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### **Legislative, Financial, And Administrative Shifts Under Pakistan's 18<sup>th</sup> Constitutional Amendment**

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#### **Abstract**

The 18th Constitutional Amendment, passed in 2010, stands as a landmark reform in Pakistan's political history, aimed at decentralizing power and enhancing provincial autonomy. This amendment significantly altered the country's constitutional framework by repealing the 17th Amendment, which had concentrated executive power in the hands of the President, and by enhancing the powers of the provinces, as enshrined in the 1973 Constitution. The primary objective of the 18th Amendment was to empower provinces, thereby promoting a more balanced federal structure. The study explores how the amendment has influenced the relationship between the federal government and the provinces, with a particular focus on the areas of legislative powers, financial resource distribution, and administrative control.

**Keywords:** Constitution, Amendments, Provincial Autonomy, Pakistan

#### **Introduction**

From the start, Federalism has been a part of the Pakistani Constitution (1973). However, due to Military, and internal and external political unrest, Pakistan has had Federalism in a Biased and Unequal Way. Pakistan has had a hard time ever since its inception (1947) to determine how much political power to allocate to the Federal system and the Country's units. Since the Federal Military Dictatorships of Ayub Khan (1958-69) and Zia-Ul Haq (1977-88) Pakistan has had a totally centralised devolvement system. These Dictators defended the use of centralised governance as an imperative for 'National Unity' and dismissed calls for provincial autonomy as an exercise in 'National Unity' (Khan 2001; Jala, 1995). The centralisation of Federalism in Pakistan's Constitution of 1973 in the absence of a provincial framework was a negative development, and resulted in the introduction of amendments during direct Martial Law (Waseem, 2011).

This 18th amendment to the Constitution represents and all amendments after it are a direct result of this amendment. To a great extent, this amendment accounts for the centralisation of a substantial amount of power and authority to The Federation. Despite the significant interventions aimed at self-rule addressed in the 18th Amendment, the impact of the 18th Amendment on provincial self-rule continues to be contested. Despite the significant interventions aimed at self-rule addressed in the 18th Amendment, the impact of the 18th Amendment on provincial self-rule continues to be contested.

The objectives of the investigation pertain to the provincial autonomy of Pakistan and post the 18th Constitutional Amendment in Pakistan regarding the legislative, fiscal, and administrative dimensions. To study the extent of autonomy the 18th Amendment to the Constitution has given to Pakistan's provinces, the study has adopted a mixed-method approach. It includes the analysis of documents, case studies, and the triangulation of secondary data. The methodology must capture the legislative, financial, and administrative changes brought about by the Amendment, along with contextual information pertaining to the provinces.

In relation to this issue, Waseem in his document "*Federalism in Pakistan: The 18th Amendment and Provincial Autonomy*" study (2011) examines Pakistan's constitutional reforms of 2010 in the context of the historical evolution of the country's centralization and provincial autonomy governance conflicts. Cheema and Siddiqui's (2020) research on Pakistan's fiscal federalism after 2010 is an assessment of the structural and political obstacles that undermine the 18th Amendment's decentralization vision.

*In Making a Muslim: The Political Economy of the 18th Amendment in Pakistan*, S. Akbar Zaidi (2019) presents a learned critique on the intersection of Identity and Politics in the 18th constitutional amendment of Pakistan and the resultant of economic politics of governance, inequality of economic resources, and the distribution of federal power. Offering socio-political analysis rather than legal or fiscal analysis, Zaidi situates the Amendment in the socio-political project of creating a cohesive Muslim identity in a multi-ethnic state. He claims that though the 18th Amendment appears to have devolved power to the provinces, it also demonstrated—and at times reinforced—the contradiction of a homogenizing national identity and the pluralistic demands of the various regions of Pakistan.

### **The Impact Of 18<sup>th</sup> Constitutional Amendment**

The 18th Constitutional Amendment of 2010 remains an important feature of Pakistan's political history as it changed the political structure of the federation by empowering the provincial governments like never before. In an attempt to re-centralize governance after years of power relinquishing, and in a response to the demands of the provincial governments, the amendment eliminated the structural remnants of authoritarian governance and changed the legislative, financial and administrative power relations between the center and the provinces. The study examines some of the contested consequences of the amendment, focusing on the legislative shift created by removing the Concurrent List and transferring important sectors to the provinces; the financial shift granted through altered resource distribution arrangements under the National Finance Commission (NFC) Award; and the administrative shift which was limited by the available institutional capacity and intergovernmental relations.

