

**Amendment to Sections 3 and 6 of the  
Law and Justice Commission of Pakistan  
Ordinance, 1979**

**Report No.117**

## **AMENDMENT TO SECTIONS 3 AND 6 OF THE LAW AND JUSTICE COMMISSION OF PAKISTAN ORDINANCE, 1979**

The Law and Justice Commission of Pakistan Ordinance, 1979 was promulgated to establish a permanent Law Commission to review laws/statutes on regular and systematic basis for making recommendations for their reformation and modernization. Section 3 of the Ordinance provides for the composition of the Law and Justice Commission of Pakistan. Initially, the section 3 may read as under:-

### **Section 3: Composition of Commission.—**

- (1) There shall be a Law Commission consisting of,—
- (a) the Chief Justice of Pakistan, who shall be the Chairman of the Commission, ex-officio;
  - (b) the Chief justice of the Federal Shariat Court, Member, ex-officio;
  - (c) the Chief Justices of the High Court of Baluchistan, High Court of Sindh, Lahore High Court and Peshawar High Court, Members, ex-officio;
  - (d) the Attorney General for Pakistan, Member, ex-officio;
  - (e) the Secretary, Ministry of Law, Justice and Human Rights, Member, ex-officio;
  - (f) the Chairperson, National Commission on the Status of Women Member, ex-officio;
  - (g) otherFour members, one from each province, to be appointed by the Federal Government, on the recommendation of the Chairman, from amongst eminent lawyers and persons of repute and integrity from civil society.

(1A) In addition to the members referred to in sub-section (1), the Chairman may, in his discretion, appoint a suitable

person or persons as member or members for a specified period to perform specified functions.

(2) The members of the Commission shall be appointed from amongst 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.

(3) A member, other than an ex-officio member, shall hold office for a term of three years but shall be eligible for re-appointment for another term.

(4) A member, other than an ex-officio member, may resign his office by writing under his hand addressed to the President.

The Commission in its meeting dated 18<sup>th</sup> May, 2002 recommended certain amendments in section 3 of the Ordinance, which are as under:-

Amendment of section 3, Ordinance XIV of 1979.— In the said Ordinance, in section 3, for sub-section (1), the following shall be substituted namely.—

- “(1) There shall be a Law and Justice Commission of Pakistan, consisting of,—
- a. the Chief Justice of Pakistan who shall be the Chairman, ex-officio;
  - b. the Chief Justice of Federal Shariat Court, Member, ex-officio;
  - c. the Chief Justice of High Court of Balochistan, High Court of Sindh, Lahore High Court and Peshawar High Court, Members, ex-officio;
  - d. the Secretary, Ministry of Law, Justice and Human Rights, Member, ex-officio;

- e. Not more than four members, one from each province, to be appointed by the Federal Government on the recommendation of the Chairman; and
- f. the Chairman may, in his discretion, appoint a suitable person or persons as Member for a specified period to perform specified function.

The recommendation was sent to the Law and Justice Division for giving it legislative effect but the Law Division revised/redrafted the proposal and the proposed clause (e) of sub-section (1) of section 3 was numbered as clause (g) and the qualification provided for appointment of members, other than the ex-officio was also provided in the said clause. The proposed clause (f) of sub-section (1) of section 3 as recommended by the Commission providing for appointment of suitable persons as members by the Chairman, for a specified period/purpose, was also redrafted by the Division and added the same as sub-section (1A) to section 3 ibid. However, the existing sub-section (2) of section 3 already providing qualifications for appointment of a member of the Commission appointed by the Government left un-repealed which came in conflict with the qualifications of a member provided in clause (g) of sub-section (1) of section 3 in respect of members appointed by the Government. Moreover, the qualifications for appointment of members prescribed in clause (g) of section 3(1) proposed by the Law & Justice Division has limited the scope of selection of members as compared to the qualifications prescribed in sub-section (2) of section 3.

Clause (g) of sub-section (1) and sub-section (2) of section 3 of the Ordinance may be read as follows.—

“(g) four members, one from each Province, to be appointed by the Federal Government, on the recommendation of the Chairman, from amongst eminent lawyers and persons of repute and integrity from civil society.”

