IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT: MR. JUSTICE MIAN SAQIB NISAR, HCJ
MR. JUSTICE MUSHIR ALAM
MR. JUSTICE SAJJAD ALI SHAH

CIVIL APPEALS NO.1583 TO 1598 OF 2014, 970 AND 971 OF 2013, 4, 5, 606 AND 1152 OF 2015 AND CIVIL PETITION NO.2154-L OF 2014 AND CIVIL MISC. APPLICATION NO.484-K OF 2014 IN CIVIL APPEAL NO.1598 OF 2014

(Against the judgments dated 4.8.2014, 29.10.2010, 3.12.2014, 18.3.2015, 9.6.2015 and 17.4.2014 of the High Court of Sindh, Karachi/Islamabad High Court, Islamabad/Peshawar High Court, Peshawar/Lahore High Court, Lahore passed in C.Ps.No.D-304/2012, D-3195/2010, D-1762/2012, D-658/2012, D-3530/2011, D-3196/2010, D-2948/2011, D-2947/2011, D-2701/2011, D-2269/2013, D-2188/2011, D-1642/2012, D-1410/2010, D-4184/2012, D-153/2012, D-1796/2010, D-2428/2010, W.P.No.4626/2014, 4628/2014, C.P.No.4514/2013, W.P.No.634/2015 and R.A.No.93/2012)

M/s Sui Southern Gas Company Ltd.	In C.A.1583/2014
M/s Karachi Electric Supply Company	In C.A.1584/2014
M/s Karachi Electric Supply Company	In C.A.1585/2014
M/s Karachi Electric Ltd.	In C.A.1586/2014
M/s Karachi Electric Ltd.	In C.A.1587/2014
M/s Karachi Electric Ltd.	In C.A.1588/2014
M/s Karachi Electric Supply Company	In C.A.1589/2014
M/s Karachi Electric Supply Company	In C.A.1590/2014
M/s Karachi Electric Supply Company	In C.A.1591/2014
M/s Karachi Electric Ltd.	In C.A.1592/2014
M/s Karachi Electric Supply Company	In C.A.1593/2014
M/s Karachi Electric Ltd.	In C.A.1594/2014
M/s Karachi Electric Ltd.	In C.A.1595/2014
M/s Karachi Electric Supply Company	In C.A.1596/2014
M/s Karachi Electric Supply Company	In C.A.1597/2014
M/s Karachi Electric Supply Company	In C.A.1598/2014
Shaheen Airport Services	In C.A.970/2013
Shaheen Airport Services	In C.A.971/2013
S.M.E. Bank Ltd. Islamabad	In C.A.4/2015
S.M.E. Bank Ltd. Islamabad	In C.A.5/2015
Muslim Commercial Bank Ltd.	In C.A.606/2015
President Meezan Bank Ltd., Karachi etc.	In C.A.1152/2015
Zohaib Arif, Traffic Loader, etc.	In C.P.2154-L/2014

...Appellant(s)/Petitioner(s)

VERSUS

Federation of Pakistan etc.	In C.A.1583/2014
National Industrial Relations Commission etc.	In C.A.1584/2014
National Industrial Relations Commission etc.	In C.A.1585/2014
Federation of Pakistan etc.	In C.A.1586/2014
Federation of Pakistan etc.	In C.A.1587/2014
National Industrial Relations Commission etc.	In C.A.1588/2014
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National Industrial Relations Commission etc.	In C.A.1591/2014
National Industrial Relations Commission etc.	In C.A.1592/2014

Federation of Pakistan etc.	In C.A.1593/2014
Federation of Pakistan etc.	In C.A.1594/2014
Federation of Pakistan etc.	In C.A.1595/2014
Province of Sindh etc.	In C.A.1596/2014
Federation of Pakistan etc.	In C.A.1597/2014
Federation of Pakistan etc.	In C.A.1598/2014
National Industrial Relations Commission etc.	In C.A.970/2013
National Industrial Relations Commission etc.	In C.A.971/2013
Full Bench, NIRC Islamabad etc.	In C.A.4/2015
Full Bench, NIRC Islamabad etc.	In C.A.5/2015
Tariq Zameer Siddiqui etc.	In C.A.606/2015
Full Bench, NIRC Islamabad etc.	In C.A.1152/2015
Manager, Shaheen Airport Services etc.	In C.P.2154-L/2014

...Respondent(s)

For the appellant(s): Mr. Khalid Anwar, Sr. ASC
Mr. Nisar A. Mujahid, ASC
Raja Abdul Ghafoor, AOR
(In C.As.970 & 971/2013)

Mr. Asim Iqbal, ASC
(In C.A.1583/2014)

Dr. Muhammad Farough Naseem, ASC
(In C.As.1584, 1585, 1589, 1590, 1591, 1593, 1596, 1597 & 1598/2014)

Nemo
(In C.As.1586, 1587, 1588, 1592, 1594 & 1595/2014)

Mr. Tariq Masood, Sr. ASC
Syed Rifaqat Hussain Shah, AOR
(In C.As.4 & 5/2015)

Mr. Shahid Anwar Bajwa, ASC
Mr. M. S. Khattak, AOR
(In C.A.606/2015)

Mr. Mehmood Abdul Ghani, ASC
Mr. M. S. Khattak, AOR
(In C.A.1152/2015)

Mr. Khalid Ismail, ASC, Sr. ASC.
(In C.P.2154-L/2014)

For the respondent(s): Mr. M. Makhdoom Ali Khan, Sr. ASC
(In C.As.1583, 1585, 1586, 1590 to 1595/2014)

Mr. Rasheed A. Rizvi, Sr. ASC
(In C.As.1584 & 1587/2014)

Mr. Khalid Ismail, ASC
(In C.As.4 & 5/2015, 970, 971/2013)

Nemo
(In C.A.970/2013)

Mr. Amir Javed, ASC
(In C.A.1152/2015)

Mr. Salman Riaz Ch., ASC
(In C.P.2154-L/2014)

On Court's notice:	Mr. Muhammad Waqar Rana, Addl.A.G.P. Mr. Shehryar Qazi, Addl. AG Sindh Ms. Asma Hamid, Addl.A.G. Punjab Barrister Qasim Wadood, Addl.A.G. KPK Mr. Ayaz Swati, Addl.A.G. Balochistan Mr. M. Bilal Nadeem, Dy. Registrar, NIRC Syed Farrukh Hamayun, Joint Director Labour Deptt. Sindh Mr. Raja Maqsood, LO Labour Deptt. Punjab Mr. Mazhar Hussain, SO (Coordination) Ibd
For intervener	Mr. Saleem Khan, ASC Qazi Ahmed Naeem Qureshi, ASC Mr. Mehmood A. Sheikh, AOR
Date of Hearing:	10.1.2018

JUDGMENT

MIAN SAQIB NISAR, CJ.- These appeals with the leave of the Court *vide* orders dated 5.9.2013 *(C.As. No.970 & 971 of 2013)*, 27.11.2014 *(C.As. No.1583 to 1598 of 2014)*, 8.1.2015 *(C.As. No.4 & 5 of 2015)*, 30.6.2015 *(C.A. No.606 of 2015)* and 4.11.2015 *(C.A. No.1152 of 2015)* and petition *(C.P. No.2154-L of 2014)* entail the common question of law thus are being disposed of through this common judgment.

2. The Islamic Republic of Pakistan is a democratic State *(Federation)* with its Federating Units *(Provinces)* and the Constitution of the Islamic Republic Pakistan, 1973 *(Constitution)* recognizes and creates a balance between the authority of the Federation and the autonomy of the Provinces, which recognition has been given an iron cladding by virtue of the Eighteenth Amendment, passed *vide* the Constitution (Eighteenth Amendment) Act, 2010. This Amendment to the Constitution has *inter alia* introduced a drastic enhancement in the legislative authority of the Provinces by deleting the Concurrent Legislative List *(CLL)*, whereby previously both the Parliament and the Provincial legislatures could legislate on the subjects enumerated therein. The omission of the CLL, left only a single

the Constitution which exclusively list subjects that can be legislated upon by the Parliament alone, and by virtue of Article 142(c) of the Constitution any subject not enumerated in these two lists would *subject to the Constitution*, be within the legislative competence of the Provinces. Entry No. 26 of the erstwhile CLL contained the subjects of "*welfare of labor; conditions of labor, provident funds; employer's liability and workmen's compensation, health insurance including invalidity pensions, old age pensions*", whereas, Entry 27 of the same dealt with the subjects of "*trade unions; industrial and labor disputes*". Thus, prior to Eighteenth Amendment, the subject of labour and trade unions were in the domain of both the Parliament as well as the Provincial Assemblies. The labour laws enacted by the Parliament which were applicable in the Federation as well as the Federating Units. However, after the Eighteenth Amendment, the Parliament enacted the Industrial Relations Act 2012 *(IRA 2012)* which was challenged before the concerned High Courts *(all the provincial High Courts as also the Islamabad High Court)* mainly on the ground that the same is incompetently enacted by the Parliament as the subject of labour and the trade unions was no more in the legislative domain of the Parliament rather within the domain of the Provincial Assemblies. All the High Courts held *(through judgments impugned herein as also other judgments)* in favour of the constitutionality/validity of the IRA 2012. The factual background as also the questions of law raised in the impugned judgments are as follows:

CA. 970/2013, against order of High Court of Sindh dated 29.10.2010 passed in C.P. No. 1796-D/2010 (2011 PLC 105)

The learned High Court of Sindh was faced with the question whether Shaheen Air Port Services, is a charitable organization

on the basis of being part of Shaheen Foundation which is a charitable trust set up by the Government of Pakistan, and thus whether a charitable organization fell within the ambit of the Industrial Relations Ordinance, 1969 and whether the same was operative in the interregnum of the lapse of the Industrial Relations Act 2008 on 30.4.2010 *(as per Section 81(3) of the said Act)* which question, the learned High Court answered in the affirmative, holding that the Industrial Relations Act 2008/Industrial Relations Ordinance 1969 being Federal law was applicable to Shaheen Airport Services as the same was operative in more than one Province and that Shaheen Airport Services did not qualify as a charitable organization in view of the activities that were entailed in the operation of its business.

Another question involved therein was that after the Eighteenth Amendment, whereby Entries No.26 and 27 occurring in the CLL have been deleted, whether the Industrial Relations Ordinance, 1969 has become ultra vires of the Constitution for the reason that power to legislate on the subject no more existed with the Federal Legislature, the Court held that if a Trade Union has membership in more than one Provinces, merely because Entries No. 26 and 27 have been deleted, the jurisdiction of the Parliament to legislate in respect of situations services and items which fall within the inter Provincial trade, did not cease to exist.

