

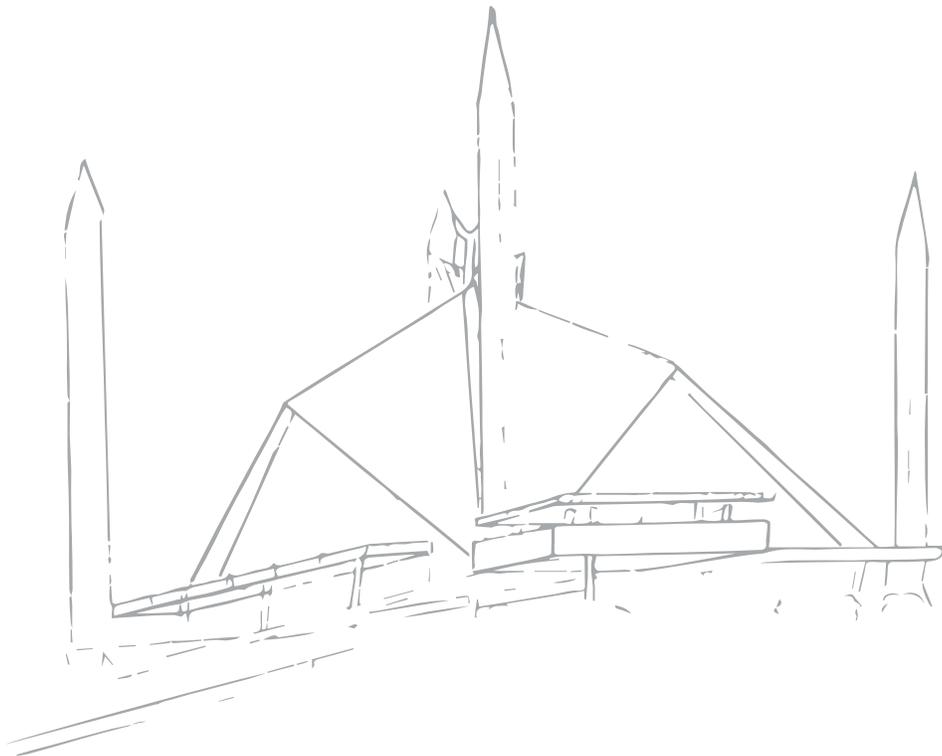


ISSN 1992-5018

ISLAMABAD LAW REVIEW

*Quarterly Research Journal of Faculty of Shariah & Law,
International Islamic University, Islamabad*

Volume 4, Number 3&4, Autumn/Winter 2020



Post 18th Amendment Health related Legislation at Federal Level: A Constitutionalism Perspective

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Abstract.

This Article will analyse the structural changes made in the health sector with focus on health legislation after the 18th amendment. Health system needs comprehensive review due to new challenges of changing population density, disease patterns and emerging diseases coupled with high costs of health. Many issues like governance in health, access and quality of health services etc. affect the ability of health system to deliver. Under Pakistan's Constitution, there exists no specific provision in the chapter on fundamental rights relating to health. The Constitution contains a Chapter on the Principles of Policy of the state of Pakistan. Eighteenth (18) Constitutional amendment introduced amendments approximately in 102 articles of the Constitution. These amendments gave long-promised autonomy to the provinces under a devolution plan due to which role of federation in health sector was undermined as ministry of health was abolished and there was a space of leadership in health sector at federal level. There arose lot of problems in implementing the 18th amendment as the provinces claimed financial constraints and insufficient funds allocation as well as also opposed the creation of Federal Drug Regulatory Authority. Though, Ministry of Health at federal level was abolished under the Constitutional 18th amendment, which redefined health related mandates at federal, inter-provincial and provincial level but after the passage of one year, it was re-established in April 2012, in the shape of Ministry of National Health Services, Regulations & Co-ordination, which reinvigorated the federal role in health care sector because it dealt with enforcement of drug laws and regulations as well as medicine in Pakistan.

Keywords: Health, constitutionalism, legislation, federal, eighteenth Amendment.

1. Introduction

Health is the fundamental human right and necessary for individual well-being at micro level, and indispensable prerequisite for economic growth and development in a country at the macro level. Like water and sanitation sector, and other social

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sectors, health is not a priority area of the government of Pakistan. Pakistan was ranked as the fifth most populous nation in the world, with a population of over 200 million (as of 2017). Pakistan has been under military rule for 33 years. The devolution of power from Federal Government to Provincial Government under the 18th Constitutional amendment has given autonomy to provincial government to some extent but the federal role in the formulation of policies remained a dominating factor. Pakistan has a mix health system that includes government infrastructure, private sector, civil society and philanthropic contributors. There has been a lack of consensus of national vision after July 2011, which depicts the combined aspiration for better health of the people of the country. A national vision document on health keeping in view the international health priorities and provincial realities is required, which should be within the framework of post 18th amendment constitutional role and responsibilities.