Sub-section (2) of section 3 of the LJCP Ordinance:

- (2) The members of the Commission shall be appointed from amongst persons who are or have been holders of a judicial or a administrative office, eminent lawyers or jurists, members of the Council of Islamic Ideology or teachers or law in a university of college.

In view of the foregoing, it is suggested that the qualifications for appointment of Members provided in clause (g) of sub-section (1) of section 3 may be omitted and in their place the qualifications as contained in sub-section (2) of section 3, may be substituted and sub-section (2) of section 3 of the Ordinance may be repealed.

Section 3(1) (c) of the LJCP Ordinance:

- (c) The Chief Justices of the High Court of Balochistan, High Court of Sindh, Lahore High Court and Peshawar High Court, Members, ex-officio;

Islamabad High Court has been established under the Islamabad High Court Act, 2010(Act XVII of 2010) and Chief Justice has also been appointed for the said Court, therefore, it is imperative to amend section 3(1) (c) of the Commission Ordinance to include the Chief Justice, Islamabad High Court as ex-officio member of the Law and Justice Commission of Pakistan.

The Ministry of Law, Justice and Human Rights in its letter No.F.No.4 (10)/2007-L.R dated 31-8-2007 has informed that the Law Reform Commission of Mauritius has approached through the High Commission for Pakistan, Mauritius, seeking an opportunity for mutual cooperation and exchange of views on their projects and in the performance of their functions and in particular, focuses on exchange/cooperation program with the Law and Justice Commission of Pakistan.

Section 6 of the Law and Justice Commission Ordinance, 1979 enumerates the functions of the Commission but it does not authorize the Commission to enter/sign Memorandum of Understanding (MoU) with Law Commission of other country. In order to authorize the Commission to sign MoU with the Foreign

Law Commissions, it is proposed that a new sub-section (6) to section 6 of the Ordinance may be added as follows;

- “(6) The Commission may, with the approval of the Federal Government, enter into a Memorandum of Understanding with the Law Commission of any country or, as the case may be, with any legal or human rights body or organization of any country to—
- i. collaborate, cooperate and participate through consultation in carrying out legal research in connection with their respective functions;
  - ii. facilitate one another in the collection of data and materials in conducting legal research;
  - iii. have bilateral and reciprocal exchange of reports, research material and other publications;
  - iv. facilitate visits, training and exchange of delegates, members and officers of the respective Commissions or, as the case may be, the respective law or human rights body or organization; and
  - v. mutually agree, on case by case basis, on financial arrangements for holding meetings undertaking exchange visits and other activities as envisaged in the Memorandum of Understanding.

The Government of Pakistan has established \$ 24 million Access to justice Development Fund as a statutory endowment to address the budgetary constraints being faced by the law and justice sector institutions. The prime object of this endowment is to support and strengthen the professional functionality and service delivery component of the courts through legal empowerment. Section 6-A of the Law and Justice Commission of Pakistan Ordinance, 1979 prescribes resources for creation and maintenance of the AJDF. The principal amount of the Fund is meant for investment in the Government approved schemes to generate income to meet the purposes of the Fund. Section 6B of

the Ordinance prescribes the mode of utilization of the annual income generated through investments. The said section is reproduced here in below:-

**6B. Expenditure to be charged on the Fund.—** The annual income generated by investment of endowment grant under clause (a) of sub-section (2) of section 6-A shall be utilized for the purposes and to the extent provided as hereunder;

- (a) 60.3% shall be allocated to the provinces on population basis to be called Provincial Judicial Development Fund for improving the capacity and performance of the subordinate courts and providing amenities and facilities to courts and litigants, as may be determined by the respective High Court(s);
- (b) 10% shall be set aside for special projects in the under-developed Provinces and regions;
- (c) not more than 4.5% on Legal and Judicial Research;
- (d) not more than 4.5% on the activities of the Federal Judicial Academy not covered by its budgetary allocation;
- (e) not more than minimum of 13.5% with a cap of 20% for the legal empowerment of the poor and underprivileged persons for provision of legal aid or assistance to have access to justice, in accordance with the criteria to be laid by the Commission;
- (f) not more than minimum of 4.5% with a cap of 10% to be spent on innovations in or promotion of legal education;
- (g) 2.7% shall be charged by the Commission for management of the Fund:

Provided that an amount allocated under clauses (a) to (g) if not spent for any category shall be carried forward for the same purposes for the next two years;

- (h) all other fund other than provided in clause (a) of sub-section(2) of section 6-A and the proceeds thereof, shall be utilized by the Commission for discharging its duties and functions under this Ordinance.

