

FEDERAL CONSTITUTIONAL COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Justice AAMER FAROOQ

Justice ROZI KHAN BARRECH

Civil Petition No.315 of 2024

(Against the Order dated 27.11.2023 passed by the Balochistan High Court, Quetta in C.P No.874 of 2021)

Attock Cement Pakistan Ltd

...Petitioner

Versus

Province of Baluchistan & another

...Respondents

For Petitioner: Mr. Khurram M. Hashmi, ASC
Mr. Noman A. Farooqi, ASC

For Respondents: N.R.

Assisted by: Barrister Zarrar Haider Bhatti, Judicial
Law Clerk

Date of Hearing: 11.12.2025

ORDER OF THE COURT

Aamer Farooq J.:

1. The Petitioners initially assailed, before the Supreme Court of Pakistan under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973 (“**the Constitution, 1973**”), the order dated 27.11.2023 (“**the impugned order**”) passed by the Balochistan High Court in the exercise of its constitutional jurisdiction under Article 199. However, upon the enactment of the Constitution (Twenty-Seventh Amendment) Act, 2025, the

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present petition stands transferred to this Court in terms of Article 175F (3) of the Constitution, 1973.

2. The Petitioner is a cement manufacturer, operating within Pakistan, engaged in the production and sale of cement, with its manufacturing facility situated at Hub, Lasbela, Balochistan. In the course of its operations, the Petitioner undertakes the mining of raw materials, including limestone, shale, and sand, essential for cement production. On 15.01.2021, the Petitioner was served with a notice by the Mines Labour Welfare Department, Government of Balochistan, requiring payment of excise duty on minerals to the Labour Welfare Commissioner, Balochistan, at the rates revised pursuant to the Balochistan Finance Act, 2020. The Petitioner, in response, addressed three separate representations to the said Department seeking revision of the applicable rates; however, each of these representations was declined.
3. The learned counsel for the Petitioners submitted before this Court that the Provincial Assembly, by amending Section 3 of the Excise Duty on Minerals (Labour Welfare) Act, 1967 (**‘the 1967 Act’**) through Section 7 of the Balochistan Finance Act, 2020, (**‘the 2020 Act’**) acted without legislative competence. It was contended that the imposition of excise duty is a subject within the exclusive Federal Legislative domain; therefore, the Provincial Assembly of Balochistan lacked the authority to amend the 1967 Act, particularly when such amendment effectively alters the rate or nature of excise duty, a matter beyond the legislative purview of the Provinces.
4. The question that we are inclined to address herein is whether the amendment introduced by Section 7 of the 2020 Act in Section 3

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of the 1967 Act, fell outside the legislative competence of the Provincial Assembly of Balochistan or not.

a. **Legislative Powers of the Majlis-e-Shoora and Provincial Assembly:**

5. Under Pakistan’s constitutional framework, legislative authority is exercised by the Provincial Assemblies within their respective Provinces and by the Majlis-e-Shoora (“**the Parliament**”) at the federal level, through duly elected representatives who enjoy public confidence and legitimacy. Before the enactment of the Constitution (Eighteenth Amendment) Act, 2010, Article 141 of the Constitution conferred law-making powers on these bodies and structured the distribution of legislative competence on a subject-wise basis. The Constitution contained both a Federal Legislative List and a Concurrent Legislative List (comprising forty-seven subjects). The Parliament was authorized to legislate on matters enumerated in both lists, while subjects included in the Concurrent list or were not part of either list (referred to as residual matters), fell within the legislative domain of the Provincial Assemblies. Following the enactment of the Constitution (Eighteenth Amendment) Act, 2010, the Concurrent Legislative List contained in the Fourth Schedule of the 1973 Constitution was eliminated, thereby substantially broadening the legislative authority of the Provinces¹. With only the Federal

