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### The Supreme Court of Pakistan as a Federal Court An Analysis

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#### ABSTRACT

An independent judiciary is an integral part of modern federations as it plays an important role in strengthening federal values. It protects minority rights, safeguards separation of powers within the federal structure and resolve disagreements between federation and the provinces, and between the provinces. Therefore, in most cases, contemporary federal constitutions assign these roles to superior courts. In this context, this study examines the role of the Supreme Court (SC) of Pakistan as a federal court, acting as a referee in disputes between the federation and the provinces, or among the provinces. This study presents an in-depth analysis of certain selected cases decided by the SC of Pakistan, aimed at safeguarding the federal character of the state. The findings offer a modest contribution to the field and serve as a valuable source for policymakers and legal scholars to grasp the federal role of the SC of Pakistan.

**Keywords:** *Supreme Court; Federalism; Intergovernmental Relations; Judiciary; Pakistan.*

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## 1. Introduction

In multicultural societies, the federal system is considered a suitable solution to address the challenges posed by regional differences which may be regarding issues of language, culture and economic interests. The federal political system believes in unity in diversity (Somin, 2024) and designs an inclusive governance structure by combining self-rule and shared rule. The federal constitution divides powers between the federation and provinces in such a way that each level of government is provided some exclusive jurisdiction in relation to policy formulation and its execution. In addition, the regional units are provided power-sharing at national level by granting over-representation in federal chambers and adopting specific constitutional mechanisms. However, in federal systems, the inter-governmental relations are not always harmonious. Most often, disagreements arise between the federation and provinces linked to distributive issues and division of powers between the two tiers of governments (Fessha et al., 2022). Therefore, the federations assign a specific role to superior courts to resolve such disagreements. It is believed that courts act as referee to interpret constitutional law when there is a disagreement between the federation and the federating units or between the federating units. However, evidence shows that the role of superior courts in resolving disputes and strengthening federalism varies across cases.

The SC of Pakistan serves as the nation's highest judicial authority, functioning both as a constitutional and an appellate court. Its rulings are mandatory for all subordinate courts within the country. The SC is expected to work in cooperation with other judicial and administrative bodies. The court's creation, authority and duties are detailed in the 1973 constitution, specifically in 'Articles 176 to 191'. These provisions also outline judges' tenure, retirement age, grounds for removal and the process for appointing judges of the superior courts. The court is comprising of the Chief Justice of Pakistan (CJP) and other judges.

The primary focus of this study is to investigate 'What role has the SC of Pakistan played in developing harmonious relations between federation and provinces?' The SC of Pakistan has received sufficient scholarly attention in almost all its aspects (Munir & Khalid, 2020;

Malik, 2023; Kureshi, 2022; Cheema, 2018), however, the federal role of this court is one subject practically overlooked in literature on the SC. Therefore, this study highlights the federal role of SC by analyzing its role in selected cases. The significance of this endeavor lies in the deeper understanding it will contribute not only to academic knowledge but also to its potential to delineate the federal norms in the state of the Pakistan. By adopting the qualitative analysis method, this research seeks to address not only the instances of the role of judiciary in protecting federalism in Pakistan but also the adequacy and efficacy of the federal mechanisms and institutions in place to safeguard the principles of the true federalism in Pakistan.

The next section of this study presents an overview of the role of judiciary in contemporary federations by reviewing the available published literature. The third section of this paper analyzes the federal role of supreme courts in light of certain cases decided by the court. Finally, the study is concluded in the last section.

## 2. Federalism and Judiciary

Federalism is a territorial division of power between regional and national governments. Although, the division's powers and allocation of competencies may vary across the federations, it is essential that each level of government has exclusive jurisdiction in at least one area of action and the authority granted to each level of government is constitutionally guaranteed, (Thorlakson, 2003). However, there are significant variations among the contemporary federations with regard to their design, distribution of legislative and executive authority, as well as allocation of financial resources to each level of government; the form and structure of the power-sharing bodies, and the role of courts as adjudicative bodies, (Watts, 2001). Several studies have investigated the role of the judiciary in federations, especially in the context of intergovernmental relations, minority rights protection, and dispute resolution, (Popelier & Bielen, 2019; Dichio & Somin, 2023; Swenden & Saxena, 2022; Harding & Snow, 2023; Kössler & Fessha, 2022; Do & Schertzer, 2024).

