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The Nature of Collective Ijtihād of the Federal Sharī'at Court (FSC) & Its Impact on the Legislative Process in Pākistān

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Abstract

This comprehensive investigation delves deeply into the authoritative status of collective Ijtihād within Pākistān's intricate legal system, with a specific emphasis on the pivotal role played by the Federal Sharī'at Court (FSC). Through meticulous analysis, it scrutinizes the nature and methodology of collective Ijtihād as practiced by the FSC and its profound impact on the legislative process within the country. Moreover, this study explores the distinctive grounds that set apart the FSC's approach to collective Ijtihād from the historical practices observed by Muslim jurists. By elucidating these differences, it provides valuable insights into the evolving dynamics of Islāmic jurisprudence in Pākistān. Furthermore, the article goes beyond mere examination and delves into the implications of the FSC's authoritative status. It highlights how the FSC's decisions and interpretations shape legal discourse and contribute to the process of judicial synchronization within Pākistān. In doing so, it underscores the significant role of the FSC in guiding legal interpretation and fostering coherence within the country's legal framework, thereby impacting the legislative process.In essence, this study offers a nuanced understanding of the complex interplay between collective Ijtihād, the Federal Sharī'at Court, and Pākistān's legal landscape, shedding light on the broader implications for legal practice and interpretation in the country, including its impact on legislative procedures.

Keywords: Ijtiḥād, Federal Sharī'at Court, Pākistān, Legislative-Process, Judicial Synchronization, Legal Interpretation, Authoritative Status, Collective Ijtihād, Legal Landscape, Jurisprudence, Islāmic law

Introduction

Legal interpretation, especially within the context of Islāmic jurisprudence, significantly influences legislative processes, shaping the legal framework of nations. In Pākistān, the FSC holds a central role in interpreting Islāmic law, thereby impacting legislative developments profoundly. This study aims to explore the impact of the FSC's collective Ijtihād on the legislative process in Pākistān.

By examining the authoritative status of collective Ijtihād within Pākistān's legal system, specifically focusing on the FSC's role, this investigation seeks to uncover how the court's interpretations influence legislative decisions. Through meticulous analysis, it will elucidate how the FSC's pronouncements and interpretations guide legislative discourse and formulation.

Moreover, this study will investigate how the FSC's approach to collective Ijtihād differs from historical practices, providing insights into the evolving dynamics of Islāmic jurisprudence within Pākistān's legislative landscape. By understanding these distinctions, it becomes possible to grasp the nuances of the FSC's influence on legislative processes.

Ultimately, this research aims to offer a comprehensive understanding of how collective Ijtihād, as practiced by the FSC, impacts legislative procedures in Pākistān. By shedding light on this aspect, it contributes to a deeper comprehension of the interplay between legal interpretation, the FSC, and the legislative framework, thereby enriching scholarly discourse on Islāmic jurisprudence and legislative processes in Pākistān.

Research Methodology

This study employs a qualitative approach to examine the FSC's collective Ijtihād and its impact on Pākistān's legislative process. Data collection includes FSC verdicts, legislative acts, historical texts, and scholarly articles. Analysis techniques involve thematic, comparative, and historical contextualization to understand the FSC's approach. The research aims to offer insights into Islāmic jurisprudence, Ijtihād, and legislative processes in Pākistān.

The Genesis of the FSC of Pākistān

Pākistān's journey as an Islāmic ideological state began in 1947 under the Indian Independence Act[1]. The 'Objectives Resolution,' adopted by Pākistān's first Constituent Assembly on March 12, 1949, embodied Islāmic ideology and shaped constitutional development. It persisted through successive constitutions from 1956 to 1973, evolving notably by 1985[2].

The 1973 Constitution of Pākistān explicitly proclaimed the country as the Islāmic Republic, reflecting a longstanding commitment to enforce Islāmic law rooted in the teachings of the Holy Qur'ān and the Sunnah[3], empowering Muslims to shape their lives according to Islāmic principles[4]. Article 227 of the 1973 Constitution mandates aligning existing laws with Islāmic injunctions, and prohibits enacting laws contradicting these injunctions."[5]

The Constitution mandates aligning existing laws with Islāmic injunctions, a responsibility entrusted to the Council of Islāmic Ideology (CII)[6]. In 1979, the introduction of Sharī'at Benches in HCs marked a significant stride in Islāmic jurisprudence, reviewing laws for conformity with Islāmic principles. However, the pace of Islāmization was slow, prompting the establishment of the FSC in 1980. Transitioning from Sharī'at Benches, the FSC was fortified by robust constitutional provisions to Islāmize the country's laws[7]. The FSC's establishment was pivotal, reaffirming Pākistān's commitment to Islāmic governance and the integration of Islāmic principles into its legal system.

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[1] Hamid Khan, *Constitutional And Political History Of Pākistān* (Karachi: Oxford University Press, 2017), 50.
[2] Zulfikar Khalid Maluka, *The Myth of Constitutionalism In Pākistān* (Karachi: Oxford University Press, 1995), 119.
[3] Article 1 of the Constitution of IRP, 1973.
[4] Article 2 of the Constitution of IRP, 1973.
[5] Article 227 ofthe Constitution of IRP, 1973.
[6] Article 228, 229 & 230 of the Constitution of IRP, 1973.
[7] President's Order No. 3 of 1979.7th February 1979.Gazette of Pākistān, Extraordinary, Part I, 7th February 1979.

Islāmizing Legislative Processes in Pākistān: The Authoritative Role of FSC's Ijtihād in Legal Synchronization

The FSC emphasizes the importance of applying ijtihād, collectively and avoiding following to establish the taqlīd. Till 1979, the constitutional clause on Islāmic repugnancy had persisted as nonjusticiable and the CII could only recommend the legislature on the conformism of the statutes with the injunctions Islām. On the other hand, in 1979, the dictatorship régime of Zia-ul-Haque proved the Sharī'at Benches at the HCs to Islāmize the Pākistān's laws. After a year, the Sharī'at Benches were replaced by the FSC, for Islāmizing the laws, at the federal level. Then for legitimacy, despite depending on the Islāmization of laws, the FSC's jurisdiction, (in Pākistān) was carefully established during Zia-ul-Haque's régime by excluding the review of the Constitution for conformity to the Islāmic injunctions.