In Pakistan, health system includes both public and private sector.¹ The role of Federal Ministry of Health is to formulate national policies and strategies for the whole population of country. Under the Constitution, the health sector is a provincial subject despite the fact that at federal level, the role of Ministry of Health (MOH) is to develop national policies and strategies for the entire population of country.² The health care delivery is jointly administered by both the Federal & Provincial Governments. The District Government is mainly responsible for its implementation. The public health delivery system is also managed at a district level administratively.³

Pre-18th amendment scenario is that the Constitution contained two legislative lists i.e Federal Legislative List (FLL) and the Concurrent Legislative Lists (CLL). The Parliament had powers to make legislation pertaining to matters contained in "FLL". Whereas the matters placed in the "CLL", both the parliament and provincial assemblies had powers to make laws.

¹ Fazli Hakim, "Role of health system research in policy, planning management and decision making with reference to Pakistan," *Eastern Mediterranean Health Journal*, 3: 3 (1997), p. 556-566.

² Health System Profile-Pakistan, Regional Health System Observatory-EMRO, 2007, p. 7.

³ *Ibid.*, p. 8.

Moreover, the Provincial assemblies had also jurisdiction to make laws regarding any matter not falling under any two of the above lists. The Federal Government has exclusive jurisdiction over the subject falling in Part-1 of the FLL. The Council of Common

Interests (CCI) has been created under Article 153 of the Constitution, which is appointed by the President and includes, the Prime Minister who shall be the Chairman of the Council, the Chief Ministers of the Provinces and three members from the Federal Government to be nominated by the Prime Minister from time to time. According to Article 153(4) of the Constitution, "CCI" is responsible to Parliament and is required to submit an Annual Report to both Houses (of Parliament). Article 154(6) of the Constitution provides that Parliament may, from time to time, by resolution, issue directions through the Federal Government to CCI generally or in a particular matter to take action as Parliament may deem just and proper and such directions shall be binding on "CCI". Furthermore, as per Article 154(7) of the Constitution, if the Federal or a Provincial Government is dissatisfied with a decision of "CCI", it may refer the matter to Parliament in a joint sitting whose decision in this regard shall be final. Thus, as per the foregoing provision of the Constitution, "CCI" is subservient, and not superior to Parliament.

Entry no.11 inserted in Part-II of Federal Legislative List (FLL), Fourth Schedule is about Legal, medical and other professions. Under Article 70 of the Constitution, Parliament has been mandated to make laws with respect to any matter in the Federal Legislative List. Article 154(1) of the Constitution, CCI has been given power to formulate and regulate policies in relation to matters in Part-II of the Federal Legislative List (FLL) and to exercise supervision and control over related institutions. Therefore, it is clear from this provision that "CCI" has no role in the legislative process with respect to the matters enumerated in the "FLL", rather it is restricted to formulation and regulation of policies in relation to the said matters, and that too contained only in Part-II of such List. Once policies are finalized, "CCI" cannot interfere in the legislative process, nor can any legislation be struck down for the reason that "CCI" was not involved in the relevant legislative process.

2. Post-18th Amendment Delegation of Powers

As stated above, the concurrent legislative list (CLL) has been omitted in its entirety through constitutional 18th amendment. Many important subjects like drug regulation (entry 20) previously inserted in “CLL” have been deleted due to which certain issues arose regarding the federal mandate for the purpose of policy formulation. Some of the subjects like entry no.22 of the “CLL” have been entered in Part-1 of the FLL for the purpose of keeping national co-ordination and conformity together. Previously in the “CLL”, the subjects relevant to health were inserted through entry no.20 to 26 and entry no. 43 & 45 and the said entries except entry no. 22 & 43, were entirely omitted. Some changes have also been introduced in the “FLL”. Entry no.43, dealing with legal medicine & other professions, of the defunct “CLL” has been shifted to Part-II of the “FLL” through entry no.11. New entry relating to international treaties, conventions, agreements and international arbitration etc. has been entered in Part-1 of the “FLL”. Another entry of a subject dealing with National Planning and Economic Coordination has been moved from Part-1 to Part-II of the “FLL”, thereby empowering the provinces to play a pro-active role in the area previously not falling in their domain. Likewise, other relevant entries regarding health system were also inserted in the “FLL”. For instance, the subject of health financing, human resource, medicines, health information, disease security, research, service delivery, trade in health and all the regulatory authorities established under the federal laws were placed in “FLL”.

