

# **Strengthening the Capacity and Expanding the Functions of Pakistan Law Commission**

## **Report No. 45**

### **Strengthening the Capacity and Expanding the Functions of Pakistan Law Commission**

Under an MoU signed between the Government of Pakistan and the Asian Development Bank, the Bank has extended a loan of US \$ 350 million for the Access to Justice Programme to strengthen the capacity of the relevant institutions namely superior/subordinate courts, Federal Law & Justice Ministry, Provincial Law Departments, Pakistan Law Commission, Federal Judicial Academy, Federal/Provincial Police Departments, Federal/Provincial/District Public Safety Commissions, Federal/Provincial/ District Ombudsmen and Bar Councils/Bar Associations, etc. The Programme also envisages the reformation and modernisation of civil/criminal laws, delay reduction strategy for courts and raising the quality of legal profession and legal education.

The Access to Justice Programme envisages certain amendments to the Law Commission Ordinance to strengthen its capacity and assign it some additional functions including the management of Access to Justice Development Fund (AJDF). A sum of US \$ 25 million has been allocated as a seed money for the AJDF, and only the interest accrued on the said amount, is to be expended on provision of amenities to the subordinate courts, training at Federal Judicial Academy, improvement of legal education, legal empowerment, legal/judicial research and legal aid/assistance. The Asian Development Bank document (RRP: PAK 32023) Report and Recommendation of the President to the Board of Directors on Proposed Loans and Technical Assistance Grant to the Islamic Republic of Pakistan for the Access to Justice Program (November 2001) speaks of expanding the role and mandate of the Law Commission in promoting access to

justice. Para 68 of the document states:

It is stated that to support national policymaking for the administration of justice, the mandate of the Law Commission will be expanded to include the administration of justice and its composition expanded to include chief justices, as ex-officio members, and adequate representation of other stakeholders. Among other things, the Law Commission (LC) will focus on issues relating to the administration of justice, such as (i) the working of the civil and criminal justice systems; (ii) penal policy; (iii) initiatives, including research on existing laws and regulations, to reduce the vulnerability to the poor; (iv) from a public perspective, issues of finance and administration relating to the justice system, to support adequate funding of justice institutions and their efficient working; and (v) a special purpose fund called the Access to Justice Development Fund (AJDF). The LC will be able to access the research and development fund of the AJDF. In addition, to promote regular review and coordination of judicial policy, a national judicial policymaking body will also be formed for policies within the exclusive sphere of the courts. This body will be formed in consultation with the chief justices of the superior courts so the principle of independence of the judiciary is fully respected.

The Asian Development Bank document also contains a letter, Development Policy Letter of the Minister for Finance, Government of Pakistan addressed to the President of Asian Development Bank, which affirm the commitment of the Government of Pakistan to bring about necessary amendments in the Law Commission Ordinance with a view to strengthening its capacity and improve its performance. The letter states:

The Government affirms the constitutional provisions relating to the independence of the judiciary. Accordingly, the Government has taken a historical decision to fulfill the constitutional mandate of separating the judiciary from the executive by placing all executive magistrates under the control and supervision of the judiciary. The Government also recognizes that in the past inadequate attention has been given to administration of justice and judicial policymaking. Accordingly, the mandate of the Law Commission will be expanded together with its composition to include the chief justices of the High Courts as ex-officio members. The reformed Law Commission will be provided adequate financial and human resources to carry out its mandate. In addition, a national judicial policy making body will also be established that is acceptable to the Chief Justices of the superior courts.

An envisaged in the Access to Justice Programme, the Secretariat prepared a Working Paper on the proposed amendments in the Commission's Ordinance for consideration of the Commission. The Commission in its meeting held on 30 March 2002 discussed the Paper and after deliberations

set-up a Committee comprising the Chief Justices of 4 High Courts and Secretary, Law & Justice Division to further examine the proposal and present report to the Commission. In the light of observations of the Commission, a revised draft was prepared for the Committee. In the revised draft, the present composition of the Commission was by and large retained and some additional functions, as envisaged in the Access to Justice Programme, assigned to the Commission. The salient features of the revised draft were:

- (1) The name is changed from "Law Commission" to "Law and Justice Commission of Pakistan".
- (2) The present composition of the Commission remains intact.
- (3) The membership of the Chief Justice, Federal Shariat Court and 4 Chief Justices of provincial High Courts has been formalised by mentioning them as ex-officio members.
- (4) A Chief Justices' Committee, headed by the Chief Justice of Pakistan and comprising the Chief Justice of Federal Shariat Court and 4 Chief Justice of provincial High Courts, has been constituted to coordinate and harmonise judicial policy, and in coordination with the Commission, ensure its implementation.
- (5) The Commission may constitute committees of one or more of its members to consider any matter and report to the Commission.
- (6) The following functions have been added to the draft in respect of judicial administration:
  - (a) improving the capacity and performance of the administration of justice;
  - (b) setting standards for Judicial officers and persons associated with performance of judicial/quasi judicial function
  - (c) co-ordination between the judiciary and executive authorities of the Federal Government and provincial governments on administrative, financial and other related matters;
  - (d) set management information system for the courts and develop human resources for efficient court administration and management of case flow;
  - (e) improvement in the terms and conditions of service of judicial officers and court staff, to ensure skilled and efficient judiciary;
  - (f) prepare and operate schemes for access to justice, legal aid and protection of human rights; and

(g) publication of the reports of the Supreme Court, Federal Shariat Court, High Courts and Courts subordinate to High Courts, Administrative Courts and Tribunals.

