculum functions in the education sector

Higher Education

A key subject devolved to the provincial domain is higher education. Prior to the passage of eighteenth amendment the provinces were only dealing with primary, elementary, secondary and tertiary education. Their role towards the development, promotion or regulation of Higher education was minimal. It is evident from the fact that at the moment only two provinces (Punjab and Khyber Pakhtunkhwa) has separate departments for Higher Education, but those too mostly deal with the tertiary education. With the devolution of most of the functions, the provinces will require specialised arrangements to respond to the challenges confronting the Higher Education Sector.

Financial Implications

The provinces will have to perform a host of new functions as well as meet the constitutional prescription under Article 25-A in limited fiscal space. The issue not only relates to the availability of the finances but of the efficient resource absorptive capacity of the provincial departments. It is noteworthy that the provinces are now authorised to directly receive foreign assistance for projects of education development. The eighteenth

amendment by inserting a new clause (Clause 4) in Article 167⁴³ of the constitution has empowered the provinces to raise domestic and international loans. It would be important in this backdrop that the provincial education departments should make sector plans and come up with calculations to engage federal government and international partners for additional targets to achieve the target set in Article 25-A

Party Positions on Revised Role of Federation and Provinces in Education

Majority of the political parties have supported the prospective change in the education governance framework in Pakistan. During the course of deliberations on the amendment only two notes of reiteration were submitted regarding the proposed changes. The review of the views of political parties as evident from the Report of the Parliamentary Committee on Constitutional Reforms in this context indicates unanimity of opinion regarding the devolution of education to the provincial ambit.

There are only two dissenting notes and their focus is on devolution of curriculum to the provinces. It would be important to note that both the notes do not call for a federal role but suggest placing curriculum in the mandate of Council of Common Interests.

- a. While favoring the devolution of the functions of education to the provinces, apprehensions were recorded by Senator Prof. Khurshid Ahmad from Jamaat-e-Islami regarding the devolution of curriculum to the provinces. In the note he suggests that uniform national curriculum is necessary to ensure national identity and solidarity, and suggests the role of coordination for the same be mandated to Council of Common Interest. The Senator also suggested a gestation period of ten (10) years for the implementation of Article 25-A⁴⁴.
- b. The second note of reiteration was submitted by Mr. Ahsan Iqbal, representative of Pakistan Muslim League (N). The note in the vain similar to Prof. Khurshid Ahmad

⁴³ 167. Borrowing by Provincial Government— (4) A Province may raise domestic or international loan, or give guarantees on the security of the Provincial Consolidated Fund within such limits and subject to such conditions as may be specified by the National Economic Council.

⁴⁴ Note of Reiteration Senator Prof. Khurshid Ahmad (JI), Report of the Parliamentary Committee on Constitutional Reforms, pp.43-44, Annex D-V

suggested placing entry 38(*Curriculum, syllabus, planning, policy, Centres of Excellence, Standards of education*), of concurrent legislative list to Federal Legislative List Part-II.⁴⁵

⁴⁵ Note of Reiteration Mr. Ahsan Iqbal(PML-N), Report of the Parliamentary Committee on Constitutional Reforms, pp.58, Annex D-IX

CONCLUSION AND RECOMMENDATIONS

The enactment of Eighteenth Constitutional Amendment has redefined the whole institutional and legal framework for education in Pakistan. In the backdrop of the mammoth educational challenge faced by Pakistan, this change will have serious repercussions on the overall educational governance framework. The dimensions of the challenge are different for both the federal as well as provincial governments. The capacity of the provinces to take on the challenge is at variance with each other. In this backdrop how the federal government will structure its response to the national challenge has yet to be seen.

It is important to note that the devolution of education may not lead to the curtailment of federal role on the issues of national importance. It seems evident that federal government needs a coordinating contrivance so as to put up a tangible, consistent and sustainable response. The role of federal government is also essential to transcend the geographical inequities and its responsibility to provide equal opportunities to all its citizens. The evidence from some of the federations which are considered highly decentralized like Germany, Canada and USA indicates that all of them maintain certain mechanisms for national coordination for education.