The preamble to the Constitution and its Principles of Policy refer to socio-economic rights but courts cannot enforce these. However, courts in Pakistan have previously handed down progressive decisions in public interest through the application of an expansive definition of ‘right to life.’⁴ In a famous case titled *Government of Sindh through Secretary Health Department and others-Versus- Dr. Nadeem Rizvi and others*, the august Supreme Court of Pakistan held as under:

⁴ *Miss Shehla Zia and others v. WAPDA* (PLD 1994 S. C. 693) as well as in the matter of human rights case no. 17599 of 2018, decided on 3rd January, 2019 regarding alarming high population growth rate in the country (2019 SCMR 247).

"The right to life undoubtedly entails the right to healthcare, which means that everyone has the right to the highest attainable standard of physical and mental health and this comprises of access to all kinds of medical services including but not limited to hospitals, clinics, medicines and services of medical practitioners, which must not only be readily available and easily accessible to everyone without discrimination, but also of high standard. As the State, the Federal Government has an obligation to carry out all necessary steps to ensure realization of this goal. This right has been recognized by the Supreme Court of India in the context of Article 21 of the Indian Constitution which provides that "No person shall be deprived of his life or personal liberty except according to procedure established by law." In this respect, the Indian Supreme Court has held in the case of "State of Punjab and others v. Mohinder Singh Chawala and others"[(1997) 2 SCC 83] that "It is now settled law that right to health is integral to right to life. Government has a constitutional obligation to provide health facilities."⁵

In this context, international law also emphasizes the right to health and imposes a duty on Pakistan, as a Member State of various organizations such as the United Nations and World Health Organization (WHO) and has ratified various international covenants including the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights, to ensure enforcement of such right.

Under the 18th Amendment, the right to education has now been included as a fundamental human right U/S 25-A of the Constitution according to which state shall provide free and compulsory education to all the children at the age of five to sixteen year in such manner as may be determined by law.⁶ However, the amendment has not accorded attention to the right to health. Article 24 of the Constitution gives protection to property rights as no person shall be deprived of his property save in accordance with law and the property can compulsorily be acquired only for public purpose, which would be subject to compensation as provided under the authority of law. However, Article 24 (3-a)(e-1) of the Constitution, 1973, provides safeguards to the validity of laws permitting the compulsory acquisition of

⁵ 2020 SCMR 1.

⁶ Substituted by the Constitution (18th amend) act, 2010(10 of 2010).

any property for preventing danger to life, property or public health and also gives protection to any law providing for the acquisition of property for education and medical aid.

The Constitution of Pakistan, 1973 specifies the subjects that come under the responsibility of the federal and provincial governments, respectively. Constitutionally, the provision of health services is the provincial government's responsibility. The Federal Government's primary responsibilities are policy development and strategy delineating, monitoring and evaluation, health communication, advocacy and information, formulation of technical values and guidelines, and the prevention of communicable diseases. In other words, the federal government is a steward of the system rather than an implementer. The provincial government's primary responsibility is health services, including planning, management and oversight, financing, implementation, medical education and training, monitoring and supervision, and regulation.⁷

Eighteenth Constitutional amendment altered Article 144 of the Constitution to the effect that anyone or more provincial assemblies may by resolution empower the parliament to regulate any matter not enumerated in the "FLL" in the fourth schedule. Prior to 18th amendment, only two or more provincial assemblies could do that. After the passing of an Act by the Parliament concerning any province was to be implemented by provincial assembly through passing of an Act in that assembly. Hence, the legislative authority of the Province under Article 142 of the Constitution can be conferred on the Federation under Article 144. Likewise, Article 270 of the Constitution 1973, was amended with the insertion of Article 270AA(6), which saved all laws and other legal instruments having the force of law with respect to any matter contained in the omitted CLL, which were enacted prior to the 18th Amendment. These laws continued to remain in-force until altered, repealed or amended by a 'competent authority.' Hence, it created an implication for the health sector that existing

⁷ Sabeena Jalal and Inam-ul-Haq, "Revisiting the three different tiers of the Health System of Pakistan and their Implications for the Achievement of MDGs by Pakistan," *Journal of the Pakistan Medical Association*, Vol. 64, Issue: 2, p. 195-200.

health-related laws will continue to be in force. However, the 18th Amendment 'saved' laws, it may have transferred the power to alter, repeal or amend laws in favour of the provinces, which may now be the 'competent authorities' as referred to in Article 270AA(6).