The authority of the FSC is derived from both the IRP's Constitution of 1973 and the Sharī'at Act of 1991, providing a solid legal basis for the court's role in interpreting Islāmic principles and aligning them with the country's régime in legal framework structure. The 18th Amendment to the Constitution made significant changes to our constitutional framework. Simultaneously, the Federal Shariat Court (FSC) upholds the basic structure doctrine to align Islāmic principles with Pākistān's laws. In the landmark case *DBA, Rawalpindi v. FoP*, the SCP reformed certain processes for the FSC[8]: "*If a law violates the Constitution's structure, it is the SCP's unequivocal statement, keeping its authority to amend the IRP's Constitution. Interpreting the Constitution is its realm. The FSC's role is limited to interpreting laws, not the IRP's Constitution. Therefore, within its scope, the FSC can nullify laws conflicting with Islāmic principles*"[9]

Along with laws derived from the sources based on the Islāmic injunctions, provisions from the constitutional law, civil, criminal, and customary law practices as well as international laws on human rights or

[8] Article 175-A of the Constitution.
[9] DBA, Rawalpindi v. FoP, PLD 2015 SC 401.

environment, in parallel, are operational in IRP[10]. The Law, in IRP, has been established on the foundation of both the Common law principles as well as Injunctions of Islām, and the Pākistān's legal system is even now (after getting independence), abound with the Anglo-Hindu régime in legal framework structure[11], even though Sharī'ah has principally been made a source of IRP's law. Even though the Anglo Hindu régime in legal framework structure is more dominant in the pursuit of commercial law, Sharī'ah law carries more influence in the regulations about Muslim personal matters. Additionally, to some extent, Sharī'ah law has also been influential in contemporary times concerning penal and taxation laws[12]. The Islāmic injunctions are the straightforward foundations of Sharī'ah law, it was not a matter of dispute that the Sharī'ah law was fashioned primarily through moral and religious means[13]. It is important to observe that the collective ijtihād activity of the FSC represents a modern legal construct for several reasons:

1. Firstly, the ijtihād performed by the FSC is not in the classical sense, as historical ijtihād was traditionally conducted by independent, civilian, and individual Islāmic scholars. In the context of the FSC, ijtihāds are not outcomes of individual scholars but rather the result of collaborative efforts between both Islāmic scholars and judges (referred to as collective ijtihād or ijtihād jamāʿī).
2. Secondly, these mujtahids are employed by the state.
3. Thirdly, within Sharī'ah, ijtihādic authority was not attributed to the qādī (judge).

If the State machinery, in IRP, is unsuccessful in bringing amendments, to the repugnant law, as suggested by the the FSC's Collective

[10] Ali, Sh Sardar. "Applying Islāmic Criminal Justice in Plural Legal Systems: Exploring Gender-Sensitive Judicial Responses to Hudood Laws in Pākistān." In *International Judicial Conference*. Islāmabad, 2006.

[11] Anglo Hindu regulations bring up to laws legislated in the course of the British régime in India before 1947.

[12] Supra note, M Munir, *Precedent in Pākistānī Law* (Karachi: OUP 2014), 452.

[13] Rehman, J. 2007. "The Sharī'ah, Islāmic Family Laws, and International Human Rights Law: Examining the Theory and Practice of Polygamy and Talāq." *International Journal of Law, Policy and the Family* 21(1): 123.

Ijtihād, during a specific time frame, the entire repugnant law or specific provision(s) thereof, to the magnitude of repugnancy declaring by the FSC, becomes no more effective, on the effective date of the decision of the FSC decision, as reported officially by the FSC in 2009[14]. The decisions of the FSC hold more weight than simple religious opinions or fatwās. They are legally binding and must be followed by relevant parties and institutions. When the FSC rules on a law or provision conflicting with Islāmic principles, it triggers a process requiring the government to amend the law. If not amended within a set timeframe, the law becomes invalid.

This process showcases the FSC's authority in ensuring that Pākistān's laws align with Islāmic principles. The FSC's directives shape the legal landscape and enforce Islāmic principles within Pākistān's framework. Unlike non-binding fatwās, the FSC's decisions carry legal weight and enforceability, making them crucial in upholding Islāmic principles in Pākistān[15].

Some judges in Pākistān argue that the FSC should have limited power. They believe that the FSC, as outlined in the country's Constitution, should not be able to declare the Constitution itself invalid. According to this view, the FSC's role should focus on assessing laws for their compatibility with Islāmic principles, without the authority to challenge the Constitution.

These judges stress the importance of maintaining the Constitution's supremacy in the legal framework. They assert that the FSC should operate within the Constitution's confines and refrain from questioning its validity.

This viewpoint represents a specific interpretation of the FSC's role within Pākistān's legal system. Ongoing discussions among legal experts and jurists continue regarding the extent of the FSC's authority regarding constitutional matters.

Any changes to limit the FSC's powers would require careful consideration, possibly involving constitutional amendments. The differing perspectives within the judiciary highlight the ongoing debate on the interpretation and application of constitutional provisions related to the FSC's authority.

[14] FSC, *FSC: Annual Report* (Islāmabad: FSC, 2009), 3.
[15] Ibid, 3, 4.

In the case, *BZ Kaikaus v. President of Pākistān*[16], the SCP passed a ruling to this extent

In principle, the FSC is realized as a "Superior Sharī'ah Court", in IRP, but, in practice, this court is still under the hierarchical structure of judiciary, under the appellate umbrella of the SAB. Likewise, more willingly than sanctioning the FSC for reviewing the entire Sharī'a-oriented statute, a special constitutional amendment in shape of the Article 203 B has been inserted to make certain that, again, the FSC has no authority to review, even this amended IRP's Constitution also the "Muslim personal law."[17]

The IRP Constitution provides that the FSC's decisions, exercising its mandatory jurisdiction as defined in Chapter 3A, "*shall be binding on an HC and all the courts subordinate to any HC*."[18] According to Article 203GG, decisions made by the FSC hold binding authority over the HCs if within its jurisdiction. Under Article 203G, other courts, including the HCs and the SCP, cannot exercise authority over matters exclusively within the FSC's jurisdiction. The FSC's jurisdiction is exclusive, and appeals against its decisions are directed solely to the Shariat Appellate Bench (SAB).

The SAB comprises three Muslim judges from the SCP and two Ulema appointed by the President as ad hoc members. These Ulema bring expertise in Islāmic law to the Bench, reflecting the importance placed on Islāmic legal knowledge within the SAB.

Working with the SCP's Muslim judges, the Ulema contribute their insights into Islāmic law during SAB deliberations. This collaboration ensures diverse perspectives and expertise when interpreting and applying Islāmic principles in cases.

The inclusion of Ulema in the SAB underscores Pākistān's commitment to incorporating Islāmic legal principles into its legal framework. It allows for a comprehensive examination of cases from legal and Islāmic viewpoints, ensuring decisions align with both the constitution and Islāmic principles.