In Pakistan the devolution of education has resulted in a debate on the pros and cons of the new institutional arrangement. Nevertheless the importance of the national response to the educational challenge confronting Pakistan appears to be missing in this regard. The present challenges of access, equity and quality of education require a response at national level. The national response needs to be articulated in a way that without arrogating the autonomy of the federating units it should be able to deal with the multifaceted challenge faced by Pakistan.

The present study was meant to explore the prospective roles of federation and provinces in the context of eighteenth amendment. On the basis of foregoing analysis of the roles and implications thereof following recommendations are proposed as a way forward:

- A. Federal government needs to create a coordinating mechanism for performing its role.
If the political expediency necessitates the dissolution of the federal ministry, an

elaborate component needs to be added within the mandate of the Federal Ministry of Interprovincial Coordination for performing the much required function of educational planning and coordination. The proposed component can take form of ‘*Human Resource Division*’ which can take on the key roles in this regard.

- B. The role of federal government is fundamental to any prospective strategy for meeting the national educational challenge. The enormity of educational challenge needs to be responded by generating a national response. The National Education Policy 2009 in this regards presents a consensually agreed and adopted strategy, the devolution of functions of policy and planning of education should not lead to doing away with the instrument. It should stay as a core strategy document which is meant to provide a common framework.
- C. In the context of reconfigured educational governance framework two institutions have gained remarkable importance, i.e. IPEM and IBCC. The evidence from other federations also substantiates formalization of these institutions e.g. Standing Conference in Germany or CPEM in Canada. IPEM has a fundamental role to play and should be provided with a statutory basis. Similarly, the institutionalization of IBCC is of critical importance. Inter Board Committee of Chairmen is a key body, at the moment working under an executive notification of Ministry of Education. Taking in to consideration its key roles of equivalence, standardised examination system, coordinating syllabus it needs to be constituted under a formal legal provision. Both the bodies can be housed in the Federal Ministry of Inter Provincial Coordination. The provincial governments should facilitate and contribute to strengthen the formation and sustainability of these bodies
- D. Article 25-A obligates the state to ensure free and compulsory quality education. According to Article 7 of the constitution the definition of state includes both the federal and provincial governments. In order to lead and create a basic framework for the provision of the right, Federal government should formulate a *National Framework for Provision of Right to Quality Education*. The provincial governments are also obligated to do legislation for complying with the obligation enshrined in Article 25-A.
- E. Legislation for the newly devolved subjects is one of the daunting tasks for the provincial governments. The Education departments and the provincial Law departments should immediately embark upon the task. It is pertinent to note that

existing framework had a number of shortcomings the *Federal Supervision of Curricula and Textbooks Act 1976* is a case in point, its rules of business were never drafted. This presents a window of opportunity to the provinces to study the existing shortcomings and come up with more comprehensive legislation as well as corresponding rules.

- F. Provincial Education Secretariats need to be strengthened so as to take on the newly devolved roles and responsibilities. Besides the administrative sections, in anticipation of the devolved functions special considerations are required for establishment of Policy and Planning wings. The Departments should prepare revised rules of business in anticipation of new roles with subsequent approval of the provincial cabinets.
- G. Higher Education in this regard needs special attention, as discussed in the foregoing sections only two provinces have separate departments for higher education and most of their work is focused on tertiary education. The devolution of key functions pertaining to higher education presents a significant challenge for the provinces. The provinces not only need to strengthen/establish higher education departments but they may develop autonomous bodies similar to the Higher Education Commission for the promotion, improvement and coordination of Post Graduate education.
- H. Though curriculum has been devolved but taking into account the fact that the recently developed National Curriculum is a consensually adopted document it should stay as the foundation document which can support the provincial curriculum development. Besides, it seems imperative that a central mechanism for coordination of curriculum framework should also be created. Formation of a broad based institution with in the ambit of the Federal Ministry of Interprovincial Coordination with membership of all the provinces, as well as from the professional organisations and civil society seems vital.
- I. The provincial education departments need to undertake financial projections to estimate the financial resources required for realizing the compliance of Article 25-A. As the assessment of the magnitude of challenge will be important in formulation of strategies for achieving the target.
- J. Federal Government should play a supportive and substantiating role vis-à-vis the federating units for the early compliance of the constitutional obligation provided in

Article 25-A. The role of federal government can take form of financial incentive regimes for the performing provinces as well as special equity grants can be awarded to the provinces.