

IMPROVING THE PERFORMANCE OF PAKISTAN LAW COMMISSION

The Hamoodur Rehman Commission (1967-70) in its Report to the Government on Law Reforms proposed the establishment of a permanent Law Commission for the purpose of carrying out, on regular and systematic basis, proper review of the laws so as to give appropriate recommendations for their reformation and modernisation. The proposal was examined by the Government and finally approved. Thus, the Law Commission was created through an Ordinance in 1979 (Ordinance XIV of 1979).

The functions of the Commission include reformation and modernisation of laws together with their unification and codification. The Commission may also suggest reforms in the areas of legal education and system of administration of justice. The Commission is also required to remove inconsistency, if any, between the laws within the legislative competence of Parliament and those of Provincial Assemblies. The Federal Government or a Provincial Government may thus refer to the Commission any matter relevant to its functions for opinion and advice.

The Chief Justice of Pakistan and Secretary, Law & Justice Division, are respectively the ex-officio Chairman and Member of the Commission. Additionally 10 members are appointed for a period of 3 years by the Federal Government on the recommendation of the Chairman. As per standing practice the Chief Justice of Federal Shariat Court, 4 Chief Justices of the Provincial High Courts and Chairman, Council of Islamic Ideology are treated as ex-officio members of the Commission. The Commission is assisted by a separate Secretariat headed by a Secretary. Other posts in the Secretariat include 2 Joint Secretaries, 2 Deputy Secretaries, 2 Research Officers and other ministerial staff.

The performance of the Commission and the effective utilisation of the services of the research staff in the Secretariat has been the subject of deliberations among the members of the Commission in several successive meetings. The issue came up for discussion before the Commission in its meeting held on 15.2.1994. The Commission

examined its composition and resolved that as per the prevailing practice, the Chief Justice of Federal Shariat Court, 4 Chief Justices of High Courts and Chairman, Council of Islamic Ideology should be made the ex-officio members through appropriate amendment in the Ordinance. The Commission further decided to expand its composition. Thus it proposed the inclusion of Wafaqi Mohtasib and Chairman, Law Reform Committee of the Pakistan Bar Council as ex-officio members of the Commission. The Commission further resolved that the number of non-ex-officio members should be raised from 4 to 5. The Commission also decided that with a view to improve its functions and supervise the ongoing projects, a new full time post of a Member/Vice Chairman may be created. This way the membership of the Commission will be increased from present 12 to 16 members. The Commission further decided that an annual report may be prepared by the Commission and presented to the Government for consideration.

Under Section 5 of the Ordinance, the Commission has a separate Secretariat headed by a Secretary and other research and administrative staff. This provision, however, does not clearly state the status of the Commission's Secretariat. The Commission observed that the status of the Commission Secretariat should be equal to and at par with the status of Federal Government Secretariat, as defined in Rule 2(vii) of the Federal Government Rules of Business 1973. The Commission, therefore, suggested that an appropriate amendment to the Ordinance may be made so as to remove ambiguity regarding the status of the Commission's Secretariat and clarify the provisions with regard to the powers of the Chairman in the appointment of its staff. Accordingly, the Commission approved the following amendments to the Law Commission Ordinance 1979:

Law Commission (Amendment) Act, 1994

An Act further to amend Law Commission Ordinance, 1979.

Whereas it is expedient to amend the Law Commission Ordinance, 1979.

It is hereby enacted as follows:

- 1. Short title and commencement.- (1) This Act may be called the Law Commission (Amendment) Act, 1994.
(2) It shall come into force at once.**
- 2. Amendment of section 1, Ordinance No XIV of 1979.- In the said Ordinance, in section 1, in sub-section (1) before the word 'law' the word 'Pakistan' shall be inserted.**
- 3. Amendment of section 2, Ordinance No XIV of 1979.- In the said Ordinance, in section 2,**
 - i. for clause (a), the following shall be substituted namely-**

"(a) Chairman and Vice Chairman means Chairman and Vice Chairman of the Commission"
 - ii. after clause (c), a new clause (d) shall be added namely-**

"(d) 'Secretariat' means the Secretariat of Pakistan Law Commission within the meaning of Rules of Business, 1973"
- 4. Substitution of sub-section(1) and (2) of section 3,**
 - 1. for sub-section (1) the following shall be substituted namely-**

"(1) There shall be a Pakistan Law Commission consisting of-

- i. the Chief Justice of Pakistan, who shall be the Chairman of the Commission, ex-officio;
- ii. the Wafaqi Mohtasib, the Chief Justices of the Federal Shariat Court and the High Courts, the Secretary to the Government of Pakistan in the Ministry of Law, Justice & Parliamentary Affairs, the Chairmen of the Council of Islamic Ideology and the Law Reforms Committee of the Pakistan Bar Council, members, ex-officio;
- iii. a retired Judge of Supreme Court of Pakistan, who shall be the full time Member and Vice Chairman of the Commission;
- iv. five members, from amongst members of the Parliament, persons who are or have been holders of a judicial or administrative office, eminent lawyers or jurists, members of the Council of Islamic Ideology or teachers of Law in a University or College;

II. for sub-section (2) the following shall be substituted namely-

"(2) A member of the Commission, other than an ex-officio member shall be appointed by the Federal Government on the recommendation of the Chairman".

5. Amendment in section 5, Ordinance No XIV of 1979.- In the said Ordinance, in section 5, in sub-section (1) after the word 'Secretary' occurring for the first time, a full stop shall be placed and rest of the sub-section shall be deleted.
6. Amendment in section 6, Ordinance No XIV of 1979.- In the said Ordinance, in sub-section (1) for clause (vii), the following shall be substituted namely-

"vii) developing and implementing schemes for introduction of reforms in the administration of justice"; and

- 7. Addition of a new section 6A in Ordinance No XIV of 1979.- In the said Ordinance, after section 6, a new section 6A shall be added, namely-**

"6A. Annual Report. The Commission shall submit an annual report to the Federal Government within three months of the conclusion of a calendar year"

- 8. Addition of a new section 8A, in Ordinance No XIV of 1979.- In the said Ordinance, after section 8, a new section 8A shall be added namely-**

"8A. Delegation of powers.- The Chairman may, by order in writing, direct that any of his powers under the Ordinance subject to such conditions and limitations as specified, be exercised or performed by the Vice Chairman or the Secretary".

- 9. Amendment in section 9, Ordinance No XIV of 1979.- In the said Ordinance in section 9 in sub-section (2) after the word `for' the words `terms and conditions of appointment and' shall be inserted.**

Statement of Objects and Reasons

These recommendations of the Pakistan Law Commission seek to amend the Law Commission Ordinance, 1979 to provide for a broad based Commission, by inducting experienced intellectuals of highest level, belonging to the legal community for improving its efficiency. By the proposed amendments the Wafaqi Mohtasib, the Chief Justices of the Federal Shariat Court and Provincial High Courts, Chairmen, Council of Islamic Ideology and Law Reforms Committee of Pakistan Bar Council will

be members of the Commission ex-officio. There will also be a full time member, who will be a retired Judge of the Supreme Court of Pakistan to act as Vice Chairman for smooth functioning and continuity of working of the Commission and as a source of constant guidance for its Secretariat. Five other non-ex-officio members appointed amongst members of Parliament and men of learning in various fields will also balance the constitution of the Commission. The amendment in provisions relating to appointment of Secretary will enable the Chairman to have a broader choice in selecting a person to head the Secretariat. The rest of the amendments are consequential in nature which were missing in the existing law.