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[16] BZ Kaikaus v. President of Pākistān, PLD 1980 SC 160.
[17] Tanzeel ur Rehman, *The Objectives Resolution and Its Impact on Pākistān's Constitution and the Law* (Karachi: Royal Press, 1996), 67-68.
[18] Article 203GG of the IRP Constitution, 1973.

The inclusion of Ulema in the SAB is specific to Pākistān's legal system, highlighting the country's unique approach to integrating Islāmic principles into its judicial processes[19]. Several crucial points necessitate discussion regarding the role and jurisdiction in Pākistān's legal framework:

1. The FSC's decisions have a binding effect on the HCs and all subordinate courts within their jurisdictions. This ensures consistency and uniformity in legal judgments throughout the judicial system, promoting the implementation of Islāmic Shariah law.
2. Despite its limited scope, the FSC's jurisdiction holds significant importance compared to the HCs or the SCP. It focuses specifically on issues related to the enactment of Shariah law within Pākistān's legal framework, contributing to the vision of an Islāmic legal system.
3. While the FSC's jurisdiction is exclusive, it holds a specialized role aimed at overseeing the process of Islāmization within the legal system. Unlike the HCs and other subordinate courts with their areas of jurisdiction, the FSC has the sole authority to address and decide matters within its defined purview.

It's important to clarify that the FSC does not restore a separate jurisdiction but was established to oversee the incorporation of Islāmic principles into Pākistān's legal system. Its role is to guide and oversee the process of Islāmization rather than solely adjudicating disputes according to Shariah law[20].

The crucial question that emerges is whether the main SCP, as distinct from the SAB, is bound by the decisions of the FSC. This inquiry gains significance, particularly in light of the FSC's rulings in the case of *Allāh Rakha v. FoP*[21], as well as *Aurangzaib v. Massan*[22], are noteworthy. The FSC and the SCP interact within Pākistān's legal system. While the FSC interprets and applies Islāmic law within its jurisdiction, its decisions don't automatically bind the SCP, which retains authority over various legal matters.

[19] Article 203F (3)(b) of the IRP Constitution, 1973.
[20] Masud, et al., *Dispensing Justice in Islām*, 42.
[21] Allāh Rakha v. FoP, PLD 2000 FSC 1, 29.
[22] *Aurangzaib v. Massan*, 1993 CLC 1020 at 1023 A.

The SCP's jurisdiction encompasses appeals, civil and constitutional issues, and criminal cases. Although the FSC's decisions hold influence, they don't establish binding precedents for the SCP. However, the SCP may find FSC decisions persuasive and consider their reasoning in its judgments.

The FSC's rulings contribute to legal discourse, especially in Islāmic law matters, potentially influencing the SCP's approach. Despite this influence, the SCP maintains autonomy to assess and decide legal matters, including those involving Islāmic law, independently.

Whereas in *Zaheer-ud-Din v. the GoP*[23], the SCP made a clear and assertive clarification regarding the binding nature of the FSC's verdicts. The SCP stated that if the FSC's decisions are not challenged in the SAB, or if these decisions are contested but ultimately endorsed by the SAB, they would indeed hold authority, even over the SCP itself, as held, "*The FSC's verdicts, if either not challenged in the SAB, or if challenged, but maintained by the SAB, would be binding even on the SCP*"[24]. This statement by the SCP signifies an important legal principle regarding the hierarchy and authority of courts within the Pākistān's judicial system. As the highest court in the nation, the SCP acknowledges that the rulings made by the FSC, when they have been reviewed and endorsed by the SAB, hold a binding effect that extends even to the SCP.

The role of the SAB in this context is crucial. As the specialized appellate forum specifically designated for hearing appeals from the FSC, the SAB acts as a bridge between the FSC and the SCP[25]. The SCP reviews and assesses decisions made by the FSC to ensure their alignment with Islāmic law principles. If an FSC decision remains unchallenged before the Shariat Appellate Bench (SAB), or if it is challenged but upheld by the SAB, the SCP recognizes it as legally binding.

This underscores the hierarchical structure and interplay between the FSC, SAB, and SCP, emphasizing the significance of the FSC's interpretation and implementation of Islāmic law when endorsed by the specialized appellate body.

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[23] Zaheer-ud-Din v. GoP, 1993 SCMR 1718.
[24] Ibid 1756.
[25] Moeen Cheema, *Courting Constitutionalism: The Politics of Public Law and Judicial Review in Pākistān* (India: Cambridge University Press, 2021), 1972.

Typically, if the government disputes an FSC decision declaring legislation inconsistent with Islāmic principles, it appeals to the SAB. The SAB thoroughly examines FSC decisions regarding Islāmic law, serving as a crucial forum for determining their validity and applicability.

It's important to note that the SCP doesn't have jurisdiction over matters related to interpreting and implementing Islāmic law. Its focus lies on constitutional issues, civil and criminal cases, and appeals from lower courts. As such, cases involving FSC decisions on legislation's compatibility with Islāmic principles usually don't reach the SCP.

In practical terms, it's unlikely for an FSC decision on legislation's inconsistency with Islāmic principles to remain unchallenged in the SAB. Due to the SCP's limited jurisdiction in Islāmic law matters, such cases typically don't proceed to the SCP for adjudication.

In the case of *Hafiz Abdul Waheed v. Mrs. Asma Jehanghir*[26], a decision was issued by the LHC, stating that the requirement for the consent of the guardian or parents is not obligatory for the validity of a nikah (Islāmic marriage contract). This decision by the LHC was based on the ruling of the FSC in the case of *M Imtiaz v. the GoP*[27]. In a minority opinion, Justice Ihsan-ul-Haque stated that the Lahore High Court (LHC) is not required to adhere to the Federal Shariat Court's (FSC) decision, which ruled that the consent of the guardian is not necessary for the validity of a nikah. Justice Ihsan-ul-Haque argued that since the FSC's decision was made in appellate jurisdiction, the LHC is not obligated to follow it.

However, most HCs rejected this argument, asserting that the FSC's decisions are binding on the HCs under Article 203GG, which pertains to the appellate FSC's jurisdiction in Pākistān.

There seems to be a divergence of opinion among judges regarding the binding nature of the FSC's decisions on the HCs. While most HCs uphold the view that the FSC's decisions are binding, even in appellate jurisdiction, Justice Ihsan-ul-Haque of the LHC holds that such decisions do not bind the HCs.

It's essential to recognize that the specific details and implications of the case may necessitate further analysis and research beyond the provided information.

[26] Supra FSC's case of Hafiz Abdul Waheed v. Mrs. Asma Jehanghir.
[27] M Imtiaz v. the GoP, PLD 1981 FSC 308.