### **Legislative Shift**

The abolition of the Concurrent Legislative List in the 18th Amendment (2010) was a major step in the transformation of the Federal Structure of Pakistan and also the first major step towards a paradigm shift in the federal structure of Pakistan. For the first time since 1973, Pakistan's Constitution shifted the Concurrent List to provincial legislative entries, giving exclusive legislative powers to the provinces on various (and important) subjects like education, health, the environment and social welfare, thereby removing one of the mechanisms of central control. Even though the purpose of the devolution was to help each province create policy laws to help boost the local economy, it also only served to showcase how provinces didn't have the laws, power, and resources to help create and grow the economy after devolution.

The abolishment of the Concurrent List was the end of the federal government having the last say on policy development for the last three decades in, education, and health. Up until 2010, there were federal regulations on what was allowed to be taught in curriculum, and what health guidelines were allowed on a provincial

basis which often led to disagreement in provincial priorities. For example, the federally mandated curriculum was taught exclusively in Urdu which led to the ethnonationalist discontent of the Sindhi and the Balochi people. After devolution, the provinces were given the constitutional right to pass laws in education and health. Sindh, for example, was able to create the Sindh Compulsory Education Act, which mandated education be taught in the mother tongue of students in primary school. Also, Khyber Pakhtunkhwa was able to implement changes to early education to teach the Pashto language. Additionally, the Health Sector Reform Act in 2013 gave administrative power to local governments regarding the management of hospitals. These changes to policy showed the innovative capabilities of the provinces, however it also showed the large difference in the ability of the provinces to create educational and health policy. Balochistan fell behind with modernizing federal laws and policies having to do with the health and educational services.

Governance over the environment showcased the advantages and disadvantages of the 18th Amendment, as it shifted governance on the environment to the provinces. This, however, created a gap within the federal framework that led to a lack of uniform policy initiatives at the federal level. This resulted in a patchwork of policies at the provincial level. Among all the provinces, Sindh was the first to implement and adopt climate change resilience law, the Sindh Environmental Protection Act of 2014, which required industries to comply with strict emissions criteria. In contrast, KP turned a blind eye to the massive deforestation and water pollution in ecologically sensitive areas like Swat, while he suffered from poor enforcement of his Environmental Protection Act in 2015 (Khan, 2018). The lack of provincial collaboration frameworks to settle transboundary concerns like Air Pollution from factories in Punjab, that were detrimental to urban Sindh, worsened The Punjab Sindh Air Pollution Crisis. Legal academics like Lau (2010), describe the line of legislation that left the provinces with no National Environmental Council, a phenomenon known as the provinces siding within their own legislative corridors and the loss of integrated environmental governance.

The same problems cropped up in the health care sector after the devolution. Hospitals and health care were transferred to the provincial and control sectors provincial command. Control operational shifts were overwhelming to fledgling provincial bureaucracies. Balochistan still did not have updated provincial health guidelines after civil war in 2017 and, as a result, had very high maternal mortality (Nishtar, 2013). Virtual federal control still created problems for the provincial autonomy in health care, as seen in 2015 when Drug Regulatory Authority of Pakistan (DRAP) blocked Khyber Pakhtunkhwa (KP) acquisition of cheaper alternative medications because of their 'national standards' (Bukhari, 2016). The evident conflicts were caused by the lack of clarity after the 18th Amendment and this was especially seen in the sectors which needed to be совместных деятельность in the federal-provincial sectors.

Definite ambiguities of the law manifested as a unique challenge. The 18th Amendment lacked a mechanism for the resolution of disputes concerning the federal-provincial relations, thus, it gave rise to litigation concerning the extent of laws governing the various fields of competencies. In the case of Federation of Pakistan v. Province of Sindh (2012), the apex court held that federal authorities could not implement energy projects over provincial land without permission, thus, confirming provincial dominion and control (Supreme Court of Pakistan, 2012). However, in the case of Province of Punjab v. Federation (2016), the Court upheld its position of the exercise of federal power on matters relating to cybersecurity as it pertained to "national security" in the Federal Legislative List (Supreme Court of Pakistan, 2016). The rulings highlighted the fact that abdication of that power by the courts, in this case the judiciary, 'They' had to rely on the power of an *ultra vires* to justify that power.