In many federations, such as US, Canada, Australia, India and Malaysia, the SC is the final

adjudicator for all laws. However, some federations such as Germany, Belgium and Spain have federal constitutional courts for interpretation of constitutional law and deciding disagreements between the federations and federating units pertaining to the division of powers, (Watts, 2001). Pakistani federation has recently adopted the 27<sup>th</sup>. Constitutional Amendment and has established a constitutional court. Prior to this amendment, the SC had the authority to interpret the constitutional law of the country.

US is the first modern federation and it offers the prime model regarding the role of judiciary in federal systems. It is argued that across the course of American history the US Supreme Court has consistently expanded federal jurisdiction across communities by serving as a key tool of the larger centralized government. More than 200 years ago, anti-Federalist adversaries of the constitution initially proposed the thesis that the SC increases federal authority at the expense of the states, (Dichio, 2018). During the 1800s and the early 1900s, the US SC made some notable but restricted attempts to limit the authority of congress. After the constitutional change of the New Deal era in the 1930s, these initiatives were mostly abandoned. In recent years, the SC has made an effort to bring back the judicial implementation of restrictions on federal power (Aroney, 2017).

In the German federation, the judicial review falls into a number of types. First, if a state government or a qualified federal organ brings a dispute before the Federal Constitutional Court (FCC), the FCC may settle it between the federal government and states or other national government entities. Only when there is a genuine dispute and a need for an interpretation of the Basic Law may the FCC get involved in the dispute. In addition, the court grants 'concrete judicial review', which permits a lower court to ask the FCC for its opinion on a constitutional issue while the matter is still ongoing in the lower court. In addition, the court has the authority to provide abstract judicial review judgments that are made when there are disagreements over the legality of a legislation. Although it is not advisory in nature, the decision is given the same weight as judgments reached through the concrete review procedure. Except in cases of individual constitutional objections, only

government agencies with official status may contact the FCC (Davis & Burnham, 1989).

Wilfried Swenden and Rekha Saxena (2022) have identified the Indian Supreme Court's involvement in federation-wide law enforcement. They argue that there is conflicting evidence to support the political harmony and judicial equality of their assumptions, according to their qualitative analysis of the 40 decisions that they studied, pertaining to 'Rule of president, state-center disagreements over sharing rule frameworks, unbalanced federalism and legislative authority'. In their opinion, the presumption of political dominance is valid, but only for situations involving President's Rule. On the other hand, they argue that no consistent pattern appears in other situations. 'In general SC jurisprudence on center-state disputes appears to be primarily informed by the presumption of constitutional philosophy, which is connected to statutory logic, philosophy of law and initial purpose as guiding concepts.' They maintained that the Indian constitution is rather centralized; therefore, decisions based on judicial theory have tended to support the central government. This has limited the SC's ability to protect federalism and state autonomy.

The federalism was the main reason behind the division of South Asia which created Pakistan and India, because congress was in favor of centralization whereas the Muslim League was in favor of decentralization. The cultural norms and values of both states are not substantially supported by these opposing federalism models. As a result, this raises the question of what kind of federalism did these Indo-Pak areas embrace? Also what distinguishes these constitutions from existing federal models? Before 1973, the constitutions of both these nations adopted centralized forms and handled them in various ways. This strong center model of Indian federalism was successful in controlling inter-ethnic disputes. The cultural division that led to Bengal's separation from Pakistan in 1973, however, was not taken into account by the Pakistani model (Shakoor Chandio et al., 2024).

Throughout Pakistan's history, the structure of federalism and the relationship between the central government and the provinces have consistently been a source of conflict. The centralization of authority that occurred right after

independence is when this issue first emerged. The Pakistani SC is a key player in settling political disputes as a mediator. Although an increasing amount of literature has been written regarding the benefits of Pakistan's 18<sup>th</sup> Amendment to the constitution, little has been written about how those improvements have really been implemented in court, (Soofi, 2023).

How the links between the federal and provincial administrations in Pakistan have been a source of political and legislative conflict since the country's inception in 1947. Pakistan, which is split into four areas (provinces), has in fact been eclipsed by Punjab, the largest of the four, to which the main body of the armed forces and government belong. The remaining three components have demanded more autonomy and democratic restraints, expressing their displeasure with the way resources are being utilized and distributed by the federal government. Pakistan's problems with federalism have been made worse by its Templar character, which has seen the army rule the country for the bulk of its history (Kundi, 2002).