CA. 1583/2014, against order of High Court of Sindh dated 4.8.2014 passed in C.P. No.304-D/2012 (PLD 2014 K 553)

The learned High Court while considering the question as to whether the IRA 2012 is ultra vires of the Constitution, held

that while there is no doubt that the Eighteenth Amendment resulted in the deletion of the CLL, some room for concurrent legislation by both the Parliament and Provincial Assemblies was retained in Article 137 of the Constitution. Moreover, the IRA 2012 aimed at protecting the Fundamental Right of the citizens to form association provided under Article 17 and since Article 141 of the Constitution is clear that Provinces cannot legislate on matters beyond their territorial boundaries, it is imperative that the Federation steps into and protects such right of workers/employees who wish to form inter-provincial trade unions/associations, which resolve is further solidified with Articles 2A and 8 of the Constitution which emphasize the protection of the fundamental rights and relied upon the judgment reported as **Pakistan Muslim League (N) v. The Federation of Pakistan (PLD 2007 SC 642)** and the Indian judgment of **Elel Hotels and Investment Ltd etc. v. Union of India (AIR 1990 SC 1664)** that advocates a liberal construction of the constitutional legislative lists. Thus, holding the IRA *intra vires* of the Constitution, the learned High Court held that there is no overlap in the Provincial and Federal law since the IRA 2012 applies to inter-provincial establishments and its workers/employees, whereas the Sindh Industrial Relations Act, 2013 applies to establishments functioning only within the Province of Sindh.

C.A. No.4/2015, against order of Islamabad High Court dated 3.12.2014 passed in W.P. No. 4626/2014

The dispute before the learned Islamabad High Court involved the employees of the SME Bank Limited, having its Branches throughout the Country i.e. in the Provinces of Punjab, Sindh,

KPK and Balochistan, and also the Islamabad Capital Territory, who hired employees on contract basis who had thereafter been working for the said Bank for periods of 2 to 13 years and terminated them. The Bank contested the grievance notice of these employees contending that a fresh grievance notice should have been sent to the Bank under the Industrial Relations Act 2002 *(the prevailing law at the time*) which contention was not accepted by the learned High Court which finding is contested *inter alia* in the present application before this Court.

C.A. No.606/2015, against order of High Court Sindh dated 18.3.2015 passed in CP No. 4154-D/2013

The Sindh Labour Appellate Tribunal directed that the grievance petition filed by the worker/employee ought to be heard by the NIRC constituted under the IRA 2012. Being aggrieved, the Bank challenged the said order through a petition under Article 199 of the Constitution on the ground that the grievance petition had to be filed with concerned Labour Court constituted under the relevant provincial statute i.e. the Sindh Industrial Relations Act, 2013 as the matter did not lie under the IRA 2012. The High Court held that since the IRA 2012 applied to the present case, the proper forum was NIRC under the said Act and not the Labour Court set up under provincial legislation.

C.A. No.1152/2015, against order of Peshawar High Court dated 9.6.2015 passed in W.P. No.634-P/2015 (2016 PLC 279)

The petitioner therein filed grievance petition before the Labour Court, Haripur which was remitted to NIRC, Peshawar Bench. During the proceedings the right of cross-examination was

struck off, against which, the Bank filed a writ petition, however, in the meantime, NIRC accepted the grievance petition, consequently the writ petition was withdrawn. The appeal filed before the Full Bench of the NIRC Islamabad was dismissed and the said order was assailed through another writ petition. The learned Peshawar High Court held that the allegation that the grievance petition of the petitioner *(in the High Court)* was not maintainable before the NIRC was ill-founded, thereby declaring that the NIRC was competent and the IRA 2012 was applicable to the Meezan Bank Limited *(which is a trans-provincial establishment)*.

C.P. No.2154/2014, against order of Lahore High Court dated 17.11.2014 passed in Review Application No.93/2012

The grievance petition filed by the worker was dismissed by the Labour Court on the ground that the IRO is not applicable to Shaheen Airport Service. The appeal was allowed and the matter was remanded, but the learned Lahore High Court in a writ petition directed that as the identical issue was pending before this Court the Labour Court would not proceed further till the decision of that matter *(CP No.11/2011)*. The review petition against that order was dismissed in light of the identical matter pending before this Court concerning the question as to whether, post the Eighteenth Amendment, the petitioner's case would fall under the provincial law i.e. the Punjab Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 or the Federal law i.e. the Industrial Relations Ordinance 1969 or Industrial Relations Act, 2008.

There are some other cases wherein the *vires* of the Industrial Relations Ordinance, 2011 *(IRO 2011)* and IRA 2012 have been considered by the High Courts but the same are not subject matter of these appeals/petition. The factual background as also the questions of law raised therein are as follows:

Order of Lahore High Court dated 13.3.2012 passed in Writ Petitions No.24691 to 24695 of 2011 (2012 PLC 219)

The NIRC through order dated 19.8.2011 directed to suspend the proceedings before the learned Labour Court. The vires of IRO 2011 was challenged through writ petitions on the ground that after abolition of CLL by means of Eighteenth Amendment, the subject of labour became the provincial subject and as such the President of Pakistan had no powers to promulgate the IRO 2011. On the basis of Entries No.3, 32 and 59 of Part-I of the FLL, the IRO 2011 was declared to be intra vires of the Constitution.

Order of Islamabad High Court dated 27.6.2012 passed in Writ Petition No.3472/2011

The learned High Court declared the IRO 2011 to be intra vires of the Constitution on the basis of Entries No.3 and 32 of Part-I in the FLL.

Order of High Court of Balochistan dated 26.6.2014 passed in C.P. No.226/2012 (2014 PLC 351)

While considering the vires of the IRA 2012, the Court held that the IRA 2012 was properly enacted by the Parliament and is not ultra vires the Constitution, therefore, the IRO 2012, which was succeeded by the IRA 2012, cannot be categorized as being unconstitutional.

3. Heard the learned Counsel for the parties and perused the impugned judgments with their able assistance. For brevity, the respective arguments of the learned counsel for the parties are not cited separately, which shall be considered and dealt with hereinafter in our detailed discussion on the questions so formulated. From the pleadings/arguments of parties, the following common questions of law emerge for determination of this Court:

(a) Whether the promulgation of the Industrial Relations Act, 2012 was *ultra vires* of the Constitution by reason of encroaching upon the legislative authority of the Provinces under Article 141-144 of the Constitution?

(b) What is the extent of legislative competence of the federal and provincial legislatures and whether a provincial legislature has extra-territorial jurisdiction?

(c) Whether there is an overlap in the legal remedies/forums available to the employees/workers who are employed in companies/corporations/institutions/establishments in more than one Province and what is the precise scope of jurisdiction of the National Industrial Relations Commission *(NIRC)* formed under Section 35 of the IRA 2012 for inter-provincial/trans-provincial labour and trade disputes?

(d) What is the precise scope of jurisdiction of the National Industrial Relations Commission *(NIRC)* formed under Section 25 of the Industrial Relations Act 2008 in the

interregnum till the IRA 2012 was not enacted for intra-provincial labour and trade disputes?

4. The case of the appellants/petitioners can be summarized as under:

(1) That by means of the Eighteenth Amendment to the Constitution the CLL under which both the Parliament and Provincial Legislatures had jurisdiction to legislative on the subjects enumerated therein was abolished, as such, the matters previously covered under Entries No.26 and 27 thereof were no longer under the legislative domain of the Parliament, because under Article 142(c) of the Constitution, the legislative competence of the Federal Legislature is restricted only to the subjects that are enumerated in the Federal Legislative List *(FLL)* and the legislative competence of the Provincial Legislatures have exclusive jurisdiction to make laws on all residuary subjects. Further, under Article 144 (1) of the Constitution, the Parliament can also legislate on any matter not enumerated in the FLL only in the eventuality if one or more Provincial Assemblies pass a resolution to that effect. Therefore, prior to promulgation of the IRA 2012 it was necessary that all the four Provincial Assemblies should have passed the resolutions authorizing the Parliament to regulate by law the subjects that are covered by it, but the said provision of the Constitution was not resorted to. In the case of **Air League of PIAC Employees through President v. Federation of Pakistan M/O Labour and Manpower Division Islamabad and others (2011 SCMR 1254)** this Court has held that the Federal Government has no power to legislate on the subject of labour welfare and trade unions, which subjects, after the Eighteenth Amendment have devolved upon the Provinces, which judgment under Article 189 of the Constitution is binding on all Courts in Pakistan. Thus, the IRA

2012 is not valid law. It was also the case of the appellants/petitioner that the IRA 2012 cannot be validated on the basis of Entry No.3 of the FLL on the ground that it is intended to discharge obligation under the International Treaties and Conventions such as the ILO Conventions No.87 and 98, especially when the Provincial Legislatures have already made the laws on the subjects covered by it *(IRA 2012)*. Further, by means of the IRA 2012 a parallel legal forum in the shape of NIRC established under it *(IRA 2012)* alongside the Labour Courts established under the Provincial laws has been created which has resulted in a confusion with regard to the relevant forum to be approached.

(2) That since the promulgation of the Government of India Act, 1935 till the Constitution of 1973, the subject of trade unions and workers welfare has consistently never ever been in the Federal sphere of legislation. The Parliament, through the Eighteenth Amendment, with a deliberate and conscious decision, enhanced the quantum of provincial autonomy by abolishing the CLL, which can be said to be one of the most important phases in the constitutional history of Pakistan; however, the learned High Courts have validated the Federal laws as if it had never taken place and the fact of the devolution of powers has been sidelined and treated as inconsequential. In fact, the upholding the federal law means an increase in the legislative power of the Federation and reduction in the legislative power of the Provinces, which is against the intent of the Eighteenth Amendment.

(3) That the learned High Courts have unanimously saved the Federal laws by interpreting different entries of the FLL on the tacit assumption that there never was any entry relating to trade unions and labour welfare. Various other entries have been stretched to

include trade unions and workers welfare while disregarding the basic fact that this subject was previously the subject matter of Entries No.26 and 27 of the CLL which have now been omitted i.e. transferred exclusively to the Provincial sphere. It is obvious that entries should be construed while taking an overall view of the contents thereof and not in isolation as if the other entries have never existed in the first place. The fact that the upholding the Federal legislation necessarily means invalidating and striking down either full or certain provisions of all four provincial Acts *(Provincial Industrial Relation Acts)*. In fact, the findings of the learned High Courts appear to be on the basis that there is a vacuum in the law, which in fact was not there, as all the four Provincial legislatures had enacted laws providing an alternate route.

(4) There is no bar on a Provincial legislature to make trans-provincial legislation. The rights of the labourers/workers are better protected through having Province-wide trade unions rather than trade unions which are operating at the Federal level or in other provinces and can only be given relief by a single body, namely the NIRC. Further, Article 17 of the Constitution does not contemplate the necessity for nationwide trade unions. If the Provincial legislatures, considered that a nationwide trade union was beneficial they could have provided for the same through the constitutional mechanism provided by Article 144 of the Constitution, by authorizing the Federal legislature to legislate on this subject. They have, however, in their legislative wisdom, consciously decided not to do so. It is a legislative policy matter on which the concerned legislatures shall be allowed to decide and the learned High Courts ought not to interfere therein.