In the case of *Hafiz Abdul Waheed v. Mrs. Asma Jahangir*, The LHC determined that it was indeed obligated to adhere to the decision of the FSC, irrespective of whether the FSC's decision was rendered within its appellate or revisional jurisdiction. The LHC held that it must follow and give effect to the FSC's decision, regardless of the specific jurisdiction in which it was rendered. This means that the Lahore High Court considered the Federal Shariat Court's decision as a binding precedent and applied it in the case at hand.

Likewise, the SCP endorsed this view when deciding the *Hafiz Abdul Waheed v. Mrs. Asma Jahangir* case. The SCP upheld the LHC's obligation to follow the FSC's decisions, regardless of jurisdiction. This confirms lower courts' duty to enforce FSC rulings as legal precedent, in the appeal against the FSC's case of *Hafiz Abdul Waheed v. Mrs. Asma Jehanghir*, Justice Karamathe t Nazir Bhandari, speaking on behalf of the Full Bench of the SCP, emphasized that decisions made by the FSC have to be followed by the HC and all the courts under the HC. This obligation comes from Article 203 of the Pākistān's Constitution. He explained that "decision" in Article 203 includes judgments, orders, and sentences from the FSC. So, these decisions are binding on the HCs and the lower courts they oversee. This shows how important FSC decisions are in Pākistān's legal system. It establishes a clear rule that the HCs and their underlying courts must stick to and apply FSC's rulings. This ensures a consistent way of interpreting and using Islāmic law in the court system. Notably, in the absence of specific case details, the full impact of this statement might need further analysis to understand how it fits into the régime in the legal framework structure[28].

The FSC has issued rulings in cases such as *M Imtiaz v. the GoP*, *Arif Hussain and Mst. Azra Parveen v. the GoP*[29], and *M Ramazan v. the GoP*[30], wherein it ruled that the consent of the wali (guardian) is not essential for the validity of nikah. These decisions by the FSC set the precedent that the consent of the wali is not obligatory for the validity of the nikah ceremony.

[28] Ibid, 230 and 233F.
[29] Arif Hussain and Mst. Azra Perveen v. GoP, PLD 1982 FSC 42.
[30] Muhammad Ramazan v. the GoP, PLD 1984 FSC 93.

The same matter was also addressed by the SCP in the case of *Mauj Ali v. Syed Safdar Hussain Shah*[31]. In its verdict, the SCP upheld the FSC's stance that the consent of the wali is not a prerequisite for the validity of nikah. By supporting the FSC's decision, the SCP reaffirmed the principle that the presence or consent of a wali is not obligatory for the validity of a nikah ceremony, by Islāmic law.

The FSC and the SCP's rulings shape Islāmic marriage laws in Pākistān, clarifying that a nikah doesn't need wali consent, giving more autonomy to those marrying under Islāmic principles. In its inaugural ruling, namely, *M Riaz v. FoP*[32], the FSC encountered the query regarding its obligation to abide by the preceding judgment of the Sharī'at Bench of the PHC [33] in *Gul Hassan v. GoP*. Unlike the territorial restrictions on Sharī'at Benches in the HCs, the FSC operates without such limits. It is bound by SCP decisions in typical cases, or by HCs in the absence of SCP rulings. As a subordinate to the SAB of the SCP, the FSC can overturn its own past decisions, similar to the SCP.

Furthermore, the FSC's larger bench can bind a smaller one, following a similar principle as the SCP. However, in matters of general law, the FSC is obliged to follow the SCP or, in the absence of SCP decisions, the HCs.

The firm code is that one DB of an HC, whether it is the FSC's bench, an HC's bench,[34] or the SCP's Bench[35], should not render a decision contradictory to another DB's decision. These principles underscore the importance of consistency and respect for precedent within the judicial system. The FSC, as a specialized court, must adhere to these principles in its interpretation and application of the law. The principle that an equal

[31] Mauj Ali v. Syed Safdar Hussain Shah, 1970 SCMR 437.
[32] Supra M Riaz v. FoP, PLD 1980 FSC 1.
[33] At that time, there were four such benches in the four HCs of Pākistān.
[34] Multiline Associates v. Ardeshir Cowasjee, PLD 1995 SC 423; 1995 SCMR 362 = Ch. M Saleem v. Fazal Ahmad, 1997 SCMR 314 = APNS v. FoP, PLD 2004 SC 600.
[35] M Saleem v. Fazal Ahmad, 1997 SCMR 315 = M Rafique v. The Border Area Committee Lahore, 1990 SCMR 817 = Azmatullah v. Mst. Hamida Bibi, 2005 SCMR 1201 = Fazal M Chaudhry v. Ch. Khadim Hussain, 1997 SCMR 1368 = Babar Shehzad v. Said Akbar, 1999 SCMR 2518 at 2522.

bench binds another promotes proper judicial behavior and consistency, avoiding conflicting decisions and ensuring stability in legal interpretation and application.

This idea is reinforced by the FSC's Rules, particularly Rule 4(6), which stipulates that if two judges on a bench disagree with a decision, a larger bench is tasked with resolving the case. This practice underscores the FSC's dedication to the principle that a larger bench's authority prevails over a smaller one. The case of Mst. *Nek Bakht v. the GoP*[36], as referenced, likely supports this principle. It reinforces the notion that a larger bench of the FSC has the power to establish binding precedent over a smaller bench. This ensures coherence in the FSC's decisions and promotes uniformity in its Sharī'ah application.

Following these principles and standards, the FSC seeks to maintain consistency, predictability, and fairness within its judicial process. This allows for a more stable and reliable régime in legal framework structure, fostering public confidence in the administration of justice.

The Collective Ijtihād of FSC: Its Essence and Influence on Legislative Dynamics in Pākistān

Its Nature

The FSC's Nature of Collective Ijtihād likely refers to the approach or methodology adopted by the FSC when collectively engaging in ijtihād, which is the process of independent legal reasoning or interpretation in Islāmic law. This could involve how the judges on the FSC collaboratively analyze and interpret legal texts, precedents, and principles of Islāmic jurisprudence to make decisions or rulings on matters within their jurisdiction. The nature of FSC's Ijtihad is characterized by the following:

1. **Accountable**: FSC is accountable to the Constitution, Islāmic law, and the people of Pākistān, ensuring responsibility and transparency in its Ijtihad.
2. **Binding**: FSC's decisions are binding and enforceable, serving as legal precedents.
3. **Collective**: A bench of judges, not a single individual, engages in Ijtihad, ensuring a collective and collaborative approach.

[36] Mst. Nek Bakht v. GoP, PLD 1986 FSC 174, 177.

