

Advocacy for Sustainable Policy and Implementation Reforms – Khyber Pakhtunkhwa (ASPIRE-KP)

Critical Evaluation of Federal Constabulary Ordinance, 2025

Scope of Review

We have examined the Federal Constabulary Ordinance, 2025, especially regarding:

- Its consistency with constitutional provisions governing police powers and provincial autonomy,
- Its compliance with principles of good legislation, and
- Its fiscal prudence in light of Pakistan's IMF obligations.

Constitutional Analysis

• Federal vs Provincial Jurisdiction:

Under Pakistan's Constitution (particularly the Fourth Schedule, including the Federal Legislative List, and following the deletion of the Concurrent List under the 18th Amendment), policing is predominantly a provincial subject

A centrally controlled police-like force, with full powers under CrPC and Police Order, risks violating the principles of legislative competence under Articles 142(b) and 143.

• Role of Council of Common Interests (CCI):

Given security overlaps and inter-provincial deployment implications, this matter ideally should be routed through the CCI under Article 153 to avoid disputes on distribution of powers.

• Vagueness & Arbitrary Scope:

The use of undefined terms like “specialized duties not limited to...” fails the test of legislative precision required under settled Pakistani jurisprudence. This could lead to arbitrary executive interpretations, compromising fundamental rights under Article 4 (due process) and 9 (security of person).

Fiscal Law Perspective

- The Ordinance vastly expands bureaucratic structure (IG, multiple DIGs, AIGs, Divisional & Wing Commanders) which directly increases recurrent expenditure, running counter to current government undertakings with the IMF to rationalize public spending.
- In the absence of a fiscal impact study, this poses serious questions of financial impropriety and breach of fiduciary duty owed by the executive to Parliament under Articles 80–84 on financial procedures.

Summary of Opinion

It is our considered professional opinion that, unless substantially redrafted:

- By centralizing control over policing functions, the Federal Constabulary Ordinance, 2025

risks undermining the constitutional autonomy of the provinces.

- Fails the test of legislative clarity and non-arbitrariness,
- And contradicts fiscal austerity obligations, exposing the state to domestic constitutional challenges and international credibility risks with lenders.

1. Introduction & Context

The Federal Constabulary Ordinance, 2025, seeks to repeal the North-West Frontier Constabulary Act, 1915, thereby reconstituting the Frontier Constabulary (FC) as a Federal Constabulary (FedC). This transition fundamentally transforms an institution that is more than a century old, deeply intertwined with regional identities, community-based recruitment, and historical policing traditions specific to the sensitive areas between erstwhile tribal regions and settled districts.

While modernization of security structures is understandable in the light of the merger of tribal areas, emerging internal security threats, and increasing demands for coordinated counterterrorism capacity, this Ordinance raises serious concerns that merit thorough parliamentary scrutiny and public debate.

Complicating this landscape is Pakistan's current fiscal crisis. The Government is under strict commitments to the IMF to reduce expenditures, rationalize public service, and close redundant offices. Against this backdrop, the Ordinance's creation of multiple new high-ranking posts and expansive bureaucratic structures stands out as a direct contradiction to the broader austerity agenda.

2. Position Overview

Pros and Cons — Federal Constabulary Ordinance, 2025

Potential Benefits (Pros)

• Standardization and Central Command

The Ordinance places the Federal Constabulary (FedC) under an Inspector General from the Police Service of Pakistan, aligning it with federal policing architecture. This shift promises improved training standards, greater operational cohesion, and streamlined coordination with existing federal law enforcement systems.

NOTE:

Update: The Interior Minister has since announced that the FedC will now be headed by a Major General from the Pakistan Army, marking a shift toward militarization. This development alters the originally proposed civilian policing structure and has implications discussed in the addendum given at the end.

• Flexible Nationwide Deployment

Unlike the 1915 Act, which limited deployment to KP's border belt (extended cautiously in 2013. This 2013 shift was done administratively through executive orders and inter-governmental cooperation, not via legislative amendment), the new Ordinance enables deployment across Pakistan for internal security, riot control, counterterrorism, and protective duties — positioning FedC as a national reserve force.

- **Ethnic Diversity and Representation**

Through the creation of a Federal Reserve Division with regionally allocated quotas (Punjab, Sindh, KP, Balochistan, AJK, GB, ICT), the Ordinance seeks to establish a multi-ethnic force, fostering inclusivity and reducing perceptions of regional monopoly.