(5) As per the definitions of terms 'employer', 'establishment', 'industrial dispute' and 'industry' contained in the Provincial law of Sindh, every commercial entity, whether it is operating on a trans-provincial basis or on a provincial basis, irrespective of the fact as to whether it has certain employees in other Provinces apart from Sindh would be covered by the Sindh Industrial Relations Act, 2013 *(SIRA 2013)*. However, the Federal Act *(IRA 2012)*, as interpreted by the High Courts, excludes in totality the jurisdiction of the Provincial Labour Courts with regard to the trade unions operating for and in relation to any company operating in Sindh which has branches in other Provinces. Therefore, this was not a case of vacuum which the Federal law, by referring to the so called trans-provincial trade unions had filled in. In fact, it was a blatant usurpation of Provincial autonomy by the Federal Government and deprivation of the jurisdiction of Provincial Labour Courts by limiting their jurisdiction only to those companies which do not have branches in other Provinces.

(6) In terms of Section 3 of the SIRA 2013, which deals with trade unions and freedom of association, it is specifically provided that workers, without any distinction whatsoever, shall have the right to establish and join trade unions of their own choice. With the Federal law, this Section has been reduced in its scope and ambit and will now apply to only those companies which do not have branches in other Provinces. There is no justification whatsoever for this arbitrary deprivation of the rights of workmen in Sindh merely because the company for which they work has branches in different Provinces. Likewise, the scope of Sections 17, 34 and 45 of the Act has also been reduced; inasmuch as, the right of workmen to take a local dispute before a local Court has been infringed.

(7) There is a critical distinction between legislative competence and fundamental rights. Insofar as the question of legislative competence is concerned the same is governed by the Article 142 of the Constitution and the Articles relating to fundamental rights are irrelevant in this regard. The fundamental rights are the rights conferred on citizens of Pakistan and have nothing whatsoever to do with legislative competence, which is a totally different concept. The learned High Courts have not only mixed together these two conceptually distinct and disparate aspects of constitutional interpretation but also the concept of legislative competence has been subordinated to the concept of fundamental rights. This has been done on the assumption that a trans-provincial trade union is desirable. Article 7, together with Article 8 of the Constitution, controls all the fundamental rights. These Articles clearly lay down restrictions upon the "State"; a restriction from passing a law in violation of the fundamental rights. The definition of State includes both the Federal as well as the Provincial organs of the State. The framers of the Constitution, irrespective of the question of legislative competence, which has to be determined under Article 142 *ibid*, stipulated that a violation of fundamental rights, either by the Federal or by the Provincial legislatures would be illegal.

(8) The learned Baluchistan High Court, upheld the Federal Legislation by relying upon the interpretation of US Supreme Court, whereby the Entry relating to "commerce" in the US Constitution has been stretched to include trade unions and workers welfare, so by means of a similar process, the Entry relating to commerce contained in Entry No. 27 of Part-I of the FLL in our Constitution, may also be so structured. While holding so, the learned High Court has ignored the fact that the entries in the US Constitution are very brief, as

against it, the Constitution of Pakistan set out at great length and detail various topics which form the subject matter of the jurisdiction of the different legislatures, and previously certain entries *(Entries No.26 and 27)* of the CLL were dealing with these subjects but were abolished and no corresponding entry was included/inserted in the FLL. Further, the US Supreme Court is unique in the western world as being the only openly politicized judicial institution; whereas, the Pakistan Supreme Court is a far better judicial model, therefore, in these circumstances, interpretation given by the US Supreme Court should not be followed by this Court irrationally.

(9) The learned High Courts have held that a Provincial legislature does not have the power to pass laws in relation to companies which operate in more than one province. There is nothing on the constitutional plane preventing the Provincial Legislature from passing a law in relation to trade unions and workmen, which would make it compulsory and mandatory for each company to allow all its employees, no matter where they are working, to become members of a trade union. Thus, a company incorporated in one Province and having its head office therein and a branch office in other Province can allow all its workmen to be members of a single union. There is nothing unconstitutional or illegal about it, as all the workers can be subjected to the laws of the said Province. Since the large companies usually have branches in different Provinces e.g. all major banks and other corporate entities such as PIA, it is obvious that the jurisdiction and legislative competence of the Provinces has been curtailed by the learned High Courts. Even otherwise, having different trade unions operating in different Provinces will cause no harm and detriment to the workmen. It is not obvious that the interest of the small minority of workmen in one Province are not co-terminus or identical with the

thousand employees in other Province. If there is only one trade union to cover both sets of workmen, then it is obvious that the majority view will be based on the interests of the vast majority of the workmen while the minority workmen's grievances may be disregarded. The principle of justice being delivered to the door step is radically breached by having only one forum at the Federal level, namely, NIRC based in Islamabad. In contrast to this, there are more than 30 Labour Courts in the different Provinces, therefore, it is obviously to the advantage of workmen to be able to have resort to a court at their door step. Although the NIRC travels to different Provinces, obviously one Court travelling on circuit is not a substitute for as many as 30 Courts operating all over the country.

5. On the other hand, while supporting the judgments of the learned High Court *(impugned herein)*, it is the case of the respondents that this Court has always leaned towards preserving the competence of the legislature and thus saving a statute rather than striking it down. Therefore, while determining the question whether any of the Entries of the FLL is wide enough to encompass within its ambit the IRA 2012, maximum possible amplitude must be provided to the Entries. The subjects of labour and trade unions are covered under many of the Entries of the FLL; therefore, the IRA 2012 was competently legislated by the Federal Legislature. Inasmuch as, as relied upon by the learned High Courts, the subjects dealt with in the IRA 2012 are covered under Entries No.3, 8, 27, 31, 32, 58 and 59 of Pert-I and Entries No.3, 13 and 18 of Pert-II of FLL, therefore, being covered by the Entries in the FLL, the IRA 2012 cannot be struck down. Further, a provincial law cannot operate beyond the territorial limits of the Province; therefore, the provincial

IRAs cannot secure the rights of the employees working in Establishments which are trans-provincial. The IRA 2012, which guarantees the employees of inter-provincial establishments to organize themselves form trade unions on inter-provincial level and to seek appointment of Collective Bargaining Agent and also to have an industrial dispute resolution mechanism at the Federal level, is not void. With regard to the judgment of this Court in **Air League of PIAC Employees' case** (*supra*) it is the case of the respondents that though under Article 189 of the Constitution a decision of this Court is binding only to the extent it decides a question of law or is based upon or enunciates a principle of law but in the said case the issue of authority of the Federal or Provincial Legislature to legislate on the subjects in issue has not been decided, therefore, the validity the IRA 2012 has to be determined decisively in the instant proceedings.

6. Learned Additional Attorney General for Pakistan fully supported the impugned judgments declaring the IRA 2012 to be a valid piece of legislation. Learned Additional Advocate General Punjab adopted the arguments of learned counsel for the appellants and her stance is similar to the appellants that after the abolition of the CLL through the Eighteenth Amendment, the subject of labour and trade unions falls within the legislative competence of the Provinces and as such IRA 2012 is ultra vires the Constitution. Same is the stance of learned Additional Advocate General Sindh. Learned Additional Advocate General KPK supported the impugned judgments to the extent of validity of the IRA 2012 and its applicability only to the Establishments existing at trans-provincial level and the Trade Unions operating therein. However, according to him the Provincial legislation can co-exist with the Federal legislation, as the former

would apply to the Establishments existing at trans-provincial level and the Trade Unions operating therein, whereas, the latter would apply to the Establishments/Trade unions functioning within one Province only. Same is the stance of the learned Additional Advocate General Balochistan.

7. Before dilating upon the questions involved in the instant matter in the light of the submissions made by the learned counsel as well as the Constitutional and legal provisions and also the relevant case-law, it is appropriate to first mention the history of the labour related laws which remained applicable from time to time in Pakistan. At the time of the independence of Pakistan in 1947, two laws on the subject i.e. the Trade Unions Act, 1926 and the Industrial Disputes Act, 1941 were holding the field. The Trade Unions Act had been enacted to provide for the registration of Trade Unions, to specify their function, privileges and powers and other incidental matters. Chapter III thereof provided for the rights and liabilities of registered Trade Unions. The said Act neither specifically conferred on the Trade Unions, whether registered or unregistered, either the power to represent workers in any proceedings or the persons to resort to authorize a strike. However, Section 15 of the said Act specified the objects on which the general funds of a registered Trade Union could be spent. In 1927, the Bombay Trade unions Regulations were issued under the provisions of section 29 of the Act and after the coming into force of the Government of India Act, 1935 the Central Government, in 1938, issued the Central Trade Unions Regulations in respect of the Trade Unions whose objects extended beyond one Province. The Bombay Trade Unions Regulations were subsequently re-named, with regard to the Province

of Sindh, as the Sindh Trade Unions Regulations, under the provisions of Section 3 of Sindh Act 1 of 1951. As far as the Industrial Disputes Act, 1947 is concerned, it came into force on l.4.1947 and provided for the Investigation and settlement of Industrial disputes by or through the Works Committees, Conciliation Courts Boards of Conciliation, Courts of Inquiry and Industrial Tribunals. Under Section 38 thereof, the Industrial Disputes Rules, 1947 were framed by the Central as well as Provincial Governments. However, this Act was repealed and replaced by the Industrial Disputes Ordinance, 1959, which was promulgated on 21.10.1959. Section 34(1) of the Ordinance of 1959, like Section 36(1) of its predecessor Act, entitled a workman, who was a party to a dispute, to be represented in any proceedings under the said Ordinance by an Officer of a Registered Trade Union. In 1960, the Federal Government framed the Industrial Disputes (Central) Rules, 1960, superseding the earlier Rules of 1938. The Trade Unions Act, 1926 was substantially modified by Trade Unions (Amendment) Ordinance, 1960 *(Ordinance No.KIV of 1960)*, whereby Chapter III-E was added thereto providing for the recognition of registered Trade Unions by the employers on the fulfillment of certain conditions by such Trade Union. In March 1968 the West Pakistan Trade Unions Ordinance, 1968 and the West Pakistan Industrial Disputes Ordinance, 1968 were promulgated. The right of the Trade Unions to negotiate with the employer through its executive, in respect of the matters connected with the employment and conditions of work, was retained. In November, 1969, the Industrial Relations Ordinance, 1969 was enacted to amend and consolidate the laws relating to reformation of trade unions and to achieve uniformity, whereby the West Pakistan Industrial Disputes Ordinance, 1968 was repealed. This new