3. Post 18th Health related Legislation

Realizing the lack of co-ordination between the federal and provincial governments for monitoring and evaluating the health sector at federal level after the 18th amendment, the federal government felt dire need of a particular federal institutional system coupled with revised laws that could support the provincial department of health so as to provide better health opportunities. Initially, the provinces opposed the creation of Federal Drug Regulatory Authority (FDRA) because the 'drug & medicine' as a subject was removed from the CLL but the mandate to regulate the same was granted to the federal government by virtue of entry no.6 of the FLL. Following the issuance of drug safety alert by World Health Organisation (WHO) due to 'Isotab drug deaths', the provinces concurred to the notion of granting the federal government the prerogative of drug regulation through Article 144 of the Constitution.⁸

In this backdrop, firstly the Ministry of National Regulations and Services was established in April, 2012. Later on, the scope of work of the ministry was expanded and its nomenclature was also changed to Ministry of National Health Services, Regulations and Coordination.⁹ The main object of the Ministry of National Health Services, Regulations and Coordination is to help the people of Pakistan to maintain and improve their health and to make the population among the healthier in the region. The other objectives include the provision of an efficient, equitable, accessible & affordable health services system with the purpose to support people and communities to improve their health status so as to develop national and international coordination in the field of public health. It further

⁸ Sania Nishtar, *Health and the 18th Amendment: Constructive tensions* by p. 66.

⁹ <http://www.nhsrsc.gov.pk/overview>.

aimed to give an oversight to the regulatory bodies in health sector to create population welfare coordination as well as to take steps for the enforcement of Drugs Laws and Regulations.

Prior to the Constitutional 18th amendment, the 'drugs and medicines' was on the concurrent legislative list (CLL). The Federal Government, on the basis of the existence of the concurrent list, had introduced the Drugs Act 1976 (No XXXI); and the Pharmacy Act 1967 (No XI). After the abolition of 'CLL' the Federation had lost jurisdiction relating to both these issues, creating a paralysis for a number of years in the whole country as the drug regulatory authorities were not functioning and the government could not make any modifications in the existing laws.

However, an anomalous situation resulted after the 18th Amendment because the area of drugs and medicine required national uniform legislation. Therefore, the Federal Government relied upon Article 144 of the Constitution, under which one or more provincial assemblies can pass resolutions authorising the federal parliament to regulate by law any matter that is an exclusive provincial subject. On the insistence of Federal Government, the Provincial Assemblies of Khyber Paktunkhwa, Punjab and Sindh passed resolution under Article 144 of the Constitution of the Islamic Republic of Pakistan by authorizing the Majlis-e-Shoora (Parliament) to regulate drugs and medicines as it was a subject that required uniformity throughout the country. Hence, the Drug Regulatory Authority of Pakistan Act, 2012 was enacted in November 2012, which established the Federal Drug Regulatory Authority to provide for effective co-ordination & enforcement of Drug Act, 1976, and to bring harmony in inter-provincial trade and commerce of therapeutic goods so as to regulate, manufacture, import, export, storage, distribution and sale of therapeutic goods.¹⁰ Alternate medicines & health product (enlistment) rules, 2014 were also notified in this regard. Hence, The Federal Government has the regulatory role in

¹⁰ Under S.2 (xxxvi) of the Ac, 2012 "Therapeutic goods" includes drugs or alternative medicine or medical devices or biological or other related products as may be notified by the Authority.

medicines and medical education as well as in human resource and technology.

The Pakistan Health Research Council Act, 2016 was enacted on 22nd March 2016, to provide for the reconstruction and reorganization of the Pakistan Medical Research Council (PMRC) with the name of Pakistan "Health Research Council" (PHRC) by providing administrative and financial autonomy for its efficient functioning.¹¹ The history of PMRC dates back to 1954, when a Medical Reforms Commission was set up to advise the Government on the organization and structure of the medical services. One of the recommendations of the Commission was to establish a Medical Research Fund, which was created. In 1962, a subsequent Medical Reforms Committee recommended the establishment of the Pakistan Medical Research Council (PMRC), which was created under the Ministry of Health and assigned responsibility for promoting, organizing and coordinating medical research in the country, and for linking medical research to overall national socio-economic planning.¹²