The SC of Pakistan asserts that parliamentary democracy, the supremacy of the judiciary and federalism are the key components of the 1973 constitution. The salient characteristics concept has been applied by Pakistan's court, a number of times to declare its independence, restrict the authority of the executive and legislative branches and determine whether laws are constitutional. The regulations of a federation constitute the lifeline of the legal system and are closely monitored by the judiciary. If the judiciary's interpretation of the key elements of theory is embraced with no challenge and federalism is, in fact, a fundamental component of Pakistan's Constitution, then Pakistan will be considered a functional federation, (Chaudhry, 2011).

An extensive range of literature review address the role of a constitutional court in a federal structure but there is no convenient and accessible source that gives a systematic and coherent picture of the role along with their evolution. Hence, the lack of scholarship regarding the role of SC of Pakistan as a constitutional court and its methods to protect the federal structure of Pakistan exemplifies the uniquely pioneer role of this discourse.

### 3. Federal Role of the Supreme Court of Pakistan

Under Article 184(1) of the 1973 Constitution of Pakistan, the SC has the authority to review administrative actions, decisions by administrative authorities and government activities to ensure they comply with the law. Additionally, 'Article 184(2)' allows the SC to issue declaratory judgments in disputes between governments. The SC of Pakistan, after the 18th amendment, became more independent, which resulted in its effective role in settling the disputes regarding the federation. It acted as an umpire in disputes between the federation and provinces, playing its role effectively to preserve the federal status of the state.

This section analyzes selected cases that highlight the role of SC in resolving disputes and contributing its role to the federal stability in Pakistan.

#### 3a.1<sup>st</sup> Case: Lahore Development Authority vs. Ms. Imrana Tiwana-2015

The Signal Free Corridor (SFC) Project was the subject of the legal dispute in this case. The GOP-established statutory entity, the Lahore Development Authority (LDA) intended to build five overhead pedestrian bridges, seven U-turns, and two underpasses on the 7.1 km of Jail Road and Main Boulevard. The defendant accused the project of being unreasonable and discriminatory, requiring the removal of a significant number of trees, and therefore required an Environmental Impact Assessment (EIA) from the Environmental Protection Authority (EPA) before it could begin. The project also violated Article 140A of the constitution. The validity of various other provisions of the 'LDA Act, 1975' was also contested. The Provincial Government (PG) challenged the petition in the Lahore High Court (LHC) under Article 199 of the 1973 constitution (Pakistan, Supreme Court of Pakistan Annual Reports, 2015-16).

The petitioners opposed the proposal on following grounds: First, the petitioners argued that the LDA started the project without waiting for the 'Provincial EPA' to approve the EIA. The Pakistan Environment Protection Act of 1997 (PEPA), Section 12(1) was breached in this instance. Secondly, the petitioners questioned the EPA's legitimacy as an independent organization.

Thirdly, in light of 'Article 140A', the petitioners also argued that the LDA, as a provincial body, lacked the legal authority to launch this project. Finally, the petitioners expressed dissatisfaction with the LDA's quality of the EIA.

The EPA was instructed by the court to furnish the EIA review process and submit it to the LHC. After the hearing, the LHC observed the evidences and the entire bench acknowledged the petitions and declared that 'sections six, thirteen, thirteen-A, fourteen, fifteen, sixteen, eighteen, twenty, twenty three, twenty four, twenty eight, thirty four-A, B, thirty five, thirty eight and forty six of the LDA Act, 1975, were unconstitutional because they went beyond the scope of the Objective Resolution ((Pakistan, Supreme Court of Pakistan Annual Reports, 2015-16).

Subsequently, the LDA filed an appeal in the Supreme Court on the following grounds; according to LDA the petitioners had another remedy accessible to them, hence the LHC shouldn't have been involved in the case. Second, by using judicial restraint, the LHC, which has writ authority, might have prevented the LDA Act's provisions from being overturned. Thirdly, the appellants argued that the PG retains its legislative and executive power and cannot be entirely stripped of its powers under 'Article 140-A' of the constitution. Fourth, the appellants thought that the charge that the EPA was vulnerable to regulatory capture was unfounded. Finally, the appellants claimed that the LDA was entitled to initiate the project and fill the void, as there had not been a Local Government (LG) election (Pakistan, Annual Report of Supreme Court of Pakistan, 2015-16).