- **Modernized Legal Mandate**

The FedC is empowered under key statutes like the Criminal Procedure Code (CrPC), the Anti-Terrorism Act (ATA), and the Police Order, significantly expanding its legal authority to counter contemporary challenges such as terrorism, organized crime, and civil unrest.

- **Potential for Enhanced Accountability**

Integration within a civilian policing framework may enhance oversight, bringing a shift from the FC's historical quasi-military insulation to a more transparent, rule-bound command structure.

Core Concerns and Drawbacks (Cons)

- **Loss of Regional Identity and Community Trust**

The FC historically derived its legitimacy from tribal recruitment and strong community ties, especially in KP's sensitive regions. Centralizing recruitment and administration may erode that trust and diminish the force's effectiveness in historically volatile areas.

- **Over-Centralization and Risk of Political Misuse**

Exclusive federal control, combined with undefined terms like "specialized duties" (Section 3) and open-ended clauses in Section 7 ("not limited to"), grants broad discretion. Critics warn this could enable suppression of dissent or misuse for political purposes.

- **Weakened Civilian Oversight**

The Ordinance removes earlier mechanisms such as supervision by Deputy Commissioners or District Magistrates. This shift to a purely federal chain of command eliminates vital local checks and balances.

- **Elimination of Proven Disciplinary Regimes**

The 1915 Act distinguished between "more heinous" and "less heinous" offences and maintained a tailored disciplinary framework. The new law omits these distinctions, potentially weakening internal discipline that had uniquely suited the FC's structure.

- **Massive Cost Escalation Amid Fiscal Austerity**

The Ordinance proposes numerous new posts (IG, Additional IGs, DIGs, AIGs, Divisional Commanders, etc.) and expanded formations (platoons, companies), leading to substantial new expenditures. This is at odds with Pakistan's commitments to reduce government spending under IMF programs.

- **Legislative Competence and Constitutional Concerns**

Policing falls primarily under the provinces per Articles 142 and 143 of Pakistan's Constitution. The Ordinance's attempt to federalize a police-like force raises serious questions about its constitutional validity and may face judicial challenge.

• **Drafting Deficiencies and Legal Ambiguity**

The Ordinance contains several technical flaws — missing schedules, undefined powers, borrowed language from repealed contexts, and unclear recruitment ratios. These issues not only risk operational confusion but also increase vulnerability to legal challenges.

3. Our considered Comments on the Intent & Need for Change

There is a legitimate argument that security needs have evolved. The merger of the tribal areas into KP, the absence of old tribal barriers, and growing cross-provincial internal security threats justify a more agile federal force. From a purely security architecture standpoint, transforming the FC into a versatile Federal Constabulary could be seen as modernization.

However, such transformation cannot be purely administrative or expedient. The FC was more than a security unit; it was a historically embedded institution tied to local identities and trust. Sweeping structural changes without robust public debate disregard these deep social and political realities.

4. On the Scope of Powers & Accountability

The Ordinance, by granting the FedC sweeping policing powers under multiple federal laws and removing traditional local checks (Deputy Commissioners / District Magistrates), risks blurring lines between civil policing and paramilitary enforcement. This could exacerbate fears of federal overreach, particularly in provinces sensitive to centralization.

Without careful statutory limitations on “specialized duties,” the FedC could be deployed against political activities under the broad banner of “internal security.” Given Pakistan’s constitutional federal structure and the exclusive domain of provinces over police under the Constitution, this is a legally and politically delicate balance.

5. On Preserving Cultural & Historical Legacy

The FC’s tribal composition and regimental traditions were not accidental—they were deliberate tools for legitimacy and effectiveness in border policing. Diluting these through a multi-ethnic recruitment model for the Federal Reserve Division, while perhaps modern in design, fundamentally changes the institution’s character. A phased, consultative approach with local stakeholders might have better balanced reform with preservation.

6. Concluding Observation

The transformation of the FC into a Federal Constabulary under this Ordinance represents a profound shift — from a regionally rooted, community-trusted force into a centrally controlled police-like federal paramilitary unit. While there are undeniable potential benefits in terms of national coordination, standardization, and flexibility in addressing new security challenges, the risks of alienating local communities, undermining historical trust, and inviting misuse for political suppression are equally real.