The PMRC was assigned the functions of promoting, organizing and coordinating health research and linking it to national socio-economic development planning. To achieve its objectives, the PMRC adopted the strategy of establishing research centres in medical teaching institutions. The Council has number of research centres located in major public sector undergraduate and postgraduate medical institutions.¹³ The notable research centres are the 'Specialized Research Centre For Communicable Diseases National Institute of Health, Islamabad', 'Research Centre National Health Research Complex Shaikh Zayed Hospital, Lahore', Specialized Research Centre for Metabolic Diseases Research Centre Fatima Jinnah Medical University,

¹¹ It was published in the official gazette on 28th March 2016 through Act No.XII of 2016.

¹² . Health research capacity in Pakistan: A country report prepared for the WHO and COHRED Regional Consultation on Health Research for Development 24 - 26 June 2000, Cairo, Prepared by: Dr Tasleem Akhtar Director, Provincial Health Academy, Department of Health, Government of Northwest Frontier Province Peshawar Dr Jehangir A. Khan, Chairman, Pakistan Medical Research Council, Islamabad at page no. 03, accessed through <http://www.cohred.org/downloads/681.pdf>.

¹³ Ibid at page no.07.

Lahore', TB Research Centre King Edward Medical University, Lahore', 'Research Centre Faisalabad Medical University, Faisalabad', 'Research Centre Nishtar Medical College, Multan', 'Specialized Research Centre For Gastroenterology and Hepatology Jinnah Postgraduate Medical Centre, Karachi', 'Specialized Research Centre For Child Health National Institute of Child Health, Karachi', 'Research Centre Dow University of Health Sciences Karachi', 'Research Centre Liaquat University of Medical and Health Sciences, Jamshoro', 'Specialized Research Centre For Traditional Medicine Khyber Medical College, Peshawar', 'Research Centre Bolan Medical College, Quetta'.¹⁴ In order to further improve the working of "PHRC" and bring it at par with the international best practices, certain amendments in the existing Act, 2016 have been made through a Bill to be called Pakistan Health Research Council (Amendment) Act, 2020 so as to meet the future challenges and bring forth better performance in public interest.¹⁵

The National University of Medical Sciences (NUMS) was established through enactment of the National University of Medical Sciences Act, 2015 (Act No. XVII of 2015) on 28th October 2015.¹⁶ The purpose of the university, as mentioned in section 04 of the Act, 2015, is the promotion and dissemination of knowledge and technology and to provide instruction, training, research, demonstration and service in the health sciences. The university shall be a fully autonomous body with autonomy to govern its academic and administrative functions in order to achieve its objectives.

Health services academy (HSA) was primarily established in 2002 through Health Services Academy Ordinance, 2002 (LXII of 2002) in the interest of the medical public health, health services administration and allied professions to establish a centre of excellence to provide a strong base for improvement in health

¹⁴ <http://phrc.org.pk/research-centres.html>.

¹⁵ This has yet to be passed from both the houses of parliament, which was laid before the Majlis-e- Shoora (Parliament) on 09th March 2020.

¹⁶ It was published in the official Gazette of Pakistan on 31st October, 2015, for general information after receiving the assent of president on 28th October 2015.

status and human resource development. On 18th May, 2018, The Health Services Academy (restructuring) Act, 2018 (ACT No. XXIV of 2018) was enacted to provide for restructuring of health services academy as a degree awarding institute in order to provide it autonomy while improving governance and management thereof so as to enhance quality of higher education in the country.¹⁷

The Islamabad Healthcare Regulatory Authority (IHRA) was established through enactment of The Islamabad Healthcare Regulation Act, 2018 (ACT No. XXIII of 2018). The objective of “IHRA” is to provide a regulatory framework to ensure provision of quality health care services, by implementing quality standards by the healthcare sector, to residents of the Islamabad Capital Territory and for the said purpose, it was expedient to establish the Islamabad Healthcare Regulatory Authority for the aforesaid purpose.¹⁸

Another legislative work done at federal level was enactment of the *Medical and Dental Council (Amendment) Act, 2012 (XIX of 2012)*. The Pakistan Medical and Dental Council (PM&DC) was established by virtue of [Pakistan]¹⁹ Medical and Dental Council Ordinance, 1962 (XXXII of 1962) so as to consolidate the law relating to the registration of medical practitioners and dentists and to reconstitute the ²⁰ Medical and Dental Council in Pakistan. To safeguard public interest, PM&DC has been given a mission to establish uniform minimum standard of basic & higher qualifications in Medicine & Dentistry throughout Pakistan. PM&DC is a statutory regulatory authority established under Pakistan Medical & Dental Council Ordinance 1962 as a body corporate. It is known and respected worldwide and is part of International Community of Medical Regulatory Authorities (IAMRA). No Pakistani Doctor can practice in

¹⁷ The Act was published in the official GAZETTE OF PAKISTAN, EXTRA on 24th May, 2018.

