

p-ISSN : 2708-2113 | e-ISSN : 2708-3608

DOI(Journal): 10.31703/gesr
DOI(Volume): 10.31703/gesr/.2024(IX)
DOI(Issue): 10.31703/gesr.2024(IX.II)

www.gesrjournal.com

Global Educational
Studies Review



GESR
educating humanity

GESR

GLOBAL EDUCATIONAL STUDIES REVIEW
HEC-RECOGNIZED CATEGORY-Y

VOL. IX, ISSUE II, SPRING (JUNE-2024)


Humanity Publications
sharing research
www.humapub.com
US | UK | Pakistan

Double-blind Peer-review Research Journal
www.gesrjournal.com
© Global Educational Studies Review

Article Title

A Critical Analysis of the Regulations and Process of Appointment of Vice-Chancellors at Higher Education Institutions in Pakistan

Global Educational Studies Review

p-ISSN: 2708-2113 e-ISSN: 2708-3608

DOI(journal): 10.31703/gesr

Volume: IX (2024)

DOI (volume): 10.31703/gesr.2024(IX)

Issue: II Spring (June-2024)

DOI(Issue): 10.31703/gesr.2024(IX-II)

Home Page

www.gesjournal.com

Volume: IX (2024)

<https://www.gesjournal.com/Current-issues>

Issue: II-Spring (June-2024)

<https://www.gesjournal.com/Current-issues/9/2/2024>

Scope

<https://www.gesjournal.com/about-us/scope>

Submission

<https://humaglobe.com/index.php/gesr/submissions>

Google Scholar



Visit Us



Abstract

In post Eighteenth Amendment era higher education became a provincial subject, limiting the Federal HEC's role to maintaining standards. However, only two provinces have established their Higher Education Commissions with limited power. Various university acts have loopholes regarding appointments of vice-chancellors, leading to some appointments being nullified by higher courts due to procedural non-compliance. The lack of clear rules for higher-level appointments negatively impacts lower levels, necessitating a robust legislative framework. It is crucial to appoint permanent vice-chancellors for all vacant positions in Higher Education Institutions. An effective and efficient regulatory and legislative framework for the higher education sector should involve all major stakeholders, including the Federal Government, Provincial Governments, university representatives, the National Finance Commission, and the Council of Common Interest. This collaboration is essential to address the current gaps and improve governance in higher education.

Keywords: Regulations, Appointments, Vice-chancellors, Higher Education Institutions, Legislative Framework, Eighteenth Amendment

Authors:

Hafiz Quaisar Mahmood Farukh: (Corresponding Author)

PhD Scholar, Department of Law, International Islamic University, Islamabad, Pakistan.

(Email: adv.qmf@gmail.com)

Hafiz Aziz-ur-Rehman: Professor & Director, School of Law, Quaid-i-Azam University, Islamabad, Pakistan.

Pages: 88-99

DOI:10.31703/gesr.2024(IX-II).11

DOI link: [https://dx.doi.org/10.31703/gesr.2024\(IX-II\).11](https://dx.doi.org/10.31703/gesr.2024(IX-II).11)