Ordinance was substantially modified by the Industrial Relation (Amendment) Ordinance, 1970 *(Ordinance No.XIX of 1970)*, the Labour Laws (Amendment) Ordinance, 1972 *(Ordinance No.IX of 1972)*, the Labour Laws (Amendment) Act, 1972 *(Act No.V of 1972)* and the Industrial Relations (Amendment) Act, 1973 (Act No.XXIX of 1973). By the Labour Laws (Amendment) Ordinance, 1972, Section 22-A was inserted in the Industrial Relations Ordinance, 1969 which provided for the establishment of the National Industrial Relations Commission *(NIRC)*, for settlement of disputes between employers and workers. The mechanism for the functioning of NIRC was provided under the National Industrial Relations Commission (Procedure and Functions) Regulations, 1973. Then comes the Industrial Relations Ordinance, 2002, which repealed and replaced the Industrial Relations Ordinance, 1969, however, all registered trade unions, were saved and were deemed to have been registered under the new Ordinance. The Industrial Relations Ordinance, 2002 was then repealed and replaced by the Industrial Relations Act, 2008; however, once again the registered trade unions were saved and were deemed to have been registered under the Act, 2008. Importantly, the said Act was a temporary enactment as under Section 87(3) thereof it was provided that unless repealed earlier, the IRA 2008 shall seize to exist on 30.4.2010. Till that date, no legislation was made either to supersede or to extend the period of operation of the said law; as such, by virtue of the said sunset clause the IRA 2008 stood repealed on 30.4.2010. In the meantime, on 20.4.2010, through the Eighteenth Amendment to the Constitution, the CLL was abolished, as such, Entries No.26 and 27 which provided the legislative authority to the Federal Legislature alongside the Provincial Legislature regarding the subjects, *inter alia*, of labor and trade

unions, no more remained in field. It is to be noted that Clause (6) of newly inserted Article 270AA of the Constitution provided that the laws with respect to the matters enumerated in the erstwhile CLL, including Ordinances, Orders, rules, bye-laws, regulations and notifications and other legal instruments having the force of law, in force in Pakistan, immediately before the commencement of the said amendment would continue to remain in force until altered, repealed or amended by the competent authority. After 30.4.2010 the Labour Courts, Labour Appellate Tribunal as well as NIRC stopped functioning for the reason that the IRA 2008 had lapsed and no further legislation had been made by the Federal Legislature. When confronted with the issue, the NIRC, Islamabad, held that by means of the Eighteenth Amendment, the IRA 2008 had been protected and was fully operative till altered or amended or repealed by the competent authority. As the Labour Courts as well as the Labour Appellate Tribunal stopped functioning, the then Chief Justice of the Lahore High Court initiated suo motu proceedings. The suo motu as also the Writ Petition No.10746/2010 was disposed of on the basis of the report submitted on behalf of the Government of Punjab stating therein that IRA 2008 stood protected only upto 30.6.2011 in accordance with the protection provided under Article 270AA of the Constitution. On the same issue, the High Court of Sindh, in Constitutional Petition No.D-1432/2010, held that IRA 2008 stood repealed on 30.4.2010 by force of Section 87(3) thereof, whereas the IRO 1969 stood revived from the said date. The Lahore High Court, Rawalpindi Bench, in ICA No.200/2008 held that IRA 2008 had been protected till 30.4.2011 in view of Article 270AA of the Constitution. The Islamabad High Court, in Writ Petition

No.4917/2010, also held that in view of Section 87(3) of IRA 2008, it *(IRA 2008)* stood repealed on 30.4.2010.

Thereafter, pursuant to the Eighteenth Amendment, the Provincial Legislatures of all the four Provinces made legislation on the subjects of the trade unions and labour disputes, etc. In the province of Punjab, on 13.6.2010, the Punjab Industrial Relations Ordinance, 2010 *(PIRO 2010)* was enacted, which was to remain operative till 10.9.2010, however, the life of the Ordinance was extended for a further period of ninety days through a Resolution passed by the Provincial Assembly on 23.7.2010. In the meantime, on 9.12.2010 the Punjab Industrial Relations Act, 2010 *(PIRA 2010)* was enacted which repealed the PIRO 2010. In the Province of Sindh, on 5.7.2010, through the Industrial Relations (Revival and Amendment) Act, 2010, the IRO 2008 was revived w.e.f. 1.5.2010 as if it had never been repealed. In the Province of Khyber Pukhtunkhwa, on 14.7.2010, the Khyber Pukhtunkhwa Industrial Relations Ordinance, 2010 *(KIRO 2010)* was promulgated. Likewise, in the province of Balochistan, on 22.72010, the Balochistan Industrial Relations Ordinance, 2010 *(BIRO 2010)* was issued, which was then replaced on 15.10.2010 by the Balochistan Industrial Relations Act, 2010 *(BIRA 2010)*.

9. The question whether the IRA 2008 stood repealed on 30.4.2010; or the same had been protected either till 30.6.2011 or permanently; or if it lapsed/got repealed, whether the IRO 1969 stood revived or not, came up for consideration before this Court in **Air League of PIAC Employees' case** *(supra)* wherein, *vide* judgment dated 2.6.2011, it was held that IRA 2008 ceased to continue in force w.e.f. 30.4.2010. As no Federal Law remained in the field,

thereafter, on 14.3.2012, the Federal Legislature promulgated the IRA 2012. As per its preamble, the purpose of its promulgation was *to consolidate and rationalize the law relating to formation of trade unions, and improvement of relations between employers and workmen in the Islamabad Capital Territory and in trans-provincial establishments and industry.* It was also to recognize the right of fundamental right of 'freedom of association' as envisaged in Article 17 of the Constitution, for implementation of the ILO Conventions No.87 and 98 and is specifically applicable to only trans-provincial establishments.

10. Before going to the constitutional questions, it is appropriate to first consider the ratio of the judgment of this Court in **AIR League of PIAC Employees' case** *(supra)*. In the said case, neither the constitutionality of any of the Federal legislations nor the legislative competence of the Federal Legislature to legislate on the subjects of labour and trade unions was considered, rather the only issue therein was that whether after the Eighteenth Amendment, the IRA 2008 stood protected or not, and if not protected whether the IRO 1969 revived or not. The Court, without going into validity of the federal or provincial legislations, held that IRA 2008 on the basis of Eighteenth Constitutional Amendment stood protected and continued till 30.6.2011. Further, without considering in detail whether the subjects of labour and trade unions fall within the legislative domain of Federer or Provincial legislature only made reference of Article 144(1) of the Constitution. Relevant paras therefrom reads as under:-

> "22. At the cost of repetition, it is to be noted that the IRA, 2008 stood repealed on 30-4-2010 by virtue of its section 87(3), whereas, the provincial legislation was made on 13th June, 2010; 5th July, 2010; 14th July, 2010; and

22nd July, 2010 for the provinces of Punjab, Sindh, Khyber Pukhtunkhwa and Balochistan, respectively. Therefore, there was a period of about two months for which there was no legislation, Federal or Provincial, in force. The Labour Laws provide the procedure and mechanism for the resolution of disputes, registration of Trade Unions and establishment of Forum for the redressal of grievance of the labourers as well as employers, therefore, it is mainly a procedural law and in the light of the well- settled principles of interpretation of Statutes as mentioned above, the procedural law has retrospective effect unless contrary is provided expressly or impliedly, the same would thus be applicable retrospectively w.e.f. 1.5.2010. Further, in the Province of Sindh, the Industrial Relations (Revival and Amendment) Act, 2010, the IRA, 2008 has been revived w.e.f. 1st May, 2010, therefore, the interregnum period has already been catered for.

27. Now turning towards the submission of the learned amicus curiae on the vires of Provincial Labour Laws on the ground that there are many Institutions/Corporations which have their branches all over the country and there were country wide Trade Unions but now Trade Union can only be registered under the legislation of a specific province. It is to be noted that instant proceedings have been initiated under Article 184(3) of the Constitution with a limited purpose of having a declaration that. IRA, 2008 on the basis of Eighteenth Constitutional Amendment stood protected and continued till 30th June, 2011, therefore, the vires of the same cannot be considered in such proceedings. However, as stated earlier Article 144(1) of the Constitution has provided mechanism for making central legislation in respect of matters not covered in the Federal Legislative List.

29. Thus, for the foregoing reasons, it is held that IRA, 2008 ceased to continue in force w.e.f. 30th April, 2010, as a consequence whereof petition is dismissed."

It is evident from the above that this Court consciously left open the question of the legislative domain of Federal or Provincial Legislature

as also the constitutionality of labour laws. Therefore, the said judgment passed by a learned Three-Member Bench of this Court, is in no way an impediment in the way of the High Courts or even this Court to consider and decide the validity of the IRA 2012.

11. At this stage, it is also appropriate to consider the history of legislative competence of the federal/provincial legislature regarding the subject of trade unions and labour rights, etc. In this regard it is to be noted that prior to the creation of Pakistan, the subject of trade unions, labour disputes and labour matters were mentioned in Entry No.35 of List-I of the FLL and also in Entries No. 26, 27 and 29 of Part-II of the CLL of the Government of India Act, 1935. The same was in the Seventh Schedule thereof and was controlled by subsection Section 126(2) thereof, which is reproduced hereunder:-

> List-I of the Federal Legislative List
>
> 35. Regulation of labour and safety in mines and oilfields.
>
> Part-II of the Concurrent Legislative List
>
> 26. Factories.
>
> 27. Welfare of labour; conditions of labour; provident funds; employers' liability and workmen's compensation; health insurance, including invalidity pensions; old age pensions.
>
> 29. Trade unions; industrial and labour disputes.
>
> Section
>
> **126. Control of Federation over Province in certain cases.-**
>
> (2) The executive authority of the Federation shall also extend to the giving of directions to a Province as to the carrying into execution therein of any Act of the Federal Legislature which relates to a matter specified in Part II of the Concurrent Legislative List and authorises the giving of such directions:

> Provided that a Bill or amendment which proposes to authorise the giving of any such directions as aforesaid shall not be introduced into or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion."

The said subjects were mentioned in Entry No.5 of Part II of the Concurrent List in Fifth Schedule of the Constitution of Islamic Republic of Pakistan, 1956. The same was controlled by Article 126(2)(d) thereof, which reads as under:-

> Part-II of the Concurrent List
>
> 5. Relations between employers and employees; trade unions; industrial and labour disputes; welfare of labour including conditions of work; provident funds; employers' liability; workmen's compensation; invalidity and old age pensions and maternity benefits; vocational and technical training of labour; social security and social insurance.
>
> Article 126.
>
> (2) The executive authority of the Federation shall extend to the giving of directions to a Province as may appear to the Federal Government to be necessary for the purpose of clause (1), and the said authority shall also extend to giving of directions to a Province-
>
> (d) as to the carrying into execution in the Province of any Act Parliament which relates to a matter enumerated in Part II of the Concurrent List and authorizes the giving of such directions."