Any such overhaul demands rigorous parliamentary scrutiny, transparent public debate, and possibly constitutional consultations to ensure it does not inadvertently erode federal principles or the unique socio-cultural compact that underpinned the FC’s success.

7. Proposed Legislative Amendments

a) Scope of Powers (Section 3 & 7)

1. Problem:

- Terms like “specialized duties” and “internal security duties not limited to...” are vague and open-ended.
- This grants overly broad discretion, potentially enabling deployment for general law and order tasks without oversight.

2. Recommendation:

- Replace Section 7(1) with:
"The Federal Constabulary may be deployed by the Federal Government strictly for internal security, riot control, counterterrorism, protection, or escort, as explicitly defined under this Ordinance and rules made thereunder. No deployment shall occur for general law and order maintenance unless expressly authorized by Parliament."
- Add new subsection:
"(2) The term 'internal security' for purposes of this Ordinance shall mean operational deployment in response to threats of terrorism, large-scale violent civil disorder, or protection of critical infrastructure, as notified by the Federal Cabinet."
- Require quarterly reporting to Parliament on deployments.

b) Organizational Expansion and Fiscal Oversight (Section 4)

1. Problem:

- Creates a new hierarchy (IG, AIGs, DIGs, etc.) with potentially hundreds of high-cost posts.
- No fiscal note provided despite IMF-mandated austerity.

2. Recommendation:

- Insert a new provision:
"Fiscal Oversight: The creation of new offices, divisions, or ranks under this Ordinance shall be subject to prior certification by the Ministry of Finance of fiscal space and consistency with the government's medium-term budgetary framework and international fiscal obligations."
- Cap senior appointments unless explicitly required and justified before Parliament.

c) Preservation of Regional Identity (Section 9)

1. Problem:

- The traditional tribal recruitment and local legitimacy of the Frontier Constabulary risk being diluted.

2. Recommendation:

- Amend Section 9:
"Provided that the Security Division, comprising the existing strength of the Frontier Constabulary, shall continue recruitment under the traditional community-based

system reflective of its historical tribal composition. Any deviation shall require prior approval of the respective Provincial Assembly."

d) Local Oversight and Civilian Accountability (Section 12 & Omissions)

1. Problem:

- Previous civilian control via Deputy Commissioners has been removed.
- Section 12 changes “competent authority” to “superior authority”, weakening safeguards against unlawful orders.

2. Recommendation:

- Restore the term “competent authority” in Section 12.
- Add a new provision:
"District Control: The operational command of the Security Division within a district shall, to the extent not inconsistent with federal security directives, remain under the general coordination of the Deputy Commissioner."

e) Legal Consistency and Constitutional Boundaries (Section 14)

1. Problem:

- Section 14 grants full police powers under CrPC, ATA, and Police Order, effectively federalizing police functions.

2. Recommendation:

- Redraft Section 14 to:
"The Federal Constabulary shall exercise support and auxiliary functions under the CrPC, Police Order, and ATA strictly under federal directive and coordination protocols with respective provincial authorities. It shall not initiate independent criminal investigations except where expressly authorized under federal law."

f) Restoration of Disciplinary Safeguards (Omissions)

1. Problem:

- The old system distinguishing “more heinous” and “less heinous” offences has been omitted.

2. Recommendation:

- Insert a new chapter on discipline:
"Offences and Discipline: The categories of offences previously recognized under the Frontier Constabulary Act, 1915 as 'more heinous' and 'less heinous' shall continue to apply to members of the Security Division, until expressly modified by rules framed under this Ordinance."

8. Suggested Recommendations to Parliament & Executive

- Initiate comprehensive parliamentary committee hearings including provincial representatives, security experts, and civil society to examine impacts on federalism, regional identity, and civil liberties.
- Direct the Ministry of Finance to prepare a fiscal impact note on the proliferation of high-ranking posts and recurrent expenditures under the Ordinance, juxtaposed against IMF-mandated austerity.
- Engage the Council of Common Interests (CCI) to address potential constitutional encroachment on provincial policing responsibilities.
- Require the government to prepare a White Paper laying out operational necessity, transitional plans, and safeguards against misuse before passing a formal Act to replace this Ordinance.

9. In Summation

This paper underscores that while modernizing security frameworks is essential, it cannot come at the cost of erasing the unique legacy, operational trust, and disciplined traditions that made the Frontier Constabulary effective. Nor can it ignore Pakistan's fiscal realities or its constitutional federal structure.