Article link: <http://www.gesjournal.com/article/A-b-c>

Full-text Link: <https://gesjournal.com/fulltext/>

Pdf link: <https://www.gesjournal.com/jadmin/Author/31rv1olA2.pdf>

Citing this Article

11	A Critical Analysis of the Regulations and Process of Appointment of Vice-Chancellors at Higher Education Institutions in Pakistan						
	Author	Hafiz Quaisar Mahmood Farukh Hafiz Aziz-ur-Rehman		DOI	10.31703/gesr.2024(IX-II).11		
Pages	88-99	Year	2024	Volume	IX	Issue	II
Referencing & Citing Styles	APA	Farukh, H. Q. M., & Aziz-ur-Rehman, H. (2024). A Critical Analysis of the Regulations and Process of Appointment of Vice-Chancellors at Higher Education Institutions in Pakistan. <i>Global Educational Studies Review</i> , IX(II), 88-99. https://doi.org/10.31703/gesr.2024(VII-II).11					
	CHICAGO	Farukh, Hafiz Quaisar Mahmood, and Hafiz Aziz-ur-Rehman. 2024. "A Critical Analysis of the Regulations and Process of Appointment of Vice-Chancellors at Higher Education Institutions in Pakistan." <i>Global Educational Studies Review</i> IX (II):88-99. doi: 10.31703/gesr.2024(VII-II).11.					
	HARVARD	FARUKH, H. Q. M. & AZIZ-UR-REHMAN, H. 2024. A Critical Analysis of the Regulations and Process of Appointment of Vice-Chancellors at Higher Education Institutions in Pakistan. <i>Global Educational Studies Review</i> , IX, 88-99.					
	MHRA	Farukh, Hafiz Quaisar Mahmood, and Hafiz Aziz-ur-Rehman. 2024. 'A Critical Analysis of the Regulations and Process of Appointment of Vice-Chancellors at Higher Education Institutions in Pakistan', <i>Global Educational Studies Review</i> , IX: 88-99.					
	MLA	Farukh, Hafiz Quaisar Mahmood, and Hafiz Aziz-ur-Rehman. "A Critical Analysis of the Regulations and Process of Appointment of Vice-Chancellors at Higher Education Institutions in Pakistan." <i>Global Educational Studies Review</i> IX.II (2024): 88-99. Print.					
	OXFORD	Farukh, Hafiz Quaisar Mahmood and Aziz-ur-Rehman, Hafiz (2024), 'A Critical Analysis of the Regulations and Process of Appointment of Vice-Chancellors at Higher Education Institutions in Pakistan', <i>Global Educational Studies Review</i> , IX (II), 88-99.					
TURABIAN	Farukh, Hafiz Quaisar Mahmood and Hafiz Aziz-ur-Rehman. "A Critical Analysis of the Regulations and Process of Appointment of Vice-Chancellors at Higher Education Institutions in Pakistan." <i>Global Educational Studies Review</i> IX, no. II (2024): 88-99. https://dx.doi.org/10.31703/gesr.2024(VII-II).11 .						



Cite Us

**Authors:****Hafiz Quaisar Mahmood Farukh:** (Corresponding Author)

PhD Scholar, Department of Law,
International Islamic University, Islamabad,
Pakistan.

(Email: adv.qmf@gmail.com)

Hafiz Aziz-ur-Rehman: Professor & Director, School of
Law, Quaid-i-Azam University, Islamabad,
Pakistan.

Contents

- [Introduction](#)
- [Research Methodology](#)
- [Framing of Legal Issues](#)
- [Historical Perspective of Higher Education Laws](#)
- [Laws related to the appointment of VC](#)
- [Balancing Centralized and Collegial Approaches for Appointing Vice Chancellors](#)
- [Recommendations](#)
- [Findings and Conclusion](#)
- [References](#)

Title

A Critical Analysis of the Regulations and Process of Appointment of Vice-Chancellors at Higher Education Institutions in Pakistan

Abstract

In post Eighteenth Amendment era higher education became a provincial subject, limiting the Federal HEC's role to maintaining standards. However, only two provinces have established their Higher Education Commissions with limited power. Various university acts have loopholes regarding appointments of vice-chancellors, leading to some appointments being nullified by higher courts due to procedural non-compliance. The lack of clear rules for higher-level appointments negatively impacts lower levels, necessitating a robust legislative framework. It is crucial to appoint permanent vice-chancellors for all vacant positions in Higher Education Institutions. An effective and efficient regulatory and legislative framework for the higher education sector should involve all major stakeholders, including the Federal Government, Provincial Governments, university representatives, the National Finance Commission, and the Council of Common Interest. This collaboration is essential to address the current gaps and improve governance in higher education.

Keywords: [Regulations](#), [Appointments](#), [Vice-chancellors](#), [Higher Education Institutions](#), [Legislative Framework](#), [Eighteenth Amendment](#)

Introduction

The importance of visionary leadership at Higher Education learning institutions cannot be ignored as leadership shapes the future of these institutions consequently, empowers

generations to face challenges with confidence. Higher Education institutions deal with the infrastructure and superstructure of research and allied facilities. These institutions cannot be beneficial without having a futuristic legal framework. Unfortunately, the legal framework