In the Constitution of 1962, there was only one legislative list pertaining to the subjects within the legislative competence of Central Legislature, provided in Third Schedule, however, the subjects pertaining to labour disputes and trade unions, etc., were not mentioned in the said list. The said Schedule was controlled by Article 131(2)(c) thereof, which reads as under: -

> 131. Central law-making power.-
>
> (2) Where the national interest of Pakistan in relation to –
>
> (c) the achievement of uniformity in respect of any matter in different parts of Pakistan,
>
> So requires, the Central Legislature shall have power to make laws (including laws having extra-territorial operation) for the whole or any part of Pakistan with respect to any matter not enumerated in the Third Schedule.

In the Interim Constitution of 1972, Part-II of CLL in Fourth Schedule deals with the subject of trade unions and labour disputes, which was controlled by Article 138 thereof, which read as under: -

> Concurrent List
>
> 29. Welfare of labor; conditions of labor, provident funds; employer's liability and workmen's compensation, health insurance including invalidity pensions, old age pensions.
>
> 31. Trade unions; industrial and labor disputes.

Before the Eighteenth Amendment, two Legislative Lists were available in the Constitution of 1973, namely, the FLL, which contained the subjects in respect whereof the Federation could legislate and the CLL, which contained the subjects in respect whereof either the Federation or a Province could legislate; whereas, the subjects which were not found in either of these two lists, were within the exclusive domain of the Provinces. The Entries No.26, 27 and 30 of the CLL in the Fourth Schedule dealt with the issue of trade unions and labour welfare, etc., which was controlled by Article 70 thereof. The same are reproduced here under:-

> Concurrent Legislative List
>
> 26. Welfare of labor; conditions of labor, provident funds; employer's liability and workmen's compensation, health insurance including invalidity pensions, old age pensions.
>
> 27. Trade unions; industrial and labor disputes.

30. Regulation of labor and safety in mines, factories and oil- fields.

70. **Introduction and passing of Bills.-** (1) A Bill with respect to any matter in the Federal Legislative List may originate in either House and shall, if it is passed by the House in which it originated, be transmitted to the other House; and, if the Bill is passed without amendment, by the other House also, it shall he presented to the President for assent.

(4) In this Article and the succeeding provisions of the Constitution, "Federal Legislative List" means the Federal Legislative List and the in the Fourth Schedule.

Reference in this regard may also be made to the provisions of the Constitution of India which contains three legislative lists i.e. the Union list, the State list and the Concurrent List. Entries No.22 to 24 of the Concurrent List in Seventh Schedule thereof deals with the subjects of trade unions and labour disputes, etc. and is controlled by Article 246 thereof, therefore, the Union as well as the States has joint powers to legislate in respect thereof. The same is reproduced below: -

Concurrent List, List-III

22. Trade unions; industrial and labour disputes.

23. Social security and social insurance; employment and unemployment.

24. Welfare of labour including conditions of work, provident funds, employers liability, workmens compensation, invalidity and old age pensions and maternity benefits.

246. Subject matter of laws made by Parliament and by the Legislatures of States.- (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the Union List).

(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters

enumerated in List III in the Seventh Schedule (in this Constitution referred to as the Concurrent List).

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included (in a State) notwithstanding that such matter is a matter enumerated in the State List.

12. The relevant provisions of the Constitution of 1973 are Articles 97, 137, 141 to 144 of the Constitution, which for reference are reproduced below:-

97. Extent of executive authority of Federation. - Subject to the Constitution, the executive authority of the Federation shall extend to the matters with respect to which Majlis-e-Shoora (Parliament) has power to make laws, including exercise of rights, authority and jurisdiction in and in relation to areas outside Pakistan:

Provided that the said authority shall not, save as expressly provided in the Constitution or in any law made by Majlis-e-Shoora (Parliament), extend in any Province to a matter with respect to which the Provincial Assembly has also power to make laws.

137. Extent of executive authority of Province.- Subject to the Constitution, the executive authority of the Province shall extend to the matters with respect to which the Provincial Assembly has power to make laws:

Provided that, in any matter with respect to which both Majlis-e-Shoora (Parliament) and the Provincial Assembly of a Province have power to make laws, the executive authority of the Province shall be subject to, and limited by, the executive authority expressly conferred by the Constitution or by law made by Majlis-e-Shoora (Parliament) upon the Federal Government or authorities thereof.

141. Extent of Federal and Provincial laws. Subject to the Constitution, Majlis-e-Shoora (Parliament) may make laws (including laws having extra-territorial operation) for the

whole or any part of Pakistan, and a Provincial Assembly may make laws for the Province or any part thereof.

142. Subject-matter of Federal and Provincial laws.- Subject to the Constitution-

(a) Majlis-e-Shoora (Parliament) shall have exclusive power to make laws with respect to any matter in the Federal Legislative List;

(b) Majlis-e-Shoora (Parliament) and a Provincial Assembly shall have power to make laws with respect to criminal law, criminal procedure and evidence;

(c) Subject to paragraph (b), a Provincial Assembly shall, and Majlis-e-Shoora (Parliament) shall not, have power to make laws with respect to any matter not enumerated in the Federal Legislative List; and

(d) Majlis-e-Shoora (Parliament) shall have exclusive power to make laws with respect to all matters pertaining to such areas in the Federation as are not included in any Province.

143. Inconsistency between Federal and Provincial Law.- If any provision of an Act of a Provincial Assembly is repugnant to any provision of an Act of Majlis-e-Shoora (Parliament) which Majlis-e-Shoora (Parliament) is competent to enact, then the Act of Majlis-e-Shoora (Parliament), whether passed before or after the Act of the Provincial Assembly, shall prevail and the Act of the Provincial Assembly shall, to the extent of the repugnancy, be void.

144. Power of Majlis-e-Shoora (Parliament) to legislate for one or more Provinces by consent.-(1) If one or more Provincial Assemblies pass resolutions to the effect that Majlis-e-Shoora (Parliament) may by law regulate any matter not enumerated the Federal Legislative List in the Fourth Schedule, it shall be lawful for Majlis-e-Shoora (Parliament) to pass an Act for regulating that matter accordingly, but any act so passed may, as respects any Province to which it applies, be amended or repealed by Act of the Assembly of that Province.

The learned High Courts while holding the IRA 2012 to be *intra vires* of the Constitution has relied upon following entries of the FLL: -

Part-I

3. External affairs; **the implementing of treaties** and agreements, including educational and cultural pacts and agreements, with other countries; extradition, including the surrender of criminals and accused persons to Governments outside Pakistan.

27. Import and export across customs frontiers as deemed by the Federal Government, **inter-provincial trade and commerce**, trade and commerce with foreign countries; standard of quality of goods to be exported out of Pakistan.

31. Corporations, that is to say, the incorporation, regulation and winding-up of **trading corporations**, including banking, insurance and financial corporations, but not including corporations owned or controlled by a Province and carrying on business only within that Province, or cooperative societies, and of corporations, whether trading or not, with objects not confined to a Province, but not including universities.

32. International treaties, conventions and agreements and International arbitration.

58. Matters which under the Constitution are within the legislative competence of Majlis- e-Shoora (Parliament) or **relate to the Federation**.

59. Matters **incidental or ancillary** to any matter enumerated in this Part.

Part II:

3. Development of industries, where development under Federal control is declared by Federal law to be expedient in the public interest; institutions, establishments, bodies and corporations administered or managed by the Federal Government immediately before the commencing day, including the [Pakistan Water and Power Development Authority and the Pakistan Industrial Development Corporation]; all undertakings, projects and schemes of such institutions, establishments, bodies and corporations,

> industries, projects and undertakings owned wholly or partially by the Federation or by a corporation set up by the Federation.
>
> **13. Inter-provincial matters and co-ordination**.
>
> **18.** Matters **incidental or ancillary** to any matter enumerated in this Part.

13. It is well established this Court, while considering the vires of a legislative enactment under its powers of judicial review, can consider not only the substance of the law but also the competence of the legislature. Further, though it is an accepted principle that no *mala fide* can be attributed to the legislature, however, the *bona fides* of the legislature as also the purpose and object of a statute may also be considered in the determination of the vires of a statute. The vires of a statute can also be determined on the ground that the legislation is colourable. In the instant case the only issue involved is the legislative competence of the Parliament *vis-à-vis* the legislative authority of the Provincial legislature. In this regard it is to be noted that there is always a presumption in favour of the constitutionality of a legislative enactment unless *ex facie* it appears to be violative of any of the Constitutional provisions and in a case where two opinions with regard to the constitutionality of an enactment are possible, the one in favour of the validity of the enactment is to be adopted. Meaning thereby that when a law is enacted by the Parliament, the presumption lies that Parliament has competently enacted it *(law)*, and if the vires of the same *(law)* are challenged, the burden always lies upon the person making such challenge to show that the same *(law)* is violative of any of the fundamental rights or the provisions of the Constitution. It is also a cardinal principle of interpretation that law should be interpreted in

such a manner that it should be saved rather than destroyed. The Courts should lean in favour of upholding the constitutionality of a legislation and it is thus incumbent upon the Courts to be extremely reluctant to strike down laws as unconstitutional. This power should be exercised only when absolutely necessary for injudicious exercise of this power might well result in grave and serious consequences. Reliance in this regard may be placed upon the cases of **Province of East Pakistan v. Sirajul Haq Patwari (PLD 1966 SC 854)**, **Mehreen Zaibun Nisa Vs. Land Commissioner, Multan and others (PLD 1975 SC 397)**, **M/s Elahi Cotton Mills Ltd and others Vs. Federation of Pakistan through Secretary M/o Finance, Islamabad and 6 others (PLD 1997 SC 582)**, **Dr. Tariq Nawaz v. Govt. of Pakistan (2000 SCMR 1956)**, **Mian Asif Islam v. Mian Mohammad Asif (PLD 2001 SC 499)**, **Pakistan Lawyers Forum and others Vs. Federation of Pakistan and others (PLD 2005 SC 719)**, **Master Foam v. Govt of Pakistan (PLD 2005 SC 373)**, **Federation of Pakistan through Secretary, Ministry of Finance and others v. Haji Muhammad Sadiq (PLD 2007 SC 133)**, **Syed Aizad Hussain v. Motor Registration Authority (PLD 2010 SC 983)**, **Dr. Mobashir Hassan v. Federation of Pakistan (PLD 2010 SC 265)**, **In re: Regarding Pensionary Benefits of the Judges of Superior Courts (PLD 2013 SC 829)** , **M.L. Kamra v. Chairman-cum-Managing Director, New India Assurance Co. Ltd. & Anr [(1992) 2 SCC 36]**, **M/s. Ispat Industries Ltd. v. Commissioner of Customs, Mumbai [(2006) 9 SCALE 652]**, **Manish Maheshwari vs Asstt. Commissioner Of Income Tax (AIR 2007 SC 1696)**, **Bharat Petroleum Corpn. Ltd vs Maddula Ratnavalli & Ors [2007 (6) SCC 81]** and also to the case reported as **Lahore Development Authority through D.G. and others Vs. Ms. Imrana Tiwana and others (2015 SCMR 1739)**. In

the last mentioned case, this Court has held that "The power to strike down or declare a legislative enactment void, however, has to be exercised with a great deal of care and caution. The Courts are one of the three coordinate institutions of the State and can only perform this solemn obligation in the exercise of their duty to uphold the Constitution. This power is exercised not because the judiciary is an institution superior to the legislature or the executive but because it is bound by its oath to uphold, preserve and protect the Constitution. It must enforce the Constitution as the Supreme Law but this duty must be performed with due care and caution and only when there is no other alternative." The Court after relying upon Cooley: "*Treatise on Constitutional Limitations, Pages 159 to 186*", H.M. Seervai: "*Constitutional Law of India, Volume I, Pages 260 to 262*", Mr. A.K. Brohi: "*Fundamental Law of Pakistan, Pages 562 to 592*", Mr. Justice Fazal Karim: "*Judicial Review of Public Actions, Volume I, Pages 488 to 492*", summarized the rules which must be applied in discharging the duty to declare laws unconstitutional, which read as under: -