The Federal Constabulary should be carefully legislated — not hastily created — with robust checks, clear scope, disciplined traditions preserved, and costs aligned with national austerity commitments.

10. Relevant Questions that the FC Ordinance has thrown up

The hasty promulgation of FC Ordinance 2025, has given rise to many questions that need to be answered by the Ministry of Interior to satisfy the worrisome queries of the public at large:

A. Constitutional Competence & Oversight

- Has the Ministry sought the opinion of the Council of Common Interests (CCI) before initiating legislation that touches upon provincial policing functions?
- How does the Federal Constabulary Ordinance align with the constitutional allocation of policing powers to provinces under the Fourth Schedule?
- Why was no consultative process conducted with the provincial governments or assemblies before finalizing the structure and deployment powers of the Federal Constabulary?

B. Fiscal Responsibility

- Has the Ministry conducted a fiscal impact analysis regarding the cost of creating multiple new posts under the Ordinance (IG, AIG, DIG, etc.)?
- In light of the IMF's recommendations for fiscal consolidation, how does the Ministry justify this expansion in federal security spending?
- How many new positions are created under the Ordinance, and what is their projected impact on the federal budget over the next five years?

C. Legal Precision & Drafting

- Why are terms such as “specialized duties” and “internal security duties not limited to...” left undefined in the text of the Ordinance?
- Will the Ministry commit to amending the Ordinance to introduce statutory definitions and boundary conditions to limit discretionary misuse?
- Why were traditional disciplinary provisions (more heinous/less heinous offences) omitted despite their historical importance in regulating FC behavior?

D. Operational Integrity & Legacy

- What safeguards are in place to preserve the historic tribal composition and regional ethos of the original Frontier Constabulary?
- Will the new Federal Reserve Division operate with the same traditional recruitment model, or will it shift entirely to the Police Service model?

11. Conclusion

We recommend and urge the government to withdraw this Ordinance and introduce revised legislation through Parliament after due consultation with:

1. A comprehensive fiscal note prepared by the Finance Ministry,
2. A constitutional referral to the CCI,
3. Clearer definitions and narrower scope,
4. Restoration of traditional discipline and local oversight,
5. Phased restructuring preserving the tribal-based Security Division.

12. Strategic Role of ASPIRE-KP on FC Ordinance, 2025

ASPIRE-KP can play a vital role in shaping the response to the Federal Constabulary Ordinance, 2025, through the following focused actions:

1. Public Engagement

- Issue a concise press note highlighting the Ordinance's key constitutional, financial, and administrative issues.
- Develop talking points for media appearances and organize expert briefings, seminars or webinars.

2. Legislative Support

- Prepare a model Private Member's Bill proposing amendments or repeal.
- Engage with and provide technical support to legislators, encouraging them to raise questions or introduce motions in Parliament concerning the Ordinance.

3. Legal Readiness

- Seek the considered opinion of ASPIRE's esteemed member, Mr. Ali Gohar Durani, on the advisability and potential efficacy of filing a constitutional petition challenging the Ordinance before a High Court

- Identify suitable petitioners and coordinate with legal advocacy networks.

4. Stakeholder Coordination

- Engage with KP's provincial leadership and relevant stakeholders to seek CCI referral.
- Build alliances with civil society and legal groups to amplify concerns.

5. Research and Documentation

- Publish a concise policy brief or position paper.
- Track legislative, legal, and media developments for strategic use.

Addendum Note: Recent Development Regarding FC Ordinance 2025

- Just as this paper was being finalized, a significant development emerged. The Interior Minister publicly announced via social media that the Federal Constabulary will now be headed by a Major General from the Pakistan Army.
- This decision marks a notable shift from a civilian-led policing framework to one with formal military leadership—effectively signaling a further **militarization** of the Federal Constabulary (FedC). While it is not unprecedented for armed forces personnel to serve in civilian posts, the appointment of a serving Major General to lead a newly constituted federal paramilitary force carries structural and symbolic implications.
- This move alters the character of the FedC substantially, reinforcing concerns raised in the analysis regarding the blurring of lines between civilian policing and military command. It may also intensify constitutional and federalism-related debates, especially with respect to civilian oversight, provincial autonomy, and the long-term implications for internal security governance.
- This addendum should be read in conjunction with the full critique, as it strengthens the urgency of some of the key concerns raised therein.