

**MECHANISM FOR POST LEGISLATIVE SCRUTINY: PAKISTAN'S CASE  
STUDY**



**Supervised By**

**Dr. Atta Ullah Khan Mehmood Wattoo**  
Assistant Professor of Law

**Submitted By**

**AZHAR SIDDIQUE**  
113-SF/PHDLAW/S19

**Department of Law**  
*Faculty of Shariah & Law*  
International Islamic University, Islamabad.



## **FINAL APPROVAL**

**It is certified that we have read the dissertation submitted by Azhar Siddique, Registration No. 113-SF/PHDLAW/S19 on the topic “Mechanism For Post Legislative Scrutiny: Pakistan’s Case Study” in the Faculty of Shariah& Law. We have evaluated the dissertation and found it up to the requirements in its scope and quality by the International Islamic University, Islamabad for award of PhD Law Degree.**

## **VIVA-VOCE EXAMINATION COMMITTEE**

### **1. SUPERVISOR:**

**Dr. Atta Ullah Khan MehmoodWattoo**

**Assistant Professor of Law,**

**International Islamic University, Islamabad.**

### **2. INTERNAL EXAMINER:**

### **3. EXTERNAL EXAMINER-I:**

### **4. EXTERNAL EXAMINER-II.**

Azhar Siddique

©

2025

---

*All Rights Reserved.*

## TABLE OF CONTENTS

Declaration.....	xi
Dedication.....	xii
Acknowledgments.....	xiii
Abbreviations.....	xiv
List of cases.....	xv
Abstract.....	xvi
Introduction.....	1
Introduction of topic.....	2
Significance .....	4
Research questions.....	5
Research Objectives.....	6
Hypothesis.....	7
literature Review.....	8
Methodology.....	14
Scheme of chapters.....	16
1.    CHAPTER 1: EXORDIUM OF LEGISLATIVE FUNCTION: .....	18
1.1.    Introduction: .....	18
1.1.1.    Definition of “Pakistan law” as per “General Clauses Act, 1897”:.....	19
1.2.    Theoretical framework of PLS:.....	20
1.3.    Overview of Thesis: .....	22
1.3.1.    Concept of Legislation:.....	24
1.4.    Types of legislation .....	25
1.4.1.    Legislative Functions:.....	28
1.4.2.    Legislative instruments:.....	29
1.4.3.    Legislative Institutions:.....	30
1.4.4.    Legislative Procedure in Pakistan:.....	39
1.5.    Primary Federal and Provincial Legislations: .....	47
1.6.    Federal Laws: .....	47
1.7.    Significance of Legislative Institutions:.....	48
1.8.    Vitality of legislation:.....	50
1.9.    Separation of power .....	51
1.9.1.    Concept of Separation of Power: .....	51
1.9.2.    Strength of Separation of Power:.....	52
1.10.    Legislative Function Viz a viz Theory of Separation:.....	54
1.10.1.    Role of Legislatures:.....	54
1.10.2.    The Development and The Role of Legislature.....	55

1.11.	Role of Judiciary.....	57
1.12.	Conclusion:.....	63
2.	CHAPTER 2 FOUNDATION OF PLS:.....	65
2.1.	Introduction:.....	65
2.2.	Scrutiny:.....	66
2.1.1.	Legislative Scrutiny:.....	67
2.1.2.	Aims and Objectives of Scrutiny:.....	67
2.2.	Input of Legislative Committee on Scrutiny:.....	69
2.4.	Legislative scrutiny:.....	72
2.4.1.	What is Post Legislative Scrutiny (PLS):.....	72
2.4.2.	PLS and Function of Parliament.....	72
2.4.3.	Oversight Character of Legislature: Warranting Administrative Body Responsibility ...	73
2.4.4.	The Committee Arrangement: Consolidating the Monitoring Role of Parliaments	74
2.5.	Pre-Legislative Scrutiny: How Can Citizens Be More Actively Involved .....	75
2.5.1.	Law Making Requires Deliberation, Scrutiny:.....	76
2.6.	What Can We Expect from The Pre-Legislative Scrutiny Phase:.....	77
2.7.	What Next Steps Will the Bill Face Before It Becomes Law:.....	78
2.7.1.	Pre-Legislative Scrutiny of Bill of Rights:.....	79
2.7.2.	The Pre-Legislative Scrutiny of the Draft Planning & development Bill 2022 Ireland:..	80
2.8.	Government Should Give Parliament Proper Power to Scrutinize Legislation :.....	81
2.9.	Post Legislative Scrutiny.....	84
2.9.1.	The Framework for Post Legislative Scrutiny .....	84
2.9.2.	What Is Relevancy of Parliament with PLS:.....	85
2.9.3.	Selection of Laws to Be Made the Subject of PLS:.....	86
2.9.4.	Post Legislative Scrutiny as a Source of Tracking the Curtailed Concerns: .....	88
2.9.5.	Which Questions Are Addressed in Exposit Facto Examination of the Enactment: .....	89
2.9.6.	Operational Stages in Forming Post Legislative Scrutiny in Parliament:.....	93
2.9.7.	Identification of The Agencies of Implementation and Related Stake Holders: ..	101
2.10.	Conclusion:.....	109
3.	CHAPTER 3. PRINCIPLES OF POST LEGISLATIVE SCRUTINY .....	111
3.1.	Introduction:.....	111
3.2.1.	Ten fundamental principles under the London declaration:.....	113
3.3.	Scope, Mandate, Participants, Process and Timing of PLS:.....	116

3.4.	Scope, Mandate, Participants, Process and Timing of PLS in workshop by PIPS: .....	117
3.4.1.	Mandate: .....	118
3.4.2.	Scope for PLS by Parliaments .....	123
3.4.3.	Participants for PLS by Parliament.....	128
3.4.4.	Processes to Be Adopted by Parliaments for Post-Legislative Scrutiny.....	131
3.4.5.	Timing for Post-Legislative Scrutiny by Parliaments:.....	136
3.5.	Post-legislative scrutiny in Indonesia:.....	138
3.5.1.	External Support .....	140
3.5.2.	Strengths, Benefits and Challenges of PLS for the DPR .....	140
3.6.	Case study, “Post Legislative Scrutiny Report on Myanmar Microfinance Law 2011”: ..	141
3.7.	Global practices on PLS by committees in different parliaments:.....	143
3.7.1.	Passive School of Thought.....	144
3.7.2.	Informal Scrutinizers .....	145
3.7.3.	Formal Scrutinizer School of Thought .....	147
3.7.4.	Independent Scrutinizers.....	149
3.8.	Application of PLS by Assembly of the Republic of Kosovo.: .....	151
3.9.	Methodology for ex post evaluation for legislation .....	153
3.10.	Challenges of the Assembly in Post Legislative Scrutiny .....	154
3.11.	PLS Case studies: .....	155
3.11.1.	Successful PLS: .....	155
3.12.	PLS Case studies: Anti-Terrorism Legislation in the UK: .....	155
3.12.1.	Successful PLS.....	155
3.13.	Conclusion:.....	157
4.	CHAPTER 4: PROCESS OF LEGISLATIVE SCRUTINY AND PAKISTAN: .....	159
4.1.	Introduction: .....	159
4.2.	Pakistan and Legislative Scrutiny: .....	161
4.2.2.	PLS the Process to Monitor the Implementation and Evaluating the Impacts of Law ..	163
4.3.	Effect of Repeal as form of PLS indicated by Constitution of Pakistan:.....	164
4.3.1.	“General Clauses Act 1897”:.....	166
4.4.	Knowledge Sharing Session on Post Legislative Scrutiny & Delegated Legislation: .	167
4.5.	Environmental Protection Act 1997 under PLS in a Blog: .....	168
4.6.	Implementation Status of Environmental Laws:.....	187
4.7.	Responsibility methods, gender developmental perspective and PLS:.....	191

4.8.3 <sup>rd</sup> Meeting Sub-Committee on Post-Legislative Scrutiny (PLS) With Anthro Insights:..	193
4.9.4 <sup>th</sup> Meeting of the Sub-Committee on Post-Legislative Scrutiny (PLS) With NCRC: .....	193
4.10. Women Laws in Pakistan .....	195
4.10.1. Provisions of Pakistan Penal Code 1868 Act XLV of 1860 Supporting Women:	196
4.11. List of Federal and Provincial Pro-Women Laws .....	200
4.11.1. Federal Laws:.....	200
4.11.2. Punjab: .....	201
4.11.3. Sindh: .....	203
4.11.4. Khyber Pakhtunkhwa:.....	203
4.11.5. Baluchistan:.....	204
4.12. ‘Post-Legislative Scrutiny Is Nicety of Advanced Democracy’: .....	204
4.13. Pakistan: Role of National Commissions in Post-Legislative Scrutiny: .....	205
4.14. Pakistan Senate Committee on Delegated Legislation: .....	211
4.15. Conclusion:.....	212
5. Chapter 5 Delegated Legislation:.....	213
5.1. Introduction: .....	213
5.2. Definition and introduction to delegated legislation .....	214
5.3. Establishment of the committee on delegated legislation .....	215
5.4. Pakistan Telecom (Re-organization) Act 1996 .....	220
5.5. Regulations No. 3, 9 And 14 Of the Privatization Commission Ordinance 2000.....	222
5.6. Rules and Regulations Governing National Police Foundation,.....	223
5.7. National School of Public Policy Rules Framed NSPP Amendment Ordinance 2017:226	
5.8. The National Command Authority Act NCA Act 2010:.....	228
5.8.1. Time Frame of 6 Months for Rule Making:.....	230
5.9. Delegated Legislation of the Ministry of Information Technology Telecommunication:	231
5.10. Examination of Rules and Regulations by LDC in Senate:.....	240
5.11. Functions and Significance of the Delegated Legislation .....	244
5.11.1. Work Out Plans and Working of the Committee.....	245
5.11.2. Periods of Examination of the Legislation by Committee on Delegated Legislation..	246
5.12. General principles for scrutiny of Delegated Legislation:.....	252
5.13. The rule 50 of Rules of Procedure and Conduct of Business in the Senate 2012 ....	254
5.14. Establishment of CCLC.....	255
5.15. Conclusion:.....	263

6.CHAPTER 6: POST-LEGISLATIVE SCRUTINY IN PAKISTAN .....	266
6.1. Introduction:.....	266
6.2. Law Reforms Ordinance 1972 .....	269
6.3. Case Law: Muhammad Ibrahim Shaikh Vs Government of Pakistan .....	279
6.3.1. The suggestions given by the Supreme Court regarding the immigrants --- .....	281
6.3.2. National Database and Registration Authority Ordinance, 2000.....	284
6.4. Report of The Senate Standing Committee on Law Reforms: .....	284
6.5. Observation of S C of Pakistan, Sou Moto Case No.1 Of 2005 Judgment PLD 2015..	257
6.6. PLS Seeks to Ensure the Text of Laws of Pakistan Accessible to Citizens in Error Free Printing and Publishing .....	291
6.7. Legislation through article 144 of the Constitution: .....	292
6.8. Free from errors text of the law of Pakistan .....	292
6.8.1. Registration of publishers .....	293
6.8.2. Maintenance of Laws of Pakistan .....	294
6.8.3. Laws of Pakistan Cell .....	294
6.8.4. The cell has been conferred with certain Powers and functions under the Act. ...	295
6.8.5. Assessment of publications.....	296
6.8.6. Responsibilities of publishers and booksellers .....	296
6.8.7. Disclaimer by the publisher .....	298
6.8.8. Translation of the laws of Pakistan.....	298
6.8.9. De-registration .....	298
6.8.10. Penalty.....	299
6.8.11. Offences.....	299
6.9. Post Legislative Scrutiny by Sunset Clause:.....	299
6.9.1. CONSTITUTION OF PAKISTAN 1973 PLS BY SUNSET CLAUSE .....	299
6.10. The Constitution (Twenty-first Amendment) Act, 2015 (I of 2015) .....	301
6.11. The Constitution (Twenty-third Amendment) Act, 2017 (XII of 2017).....	302
6.12. TheProtectionofPakistanAct,2014 ActNo. X of2014.....	302
6.13. Conclusion:.....	303
7. CONCLUSION, ANALYSIS & RECOMMENDATIONS .....	305
7.1. Conclusion:.....	305
7.2. Analysis:.....	305
7.2.1. Low Cost: .....	305

7.2.2. Committees:.....	306
7.3. Different Models to be followed:.....	307
7.4. Recommendations:.....	312
7.4. Peculiar Perspective of Pakistan:.....	314
Bibliography .....	317

## **Declaration:**

**I, the undersigned Azhar Siddique hereby declare that I am the sole author of this thesis. To the best of my knowledge this thesis contains no material previously published by any other person except where due acknowledgement has been made. This thesis contains no material which has been accepted as part of the requirements of any other academic degree or non-degree program, in English or in any other language. This is a true copy of the thesis, including final revisions.**

**Date:**

**Name:Azhar Siddique**

**Signature:**

**Dedication:**

This research study is dedicated to my wife **Dr. Javeria Hayat** who has been always with me through the journey of struggles and the moments of success with patience and support in all terms throughout the entire doctorate program.

## **ACKNOWLEDGEMENTS:**

By the grace of Almighty Allah, I have earned my Ph.D. in Law. Writing PhD though is not task of a big crowd yet it is also not a task of one person as it requires assistance from others. In my case certain people supported me whom I am indebted and pay regard to the persons particularly Dr. Najamul Hassan Najmi, for his passion of inculcating knowledge and in-depth study of legislation, delegated legislation and its practical work in Punjab Assembly and Government of the Punjab, that became a harbinger for my affiliation with the subject. Prof Dr. MuhammadMunirguided me on the research typology and methodology for doing research on the subject opted by me referred in the caption for which his guidance to me and pushing me hard to grasp the idea.

My supervisor Dr. Atta Ullah Khan MehmoodWattoowho has very affectionate approach on throwing the light on the subject under discussion ultimately and eased the subject for me. His kind personality, quality of being available round the clock guidance in editing my narration of thesis in the pieces of advice pushed me here to acme point of success in accomplishment of the thesis.