(7) The Commission will manage the Access to Justice Development Fund of US \$ 25 million. Only the income generated from this amount is to be expended under the following heads:

(i) 67% has been allocated for providing amenities in subordinate courts, facilities for litigants and financial incentive to judges, as determined by the respective High Court;

(ii) 5% for legal empowerment;

(iii) 5% for legal and judicial research;

(iv) 5% for Federal Judicial Academy

(v) 5% for improvement/innovations in legal education;

(vi) 3% for the Law Commission, as expenses for managing the Fund;

(vii) The Commission may also receive grants/donations and raise sums for utilization in discharging its functions.

(8) The reports of the Commission requiring legislative/executive action shall be placed before the Federal or Provincial Cabinet, as the case may be, and

(9) The Commission and the Chairman may, subject to such conditions and limitations as may be specified, delegate their powers under the Ordinance to a Member or an Officer of the Secretariat.

The Committee in its meeting on 18 May 2002, chaired by the Chief Justice of Pakistan considered the draft and approved the same with appropriate changes. The report of the Committee was also considered by the Commission on the same day and approved with minor modifications. The approved draft (Annex-I) was forwarded to the Government for implementation.

**AN  
ORDINANCE**

to amend the Law Commission Ordinance, 1979

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

**AND WHEREAS** the President is satisfied that circumstances exist which render it necessary to take immediate action;

**NOW, THEREFORE**, in pursuance of the Proclamation of Emergency of the fourteenth day of October, 1999, and the Provisional Constitution Order No. 1 of 1999, read with the Provisional Constitution (Amendment) Order No. 9 of 1999, and in exercise of all powers enabling him in that behalf, the President of the Islamic Republic of Pakistan is pleased to make and promulgate the following Ordinance: -

**1. Short title and commencement.** --(1) This Ordinance may be called the Law Commission (Amendment) Ordinance, 2002.

(2) It shall come into force at once.

**2. Amendment of long title, preamble and short title, Ordinance XIV of 1979**

In the Law Commission Ordinance, 1979 (XIV of 1979), hereinafter referred to as the said Ordinance, in the long title, preamble and short title, for the words "Law Commission" the words "Law and Justice Commission of Pakistan" shall be substituted.

**3. Amendment of Section 2, Ordinance XIV of 1979.** - In the said Ordinance, in section 2, in clause (b), the word "and" shall be omitted and the existing clause (c) shall be renumbered as clause (d) and before the aforesaid amended clause, the following clause shall be inserted, namely; -

"(c) Fund.- means Access to Justice Development Fund established under section 6-A; and"

**4. 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 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 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 functions.

**5 Amendment of Section 6, Ordinance XIV of 1979.** - In the said Ordinance, in section 6, the existing sub-sections (2) and (3) shall be renumbered as sub-sections (4) and (5) and before these sub-sections as amended the following new sub-sections shall be inserted;-

“(2) The Commission shall take measures for-

(a) developing human resources for efficient court administration and management of case flow;

(b) co-ordination between the judiciary and executive authorities of the Federal Government and provincial governments on administrative, financial and other related matters; and

(c) preparing and operating schemes for access to justice, legal aid and protection of human rights.

The Commission shall manage the Access to Justice Development Fund;

**6.Insertion of new Sections, Ordinance XIV of 1979.** - In the said Ordinance, after section 6 as amended, the following new sections shall be inserted, namely; -

“6-A. **Fund.** - **(1) There shall be established for the purposes of this Ordinance a fund to be called the Access to Justice Development Fund.**

(2) The fund shall consist of. -

- (a) an endowment grant of initial amount equivalent to US \$25 million by the Federal Government in installments;
- (b) other grants and donations made by the Federal Government, Provincial Government or a Local Government;
- (c) donations and contributions made by the individuals or institutions;
  
- (d) sums raised by the Commission;

**6-B. 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 charged for the purposes and to the extent hereinafter indicated for meeting the expenses or its distribution to. -

- (a) 67% 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 Courts.
  
- (b) not more than 5 % on Legal and Judicial Research.
  
- (c) not more than 5 % on the activities of the Federal Judicial Academy not covered by its budgetary allocation.
  
- (d) not more than minimum of 15 % 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;
  
- (e) not more than minimum of 5 % with a cap of 10% to be spent on innovations in or promotion of legal education.
  
- f) 3% shall be charged by the Commission for management of the Fund

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

- (g) 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.

**6-C Chief Justices Committee.** - There shall be a Chief Justices Committee headed by the Chief Justice of Pakistan and comprising the Chief Justice, Federal Shariat Court and Chief Justices of four Provincial High Courts to coordinate and harmonize judicial policy within the court system, and in coordination with the Commission, ensure its implementation. The Committee shall also perform the functions, namely: -

- (a) improving the capacity and performance of the administration of justice;
- (b) setting performance standards for Judicial officers and persons associated with performance of judicial/quasi judicial functions;
- (c) improvement in the terms and conditions of service of Judicial officers and court staff, to ensure skilled and efficient judiciary, and
- (d) publication of the annual or periodic reports of the Supreme Court, Federal Shariat Court, High Courts and Courts subordinate to High Courts, Administrative Courts and Tribunals.

**6-D Constitution of Committees.**- The Commission may constitute committees consisting of one or more of its members, as it thinks fit, and may refer to them any matter relevant to the functions of the Commission for consideration and report.

**6-E Reports.** - The Commission shall publish an annual report of its activities and such other periodic or special reports requiring legislative or implementation effect as it may consider necessary.”.

**General  
Pervez Musharraf  
President**

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{Note.- The Commission approved the above draft Ordinance, subject to an observation that keeping in view the high stature of the Chief Justices' Committee, envisaged in section 6 (c), it is appropriate that the said Committee is created through a separate Ordinance}.