regarding the appointment of a vice chancellor was missing after the Eighteenth Constitutional Amendment in the Constitution of Pakistan 1973 and before the pronouncement of the judgment of Lahore High Court, Lahore in Dr. Aurangzeb Aalamghir vs. Province of Punjab case. University Grants Commission Act, 1974 which was repealed by the Higher Commission Ordinance, 2002 (the Ordinance) did not provide a mechanism to appoint the topnotch position of vice chancellor. Meanwhile, the Federal Universities Ordinance, of 2002 which was followed by the Higher Education Commission Ordinance, of 2002 had a provision regarding the appointment of a vice chancellor. Later on, after Eighteenth Constitutional Amendment the decision in Dr. Aurangzeb Aalamghir's case paved the way to resolve a deadlock between federation and provinces. The Court decided that the Higher Education Commission at the Federal level would be responsible for setting standards for Higher Education Institutions as enunciated in Federal Legislative List Entry No. 38 and respective provinces would implement and execute these standards with true letter and spirit. The crux of the case is that After the Eighteenth Constitutional Amendment in the Constitution of Pakistan 1973 the Punjab province assumed that Education had become a provincial subject. Consequently, amended the law i.e. the Public Sector Universities (Amendment) Act, 2012, and announced the vacancies while laying down the criterion for appointment of vice-chancellor. The Court gave its verdict that no provincial government could formulate the criterion for appointment of a vice-chancellor as it falls in the exclusive domain of the Federal Higher Education Commission (HEC). The court also directed that the HEC should examine the advanced standards prevalent in other countries for the selection of vice-chancellors. At the moment, Higher Education institutions are suffering from academic stagnation due to the stereotypical selection of their leaders. Further, visionary leadership can get rid of the malaise of stagnation afflicted our universities. Though, it was the responsibility of the Federal and Provincial governments to comprehend their powers yet Court had to interfere to fill the gap and facilitate the government to accomplish the task. The Court also decided that the members would have strong credibility & integrity while having sound knowledge of their respective fields. The Honorable Court has attempted to cure the malaise of stagnation afflicted on our universities now it is the turn of the government to implement this judgment with true letter and spirit to rejuvenate the Higher Education institutions. Recently, the directions given by the Honorable Court have

been made part of the Higher Education Amendment Act 2021. In March 2024 a writ petition u/a 184 (3) of the Constitution was filed by All Pakistan University BPS Teachers Association (APUBTA) before the Supreme Court of Pakistan that 64 higher education institutions don't have permanent vice-chancellors. As per the official record in Sindh 6 universities don't have permanent Vice Chancellors. Likewise, 2 universities in Balochistan don't have permanent Vice Chancellors. Punjab and Khyber Pakhtunkhwa further aggravated this situation as 32 universities in Punjab out of 50 & 24 out of 34 universities in Khyber Pakhtunkhwa don't have permanent Vice Chancellors. This malpractice can cause severe harm to the whole structure of higher education as temporary appointments would be puppets in the hands of politicians on one side and could not be beneficial to improve the prevailing system in universities. In this paper, we critically examined the laws dealing with the appointment of Vice Chancellors before the Eighteenth Amendment and laws that are functional right now. There were lacunas in prevailing laws and courts tried to fill the gap to some extent by making judicious decisions as mandated by the Eighteenth Amendment of the Constitution of Pakistan 1973.

Research Methodology

This research employed a mixed interdisciplinary approach, utilizing both quantitative and qualitative research techniques. The predominant focus was on qualitative methods, which are part of the conventional legal methodology of analyzing primary and secondary legal sources. Integral parts of this research include case laws, acts, and ordinances of the universities; therefore, the provisions of the world constitutions, laws related to the higher education sector, and important case laws of higher courts while shedding light on the irregularities of the regulatory framework of higher education sector in Pakistan have been discussed. The theoretical framework encompasses the application of regulatory ritualism theory. Additionally, this research includes arguments based on data from several publications regarding various regulatory systems that have been published by national and international authors and agencies.

Framing of Legal Issues

Whether devolution of power regarding appointments at a higher level as envisaged by the 18th Amendment is reflected and incorporated in the existing Legislative Framework.

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

Historical Perspective of Higher Education Laws

While discussing the historical perspective of laws related to "higher education institutions" it would be unfair to ignore the system of Higher Education presented and implemented by Thomas Babington Macaulay (1800-1859)—a poet, politician, and prominent British historian who presented the Education system for Indian Sub-continent with the name of "Minute on Education" 1835 which was implemented through different reforms and policies by British Colonial Administration. The reforms introduced by Thomas Babington Macaulay were: the establishment of universities in big cities, English as a medium of instruction, for that purpose induction of English-speaking teachers, the devaluing the indigenous education, and the focus on Western sciences, literature, and philosophy. Unfortunately,

these reforms are prevalent in our existing Higher Education system. Secondly, the appointment of vice-chancellors was made through different acts of universities. Lord Curzon's Act, 1904 introduced guidelines for appointment of vice chancellors. Likewise, the universities in big cities like the University of Calcutta 1857, the University of Madras 1857, and the University of Bombay 1857 had their own rules for the appointment of vice-chancellors. Since the inception of Pakistan in 1947 universities had their own regulations to appoint vice chancellors. The upcoming tables show that the right to Education was recognized but it was not justiciable in the pre and post-independence era. Moreover, no specific provision was present dealing with the right to Education specifically which shows the lack of interest in this sector. Further, Higher Education remained on the provincial legislative list, and concurrent legislative list, and finally after the Eighteenth Amendment it became a provincial subject. Nonetheless, the maintaining standards rests with the Federal Higher Education Commission.