I can't restrain my self-giving tribute to my loving wife Dr. Javeria Hayat currently working as Deputy Commissioner Inland Revenue Services, who has been giving input and helping me academically in research. Moreover, giving me every kind of support and making my course easier. Last but not the least my father M. Siddique a retired officer from Airport Security Force Pakistan (civil Aviation Pakistan) who always thought me a kid in cradle and always guided me even on taking a small step who still guides me which definitely made me caring, curious, careful and meticulous and my

mother who is a housewife and leaves not a single second in her prayers for my success.

Azhar Siddique

## Abbreviations

CAN	Calling Attention Notice
CCLC	Cabinet Committee for Disposal of Legislative Cases
DCMS	Digital, Culture, Media, and Sport
DG	Director General
DPR	DewanPerwakilan Rakyat
EIA	Environmental Impact Assessment
EPA	Environmental Protection Agency
E stake	electronic stake
H.C	High Court
ICT	Islamabad Capital Territory
IEE	Initial Environmental Examination
KPK	Khyber Pakhtunkhwa
LDU	Legislative Drafting Unit
MP	Member of Parliament
NADRA	National Database and Registration Authority
NGO	Non-Governmental Organization
OTA	Office of Technology Assessment
PCA	Parliamentary Control of the Administration
PEPA	Pakistan Environment Protection Act
PLD	Pakistan Legal Decisions
PLS	Post legislative scrutiny
PPC	Pakistan penal code
ROB	Rules Of Business
SNP	Scottish National Party
S.C	Supreme Court
SCC	Standard Contractual Clauses
SEPA	Sindh Environmental Protection Act
SPA	Supreme People Association
TORs	Terms of References

## **LIST OF CASES**

*Muhammad Ibrahim Shaikh v. Government of Pakistan through Secretary Ministry of Defence,*  
PLD 2019 Supreme Court 133.

*Sou Moto Case No.1 of 2005 P L D 2015 Supreme Court 257.*

*ZaraiTaraqiati Bank etc .vsSaid Rehmanetc (2013 SCMR 642).*

*Government Of Sindh vsSharafFaridi 1994 PLD SupremeCourt 105.*

*Federation of Pakistan vs. Ministry of Interior (Case No. 11 of 2011) PLD 2014.*

*Marbury v. Madison, 5 U.S. 137 (1803)*

*Khawaja Ahmad Hassan v. Government of Punjab and others, (2005 SCMR 186).*

**ABSTRACT:**

Legislative function performed by legislative body is one of the three core functions of the state. Legislative Competence is essentiality of Post-Legislative Scrutiny (PLS) has the basic principle that every legislation should be subject to critical examination after its enactment. Pakistan's legislative process is complex and inaccessible, leading to ineffective laws and a lack of transparency. Post-Legislative Scrutiny (PLS) evaluates laws to ensure they're efficient, effective, and result-oriented. PLS aims to assess implementation, identify unintended consequences, improve lawmaking, enhance accountability, and refine laws. Pre-legislative and post-legislative scrutiny are connected in that they both aim to improve the quality and effectiveness of legislation. Insights gained from post-legislative scrutiny can inform and improve the pre-legislative scrutiny process for future laws. Delegated legislation, plays a significant role in PLS in term of provision of necessary detail for implementation, identifying areas of improvement and ensuring accountability in implementation. This research will analyze original laws, parliamentary reports, and existing PLS models to identify issues and provide recommendations.

# **INTRODUCTION**

## **THESIS STATEMENT**

Pakistan's post-legislative scrutiny (PLS) system needs a potential mechanism, existing committees often don't engage formally, weakening recommendation impact, ensuring a compact and established mechanism of PLS can improve law effectiveness, governance, and fundamental rights protection.

## **INTRODUCTION OF THE TOPIC:**

There is no formal mechanism of PLS in Pakistan. Post-legislative scrutiny (PLS) in Pakistan refers to the process of reviewing and evaluating the effectiveness of laws after they have been enacted. The main goal is to ensure that laws are working as intended, identify any issues, and suggest improvements. However, The Rules of Procedure and Conduct of Business in the Senate, 2012, was amended to incorporate vide S.R.O. 1323, dated 31-12-2015 The Committee on Delegated Legislation as a novel step taken by the Senate of Pakistan a first-hand Congressional idea.

The Law and Justice Commission of Pakistan Ordinance, 1979 was a good move mandated with to review and keep under review on a continuing systematic basis the statutes and other laws with a view to make, recommendations to the Federal Government and the Provincial Governments for the improvement, modernization and reform thereof. The senate Committee on law reforms with its certain TORs like to evaluate the laws for restructuring and suggesting modifications in the laws along with its different findings, observation and recommendations. In Pakistan, PLS involves assessing whether laws are achieving their objectives, identifying any problems or loopholes, and recommending changes to improve implementation.

The significance of PLS in Pakistan includes improved governance, Accountability, Better law, Review of laws, Stakeholder engagement. Some key institutions involved in PLS in Pakistan include the Parliament of Pakistan, the Pakistan Institute for Parliamentary Services (PIPS), and the Westminster Foundation for Democracy (WFD).

Post-Legislative Scrutiny (PLS) is the process of reviewing laws after they're enacted to evaluate their effectiveness, impact, and continued relevance. It ensures laws achieve their intended objectives, identify areas for improvement, and inform future policymaking, promoting accountability, transparency, and good governance.

Post-Legislative Scrutiny (PLS) is the process of reviewing laws after they've been enacted to evaluate their effectiveness and impact. The concept gained traction in the UK in the early 2000s, with the House of Lords Constitution Committee recommending in 2004 that government departments review significant legislation 3-6 years after enactment.

The UK Government responded in 2005, proposing that departments publish memoranda on post-legislative assessments, which would be submitted to relevant select committees. Since then, 1, 58 memoranda were published by January 2013, with select committees conducting inquiries on several laws, including the Mental Capacity Act 2005 and the Inquiries Act 2005.

The House of Lords has played a significant role in PLS, establishing ad hoc committees to review specific laws, such as the Mental Capacity Act 2005 and the Adoption Legislation. The Westminster Foundation for Democracy also provides guidance on PLS, emphasizing its importance in ensuring laws achieve their intended outcomes.

## **SIGNIFICANCE:**

The thesis shall explore how Pakistan's legislative body reviews and evaluates laws after they've been passed. Post-legislative scrutiny is a crucial process that helps ensure laws are effective, efficient, and meet their intended objectives.

In Pakistan's context, this could involve examining how Parliament, specifically the Senate and National Assembly, oversee and assess the implementation of laws. This might include looking at the roles of committees, the executive's accountability, and the impact of laws on citizens.

## **RESEARCH QUESTIONS:**

The research questions include the following:

1. What is the role of legislative function in Pakistan, and how does it impact the country's governance?
2. What are the foundational principles of Post-Legislative Scrutiny (PLS), and how does it contribute to effective lawmaking in Pakistan?
3. How does the process of legislative scrutiny work in Pakistan, what are the challenges faced by parliamentarians, and what is the role of delegated legislation and the Law Commission in improving the legislative framework?
4. How can Pakistan strengthen its PLS mechanism to ensure effective implementation of laws, improve governance, and adopt best practices for PLS?

## **RESEARCH OBJECTIVES:**

The objectives of the research include to examine the existing PLS mechanism i.e. to analyze the current process of reviewing laws after enactment in Pakistan; to identify strengths and weaknesses i.e. evaluate the effectiveness of Pakistan's PLS process, highlighting challenges and areas for improvement; to assess impact and implementation i.e. investigate how PLS influences law-making, governance, and citizens' lives; recommend improvements i.e. to provide suggestions to strengthen Pakistan's PLS mechanism, enhancing accountability, transparency, and good governance.

## **HYPOTHESIS:**

The current mechanism of Post-Legislative Scrutiny (PLS) in Pakistan is inadequate, leading to ineffective implementation of laws and limited accountability, and strengthening the PLS process can improve governance and responsiveness to citizens' needs.

## LITERATURE REVIEW

A literature review on the mechanism of post-legislative scrutiny (PLS) in Pakistan reveals that it's an essential process for evaluating the effectiveness and impact of laws after they're enacted. PLS involves reviewing laws to ensure they achieve their intended objectives, identify areas for improvement, and inform future policymaking.

Key Aspects of PLS in Pakistan:

- Purpose: PLS aims to assess whether laws are working as intended, identify unintended consequences, and inform future policymaking.
- Process: PLS typically involves committee reviews, public hearings, and stakeholder engagement.
- Benefits: PLS promotes accountability, transparency, and good governance.
- Challenges: PLS faces challenges such as limited resources, time constraints, and political pressures.

Studies highlight the importance of PLS in ensuring laws are effective and responsive to societal needs. Research also emphasizes the need for parliaments to strengthen their PLS mechanisms, including building capacity, improving transparency, and engaging stakeholders.

Some notable works on PLS in Pakistan include:

- The Pakistan Institute for Parliamentary Services (PIPS) has conducted workshops and research on PLS, emphasizing its importance in improving governance.
- The Westminster Foundation for Democracy (WFD) has published guides on PLS, highlighting best practices and challenges in implementing PLS mechanisms

The concept of legislative scrutiny has great importance in International world. The concept of legislative scrutiny and its working across the globe has been discussed by many writers.

*Post-enactment scrutiny (PeS) by Parliament* is research paper explaining Post-enactment scrutiny (also known as post-legislative scrutiny) which is in force. It is sometimes undertaken in an ad hoc manner by government departments, can be prompted by a ‘review clause’ inserted into a specific piece of legislation or may be undertaken through a structured process which covers all or most Acts. <sup>1</sup>

*Post-Legislative Scrutiny in the Americas* is draft publication by Franklin De Vrieze, Senior Governance Adviser, Westminster Foundation for Democracy is another work on this doctrine. The publication emphasized on Implementation as a multifaceted matter depending on the mobilization of resources and different actors, as well as the commitment to the policies and legislation, coordination and cooperation among all parties.<sup>2</sup>

It also spectacles how post-legislative scrutiny has been developed in Chile, analyzing in particular its performance in relation to the scrutiny of the effectiveness, efficacy and efficiency standards of laws. This article examines the way in which the system of post-legislative scrutiny in Chile evaluates each of the aforementioned standards, identifying the advances that have been made over the years in terms of development and the challenges that continue to exist in making improvements to this system.<sup>3</sup>

*Parliamentary Oversight of Sustainable Development Goals and the Application of Post-Legislative Scrutiny Principles* is a Working paper<sup>4</sup> which focused that Legislative Scrutiny can be considered a broad concept along two main lines: the legal dimension assessing the

---

<sup>1</sup>Oireachtas Library and Research Service, *Post-enactment scrutiny (PeS) by Parliament*, 2017, pg 3.

<sup>2</sup>Franklin De Vrieze, *Post-Legislative Scrutiny in the Americas*, 2019 pg 4.

<sup>3</sup> *ibid* pg 9.

<sup>4</sup>Dr. Fotios Fitsilis, *Parliamentary Oversight of Sustainable Development Goals and the Application of Post-Legislative Scrutiny Principles*, 2019 pg 2.

enactment of the law and the impact dimension assessing to what extent the policy objectives of the law have been met.

*The significance of post-legislative scrutiny* by Franklin De Vrieze & Philip Norton<sup>5</sup> indicated the mechanism of Post Legislative Scrutiny in countries like U.K and U.S.A. The article explains that how Executive bills are laid before the legislature. They are called executive bills as they have been prepared by the executive. Once approved the measures are then implemented by the executive and other public agencies. Any dispute as to meaning is a matter for the courts. The initiation stage of the policy process is dominated typically by political parties, executive bodies and by organized interests.

*Legislation Under Review: An Assessment of Post-Legislative Scrutiny Recommendations in the UK Parliament* by Thomas Caygill<sup>6</sup> reports the results of a systematic study of the consequences of post-legislative scrutiny in terms of the types of recommendations being made, whether they are being accepted by the government, and what factors impact upon the acceptance of those recommendations. It settles that there is a partiality in the legislation being selected to receive post-legislative scrutiny and that committees, on the whole, are producing weaker recommendations which are more likely to be accepted and stronger the action that a recommendation calls for, the more likely it is to be rejected.

*Spotlight Post-enactment scrutiny (PeS) by Parliament* by Oireachtas Library and Research Service articulates that Post-enactment scrutiny (also known as post-legislative scrutiny) is the review of a piece of legislation which is in force. It is sometimes undertaken in

---

<sup>5</sup> Franklin De Vrieze & Philip Norton, *The significance of post-legislative scrutiny* (Journal of Legislative Studies), 2020, vol 26:issue 3,pg 349-361.

<sup>6</sup> Thomas Caygill, *Legislation Under Review: An Assessment of Post-Legislative Scrutiny Recommendations in the UK Parliament*, 2019 Pg 280.

an ad hoc manner by government departments, can be prompted by a ‘review clause’ inserted into a specific piece of legislation. Moreover, some pieces of legislation, by way of a sunset clause, make explicit provision for their continuance to be affirmed by both Houses. Other Acts stipulate that their operation must be reviewed after a period of time, a task for which the Minister is generally responsible or may be undertaken through a structured process which covers all or most Acts.<sup>7</sup>

*Better Regulation Practices in National Parliaments* by Irmgard Anglmayer contextualizes the role of Parliaments in Better Regulation and reflects on concrete areas for Parliaments to join in the process. There is considerable potential for Parliamentary participation at both ends of the policy cycle – impact assessment and evaluation. While such engagement can take multiple forms (spanning from passive scrutiny to an active use of the tools), it relates to two Parliamentary core functions: law-making and oversight. It also analyses the level, types, processes, particularities as well as, to the extent possible, the impact of individual Parliaments' engagement in impact assessment and evaluation of Parliaments of different countries.<sup>8</sup>

*Comparative study of practices of Post-Legislative Scrutiny in selected Parliaments and the rationale for its place in democracy assistance* by Franklin De Vrieze and Victoria Hasson, examines the relevant trends in Post-Legislative Scrutiny by Parliaments in the UK

---

<sup>7</sup>Oireachtas Library and Research Service, Post-enactment scrutiny (PeS) by Parliament, 2017, pg 81.

<sup>8</sup>Better Regulation practices in national parliaments by European Parliamentary Research Service. June 2020 Pg 45.