(a) There is a presumption in favour of constitutionality and a law must not be declared unconstitutional unless the statute is placed next to the Constitution and no way can be found in reconciling the two;

(b) Where more than one interpretation is possible, one of which would make the law valid and the other void, the Court must prefer the interpretation which favours validity;

(c) A statute must never be declared unconstitutional unless its invalidity is beyond reasonable doubt. A reasonable doubt must be resolved in favour of the statute being valid;

(d) If a case can be decided on other or narrower grounds, the Court will abstain from deciding the constitutional question;

(e) The Court will not decide a larger constitutional question than is necessary for the determination of the case;

(f) The Court will not declare a statute unconstitutional on the

ground that it violates the spirit of the Constitution unless it also violates the letter of the Constitution;

(g) The Court is not concerned with the wisdom or prudence of the legislation but only with its constitutionality;

(h) The Court will not strike down statutes on principles of republican or democratic government unless those principles are placed beyond legislative encroachment by the Constitution;

(i) Mala fides will not be attributed to the Legislature.

14. There another rule of interpretation that entries in a Legislative List are to be interpreted liberally. Reliance in this regard may be made to the following cases:

(a) In **United Provinces Vs. Mt. Atiqa Begam (AIR 1941 FC 16)** it was held that "none of the items in the lists is to be read in a narrow or restricted sense and each general word therein should be held to extend to all ancillary and subsidiary matters which can fairly and reasonably be said to be comprehended in it.

(b) In **Navinchandra Mafatlal Vs. The Commissioner of Income Tax, Bombay City (AIR 1954 SC 58)** it was held that "the cardinal rule of interpretation, however, is that words should be read in their ordinary, natural and grammatical meaning subject to this rider that in construing words in a constitutional enactment conferring legislative power the most liberal construction should be put upon the words so that the same may have effect in their widest amplitude."

(c) In **Sri Ram Ram Narain Medhi vs The State Of Bombay (AIR 1959 SC 459)** it was held as under: -

> "It is well settled that these heads of legislation should not be construed in a narrow and pedantic sense but should be given a large and liberal interpretation. As was observed by the Judicial Committee of the Privy Council in British Coal Corporation v. The King [(1935) A.C. 500]:-
>
> "Indeed, in interpreting a constituent or organic statute such as the Act, that construction most beneficial to the widest possible amplitude of its powers must be adopted."
>
> The Federal Court also in the United Provinces V. Atiqa Begum [(1940) F.C.R. 110] pointed out that none of the items in the Lists is to be read in a narrow or restricted sense and that each general word should be held to extend to all ancillary

> or subsidiary matters which can fairly and reasonably be said to be comprehended in it."

(d) In **M/S New India Sugar Mills Ltd vs Commissioner Of Sales Tax, Bihar (AIR 1963 SC 1207)** it was held that "the entry should be interpreted in a liberal spirit and not cut down by narrow technical considerations. The entry in other words should not be shorn of all its content to leave a mere husk of legislative power."

(e) In **Navnit Lal C. Javeri v. K.K. Sen, Appellate Assistant Commissioner of Income-tax, Bombay (AIR 1965 SC 1375)** it was held as under: -

> "It is hardly necessary to emphasise that the entries in the Lists cannot be read in a narrow or restricted sense, and as observed by Gwyer, C.J., in the United Provinces v. Atiqa Begum, 1940 FCR 110: AIR 1941 FC 16, "each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it". What the entries in the Lists purport to do is to confer legislative powers on the respective Legislature in respect of areas or fields covered by the said entries; and it is an elementary rule of construction that the widest possible construction must be put upon their words."

(f) In **Assistant 'Commissioner of Land Tax, Madras, and others v. Buckingham and Carnatic Co. Ltd**. **[(1970) 75 ITR 603]** it was held as under: -

> "The legislative entries must be given a large and liberal interpretation, the reason being that the allocation of the subjects to the lists is not by way of scientific or logical definition not by way of a mere simplex enumeration of broad categories. We see no reason, therefore, for holding that Entries 86 and 87 or List I preclude the State Legislature from taxing capital value of lands and buildings under Entry 49 of List II. In our opinion there is no conflict between Entry 86 of List I and Entry 49 of List II. The basis of taxation under the two entries is quite distinct. As regards Entry 86 of List I the basis of the taxation is the capital value of the asset."

(g) In **Elel Hotels and Investment Ltd. and another Vs. Union of India (AIR 1990 SC 1664) = [(1989) 3 SCC 698)]**, wherein the Indian Supreme Court held as under:-

> "6. … … The cardinal rule of interpretation is that the entries in the legislative lists are not to be read in a narrow or restricted sense and that each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it. The widest possible construction, according to the ordinary meaning of the words in the entry, must be put upon them. Reference to

> legislative practice may be admissible in reconciling two conflicting provisions of rival legislative lists. In construing the words in a Constitutional document conferring legislative power the most liberal construction should be put upon the words so that the same may have effect in their widest amplitude."

(h) In **Union Of India & Anr., Etc. Etc vs A.Sanyasi Rao & Ors., Etc. Etc (AIR 1996 SC 1219)** it was held that: -

> As held by a Constitution Bench of this Court in Sri Ram Ram Narain Medhi vs. State of Bombay (AIR 1959 SC 459), the heads of legislation in the lists should not be construed in a narrow and pedantic sense, but should be given a large and liberal interpretation. To similar effect are the decisions of this Court in Calcutta Gas Company (Proprietary) Ltd. vs. State of West Bengal and others (AIR 1962 SC 1044 at p. 1049) and Banarasi Das and others vs. The Wealth Tax Officer and others (AIR 1965 SC 1387). In Union of India vs. Shri Harbhajan Singh Dhillon (1971 (2) SCC 779 at p.792), the Court quoted its earlier decision in Harakchand Ratanchand Banthia and others vs. Union of India and others (1969 (2) SCC 166), wherein it was held thus:-
>
> ".... The entries in the three Lists are only legislative heads or fields of legislation, they demarcate the area over which the appropriate Legislatures can operate."

(i) In **Godfrey Phillips India Ltd. & Anr Vs. State of U.P. [(2005) 2 SCC 515]** it was held that "where there is the possibility of legislative overlap, courts have resolved the issue according to settled principles of construction of entries in the legislative lists. The first of such settled principles is that legislative entries should be liberally interpreted, that none of the items in the list is to be read in a narrow or restricted sense and that each general word should be held to extend to ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it."

"The second principle is that competing entries must be read harmoniously. The proper way to avoid a conflict would be to read the entries together and to interpret the language of one by that of the other." [reliance in this regard was placed upon the cases of **Governor General in Council vs. Province of Madras [(1945) FCR 179 at pg. 191-192]**; **State of Bombay vs. Narottamdas Jethabhai (AIR 1951 SC 69)**; **Bar Council of U.P. vs. State of U.P. & Anr. (AIR 1973 SC 231) = [(1973) 1 SCC 261]**; **D.G. Ghose & Co. (Agents) (P) Ltd. vs. State of Kerala & Anr. [(1980) 2 SCC 410]**; **Federation of Hotel and Restaurant vs. Union of**

India [(1989) 3 SCC 634] and **State of West Bengal vs. Kesoram Industries (AIR 2005 SC 1646) = [(2004) 10 SCC 201]**, **In the matter of Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938 (AIR 1939 FC 1)]**

(j) In **Sh. Jilubhai Nanbhai Khachar etc. etc. Vs. State of Gujarat and anr. etc. etc. [(1995) Suppl. (1) SCC 596]** it was held as under: -

> "It is settled law of interpretation that entries in the Seventh Schedule are not powers but fields of legislation. The legislature derives its power from Article 246 and other related Articles of the Constitution. Therefore, the power to make the Amendment Act is derived not from the respective entries but under Article 246 of the Constitution. The language of the respective entries should be given the widest scope of their meaning, fairly capable to meet the machinery of the Government settled by the Constitution. Each general word should extend to all ancillary or subsidiary matters which can fairly and reasonably be comprehended in it. When the vires of an enactment is impugned, there is an initial presumption of its constitutionality and if there is any difficulty in ascertaining the limits of the legislative power, the difficulty must be resolved, as far as possible in favour of the legislature putting the most liberal construction upon the legislative entry so that it may have the widest amplitude. Burden is on the appellants to prove affirmatively of its invalidity. It must be remembered that we are interpreting the Constitution and when the court is called upon to interpret the Constitution, it must not be construed in any narrow or pedantic sense and adopt such construction which must be beneficial to the amplitude of legislative powers. The broad and liberal spirit should inspire those whose duty is to interpret the Constitution to find whether the impugned Act is relatable to any entry in the relevant List."

(k) In **Bharat Hydro Power Corp. Ltd. & Ors. Vs. State of Assam & Anr. [(2004) 2 SCC 553]** it was held as under: -

> "It is likely to happen from time to time that enactment though purporting to deal with a subject in one list touches also on a subject in another list and prima facie looks as if one legislature is impinging on the legislative field of the another Legislature. This may result in large number of statutes being declared unconstitutional because the legislature enacting law may appear to have legislated in a field reserved for the other legislature. To examine whether a legislation has impinged in the field of other legislatures, in fact or in substance, or is incidental, keeping in view the true nature of the enactment, the Courts have evolved the doctrine of "pith and substance" for the purpose of determining whether it is legislation with respect to matters in one list or the other. Where the question for determination is whether a particular law relates to a particular subject mentioned in one list or the other, the courts look into the substance of the enactment. Thus, if the

substance of enactment falls within Union List then the incidental encroachment by the enactment on the State List would not make it invalid. This principle came come to be established by the Privy Council when it determined appeals from Canada or Australia involving the question of legislative competence of the federation or the States in those countries."

