



**RESEARCH PAPER**

**Scope of Primary and Secondary Legislation: A Critical Analysis of Adjudication Mechanism of Section 33 of the SECP Act, 1997 with Appellate Bench Rules 2003**

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**ABSTRACT**

The principle of the rule of law is a core characteristic of fair and equitable adjudication. Judicial or quasi-judicial adjudication mechanisms cannot work effectively unless these are based on a harmonized structure of primary and secondary legislation. The Securities and Exchange Commission of Pakistan is a quasi-judicial administrative body that functions under the ambit of primary and secondary legislation. Synchronized legislation is pivotal to ensure that the actions of administrative bodies are legally correct. SECP is empowered to adjudicate the violations and non-compliance cases under the laws governed by it. In this adjudication process, section 33 of the SECP Act, 1997 authorizes the Appellate Bench to adjudicate appeals whereas the Securities and Exchange Commission of Pakistan (Appellate Bench Procedure) Rules, 2003(Rules) provide a detailed procedure of filing and adjudication of appeals. Furthermore, the Rules also provide a provision with respect to a larger bench, however, no such mandate is provided under Section 33 of the SECP Act, 1997. Apparently, Primary and secondary legislation are in conflict and it is a settled principle of law that secondary legislation cannot override or enhance the mandate and scope of primary legislation. The conflict between primary and secondary legislation cannot be cured through a harmonized interpretation approach, hence, either conflict between primary or secondary legislation may be removed through appropriate amendments in the SECP Act, 1997, and in the Rules or it should have been dealt with under judicial review.

**KEYWORDS** Administrative Bodies, SECP, Conflict and Overriding Effect, Interpretation of Statutes, Judicial Review, Primary and Secondary Legislation, Quasi-Judicial, Corporate Disputes.

**Introduction**

The Securities and Exchange Commission of Pakistan (SECP) is an administrative regulatory body that deals with corporate and capital markets affairs (Vision, 1997). In addition to its ordinary regulatory functions, it is also empowered to adjudicate cases pertaining to corporate and capital markets non-compliance and violations. The SECP and other Administrative regulatory bodies perform their quasi-judicial function in accordance with the express provisions of law enacted or prescribed by the legislature (What, 1997).

Legislation is a process of modern governance, providing the legal framework for a society to function in an appropriate manner. It takes effect by enacting, amending, and repealing laws that govern social, economic, public and private affairs of the society. Legislation may have various forms including but not limited to acts, rules and regulations. Acts are known as primary legislation whereas, rules and regulations are termed as secondary legislation (Muzaffar, Khan & Karamat, 2017; Posner, 1989).

The scope of primary and secondary legislation is distinct but interdependent, however, sometimes their application can cause a conflicting legal position whereby secondary legislation may exceed the authority devolved by the primary law. Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (SECP Act) is the primary law dealing with the adjudication process and appellate jurisdiction of the Appellate Bench of the SECP. To regulate the function and process of the Appellate Bench, the Federal Government has prescribed the Securities and Exchange Commission of Pakistan (Appellate Bench Procedure) Rules, 2003 (Rules). The Rules are secondary legislation therefore, the same should have been made within the scope of Section 33 of the SECP Act, however, by introducing a provision of the larger bench, the Rules have apparently exceeded the mandate and scope of primary legislation. On the other hand, the Competition Commission of Pakistan (CCP) has power under Section 41 of the Competition Act, 2010 (Competition Act) to establish Appellate Bench or larger bench and accordingly, the Competition Commission (Appeal) Rules, 2007 (CCP Rules) had been introduced. Therefore, by providing the establishment of a larger bench, through the Rules, the Secondary legislation has exceeded the scope and mandate of section 33 of the SECP Act. In the circumstance, as per fundamental principles of interpretation, secondary legislation can neither exceed nor it override the scope and limitation provided in enabling laws. And in case of any conflict between primary and secondary legislation, courts are competent to review such legislation judicially.

There are so many distinct conceptual and juristic points to determine the status and forms of secondary legislation, however, there is a single common factor among all, that secondary legislation is not enacted by the parliament (Meagher & Groves, 2016).

Statutory interpretation has evolved and formulated certain theories to interpret statutes. Formalism is a theory that places strict reliance on the text of law and in this regard, they do not consider legislature intent or legislative history. The Holmesian theory is based upon the text of the law and legislative intent and history. Natural theory “discover what reason suggests was intended in light of all reliable sources”. Whereas, the Instrumental theory of interpretation strives to get the inference that what results were expected by legislatures while enacting any law. Concisely, the theory is based to get the results intended result by the legislatures (Kelso, J & Kelso, C, 2000).