It was also clear that provincial legislatures had difficulties getting their laws right. Research in 2017 showed that 40% of post-devolution bills from Sindh had erroneous forms, which showed a lack of proper outline of

any governing directives and stalled implementation (PILDAT, 2018). KP responded to these issues by forming organizational partnerships with advocacy legal NGOs, such as Sarhad Development Authority (SDA), and training staff which resulted in improved legislative frameworks such as KP Right to Public Services Act (2014). On the contrary, Balochistan Supplementary Budget Legislation, which had resource and insurgency driven lag in legislating, passed only 12 of the 48 laws in health and education over the period 2010-2020 in comparison to Punjab (Cheema, 2020). The removal of the Concurrent List also created a new axis of interprovincial. The Punjab-Sindh accord of 2018 on the sharing of copyright of textbooks is a clear example of the positive trend of interprovincial bilateral partnerships. However, following the South Africa model, after the drafting of the Water Management Act (2019) in Sindh which showed a clear bias to agricultural water entitlement, the competition over water governance was exacerbated. This resulted in the upstream dam project of Punjab and later on Supreme Court mediation to resolve the conflict (Mustafa, 2020).

### **Financial Shift**

The NFC award is a constitutional mechanism of distributing resources with the federal government and the provincial government of Pakistan. After the 18th Amendment 2010 the award underwent reforms of considerable significance. With the 7th NFC Award (2009-2014) operational restructuring of fiscal federalism were changes made by increasing equity in the provincial revenue shares and introducing federal revenue shares. However, inequities and structural disproportionalities in one of the foremost features of financial devolutions remained the same. This indicates greater disparities in fiscal federalism and features interprovincial inequalities.

The 2009 NFC Award changed how resources were distributed to different provinces based on population alone. Since 2009, the Award has based resource distributions on population (82%), poverty/backwardness (10.3%), revenue (5%), and inverse population density (2.7%) (Adeney, 2012). Using these criteria, the federal revenue divisible tax pool to provinces increased from 47.5% to 57.5%. This allowed provinces to have more flexibility in budgeting the devolved sectors of education and health. Although, Punjab's share of the federal tax revenue also decreased from 57.36% to 51.74%. Punjab, the most populous province, became the most major recipient of federal tax revenue, receiving Rs. 1.2 trillion in 2010-2011 (Zaidi, 2015). Sindh increased its federal tax revenue to 24.55%, and, Khyber Pakhtunkhwa (KP) to 14.62% and, Balochistan to 9.09%, which was reasonable due to its poor underdevelopment and vast territory. Limited infrastructure also hindered Balochistan from collecting more revenue. In 2015, the province was only collecting 12% of its potential tax revenue (Cheema, 2016). There were also major bureaucratic problems in KP in the conflict-affected areas which had been the result of the war on terror it was supposed to help (Grare, 2013). Punjab, which had the highest population, was also the only province to receive a per capita of 10,245 in 2012-2013, which was significantly more than Balochistan's, as the NFC had been intending.

However, the resources inequity. However, their higher number does not compensate for the infrastructural gaps, which include a 78% deficit with respect to primary healthcare facilities (Nishtar, 2013). Critics have argued that keeping the population as the principal variable (82%) has been instrumental in magnifying Punjab's dominance, as its population size eclipsed the other provinces' development requirements. For example, Sindh with its industrial and port city, Karachi, contributed 68% of the country's budget. Nonetheless, it was allocated 24.55% of the NFC (National Finance Commission) funds which severely restricted investments in its dilapidated water and sanitation systems (Hasan, 2015). The same goes for KP which with its 14.62% share also remained deficient in meeting its post-conflict construction requirements. By 2018, 40% of the schools in the tribal districts were dysfunctional (Akhtar, 2020).