¹ One of the various architects of the 18th Constitutional Amendment, Mr. Raza Rabbani, while introducing the 18th Constitutional Amendment Bill on the floor of Majlis-e-Shoora, addressed the Speaker and described it as a “unique Bill.” He expressed the view that the Bill would “strengthen institutions”, promote “good governance”, and provide a renewed consent of “participatory federalism”, while simultaneously striking an equilibrium on the question of provincial autonomy. Accordingly, at the time of its passage by the National Assembly, the prevailing understanding was that the 18th Constitutional Amendment was intended to enhance participatory federalism which is the “cornerstone principal of 1973 Constitution”. (See *NA Deb, 6th April 2010, XXI, 21st Session*)

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Legislative List remaining in the Fourth Schedule, all matters not specifically enumerated therein fell within the exclusive legislative jurisdiction of the Provincial assemblies. Article 142(a) confines the legislative authority of the Federal Legislature to the subjects listed in the Federal Legislative List, whereas Article 142(c) clearly provides that matters not included in that list fall exclusively within provincial jurisdiction and are beyond the scope of federal legislation. Any areas in which concurrent legislative powers may still exist are addressed under Article 142(b) of the Constitution of 1973. Thus, all “residual powers” not assigned to the Federal Legislature rightfully belong to the provinces, forming a constitutional landscape where Provincial autonomy is affirmed.

6. It is, in truth, impossible to delineate every legislative power with such precision that no ambiguity ever arises. As the Privy Council aptly observed, *“It is not possible to make so clean a cut between the powers of the various legislatures; they are bound to overlap from time to time”*². Our courts have repeatedly encountered instances where the boundaries of legislative competence required careful interpretation. Though the Constitution, 1973 strives to draw these lines with clarity, there are moments when discerning whether authority lies with the Federation or the Provinces becomes far from straightforward. The present matter places us squarely before such a situation; one that we must now endeavor to resolve.

² Prafulla v. Bank of Commerce, AIR 1947 PC 28

b. Doctrine of Pith and Substance & Double Aspect Legislation:

7. Where provincial and federal legislation appears to be in conflict, the courts in Pakistan have consistently relied upon the doctrine of *pith and substance* as a guiding principle for resolving such constitutional overlaps. In cases of inconsistency, Article 143 of the Constitution provides a clear mandate that a law enacted by the Majlis-e-Shoora shall prevail over any conflicting provincial law, thereby affirming the supremacy of federal legislation. Given the inherent difficulty in delineating legislative competencies with absolute precision, disputes often arise regarding whether a particular subject falls within federal or provincial domain. In such circumstances, the doctrine of *pith and substance* has served as an essential tool to determine the true nature and character of the legislation in question.

8. The doctrine of “*pith and substance*” invites the court to embark upon a search for the “true nature and character” of the impugned enactment³. This means assessing whether the law, in its essence, falls within the legislative competence of the body that enacted it. However, we note that a law does not become invalid merely because it incidentally encroaches upon the legislative domain of another body. Even where such incidental encroachment is detected, the inquiry does not end; the constitutional compass demands that we consider whether the intrusion is of such gravity so as to disturb the delicate architecture of the distribution of legislative powers. Only when the encroachment strikes at this structural balance does it imperil the validity of the law. Therefore,

³ Durga Das Basu, Commentary on the Constitution of India (8th edn, 2011) 8692

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it follows that the doctrine of *pith and substance* is summoned whenever the inquiry turns upon a foundational question: within whose constitutional province does the impugned law truly reside? Whenever legislative contours get blur, this doctrine becomes the interpretive compass by which the courts in Pakistan have charted their course. The issue presently before us is of the same delicate character; namely, whether Section 7 of the 2020 Act, a provincial enactment, could rightfully reach across constitutional boundaries to affect an amendment in Section 3 of the 1967 Act, a piece of federal legislation. It is this very tension between legislative spheres that necessitates a careful excavation of the statute's true essence; its pith and its substance.