Interpretation of statutes is not a simple subject or doctrine rather it has multiple complexities with regard to the role and mandate of courts and judges while interpreting any law. Therefore, keeping in view theories of interpretation, theories and adjudication and theory of rule of law, this research will determine the existence of any apparent conflict between primary and secondary legislation of appellate jurisdiction of the SECP. Furthermore, the status of adjunction outcomes of the larger bench’s decisions shall also be analyzed.

### **Literature Review**

The research revolves around administrative adjudication, therefore, relevant previous scholarly contributions related to adjudication, administrative adjudication, interpretation of statutes and judicial review. The Adjudication Mechanism of SECP is a set of procedures that revolves around quasi-judicial administrative forums and judicial forums including High Courts and Supreme Court. Judicial determination of Corporate and Capital Market Disputes also includes a judicial review of the decisions rendered by the SECP while dealing with such disputes.

David w. Kennedy in his work titled “A Critique of Adjudication” has adequately explained the Formalist and Realist theories of adjudication. Formalist adjudication theory emphasizes the application of legal norms and principles to the facts of a case (Kennedy, 2001). This method emphasizes the significance of legal precedent as well as

the function of judges in interpreting and applying the law. Additionally, Felipe Jiménez's research article; "A Formalist Theory of Contract Law Adjudication" has further clarified and rebutted the assumption that judges while applying and interpreting any statute consider extra-legal considerations such as social or political concerns. Instead, they contend that the law is a self-contained system with its own internal logic, and that judges' decisions should be guided by this logic (Jiménez, 2021). H.L.A. Hart was a legal philosopher who made substantial contributions to the development of formalist theory. Realist adjudication theories, on the other hand, emphasize that while interpreting any law, Judges should be guided by their personal experiences and the practical ramifications of their judgments (Nazari, 2021).

The report published by Congressional Research Service, USA is very vital for the purpose of this paper as we have to determine whether the court should focus on text or the purpose of the Rules. It has been discussed in this report that courts either interpret statutes on the basis of the theory of Textualism or the theory of Purposivism. Textualists strictly focus on the words of a statute, while interpreting any statute whereas, the Purposivists rely upon the purpose of such law.

Raymond Shonholtz in his famous work "General Theory on Disputes and Conflicts" explained that a theory of adjudication provides an accurate description that how cases should be decided by the judges and, at the same time, attempts to convey to judges how they should resolve them (Shonholtz, 2003). The debate over the theory of adjudication between "Ronald Dworkin and H. L. A. Hart" is very important and it will facilitate the conclusion of this research. In view of Dworkin, judges must follow the law and they should not indulge in law-making through their decisions. Whereas, Hart justifies judges' conduct of law-making to decide the hard cases.

Vivek's analysis demonstrates that the rule of law is a core and fundamental principle of administrative law. This work has presented Dicey's definition of the rule of law, which says that the "rule of Law is the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power and excludes the existence of prerogatives or even wide discretionary power on the part of the government". Dicey is of the view that discretionary powers always result in arbitrary acts and decisions. It has been stated that the contemporary "administrative law" is a blend of "Droit Administrative"; "the French law system and Dicey's rule of law". (Ranjan, 2011). The work will help us to understand the validity and sanctity of the adjudication process and decisions made by SECP and other administrative bodies while performing their quasi-judicial function against regulatory and statutory violations.

Fourie's critical examination has demonstrated the need for judicial review of "quasi-judicial" decisions to ensure accountability, independence, and impartiality. This work has adequately explained the benefits and drawbacks of current "administrative law" (Fourie, 2009). The above-mentioned work would facilitate this research in the analysis of discretionary powers of quasi-judicial authorities, interpretation of statutes and judicial review of such powers. This research is purely doctrinal in nature therefore, statutes, laws and case laws would be focused to draw the analysis of the relevant facts and conclusion.