Table 1

Pre-Independence Status of Education and Higher Education

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

Table 2

Post-Independence Status of Education and Higher Education

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

Table 3

Constitutions of 1956, 1962 and 1972

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

Table 4

Constitution of 1973

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

Table 5

Eighteenth Amendment

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

Source: Primarily idea was taken from the report of Dr. Khawaja which he mentioned in his report Management and Governance of Higher Education Institutions.

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

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

Laws related to the appointment of VC

The top-notch position at university is the post of Vice-Chancellor therefore, it is time to elucidate the relevant laws regarding the appointment of vice-chancellors. This position would determine the future of universities as the Vice-Chancellor would be considered the Prime Minister of the University and have a direct impact on selection at the university. Higher Education Commission was established in September 2002 and soon after that The Federal Universities Ordinance, 2002 was enacted with the purpose of establishing and restructuring the universities that the Federal Government had established. Section 11 of the Federal Universities Ordinance, 2002 deals with the method to appoint and remove the VCs. The Senate's proposal would guide the Chancellor regarding the appointment of the VC. The Senate will form a search committee. Two members of the Senate, two Chancellor Nominees, and two eminent educators will make up this search committee. The two teachers shall be selected by the Senate as prescribed by the Statute. The search committee will continue to function until

the vice-chancellor is appointed. The Senate will evaluate the search committee's nominee and forward it to the Chancellor in priority order. It is pertinent to mention here that the Chancellor may decline the appointment made by the Senate. The Vice-Chancellor will be appointed for a period of five years that is renewable. Section 13 of the Universities Act 2012 sets out the qualifications and criteria for the appointment of VCs. The Punjab HEC Act, 2014, Section 7, outlines the procedure for appointing vice-chancellors. It requires that the Punjab Higher Education Commission develop policies and guidelines for that purpose and that it oversee the selection process to ensure that it is fair, transparent, and merit-based. Section 12 of the KPU Act, 2012 sets out qualifications and criteria for the appointment of vice-chancellors at universities in Khyber Pakhtunkhwa. The section also sets out the process for the selection of vice-chancellors, which includes the formation of a search committee, the advertisement of the position, the review of applications, and interviews of shortlisted candidates. Candidly speaking it is also naked truth no proper procedure has been devised for appointing the vice chancellor after the 18th amendment.

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

VC selection was a herculean task for the public sector as well as for private sector universities. There is no proper appointment method after the Eighteenth Constitutional Amendment to fulfill the most powerful as well as the highest position at the university level. That's why a petition has been filed before the Supreme Court to direct the government regarding the appointment of vice-chancellors in sixty-four institutions in Pakistan. Obviously, when the highest position would be fulfilled through political biasedness and without merit; there would be higher chances of perishing the meritocracy at all levels. It is the responsibility of VC to guarantee the strict observance of statutes, rules, regulations,

and the conditions of the University Act. In an emergency, the vice-chancellor may take any action that falls under the purview of any authority but is not otherwise within his or her purview. The Vice-Chancellor may appoint teachers and officers, direct them to take on assignments related to exams, administration, or any other university-related activity, authorize funds for unanticipated expenses not included in the University budget, make appointments, discipline teachers, officers, or other university employees, and assign any of the Vice Chancellor's powers to a teacher or officer of the University. Each year, VC is required to compile an annual report that includes details on the previous academic year, including all pertinent information about the University's finances, administration, research, and academic programs. The Vice-Chancellor is required to present the University's annual report to the Syndicate within three months after the conclusion of the academic year. To conclude, the vice-chancellor is to be considered the most powerful person who enjoys absolute authority according to the acts of universities.