(Westminster Parliament and Scottish Parliament), Belgium, Canada, India, Indonesia, Lebanon, Montenegro, Pakistan, South Africa, and Switzerland.<sup>9</sup>

In Pakistan, the Senate has created a Committee on Delegated Legislation. This committee checks all past and present delegated legislation and has the power to recommend annulment, in full or partially, or suggest amendments in any respect.<sup>10</sup>

In essay “*Separation of Powers in Thought and Practice?*” by Jeremy Waldron,<sup>11</sup> emphasizes made on the functional separation of powers in what M.J.C. Vile called it as “pure form.” Reexamining the theories of Locke, Montesquieu, and Madison, the essay seeks to recover (amidst all their tautologies and evasions) a genuine case in favor of this principle. The Essay debates that the rationale of the separation of powers is closely related to that of the rule of law: it is partly a matter of the distinct integrity of each of the separated institutions—judiciary, legislature, and administration.

Article *Parliamentary Scrutiny of the Quality of Legislation within Europe* by Enrico Albanesi is a comparative analysis of Parliamentary scrutiny of the quality of legislation contained in bills in the British system and in Continental Europe (with a special focus on Italy as case study). The main difference between the two systems is due to the establishment, especially in Continental Europe, of specific Parliamentary tools, standards, or bodies to scrutinize the quality of legislation. The British model of legislative drafting has shown its

---

<sup>9</sup>Franklin De Vrieze and Victoria Hasson, *Comparative study of practices of Post-Legislative Scrutiny in selected parliaments and the rationale for its place in democracy assistance*, 2017, pg 5.

<sup>10</sup>Franklin De Vrieze and Victoria Hasson, *Comparative study of practices of Post-Legislative Scrutiny in selected parliaments and the rationale for its place in democracy assistance*, 2017, pg 9

<sup>11</sup>Jeremy Waldron, *Separation of Powers in Thought and Practice*, pg 3.

strength: clearly, it is better having a legislative product which is well-drafted upstream, instead of a scrutiny downstream. However, in the United Kingdom, there is currently a debate concerning the opportunity to strengthen Parliamentary scrutiny of the quality of legislation by establishing legislative standards and bodies (such as a Legislative Standards Committee) for this purpose.<sup>12</sup>

A number of research articles are available explaining the Legislative scrutiny especially by judicial review, some say it judicial activism. But there is no independent work on mechanism of legislative scrutiny especially with reference to Pakistan. Hence, it is necessary that the mechanism may be analyzed jurisprudentially to check the compatibility of Pakistani jurisprudence.

---

<sup>12</sup>Enrico Albanesi, Parliamentary Scrutiny of the Quality of Legislation within Europe,2020, pg 3.

## **METHADODOLOGY:**

The thesis shall depend on the doctrinal research. Doctrinal research is one of the legal researches which highlights the examination of rules, policies, and judicial precedents in order to obtain a vibrant understanding into the law on the subject. “Black-letter law” research is its another name because it is based on primary legal sources such as laws, court rulings, and administrative orders.

The dissertation focuses on critical and comparative exploration and not the descriptive methodology for the analysis of these issues because descriptive research is used to describe characteristics of a phenomenon being studied. It does not answer questions about how/when/why the characteristics occurred.

The research is more concerned with analysis of the legislative scrutiny and how it has been developed and applied in countries of advanced legal system. While analyzing these issues, emphasis will be on legislations and case laws of different countries especially of England, USA, and India. While conducting this research, primary sources are available in the form of legislations and case laws. The secondary sources will consist of books, articles and other relevant research material i.e., book reviews, etc. The major part of research will focus on establishment of foundation for legislative scrutiny in Pakistan to ensure effective, efficient and free legislation in Pakistan.

This research is based on primary sources such as legal texts i.e. The Constitution of Pakistan 1973 , The General clauses Act 1897 etc., judgments i.e. *Zarai Tarqiyati Bank vs said Rehman* etc., and books on law i.e. “Jurisprudence” (12th Edn.) by John Salmond the process of lawmaking in India - accountability initiative” by Sruti Bandyopadhyay, and parliamentary reports like “Enhancement of Role and Powers of Senate of Pakistan for Participatory Federalism etc.”

This thesis analyzes legal concepts and systems in an orderly fashion as a means of defining and explaining the law i.e The Law and Justice Commission of Pakistan Ordinance, 1979, the Publication of Laws of Pakistan Act, 2016. It sets out to explain law as it is and not its sociological effects i.e. The Protection for Women (Criminal Law Amendment) Act 2006, Protection against Harassment of Women at Workplace 2010 and Domestic Violence (Prevention and Protection) Act, 2012. This is based also on the analysis of judicial decisions like Muhammad Ibrahim Shaikh---Petitioner Versus Government of Pakistan.

## **SCHEME OF CHAPTERS:**

This dissertation is divided into seven chapters and each chapter is sub divided. Each chapter discusses different yet connected concepts. Chapter 1 exordium of legislative function deals introductory concepts of law, legislation and types of legislation, legislative functions , legislative instruments, legislative institutions, legislative procedure in Pakistan, primary federal and provincial legislations, significance of legislative institutions, vitality of legislation, separation of power, legislative function *viz a viz* theory of separation, role of legislatures, the development and the role of legislature and ultimately role of judiciary.

Chapter 2 foundation of PLS discusses concepts regarding scrutiny, legislative scrutiny, aims and objectives of scrutiny, input of legislative committee on scrutiny, legislative scrutiny, post legislative scrutiny, PLS and function of parliament, oversight character of legislature, responsibility and role of administrative body and the committee arrangement, role of parliaments and citizens and review of the UK Constitution.

Chapter 3 principles of PLS discusses ten fundamental principles under the London declaration, Scope, Mandate, Participants, Process and Timing of PLS, Post-legislative scrutiny in Indonesia, Global practices on PLS by committees in different parliaments, Application of PLS by the assembly, Methodology for ex post evaluation for legislation, Challenges of the Assembly in Post Legislative Scrutiny, PLS Case studies and Successful PLS.

Chapter 4 process of legislative scrutiny and Pakistan comprises of Pakistan and Legislative Scrutiny, Legislation and Stages of Scrutiny in Pakistan, Effect of Repeal as form of PLS indicated by Constitution of Pakistan, Implementation Status of Environmental Laws, Women

Laws in Pakistan, Pakistan: Role of National Commissions in Post-Legislative Scrutiny and Pakistan Senate Committee on Delegated Legislation.

Chapter 5 i.e. Delegated Legislation deals with Definition and introduction to delegated legislation, Establishment of the committee on delegated legislation and various laws and regulations which underwent the process of scrutiny like Pakistan Telecom (Re-organization) Act 19965, Privatization Commission Ordinance 2005, National School of Public Policy Rules 2017 etc. framed under NSPP Amendment Ordinance 2017 etc. Further discussion includes Examination of Rules and Regulations by LDC in Senate:, Functions and Significance of the Delegated Legislation, Work Out Plans and Working of the Committee, Three Periods of Examination of the Legislation by the Committee on Delegated Legislation, General principles for scrutiny of Delegated Legislation, Rules of Procedure and Conduct of Business in the Senate 2012 and Establishment of CCLC.

CHAPTER 6 establishment of law commission to review the laws deliberates on law reforms Ordinance 1972, different related case laws, related senate standing committee reports , post legislative scrutiny by sunset clause and laws that provide PLS followed by chapter 7 encompassing conclusion , analysis and recommendations.

# **1. CHAPTER 1: EXORDIUM OF LEGISLATIVE FUNCTION:**

## **1.1. Introduction:**

The main role of the Parliament includes legislation, oversight, representation and appropriation and approval of budgets. Legislative Roles of the Parliament include advance fresh legislations, inspection of the planned legislations, alter prevailing legislations, abolish earlier legislations, oversight on operation of statutes, and assess the impact of the legislations. Thus, it could be easily said that legislative function is one of the three core functions of the state. It enjoys the peak position in the affairs of the state in the modern welfare state functions. The legislative body performs functions of legislation. The legislature remains within the given legislative competence in the constitution. The concept of post-legislative scrutiny stands on the principle that post-legislative scrutiny is a critical examination of prior legislation. It aims to address the effects after its enactment. It follows the process of monitoring the implementation of the legislation. It evaluates the impacts of laws in society. It looks into the character of laws whether the intended goals and objectives have been achieved. It assesses whether the provisions of law have been

enforced as it aimed and the anticipated vision of the law has been met in terms of the intended purposes.<sup>13</sup>

The concept of post-legislative scrutiny as in its theoretical working across the globe has been discussed very little. There is the emphasis on establishment of systemic and organized forum for post-legislative scrutiny in Pakistan in this research work as a whole and Concept of Legislation, Primary legislation i.e. Acts of Parliament or Statutes, Secondary legislation, quasilegislations, Bill which is the most common type of legislation, Policy making Lawmaking, Oversight of the Executive, Constituency representation, and Political recruitment are functions of parliament.

### **1.1.1. Definition of “Pakistan law” as per “General Clauses Act, 1897”:**

As a misconception law is considered only the supreme legislation while the delegated legislation is not measured as the part of law. Definition of Pakistan law as per General Clauses Act, 1897 dissipates this misconception by giving following definition

*“Pakistan law” shall mean any Act, Ordinance, Regulation, rule, order, byelaw or any other instrument which has or had the force of law in Pakistan or any part thereof*.<sup>14</sup>

Thus, it shows that law means and includes the bill that has become law by following the procedure given by the constitution as well as the subordinate legislation made by the executive

---

<sup>13</sup>“The London Declaration On Post-Legislative Scrutiny”, (London, Westminster Foundation for Democracy (WFD, 2018), last accessed 19th December, 2024. (Principal number 1.) <https://www.wfd.org/sites/default/files/2021-12/2018-07-26-Declaration-on-PLS.pdf>

<sup>14</sup> Section 3(37b) The General Clauses Act, 1897.

empowered by the statute and also not limited to the rules and regulations, its limit even goes beyond it and includes in it all those practices and customs having the force of law.

Delegated legislation is a type of law, but it's a bit different from the laws passed by the parliament, like Acts or statutes. It's made by authorities or bodies empowered by an Act, like the government or a ministry, and has the same force of law. Think of it like this: parliament passes a law, let's call it the "Parent Act", which gives power to the government or another body to make more detailed rules or regulations, known as "delegated legislation", to implement the Parent Act. Examples include rules, regulations, by-laws, orders, and notifications. They're used to fill in the gaps and provide more specifics on how the law should work.

## **1.2. Theoretical framework of PLS:**

The theoretical framework of post-legislative scrutiny includes numerous notions and principles from law, politics, and public policy. Democratic Theory, Rule of Law and Accountability are Theoretical Foundations. Democratic Theory: Post-legislative scrutiny is entrenched in democratic principles, guaranteeing that laws reflect the will of the people and are effective in addressing societal needs. Rule of Law: This framework stresses the importance of laws being clear, reliable, and applied equally to all, with post-legislative scrutiny ensuring that laws meet these standards.

Accountability: Post-legislative scrutiny upholds accountability by investigating the impact of laws and holding lawmakers responsible for their decisions.<sup>15</sup>

Policy Cycle, Legislative Evaluation and Stakeholder Engagement are Conceptual Framework. Policy Cycle: Post-legislative scrutiny is part of the policy cycle, which contains agenda-setting, policy preparation, operation, estimation, and modification. Legislative Evaluation: This framework comprises engaging the usefulness, competence, and impression of laws, recognizing spaces for upgrading, and recommending revisions. Stakeholder Engagement: Post-legislative scrutiny encompasses attracting with stakeholders, including citizens, civil society organizations, and experts, to gather feedback and insights.<sup>16</sup>

Rational Choice Theory, Institutional Theory and Social Constructivist Theory are Theoretical Models. Rational Choice Theory: This model undertakes that lawmakers make rational decisions based on available information. Post-legislative scrutiny helps to refine this process by providing additional data and analysis. Institutional Theory: This model accentuates the character of institutions in shaping policy outcomes. Post-legislative scrutiny inspects how institutional factors, such as parliamentary procedures and bureaucratic constructions, impact the effectiveness of laws. Social Constructivist Theory: This model highlights the rank of social norms, values, and beliefs in shaping policy decisions. Post-legislative scrutiny considers how social factors impact the implementation and effectiveness of laws<sup>17</sup>.

---

<sup>15</sup>Jean-Jacques Rousseau, *The Social Contract*, trans. Maurice Cranston (London: Penguin Books, 2004), 25 last accessed 1 December 2025.

<sup>16</sup>Joseph A. Schumpeter, *Capitalism, Socialism, and Democracy* (New York: Harper & Brothers, 1942), 40. 1 December 2025.

<sup>17</sup>Mark Bovens, "Analysing and Assessing Accountability: A Conceptual Framework," in *The Oxford Handbook of Public Management*, ed. Ewan Ferlie, Laurence E. Lynn Jr., and Christopher Pollitt (Oxford: Oxford University Press, 2007), 45, last accessed 2 December 2025.

Transparency, Participation, Accountability and Evidence-Based Decision-Making are Key Principles. Transparency: Post-legislative scrutiny approves transparency by making information about laws and their impact accessible to stakeholders. Participation: This framework encourages participation from diverse stakeholders, ensuring that a wide range of perspectives are considered. Accountability: Post-legislative scrutiny holds lawmakers accountable for their decisions, promoting responsible governance.<sup>18</sup>

Evidence-Based Decision-Making: This framework relies on empirical evidence to inform evaluations and recommendations, ensuring that decisions are grounded in reality. By integrating these theoretical foundations, conceptual frameworks, theoretical models, and key principles, the theoretical framework of post-legislative scrutiny provides a comprehensive approach to evaluating and improving laws.<sup>19</sup>

### 1.3. Overview of Thesis:

After the French revolution the juristlike Aohn Austin, Black Stone and James Madison agreed upon theory of separation of power specified by a “French social and political philosopher”, namely “**Charles-Louis de Secondat, baron de La Brède et de Montesquieu**” in 18th century. The history of political theory and jurisprudence after his publication, “*Spirit of the Laws*”, is self-evident that a masterpiece by which the Constitution of the United States and the Declaration of the Rights of Man were inspired. Legislative, executive and judicial powers are wings of the political authority of the state which are supposed to be independent, acting

---

<sup>18</sup>Harold D. Lasswell, *The Decision Process: Seven Categories of Functional Analysis* (College Park, MD: Bureau of Governmental Research, College of Business and Public Administration, University of Maryland, 1956),. last accessed 3 December 2025.