¹⁸ The Act was published in the official GAZETTE OF PAKISTAN, EXTRA on 24th May, 2018.

¹⁹ Inserted by the Medical and Dental Council (Amendment) Act, 2012 (XIX of 2012).

²⁰ Subs. By the Federal Laws (Revision and Declaration) Ordinance, 1981 (27 of 1981), s. 3 and Sch, II, for “Medical Council”

Pakistan or abroad without being registered with PM&DC or without being in good standing with it.

Initially, a Medical Council was established under the Indian Medical Council Act, 1933 (Act of 1933). After partition of the Sub-continent, on the recommendation of the Health Conference held at Lahore in November 1947, a Medical Council (later on called as PM&DC) was constituted by adopting Indian Medical Council Act 1933. The Medical Council was re-organized under the Pakistan Medical Council Act, 1951, which provided for a Medical Council for each Province. In 1957, the West Pakistan Medical Council was created by merging the Sindh and Punjab Medical Councils. Thereafter, the Ordinance of 1962, was promulgated on 05.06.1962 to consolidate the law relating to registration of medical practitioners as well as of dentists and to reconstitute the Council in order to establish a uniform minimum standard of basic and higher qualifications in medicine and dentistry. As per Section 3 of the Ordinance, the Council was to be consisted of approximately 18 members to be supervised by Head of the Council.

Similarly, the said Ordinance also provides the mechanism for election of members of the Council, its nomination and terms of the office in sections 4, 5 and 7. The powers and functions of the Council have been defined as the apex body to deal with the affairs of medical profession in all respects. The PMDC was also authorized to make regulations on subject enumerated in Section 33 of the PMDC Ordinance, 1962 and provides recognized medical qualification as well as institutions and the methodology for the regularization of the medical colleges/universities. The Medical & Dental Council (Amendment) Act 1973 also made some changes in the erstwhile Ordinance, 1962 as the Council constituted under section 3 shall be a body corporate by the name of the "Medical and Dental Council".²¹ In the year 2012, the PMDC Ordinance, 1962 was amended through PMDC (Amendment) Act, 2012, as notified on 13.08.2012, whereby the structure of the Council was changed by incorporating the concept of recognition of hospital, institutions, house jobs,

²¹ Subs. by the Medical Council (Amdt.) Act, 1973 (10 of 1973), a. 2, for "Medical Council".

internships, terms of office, restriction of nomination of members, mode of election, withdrawal of recognition, penalties, commission of inquiry, etc.²² The said Act, 2012 brought about lot of amendments in Ordinance, 1962, whereby interests of private colleges for their profits were infused into composition of the Pakistan Medical & Dental Council. These amendments created conflict of interest amongst different segments of regulators and medical professionals, which could not escape the attention of Standing Committee of National Assembly on National Health Services, Regulations & Co-ordination as well as the Hon'ble Chief Justice of Pakistan. When the matter came before the august Supreme Court of Pakistan in three (3) different appeals²³ filed against the decisions of Hon'ble Lahore High Court and Islamabad High Court, the Supreme Court dissolved the PMDC and constituted an Adhoc Council comprising of Justice (Retd) Mian Shakirullah Jaan (Chairman), the Attorney General for Pakistan (Member) or in case of his non-availability, his nominee/representative; Federal Secretary Health, Islamabad (Member); Surgeon General of Pakistan Armed Forces (Member); and Vice Chancellors of Public Sector Universities from each province to run the affairs of PMDC.

On 12.02.2013, *Medical and Dental Council (Amendment) Ordinance, 2013 (Ordinance No. II of 2013)* was promulgated whereby the section 36-B was substituted with a new one, which provided that the Council constituted under section 3 of the Ordinance, 1962 would stand dissolved upon the commencement of the Act of 2012, however, the President, Vice-President and Executive Committee of the Council existing before the Act of 2012, would stay intact, and the President and Vice-President would act as members of the said Committee. On 19.03.2014, another amendment was made through PMDC Ordinance (Amendment), 2014 incorporating transitory provision of Section 36-B and also to regulate free and fair election of the Council and to deal with procedure of irregularity of the Management Committee and as such, the role of the Federal Government was

²² <http://www.pmdc.org.pk/AboutUs/tabid/72/Default.aspx>.