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

The laws, rules, and regulations regarding appointments at higher levels in different countries vary widely. However, there are some common themes and differences in the appointment processes across different countries, which can be compared as follows: In most developed countries, the criterion for appointments at higher levels is based on merit, academic excellence, leadership & managerial skills, research, and scholarly publications. Usually, there is a focus on transparency and fairness in the selection process, as well as on the qualifications and experience of the candidates. In contrast, in some developing countries like Pakistan, appointments at higher levels may be influenced by political considerations, personal connections, or other non-merit-based factors in a famous case court declared the appointment of the vice chancellor null and void and ordered to re-initiate the whole process. In developed countries, the appointment process is usually formalized and transparent, with clear criteria and procedures for the selection of candidates. There may be a search committee or an independent body that oversees the selection process, and the candidates are required to undergo interviews or other selection tests. In developing countries like Pakistan, the appointment process may be less formalized, with ad-hoc decision-making and less transparent procedures: there are

no mechanisms to fill the vacant positions immediately and there are so many positions at higher levels are vacant. Similarly, the highest positions are to be fulfilled on a temporary basis. In March 2024 a writ petition was filed before the Supreme Court of Pakistan by the All Pakistan Universities BPS Teachers Association (APUBTA) that 64 Higher Education Institutions don't have permanent vice chancellors; therefore, they prayed that the Government should be directed to make appointments on an urgent basis without compromising the merit and transparency. In developed countries, there is usually a greater emphasis on institutional autonomy and governance, with universities and other higher education institutions having more control over their own affairs. In contrast, in some developing countries, like Pakistan, there is a tendency to make appointments at higher levels on an ad-hoc basis so that higher-level officials can be controlled by politicians easily. In developed countries, there is usually a greater emphasis on diversity and inclusivity in the appointment process, with efforts to promote gender, ethnic, and cultural diversity among candidates. In contrast, in some developing countries like Pakistan, appointments at higher levels may be dominated by a narrow elite group, with little effort to promote diversity and inclusivity. In developed countries, there is usually a greater emphasis on public accountability mechanisms in the appointment process, with mechanisms for public scrutiny and oversight of the selection process. In contrast, in some developing countries like Pakistan, the appointment process may be less transparent and subject to less public scrutiny. Not only this but Supreme Court also refused to hear the cases of universities and their employees on the basis of statutory and non-statutory rules. The Supreme Court also declared that the relationship between the university and its employees is a relationship between Master and Servant. The available remedy is compensation only. Those who have been removed from service by the university shall not be reinstated to their positions.

Balancing Centralized and Collegial Approaches for Appointing Vice Chancellors

In a similar fashion, we would like to highlight the method for appointing VCs in public sector institutions as we have already discussed the powers of the Vice Chancellor so it is time to discuss the appointment method for this prestigious position in Pakistan. After that, we would be able to critically analyze the role of the Vice Chancellor in reshaping the

legislative framework of the Higher Education sector in Pakistan. And what are loopholes in our existing legislative framework and how to make an effective legislative framework by overcoming these loopholes? Curt has tried to fill the gap through its decisions so the power should not be concentrated in one hand to exploit the others.

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

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

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

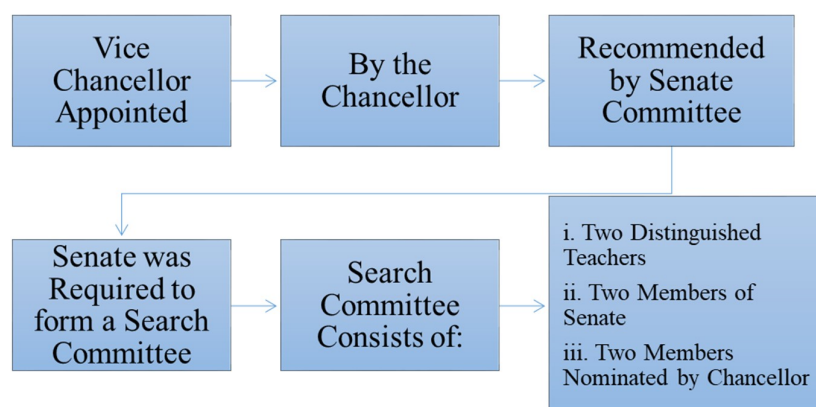
A change from the past was the appointment of VC by a Committee. An open (vacancies announced through advertisement), competitive, merit-based system was implemented for the first time in the nation. The requirement of law that the Senate appoint the Search Committee caused a significant issue during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