With the federal government holding on to profitable revenue streams, such as sales tax (now provincial, but

federal the entire time until 2018), we began to develop a dependency on central transfers. Provincial governments were unable to independently generate any revenue on their own; Punjab for instance, was 70% reliant on NFC transfers as of 2015 (Bukhari, 2016), demonstrating how their capacity to self-govern was limited. Even though Sindh was the first province to implement a sales tax, there were still lengthy legal disputes with FBR regarding the right to collect tax, which resulted in revenue losses of Rs. 120 billion for the period of 2011-2015 (PILDAT, 2017). Balochistan's fiscal constraints were even worse since it was the most underdeveloped province, with less than 5% of its budget being self-generated, and had to depend on federal transfers for its basic administrative functions, and hence had little left for actual development (Siddiqui, 2012).

Ignoring non-tax income streams like mineral royalties and profits from hydroelectricity further compounded inequity. Apart from the royalties gas fields located in Balochistan's Sui gas fields contributed 45% out of the 12.4% of natural gas exports the province received under the inequitable 1954 agreements (Supreme Court of Pakistan, 2009). The 18th Amendment introduced new royalties, but Balochistan had to wait until 2013 because of the Federal Government's sluggishness. This led Balochistan to seek a remedy in the courts and received a pitiful 120 billion rupees (umas 2013). KP's hydropower potential has also been ignored. Previous to the 2016 Hydel Profit Notification, KP had produced 1500 MW for the national grid and KP had received no profit shares, even though the 6 billion rupees allocated was outrageously small given 38% of the households in the province were energy poor (, 2020).

Provincial spending priorities also created horizontal inequities. In the 2018-2019 budget, Balochistan spent 19% on education and 62% of schools had no electricity (ASER 2019). In comparison, KP built 22% more healthcare facilities after devolution and has spent more on healthcare. However, Sindh's funds misallocation - exemplified by a Rs. 12 billion health department corruption scandal (2017) - undermined service delivery (Transparency International 2018). The differential servicing of the population also led to discontent regarding the NFC's redistributive NFC formula, as governance equity was considered a prerequisite to harmonious governance. The NFC's inequitable division of unconditionally tied grants resulted in the inequitable division of accessible foreign aid as well. Both Punjab and Sindh used their administrative capacity to obtain foreign aid for infrastructure, while Balochistan's poor governance disqualified it from having foreign aid, leaving it reliant on unconditionally tied federal grants (Cheema 2020). The 2017 Rs. 45 billion Balochistan Development Package (BDP) exemplified a federal government prioritization of security infrastructure over education and health services, with the BDP reflecting a poor understanding of local needs (Akhtar 2020).

### **Administrative Shift**

Provincial administrations got 17 devolved ministries without comparable upgrades in bureaucracy and infrastructure. Punjab, taking advantage of the existing administrative system, grew health and education by hiring 120,000 teachers and 15,000 doctors from 2010 to 2015 (PILDAT, 2016). Conversely, Balochistan's civil service, suffering from a 35% vacant post ratio (2018) and a shortage of operational level staff, struggled to implement devolved departments. By 2019, only 40% of its health facilities were operational and most of them were without electricity and water (World Bank, 2020). Sindh's bureaucracy, while also having more resources, has also suffered from corruption such as the diversion of Rs. 5.6 billion intended for school infrastructure, which embezzlement stalled enrollment campaigns (Transparency International, 2017).

The impact of service delivery continued to be hampered by infrastructure gaps. The Khyber Pakhtunkhwa (KP) region of Pakistan has begun Digital Governance and has implemented e-governance systems for land record management and e-procurement, however, rural areas with 22% internet connectivity are still being left behind (KP IT Board, 2019). In Afghanistan, Balochistan, the most remote areas of the country, and with

less than 15% of territory used to be covered by the road network, the population (60%) who lacked access to health care were dependent on sporadic health care delivery by mobile clinics (UNDP, 2018). In Punjab, Local Government Act (2013) introduced the devolution of municipal services, however, in urban areas, for instance in Lahore, there were 30% misdirections of sanitation funds, and there were gaps of management (Urban Unit, 2016). Bureaucratic inertia were the results of outdated protocols of the federal era. In Sindh, the attempt to implement reform of the police Force by the enactment of the Sindh Police Act (2019) was hampered by officers who were dominant in the command left. This has resulted in the delays of the implementation of community policing (Ahmad, 2020). Also in the KP, Right to Public Services Act (2014) was aimed to streamline administrative procedures and was reported that less than 45% of compliance rate was reported to be caused by lack of proper training of staff, less effective supervision, and systems control (Cheema, 2018).