(l) In **Messrs Haider Automobile Ltd. Vs. Pakistan (PLD 1969 SC 623)** it was held as under: -

"The items in the legislative list, as was observed in the case of the United Provinces v. Mst. Atique Begum and others (AIR 1941 FC 16) are not to be read in any narrow or pedantic sense. Each general word therein should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to' be comprehended within it. These items describe only comprehensive categories of legislation by a word of broad and general meaning. Thus, by being given the authority to legislate in respect of the Constitution, organisation, jurisdiction and powers of the Supreme Court, the Central Legislature, in my view, acquired the jurisdiction also to legislate with regard to the number of Judges to be appointed, the salaries to be paid to them and the terms and conditions upon which they were to serve in the Supreme Court."

(m) In **Pir Rashid-ud-Daula and 3 others v. The Chief Administrator of Auqaf, West Pakistan (PLD 1971 SC 401)**, it was observed as under: -

"In a Federal Constitution, in which an elaborate division of Legislative powers is attempted, it is inevitable that controversy should arise whether one or the other Legislature is encroaching on the other's legislative field, for, no matter how careful the draftsman or how exhaustive the legislative lists it is not possible to provide for all conceivable eventualities or to categories each subject of legislation under a specific label. It is for the resolution of such controversies that the Courts have evolved certain basic tests. A careful examination of the relevant decisions indicates that the main principles deducible from them are:--

(i) That legislation, the validity of which has to be tested, must be scrutinized in its entirety in order to determine its true character in pith and substance. (Great Saddelory Co,. Ltd v. The King (AIR 1921 PC 148).

(ii) That after considering the legislation as a whole in pith and substance it has to be seen as to with respect to which topic or category of legislation in the various fields, it deals substantially and directly and not whether it would in actual operation affect an item in the forbidden field in an indirect way. (Subrahmanyan Chettiar v. Muttuswami Gourdan AIR 1941 PC 47).

(iii) That none of the items in the lists is to be read in a narrow or restricted sense and each general word therein should be held .to extend to all ancillary and subsidiary matters

which can fairly and reasonably be said to be comprehended in it. (United Provinces v. Atiqa Begum AIR 1941 FC 16). [emphasis supplied]

(iv) That where there appears to be apparent overlapping in respect of the subject-matter of the impugned legislation it must first be considered whether a fair reconciliation cannot be effected by giving to the language of the federal and concurrent context bear is yet one that can properly be given to it. (Governor-General-in-Council v. Province of Madras AIR 1945 PC 98).

(v) That a general power ought not to be so construed as to make a particular power conferred by the same Act arid operating in the same filed a nullity. (In re: C. P. Motor Spirit Act AIR 1939 FC 1)."

(n) In **Fauji Foundation and another v. Shamimur Rehman (PLD 1983 SC 457)**, it has been held as under: -

"Item No. l as worded should be construed not in a narrow or restricted sense but in a wider sense so as to include all ancillary or subsidiary matters which can reasonably be included within it".

(o) In **Pakistan Industrial Development Corporation Vs. Pakistan through the Secretary, Ministry of Finance (1992 SCMR 891)** after relying upon the cases of **Navinchandra's case** (supra) and **Mst. Atiqa Begum's case** (supra), it was held as under: -

"The Constitution provides governance to the country, confers rights, privileges and liabilities on the citizens and also controls the working in all fields of life. It is a living document and is to be interpreted in a widest possible manner to ensure continuity and balance in the several constituents and organs of the State. The item in the list in respect of which the power of taxation can be exercised should not be interpreted in a restricted and pedantic manner."

(p) In **Messrs Elahi Cotton Mills Ltd and others Vs. Federation of Pakistan through Secretary M/o Finance, Islamabad and 6 others (PLD 1997 SC 582)** it was held as under: -

"The power to levy taxes is a sine qua non for a State. In fact it is an attribute of sovereignty of a State. … The entries in the Legislative List of the Constitution are not powers of legislation but only fields of legislative heads. The allocation of the subjects to the lists is not by way of scientific or logical definition but by way of mere simple enumeration of broad catalogue. … An entry in the Legislative List must be given a very wide and liberal interpretation.

It is needless to reiterate that it is a well-settled proposition of law that an entry in the Legislative List must be given a very wide and liberal interpretation.

(q) In **Commissioner of Sales Tax and others Vs. Hunza Central Asian Textile and Woollen Mills Ltd. and others (1999 SCMR 526)** it was held as under: -

> 19. The Darned Attorney-General is correct in his submission that Legislative entries in a Constitution are to be interpreted liberally. This principle is well recognized and was recently confirmed by this Court in its judgment (Full Bench of 5 Judges) in the case of Elahi Cotton Mills Ltd. (PLD 1997 SC 582). While considering the term "income-tax" in Entry No.49 in Part I of the Federal Legislative List (Fourth Schedule) of the 1973 Constitution, it was observed that, from the case-law and treatises considered in the judgment, one of the principles deducible therefrom is that while construing the said word "income" used in the entry in the Legislative List, restrictive meaning cannot be applied … . While interpreting the word, it was recognized that the rule of interpretation of any entry in Legislative List is that the same should be given widest possible meaning. …
>
> 24. As observed, legislative entries should be given liberal and very wide interpretation and that the judicial approach in this regard should be dynamic rather than rigid. Another principle that has been noted in the earlier part of this judgment is that the Legislature enjoys a wide latitude in the matter of selection of persons subject-matter, events etc. for taxation. …

From the perusal of above case law, the following principles of Constitutional interpretation with regard to the Entries in the legislative lists emerge: -

(1) The entries in the Legislative Lists of the Constitution are not powers of legislation but only fields of legislative heads;

(2) In construing the words in an Entry conferring legislative power on a legislative authority, the most liberal construction should be put upon the words.

(3) While interpreting an Entry in a Legislative List it should be given widest possible meaning and should not be read in a narrow or restricted sense;

(4) Each general word in an entry should be considered to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it;

(5) If there appears to be apparent overlapping in respect of the subject-matter of a legislation, an effort has to be made to reconcile the Entries to give proper and pertinent meaning to them.

(6) A general power ought not to be so construed so as to make a particular power conferred by the same legislation and operating in the same filed a nullity.

(7) Legislation under attack must be scrutinized in its entirety to determine its true character in pith and substance;

(8) After considering the legislation as a whole in pith and substance, it has to be seen as to with respect to which topic or category of legislation in the various fields, it deals substantially and directly and not whether it would in actual operation affect an item in the forbidden field in an indirect way.

15. In the light of the above principles, now we shall consider the vires of the Federal legislation i.e. IRA 2012. In this regard, the most important aspect of the matter is that there are two types of establishments/organizations/ industries; firstly, the industries, etc. functioning within the territorial limits of one Province only, and secondly, certain other establishments, etc. functioning within the territorial limits of more than one Province or even in all the four Provinces as well as the Federal

Capital Territory. Now the moot question arises whether, notwithstanding the fact that the authority to legislate with regard to the matters concerning the trade unions and unfair labour practices vests with the Federal Legislature or not, a Provincial legislature can legislate with regard to the trade union/establishments functioning at trans-provincial level. In this regard it is to be noted that Article 97 of the Constitution provides that "*subject to the Constitution, the executive authority of the Federation shall extend to the matters with respect to which the both Majlis-e-Shoora (Parliament) has power to make laws, including exercise of rights, authority and jurisdiction in and in relation to areas outside Pakistan*". Under the said Article, the executive authority of the Federation is not restricted to the areas within Pakistan but also extended in relation to the areas outside Pakistan. However, as per proviso thereto, "*the said authority shall not, save as expressly provided in the Constitution or in any law made by Majlis-e-Shoora (Parliament), extend in any Province to a matter with respect to which the Provincial Assembly has also power to make laws*". Under Article 137 of the Constitution, "*subject to the Constitution, the executive authority of the Province shall extend to the matters with respect to which the Provincial Assembly has power to make laws*". As per proviso thereto, "*in any matter with respect to which both Majlis-e-Shoora (Parliament) and the Provincial Assembly of a Province have power to make laws, the executive authority of the Province shall be subject to, and limited by, the executive authority expressly conferred by the Constitution or by law made by Majlis-e-Shoora (Parliament) upon the Federal Government or authorities thereof*". Further, as per Article 141 of the Constitution, "*subject to the Constitution, Majlis-e-*

Shoora (Parliament) may make laws (including laws having extra-territorial operation) for the whole or any part of Pakistan, and a Provincial Assembly may make laws for the Province or any part thereof". Under Article 142 of the Constitution, the Parliament has exclusive power to make laws with respect to (1) any matter in the FLL, (2) criminal law, criminal procedure and evidence and (3) all matters pertaining to such areas in the Federation as are not included in any Province; whereas, a Provincial Assembly has power to make laws with respect to (1) criminal law, criminal procedure and evidence and (2) any matter not enumerated in the FLL. Under Article 232(2) of the Constitution, in case of emergency, the Legislative authority of the Federation extends to enacting laws for a Province, or any part thereof, with respect to any matter not enumerated in the FLL. Thus, from the above provisions of the Constitution it is clear that the Federal Legislature has extra-territorial authority to legislate, but no such extra-territorial authority has been invested with the Provincial Legislature. Thus, the Provincial Legislature has no legislative competence to legislate law regulating the trade unions functioning at trans-provincial level. Needless to observe that to deal with such a matter, the Constitution itself has provided a mechanism i.e. entries No.58 and 59 in Part-I of FLL, whereby the Federal Legislature has been mandated to legislate in order to preserve and regulate a right, which in its exercise transcends provincial boundaries, especially one guaranteed under Article 17 of the Constitution. The scope of Entries No.58 and 59 shall be discussed in detail at the latter part of the judgment, considering the scope of the Entries in the FLL.