4. **Contextual**: Ijtihad takes into account the social, cultural, and historical context of Pākistān and the Islāmic tradition.
5. **Dynamic**: FSC's Ijtihad is adaptable and responsive to changing circumstances and new challenges.
6. **Evolutionary**: FSC's Ijtihad contributes to the ongoing development and refinement of Islāmic law in Pākistān.
7. **Inclusive**: The court considers diverse Islāmic legal schools of thought (Hanafi, Maliki, Shafi'i, and Hanbali) and scholarly opinions.
8. **Independent**: FSC exercises independent reasoning and interpretation, not bound by previous decisions or opinions.
9. **Interdisciplinary**: FSC considers various disciplines, including Islāmic law, jurisprudence, theology, and social sciences, to inform its decisions.
10. **Reasoned**: FSC provides detailed, reasoned judgments, explaining the legal and Islāmic basis for its decisions.

By embracing this comprehensive and nuanced approach, the FSC's Ijtihad plays a vital role in interpreting and applying Islāmic law, shaping the country's legal landscape, and promoting justice and harmony.

Additionally, the Federal Shariat Court of Pākistān's Ijtihad includes the following aspects:

1. **Collaboration with other courts**: FSC works with other Pākistāni courts and legal institutions, promoting a cohesive and consistent application of Islāmic law.
2. **Consultative**: The court may consult with Islāmic scholars, experts, and stakeholders to ensure a well-informed and nuanced understanding of the issues.
3. **Contribution to Islāmic legal discourse**: The Federal Shariat Court's Ijtihad enriches the global Islāmic legal discourse, offering insights and perspectives that benefit the wider Muslim community.
4. **Engagement with contemporary issues**: FSC's Ijtihad addresses modern challenges and controversies, providing guidance on Islāmic legal perspectives.
5. **Flexible**: FSC's Ijtihad is adaptable to different circumstances, allowing for a range of legal and social considerations.
6. **In harmony with modern law**: FSC's decisions aim to harmonize Islāmic law with modern legal principles and human rights standards.

7. **Progressive**: The court's Ijtihad seeks to promote social justice, human rights, and gender equality within the framework of Islāmic law.
8. **Respect for precedent**: While not bound by previous decisions, FSC considers earlier judgments and opinions, ensuring consistency and continuity.
9. **Scholarly**: FSC's judges and staff engage in extensive research and scholarship, drawing on Islāmic legal texts, commentaries, and scholarly opinions.
10. **Transparency**: The court's proceedings and decisions are publicly accessible, promoting transparency and accountability.

By embracing these qualities, the Federal Shariat Court of Pākistān's Ijtihad plays a vital role in the development of Islāmic law, promoting justice, harmony, and human rights in Pākistān and beyond.

The FSC's Ijtihad and Balancing Religious Identity

Pākistān's quest for equilibrium between its religious identity and democratic aspirations has been a complex and ongoing struggle since its independence. The foundation of the country's religious identity is firmly rooted in its struggle for independence, which drew inspiration from the ideology of the "two nation theory". According to this theory, Muslims and Hindus were distinct nations with irreconcilable differences, necessitating the creation of separate homelands to safeguard the interests of the Muslim population.

This religious identity became embedded in the very fabric of Pākistān's nationhood, shaping its political landscape, constitutional framework, and societal norms. The country's founders envisioned an Islāmic state that would provide a safe haven for Muslims to practice their faith freely and establish an egalitarian society based on Islāmic principles. However, the simultaneous aspiration for a democratic setup presented a challenge. Democracy, with its emphasis on equal rights, pluralism, and individual freedoms, necessitated accommodating diverse religious, ethnic, and ideological perspectives within a unified framework. Balancing

Pākistān's religious identity with the tenets of democracy posed a complex challenge, requiring thoughtful navigation and ongoing negotiation[37].

Over the years, Pākistān has witnessed various attempts to reconcile these seemingly conflicting objectives. Different governments, leaders, and institutions have grappled with the interpretation and implementation of Islāmic principles in a democratic context. The involvement of religion in education, governance, lawmaking, and social affairs, has been remained a topic of passionate contention and debate. While some argue for a strict adherence to Islāmic law and a more prominent role for religious institutions, others advocate for a more inclusive methodology that respects the rights and diversity of all citizens, regardless of their religious beliefs. Striking a balance between religious ideals and democratic principles has proven to be a delicate task, with numerous challenges and complexities along the way. Despite the challenges, Pākistān's journey towards finding equilibrium continues. The country's democratic institutions, civil society organizations, and diverse political voices are engaged in an ongoing dialogue to shape a system that respects religious identity while safeguarding democratic values. The path to equilibrium is not straightforward and requires continuous introspection, open dialogue, and a commitment to the rights and well-being of all citizens.

In conclusion, Pākistān's struggle to reconcile its religious identity with the establishment of a functioning democracy reflects the complex nature of its nationhood. The religious identity rooted in the "two nation theory" has influenced the country's aspirations and constitutional framework. Balancing this religious identity with democratic principles requires thoughtful deliberation, dialogue, and inclusivity. The ongoing journey towards equilibrium is a testament to Pākistān's evolving democratic experiment and its quest for a harmonious coexistence of religious and democratic values[38], during Pākistān's path to independence; movement leaders energetically and resolutely united the Muslim population

[37] Muhammad Izfal Mehmood, "Fatwa in Islāmic law, institutional comparison of fatwa in Malaysia and Pākistān: The relevance of Malaysian fatwa model for legal system of Pākistān," *Arts and Social Sciences Journal* 6, no. 3 (2015): 1-3

[38] Aziz KK, *The Making of Pākistān: A Study in Nationalism* (Chatto & Windus 1967) 163-95.

of the Indian Subcontinent to establish an independent homeland for Muslims. This religiously infused political movement resulted in the creation of Pākistān, fundamentally altering the interplay between religion and the state.

Following Pākistān's emergence as an independent nation, the process of constitution-making became a focal point of debate and discussion. Deciding Islām's role in the early era of Pākistān's politics was highly argued. This question sparked intense deliberations among the country's leaders, intellectuals, and constitutional experts.

The proponents of a greater role for Islām argued that Pākistān should be an Islāmic state, where Islāmic principles and values guide the legal, social, and political framework. They emphasized the need for an Islāmic constitution that would reflect the religious identity and aspirations of the Muslim majority.

Advocates of non-religious governance emphasized equality and individual rights, advocating for the separation of religion from governance despite Pākistān's Islāmic majority. The 1949 Objectives Resolution affirmed Islām's role in legislation while protecting minority rights, shaping Pākistān's constitutional evolution. Ongoing debates continue to balance Islāmic principles with democratic ideals, impacting laws, education, and governance. Pākistān's constitutional journey reflects the enduring interaction between religion and the state, influencing its legal and political landscape[39].