9. While the doctrine of *pith and substance* assists in identifying the true nature or essence of a statute, we are persuaded that reliance can also be placed on doctrine of *double aspect legislation*, as discussed by Lefroy in his treatise on Canadian Constitutional Law⁴. The *double aspect doctrine* deals not with what the “matter” is, but what it “comes within”. In his commentary on Sections 91 and 92 of the British North America Act, 1867, Lefroy emphasized that;

“One of the most interesting and important principles which have been evolved by judicial decisions in connection with the distribution of legislative powers is that subjects which in one aspect and for one purpose fall within the power of a particular legislature may in another aspect and for another purpose fall within another legislative power”.

⁴ AHF Lefroy, A Short Treatise on Canadian Constitutional Law (Sweet and Maxwell 1918)

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Similarly, Dr. C. D. Jha, in his commentary on the doctrine of *double aspect*, noted that⁵;

“Aspect doctrine is akin to the doctrine of “pith and substance”. It ascertains the object, purposes and scope of legislation. If State legislation has some bearing upon a subject exclusively reserved in the Union List, the simply because it has some bearing on the Union subject, the State legislation is not liable to be declared ultra vires the State legislature merely on the plea that it has encroached upon the field specially reserved for the Union Parliament”.

10. The doctrine of *double aspect legislation* was pronounced by the Supreme Court of Canada in *Multiple Access v. McCutcheon*⁶, where the Court upheld the validity of both the impugned statutes, one enacted by the Ontario Legislature and the other by the Canadian Parliament, aimed at addressing insider trading. The doctrine of *double aspect* operates on the premise that a single subject may legitimately attract both federal and provincial legislative competence; for instance, while the generation and transmission of electricity fall within the federal domain, considerations of public health and safety arising therefrom remain within provincial jurisdiction. A federal law enacted under Article 157(1) may validly authorize the construction of a grid station, whereas a Provincial law may require that such construction comply with certain safety standards for the protection of the public. In such situations, it seems to us that there is no reason to strike down either law, as both serve different

⁵ CD Jha, *Judicial Review of Legislative Acts* (2nd edn, 2009) 517

⁶ 1982 CanLII 55 (SCC)

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constitutional purposes. In such a case, the doctrine of *double aspect*, rather than the doctrine of pith and substance, offers the more appropriate approach to uphold the validity of both enactments.

11. However, it appears to us that the doctrine of *pith and substance* has predominantly been employed by the courts in Pakistan to determine legislative competence, often in a binary manner i.e., to ascertain the true nature and character of the impugned legislations and to determine whether the subject matter falls within the provincial or the federal domain, and, on that basis, to “strike down” the legislation found to be encroaching upon the other’s field. In our view, what the doctrine does not adequately facilitate is an approach aimed at sustaining both legislations. Its application tends to be restrictive, adopting a narrow lens that overlooks the possibility of examining statutes through their distinct and concurrent aspects⁷. Where the true nature and character of a statute is found to fall outside the legislative competence of the enacting body, the law must necessarily be declared *ultra vires*. In such circumstances, the notion that a judge must exhaust every interpretative tool in his toolkit becomes untenable. To us, another interpretative aid available is the doctrine of *double aspect legislation*, though not applicable in every case may be appropriately invoked in situations such as the present one or those discussed in

⁷ Although the doctrine of pith and substance is by no means being discarded, it must be acknowledged that a rigid and overly technical application of the doctrine can itself be unduly restrictive. A broader and more pragmatic approach is therefore warranted, one that seeks to uphold the vires of legislation and fosters a constitutional environment in which both the Federation and the Provinces operate in harmony and move in tandem with each other.

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paragraph 10. Courts should therefore exercise restraint and avoid hastily invalidating legislation enacted by the Majlis-e-Shoora or a Provincial Assembly, as such enactments embody the democratic will and confidence of the people.

12. In the instant case, the Federal Government enacted 1967 Act, the preamble of which read as follows;

“THE EXCISE DUTY ON MINERALS (LABOUR WELFARE) ACT,

1967

(VIII of 1967)

An Act

To impose a duty of excise on certain minerals for financing measures for promoting the welfare of labour employed in the mining industry.