Supreme Court of Pakistan has categorically declared that Rules being subordinate legislation cannot override the Statute. In the order dated July 28, 2022 passed by a two-member Bench consisting Mr. Justice Umar Ata Bandial, CJ. And Mr. Justice Syed Mansoor Ali Shah (Shah) has declared a part of Rule 22(1) of the Appellate Tribunal Inland Revenue Rules, 2010 "clearly contradicts the parent statute i.e., Section 132(2) of the Income Tax Ordinance, 2001". While further elaborating the law it has been held that "the Rules are to carry out the purposes of the Ordinance and cannot offend, oppose or be inconsistent with the provisions of the parent statute (Ordinance in this

case). The Bench has declared that part of Rule 22, which is inconsistent with the parent statute is, ultra vires of the parent statute (Farrukh v. Appellate Tribunal, 2022). This case law has provided a foundation stone that under the purview of judicial review, how, courts treat a conflicting provision of subordinate law. Earlier, the same view was endorsed by Mr. Justice Nadeem Akhtar and Mr. Justice Aziz-ur-Rahman of Sindh High Court. It was held that *“it is a well-established principle of law that rules made or framed under a statute cannot override the provisions of the statute under which they are made or framed and on which their very existence is dependent.”* (Nadar v. Province, 2016)

The research methodology employed in this thesis explores the conflicts between primary and secondary legislation within the SECP through a rigorous comparative analysis. The research approach is inherently qualitative, focusing on an in-depth examination of legislative documents, legal commentaries, court cases, and related scholarly works. The methodology acknowledges its limitations, such as potential gaps in data availability or the complexity of legal interpretation. Overall, this research methodology adopts a holistic approach to dissecting the conflict between primary and secondary legislation of SECP and CCP through meticulous data collection, qualitative comparison, and critical analysis, it endeavours to contribute an exact understanding of the nature of conflict and proposes insights for potential resolutions and future research directions.

## **Results and Discussion**

### **Quasi-Judicial Function of Administrative Bodies**

In Pakistan, the administrative adjudication procedure resolves disputes and controversies between citizens and the government or its administrative institutions. Many administrative bodies (Bodies) regulate this adjudication system and carry out the adjudication process by delegation of powers to individuals or through specialized tribunals/quasi-judicial forums (Adjudication Forums) created under various legislation controlled by such Bodies. These quasi-judicial administrative organizations have the authority to entertain, hear, and decide administrative cases such as disciplinary actions, regulatory non-compliance, directive violations, land acquisition disputes, and tax and duty disputes (Maheshwari, 1974).

The Bodies' Adjudication Forums are presided over by judges or other individuals with the necessary credentials, skills, and experience in the appropriate fields of law. One of the primary goals of administrative adjudication is to resolve disputes and conflicts as quickly as possible, and in Pakistan, this crucial element is the cornerstone of the administrative adjudication apparatus. The Forums are mandated to hear cases and issue decisions within a certain time frame, which helps to minimize delays and guarantee that justice is given on time. Appropriate legislation is very important for the smooth functioning of the ordinary and quasi-judicial functions of Administrative regulatory bodies. In the following sections, we will discuss this aspect in detail.

### **Purpose and Scope of Legislation**

The legislation serves as the foundation for a well-ordered society and its primary purpose is to establish a legal framework that safeguards the rights and interests of individuals and the community as a whole, through the enactment of laws. Laws are a set of rules and norms that guide the behavior of individuals, organizations, and institutions. Moreover, the legislation helps to prevent conflicts and disputes by providing a legal framework for resolving disagreements through courts and other judicial or quasi-judicial administrative institutions. Legislation plays a critical role in promoting justice and equity within society. By ensuring fair treatment and equality, the legislation aims to create a more inclusive and cohesive society. Legislation plays a

pivotal role in fostering economic development and prosperity. Laws governing property rights, contracts, intellectual property, and business regulations create a stable and predictable environment for investment and economic growth. By providing a conducive legal framework for economic activities, legislation contributes to the growth and stability of the national economy. The legislation serves as the basis for governance and the functioning of government institutions. It defines the powers and responsibilities of various branches of government, establishes checks and balances, and ensures accountability of public officials.

As discussed earlier, a legislative process involves the creation of laws through two distinct categories: primary legislation and secondary legislation. Both sets of legislation, have different but supplementary attributes to each other. By understanding their roles and limitations, we can appreciate the significance of each in the broader context of lawmaking.

### **Types of Legislation**

The legislation encompasses a wide array of legal instruments designed to regulate various aspects of society. Different types of legislation serve distinct purposes, catering to the complexities and evolving needs of governance. Broadly, legislation may be recognized as primary and secondary (Posner, 1989).