The Clause (d) of section 6B of the Ordinance states that 4.5% of the annual income would be spent on the activities of the Federal Judicial Academy, which are not covered under its budgetary allocation. The AJDF Rules, 2002 specify that the money available under this window can be spent to promote the efficiency of the courts by improving skills of the Judicial Officers through pre and in-service training programs. The Federal Judicial Academy is responsible to ensure utilization of this amount in accordance with the schemes approved by the Governing Body, AJDF in the light of the Access to Justice Development Fund Rules, 2002 and Accounting Procedures of AJDF 2005. Precisely stated that purpose of this window is to support following activities.

- (i) Training programs for the judiciary including mobile training arrangements and facilities;
- (ii) Development of new courses, especially attempts at innovations; and
- (iii) Training and education of the administrative and other staff dealing with case flow management, budget, planning, information system and record management.

It is noteworthy to mention here that despite lapse of considerable time, the Federal Judicial Academy has not forwarded any substantial project/proposal to get its allocated share. According to proviso to sub-section (1) of section 6B an amount allocated to any window is if not spent for that very category should be carried forward for same purpose for the next two year;

therefore, the share of FJA is accumulating without any use which is against the spirit of the Fund.

The Federal Judicial Academy vide letter No.F.14(157)/2007-FJA dated 18<sup>th</sup> January 2008 informed that the Board of Governors of the Academy in its meeting held on 5<sup>th</sup> January 2008, decided that the FJA did not need its 4.5% share of Access to Justice Development Fund. The matter was placed before the Governing Body of AJDF in its meeting dated 16 May, 2009. The Hon'ble Chief Justice of Pakistan/Chairman, LJPC after discussion directed that the issue be placed before the Board of Governors of Federal Judicial Academy (FJA) for reconsideration so that the matter may be settled once for all. The Hon'ble Chairman further directed that the Registrar, Supreme Court/Secretary, LJCP may also attend the said meeting. Accordingly, the issue was placed before the Board of Governors of the Academy in its meeting held on 6<sup>th</sup> June, 2009. The Board of Governors approved that the Academy must get its due share of AJDF from the LJCP for promotion and strict enforcement of National Judicial Policy, Mobile Training of Judicial Officers, for conversion of the FJA into Centre of Excellence and for Training of Non-Judicial Personnel, Para-Legal Staff, Prosecutors and Defense Lawyers.

It is pertinent to mention here that in order to promote awareness about AJDF, the LJCP organized a series of workshops across the country. The workshops were chaired by the Chief Justices of the Provincial High Courts and attended by stakeholders of the law and justice sector including judges of the High Courts, representatives of the Judicial Academies, Legal academia, members of the Bar, Civil Society Organizations and Media.

During deliberations, it was strongly recommended that Provincial Judicial Academies may be included in the subject window to get funds for expenditures on innovative judicial training module. As the High Courts are arranging pre and in service training programs through Provincial Judicial Academies; therefore, it would be better that funds under the subject window may also be made available for the Provincial Judicial Academies rather entertaining their project proposal through or the collaboration of FJA, Islamabad.

In view of the above, it is recommended that clause (d) of section 6B of the Ordinance may be amended to enable the Provincial Judicial Academies to access funds from the said window.

Accordingly, the following proposals were placed before the Law and Justice Commission for deliberations.