<sup>19</sup>Carl V. Patton and David S. Sawicki, *Basic Methods of Policy Analysis and Planning* (Englewood Cliffs, NJ: Prentice Hall, 1993), last accessed 5 December 2025.

separately, as a distinct power. The obligatory functions of government were divided into three distinguished wings on the basis of this theory, out of which, the Legislative function was considered for enactment of laws only and its implementation was left for executive and the judiciary was on the specific role of adjudication for protection of the rights of people and smooth functioning of social system. There is no established principle on the concept of post-legislative scrutiny as an acknowledged recipe however its working across the globe has been discussed very little as a theory. Conversely, the seeds of the need in various articles, papers and discourses have become harbinger of the fact that post legislative scrutiny is the need of the hour. Literature work academically is very few on the current time found in the papers on the subject post legislative scrutiny.<sup>20</sup>

This issue is extremely important because it has not only been a very crucial issue for debate at different forums, but it requires a proper critical and academic evaluation. The research encompasses the basic concept of legislative scrutiny detailing the ingredients of pre and post legislative scrutiny, their significance and relation of legislative function within the parameters of “the theory of the separation of power”. It also elaborates history and current situation of legislative scrutiny all over the globe and aspirations of parliament for future of legislative scrutiny. It further views the misrepresentations and actualities in legislative task. The main emphasis is on legislative scrutiny in Pakistan, the process adopted currently, types of legislative scrutiny, machinery used and outcomes leading to signify the need of institutionalization of legislative scrutiny, factors and way forward. The research is concluded by summary, deductions, recommendation and implications. Thus,

---

<sup>20</sup> “*Separation of Powers: An Overview*,” (National Conference Of State Legislatures, 2021), accessed May 20, 2022, <https://www.ncsl.org/about-state-legislatures/separation-of-powers-an-overview>.

in epitome, the research shall discover the evidentiary grounds of PLS, the effects of these grounds, the impactful recommendations of committees in both Houses of parliament of Pakistan. Furthermore, the post-legislative scrutiny is a distinct modus operandi. It contains the capacitated fortification in terms of extending, selecting and impacting on the welfare of society through the application of useful enactments. And, obviously, this research will emphasize on establishment of systemic and organized form of a forum for post-legislative scrutiny in Pakistan.

### **1.3.1. Concept of Legislation:**

Before discussing the procedure of legislation in various countries it is necessary to have the basic concept of legislation i.e., what does legislation mean. The Encyclopedia Britannica defines legislation as:

*“Legislation, the preparing and enacting of laws by local, state, or national legislatures. In other contexts, it is sometimes used to apply to municipal ordinances and to the rules and regulations of administrative agencies passed in the exercise of delegated legislative functions.”<sup>21</sup>*

The dictionary by Merriam Webster defined legislation as following.

*“The action of legislating specifically: the exercise of the power and function of making rules (such as laws) that have the force of authority by virtue of their promulgation by an official organ of a state or other organization.*

---

<sup>21</sup>“Legislation | Definition, Types, & Examples | Britannica,” (Britannica.com, 2018), Accessed 26 May 2022, <https://www.britannica.com/topic/legislation-politics>.

*The major function of Congress is legislation”*

*“The enactments of a legislator or a legislative bodyLegislation to help distressed homeowners”*

*“a matter of business for or under consideration by a legislative bodyShe proposed new legislation to protect the environment.”<sup>22</sup>*

The Definition given in UK Parliament official website is:

*“Legislation is a law or a set of laws that have been passed by Parliament. The word is also used to describe the act of making a new law.”<sup>23</sup>*

*Legislation refers to the process of preparing and enacting laws by various levels of government, including local, state, or national legislatures.*

*Municipal ordinances, Rules and regulations of administrative agencies are types of laws. The term "legislation" can also apply to rules and regulations passed by administrative agencies in the exercise of delegated legislative functions.*

*Comments.*

#### **1.4. Types of legislation:**

---

<sup>22</sup> *“Legislation Definition & Meaning - Merriam-Webster,”* (merriam-webster.com. n.d.), accessed May 26, 2022, <https://www.merriam-webster.com/dictionary/legislation>.

<sup>23</sup> *“Glossary - UK Parliament,”* (parliament.uk. n.d.), accessed May 26, 2023, <https://www.parliament.uk/site-information/glossary>.

Primary legislation “Acts of Parliament or Statutes” and Secondary legislation “Statutory Instruments” are two main types of legislation as discussed by the Oxford law faculty. Similarly, “bills, simple resolutions, joint resolutions and concurrent resolutions” are few other types defined by Hobnob.<sup>24</sup>

- i. Most customary type of legislative instrument is bill. Bill is of many types like permanent or temporary, general or special in nature; public or private. Except for the revenue bills which only originate in House of Representatives all other bills can originate in either house i.e. the Senate or the House of Representatives.
- ii. Joint resolution is not much different from a bill, except joint resolution can include a preamble that precedes the resolving clause.
- iii. Simple resolution is one that is considered in the House in which it is introduced.
- iv. Concurrent resolution is introduced in issue affecting the processes of both chambers.<sup>25</sup>

Laws, news and network convey following types of legislation:

- a) Supreme legislation i.e. legislation by state or supreme authority
- b) Subordinate legislation i.e. legislation by anybody sanctioned by Supreme authority
- c) Delegated legislation is one which is done by executive on the authorization of supreme authority.

---

<sup>24</sup>“*Law Reports | Faculty of Law*,”(law.ox.ac.uk. n.d.), accessed June 10, 2022, <https://www.law.ox.ac.uk/legal-research-and-mooting-skills-programme/law-reports>.

<sup>25</sup>“*Understanding the 4 Basic Types of Legislation - Hobnob Blog*,”(hobnobblog.com. n.d.), accessed June 10, 2022, <https://hobnobblog.com/2010/09/understanding-the-4-basic-types-of-legislation>.

- d) - Executive Legislation: Made by the executive branch, it is used to implement laws passed by the legislature.
- e) - Judicial Legislation: Made by courts, it interprets laws and sets precedents.
- f) - Municipal Legislation: Made by local governments, it applies to specific areas or municipalities.
- g) - Autonomous Legislation: Made by autonomous bodies, it governs their internal affairs.
- h) - Colonial Legislation: Made by colonies or territories under the control of another state.
- i) - Conditional Legislation: Made by administrative authorities, it is contingent on certain conditions being met.<sup>26</sup>

Primary legislation and secondary legislation are main kinds of legislation in the United Kingdom. Primary legislation includes the laws made by Parliament or the statutes and these secondary legislation includes but not limited to the rules, regulations, orders, codes and bylaws made subordinate to the acts of Parliament. Quasi legislation and European community legislation is also a form of Secondary legislation.<sup>27</sup>

While speaking on primary legislation Public General Acts and Local and personal acts are known as the types of Primary Legislation. Public General Acts are the Acts which are annexed with the explanatory notes of achieving the objective of the Act with its

---

<sup>26</sup>Admin Lawnn, “*Types of Legislation, Merits, Supremacy under Jurisprudence*,” (lawnn.com, 2018), Accessed 10th June, 2022.<https://www.lawnn.com/types-of-legislation>.

<sup>27</sup> Ibid

context while local and personal Acts are the Acts which are relatable to the boroughs, railways, canal companies and enclosed land<sup>28</sup> . Ref.

Secondary legislation is also called as subordinate, subsidiary or delegated legislation. The common terms of this legislation are known as Orders, Regulations, Rules, and Codes etc. as this legislation is made by government, the executive pillar of the state. Such legislation is authorized by the parliament.<sup>29</sup> .

Quasi legislation has no classification however the circulars issued by the Government, rules provided by the regulatory bodies and the codes bringing in to force are the forms of legislation.

#### **1.4.1. Legislative Functions:**

*“Parliament is the institution that embodies society in the diversity of its composition and its opinions which relays and channels this diversity in the political process. Its vocation is to regulate tensions and maintain equilibrium between the competing claims of diversity and uniformity, individuality and collectivity, in order to enhance social cohesion and solidarity. Its role is to legislate, inter alia by*

---

<sup>28</sup> - UK Parliamentary Archives: This archive holds physical copies of public, local, personal, and private acts, as well as UK statutory instruments.

- Faculty of Law: This resource provides information on how statutes are made and how to cite acts.

<sup>29</sup> Ibid

*allocating financial resources, and oversee the action of the Executive.*”<sup>30</sup>

Five comprehensive and fundamental roles of Parliaments have been identified internationally unanimously as under:

- i. Policymaking;
- ii. Lawmaking;
- iii. Oversight of the Executive;
- iv. Constituency representation;
- v. Political recruitment.<sup>31</sup>

#### **1.4.2. Legislative instruments:**

Bills are the legislative tools. Bills may be Government Bills or Private Members' Bills. Original Bills, Amending Bills, Consolidating Bills, Repealing Bills, Bills to replace Ordinances are classification of bills depending upon their contents.

Dealing with Government Bills the steps like Formulation of legislative policy is made, The Division concerned shall be responsible for determining the contents of the proposed legislation for consulting the other Divisions concerned (including the Finance Division) where necessary, and for obtaining the approval of the Cabinet as well as referring the approved legislation to Law and Justice Division for drafting, (relevant papers along with a memorandum). Ministry of Law scrutinizes constitutional legitimacy, and the need for amendment /enactment-gives legal shape.

---

<sup>30</sup> “*Guidelines on the Rights and Duties of the Opposition in Parliament*,” (inter-parliamentary union.org. n.d.), accessed June 12, 2022, <http://archive.ipu.org/dem-e/opposition.pdf>.

<sup>31</sup> Ibid.

Some legislative proposals may be initiated in the Law and Justice Division (consultation with the Division concerned) and same are submitted to the Cabinet. The Division concerned shall forward to the Law and Justice Division the draft legislation in its final form with a statement of objects and reasons duly signed by the Minister-in-Charge.

The Law and Justice Division, after satisfying itself that all legal requirements have been complied with for the introduction of the Bill transfer the bill along with the statement of objects and reasons to the Parliamentary Affairs Division for arranging its introduction in the appropriate House. Notice of intention to introduce the Bill duly signed by the Minister- in-Charge of the Bill is submitted to the concerned Secretariat. Ministry of Parliamentary Affairs place the Bill on the Orders of the Day of a Government Business Day.

While dealing with Private Members' Bills, the stages like Conceptualization is made, the support mechanism i.e. LDU and LDC have been provided to assist the members in order to help on technical grounds. Primary responsibility on the Member is to give Notice, make Initial filters/Scrutiny on that bill is made, Copy of Bill is shared with Parliamentary Affairs and Division concerned Ballot of Bills is made to select it for the Orders of the Day.

The representative, the lawmaking and the oversight roles are the three tasks which are of utmost significance.<sup>32</sup>

### **1.4.3. Legislative Institutions:**

Legislative institutions can be branded into diverse kinds founded on their construction, arrangement, and purposes. Unicameral Legislature, Bicameral Legislature,

---

<sup>32</sup>“*USAID Handbook on Legislative Strengthening*” (Washington D.C, the USA: Center for Democracy and Governance , February 2000), Accessed 12 June 2022, <https://www.usaid.gov/sites/default/files/2022-05/200sbb.pdf>.

Parliamentary System, Presidential System, Hybrid System and Local Legislative Bodies are some common types of legislative institutions. In Unicameral Legislature, legislature consists of a sole chamber. This type of legislature is frequently found in smaller states or in local governments. Article 109 of the Constitution of Pakistan, 1973 deals with this category of legislative institution. A bicameral legislature contains two houses, stereotypically an upper house and a lower house. This type of legislature is often found in federal systems or larger countries. Article 51 and 59 of the Constitution of Pakistan, 1973 transpire this class of legislative institution. In a parliamentary system, the legislative branch is collected of chosen legislative bodies who are responsible for making laws and supervision of the executive branch. The head of government is characteristically the prime minister or premier. Article 50 of the Constitution of Pakistan 1973 contemplates the parliament. In a presidential system, the lawmaking branch is distinct from the executive branch, and the president works as both the head of state and head of government. Part iii of the constitution of Pakistan deals with federation, article 41 deals with president and article 48 deals with the powers of the president. Certain countries have a hybrid system that chains basics of parliamentary and presidential systems. Article 91 of the constitution of Pakistan contains the powers of prime minister as the head of the executive chosen by the national assembly of Pakistan while the president has to act upon the advice of prime minister under article 48 during exercise of his vast legislative, executive and judicial powers while the Local legislative bodies, such as municipal councils or county boards, are responsible for making laws and policies at the local level. Article 140 A of the constitution of Pakistan mandatorily obligates every province to set up local government in the areas where the representatives from gross root

level shall be elected through election commission of Pakistan to form the policies, bye laws at the local level. <sup>33</sup>

Legislative institutions all over the globe have varied names, organization and powers. It can be of one chamber (unicameral) or two chambers (bicameral) or the members of legislature maybe appointed or elected. Legislature may be called as parliament, congress, Lok Sabha, Majlis-Shoora, Sejm or Storting. <sup>34</sup>

Parliaments are industry of legislative instruments. The making of Law starts with the 'bill' i.e.,view of making that somebody will create decent piece of law. It can be a new law or a change in existing law. If the idea is from the ruling side, then the name is a government-sponsored bill. And if the thought is coined by any Member of Parliament, then it is known as a private member's bill. <sup>35</sup>

UK parliament is composed of The House of Commons, The House of Lords and The Monarchy. After the bill is presented, it passes through following stages in order to become an Act:

- i. First reading: the formal introduction of bill by person who is introducing it.
- ii. Second reading: Politicians debate the bill in their House.
- iii. At the stage of the Committee discussion: collection of the members of a house who discusses the matters, bills, house related job is known as committee. If the

---

<sup>33</sup> The Constitution Of The Islamic Republic Of Pakistan, 1973.

<sup>34</sup> Attshan Ali Abbasi, (*The Parliament of Pakistan an Analytical Research Study of Strength, Weaknesses, Opportunities and Challenges*)” (International Journal of Youth Economy 2, no. 2 (November,2018): 119-143, Accessed 12 June 2022, <https://doi.org/10.18576/ijye/020204>.