#### **Primary Legislation**

Primary legislation is a substantive or enacted law, that represents the highest form of law within a legal system. It is created by the legislative body, such as a parliament and addresses fundamental and significant issues. Primary legislation outlines general principles, establishes rights and duties, and sets forth policies that apply to the entire population. Constitution, Criminal Code, Civil Code, Company Law and Securities Law are common examples of primary legislation (Posner, 1989).

#### **Secondary Legislation**

Secondary legislation, also known as subordinate or delegated legislation, derives its authority from primary legislation. It is created by entities or individuals empowered by primary legislation to address specific details, procedures, and administrative matters. Secondary legislation complements primary laws, filling in the gaps and providing practical guidelines for implementation. Rules, Regulations, orders, and bylaws are common examples of secondary legislation (Posner, 1989).

#### **Conflict of Primary and Secondary Legislation**

In any legal system, primary and secondary legislation play crucial roles in shaping the legal framework, however, despite their interdependence, conflicts can arise between primary and secondary legislation, leading to challenges in their interpretation and application. Conflicts can arise when secondary legislation exceeds the authority delegated by primary legislation. If secondary legislation goes beyond the scope and intent of the enabling act or primary law, it risks being *ultra vires* (beyond the powers) and may be rendered invalid (Wales, 2021). Another source of conflict occurs when secondary legislation contradicts or conflicts with primary legislation, however, this conflict is not the subject of this paper, therefore, we will confine it to the extent of conflicts whereby secondary legislation exceeds the mandate and powers conferred through the primary law.

#### **Conflict Resolution of Primary and Legislation**

Courts having jurisdiction, play a critical role in resolving conflicts between primary and secondary legislation, through interpretation to harmonize to give effect to the legislative intent. The doctrine of separation of powers has empowered the Courts to exclusively determine the conflict of legislation through judicial review within a jurisdiction. It is important to note here that the legality and validity of secondary legislation are determined by courts with reference to primary legislation. The courts struck down secondary legislation because it either conflicted or overridden the intent and scope of primary legislation. Judicial review is also known as a constitutional arrangement whereby the legislature may be restricted to proceed with the legislative tasks as per the parameters established by primary law. A Judicial review serves as a mechanism to resolve conflicts between primary and secondary legislation and after due deliberation on the legality and ambit of both sets of legislation, the court can strike down complete or part of secondary legislation that exceeds delegated authority or conflicts with primary law (Syrpis, 2015). In a result of striking down any secondary legislation by the courts, any decisions made or actions taken in the exercise of powers of secondary legislation may be declared null and void. In addition to the above, to resolve conflicts and to avoid ambiguities, legislative bodies can review and amend either or both primary and secondary legislation.

### **Scope of Section 33 of the SECP Act and the Rules**

The SECP has fifteen primary laws and more than one hundred secondary laws, which include, but are not limited to, Rules, Regulations, Notifications, and Directives. Few secondary legislations supplement the adjudication procedure provided in primary legislation whereas, other Primary and Secondary legislation has its own adjudication procedure. The SECP adjudicates infractions of the laws administered by it, at its own and through the delegation of its powers to its Commissioners and other officers under Sections 10 and 20 of the SECP Act.

At the first instance or stage of adjudication, the authorized officers of the SECP, in the exercise of delegated powers, adjudicate matters of non-compliance or violation committed by any person. Thereafter, the person who is not satisfied with the initial adjudication process at first instance may file an appeal either under Section 480, Section 481 of the Companies Act, 2017 or Section 33 of the SECP Act. As this research paper is specifically addressing the issue of the ambit of section 33 of the SECP Act, therefore, for reference relevant section is reproduced below;

33. Appeal to the Appellate Bench of the Commission. - (1) Except as otherwise provided any person aggrieved by an order of the Commission passed by one Commissioner or an officer authorized in this behalf by the Commission, may within thirty days of the order, prefer an appeal to an Appellate Bench of the Commission constituted under sub-section (2):

Provided that no appeal shall lie against ----

- (a) an administrative direction given by a Commissioner or an officer of the Commission;
- (b) an order passed in exercise of the powers of revision or review;
- (c) a sanction provided or decision made by a Commissioner or an officer of the Commission to commence legal proceedings; and
- (d) an interim order which does not dispose of the entire matter.

(2) The Commission shall constitute an Appellate Bench of the Commission comprising not less than two Commissioners to hear appeals under sub-section (1).