In KP and Punjab, the Higher Education Department is handling the procedure administratively. In Baluchistan, the Governor's secretariat is in charge, whereas the Chief Minister's secretariat is active in Sindh. The search committee is often made up of the university senate, and in Baluchistan, the governor makes the

appointments. Delays in appointments are happening for unknown causes and are negatively affecting the institutions. There are numerous cases where the VC has been asked to continue working after his term has expired. Section 12 of the KPU Act, 2012 addressed the appointment method of VC. The following amendments to Section, 12 were made in the KPU amended Acts of 2015 and 2016. The Academic Search Committee will recommend three candidates, and the Chancellor will select one of them as Vice Chancellor at the government's request. According to provision 12 (2) of the act, a committee of academic experts would be formed on the suggestion of the government to recommend applicants for VC's position. The Academic Search Committee's convener and chairperson, who must be a renowned academic with at least fifty international publications, will be nominated by the Chief Executive of the Province. Following that, two of Pakistan's most renowned educationists who have held positions in academic administration as chairman, dean, vice chancellor, etc., outside of Khyber Pakhtunkhwa well-known scholars or researchers from the region of Khyber Pakhtunkhwa who have further expertise collaborating with governmental and commercial institutions. The academic search committee's secretary will be the secretary of Khyber Pakhtunkhwa's Higher Department. The committee was once composed of ten members, however after the amendment, there are now just five members left. Four pages of the amendment act

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

According to a survey conducted by Prof. Azam Ali Khawaja eight more instructors (19%) do not disagree but want the situation to get better. They discussed the need for transparency and came to that conclusion. Overall, the majority (75%) is in favor of having a Search Committee to select a VC. Additionally, in their comments, all 9 VCs and 7 registrars agreed that the method was suitable. According to the report 1.56% of the faculty members who participated in the survey, which also included QEC officials because the majority of them are also active in teaching, thought it was the best approach. Despite wanting change, 8 more teachers (19%) do not disagree. They acknowledged the need for transparency during the conversation. A search committee should be used to appoint VCs, according to the majority (75%) of respondents. Furthermore, in their comments, all 9 venture capitalists and 7 registrars agreed that the procedure was proper.



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

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

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

standards for VC. Apart from these issues, certain issues were raised before the Court. Whether legislative power to set standards for HE exclusively within the domain of FLL? Whether there is an overlap of legislative power among Federation vs. Federating Units. What is the nature and scope of standards of HEI—minimum or mandatory? Provincial law regarding standards is unconstitutional in section 14(2) (4) of the PU Act, 1973. Whether notification complies with statutory requirements to the extent of providing a fair mechanism for constitutions of the search committee. What would be the role of the Council of Common Interest – whether it played its constitutional role? Education includes standards in education; standards in Higher Education Institutions "HEI" fall in the Federal Legislative List "FLL" too; therefore, there is an overlap in legislative competence between the Federation & Province in the area of "Education" and standards in HEI. Post 18th amendment commonality of legislative subjects is asymmetrical and uneven. In such an uneven overlap Federal Principle applies and both governments enjoy plenary legislative power. However, the Federal legislature does not oust the Provincial legislature. There is an exception when both statues are locked the Federal law prevails u/a 143. 18th Amendment gives way to cooperativeness and coordination; the survival of the Constitution rests on cooperative federalism. Cooperative Federalism refers to multiple levels of government being seen as a part of a single government. It was held that the Constitution is not a straitjacket rather it is a breathing document. The constitutional court of South Africa also held that when two legislatures have concurrent powers to make laws; the one way is cooperation. Justice Iacobucci stated that in case of conflict provincial legislature intra-vires "Parmountas doctrine" would be applied. Federal standards would be a baseline reflecting the national integrity in case of vertical power sharing Federal encourages cooperation and inter-departmental coordination. Federation and provinces both can set standards in HEI; however, provinces will not be allowed to develop standards in HEI below the federal standards. SC in India held in AIR 2016 SC 2601 Union list was limited to lay down uniform standard of education: - not to bereft the state legislature. The central government is responsible for determining the standards in HEI; the same should not be lowered in the hands of the state. HEC provides guidelines that are non-binding. This was an exhaustive judgment elaborating the issues pragmatically and considering the ground realities.