16. Having decided the question regarding the legislative

competence of the Provincial legislature, now we shall consider the question whether the IRA 2012 is a valid piece of legislation or not, and whether by promulgating the said Act, the Federal Legislature has gone beyond its legislative competence and encroached upon the authority of the Provincial Legislature. In this regard it is to be noted that although through the Eighteenth Amendment the CLL *(Entries No.26 and 27 whereof covered the subjects, inter alia, of labour disputes and trade unions)* was abolished from the Constitution, however, a new Entry No.32 in Part-I of the FLL was introduced which covered the subjects of "*International treaties, conventions and agreements and International arbitration*". Previously, somewhat similar subjects were available in Entry No.3 of Part-I of the FLL, i.e. "*External affairs; the implementing of treaties and agreements, including educational and cultural pacts and agreements, with other countries; extradition, including the surrender of criminals and accused persons to Governments outside Pakistan*". It has been argued by the learned counsel for the appellants that if the interpretation of Entry No.3 of Part-I of FLL as made by the learned High Courts is presumed to be correct, then the Federal legislature could enlarge its legislative powers and legislate on any subject it chooses simply because the Executive has signed a treaty in relation to that topic; this would negate the basic concept of division of powers on which our constitutional structure has been erected. In this regard it is to be noted that the Parliament through Eighteenth constitutional amendment, though abolished the CLL which contained the subjects of labour practices and trade unions *(Entries No.26 and 27 of the CLL)*, but with conscious application of mind, through insertion of the new Entry No.32 *ibid* in the FLL, brought within the legislative competence of the Federal Legislature the matters relating to the

international treaties, conventions, etc.; obviously, while doing so, it *(Parliament)* was conscious of the fact that the matters relating to trade unions and labour disputes, etc., have been dealt with and protected under the International Labour Organization's Conventions No.87 *(Convention concerning Freedom of Association and Protection of the Right to Organise)* and 98 *(Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively)* which are covered under Entries No.3 and 32 of Part-I of the FLL. Thus, the Federal Legislature has legislative competence to legislate in this regard to discharge the obligations created under the International Treaties and Conventions. Therefore, the IRA 2012 has been validly enacted by the Parliament.

17. Additionally, Entries No.58 and 59, which fall at the end of the Part-I of the FLL, have their own significance. These two entries are independent and unfettered. Entry No.58 *ibid* covers the "*Matters which under the Constitution are within the legislative competence of Majlis- e-Shoora (Parliament) or* ***relate to the Federation*****"**. Further, Entry No.59 deals with the "*Matters* ***incidental or ancillary*** *to any matter enumerated in this Part*". From the plain reading of these two Entries, it is clear that besides the subjects enumerated in the previous Entries, these Entries provide extended powers to the Federal Legislature; inasmuch as, by means of these Entries, the legislative competence of the Federal Legislature extends not only to the matters which under the Constitution are **within the legislative competence of the Parliament** but also to the matters which **relate to the Federation** and also the matters **incidental or ancillary** thereto. Thus, in addition to the matters specifically enumerated in any of the Entries in Part-I of the FLL, the matters which in some way relate to the Federation would also fall within the legislative

competence of the Parliament. This interpretation also finds support from the fact that in terms of Article 141 of the Constitution, a Provincial Legislature does not possess extra-territorial legislative competence and therefore, cannot legislate with regard to a subject which in its application has to transcend the provincial boundaries. It is to be noted that as clarified by the learned High Court the resort to Entry No.58 *ibid* could only be made to deal with an extra-ordinary situation i.e. when a matter may fall within the legislative competence of the Province but when it comes to its application it has to travel beyond the territorial boundaries of the Province, bringing it into the domain of the Federal Legislation. Thus, it is held that the federal legislature has the competence to legislate relating to the Establishments/Trade Unions functioning at the Federal as well as trans-provincial level.

18. There is yet another Entry in Part-II of the FLL which provides the legislative authority to the Federal Legislation, namely, entry No. 13 which covers "*Inter-provincial matters and co-ordination*". This Entry also has two parts, firstly, the inter-provincial matters and secondly, inter-provincial co-ordination. It is clear that under the command of this Entry too, the Federation has competence to enact laws relating to the inter-provincial matters/Trade Unions. Further, Entry No.18 thereof covers the "*Matters* ***incidental or ancillary*** *to any matter enumerated in this Part*". This Entry further enlarges the scope of the above Entry. Thus, it is held that even on the basis of Entries No.13 and 18 *ibid*, the IRA 2012 is a valid piece of legislation.

19. As we have already held that the subjects of labour and trade unions fall within the scope of Entries no.3, 32, 58 and 59 of Part-I and Entry No.13 and 18 of Part-II of FLL, we do not deem it

appropriate to enter into the scope of Entries No.27 and 31 as also other Entries which have been relied upon by the learned High Court to uphold the validity of Federal legislations.

20. At this juncture it is to be noted that when a provincial legislature is not competent to legislate with regard to the workmen of trans-provincial establishments, obviously the Federation has to interfere in the matter with a Federal Legislation to preserve and protect the fundamental rights of the said workmen ensured under Article 17 of the Constitution. We are in agreement with the observation made by the learned High Court that though in a Federal system, provincial autonomy means capacity of a province to govern itself without interference from the Federal Government or the Federal legislature, but as the Provincial legislature does not possess extra-territorial legislative authority i.e. it cannot legislate regarding the establishments operating beyond the territorial boundaries of that province. In absence of a Federal legislation, the right to form a trade union that can operate beyond the provincial boundaries could not be secured by any provincial law, and as such, any matter or activity of a trans-provincial nature would remain unregulated. The only solution to the above said problem is a Federal legislation. The effect of non-promulgation of IRA 2012 would be that the employer would not recognize the right of the workmen to form a countrywide trade union and carry out unified activities in his establishment at trans-provincial level; and also the number of workmen working in each unit of an establishment working in a certain Province would be counted separately which in turn would have adverse impact on the rights of the workmen, in so far as applicability of benefits and security of job granted under various labour laws are concerned as certain rights granted under various labour laws become available to

the workmen depending upon the total strength of the workmen in an establishment. Needless to observe that as mentioned in its preamble, the object of promulgation of IRA 2012 is "*to consolidate and rationalize the law relating to formation of trade unions, and improvement of relations between employers and workmen in the* ***Islamabad Capital Territory and in trans-provincial establishments and industry***". Further, as per Section 3 thereof "*it shall apply to all persons employed in any* ***establishment or industry, in the Islamabad Capital Territory or carrying on business in more than one province***". Hence, the parliament in its wisdom has intentionally left it for a Province to make legislation concerning the establishments/trade unions functioning only within the limits of that Province, without transgressing the territorial limits of the said Province. Thus, neither does the IRA 2012 in any manner, defeat the object of the Eighteenth Amendment nor does it destroys or usurps the provincial autonomy or the principle on which the Federation was formed under the Constitution; rather it facilitates to regulate the right to form unions at trans-provincial level, which could not be attained through a provincial law.

21. With regard to the question about the jurisdiction of the NIRC formed under Section 25 of the Industrial Relations Act 2008 *(which stood repealed w.e.f. 01.05.2010)* in the interregnum till the promulgation of IRA 2012, suffice it to say that as held by this Court in **Air League of Piac Employees's case** *(supra)* during the interregnum period w.e.f. 01.05.2010, when no Industrial Relations Law was holding the field, the workers had remedy under the ordinary laws prevailing at that time, because in absence of a special law, the ordinary/general laws come forward to fill in the vacuum. Further, the IRO 2012 does not destroy any existing right,

rather by means of Section 33 thereof, all the existing rights stood preserved and protected, as such, it cannot be said that it affects any right or obligation created by other laws, including any provincial law. This Court has dealt with the issue of applicability of laws during the interregnum period when any law was repealed or declared ultra vires, and it has been repeatedly held that at the best the newly enacted law would be deemed to have retrospective effect by necessary implication because such change would only be deemed to be procedural [see: **Government of N.-W.F.P. v. Said Kamal Shah (PLD 1986 SC 360) and Sarfraz v. Muhammad Aslam Khan (2001 SCMR 1062)]**. The Labour Laws provide the procedure and mechanism for the resolution of disputes, registration of Trade Unions and establishment of Forum for the redressal of grievance of the labourers as well as employers, therefore, it is mainly a procedural law and in the light of the well settled principles of interpretation of Statutes, the procedural law has retrospective effect unless contrary is provided expressly or impliedly [see: **Air League of Piac Employees's case** *(supra)*]. Thus, it is held that the IRA 2012 would be applicable retrospectively w.e.f. 01.05.2010, when the IRO 2008 ceased to exist.

22. There is yet another question involved in the matter, namely, the appellant-Shaheen Airport Services is a charitable organizations or not. It is the case of the appellant that charitable organizations are excluded from the operation of both the federal and provincial law, therefore, regardless of the question whether the appellant is a trans-provincial establishment for purposes of the federal law or whether it comes within the ambit of the provincial law, the appellant falls outside the purview of both the IRA, 2012 and the

SIRA, 2013, resultantly, no trade union can be registered within the appellant. In this regard it is to be noted that the learned High Court has considered this question in detail and has held that the Federal law was applicable to Shaheen Airport Services as the same was operative in more than one Province and that Shaheen Airport Services did not qualify as a charitable organization in view of the activities that were entailed in the operation of its business. We are in agreement with the findings of the learned High Court.

23. For the foregoing reasons, the appeals as also the petition are dismissed and it is held as under: -

(1) the Federal Legislature has extra-territorial authority but no such extra-territorial authority has been conferred to the Provincial Legislature by the Constitution;

(2) the Federal legislature does, but the Provincial Legislature does not, have legislative competence to legislate to regulate the trade unions functioning at trans-provincial level;

(3) the matters relating to trade unions and labour disputes, etc., having been dealt with and protected under the International Conventions, are covered under Entries No.3 and 32 of Part-I of the FLL. Thus, the Federal Legislature has legislative competence to legislate in this regard;

(4) under the command of Entry No.13 in Part-II of the FLL, the Federation has competence to enact laws relating to the inter-provincial matters, Entry No.18 thereof further enlarges the scope of the said Entry; therefore, the

Federal Legislature has legislative competence to legislate in this regard too;

(5) the IRA 2012 neither defeats the object of the Eighteenth Amendment to the Constitution nor does it destroy or usurp the provincial autonomy;

(6) the IRA 2012 has been validly enacted by the Parliament and is intra vires the Constitution;

(7) the workers of the establishments/industries functioning in the Islamabad Capital Territory or carrying on business in more than one provinces shall be governed by the Federal legislation i.e. IRO 2012; whereas, the workers of establishments/industries functioning or carrying on business only within the territorial limits of a province shall be governed by the concerned provincial legislations;

(8) as we have held that the IRA 2012 is valid piece of legislation, it is held that the National Industrial Relations Commission *(NIRC)* formed under Section 35 of the IRA 2012 has jurisdiction to decide the labour disputes, etc., relating to the employees/workers of companies/corporations/institutions/establishments functioning in more than one Province;

(9) the IRA 2012, being a procedural law, would be applicable retrospectively w.e.f. 01.05.2010, when the IRO 2008 ceased to exist; and

(10) M/s Shaheen Airport Services is not a charitable

organization and IRA 2012 is applicable to it as it is operating in more than one Province.

CHIEF JUSTICE

JUDGE

JUDGE

Announced in open Court
on 28.3.2018 at Islamabad.
Approved for reporting
Waqas/*