The Constituent Assembly's approval of the Objectives Resolution in 1949 marks a crucial moment in Pākistān's constitutional history. This document profoundly influenced the integration of Islāmic principles into laws and the promotion of democracy within the Pākistāni state, as emphasized by the SCP in the petition *Hakim Khan v. GoP*[40]. The Objectives Resolution, adopted in 1949, marked a pivotal moment in Pākistān's constitutional journey. It outlined principles guiding the future constitution,

[39] Malik R, "The Process of Constitutional Making in Pαkistαn 1947-1956" (2001) 22 (1) *Pākistān Journal of History and Culture* 57-80.
[40] Hakim Khan v. GoP, PLD 1992 SC 595.

emphasizing sovereignty to Allah and the alignment of laws with Islāmic teachings. This framework aimed to Islāmize laws while ensuring democracy, constitutionalism, and minority rights. The SCP highlighted its significance, shaping legal and constitutional dynamics. Debates ensued over its constitutional status and implications for Islāmization, fueling political discourse for over four decades. These discussions reflected diverse perspectives on Islām's role in governance, shaping Pākistān's political narrative and policy decisions. In summary, the Objectives Resolution's debate profoundly influenced Pākistān's political landscape, reflecting the complex interplay between religion, law, and governance[41].

Pākistān has had several constitutions since 1956. These reflect struggles between democracy and Islāmic beliefs. They tried different ways to balance these tensions, especially in making laws Islāmic. Before the FSC, Parliament had all the power. But introducing the FSC changed things. It helped decide if laws followed Islāmic principles, not just Parliament. People could ask the FSC to review laws, which made the process open. Even if they didn't win, they felt heard. This made them part of the system. The FSC made it easier for people to discuss Islāmic laws. It also made Islāmists think before using religion for politics. When they couldn't prove their arguments to the FSC, their slogans lost power. The FSC made laws while considering religion. It has been updated over time and has up to eight judges chosen by the President. Overall, the FSC has shaped laws and discussions about Islāmization in Pākistān[42].

Until 1980, the highest judiciary in Pākistān believed that making laws Islāmic and interpreting them through collective Ijtihād were the government's responsibility, not the courts'. The SCP expressed this view in the case of *B Z Kaikaus v. President of Pākistān,* that held that "*Islāmization is not a judicial function and it is a governmental one"*[43]. In the 1980s, Pākistān's judiciary followed a certain approach. But in the 1990s, there was

[41] Raza SS, "Contested Space of the Objectives Resolution in the Constitutional Order of Pākistān" (2017) 17(2) *IPRI Journal* pp 01-19.
[42] M Khalid Masud, *Teaching of Islāmic Law and Sharī'ah: A Critical Evaluation of the Present and Prospects for the Future* 79 (2005).
[43] B Z Kaikaus v. President of Pākistān, PLD 1980 SC 160.

a change in how Islāmic principles were applied in the judiciary. Public Interest Litigation (PIL) during this time reflected Pākistān's Islāmic judicial goals. The judiciary started referencing Sharia more often when interpreting fundamental rights. The FSC was established in 1980 through a presidential order, which was later endorsed as a constitutional amendment[44]. The FSC has been acknowledged internationally as a unique court in Muslim history. It has the authority to review almost the entire legal system in line with Islāmic principles, as recognized by the SCP in the verdict of *Mst. Kaneez Fatima v. Wali Muhammad*[45]. Some Pākistānī activists, and even legal professionals, have criticised that the existence of the FSC hinders the procedures for getting justice, by maintaining a parallel legal system[46].

During the 1990s, arguments based on Sharia proliferated not only in the FSC and SAB but also in the HCs. However, in these cases, arguments from Islāmic Sharia Law were often not the primary legal arguments,[47] but were used to justify the court's position morally. The archetypal decisions of that era have been cited as *Hassan Bakhsh Khan v. DC, DG Khan*[48], *M D Tahir v. Provincial Govt.*[49], *Mst. Mrs. Anjum Irfan v. LDA*[50], and *Muhammad Shabbeer Ahmed Khan v. FoP*[51], etc. This dynamic shift toward Islāmization moved the focus from the Executive to the judiciary, implicitly urging collective Ijtihād exertion. HCs, in numerous instances, have invoked uncodified principles of Islāmic Sharī'ah Law, interpreting statutory provisions through an Islāmic lens. Notably, HCs displayed greater enthusiasm for Islām than the Sharī'ah Courts. The Islāmic scholars, serving

[44] PLD 1980 Central Statues 89.
[45] Mst. Kaneez Fatima v. Wali Muhammad, PLD 1993 SC 901.
[46] Karin Carmit Yefet, "The Constitution and Female-Initiated Divorce in Pākistān: Western Liberalism in Islāmic Garb." *Harvard Journal of Law and Gender 34: 2 (2011), 553–615.*
[47] Lau, Martin. *The Role of Islām in the Legal System of Pākistān* (Leiden: Brill, 2006), 18-23.
[48] Hassan Bakhsh Khan v. DC, DG Khan, 1999 CLC 88.
[49] M D Tahir v. Provincial Govt. 1995 CLC 1730.
[50] Mst. Mrs. Anjum Irfan v. LDA, PLD 2002 Lahore 555.
[51] Muhammad Shabbeer Ahmed Khan v. FoP, PLD 2001 SC 18.

as judges, exhibited greater flexibility in matters of Islāmic Sharī'ah Law due to their profound understanding of both Islām and the Sharī'ah[52].

The FSC's Role in Implementing Islāmic Law and Legislative Impact

In Pākistān, the FSC is the sole constitutional body with the authority to definitively determine the compatibility of laws with "Islāmic injunctions." This exclusive authority of the FSC holds mandatory significance for implementing Sharī'ah law in the country. To ensure social sustainability, it's recommended that the government establish Ijtihād institutions and support their leadership activities. Successfully implementing Collective Ijtihād enables the FSC, as a governmental entity, to effectively address the challenges of establishing Islāmic jurisprudence in Pākistān.[53] The FSC holds a vital role in interpreting and applying Islāmic law in Pākistān. Judgments are based on derived injunctions, with the court directly referencing the Qurʾān and Sunnah, as primary sources. For topics like family law, gender equality, and rights of the women, the FSC employs a flexible methodology. This means moving from strict interpretations to adaptable ones, aligned with current contexts. Through Ijtihād, independent legal reasoning and interpretation, the FSC tackles modern issues within Islāmic law's framework. This allows it to provide relevant solutions while upholding Islāmic principles. Recognizing that interpretations can adapt, the FSC considers social, cultural, and legal realities, ensuring a nuanced understanding. In essence, the FSC employs the Qurʾān and Sunnah for Islāmic law, utilizing flexible interpretation for subjects like family law and gender equality. Ijtihād enables the court to address contemporary challenges while staying faithful to Islāmic values[54].

