

Repeal of the Federal Court Act, 1937

Report No.121

REPEAL OF THE FEDERAL COURT ACT, 1937

The Federal Court Act, 1937, (Act No. XXV of 1937) was enacted for the purpose to empower the Federal Court to make rules for regulating the service of processes issued by the Court. The said Act is still holding the field and from perusal of its provisions, it reveals that the said Act has only two sections. Section 1 provides its name and section 2 of the Act provides the supplemental power for rule making vested in the Federal Court. Section 2 of the said Act is reproduced hereunder:-

2. The Supreme Court may make rules for regulating the service of processes issued by the Court, including rules requiring High Court from which an appeal has been preferred to the Supreme Court to serve any process issued by the Supreme Court in connection with that appeal.

The Supreme Court of Pakistan was established on 2nd March, 1956 under the Constitution of the Islamic Republic of Pakistan, 1956. The Supreme Court of Pakistan, in fact, succeeded the Federal Court of Pakistan, which was established in 1948 under the Federal Court of Pakistan Order, 1948. The Federal Court of Pakistan, in turn, was successor to the Federal Court of India, as it was established in 1937, under the Government of India Act, 1935. The last amendment in the said Act had been made by A.O. 1961 in Article 2 by which name of the Federal Court was substituted with the Supreme Court and after lapse of longtime, neither any amendment is made therein nor the said Act has been repealed.

Article 191 of the Constitution of the Islamic Republic of Pakistan, 1973 conferred the powers upon the Supreme Court of Pakistan for making of the rules for regulating the practice and procedure of the Supreme Court of Pakistan. Article 191 of the Constitution of the Islamic Republic of Pakistan, 1973 is reproduced hereunder.

Article 191

“Subject to the Constitution and law, the Supreme Court may make rules regulating the practice and procedure of the Court”.

In exercise of the powers conferred under Article 191 of the Constitution of the Islamic Republic of Pakistan, 1973 the Supreme Court has made/framed the rules on 20th November, 1980 and has also revoked the earlier rules viz:- Supreme Court Rules, 1956. Rule 1 to 3 of Order XXIX of Part VII and rule 1 to 7 of Order XXXI of the Supreme Court Rules, 1980 provides comprehensive mechanism for service upon the Attorney General, Advocate General or any other person. Above referred rules are reproduced hereunder:-

ORDER XXIX

Rule 1. The Court may direct notice of any proceedings to be given to the Attorney-General or to the Advocate-General of any Province, and the Attorney-General or the Advocate-General to whom such notice is given may appear, and shall do so if required by the Court.

Rule 2. The Attorney-General or the Advocate-General of any Province may apply to be heard in any proceedings before the Court and the Court may, if in its opinion the Justice of the case so requires, permit the Attorney-General or nay Advocate-General so applying to appear and be heard, subject to such terms as to costs or otherwise as the Court may think fit.

Rule 3. For the purpose of this Order, the expression "Attorney-General of Pakistan" includes a Deputy Attorney-General.

ORDER XXXI

Rule 1. Except where otherwise provided by Statute or prescribed by these Rules, all notices, orders or other documents required to be given to, or served on, any person shall be served in the manner provided by the Code for the service of summons.

Rule 2. Service of any notice, order or other document on the Advocate-on-Record of any party may be effected by delivering it to the Advocate-on-Record or by leaving it at his

place of business, or by sending to his address by registered post.

Rule 3. Service of any notice, order or other document upon a person, other than an Advocate-on-Record, residing at a place within the territories of Pakistan, between which place and the seat of the Court there is communication by registered post, may be effected by posting a copy of the document required to be served in a pre-paid envelope registered for acknowledgement, addressed to the party or person at the place where he ordinarily resides.

Rule 4. A document served by post shall be deemed to be served at the time at which it could have been delivered in the ordinary course of post.

Rule 5. Except where the notice or process has been served through the Registry, the party required to effect the service shall file an affidavit of service, alongwith such proof thereof as may be available, stating the manner in which the service has been effected.

Rule 6. Where the notice, order or other document has been served through another Court, the service may be proved by the deposition of affidavit of the serving officer made before the Court through which the service was effected.

Rule 7. Service effected after Court hours shall for the purpose of computing any period of time subsequent to that service be deemed to have been effected on the following day.

Conclusion

The Supreme Court Rules, 1980 are in existence and provide the rules as mentioned in Para No. 4, as such, in the circumstances and existing position, the Federal Court Act, 1937 has lost its application and effectiveness, therefore, has become redundant and obsolete law, as such, no longer required to be kept on the Statute Book. It is, therefore, proposed on the basis of

foregoing reasons that the Commission may make recommendation to the Federal Government for repeal of the Federal Court Act, 1937 (Act No. XXV of 1937).

Commission's deliberation on 4th June, 2011

The Commission deliberated that pursuant to enactment of the Supreme Court Rules, 1980, the Federal Court Act, 1937 (Act No. XXV of 1937) has lost its effectiveness and become redundant. Therefore, it was recommended to repeal the Federal Court Act, 1937 (Act No. XXV of 1937). Draft Bill for amendment of the law is hereby enclosed.

A

Bill

To Repeal the Federal Court Act, 1937

WHEREAS it is expedient to repeal the Federal Court Act, 1937, (XXV of 1937).

It I hereby enacted as follows:-

1. Short title and commencement.— (1) This Act may be called the Federal Court (Repeal) Act, 2011.

(2) It shall come into force at once.

2. Repeal of Federal Court Act, 1937, (Act No. XXV of 1937).— The Federal Court Act, 1937, (XXV of 1937) is hereby repealed.

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