The SC reversed the ruling of the LHC and approved the project's development. The SC overturned the LHC's ruling on several grounds. Firstly, the SC declared that the LHC had erred in ruling that several parts of the LDA Act were illegal. The SC ruled that legislation cannot be overturned based only on the Principles of Policy. The SC held that the Articles 140A and 137 must be interpreted harmoniously and that one cannot supersede the other. Secondly, regarding the question of whether the PG retains the authority to repeal the law even after assigning specific functions to the LG, the SC ruled that it does and rejected the notion that the PG constitutional power to amend the law was lost as a result of

devolution. It will be considered a violation of Article 140-A COP (Constitution of Pakistan). Thirdly, the SC went on to say that even though the courts are the guardians of the COP, they must proceed extremely carefully when overturning laws. Fourthly, the LHC did not make a deliberate effort to compare the LDA Act's provisions with the fundamental rights and determine whether they could be construed harmoniously. The ruling does not explicitly state how the LDA Act's provisions infringe Articles nine: 'right to life' and fourteen: 'dignity of man'. Fifthly, when a matter of concern to society arose, the PG was also permitted to take the lead. Thus, it was determined that in the event of a disagreement between the LDA Act and the LG law, only section 46 of the LDA Act would take precedence. Lastly, the SC then discussed regulatory capture and whether the LHC erred in holding that the EPA should operate as a separate statutory agency. The SC made clear that the presence of a government person in charge of the department did not imply bias or carelessness in carrying out its responsibilities in a manner consistent with the goals of the law. The SC ruled against it because the EPA's regulations made it clear that an EIA was not necessary for road rehabilitation or reconstruction (Pakistan, Supreme Court of Pakistan Annual Reports, 2015-16).

In this case, the SC of Pakistan gave its decision in the light of the COP 1973 after hearing the arguments of both parties. The ruling by the SC is significant to evaluate the relationship between the environment and its legality in Pakistan. It demonstrated that the state's judiciary has the authority to enforce the law and defend the rights of its people. The primary motivation behind this was the separation of powers that the courts should have to monitor the actions taken by the executive. If those actions conflict with the COP 1973, the SC has the authority to address them and ensure compliance with the COP's requirements. The SC decided that the 'Lahore Signal Free Corridor' could be built, and there was no need to grant permission from the LG, which demonstrated that the SC played a crucial role in resolving the dispute and maintaining the status of federalism in Pakistan. This showed how the Supreme Court of Pakistan is independent under the constitution and genuinely upholds the principles of federalism, thereby ensuring the

independence of the judiciary. Hence, in this case, the SC interpreted Article 140A in its true sense, which protects the federation from future disputes, as it would serve as a precedent for any future issue regarding federalism.

### **3b. 2<sup>nd</sup> Case: Sindh Revenue Board vs. Civil Aviation Authority of Pakistan (2017)**

According to the Sindh Sales Tax on Services Act 2011 (SSTS) and the SSTS Rules, 2011, the PG imposed sales tax on services on the Civil Aviation Authority (CAA), which is an autonomous agency that operates under the federal government. The issue concerned whether this tax was lawful in the post-18<sup>th</sup> amendment.

In every aspect, the needs made, proceedings started, orders made or notices sent to CAA under the Act and the Rules were quashed and set aside after the learned 'Division Bench of the HC' granted the petition filed by CAA and ruled that CAA was 'not liable to pay the tax under the SSTS act 2011'. 'Notices under Order XXVII-A of the CPC' were sent to the Advocate General of Sindh and the Attorney General of Pakistan because this matter involved the interpretation of the constitution (Sindh Revenue Board vs. Civil Aviation Authority of Pakistan 2017).

In a landmark decision that thoroughly addressed every facet of the dispute, the court noted that the CAA was a regulatory body that carried out tasks solely within the purview of the Federal Legislature. The tasks carried out by the Authority were those specified in the FLL. The Authority's legislative responsibilities and tasks were not services. The Authority was compelled to fulfill its mandated tasks and obligations. The provision of the role, assignment, availabilities and instruments given in accordance therewith, would not by itself bring the Authority's payment for giving them, which Parliament had empowered it to enforce, in the purview of activities upon which tax for sale is levied.