Collective Ijtihād is regarded as a legislative effort since it establishes laws from scratch for the first time, and Ijtihād of FSC has been leaving a directorial impact on Legislative Process in Pākistān, since its functional establishment. As Collective Ijtihād constitutes the law, the government

[52] Elisa Giunchi, "Islāmization and Judicial Activism in Pākistān: What is Sharī'ah?," *Oriente Moderno*, 93: 1, (2013), 197.

[53] Masood Khan, *Iqbal's Reconstruction of Ijtihād*. (Lahore: Iqbal Academy Publishers, 2003) 148.

[54] Supra Ihsan Y, Pākistān Federal Sharī'at Court's Collective Ijtihād on Gender Equality, 2014, 185–188.

machinery in Pākistān has devised an Islāmic way of establishing Islāmic law in the true sense of the word by enforcing all its rulings through collective Ijtihād (its operational structure and legal system).

As expounded by the article 203C of the IRP Constitution that the structure as well as the prerequisite criteria of its Hon'able panel of judges. Ultimately, it is the prerequisite that the all-out strength of the panel of judges must not go beyond eight judges inclusive of the CJ[55], the highest four must be qualified to become a HC judge, not more than three *ulema* personnel with as a minimum fifteen years of experience and deep knowledge of Islām and the Sharīʿah, as researchers or teachers. Constitutionally it is required that the FSC must keep up, on list, the judicial officers, who are representing the eminent *mujtahidīn* of the Sharīʿah Islāmic Schools of thoughts, upholding diverse philosophical paradigms, of Sharīʿah[56].

The determination of Muslims' rights and responsibilities under Islāmic law rests on the rulings of the legislative body, known as the Mujtahid, in Pākistān's régime in legal framework structure. The concept of Collective Ijtihād forms the foundation for the Mujtahid's jurisprudence. However, the full implementation of the Islāmization of laws through Collective Ijtihād remains incomplete until it is integrated into Pākistān's legislative process. Until this integration occurs, the requirements pertaining to the members of Collective Ijtihād cannot be adequately fulfilled. Furthermore, in order to assert the judicial influence of Ijtihād by the FSC, the IRP Constitution necessitates that the jurisconsults possess deep knowledge of Islām and the Sharīʿah, as stipulated in Article 203E (5)[57].

The Legislature as an institution should get support for Collective Ijtihād.[58] Impact of FSC's Collective Ijtihād developed a common thinking

[55] All must be Muslims.

[56] Imran Ahsan Khan Nyazee, *Legal System of Pākistān* (Rawalpindi: Federal Law House, 2016), 246.

[57] At this juncture the prerequisite criteria for qualifying is being given in all-purpose standings I would like to define the terminology of "ulema" as those individuals who are able to perform Ijtihād, individually and could arrange for Collective Ijtihād, and it is must that they satisfy the benchmarks of the Islāmic Sharīʿah mufti

[58] Tilmann Röder, J. *Constitutionalism in Islāmic Countries: Between Upheaval and Continuity* (New York: OUP, 2012).

on the constitutional care for the exercise of legislation on the footings of the Islāmic Injunctions. In Pākistān, for a better and more fruitful impact, members of the main Legislature of Pākistān[59] must be of virtuous personality and not known to violate Islāmic injunctions.[60] The FSC can strike down laws deemed against Islāmic principles, but such cases can be appealed to the SAB and ultimately heard by the full Bench in SCP. The FSC applies to both Muslims and non-Muslims, with the latter having the right to consult the FSC about issues impacting them. Implementing justice and rights relies on the Islāmic doctrine derived from Collective Ijtihād, collectively, to get the force of law because in Islāmic government the law and institutions are given constitutional authority to issue some Ijtihād in the form of law[61]. Through Collective Ijtihād, the FSC, meaningfully, administers its role in the pursuit of the important process of Islāmization of the legal structure of Pākistān.[62] The verdicts and rulings of the FSC are forcibly binding on the formulated. Syed Abul Ala Maududi indicated that a Muslim régime can take a piece legislature of IRP.

On every occasion, the FSC deemed a law contradictory to the Islāmic injunctions found in the Holy Qurʾān and the Sunnah, the undertaking of drafting it as a Sharī'ah alternative, is, in order, worked on by the Legislature[63]. Consequently, the lawmaking is the responsibility of the Legislative body and then the Collective Ijtihād by the FSC, for recommending meeting the requirements of the "Islāmic injunctions", the obligatory amendment, in the statute, is the concern of the Executive[64].

Originally, through its jurisdiction, the FSC has acquired a directive for "*the judicial Islāmisation, of IRP's Laws*"[65], explicitly, to scrutinize and

[59] The Parliament or Majlis-e-Shura.
[60] Article 62 (d) of the Constitution of IRP, 1973.
[61] Abul Ala Maodoodi, *Khilafat-o-Malukiyat* (Lahore: Kitab Bhavan, 2002), 34.
[62] Osama Siddique, *Pākistān's Experience with Formal Law: An Alien Justice* (New York: CUP, 2013), 230.
[63] Supra note Lau, 2010, 412.
[64] Ibid.
[65] Supra note Lau, 2010, 144.

resolve whether any 'Pākistān's Law'[66], partakes any repugnancy to the Islāmic injunctions, vidē the Islāmic injunctions or not. On the other hand, as clarified itself in it own judgeent of the case *Mian Abdur Razzaq Aamir v. FoP*, the "*FSC is not part of the country's legislature, but it has the ability to provide relief to anyone critically agrieved of a lawmaking action*."[67]. Ultimately, the FSC holds the authority to nullify any statute or its provision by declaring it non-binding due to conflict with Islāmic injunctions from the Islāmic law. This power was upheld in the case of *M Riaz v. FoP*, "when the FSC would decide to recommend any amendments to the challenged statute or a provison thereof, the findings and decision would not constitute a new effect until and unless if the Parliament does not materialises the amendment."[68]. Consequently *the judicial Islāmisation, of IRP's Laws* must not be taken as imprinting a extensive authority to this Constitutional body, even to the scope of constituting an amendment to the law having found a declared repugnancy to the Islāmic injunctions[69].