(3) If any Commissioner who is included in the Appellate Bench has participated or been concerned in the decision being appealed against the Chairman shall nominate an other Commissioner to sit in the Bench to hear that appeal.

(3A) Any clerical or arthematic mistakes in an order or error arising therein from any accidental slip or omission may at any time be corrected by the Appellate Bench on its own motion or on an application made to it by any party.

The form in which an appeal is to be filed and the fees to be paid therefor and other related matters shall be prescribed by rules. *Emphasis Added*

In the context of the SECP's adjudication mechanism, the Appellate Bench is in charge of hearing and disposing of appeals filed against decisions made by the SECP's officers while exercising the SECP's delegated powers under various laws. As per Section 33(2) of the SECP Act, the Appellate Bench is composed of at least two individuals who are nominated by the federal government to act as SECP's Commissioners. Furthermore, in view of Section 33 (4) of the SECP Act, the Federal government has prescribed the Rules to explain "*form in which an appeal is to be filed and the fees to be paid therefor and other related matters shall be prescribed by rules.*". By adjudicating the appeals, the Appellate Bench also considers important legal precedents issued or instructions passed by higher courts, implying that it follows H L A Hart's theory of law and adjudication.

When we place Section 33 of the SECP Act and the Rules in a juxtaposition then we can realize that both sets of legislation are not harmonized in the context of rules of interpretation and the scope of primary and secondary legislation. The Scheme of adjudication provided under Section 33 of the SECP Act is not in consonance with the rules and interpretation and as per the prevailing legal framework of primary and secondary legislation. Furthermore, it is also in contrast with the adjudication mechanism followed by the other regulatory bodies in Pakistan. As per primary law, the Rules were supposed to deal with forms and fee of appeal, however, there is an excess of the jurisdiction of the Rules, made under section 33 of the SECP Act. The ambit of Section 33 of SECP Act is limited with respect to the constitution of benches comprising two commissioners, however, through secondary legislation i.e. Rules, the scope of Section 33 of the SECP Act has been enhanced by providing provisions to constitute a larger bench. For reference Rule 17 of the Rules is reproduced below;

**Hearing of appeal and decision of appeal—** (6) If the Commissioners constituting the Appellate Bench hearing the appeal are divided in opinion, the appeal shall be placed for hearing and disposal before a larger Bench to be nominated by Chairman of the Commission.

Apparently, the formation of a larger bench is based on the importance or public interest involved in particular cases, however, the issue arose when we see the primary legislation of the Appellate Bench, which does not provide any reference to constitute larger bench. The law explicitly states that the Appellate bench shall consist of the two commissioners, whereas, the larger bench comprises of three commissioners, which are constituted under the Rules.

The conflict between primary and secondary law has a major impact with respect to the legality of the existence of a larger bench and the decisions rendered by it. In view thereof, we may say that constitution of a larger bench under the Rules and decisions made by the larger bench are not only beyond the scope of the appellate jurisdiction of Section 33 of the SECP Act, but also such decisions are null and void.

As of today, the larger bench has decided four cases whereby initial two-member Appellate bench was divided in its opinion and due to split decision/opinion, the Chairman SECP has constituted a three-member larger bench by adding one additional member. Appeal No. 2 of 2018 titled Sheraz Jehangir Monnoo Versus the Commissioner (SMD), SECP, Islamabad was decided by the larger bench of the SECP vide order dated December 20, 2019 (*Sheraz v. Commissioner, 2019*). Similarly, Appeal No. 9 of 2018 titled Bilal Aurangzeb Noor Versus the Commissioner (SMD), SECP, Islamabad was decided by the larger bench of the SECP vide order dated December 20, 2019 (*Bilal v. Commissioner, 2019*). Appeal No. 8 of 2018 titled Noor Capital (Pvt) Limited Versus the Commissioner (SMD), SECP, Islamabad was decided by the larger bench of the SECP vide order dated December 20, 2019 (*Noor v. Commissioner, 2019*). Whereas, Appeal No. 21 of 2017 titled Mr. Nasir Ali Shah Bukhari and two others Versus the Commissioner (SMD), SECP, was decided by the larger bench of the SECP vide order dated December 26, 2019 (*Nasir v. Commissioner, 2019*). All four cases have been decided by the larger bench constituted under the Rules however, Section 33 has no such provision, therefore, by providing the provision to constitute a larger bench under Rule 17(6) of the Rules, the legislature had ignored the fundamental principle of interpretation, whereby, subordinate legislation cannot override or exceed the scope provided under the primary legislation.