Furthermore, the Authority was answerable to the representatives of the people, who oversaw its operations. It was overseen financially by an individual holding a constitutional post. The provincial government attempted to tax the federal Government's operations, as well as a regulatory body established by the FL, by taxing the Authority (Sindh Revenue Board Versus the Civil Aviation Authority of Pakistan, 2017).

The SC ruled that the 'SSTS Act, 2011 and the SSTS Rules, 2011', which levied sales tax on services under the CAA in violation of the constitution's provisions, were invalid from the outset and had no legal significance. Since only the 'Federal Legislature' was able to enact laws about matters regarding the Authority, 'the SSTS act, 2011 and the SSTS rules, 2011 violated Article one hundred forty-two-A of the COP' to the extent that they taxed the CAA (Sindh Revenue Board Versus the Civil Aviation Authority of Pakistan, 2017).

The SC ruled that, 'notwithstanding the CLL's (The Concurrent Legislative List in the constitution) abolition, the federation may still act on the topics covered in it as long as 'it came within the purview of the FLL (Federal Legislative List in the constitution) or was related or connected therewith.' It meets the constitutional interpretation standards to believe that the '18th Amendment's' legislators should follow the constitution. Furthermore, the SC based its conclusion on a broad understanding of what constitutes 'supporting', allowing the federation complete authority. Anything, after all, may be secondary or unrelated to a federal issue. Hence, SC played its effective role in this case for 'implementation of the 18<sup>th</sup> Amendment in letter and spirit'.

### **3c. 3<sup>rd</sup> Case: Sui Southern Gas Limited and Others vs. Federation of Pakistan and others (2018)**

Both the parliament and the 'provincial legislatures' could pass laws on the subjects listed in the CLL before the passage of the 18<sup>th</sup>. Amendment. However, as a result of the Constitution Eighteenth Amendment Act 2010. 'Entry Number 26 of the CLL' that covered the subjects of: workers' well-being, employment conditions, retirement savings, compensation for workmen, corporate responsibility, medical coverage, retirement and disability retirement benefits; and for labor unions; industry and labor conflicts were covered in Entry Number 27. Following the ratification of the '18<sup>th</sup>. Amendment, the parliament enacted the IRA 2012, which was subsequently challenged before 'all provincial High Courts and the Islamabad HC'. The primary argument put forth was that the Act was enacted incompetently, as trade unions and labor matters fell under the purview of



provincial assemblies rather than the parliament (Sui Southern Gas Company Ltd. and others v. Federation of Pakistan and others, 2013). All high court rulings (both via overturned and other judgments) supported the legitimacy and constitutionality of the IRA 2012.

The SC denied the appeals as well as the petition while giving a ruling as follows;

1. The 'Federal Legislature' has the legislative authority to run trade unions operating at the 'trans-provincial level', but the 'Provincial Legislature' lacks this authority.
2. The topics about trade unions, labor disputes, etc., 'are included in the Entries Numbers three and thirty-two of Part I of the FLL', having been addressed and protected by international conventions. Therefore, The Federal legislature can pass the rules and regulations in this regard.
3. The 'Federal Legislature' has the legislative authority to create laws about inter-provincial concerns in the authority of 'Entry Number thirteen in Part-II of the FLL'; therefore, it is also competent to do so.
4. The IRA 2012 is within the bounds of the Constitution and does not undermine the purpose of the Eighteenth Amendment to the Constitution or usurp the authority of provinces.
5. Because the IRA 2012 is a procedural law, it will take effect retroactively on May 1, 2010, the date the IRO 2008 was abolished ((Pakistan, Annual reports of Supreme Court of Pakistan, 2018).

The SC granted the federation sweeping powers. In this case, the SC relied on a precedent established 'before the 18<sup>th</sup>. Amendment' to rule that the terms of the FLL should be interpreted broadly. It therefore ruled that if the federation had signed an international treaty on a particular issue, regardless of whether it was a provincial matter, it may legislate on it. However, the federation signed several foreign accords 'before the 18<sup>th</sup>. Amendment'. This context is also essential for interpreting the constitution. It created the center-provincial harmony by deciding according to the 'provisions of the constitution'. To be able to address this issue, the 18th Amendment stated some subjects that would require CCI (The Council of Common Interests) approval, so SC

highlighted the role of CCI in the post-18th Amendment. Hence, in this case, the SC also attempted to maximize harmony between the federation and the province, ensuring the smooth operation of the state's affairs.