WHEREAS *it is expedient to impose a duty of excise on certain minerals for financing measures for promoting the welfare of labour employed in the mining industry and to provide for the administration and utilization of the proceeds of such duty and for matters ancillary thereto.”*

The preamble of a statute indeed serves a “constructive” and “contextual” function in statutory interpretation and can help elucidate the objectives the legislature sought to accomplish (see *Sui Northern Gas Pipelines v. S.K. Pvt Limited*⁸). A straightforward reading of the statute shows that it imposes an excise duty on certain minerals with the aim of promoting the welfare of laborers employed in the mining sector. Accordingly, the preamble clearly reflects the legislature’s intention to advance

⁸ 2025 SCMR 570 (Per Muhammad Ali Mazhar J.)

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labor welfare and as if for larger “public interest” as held in *DG Khan Cement v. The Province of Punjab*⁹ as follows:

“Needless to say, that concept of larger public interest is of vital importance in an organized democratic society. Section 3 of the Act 1967 contemplates that duty of excise is to be levied and collected as cess for the purposes of this Act on all minerals specified in the Schedule. The purpose of the Act is clearly manifested in the Preamble of the Act i.e. To impose a duty of excise on certain minerals for financing and promoting the welfare of labour employed in the mining industry. Ordinarily a cess is a tax confined to local area for specific object or particular purpose. The imposition of cess is co-related to the object for which it is to be used. In contrast tax is compulsory exaction of money by public authority for public purposes enforceable by law. The tax realized form part of general revenue of the State whereas cess imposed for specific object and purpose, is not part of the general revenue, but must be utilized for the attainment of the purpose and object of the imposition. The object of the impugned levy is welfare of labour employed in the mining industry. The declared object falls within the purview of larger public interest. There is nothing on the record on behalf of the petitioner to show that the impugned Notifications do not advance the public interest i.e. Welfare of labour employed in the mining industry or cause any harm to the petitioner's fundamental right of freedom of trade or

⁹ 2014 PTD 478 (Per Abdus Sattar Asghar J.)

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business. Both the impugned notifications are neither ultra-Constitutional nor illegal. Petitioner has no case to invoke the Constitutional jurisdiction of this Court". (Emphasis supplied)

13. The 2020 Act, a provincial enactment, by virtue of section 7 thereof, amended section 3 of the 1967 Act, the charging provision, in the following manner:

Section 3 of the 1967 Act	Section 7 of the 2020 Act
<p>3. Imposition and collection of duty.</p> <p>- (1) There shall be levied and collected as a cess for the purposes of this Act a duty of excise on all minerals specified in the Schedule dispatched from the mines, at such rate not less than [one rupee] and not more than [five rupees] per ton as may be fixed by the [Federal Government] by notification in the official Gazette</p> <p>Provided that the [Federal Government] may, by notification in the official</p>	<p>3. Imposition and collection of duty.</p> <p>- (1) There shall be levied and collected as a cess for the purposes of this Act a duty of excise on all minerals specified in the Schedule dispatched from the mines, at such rate not less than [two hundred rupees] and not more than [25% on major minerals and 10% of the rate of royalty on other minerals as specified in third schedule Part ii & III of the Baluchistan Mineral Rules, 2002] per ton as may be fixed by the [Federal Government] by notification in the official Gazette</p>

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<p>Gazette, exempt from liability to the duty any of such minerals or any class thereof.</p> <p>(2) The duty levied under subsection (1) shall, subject to and in accordance with rules made in this behalf under this Act, be collected by such agencies (hereinafter referred to as the collecting agencies) and in such manner as may be prescribed.</p>	<p>Provided that the [Federal Government] may, by notification in the official Gazette, exempt from liability to the duty any of such minerals or any class thereof.</p> <p>(2) The duty levied under subsection (1) shall, subject to and in accordance with rules made in this behalf under this Act, be collected by such agencies (hereinafter referred to as the collecting agencies) and in such manner as may be prescribed.</p>
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14. Accordingly, the principal alteration effected by section 7 of the 2020 Act is that it enhanced the duty of excise previously prescribed under section 3 of the 1967 Act. It has been contended before this Court that the imposition of excise duty falls within the federal domain, as Entry 44 of the Fourth Schedule to the Constitution, 1973, confers exclusive competence upon the federal legislature in this regard. Entry 44 is reproduced herein below:

“Entry 44- Duties of excise, including duties on salt, but not including duties on alcoholic liquors, opium and other narcotics”

However, on the other hand, welfare of labour, as not mentioned in the Federal Legislative List of the Fourth Schedule and not

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falling in any ancillary domain of the Federal Government, is undoubtedly a Provincial subject.

15. The objective of the 1967 Act, as revealed through its preambular language, is undoubtedly oriented toward the advancement of labour welfare; a domain constitutionally entrusted to the provinces. The mechanism through which this objective is pursued is the imposition of a duty of excise, not as an end in itself, but as a means carefully fashioned to finance a broader “public interest”. The statute does not merely levy a tax; it constructs an administrative framework for the collection, allocation, and utilization of the proceeds, all of which are inextricably linked to the welfare of labour employed in the industry. Thus, while the recovery of excise duty is the operative mechanism of the Act, its spirit, essential character, and constitutional essence lie in the realization of labour welfare. The excise duty is instrumental in, achieving this predominant provincial objective, rendering the Act, in its true nature, a legislative expression of social welfare rather than mere taxation.
16. Even if, by a rigorous reading of the preamble and the operative provisions of the 1967 Act, one was to conclude that its dominant character lies in the collection and imposition of a duty of excise, its underlying purpose still cannot thereby be ignored. Such a conclusion merely reveals an overlap between two constitutional competences: the federal authority to levy excise duty and the provincial responsibility to advance labour welfare. Such an overlap does not warrant this court to invalidate the statute on this ground. Eighteenth Amendment of the Constitution, 1973, consciously embraced the ethos of cooperative federalism,

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wherein legislative fields are not rigid silos but at times interacting spheres¹⁰. In this constitutional landscape, incidental overlap does not render a statute *ultra vires*. Viewed from the fiscal aspect, the imposition of excise duty squarely falls within federal legislative competence; viewed from the “public interest” aspect, the advancement of labour welfare lies well within the provincial domain. Consequently, both enactments stand on firm constitutional footing, not in conflict but in constitutional harmony, each valid in its own aspect.

17. Accordingly, the 2020 Act must be sustained by applying the settled doctrine of pith and substance and double aspect legislation, read in light of the Constitution’s post-Eighteenth Amendment commitment to cooperative federalism. The impugned statute neither encroaches upon nor displaces federal legislative authority; rather, it operates within a constitutionally permissible overlap to advance a legitimate provincial objective. Its fiscal mechanism serves as an ancillary means to realize a substantive purpose squarely rooted in labour welfare. To strike down such legislation would be to adopt a rigid and formalistic approach, inconsistent with constitutional design. The Act, therefore, represents a lawful and harmonious exercise of legislative power.

¹⁰ Under our constitutional fabric, the Federation and the Provinces do not function in isolation but advance in harmonious cadence, bound together in pursuit of prosperity, economic vitality, and national security as envisioned by the constitutional compact. Cooperative federalism, as our constitutional philosophy, rejects isolation; it demands that state institutions be interwoven strands of a single fabric, collectively striving toward a unified constitutional destiny. Chapter 2 of Part V breathes life into this vision by mandating intergovernmental cooperation and coordination in both administrative and legislative spheres, affirming the Constitution’s dynamic vitality. This collaborative architecture has been judicially recognized as a form of “marble-cake” federalism, where responsibilities and powers blend rather than divide (see *Pakistan College of Law v. University of the Punjab*, W.P No. 45178 of 2017, Lahore High Court).

c. Conclusion:

18. In view of the foregoing discussion, the present petition stands dismissed and leave is accordingly refused. There shall be no order as to costs.

Judge

Judge

Islamabad
Zawar
APPROVED FOR REPORTING