### COMPARATIVE TABLE

Existing	Proposed
<p><b>Section 3.Composition of Commission:-</b>“(1) There shall be Law and Justice Commission of Pakistan, consisting of.—</p>	No change
<p>(a) The Chief Justice of Pakistan who shall be the Chairman, ex-officio;</p>	No change
<p>(b) The Chief Justice of Federal Shariat Court, Member, ex-officio;</p>	No change
<p>(c) The Chief Justice of High Court of Balochistan, High Court of Sindh, Lahore High Court and Peshawar High Court, Members, ex-officio;</p>	<p>(c) The Chief Justice of High Court of Balochistan, High Court of Sindh, Lahore High Court, Peshawar High Court, <b>and Islamabad High Court</b>, Members, ex-officio;</p>
<p>(d) Attorney General of Pakistan, Member, ex-officio;</p>	No change
<p>(e) The Secretary, Ministry of Law, Justice and Human Rights, Member, ex-officio;</p>	No change

<p>(f) Chairperson, National Commission of the Status of Women Member, ex-officio;</p> <p>(g) four members, one from each province, to be appointed by the Federal Government on the recommendation of the Chairman form amongst eminent lawyers and persons of repute and integrity form civil society.</p> <p>(2) The members of the Commission shall be appointed from amongst person 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.</p> <p><b>6. Function of the Commission.-</b></p> <p>(1) _____</p> <p>(2) The Commission shall take appropriate measures for—</p> <p>(a) developing and augmenting human resources for efficient</p>	<p>No change</p> <p>(g) four members, one from each province, to be appointed by the Federal Government on the recommendation of the Chairman form amongst the <b>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.</b></p> <p>(2) <b>Repealed.</b></p> <p>No Change</p>
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<p>court administration and case management;</p> <p>(b) co-ordination of judiciary and executive; and</p> <p>(c) preparing schemes for access to justice, legal aid and protection of human rights.</p> <p>(3) The Commission shall administer and manage the Access to Justice Development Fund;</p> <p>(4) The Commission shall study the present system of legal education and make recommendations to the Federal Government for improving the standard of legal education.</p> <p>(5) The Federal Government or a Provincial Government may refer to the Commission any matter relevant to its functions for opinion and advice.</p>	<p>No Change</p> <p>No Change</p> <p>No change</p> <p><b>(6) The Commission may, with the approval of the Federal Government, enter into a Memorandum of Understanding with the Law Commission of any country or, as the case may be, with any legal or human rights body or organization of any country to-</b></p> <p><b>i. collaborate,</b></p>
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	<p>cooperate and participate through consultation in carrying out legal research in connection with their respective functions;</p> <p>ii. facilitate one another in the collection of data and materials in conducting legal research;</p> <p>iii. have bilateral and reciprocal exchange of reports, research material and other publications;</p> <p>iv. facilitate visits, training and exchange of delegates, members and officers of the respective Commissions or, as the case may be, the respective law or human rights body or organization; and</p> <p>v. mutually agree, on case by case basis, on financial arrangements for holding meetings undertaking exchange visits and other activities as envisaged in the Memorandum of Understanding.</p>
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<p><b>6B. Expenditure to be charged on the Fund.—</b> The annual income generated by investment of endowment grant under clause (a) of sub-section (2) of section 6-A shall be utilized for the purposes and to the extent provided a hereunder;</p> <p>(a) 60.3% shall be allocated to the provinces on population basis to be called Provincial Judicial Development Fund for improving the capacity and performance of the subordinate courts and providing amenities and facilities to courts and litigants, as may be determined by the respective High Court(s);</p> <p>(b) 10% shall be set aside for special projects in the under-developed Provinces and regions;</p> <p>(c) not more than 4.5% on Legal and Judicial Research;</p> <p>(d) not more than 4.5% on the activities of the Federal Judicial Academy not covered by its budgetary allocation;</p>	<p>No Change</p> <p>No Change</p> <p>No Change</p> <p>No Change</p> <p>(d) not more than 4.5% on the activities of the Federal <b>and Provincial Judicial Academies</b> not covered under their regular budget;</p> <p>No Change</p>
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<p>(e) not more than minimum of 13.5% with a cap of 20% for the legal empowerment of the poor and underprivileged persons for provision of legal aid or assistance to have access to justice, in accordance with the criteria to be laid by the Commission;</p>	<p>No Change</p>
<p>(f) not more than minimum of 4.5% with a cap of 10% to be spent on innovations in or promotion of legal education;</p>	<p>No Change</p>
<p>(g) 2.7% shall be charged by the Commission for management of the Fund:  Provided that an amount allocated under clauses (a) to (g) if not spent for any category shall be carried forward for the same purposes for the next two years;</p>	<p>No Change</p>
<p>(h) all other fund other than provided in clause (a) of sub-section (2) of section 6-A and the proceeds thereof, shall be utilized by the Commission for discharging its duties and functions under this Ordinance.</p>	<p>No Change</p>