### **3d. 4<sup>th</sup> Case: PMDC and others Vs. Muhammad Fahad Malik and others (2018)**

The actual circumstances of the case were outlined as follows: according to the Admission in Medical and Dental Colleges (Regulations of 2013), students who had completed their F.Sc. were eligible to enroll in medical and dental colleges based on their F.Sc. results. The scores and results of the MDCAT (Medical and Dental College Admission Test), in contrast, were used to determine eligibility for enrollment in medical and dental colleges (MDC) for students who had completed their A-levels. Eligibility was based on their grades, as per equivalent declarations provided by the IBCC (Inter Board Coordination Commission) of GOP Islamabad. As a result, they could no longer rely on their SAT-II results for enrollment in medical and dental colleges and were required to use the MDCAT instead. The topic under investigation was whether the MDC Ordinance of 2013, as well as the Ordinances of 2014 and 2015, which alter the Ordinance of 1962, required the CCI's previous approval (PMDC and others Vs. Muhammad Fahad Malik and others , 2017).

The high court held that for approximately three months, the federal government would establish the Council by Section three of the 1962 Ordinance. The students who finished their A levels in June 2017 are eligible to apply to MDC based on their SAT II results from the 2017–18 school year. Moreover, the PMDC will operate under the surveillance and direction of the CCI, and the CCI will accept every regulation, which will have legal force if enacted in accordance with constitutional obligations. The CCI will review the requirements and standards established according to the 2016 Regulations. (PMDC and others Vs. Muhammad Fahad Malik and others , 2017).

The court held that the complainant is no longer an employee of the PMDC or its president, even though the Ordinances of 2014 and 2015 have either expired, been terminated, or been revoked. This is because, according to Section 6-A of the General Clauses Act, the amendments and

substitutes made in the Ordinance of 1962 (which was a martial law ordinance delineating the hierarchy of the courts that was relevant to the substance of the case) have survived and remain in effect, forming part of the said Ordinance, (PMDC and others Vs. Muhammad Fahad Malik and others , 2017).

The case went to the Supreme Court. The CJP delivered the pivotal ruling. The court ruled that the PMDC's duty encompassed the control of medical and dental education and institutions. While assessing the legality of CAP (Ordinance of 1962, Sec. 6 (ii), 6(iii), given that this factor encompassed the admissions process, CAP was deemed a valid determination made by the PMDC. Referring to the ruling of the high court, the court determined that, by the constitution, the parliament was supreme over the CCI and could enact any laws listed in the Federal Legislative List without seeking permission from anybody, including the CCI. The 2016 Regulations were therefore validated even though the CCI had not authorized them, meaning that the ordinances, including the Amendment Ordinances, were not unconstitutional on the basis that the CCI had not authorized them. According to the court, unless the legislature approved them, ordinances issued by the president were valid until the duration mentioned in Article 89 of the constitution. It was a grave violation of the constitution and an abuse of the constitutional process that the ordinance was not laid before the legislature. As a result, the court allowed students who finished their A-level in June 2017 to be accepted into medical and dentistry universities based only on their SAT-II score for the 2017–18 academic year, upholding all other rulings made by the PMDC (Pakistan Medical and Dental Council through its President and others V. Muhammad Fahad Malik etc., 2018).

The primary aspect of the ruling that affected the state's federal structure was the requirement for CCI permission before enacting new laws or amending existing regulations, as the medical profession was placed under Part II of the FLL, following the 18th Amendment. The SC gave a landmark judgment stating that the CCI is limited to making and implementing policy regarding matters listed in the FLL, specifically in Part II of the said list. CCI is not involved in the legislative process in any way regarding the issues listed

above. After policies are established, CCI is not allowed to impede the legislative process again, nor may legislation be overturned because CCI was not present during the relevant parliamentary session. Furthermore, CCI has supervision and control over allied institutions; however, it is not above parliament, which is essential in the constitution's design and requires all other institutions to operate within their constitutional bounds. Therefore, it is decided that parliament has complete and unrestricted power to enact laws regarding the subjects listed in the FLL, without requiring permission or consent from any national forum or authority, including the CCI. Hence, SC became successful in settling the differences between the federation and provinces and creating harmony.