<sup>35</sup>“*How Are UK Laws Made? - BBC Newsround*,” (bbc.co.uk. September, 2019), Accessed 12 June 2022.<https://www.bbc.co.uk/newsround/47029982>.

members in committee are of the view to change the bill. The changes shall be suggested accordingly. All the amendments intended to be made at committee stage require the voting in the house.

- iv. Report Stage: all the preparations on the debate in the committee including the amendments are made by the committee.
- v. Third reading: A 'tidying up' stage, aiming to close any loopholes. A final chance for amendments and votes. After the committee has reported back to the House, the bill receives its third reading. The third reading is the point when another vote is taken on the bill.
- vi. Royal assent: When both Houses have agreed the text, the bill is approved by the monarch and becomes a law or 'Act of Parliament'. This is the last level of passing of bill.<sup>36</sup>

In Canada for a bill to become law has to be approved by both houses and then get royal assent.

- i. Notice: The notice to introduce the bill must be given by the minister who wants to introduce bill to bill clerk to house clerk at least 48 (forty-eight) hours prior to be placed on notice paper.
- ii. Introduction of the Bill. A bill can be introduced by both government minister and Private Member, for this a motion is presented to put a bill on the parliamentary agenda.

---

<sup>36</sup>“*How Does a Bill Become a Law? - UK Parliament,*” (parliament.uk. n.d.), accessed June 12, 2022, <https://www.parliament.uk/about/how/laws/passage-bill>.

- iii. First Reading in the House of Commons. In first reading just the introduction of bill is made and there is no debate.
- iv. Second Reading and Discussion. Discussion is done after second reading.
- v. Committee Stage. Each change is discussed and considered; alterations are anticipated.
- vi. Report Stage. The House of Commons analyses the changes proposed by the committee.
- vii. Third Reading. The bill is sent back for pursuing final reading and debate.
- viii. Royal Assent. When the charge is affirmed by both the House and the Senate, it is sent to the Senator Common Consent. When it has passed this organize, the charge is authoritatively an Act of Parliament.<sup>37,38</sup>

The Legislative Process in America starts with introduction to bill in congress. Article I, Section 1, of the United States Constitution states

*"All Legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."*<sup>39</sup>

- i. Introduction. It is mandatory that bill can only be introduced by the members of congress.

---

<sup>37</sup> "How a Bill Becomes a Law," (learn.parl.ca. n.d.), accessed June 14, 2022, <https://learn.parl.ca/understanding-comprendre/en/how-parliament-works/how-a-bill-becomes-a-law>.

<sup>38</sup> "Advocacy Toolkit | Citizens for Public Justice," (cpj.ca. n.d.), accessed June 14, 2022, <https://cpj.ca/cpjs-advocacy-toolkit>.

<sup>39</sup> "The Legislative Process | house.Gov," (house.gov. n.d.), accessed June 14, 2022, <http://www.house.gov/the-house-explained/the-legislative-process>.

- ii. Refer to Committee: The bill is referred to apposite committee after introduction for analysis. After deliberation in subcommittee the bill may be accepted, amended, or rejected entirely. If accepted, the bill is forwarded to the full committee, where the process is repeated again. If the full committee votes to favor the bill, it is reported to the floor of the House or Senate, and the majority party leadership decides when to place the bill on the calendar for consideration. If a bill is predominantly persuasive, it may be considered right away. Others may wait for months or never be scheduled at all.
- iii. Bill in both houses: two congress houses shall approve bill before sending it to the President for acceptance. In practice Conference Committee is convened, consisting of members from both chambers for bill arrangement. A “conference report” is generated as concluding shape of bill and voting is done. Depending on where the bill originated, the final text is then enrolled by either the Clerk of the House or the Secretary of the Senate, and presented to the Speaker of the House and the President of the Senate for their signatures. The bill is then sent to the President.
- iv. President Assent: After getting, a bill from Congress, if President agrees significantly with the bill, he or she may sign it into law, and the bill is then printed in the Statutes at Large. If the President believes the law to be bad policy, he or she may veto it and send it back to Congress. Congress may override the veto with a two-thirds vote of each chamber, at which point the bill becomes law and is printed.
- v. Pocket veto: There are two other selections that the President may use. If Congress is in session and the President takes no action within 10 days, the bill

becomes law. If Congress adjourns before 10 days are up, and the President takes no action, then the bill dies and Congress may not vote to override. This is called a pocket veto, and if Congress still wants to pass the legislation, they must begin the entire process anew.<sup>40</sup>

In India following passage is followed for legislative proposals in parliament.

- i. Introduction. The procedure of law creation initiates with the introduction of a Bill in either House of Parliament. A Bill undergoes three readings in each House, i.e., the Lok Sabha and the Rajya Sabha, before it is submitted to the President for assent.
- ii. First Reading. Denotes to motion for leave to introduce a Bill in the House on the adoption of which the Bill is introduced.
- iii. Second Reading. The Second Reading entails two stages.
  - a. In the "First Stage" there is deliberation on the principles of the Bill and is referred to Committee.
  - b. The "Second Stage" constitutes the clause-by-clause consideration of the Bill, as introduced in the House or as reported by a committee.
- iv. Third Reading. The Third Reading refers to the discussion on the motion that the Bill or the Bill, as amended, be passed.

Almost similar procedure is followed in Rajya Sabha in respect of Bills introduced in that House.

---

<sup>40</sup> “*The Legislative Branch | The White House*,” (whitehouse.gov. n.d.), accessed June 15, 2022, <https://www.whitehouse.gov/about-the-white-house/our-government/the-legislative-branch>.

- v. President Assent. After a Bill has been finally passed by the Houses of Parliament, it is submitted to the President for his assent. After a Bill has received the assent of the President, it becomes the law of the land.<sup>41</sup>

Following is brief procedure of legislation in Pakistan:

The procedure includes three readings. Every reading comprises different stages. First reading consists in four stages. At stage 1 the bill is circulated with the orders of the day. 2nd stage is about the introduction of the bill which is made after the leave of the house is sought for. 3rd stage is publication stage where the bill is published in the gazette and at the 4<sup>th</sup> stage the bill is referred to the standing committee concerned.

Then the time of second reading of the bill starts where member in charge may take one of the following Motions after a bill is reported back from a Standing or a Select Committee: -

- i. That the bill be taken into consideration at once.
- ii. That it be taken into consideration on a date to be fixed forthwith
- iii. That it be referred to a select Committee
- iv. Be circulated for eliciting public opinion

It is worth mentioning about private member bill in the second reading. The consideration of the bill at committee stage is made. Member in charge shall be invited in the meeting.

The committee can endorse to the house one of the ensuing commands:

---

<sup>41</sup>SrutiBandyopadhyay, (*The Process of Lawmaking in India - Accountability Initiative*),” (accountabilityindia.in. August, 2010), Accessed 16th June, 2022, <https://accountabilityindia.in/blog/the-process-of-lawmaking-in-india>.

- i. The Bill may be approved as presented in the Senate; or
- ii. The Bill may be accepted as stated by the Committee (with changes)
- iii. The Bill may not be conceded.

Thereafter following stages come to be followed like placement of report of the Bill on the Table of the House, transmission of report on the Bill to all Members and Ministries concerned, publication of report in the Gazette of Pakistan and inclusion of Bill in the Orders of the Day. At this stage the important steps i.e. Clause by Clause deliberation of the Bill, Discussion takes place on each clause of the Bill and amendments can be suggested, each amendment and each clause is put to the vote of the House, the amendments become part of the Bill, if they are accepted and voted by the majority of the House take place.

The third reading also known as the stage of passage of a bill, refers to the discussion that the bill, as amended be passed, debate is confined to arguments either in support or rejection of the Bill without referring to the detail, only formal, verbal or consequential amendments are allowed at this stage.

**Presidential Assent/Assent by the Governor:**

When a Bill is presented to the President for assent, the President shall, within ten days, Assent to the Bill, or in the case of a Bill other than a Money Bill, return the Bill to the Parliament with a message requesting that the Bill, or any specified provision thereof, be reconsidered and that any amendments specified in the message be considered, on which the same is Considered in a joint session/assembly, and this is sent again to President/Governor who shall give assent in 10 days failing which assent shall be deemed to have been given. Or in other words

- i. **First reading:** Bill reaches.
  - ii. **Second reading:** Key argument on purpose and key areas of the bill.
  - iii. **Committee stage:** Detailed line by line scrutiny of the text with amendments (proposed changes). Votes may take place to decide whether to make the changes.
  - iv. **Report stage:** Further examination of the text. More amendments are debated and further votes take place to decide whether to make the changes.
- i. **Third reading:** After clause-by-clause consideration of the Bill, the member-in-charge of the Bill can move a motion that the Bill (or the Bill, as amended, as the case may be) be passed. At this stage, the debate is confined to arguments either in support or for rejection of the Bill without referring to the details thereof.
  - ii. **Presidential Assent:** When both Houses agree the final content, a bill is assented by the Parliament and becomes a law or ‘Act of Parliament’,<sup>42</sup>

#### 1.4.4. Legislative Procedure in Pakistan:

The Legislative Competence in Pakistan is as follows:

In the constitution of Pakistan Article 70 to 77 envisage General Procedures regarding Legislations. Art 89 envisions Power of the President to Promulgate Ordinances. Art 141 articulates Extent of Federal and Provincial Laws. Art 142 transpires Subject Matters of Federal and Provincial Laws. Art-143 contemplates Inconsistency between federal and provincial laws. Art 144 forestalls Power of the Parliament to

---

<sup>42</sup>“*Legislation, Stages*”( Senate of Pakistan, senate.gov.pk, n.d), accessed June 16, 2022, <https://senate.gov.pk/en/essence.php?id=1106&catid=3&cattitle=Legislation>.

## UNDERSTANDING NEW LEGISLATIVE ROLES



legislate for one or more provinces by consent. In constitution, in Fourth Schedule, in Federal Legislative List, in Part I there are 59 Entries and in the same List, in Part II there are 18 Entries.

Detailed Process of Legislation laid down in Rules of Procedure and Conduct of Business in Senate 2012, and the Rules of Procedure and Conduct of Business in National Assembly 2007.

The detailed legislative procedure of Pakistan is given in article 70 to 77 of the Constitution of Pakistan, 1973 is as follows:

*How does a bill become law?*

Article 70 of the constitution of Pakistan elucidates the procedure of legislation where a bill becomes the law. It speaks on the bicameral legislation. Article 70 speaks on the federal legislation in Pakistan, for this a bill must contain the contents of the subjects given in the federal legislative list. This bill may be introduced either in the lower house or in the upper house. In Pakistan lower house is known as the National assembly of Pakistan

and the senate is upper house of Pakistan. Article 70 expresses three conditions of a bill to become a law.

First if a bill is passed from the house where it is presented and this bill is sent to the second house and if the same is passed in the second house without any amendment, then it is sent to the president for signature to be made. If the president signs on the bill which has been passed by both the houses, it becomes the law.

In the second condition as we know the bill may be originated from either house if a bill is passed with amendments in the other house where it was sent from the originating house the same bill is sent back to the originating house and if those amendments are adopted by the originating house and same is sent to the president and after assent of the president it becomes a law.<sup>43</sup>

In the third condition two situations arise first if the bill is rejected second if the bill is passed with the amendments and is sent back to the originating house and amendments are not adopted by the house these both situations shall be considered in the joint sitting where voting shall take place in the joint sitting and in consequence of majority vote in “ayes” it shall pass and in the form of majority of “Noes” the same shall get rejection, the passed bills would be presented to the president for the purposes of signatures. Bill only becomes law when the assent is given by the president. This federal legislation contains the subjects in the fourth schedule of the constitution in a federal legislative list. Article 72 of

---

<sup>43</sup> Article 70-76, The Constitution of the Islamic Republic of Pakistan 1973.

the constitution states the procedure of joint sitting for which president is authorized to make rules.<sup>44</sup>

Finance bill is the special bill. There is the special procedure for the finance bill given in article 73. It is only originated in the lower house that is national assembly the house of members who come by winning the direct elections from the certain constituencies. Thus, this is the uniqueness of the money bill that it cannot be initiated from the senate the upper house however under article 73 the senate is the body mandated only to give recommendations on finance bill within the certain period of time i.e. 14 days. The speaker national assembly is competent authority to declare that whether a bill is finance bill or not if any ambiguity or the question arises on the truthfulness of the finance bill. Ordinarily finance bill comprises of the matters relating with the subjects of taxation, loans, consolidated funds, charge receipts of federal consolidated funds etc.

Article 74 necessitates that all the matters regarding finance should get consent of federal government if the federal government does not concede in such bill, then such bills are not to be moved in either of the house. Bills after debate and discussions are presented to the president for which article 75 envisages the obligatory acts of the president on those laws. Under article 75 the president shall give his approval *in* 14 days or sent back to the either house with the message to reconsider it and the same shall be reconsidered. In this situation if the same bill is reconsidered and same is passed on the reconsideration then again presented to the president, the president may approve. But after specific time period even the president does not give consent on such reconsidered bill, the same shall become

---

<sup>44</sup> Ibid.

a law which is known as “the Act of the parliament”. Article 76 expresses about condition of the bill on the occasion if the session of a house is prorogued.<sup>45</sup>

Rules of Business of the Senate 2012 in its chapter 12 gives the detailed procedure of legislation. Rule 94 of the rules elucidates the private member bill. According to rule 94 the member is authorized to introduce a bill which had been drafted on the subjects given in the federal legislative list for which a member has to give a notice under rule 94 to the secretary senate for 10 days. This bill should contain three copies. It must incorporate the statement of objects and reasons duly signed by the member. The chairman senate is a deciding authority regarding the consent of the government or the approval of the president on the bill which becomes controversial about the prior approval of the federal government. The senate secretariat is bound to assist the members on the bill on its technical formalities. The introduction of private member bill is made under rule 94. The bill should enclose with a motion of leave to introduce the bill. The member in charge of the bill has to face, speak and explain the bill under rule 95.