### **Commission's deliberations on 4<sup>th</sup> June, 2011**

The Commission examined the existing sub-section (2) of section 3 of the Ordinance, which provides qualifications for appointment of a member of the Commission and resolved that this sub-section is in conflict with the qualification of a member as provided in clause (g) of sub-section (1) of section 3 of the Ordinance. Therefore, it was recommended that the qualification for appointment of Members, as provided in clause (g) of sub-section (1) of section 3 of the Ordinance shall be omitted and in its place the qualification contained in sub-section (2) of section 3 of the Ordinance may be substituted and sub-section (2) of section 3 of the Ordinance be repealed.

The Commission also recommended to amend section 3(1) (c) of the Ordinance to include the Chief Justice of the Islamabad High Court as ex-officio member of the Law and Justice Commission of Pakistan. It was further recommended that a new sub-subsection (6) to section 6 of the Ordinance, 1979 shall be added to authorize the Commission to collaborate and sign Memorandum of Understanding (MoU) with any foreign Law Commission as it will provide an opportunity for conducting research.

Further, the Commission also recommended amendment in clause (d) of section 6B of the Ordinance to enable the Provincial Judicial Academies to access funds from the said window for spending on activities not covered under their regular budget.

Draft Bill for amendment of the Law and Justice Commission of Pakistan Ordinance, 1979 is hereby enclosed.

**A**

**Bill**

*further to amend the Law and Justice Commission of Pakistan,  
Ordinance, 1979*

WHEREAS it is expedient further to amend the Law and Justice Commission Ordinance, 1979 (XIV of 1979) for the purposes hereinafter appearing;

It is hereby enacted as follows:-

**1. Short title and commencement.**— (1) This Act may be called the Law and Justice Commission of Pakistan (Amendment) Act, 2011.

(2) It shall come into force at once.

**2. Amendment of section 3, Ordinance XIV of 1979.**—In the Law and Justice Commission of Pakistan Ordinance, 1979 (XIV of 1979) hereinafter referred to as the said Ordinance, in section 3,—

(a) In sub-section (1) for clause (c) the following shall be substituted, namely:-

“(c) the Chief Justices of the High Courts, Members, ex-officio;”

(b) In sub-section (1) for clause (g) the following shall be substituted, namely:-

“(g) four members, one from each province, to be appointed by the Federal Government, on the recommendation of the Chairman from amongst the 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.”

(c) Sub-section (2) shall be omitted.

**3. Amendment of section 6, Ordinance XIV of 1979.**—In the said Ordinance, in section 6, after sub-section (5), the following new sub-section shall be inserted, namely;—

“(6) The Commission may, with the approval of the Federal Government, enter into a Memorandum of Understanding with the Law Commission of any country or, as the case may be, with any legal or human rights body or organization of any country to:-

- a. collaborate, cooperate and participate through consultation in carrying out legal research in connection with their respective functions;
- b. facilitate each other in the collection of data and materials in conducting legal research;
- c. have bilateral and reciprocal exchange of reports, research material and other publications;
- d. facilitate visits, training and exchange of delegates, members and officers of the respective Commissions or, as the case may be, the respective law or human rights body or organization; and
- e. mutually agree, on case by case basis, on financial arrangements for holding meetings undertaking exchange visits and other activities as envisaged in the Memorandum of Understanding.”

**4. Amendment of section 6-B, Ordinance XIV of 1979.**—In the said Ordinance, in section 6-B, in clause (d), the words “Federal Judicial Academy” the words “Federal and Provincial Judicial Academies” shall be substituted.