### **3e. 5<sup>th</sup> Case: Government of Sindh, through the Secretary, Health Department, and others vs. Dr. Nadeem Rizvi and Others (2019)**

The present case raises a significant legal and constitutional question: under the Constitution (18<sup>th</sup>. Amendment) Act, 2010, the following entities can be transferred from the federal to the provincial domain: JPMC, NICVD, NICH, NMP, and SZPMI.

The movement of “JPMC, NICVD, and NICH” by the ‘Federal Ministry of Health’ to ‘the Province of Sindh’ was challenged in constitutional challenges submitted by several physicians before the learned ‘Sindh High Court’ (SHC). A second constitutional appeal challenging the transfer of ‘NMP from the (federal) Ministry of Culture to the Department of Culture and Tourism, Government of Sindh’, was brought before the learned High Court of Sindh.

The underlying argument in each of the writ petitions was that the institutions above should be allowed to continue operating as federal institutions, as ‘they were federal subjects and covered by the FLL. The learned High Court of Sindh combined the writ petitions and granted them in the contested ruling of July 4, 2016. The transfer of ‘JPMC, NICVD, NICH, and NMP’ to the Province of Sindh was ruled by the HC to be unlawful, without legal standing, and to have no legal significance (Government of Sindh through Secretary Health Department and others v. Dr. Nadeem, 2016).

The SC was divided on the matter, with two



distinct views prevailing: the majority view and the minority view. Let's discuss both briefly:

This view was shared by the 'Hon'ble Mr. Justice Ijaz-ul-Ahsan'. The foundational documents of SZMC, such as the trust deed that founded the organization, made it abundantly evident that the primary goals of the establishment were 'research, academic and vocational training of physicians and other medical personnel'. Given this, there was no question that SZMC was covered by 'Federal Legislative List Entry No. 16'. It was also discovered that the Federal Government had transferred the SZMC without applying due diligence, carefully considering the constitutional position, or according to the required legal processes (GOS through SHD and others Versus Nadeem Rizvi, 2019).

These views were shared by the 'Hon'ble Mr. Justice Maqbool Baqar'. A federal constitution is essentially a statement of the division of legislative authorities between the federal and provincial governments. Public healthcare and healthcare centers have been the provinces' sole jurisdiction throughout our legislative history. Since the federal list does not include public health and public hospitals, COP 1973, which has only one legislative list, the 'FLL' also grants these powers and authorities to the provinces. As a result, public health and public hospitals are exclusively within the legislative and executive branches of government in the provinces (GOS through SHD and others Versus Nadeem Rizvi, 2019). The Supreme Court ruled that 'SZMC, JPMC, NICVD, NICH, and NMP' were unlawfully transferred from the 'Federation to the Provinces'.

In this case, the SC gave a landmark judgment, stating that under the constitution, the federation has the authority to establish, manage, or run

fundamental units, such as healthcare or other associations, for the welfare of the nation. If this right were taken from the federation, the federation would collapse and would not work correctly for the betterment of the state and its people. In this case, the SC played a crucial role in resolving the dispute peacefully, as well as bilaterally, after hearing the arguments from both sides. This means that the SC's decision met the provisions of the constitution. Hence, SC became successful in settling the differences between the federation and provinces and creating harmony.

#### 4. Conclusion

Federalism 'is a constitutional structure in which powers are divided and shared across two or three levels of government. In federations, courts, as arbiters of constitutional disputes, have the authority to play an important role in overseeing the division and sharing of powers. All the above mentioned cases showed that in Pakistan the Supreme Court of Pakistan has played its vital federal role as other Supreme Courts of other contemporary federations in the world have played in implementing the true federal structure in a state, because the Court has decided the cases after hearing both parties and has decided the cases on merit. It decided the cases bilaterally which met the requirements of the justice. It also upheld the dignity of man, as well as the fundamental rights of the citizens. The SC of Pakistan in all these cases tried to maintain the center-provincial harmony according to the provisions of the constitution. These cases showed that the SC of Pakistan has the authority to declare all those actions which are ultra-virus to the COP 1973 and maintain the supremacy of the constitution, which is an essential principle for federalism.

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The authors showed no conflict of interest.

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