Rule 96 speaks on the notice of the government bills. Minister gives the notice of government bill and annexes the copy of bill with the notice. The government bill also contains statement of objects and reasons signed by the minister. The minister also gives certificate regarding the bill is money bill or not. The government bill is introduced by the minister.<sup>46</sup>

Such bills are published in the official gazette under rule 97. Rule 98 envisages the bills to be referred in the standing committee concerned. Rules of Business of Senate 2012

---

<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

also contains the model of first, second and third reading. Rule 103 of the rules depicts the discussion on principles of the bill which is known as the first reading of the bill while clause by clause consideration of the bill is known as the second reading of bill which is envisaged by rule 104. Rule 105 of the rules *ibid* authorizes about the notice of the amendments. Final passing of bill is known as third reading of bill. Rule 113 describes the third reading i.e. passing of the bill. While rule 114 gives the detail of the scope of the debate and rule 115 also licenses the withdrawal of the bills. Correction of formal nature of the bill is provided under rule 116 while rule 117 of the rules necessitate the transmission of the bill to the assembly. Usually when the bills which are passed by the senate of Pakistan those are sent to the national assembly of Pakistan under rule 117 of the rules.

Rule 118 deals with the bills which were approved by the assembly and sent to the senate. The secretary senate is bound to circulate such transmitted bills to the members. Rule 121 deals with such bills to be referred to the standing committee concerned. The bill is taken for clause-by-clause consideration under rule 123. Rule 124 deals with bill passed without amendments while rule 125 deals with bills passed with amendments and bills rejected.<sup>47</sup>

Rule 126 to 129 deal with the bills passed by the senate and amended, rejected or not passed by the assembly, in such case the secretary is bound to convey the situation to the members. Under rule 129 the bills are sent to the president for his assent.

---

<sup>47</sup>Rule 94-131, Rules of Procedure and Conduct of Business in the Senate, 2012.

Constitution amendment bill is dealt under rule 123 when the bill is assented by the president the chairman shall at once send it for publishing it in the gazette showing it as an act of the Majlis e Shoora having become a statute.

#### NATIONAL ASSEMBLY:

Rules of Procedure and Conduct of Business in the National Assembly, 2007 in Pakistan comprises of the corresponding provisions from rule 118 to 156 which mainly throws light as that of the procedure of senate on the private members bill and government bills starts from the notice of private member bill, introduction of private members bills, notice of government bill, publication of bill, consideration of bill, different motions, reference to standing committees and passing of the bills there after transmission to the president for assent.<sup>48</sup>

#### PROVINCE OF PUNJAB (ROB).

In Pakistan in provinces there is unicameral system of legislation. Article 115 of the constitution deals with the provincial legislation. Article 115 necessitates that money bills must annex with the accord of provincial government concerned before it is introduced in the provincial assembly concerned. All such bills need to be introduced in the assembly with the prior consent of the provincial government. The bills which have been passed in the provincial assembly are presented to governor for assent under article 116 and once the bill assented by the governor it becomes a provincial law.<sup>49</sup>

---

<sup>48</sup> Ibid. Rule 118-156.

<sup>49</sup> Art 115, The Constitution of The Islamic Republic of Pakistan 1973.

Punjab rules of business 1973 in its part F encompasses the corresponding provisions of legislation from rule 33 to rule 35 revolving around the official bill's amendments for which the administrative department is responsible for the contents of the bill there after consultation with finance department and law and parliamentary affairs department then the non-official bills and amendments which in that bill the administrative implications are accessed. The concerned department, finance department and law department are consulted then it is presented to the provincial cabinet and put it to the procedure. All other provinces contain the corresponding provisions according to the provincial rule of business.<sup>50</sup>

Constitution of Pakistan provides for temporary form of legislation too which is known as ordinances which is the power of president or the government under article 89 this is power of president to promulgate ordinances this ordinance is known as federal legislation, it can be promulgated only when the senate or the national assembly is not in session and its life is 120 days but it is extendable for more 120 days meanwhile if the session of the house is summoned then this ordinance may be laid before the house which shall be treated as a bill. Provincial ordinance which is the power of governor and its life is 90 days and it is extendable for more than 90 days.<sup>51</sup>

#### **1.4.5. TYPES OF LEGISLATION IN PAKISTAN:**

<b><u>Primary/Principal Legislation</u></b>	<b><u>Secondary/Delegated Legislations</u></b>
Acts	Rules

<sup>50</sup>Rule 33-35, Punjab Government Rules of Business 2011.

<sup>51</sup>Article 89, 128, The Constitution of the Islamic Republic of Pakistan 1973.

Ordinances	Regulations
Orders	By-laws
	Notification
	Statutory Rules and Orders (SRO)
	Guidelines
	Other Statutory Instruments

### 1.5. Primary Federal and Provincial Legislations:

House	Number of Laws
Federal Parliament	968
Punjab	688
Khyber Pakhtunkhwa	553
Sindh	115
Baluchistan	510
Total Number of Laws	3834 <sup>52</sup>

### 1.6. Federal Laws:

Mode of Law	Number	Percentage
Pre-Partition (1839-1947)	224 (20 laws repealed)	23%
Ordinances/Order	279 (16 ordinances repealed)	29%

<sup>52</sup> Official Websites of Pakistan code, KPK code, Sindh code, Punjab and Sindh code. <https://pakistancode.gov.pk/english/index.php>, <https://kpcode.kp.gov.pk/>, <https://punjabcode.punjab.gov.pk/> Last accessed 12<sup>th</sup> July, 2025

Acts by Parliament	465	48% <sup>53</sup>
--------------------	-----	-------------------

## 1.7. Significance of Legislative Institutions:

Legislative institutions are of great importance and have primary role all across the globe. Prominence of institutions of many countries will be discussed in this section. In UK Parliament is the legislature and the absolute legal power having authority of making, changing and abrogating any law.

The legislative institutions of UK that are House of Commons and House of Lords have following important functions:

- To represent the peoples of the United Kingdom in all matters;
- To hold the government to account;
- To scrutinize and approve Bills as part of the legislative process;
- To authorize taxation;
- To scrutinize and approve the Government’s budget and planned expenditure on an annual basis;
- To debate the public policies of and for the Government of the United Kingdom.
- To hold the government to account;
- To scrutinize, amend and approve bills as part of the legislative process.<sup>54</sup>

<sup>53</sup> Official website of Pakistan code. <https://pakistancode.gov.pk/english/index.php> , last accessed 12<sup>th</sup> July, 2025

<sup>54</sup> “*Constitution Committee - Summary - Committees - UK Parliament*,” (parliament.uk. n.d.), accessed June 16, 2022, <https://committees.parliament.uk/committee/172/constitution-committee>.

The main importance of Swiss legislative institution i.e. Parliament is to legislate. It also endorses international agreements, accepts federal budgets and state accounts, supervises the federal government, and chooses members of the Federal Council and federal courts.

The US Congress is the legislative branch of the federal government. It signifies the American people and makes the nation's laws. It shares power with the executive branch, led by the president, and the judicial branch, whose highest body is the Supreme Court of the United States. Of the three branches of government, Congress is the only one elected directly by the people.

Article I of American Constitution describes congressional powers as follows:

- Make laws
- Declare war
- Raise and provide public money and oversee its proper expenditure
- Impeach and try federal officers
- Approve presidential appointments
- Approve treaties negotiated by the executive branch
- Oversight and investigations<sup>55</sup>

In Pakistan legislative institutions are the Senate of Pakistan and National Assembly which are bicameral legislative institutions. The Senate of Pakistan represents the

---

<sup>55</sup>(The National Constitution Center, William N. Eskridge, Jr. & Neomi Rao, “Article I, Section 1: General Principles, Common Interpretation”, Accessed 30 June 2022, <https://constitutioncenter.org/the-constitution/articles/article-i/clauses/749#:~:text=Article%20I%2C%20Section%201%20provides,in%20a%20representative%20bicameral%20Congress.>

provinces and stimulates a feeling of equality, peace and harmony. The role of the Senate is to stimulate national cohesion and harmony. The Senate of Pakistan gives equal representation to all the federating units and balances the provincial inequality.<sup>56</sup> The unicameral legislative institutions are the provincial assemblies which are four in number and are empowered to legislate on the residuary subjects i.e. which are not listed in the fourth schedule of the constitution and under article 141, 142 (c), 144 in accordance with the procedure given under article 115 and 116 of the constitution read with the rules of procedure and conduct of business of the province concerned.

## **1.8. Vitality of legislation:**

Legislation sets the foundation for authority's work, and dos and don'ts of employees of authorities. Authorities operate under these responsibilities and needs through expectations, standards (like codes of conduct), policies and procedures.

According to general law, one person may acquire or be obliged as a result of a particular legal relationship with another person. This relationship can result from an agreement or document that allows one person to control another person's property. It could be a legal relationship established as a result of a civil mistake made by a person. These relationships are narrow in nature and cannot be unilaterally created under common law for all citizens or all citizens of a particular class.

---

<sup>56</sup> "Senate of Pakistan, About the Senate, overview", Accessed 1st July, 2022. <https://senate.gov.pk/en/essence.php?id=58&catid=4&subcatid=138&cattitle=House%20of%20%20Federation?id=-1&catid=4&cattitle>About%20the%20Senate>.

Only properly approved and enacted laws can unilaterally create or change the rights and obligations of the general public, or change or interfere with the operation of general law. Legislation may also be the option of choice to present policies particularly effectively, or to create situations that can only be further modified or terminated by legislation.<sup>57</sup>

## 1.9. Separation of power:

### 1.9.1. Concept of Separation of Power:

French social and political philosopher Charles-Louis de Secondat, baron de La Brède et de Montesquieu in 1748 and coined the term "trias politica" or "separation of powers"<sup>58</sup> and gave the statement:

*“When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty... there is no liberty if the powers of judging are not separated from the legislative and executive... there would be an end to everything, if the same man or the same body... were to exercise those three powers.”<sup>59</sup>*

---

<sup>57</sup> Prof Herman de Jager, (*Importance of legislation*) Accessed 1st July, 2022, <https://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks/legislation-handbook/context/why-its-needed.aspx>

<sup>58</sup> “*The NCSL Foundation for State Legislatures, Separation of Powers: An Overview*”, Accessed 5th July, 2022, <https://www.ncsl.org/research/about-state-legislatures/separation-of-powers-an-overview.aspx>

<sup>59</sup> Baron de Montesquieu Montesquieu: (*The Spirit of the Laws*), (New York, the USA: Cambridge University Press, 1989). Accessed 6th July, 2022, <https://socialsciences.mcmaster.ca/econ/ugcm/3113/montesquieu/spiritoflaws.pdf>

In stricto sensu, separation of power means that all three branches are not allowed to use the power of others at all. There should be no person, member of any two branches. Instead, the independent actions of distinct institutions need to create a system of reciprocal control.<sup>60</sup>

The same was held in the famous case of *Marbury vs Madison*. It established the concept of judicial review, meaning that the Supreme Court can determine whether or not a law is constitutional.<sup>61</sup>

### **1.9.2. Strength of Separation of Power:**

The doctrine of separation of power has own strengths on one side while it is criticized too in terms of its weaknesses. “Montesquieu” tells about three offshoots of government – “the legislature, executive and the judiciary” should be distinct nondependent in terms of personnel, functional and powers. This theory has the forte for the welfare of the citizens like the following summarized tenets:

- a. It guarantees the citizens to enjoy the fortification of freedom of rights as well as shield against all forms of despotic control and tyranny.
- b. It leads towards distinct role of each organ and causes efficient and smooth functioning of official task.
- c. The arrangement of the official business is assured and put it in to an orderly form under this formula.

---

<sup>60</sup>Richard Benwell and Oonagh Gay, (Research Briefings Publications - House of Commons Library,” parliament.uk. n.d), accessed July 7, 2022, <https://commonslibrary.parliament.uk/research-briefings>.

<sup>61</sup>*Marbury v. Madison* is 5 U.S. 137 (1803)

- d. It discourages the arbitrary act and one man show through the process of checks and balances.
- e. Independence of judiciary is its main trait whose function is to adjudicate the matters, within accordance of law ,beyond all biases.

“DARK SIDE OF THE THEORY”:

“The theory of separation of power” faces a lot of criticism in a great number of countries being an ideal one. Sabin and Finer are main exponent of criticism on this theory.

Few of the points of the criticism are enumerated as:

- a. Montesquieu developed the theory at the time of Cabinet form of Government in UK thinking that the Government has assigned the obligations differently which was erroneous concept and ultimately, he comprehended that falsely.
- b. Separation of power cannot be established as a whole for the reasons behind certain functions of one organ has to be undertaken by the other organ to run the state functions. Those functions include delegated legislation, quasi legislative function, quasi-judicial and purely administrative functions.
- c. It creates complex management causing disharmony, aloofness and disintegration which is against the spirit of modern state system.
- d. Finer has stated this theory as a sick theory that causes muddles creating the vanity, prejudices and disturbance among the organs that slow down the state functions.

- e. This theory results in the unequal distribution of powers like the parliamentary system and presidential system, the exercise of powers differently emerges with inadequate authorities.
- f. It is not a single aspect of liberty, despite of its role in liberty that includes many other features which are of paramount significance.
- g. It has caused imbalance in the division of power as the enhanced role of modern welfare state has enlarged the administrative role of the executive that some time also creates the arbitrariness due to extra executive powers.<sup>62</sup>

## **1.10. Legislative Function Viz a viz Theory of Separation:**

### **1.10.1. Role of Legislatures:**

Parliaments are the house of legislature which are the epicenter foundation of democracy represent the wish of the public in the government. The legislatures are always amenable to the whims of the people by visiting them in the street life they feel their problems by looking in to the problems of the people they make certain promises to solve these problems. On the basis of those promises they make the policies, ultimately those policies become laws. These laws are basically the demand of the society which are made by the parliaments according to the need of the time. The government acts in accordance with the laws made by the legislatures consequently it is answerable to the public. Parliaments in its process change with the changing circumstances in the term of betterment of work i.e., to be reachable, answerable, responsive, sweeping and clear in

---

<sup>62</sup>“*Research Briefings Publications - House of Commons Library*,”(parliament.uk. n.d.), accessed July 7, 2022, <https://commonslibrary.parliament.uk/research-briefings>.

particular having more efficacy in their pivotal role of legislation and scrutiny of governments.