²³ Pakistan Medical And Dental Council Through President And 3 Others Versus Muhammad Fahad Malik And 10 Others (2018 SCMR 1956)

also highlighted. The Ordinance of 2014 stood repealed in terms of Article 89(2)(a)(ii) of the Constitution as the same was disapproved by the Senate of Pakistan through a Resolution dated 23.04.2014.

On 28 August 2015, by virtue of the *Pakistan Medical and Dental Council (Amendment) Ordinance, 2015 (Ordinance No. XI of 2015)*, PMDC was again dissolved and structural changes in its constitution and composition were made. Pursuant to the Ordinance of 2015, a fresh Managing Committee was constituted, elections were held and a new Council was elected. The Ordinance of 2015 was not enacted as an Act of Parliament; however, after the expiry of 120 days, it was extended for a period of another 120 days by the National Assembly on 26.12.2015, thereafter the same lapsed on 24.04.2016.²⁴ So, all the Ordinances of 2013, 2014 and 2015 have lapsed/ expired/repealed and the fate of said Ordinances was settled by the apex Court through case titled as PMDC vs. Muhammad Fahad Malik.²⁵ For an efficient statutory regulatory and registration authority for medical & dental education and practitioners, the President of Pakistan promulgated Pakistan Medical & Dental Council Ordinance, 2019 on 5th January, 2019.²⁶ Although the proposed Ordinance has been developed with the inputs of current ad-hoc 'PMDC' council established through the order of Supreme Court of Pakistan and renowned professionals in the field and the matter was placed before the Senate by considering the same as bill, but the same was disapproved on 28.09.2019 after due deliberation, which resulted into promulgation of a new Ordinance on 20.10.2019 i.e. the Pakistan Medical Commission Ordinance, 2019.

The President of Pakistan in exercise of powers under Article 89 (1) of the Constitution, 1973, promulgated "Pakistan Medical Commission Ordinance, 2019" (Ordinance No. XV of 2019) on 20.10.2019,²⁷ which established the Pakistan Medical

²⁴ <http://www.pmdc.org.pk/OtherPMDCRulesandRegulations/tabid/292/Default.aspx>.

²⁵ 2018 SCMR 1956.

²⁶ The said Ordinance was published in the Gazette of Pakistan Extraordinary Part-1 on 9th January, 2019.

²⁷ It was published in the Gazette of Pakistan, Extraordinary, Part-1, dated the 21st October, 2019.

Commission (PMC) u/s 03 of the Act to provide for the regulation and control of the medical profession and to establish a uniform minimum standard of basic and higher medical education and training and recognition of qualifications in medicine and dentistry. The “PMC” was the successor of ‘PM&DC’, and the reconstituted PM&DC worked under the auspices of “PMC”.²⁸ The employees of erstwhile/defunct ‘PM&DC’ filed writ petitions U/A 199 of the Constitution and challenged the Presidential Ordinance before Islamabad High Court by invoking Articles 8, 9 and 14 read with Articles 2-A, 3, 4, 24, 25 and 37 of the Constitution and the Court restored the PM&DC by declaring the dissolution of the Pakistan Medical and Dental Council (PMDC) as well as the establishment of the Pakistan Medical Commission (PMC) by a Presidential Ordinance as ‘illegal, null and void’.²⁹

The Federal Government through its Secretary Ministry of National Health Services, Regulations & Coordination, Government of Pakistan, Islamabad, challenged the order dated 07.04.2020 passed by the Islamabad High Court, Islamabad in Criminal Original No.70-W/2020 in Writ Petition No.3800 of 2019 by filing Criminal Misc. Application No.459 of 2020 in Criminal Petition No.350 Of 2020 before the august Supreme Court of Pakistan, which disposed of the application by reconstituting the PM&DC in the following manner;

1. Mr. Justice Ejaz Afzal Khan, (former Judge of the Supreme Court of Pakistan) President.
2. The Attorney General for Pakistan or his nominee (Member).
3. Federal Secretary Health, Islamabad. (Member)
4. Surgeon General of Pakistan Armed Forces (Member).
5. Vice Chancellor, The National University of Medical Sciences (Member).

²⁸ PMC Ordinance, 2019 has also been laid down before the Parliament as a bill.