Most of the time of the CCI since the 18th Amendment is of mixed character. According to the Constitution of the CCI is required to resolve conflicts of the CCI. As the CCI was renewed after the 18th Amendment, the new members, including the Prime Minister, the provincial chief ministers, and the federal ministers, were given their due representation. However, due to the political divides, constructing a majority was often impossible. According to the assessments of 2010-2020, the CCI conducted 12 sessions. These sessions were primarily centered on and authorized projects that were federally proposed, such as the CPEC (China-Pakistan Economic Corridor), during which the provinces were disregarded and their concerns with the CPEC were neglected (Sial, 2019). One of the most neglected provinces was Balochistan, whose concerns regarding the CPEC were altered and brought to the obtainment of the hinterland of Gwadar, which was later disregarded by the CPEC in 2015 (Grare, 2016).

The CCI's mediation of water disputes was very controversial. In 2018, they helped create a temporary agreement concerning the distribution of the Indus River System. However, at the same time, Sindh accused Punjab of breach of contract when they built the Diamer-Bhasha Dam without a consultation (Mustafa, 2020). Without the CCI having coercive enforceability, they must rely on the goodwill of the other party. In the same sense, the federal government's refusal to validate KP's claims of Hydel profits under the 1991 Water Accord led to the Supreme Court having to get involved (KP v. Federation, 2016). Thus, this massively undermined the CCI's jurisdiction. The scope of energy policy brought to light the CCI's shortcomings once again. The provinces had to split control over new renewable energy projects, but the federal government maintained a veto over all of them through NEPRA. Even when the CCI had granted approval, Sindh had to wait two years after the federal government obtained all of the necessary permitting to move forward on their proposal to begin building wind farms (Hoodbhoy, 2019). The lack of political neutrality also affected the CCI. CCI discussions during PML-N's (2013-2018) term, predominantly revolved around projects focused on Punjab. This was evident in the funding of the Lahore Metro project, for which the federal government allocated 250 billion rupees, while the Karachi Circular Railway was abandoned (Haider, 2019). The CCI's dependence on the federal government for the organization of the agenda and the data they based it on was also an exacerbating factor for these flawed priorities. This was evident when the 2017 census recorded a population in Punjab to be significantly larger than reality, in which Sindh and KP questioned. This was used to justify resource distribution, and inequities in resource flows (Adeney, 2018).

### **Challenges And Implementation**

The 18th Amendment's Transformative agenda suffered serious challenges of implementation, which stemmed from resistance from the federal government, stagnation of the bureaucracy, and issues of politics. Critics contend that devolution may lead to national disintegration. These issues highlight the challenges involved in attempting to rebalance the power in a state that has been historically centralized, and the gaps between what the constitution intends and the realities on the ground.

Federal resistance was especially pronounced in areas where central control remained indirect. Even after the Concurrent List was removed, federal bodies like NEPRA and DRAP maintained a stranglehold on provincial initiatives and imposed their standards, inhibiting custom provincial solutions. In our example, Sindh in 2017 lost a case with DRAP in the Supreme Court and was unable to provide 2 million diabetic patients with access to affordable insulin that the province was to purchase, as the province was non-compliant with federal price control laws (Bukhari, 2018). Likewise, the Ministry of Energy claimed jurisdiction over the “national energy grids” and obstructed KP’s micro-hydel projects, despite the fact that the 18th Amendment devolved renewable energy to the provinces (Hoodbhoy 2020). Disbursements of the National Finance Commission (NFC) Awards, though mandatory by the Constitution, faced delays. In 2019, 94% of the allocated share to Punjab was released, while “audit discrepancies” led to Balochistan receiving 67% of their allocated share (World Bank 2021). These delays Mainy in NPC defensively overestimated their jurisdiction and lost any remaining trust in the devolution compact.