The main traits of a legislature sitting in a democratic parliament are as under;

- i. A legislature is always a socially and politically representative of the people who ensures the chances to all the people equally with full protection.
- ii. He is always crystal clear before the nation having no secrecy in his deeds and works by open media with full transparency.
- iii. He always tries to involve the people in work of parliament particularly the desirous unions and activist of the civil society to make it accessible.
- iv. His work and conduct that needs integrity with reference to his performance is always open to be answerable for his constituency.
- v. He is emblem of effective body showing true norms of democracy performing the legislative and scrutiny functions which serves the public at large according to their needs.<sup>63</sup>

### **1.10.2. The Development and The Role of Legislature:**

UNDP defines human development approach as:

*“Human development is about expending the richness of human life, rather than simply the richness of the economy in which human being*

---

<sup>63</sup> “Parliament and Democracy in the Twenty-First Century a guide-good-practice.”,(ipu.org. n.d.), accessed July 14, 2022, <https://www.ipu.org/resources/publications/handbooks/2016-07/parliament-and-democracy-in-twenty-first-century-guide-good-practice>.

*lives. It is an approach that is focused on people and their opportunities and choices.”*<sup>64</sup>

Legislatures usually look forward for the following acts on the way of development:

- a. In socio economic development looking in to the policies for making it law after debates and discussions.
- b. Making legal frame works for different development works.
- c. Budget and budgetary considerations and recommendations having the oversight on the operative budget.
- d. The proposals on budgets by the executives and its surveillance grass root level service on development issues in the concerned constituencies.
- e. Representation of the people of their area with their problems and policy matters.
- f. Over all progress of the public functionaries and its accountability by the Committees.
- g. Role in the policy formation and looking in to its implementation.
- h. The strategic acts concerning education, health sanitation, women empowerment etc. and its approval.

The above developmental role can be viewed in different tools of legislation example given enactment of laws, oversight, financial sanctions, debates in Committees along with

---

<sup>64</sup>“*Human Development | Human Development Reports,*”(undp.org. n.d.), accessed July 16, 2022, <https://hdr.undp.org/about/human-development>.

other non-legislative tools that includes but not limited to the CAN(calling attention notice), motions, starred and un starred questions, other debates and discussions. <sup>65</sup>

The important role of legislator in development revolves around poverty alleviation, employment, creation development of infra-structure, education and skill development, public health. It also works on upgraded elementary services, advanced yield, better human growth, improved employment prospects, abridged inequalities, approach to privileges and prerogatives, broader societal deployment and supplemented communal investment. <sup>66</sup>

### **1.11. Role of Judiciary:**

Encyclopedia Britannica Defines judiciary as:

*“Judiciary, branch of government whose task is the authoritative adjudication of controversies over the application of laws in specific situations.”*

Judiciary pillar of state is mandated with the job of deciding the controversy or controversies between two parties consisting of individual, groups or the bodies which may be governmental or private entities. The courts take up the matter in which one party allege some fact in which it has claimed about the abrasion of the law or breach of some contract or some felony has been conducted the decisions of judiciary may be civil, financial or criminal which are different in nature. Crimes are basically the offences against the society

---

<sup>65</sup> “Research Note on Role of Legislators in The Development Process. ”, (Research and Information Division, Lok Sabha Secretariat), 2,3. Accessed 10th July, 2022, [https://loksabhadocs.nic.in/Refinput/Research\\_notes/English/04122019\\_171611\\_102120495.pdf](https://loksabhadocs.nic.in/Refinput/Research_notes/English/04122019_171611_102120495.pdf).

<sup>66</sup> Ibid.11,12,13, 15.

the judiciary in this matter declare whether the person has committed the crime or not. There are two parties in this situation one party is accused or defendant and other is petitioner or the prosecutor. The accused declared as guilty by the court are sentenced to punishment and non-guilty are acquitted by the court.

In the administrative matter judiciary often resolves the issues between two parties which may be citizens, groups, government agencies or others. Here in this matter the court is prayed for the remedies to be provided against the government functionaries which had resulted from the abuse of power and the courts have to look in to the matter and decide appropriate remedy. Civil, criminal and administrative matters differ in nature before the courts in the system of courts the dispute has to be heard on the basis of natural justice and following the procedure differently.

Judiciary usually finds out the facts and issues 1<sup>st</sup> then require the evidence on that facts and issue to be proved or disproved the parties which prove the case usually declared as the successful party who had established the case. The judiciary has been illustrated as the less harmful pillar of the state because it takes no active determination.<sup>67</sup>

In Pakistan S.C is the top court as per article 189 of constitution of Pakistan ,which is apex court of the country under the constitution and law. The decisions made by this apex court are exclusively obligatory on all the subordinate courts.<sup>68</sup>The whole administrative and legal establishments have to operate under the direction of the apex court. The supreme Courts composition, functions powers and jurisdictions are governed

---

<sup>67</sup> Tate, C. Neal. (*judiciary*). (Encyclopedia Britannica, Oct. 2023), Accessed 6 October 2023. <https://www.britannica.com/topic/judiciary>.

<sup>68</sup>Constitution of Pakistan , 1973  
<https://pakistancode.gov.pk/pdf/files/administrator9d8e2ecc414c6d33371ac41114b61a2c4.pdf>.

by the Constitution of Pakistan. The Constitution of Pakistan provides the way of selection of judges, its procedure of appointment and removal with its conditions. It also provides the original, appellate, advisory and review jurisdiction for the S.C., original jurisdiction revolves around the exclusive power of determining the disputes between the governments for which the court provides declaratory judgments. The original jurisdiction also empowers the court to exercise its powers in respect to the matter of public importance as well as the enforcement of fundamental rights. In its advisory jurisdiction the S.C gives its opinion to the president on the matters involving a question of law while exercising its appellate jurisdiction all orders and verdicts of the high court's special courts or tribunals are entertained as an appeal against those findings on the matter of question of law. Constitution envisages the liberty of judiciary and its separation from the executive. The three pillars that are legislature, the executive and the judiciary are harmonized by the supreme act of S.C being unique responsibility. The S.C also acts as the guardian of the constitution which is the basic document, defended protected and preserved by the court as prime duty.<sup>69</sup>

By looking in to role of judiciary judicial system in Pakistan has three various periods including Hindu kingdom, British rule and colonial and forth is running period the running period is influenced from imported theories ideas and domestic practices and folk ways.<sup>70</sup>

---

<sup>69</sup> “*History – Supreme Court of Pakistan*,” (supremecourt.gov.pk. n.d.), accessed October 6, 2023, <https://www.supremecourt.gov.pk/about/history>.

<sup>70</sup> Dr Faqir Hussain, (The Judicial System of Pakistan), 06, Accessed 6 October 2023. <http://www.scp.gov.pk/files/Misc/thejudicialsystemofPakistan.pdf>.

As per "Unravelling Justice: A Critical Examination of Pakistan's Judicial History and its Failures" is written by Abdul Qayyum Gondal and Prof. Zulkaenain Hatta and Studocu Pakistan's judicial system has evolved significantly over four distinct periods: the Hindu kingdom, British rule, colonial era, and the current post-independence period.

- i. Hindu Period (1500 BC - 1500 AD): During this era, the King was the fountain of justice, and his court was the highest judicial authority. The judicial system was based on Hindu customs and traditions, with Panchayats (councils of elders) resolving disputes at the village level.
- ii. Muslim Period (1500 AD - 1757 AD): The Qazi System was introduced, with Qazis (judges) appointed by the ruler to administer justice. Islamic law (Sharia) played a significant role in shaping the judicial system.
- iii. British Period (1757 AD - 1947 AD): The British established a modern judicial system, introducing the Indian High Courts Act of 1861 and the Government of India Acts of 1915 and 1935.
- iv. Post-Independence Period (1947 AD - present): Pakistan inherited the British judicial system, with subsequent constitutions shaping the country's judicial framework

Current Judicial Structure:

- Supreme Court: The apex court, with original, appellate, and advisory jurisdiction.
- High Courts: One in each province and the Islamabad Capital Territory.

- Subordinate Judiciary: Civil, criminal, family, and specialized courts.<sup>71, 72</sup>

“The Government of India Act 1935” became the foundation which was amended in 1954 for giving powers to the High Court with the writs prerogative it remain the same in 1956, 1962 and 1973 constitution, however 1973 constitution substituted the name of federal court by the S.C and the chief court of the NWFP and judicial commission court of Baluchistan were elevated as High Court<sup>73</sup>. Today the constitution of Pakistan envisages the independence of judiciary entrusting the superior judiciary to perform its responsibility of “preserving, protecting and defending the constitution”. After the Government of Sindh vs. Sharaffiridi case the financial autonomy of the superior courts i.e., S.C and High Courts have been granted<sup>74</sup>. In the said case it was held that independence of judiciary includes the eradication of monetary mechanism of executive over the judicial. Besides S.C in every province there is one High Court. Art.199 provides original jurisdiction to the High Courts to protect the fundamental rights and to act as the appellate court of criminal and civil matters. High Court administers and regulats all the subsidiary courts. HCs staff is appointed in the subsidiary courts<sup>75</sup>. The Federal Shariat Court under article 203 of constitution exercises the role of examining and determining the laws within the

---

<sup>71</sup>Judicial System of Pakistan: Historical Evolution and Current Structure," Studocu, accessed December 7, 2025, <https://www.studocu.com/row/document/ghulam-ishaq-khan-institute-of-engineering-sciences-and-technology/engineering-electromagnetics-by-william-hyatt-8th-edition/judicial-system-of-pakistan-faqir-hussain/28829064>

<sup>72</sup>Abdul Qayyum Gondal and Zulkaenain Hatta, “Unraveling Justice: A Critical Examination of Pakistan's Judicial History and Its Failures,” Pakistan Social Sciences Review 7, no. 4 (December 31, 2023): 698–712, accessed October 15, 2025, <https://ojs.pssr.org.pk/journal/article/view/434/298>.

<sup>73</sup>Ibid.10.

<sup>74</sup>Government Of Sindh vs Sharaffaridi 1994 PLD 105 Supreme-Court

<sup>75</sup> Ibid. 17

conformity of injunction of Islam along with exercising as an appellate and revisional jurisdiction over the criminal courts in hardwood cases.<sup>76</sup>

In Pakistan, the district courts are categorized into two main types: Civil Courts and Criminal Courts. Civil Courts: These courts handle civil matters, such as disputes related to property, contracts, family law, and other non-criminal cases. Examples are Court of District Judge, Court of Additional District Judge, and Civil Judge. Criminal Courts: These courts deal with criminal cases, including trials for various offenses, and are responsible for administering justice in accordance with the country's criminal laws. Examples are Sessions Court, Court of Magistrate (First Class, Second Class, and Third Class). Additionally, there are specialized courts and tribunals, such as: Juvenile Courts: handling cases involving minors, Anti-Terrorism Courts: dealing with terrorism-related cases, Labour Courts: handling labour disputes and Family Courts: handling family law cases.

These courts operate under the jurisdiction of the High Courts and are governed by various laws, including the Civil Courts Ordinance 1962 and the Code of Criminal Procedure 1868. Civil courts ordinance 1962 ordinance regulates civil courts while code of criminal procedure 1898 regulates criminal courts. The judgments of such courts may be appealed against before the superior judiciary, i.e. S.C and High Court<sup>77</sup>. Special courts and administrative tribunals, banking courts customs courts, taxation and anti-smuggling, income tax tribunals, drugs courts environmental tribunals antiterrorism courts accountability courts have been authorized to be established by the federal legislature.

---

<sup>76</sup> Ibid .8,19

<sup>77</sup> Ibid. 20

Government is authorized to establish administrative courts and service tribunals under article 212.<sup>78</sup>

Diagram organogram of courts in Pakistan is as under:

11 ORGANISATION AND STRENGTH OF JUDICIAL HIERARCHY

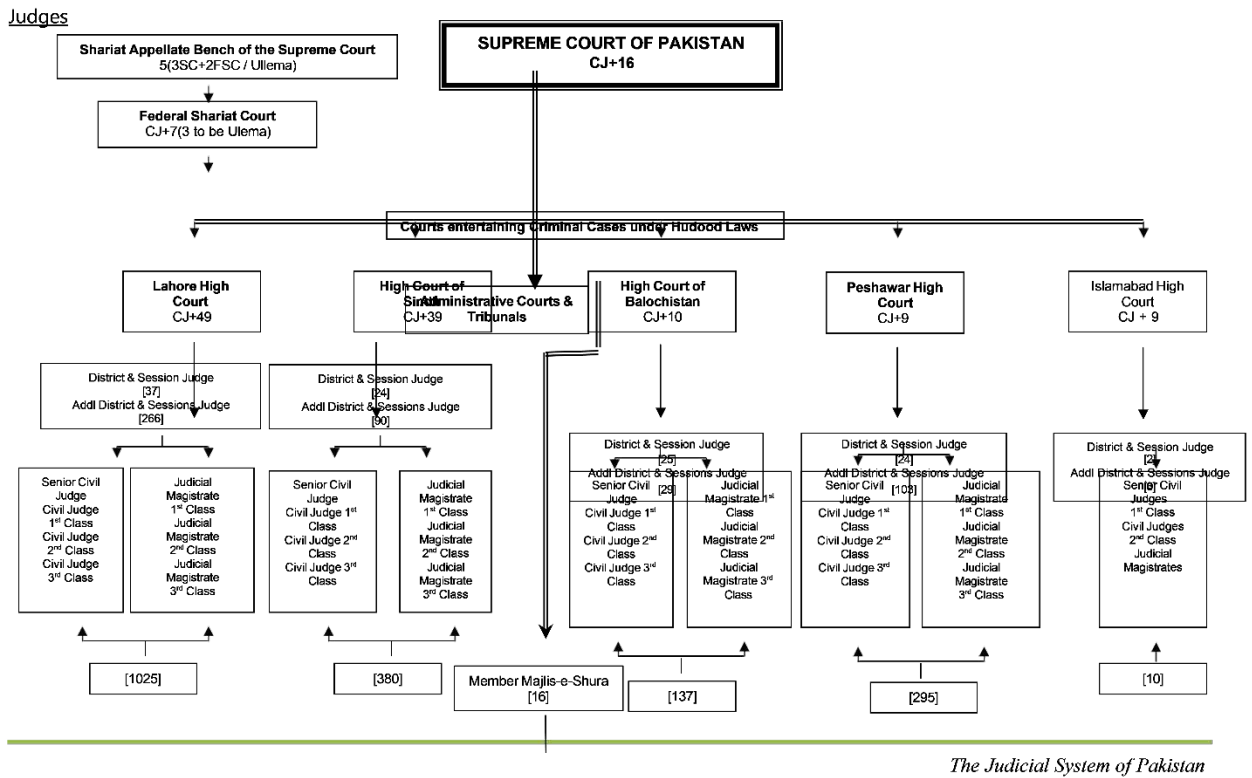


Figure 1-1: Organogram of courts in Pakistan<sup>79</sup>

1.12. Conclusion:

1. Legislation is a law or a set of laws that have been passed by Parliament. The word is also used to describe the act of making a new law. parliament undertakes the job

<sup>78</sup> Ibid. 21

<sup>79</sup> Ibid. 30.

of law making which is known as supreme legislation, the executive performs the duty to make policy and to act in accordance with the statutory powers, parliament also allows executive through statutes to make legislation which is known as delegated legislation and the judiciary performs the duty of the adjudication that is to resolve the issues and matters under contention purely in the light of the provisions of the laws made by the parliament it is however also the duty of judiciary to use its innate power known as the inherent powers when the express provisions of laws are missing in the statutes.