²⁹ Total six writ petitions were filed i.e, (I) Writ Petition No. 3800/2019 titled Saira Rubab Nasir, etc. Vs. President of Pakistan, etc. (II) Writ Petition No.3777/2019 titled Brig. (R) Dr. Hafeez-ud-Din Ahmad Siddiqui etc. V. FOP, etc. (III) Writ Petition No.3825/2019 titled Dr. Sitara Hassan, etc. vs. President of Pakistan, etc. (IV) Writ Petition No.3837/2019 titled Raja Aftab Ashraf, etc. v. President of Pakistan, etc. (V) Writ Petition No.3901/2019 titled Dr. Saleem Khattak v. PMDC, Islamabad, etc. and (VI) Writ Petition No.3905/2019, Dr. Javaid Akhtar v. Federation of Pakistan, etc.)

6. Vice Chancellor, University of Health Sciences, Lahore (Member).
7. CrI.M.A.459/20 etc 7
8. Vice Chancellor, Jinnah Sindh Medical University, Karachi (Member).
9. Vice Chancellor, Khyber Medical University, Peshawar (Member).
10. Vice Chancellor Bolan University of Medical and Health Sciences, Quetta (Member).
11. Vice Chancellor, Shaheed Zulfiqar Ali Bhutto Medical University, Islamabad (Member).
12. Principal De'Montmorency College of Dentistry, Lahore (Member).

Hence, both the Ordinances i.e PMDC Ordinance 2019, and PMC Ordinance are no more in field and the reconstituted PM&DC will work under the PMDC Ordinance, 1962 amended through the PMDC (Amendment) Act 2012.

The Medical Tribunal Ordinance, 2019 (ORDINANCE NO.XIV OF 2019) was promulgated by the President of Pakistan on 19.10.2019 for the constitution of a Medical Tribunal³⁰ to efficiently and expeditiously hear and decide disputes arising out of matters pertaining to the medical and health sectors. The main purpose of the Medical Tribunal is to efficiently and expeditiously hear and decide disputes arising out of matter pertaining to the actions of authorities formed to regulate different areas of the medical sector in Pakistan and to provide cost effective adjudication of such disputes. As the actions, orders and decisions taken by the PMC pursuant to promulgation of the PMC Ordinance, 2019 were declared unlawful, which were not allowed to proceed further in any manner, therefore, this Ordinance met the same fate as that of the PMC Ordinance. Unfortunately, the medical tribunals were not constituted in the wake of litigation pending before the Higher & Superior courts of the country.

4. Conclusion

After Constitutional amendment, the role of Federation in health sector was undermined due to the abolition of Ministry of

³⁰ The Ordinance was published in the Gazette of Pakistan, Extraordinary, Part-I, on the 21st October 2019.

Health. The federal Government soon realized the space created in health sector in the aftermath of 18th amendment and on 1st April, 2012, it re-established the Ministry of Health in the form of Ministry of National Health Services, Regulations & Co-ordination taking upon the functions of enforcement of drug laws, regulations and medicine in Pakistan. Constitutionally, the Health sector is a provincial subject and the role of Ministry of Health is to formulate national policies and strategies for the entire population of country. The CLL has been omitted after 18th constitutional amendment and some of the important subjects were either deleted or shifted to the FLL. After the re-establishment of ministry of health, the Federal Drug Regulatory Authority was established through the enactment of Drug Regulatory Authority Act, 2012. The Federal Government gradually assumed jurisdiction over health sector by promulgating different acts and ordinances. The enactment of PMDC (amendment) Act, 2012, the Pakistan Health Research Council (PHRC) Act, 2016, The National University of Medical Sciences (NUMS) Act, 2015, Health Services Academy (restructuring) Act, 2018, The Islamabad Health Regulation, Act 2018 etc. reinvigorated the role of Federal Government in the health sector. The Federal Government also assumed control of Sheikh Zayed Medical Complex, Lahore, Jinnah Post Graduate Medical Centre Karachi ("JPMC"), National Institute of Cardiovascular Diseases, Karachi ("NICVD), National Institute of Child Health, Karachi ("NICH") and National Museum of Pakistan Karachi ("NMP") in the wake of judgment of Supreme Court in case titled GOVERNMENT OF SINDH through Secretary Health Department and others Versus Dr. NADEEM RIZVI and others³¹ whereby the transfer and devolution of medical institution supra was declared unconstitutional and of no legal effect. Hence, gradually, the role of federation in health sector is increasing.

³¹ 2020 SCMR 1