### **Scope of Section 41 of the Competition Act and CCP Rules**

The Competition Commission of Pakistan (CCP) has the same adjudication mechanism at the initial stage, as it is being exercised by the SECP. Although powers and functions are vested with the CCP, however, such functions are being exercised by its members and authorized officers under Section 28(2) of the Competition Act. Anyone who is dissatisfied with an order issued by a CCP member or authorized officer may file an appeal with the CCP's Appellate Bench under Section 41 of the Competition Act. Section 41 of the Competition Act is reproduced below for reference;

**Appeal to the Appellate Bench of The Commission.** –(1) An appeal shall lie to an Appellate Bench of the Commission in respect of an order made by any Member or authorized officer of the Commission. The person Aggrieved by such order may, within thirty days of the passing of the order submit an appeal, to the Appellate Bench of the Commission.

2) The Commission shall constitute Appellate Benches comprising not less than two Members to hear appeals under sub-section (1).

3) The decisions of the Appellate Bench shall be made unanimously or by a majority of votes if the Appellate Bench comprises of more than two members. In the event of the split verdict, the original order appealed against shall hold and have effect as the final order of the Commission.

4) No Member shall be included in an Appellate Bench who has participated or been involved in the decision being appealed against.

(5) The form in which an appeal is to be filed be and the fees to be paid therefor and other related matters shall be prescribed by rules.

In view thereof, if a commissioner or authorized officer, in the exercise of delegated powers of the CCP has passed an order then any person who is aggrieved from such order may file an appeal before the Appellate Bench of the CCP (Competition, 2010).

The provision of Appellate Bench or larger Bench has been provided under Section 41 of the Competition Act 2010 and accordingly, the Competition Commission (Appeal) Rules, 2007 had been made. Sub-section 3 of section 41 of “the Competition Act”



empowers the Appellate Bench to decide the appeal unanimously or on the basis of a majority verdict. As the majority view is only possible if the bench consists of at least three members, therefore, without any doubt and ambiguity the CCP has an adequate enabling provision in primary law to constitute a larger bench (Competition, 2010). Accordingly, the procedure of a larger bench has been provided under Rule 22(2) of the CCP Rules and said Rules have been made as per the scope and mandate given by section 41(3) of “the Competition Act”. The relevant rule of the CCP Rules is reproduced below for reference;

**Decision of appeal. -(2)** The decisions of the Appellate Bench shall be made unanimously or by majority of votes if the Appellate Bench comprises of more than two members. In the event of a split verdict, the original order appealed against shall hold and shall have effect as the final order of the Commission.

In view of the above comparative analysis of SECP’s and CCP’s provisions related to larger bench, we may say that under Section 41 of the Competition Act, CCP may constitute Appellate Bench or larger bench. Accordingly, while providing the procedure and proceedings of a larger bench under the Rule 22(2) of the CCP Rules has also not exceeded the scope and mandate given by Primary legislation i.e. section 41(3) of “the Competition Act” whereas, by providing the provision to constitute a larger bench through secondary legislation made under Rule 17(6) of the Rules, the legislature had ignored the fundamental principle of interpretation, whereby, subordinate legislation cannot override or exceed the scope and limitations provided under the Primary legislation i.e. SECP Act.

### **Judicial Review on Conflict between Primary and Secondary Legislation**

The judicial review is a constitutional and statutory process that empowers the judicial organs to review the legality and constitutionality of laws promulgated by the legislature. It is a process to ensure adherence to the rules of law and place a check on the powers of the legislative and executive bodies. Judicial review can be exercised over both primary and secondary legislation (Street, 2013). The doctrine of legitimate expectation in the latest yardstick of courts to determine the validity or abuse of administrative powers. This doctrine discusses various claims and counterclaims (Srivastava, 1995).

Judicial review is an essential aspect to ensure the rule of law and it is a core function of courts to review the validity of legislative outcomes and exercise of powers and actions taken by administrative bodies (Antharvedi, 2008). The Principles of interpretation of statutes and persistent judicial view have made it clear that in case of inconsistency between primary law and secondary law made thereunder, the first attempt should be to adopt a harmonized approach otherwise secondary legislation will have to be declared ultra vires. This principle has been rendered by the Supreme Court of Pakistan in the case titled Mian Hakimullah etc. v. Addl. District Judge cited as 1993 SCMR 907 and the case titled Sayed Mukhtar Gilani v. Registrar cited as 1993 CLC 463 (Azad J & K) (Mian, 2023). The Lahore High Court has declared that a primary law has to get through test of constitutionality whereas subordinate legislation has to comply with certain additions tests as well. Such test implies that subordinate legislation “not be uncertain, unreasonable, ultra vires the parent statute or in conflict with any other law” (Shaheen v. Federation, 2011).