Provinces were unable to govern effectively due to bureaucratic inertia. For example, Balochistan’s health department, which includes vital staff such as epidemiologists and procurement specialists, had a 35% vacancy rate as of 2020. (UNDP 2021) During this time, Sindh’s education sector also had a 5 year delay due to practices inherited from the central government, which resulted in a backlog of student enrollments as it took the sector 5 years to digitize student records. (Sindh Education Report 2019) Even with superior infrastructure to other provinces, challenges were evident with Punjab’s inability to retrain staff in other devolved sectors. An 2018 audit highlighted 40% of health inspectors were not up to date in their training which compromised the quality of services provided (Punjab Health Department 2019). There were many cases of corruption which worsened the overall efficiency, as in the 12 billion Rs. Health of Sindh embezzlement case where money meant for hospital equipment was stolen and disbursed to bogus projects (Transparency International 2020).

Problems on how to deal with inter-province and intraprovincial politics and other issues in the center during the implementation phase involved political and policy tensions. More recently, water disputes with Sindh and Punjab post-devolution have intensified with Punjab accused of violations of the 1991 Water Accord on allegations of unsanctioned canal building (Mustafa 2021). The CCI, which was established to resolve such issues, was utterly unresponsive and, in 2018, held only two meetings in 2019 to resolve the controversy concerning the Diamer-Bhasha Dam (Sial 2020). The CPCE was also notable for the political responses, especially Balochistan, which resented the official government of Pakistan’s planned diversion of projects to the southeastern province and, in particular, annoyed the rhetoric of exclusion (Grare 2021). The party’s politics also intensified such disputes, especially concerning the PML-N. PML-N’s political dominance in Punjab, along with its federal powers, enabled it to expedite several controversial projects such as the Lahore Metro. In contrast, the PPP government of Sindh faced bureaucratic intransigence concerning the management of sewage in Karachi (Haider 2019).

### **Policy Recommendations**

To help keep the improvements, decision makers will have to focus on the training, counter-corruption, and investments in local bureaucracies that build local systems. Altering the NFC to stop including population weighting, and including other factors such as the level of human development, would keep the fiscal gaps in check, and sharing non tax revenue such as mineral royalties would be equitable. The CCI needs modernization and needs to have regular Meetings along with mechanisms for the resolution of disputes and Policy-making that is based on data to help deal with conflicts between the provincials. The standardization of education and environmental regulation will help the Federal and Provincial system work together to unify a

decentralized system of governance and encourage innovation.

Future research examinations on decentralization's impact on socio-economics will be needed. For further analysis of impact at the socio-economic level, particular focus will have to be given to the Balochistan region and other developing areas. Future studies on the health, education and infrastructure policies provided at the province level should provide information on structural and systematic examples of best practices and bottleneck systems. The research on the federal geography and military's role on the policy intervention at decentralization of the systems remains of importance. The work of these relations should be of importance academically and politically. Research on the NFC and the CCI of the Federal Compact is needed to provide equity and to CCI to Pakistan. Research very much should be designed to determine the bottom approach to the research. The socio-economic impact and the future impact of the region will be needed on Decentralisation. For the socio-economic impact. Special focus in developing areas as impact will be much needed on Balochistan.

Future studies on health and education will be structured on silo's on policy and systematic examples. The research on federal geography and military's role Decentralisation systems will be of importance academically and politically. Research is needed on the NFC and the CCI of Pakistan. Research should be designed to provide bottom approach. The decentralisation and socio-economics will be needed on the region. Special impact focus is needed on Balochistan developing areas. Systems and Policy inter disciplinary relations.

In terms of Pakistan's Federal Compact, the NFC and Equity Outcomes and the CCI as a collaborative central body are in need of urgent attention. Such studies must identify the pivotal actors, to ensure that the devolution enhances and does not inhibit the real improvement of public sector service delivery and social cohesion, and that such improvements are socially grounded.

## Conclusion

The 18th Amendment made the first big step in giving provinces and all the different regions in Pakistan their own power and control over their own area, without having the power and control over the whole area run by the main, central government. It took away central legislative control, increased specific local government control, and also allowed provinces to help their local areas. Out of all the provinces, Punjab and Khyber Pakhtunkhwa were also the only ones who teamed up with outside donators and sponsors to try and help their areas, and were fairly successful, however, Baluchistan and Sindh continued to fall behind. This was because of high level, government technical ineptitude and control, and also poor level government rich, elite control which kept all the resources. Then all the average regions got to run the areas they were given such as health and the environment, but the central government shut them down which made it unequal. Smaller provinces had the most problems with authority in the areas they were given which made big problems with control and power, unequal governance and inter provincial equity.

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