The appointment of Dr. Ashraf was challenged. ICA set aside the judgment of Single Bench by holding that Dr. Ashraf was appointed as vice-chancellor without lawful authority. The salient points are that Dr. Ashraf was appointed as vice chancellor for a period of three years. After completion of his tenure, he applied again for the post of VC. After thorough deliberation and investigation, the search committee recommended the name of Dr. Ashraf for the post of VC. However, the Chancellor while using his prerogative Dr. Muhammad Iqbal Zafar challenged the appointment of pro-VC for a period of 3 years. The condition for a period of 3 years or superannuation is against the law. The court decided in ICA that Dr. Iqbal Zafar was a beneficiary of notification and enjoyed the post of Pro Vice Chancellor for one year. However, the provisions of the University of Agriculture Faisalabad Act, 1993 are not contradictory with each other and in case of a clash between the two provisions section 41 of the Act will prevail. Therefore, he cannot claim an appointment as his vested right.

In another landmark judgment, two main questions of law were raised before the court. First, a search committee was constituted before the advertisement therefore a fresh advertisement should be made. Second, Dr. Akmal was not an expert. Therefore, a fresh search committee is constituted to re-initiate the appointment process. Three candidates were shortlisted and put up before the Chief Minister. After perusing the available record, the court concluded that Dr. Akmal is an economist instead of an Agriculturalist. So a new search and scrutiny committee be constituted for fresh appointment. Furthermore, in this judgment court also directed the HED while presenting the guidelines regarding the constitution of the search and scrutiny committee. The search committee should be composed of three to five members who demonstrate high moral character and integrity. It is imperative for a candidate to he will be a citizen of Pakistan and have integrity and competency; must be sagacious righteous and honest; within forty to seventy-five years; has declared his assets. The committee shall be responsible for the appointment of new members, the Chairperson to be elected among members, Member can resign to address the Governor. Member can be removed if he becomes incapacitated. Following the enactment of this legislation, the government shall nominate candidates for the search and scrutiny committee within 15 days. At least one of the nominees must be a woman. The list of recommended candidates will be publicly disclosed, and the public will be

appointed another candidate as VC alleging that Dr. Ashraf failed to fulfill his financial responsibilities diligently as one hundred sixty-four Audit Paras were pending. Supreme Court ruled that this reason is not sufficient and as per the result of the search committee, he should be considered to be the most suitable candidate for the post of the vice-chancellor as he obtained the highest marks by the search committee. Further, it was also highlighted that the obiter dicta of the Supreme Court are also binding on all high courts in Pakistan.

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

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

appointment notification has been automatically superseded when Pro VC has assumed the charge. Furthermore, the Vice-Chancellor was assigned to perform the duties as a stoppage arrangement. The court also defines the difference between duties and functions. Duties mean limited roles assigned by the law; however, functions include full-fledged power assigned by the Act.

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

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

natural justice, it can be inferred within writ jurisdiction. The counsel for the respondent submitted his arguments by contending that complaints were received against the Vice-Chancellor about corruption, mismanagement, and irregularities. Therefore, the President of Pakistan "The Chancellor" referred the matter to HEC to constitute a committee u/s 10(1) (b) of the HEC Ordinance, 2002. Meanwhile, the petitioner filed a writ petition so the committee has to stop its function. The Chancellor's counsel submitted that to hold two senate meetings is a statutory obligation u/s 17 (5) of the Act. Under section 11 (2) there was no bar on the Vice-Chancellor to convene a meeting. Even, when the chancellor directed him to convene a meeting; he failed to fulfill his legal obligation. In these circumstances, the petition was dismissed.

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

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

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

Recommendations

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

Findings and Conclusion

To sum up, all landmark judgments regarding the appointment of the vice-chancellor have been discussed and critically examined. No proper legislation regarding the Higher Education sector has been made after the Eighteenth Constitutional Amendment in the Constitution of the Islamic Republic of Pakistan, 1973. A vacuum had been created after the Eighteenth Amendment and the courts tried to fill the gap