The Methodology of Collective Ijtihād Employed by the FSC

In *M Riaz v. FoP* the following step-by-step methodology (*manhaji)* for Ijtihād has been fixed by the FSC[70], for deciding cases:

1. First of all, seeking the appropriate verses of the Holy Qur'ān and then the Holy Sunnah (ahādīth);

Ascertaining the intent of Qur'ānic verse with the help of the related the Hazrat Muhammad(Ṣal Allah-u-'alaihe wa sallam)'s Sunnah (ahādīth);

2. Examining the applicable juristic opinions, and reasonings of the jurist(s) for characterizing their coherence and harmony with the up-to-date requirements, if desired, modulating them to the requirements of the current age;

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[66] Excluding some, constitutionally specified like Constitutional law, Muslim personal and procedural laws and inclusive of any customary laws or usages formulating the "force of law".

[67] Mian A Razzaq Aamir v. FoP, PLD 2011 FSC 1.

[68] M Riaz v. FoP, PLD 1980 1

[69] Supra Cheema Shahbaz A, "The FSC's Role to Determine the Scope of 'Injunctions of Islām' and Its Implications," *Journal of Islāmic State Practices in International Law* 09, no. 02 (2013): 95.

[70] *M Riaz v. FoP,* PLD 1980 FSC 1, 15.

3. Ascertaining and employing, as the last option, any other juristic opinion, well-matched with the Holy Qurʾān and the Ahādīth.

As per the FSC's guidance, the jury is instructed not to confine themselves solely to the literal interpretation of the Holy Qurʾānic verse, but to grasp the entire essence of the Holy Qurʾān and consider the underlying spirit of the verse(s). While interpreting the Holy Qurʾān, and the Sunnah (ahādīth), it is essential to account for the evolution of human society, although this approach must not disregard the original intent and purpose of the Holy Qurʾān. This principle is echoed in cases such as *Mst. Zohra Begum v. Sh. Latif Ahmad Munawar*[71], and *Mst. Rashida Begum v. Shahab ud Din*[72], *i*n affirming the entitlement to engage in Ijtihād, the Superior Judiciary of Pākistān has upheld the right to independently interpret the Holy Qurʾān and the Sunnah (ahādīth), even if such interpretations diverge from established perspectives within Islāmic Sharīʿah law. The SCP (SAB) held, in the case *Abdul Majid v. GoP*, that:

"*Where Ijtihād is complete on an issue, then matters should not be referred directly to the Holy Qurʾān, and the Sunnah, direct evidence that can be cited from the Qurʾān and Sunnah, but it should not be called direct or indirect evidence and it should be called Ijtihād. And, when the Holy Qurʾān and the Sunnah (ahādīth) are silent, the state government can conduct Ijtihād on the matter. The silence of the Holy Qurʾān, and the Sunnah (ahādīth) does not amount a thing to be forbidden in Sharīʿah or harām.*"[73]

The term "Collective Ijtihād" represents a modern methodology (manhaji) introduced by contemporary Islāmic jurists (Sharīʿah scholars) specializing in Usūl al-fiqh, in response to contemporary challenges and developments. Although an exact definition of Collective Ijtihād remains absent, many Islāmic jurists in Usūl al-fiqh describe it as the consensus reached among public jurists on a specific issue. During this period, numerous institutions for issuing legal opinions (fatwas) have proliferated across the Islāmic world. Despite attempts to relate it to classical consensus, research has confirmed that Collective Ijtihād, in principle, holds a position

[71] Mst. Zohra Begum v. Sh. Latif Ahmad Munawar, PLD 1965 Lahore 695.
[72] Mst. Rashida Begum v. Shahab ud Din, PLD 1960 Lahore 1142.
[73] Abdul Majid v. GoP, PLD 2009 SC 861.

subordinate to classical consensus while surpassing individual judgement. This segment of the study aimed to delve into the concept of collective Ijtihād, using common sense to arrive at novel decisions. Consequently, the study explored the theoretical framework and practical implementation of collective Ijtihād, examining and analyzing various institutional perspectives. Overall, in this study, an attempt has been made to present collective Ijtihād as a practical method to find out the Sharīʿah opinion of the Islāmic Ummah on various contemporary issues. Predominantly, this type of Ijtihād has been heavily relied upon in the history of Islāmic fiqh (jurisprudence) and we know that the function of collective Ijtihād has never been abandoned, and this briefly presents the argument for closing the door to Ijtihād.

Therefore, decisions in Pākistānī institutions are not considered binding unless they are binding on them. However, This form of jurisprudence for collective Ijtihād offers greater practicality compared to classical consensus (ijm'ā') and enhances reliability compared to subjective judgment. This collaborative approach via Collective Ijtihād enables diverse answers to various questions, ensuring a well-rounded outcome. However, any potential weaknesses should be addressed through improvements in its application. In the concluding segment of this research, constructive suggestions will be presented to attain productive outcomes from Collective Ijtihād, particularly in terms of addressing contemporary issues based on Sharīʿah principles. In cases within the FSC, the pursuit of collective Ijtihād is uniquely evaluated by the judges based on situational considerations. The FSC emphasizes the importance of turning to Ijtihād and welcomes the reopening of the door to Ijtihād which had been closed previously[74].

Conclusion

In conclusion, this investigation has illuminated the significant impact of the FSC's collective Ijtihād on the legislative process in Pākistān. Through meticulous analysis, we have unveiled how the FSC's interpretations of Islāmic law profoundly influence legislative decisions and shape the legal framework of the country.

By scrutinizing the FSC's methodology and its application of collective Ijtihād, we have underscored the pivotal role it plays in guiding legislative discourse and formulation. The FSC's verdicts serve as

[74] 2006's 1/K Suo Motu action by the FSC, Pākistān Citizenship Act 1951, Re: Gender Equality, decided December 12, 2007, PLD 2008 FSC 1., 12-13.

authoritative interpretations that inform and sometimes even directly influence the drafting and enactment of legislation in Pākistān.

Moreover, this study has highlighted how the FSC's approach to collective Ijtihād differs from historical practices, offering insights into the evolving dynamics of Islāmic jurisprudence within Pākistān's legislative context. This differentiation emphasizes the unique contribution of the FSC to the development of Islāmic law and its impact on contemporary legislative processes.

Ultimately, our research contributes to a deeper understanding of the interplay between collective Ijtihād, the FSC, and the legislative framework in Pākistān. By recognizing the FSC's significant role in shaping legislation through its interpretations of Islāmic law, we gain valuable insights into the complexities of legal interpretation and legislative decision-making within the realm of Islāmic jurisprudence in Pākistān. This understanding is crucial for informed dialogue and discourse on legal reforms and the development of legislation in the country.