Furthermore, it is also a settled principle of law that secondary legislation neither has an overriding effect over the Primary legislation nor it can enhance or enlarge the scope and mandate of primary legislation. This principle has been declared by the Supreme Court of Pakistan in a case titled Emmanuel Masih v. Punjab Local Council cited as 1985 SCMR 729 and case titled Bakhsh Elahi cited as 1985 SCMR 291 (Mian, 2023).

In another case law it has been declared by the Peshawar High Court that “where there was a conflict between a primary piece of legislation such as Act of the Federal/Provincial Assembly with the secondary legislation i.e. notification, rules and regulations then former would prevail over the latter (YLR, 2018). The same view has been adopted by the SECP’s Appellate Bench while deciding Appeal No. 24 of 2014, titled Mr. Sikander Mustafa Khan and others Versus Head of Department (Enforcement), SECP, Islamabad, whereby it has been held that “It is a settled principle of Law that primary legislation prevails over secondary legislation in cases there occurs a conflict between the two.”

The above-mentioned case laws have made it clear that in case of conflict between primary and secondary legislation, the Primary legislation shall prevail, however, in our case neither the SECP’s larger bench has noted or addressed the issue of conflict between section 33 of the SECP Act and the Rules nor the courts have settled this issue. Therefore, cases decided by the larger bench will maintain their authority unless the same is declared null and void and *ultra vires* by the courts.

### **Conclusion**

The research questions of paper have been adequately answered in the preceding section, however, to reiterate and to formally conclude the hypothesis of this research, it is evident that by providing the provision of a larger bench under rule 17 of the Rules, the secondary legislation i.e. the Rules have exceeded the mandate provided under the primary legislation i.e. the Section 33 of the SECP Act. As per section 33 of the SECP Act, only a two-member Appellate Bench can adjudicate appeals, whereas, the Rules have authorized the constitution of a larger bench (consisting of at least three members). The legislature has not provided a provision for a larger bench in primary law; therefore, no such provision be provided in secondary law. In view thereof, it may be inferred that the legislature had no intention to provide larger bench provisions in the SECP Act, therefore, the Rules cannot enhance the scope of section 33 of the SECP Act.

As per Hart’s theory of law/adjudication judges/adjudicating authorities are bound to follow the law while adjudicating upon the rights of persons, whereas, the theory of Textualism also emphasizes upon strict compliance with the written law. Furthermore, it is also a settled position of law and precedents that secondary legislation can neither enhance nor override the scope and mandate of primary legislation. For all theoretical and practical purposes constitution of a larger bench through the Rules is against the fundamental principles of interpretation of statutes. Dicey’s rule of law, Hart’s theory of law/adjudication and theory of Textualism speaks about strict compliance and application of written law so that arbitrary use of discretion may be avoided in adjudication mechanism followed by courts and quasi-judicial administrative bodies. Rule of law and adjudication have a direct nexus to evaluate and determine the constitutionality and legality of the ambit and authority of primary and secondary legislation. Rule of law may not be implemented in a jurisdiction, where the adjudication process of courts and other empowered authorities is not fair and impartial (Merrill, 2019).

Furthermore, through numerous decisions, the courts have settled the proposition that secondary law does not enhance or override the scope of primary law. Therefore, conflict between the secondary legislation and primary legislation may be eliminated by courts by declaring such provision *ultra vires* or the legislature itself should proceed to amend and omit conflicting provision contained in the Rules.

### **Recommendations**

Based on the discussion and findings of the study, it is recommended that;

- 1) Upon recommendation of legislatures during legislative debates or recommendation made by any stakeholder, amendments may be proposed for Section 33 of the SECP Act to empower the SECP to constitute a larger bench;
- 2) If the preceding recommendation is not permitted then amendments be made in Rule 17 of the Rules to omit the provision of a larger bench to make it in conformity with the ambit and scope of section 33 of the SECP Act;
- 3) In consequence of judicial review, proviso of larger bench contained in the Rules may be declared *ultra vires* of the primary law i.e. SECP Act.

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