to some extent. Although, courts are making contradictory judgments yet to some extent gap has been filled by the courts. For a plausible Legislative and regulatory framework, all major stakeholders i.e. Federal Government, Provincial governments, representatives of universities, the National Finance Commission, Council of Common Interest should be made part of devising an effective and efficient regulatory and legislative framework for the higher education sector. All major stakeholders should work exclusively in their domains. First and foremost, the vice-chancellor against all vacant posts at Higher Education Institutions should be appointed permanently. For that purpose, a panel of experts consisting of the topmost academicians should be constituted to advise the Chief Minister and Governor in matters of appointment at a higher level. A candidate should have vast experience in administration and research having considerable impact factor at the International level. A mid-term review of the progress made by the university so that the Vice-Chancellor may be made accountable for his actions. Maintaining uniform standards of education and effective monitoring of such standards and curriculum by the HEC is essential for safeguarding the future of education. Supreme Court also endorsed all lawful actions taken by the Higher Education Commission and directed both governments to render their fullest cooperation in enforcing such measures and standards. However, the role of the HEC should be circumscribed within the ambit of the law to have a plausible regulatory and legislative framework for the Higher Education sector in Pakistan. While elucidating the legislative framework in developed countries it was noted that there is a concept of cooperative federalism and both federation and federating units are cooperating with each other while enjoying their domains. The issue of appointment of vice chancellor shall be followed strictly according to the judgments of apex courts. To address all challenges, it is imperative to lay the foundation of consistent guidelines and thorough procedures for the appointment of vice-chancellors and to make sure that these guidelines and procedures are to be followed consistently in all universities. Last but not least, political interference should be reduced to the minimum in running the affairs of the university. This approach would pave the way for greater accountability and transparency in the higher education sector.

References

- Ehrmann, Stephen C. (Author) Jillian Kinzie (Foreword) "Pursuing Quality, Access, and Affordability: A Field Guide to Improving Higher Education" Published by Stylus Publishing LLC March 2021, Printed in USA (2021)
[Google Scholar](#) [WorldCat](#) [Fulltext](#)
- Siddiqui, Shahid. (2016); Education Policies in Pakistan; Politics, Projections and Practices; Second Edition; Published in June, 11, 2022 Oxford University Press; 1st Edition 2016; ISBN: 97801907078971269. The Higher Education Commission (Amendment) Ordinance, 2021 (IX of 2021)
[Google Scholar](#) [WorldCat](#) [Fulltext](#)
- Eighteenth Constitutional Amendment: Federal and Provincial roles and responsibilities in Education. Institute of Social and Policy Sciences (I-SAPS), 2019
[Google Scholar](#) [WorldCat](#) [Fulltext](#)
- Steedman, C. (2007b). *Master and Servant: Love and Labour in the English Industrial Age*. Cambridge University Press.
[Google Scholar](#) [WorldCat](#) [Fulltext](#)
- Aman, K. (2011). *Role of HEC in promoting and facilitating educational research in Pakistani universities* (Unpublished master's dissertation). Aga Khan University, Karachi, Pakistan.
[Google Scholar](#) [WorldCat](#) [Fulltext](#)
- Danielson, C. F., Bevan, P. M., Axtell, D. H., Wright, K. F., McKay, C., & Cleland, B. (2009b). *Implementing the Framework for Teaching in Enhancing Professional Practice: an ASCD Action Tool*. <https://eric.ed.gov/?id=ED531509>
[Google Scholar](#) [WorldCat](#) [Fulltext](#)
- Danielson, C. (1996). *Enhancing Professional Practice: a framework for teaching*. <http://ci.nii.ac.jp/ncid/BA88470691>
[Google Scholar](#) [WorldCat](#) [Fulltext](#)
- Summers-Effler, E. (2007). Ritual theory. In *Springer eBooks* (pp. 135–154). https://doi.org/10.1007/978-0-387-30715-2_7
[Google Scholar](#) [WorldCat](#) [Fulltext](#)
- Report of Prof. Dr. Azam Ali Khawaja, Management and Governance (Federal/Provincial roles and responsibilities; HEI managers, appointment, autonomy, and accountability).
[Google Scholar](#) [WorldCat](#) [Fulltext](#)
- Section 10 of the Federal Universities Ordinance, 2002; Ordinance CXX of 2002; Promulgated on November 13, 2002
[Google Scholar](#) [WorldCat](#) [Fulltext](#)
- Punjab Higher Education Commission, 2014; Act I of 2015; Dated: 2 January 2015
[Google Scholar](#) [WorldCat](#) [Fulltext](#)
- Sindh higher Education Commission, 2013; Sindh Act XI of 2013; March 1, 2013
[Google Scholar](#) [WorldCat](#) [Fulltext](#)
- Khyber Pakhtunkhwa Universities Act, 2012; Khyber Pakhtunkhwa Act No. X OF 2012 (as amended by the Act of 2016)
[Google Scholar](#) [WorldCat](#) [Fulltext](#)
- Constitution of Islamic Republic of Pakistan (Eighteen Amendments) Act 2010, Act No. X of 2010
[Google Scholar](#) [WorldCat](#) [Fulltext](#)