## 2. CHAPTER 2 FOUNDATION OF PLS:

### 2.1.Introduction:

Liability, evidence-based decision-making, transparency, neutrality, participant engagement, unceasing enhancement, parliamentary oversight are numerous key elements on which the foundation of Post-Legislative Scrutiny (PLS) is built. PLS believes in Guaranteeing that the government and policymakers are held answerable for the commandments they pass and their operation. It relies on healthy proof and statistics to notify PLS results and endorsements. Leading PLS in an open and transparent manner, letting stakeholders and the community to access information and contribute in the process. Oncoming PLS with an impartial attitude, concentrating on scrutiny and estimation rather than partisan programmes. Inspiring contribution and appointment from varied investors, plus residents, civil society organizations, and specialists. Frequently studying and purifying PLS processes to confirm they remain operative, effectual, and receptive to varying wants and conditions. Identifying the role of parliament in supervision of the execution of laws and holding the government accountable are the elements work collectedly to deliver a solid foundation for effective Post-Legislative Scrutiny, empowering parliaments to recover the quality of legislation and governance.

Scrutiny is an inspection. “Legislative scrutiny” is a system where the competence of legislation is inspected. The Committees are a good source of legislative scrutiny. Parliament can carry out the **PLS even at the stage of Pre-Legislative Scrutiny** by Memo of secondary legislation, empowerment of framing rules within the timeframes, recognition of provisions, including the special provisions confirming systemized PLS, incorporation of Review Clauses and Sunset Clauses like that of Canada.

Post legislative scrutiny is an inspection of laws after being enforced. Post legislative scrutiny has two aspects: first, the provisions of law have been enforced; second, the anticipated vision of the law has been met. PLS is a particular process of Evaluation, that if the provisions of the law have been efficaciously executed and brought into force, assessment that courts interpretation of the law and its application practically, comprehending that how the legal experts, individuals, and public organizations are engaged with the use of law and having ensured that subordinate legislation has been enacted in accordance with the primary law are the dimensions of PLS.

Analysis, sunset clauses are the tools of PLS. Participants need to carefully identify the pieces of legislation. Pre legislative scrutiny is also named as public feedback. Committees carry out the pre legislative scrutiny. The Committees publish a call of evidence to get feedback from stakeholders. First reading, second reading, Committee stage, report stage, third reading and Royal assent are the stages of pre legislative scrutiny. In PLS, Parliament has to address the question of whether the aims of the law have been retrieved timely qualitatively and quantitatively, noting down the adverse effects in the absence of this law.

## **2.2. Scrutiny:**

Merriam Webster defines word scrutiny as,

*“1: a searching study, inquiry, or inspection: EXAMINATION*

*2: a searching look*

*3: close watch: SURVEILLANCE.”*

Etymology

“Latin scrutinium, from scrutari to search, examine, probably from scruta trash”<sup>80</sup>

The word "scrutiny" is closely tied to legislative scrutiny. Legislative scrutiny is a process where government agencies, policies, or decisions are examined and reviewed by legislative bodies, like parliament or congress. This involves a thorough examination of the actions, policies, or proposed laws to ensure they align with the constitution, are effective, and serve the public interest.

In this context, "scrutiny" retains its meaning of close examination and inspection. Legislative scrutiny is a crucial aspect of checks and balances, holding the executive branch accountable and ensuring transparency.

### **2.1.1. Legislative Scrutiny:**

Glossary formulated by UK Parliament transpires the meaning of Legislation as “word is also used to describe the act of making a new law.”, scrutiny or parliamentary scrutiny as “Parliamentary scrutiny is the close examination and investigation of government policies, actions and spending that is carried out by the House of Commons and the House of Lords and their committees.”<sup>81</sup>

### **2.1.2. Aims and Objectives of Scrutiny:**

Kate Dew Sniprefers in his journal that parliamentary scrutiny is a nice act. On the act of the scrutiny most of the comments are received to improve and enhance the scrutiny

---

<sup>80</sup> “*Scrutiny.*” Merriam-Webster.com Dictionary, Merriam-Webster, Accessed 7 Oct, 2023, <https://www.merriam-webster.com/dictionary/scrutiny>.

<sup>81</sup> “UK Parliament” “Legislation”, Parliament UK, Accessed 24 august, 2023, <https://www.parliament.uk/site-information/glossary> .

during the legislative process instead of pondering over the reason of importance of the legislative scrutiny to start and to complete.<sup>82</sup>

The objects and reasons of legislative scrutiny includes the technical quality of legislation to make legislation workable and usefulness is enhanced. The accountability is ensured by scrutiny as it operates to hold the government accountable for its deed and policy influence is facilitated by scrutiny as parliament provides the platform to hold debate and discussion on the proposed policy in bill where the further amendments may be introduced.<sup>83</sup>

Russel and Cowley adduce in their study that a government always wishes to escape legislative failure at the time of making of new policy and laws for which government anticipates the reactions at the time of policy formulation so the ministries also hold prior discussion with the opposition benches so that the bill may be passed and the dissenting statements may be redressed.<sup>84</sup>

The preamble of the Legislative and Regulatory Reform Act 2006 reads as under

*“An Act to enable provision to be made for the purpose of removing or reducing burdens resulting from legislation and promoting regulatory principles; to make provision about the exercise of regulatory functions; to make provision about the interpretation of legislation relating to the European Communities and the European Economic Area; to make*

---

<sup>82</sup>Kate Dewsnip, (*The Purpose of Legislative Scrutiny - The Constitution Society*), (consoc.org.uk. April 2023), <https://consoc.org.uk/the-purpose-of-legislative-scrutiny>.

<sup>83</sup> Ibid.

<sup>84</sup> Meg Russell, Philip Cowley, (*The Policy Power of the Westminster Parliament: The ‘Parliamentary State’ and the Empirical Evidence*) Governance 29, no. 1 (2015): 121-137, Accessed 2 September 2023, <https://doi.org/10.1111/gove.12149>.

*provision relating to section 2(2) of the European Communities Act 1972; and for connected purposes.”<sup>85</sup>*

This preamble is very crucial in legislative scrutiny process as it outlines the purpose of the Act, which includes improving regulatory functions and reducing burdens. This aligns with the concept of legislative scrutiny, which involves reviewing and examining proposed laws and regulations to ensure they are effective, necessary, and do not impose undue burdens. Further the preamble provides for understanding the intent behind the legislation, Highlights the need for careful examination and review of proposed orders, emphasizes the importance of accountability and transparency in regulatory processes.

By considering the preamble, lawmakers and regulatory bodies can better understand the purpose and scope of the legislation, informing their scrutiny and decision-making processes.

## **2.2. Input of Legislative Committeeon Scrutiny:**

Professor John Uhr opined that scrutiny committees are a sort of back-office set-up. The senate standing committees examine the legislative proposals in a special angle instead of holding public hearing. Senator Coonam Eis of the view that senate scrutinizes the legislation without involvement of executive by stating that the scrutiny of bills committee is a technical committee which definitely performs the operation of modern parliaments adding that he said which definitely performs the operation of modern parliaments adding

---

<sup>85</sup>“Legislative and Regulatory Reform Act 2006”, preamble, Accessed 2 September 2023, <https://www.legislation.gov.uk/ukpga/2006/51>.

that he said Australian senate committees performs the vital role in the accountability of the government in particular by scrutinizing the budget and policy issues through public enquiries and the same continues all the year .

Committee scheme entitles the senate part as the platform of scrutiny and assessment.

Senator Coonam further states that:

*“Scrutiny of bills committee is very old committee which was established on 19 November 1981 by resolution of the senate. Its purpose is to access legislative proposals against a set of accountability standards that focus on the effect of proposed legislation on the individual’s rights, liberties and obligations, and on parliamentary propriety.”*

The senate regulation and ordinances committee perform its part by examining the whole “delegated legislation” and reports to the senate on following 5 heads

- a. Whether a bill violates privileges and duties `
- b. Creates privileges and duties or compulsions upon inadequately defined executivecontrols
- c. Creates privileges and duties upon verdicts which are not assessed
- d. Legislative power delegation in an appropriate manner
- e. In addition, the exercise of legislative power is not adequately subject to parliamentary scrutiny.

In parliament paper no. 54 of Australian Parliament it was discussed that scrutiny of bill committee commenced an enquiry in to its future role and direction. The terms of reference for the enquiry were to inquire in to and report on the future direction and role of the scrutiny of the bills committee, with particular reference to

- a. whether its powers, procedures, and guidelines are still suitable.
- b. whether the best mechanisms for parliamentary oversight and control of delegated legislation exist and.
- c. What additional duties, if any, the committee ought to fulfill in connection with the common good and human rights?

The scrutiny of bills committee intends to be the good source of legislative scrutiny of senate. So, it is on this vital job. Mr. Vanstone comes with his view point that the scrutiny committees are of great importance because their work is clearly visible. The scrutiny of bills committee believes in having meaningful reports and correspondence with the ministers and leaves this thing over to parliament to take decision, similarly regulation and ordinance committee does the work of scrutinizing the substance of regulation and ordinances finally appears with the advice to the parliament by a tool of resolution if there has not happened rightly. In all these works the role of senate secretariats and legal advisors are of paramount worth mentioning.<sup>86</sup>

The proposed bills to be introduced in the parliament as well as the subordinate legislation i.e. rules, regulations by laws and notifications etc. both are examined by the legislative scrutiny committees. The committees follow many principles of scrutiny which aimed at defending the rights and liberties having ensured the over sight of parliament then

---

<sup>86</sup> “*Role and contribution of legislative scrutiny committee. Papers of parliament no.54*” December 2010, Parliament of Australia, Accessed 3<sup>rd</sup>, September 2023.  
[https://www.aph.gov.au/About\\_Parliament/Senate/Publications\\_and\\_resources/Papers\\_and\\_research/Papers\\_on\\_Parliament\\_and\\_other\\_resources/Papers\\_on\\_Parliament/54/c05](https://www.aph.gov.au/About_Parliament/Senate/Publications_and_resources/Papers_and_research/Papers_on_Parliament_and_other_resources/Papers_on_Parliament/54/c05).

the committees go to report to senate the result of its assessment on the legislative instruments.<sup>87</sup>

## **2.4. Legislative scrutiny:**

### **2.4.1. What is Post Legislative Scrutiny (PLS):**

Monitoring, evaluating and overseeing is the main function of parliament having an eye to look in to the extent of implementation and success of the legislation made by the parliament it is therefore the PLS becomes a momentous device for safeguarding government accountability.

There is no availability of dictionary definition of the word, however the Law Commission of England and Wales as described this term as follows: -

*“A broad form of review, the purpose of which is to address the effects of legislation in terms of whether intended policy objectives have been met by the legislation and, if so, how effectively. However, this does not preclude consideration of narrow questions of a purely legal or technical nature”.*<sup>88</sup>

PLS has two aspects, first the provisions of law have been enforced second the anticipated vision of the law has been met.

### **2.4.2. PLS and Function of Parliament:**

---

<sup>87</sup> Senate of Pakistan, Committees, Accessed 3<sup>rd</sup>, September 2023., [https://senate.gov.pk/en/all\\_committees.php?id=-1?id=-1&catid=90&subcatid=85&cattitle=Senate%20Committees](https://senate.gov.pk/en/all_committees.php?id=-1?id=-1&catid=90&subcatid=85&cattitle=Senate%20Committees) .

<sup>88</sup> “Law Commission, Post-Legislative Scrutiny”, October 2006, Law Com 302, Cm 6945, para 2.4, last accessed 4<sup>th</sup> November, 2024

A ministerial undertaking “review clauses” in legislative business or the “sunset clauses” are the tools which may be utilized by the parliament to capacitate itself to make the PLS. Indeed, all the powers are extracted from public and these are given to the authorities with certain roles to be performed with desired results such authority is to be checked that is known as the accountability is an act of accounting others actions. These actions of executive to make the executive accountable in order to make the government democratic government.

In parliamentary system the parliamentary role of oversight is a continuous process and also this is much important on account of this role that is oversight role the parliament enables itself to make the government accountable to the people demonstrating the government schemes are indeed in accordance with the demand of the people, along with this paramount goal the parliament consists in an innate function to observe the application of legislative tool. The deed of assessing statutes that legislature has accepted is acknowledged as PLS.

### **2.4.3. Oversight Character of Legislature: Warranting Administrative Body Responsibility**

PARLIAMENTARY CONTROL OVER THE MANAGEMENT HAS NUMEROUS CHARACTERISTICS:

- i. The core object is to ensure that the performance of the present Government is for the general good and maximum benefit of the people.
- ii. It is also mandatory to have a look on the executive body that it should not misuse the conferred power.

- iii. All the schemes and plans of the public functionaries are subject to the scrutiny by parliament.
- iv. The public representative affords many opportunities to assess the executive constructively by the help of rules procedure and practices of the parliaments.
- v. The consequence of the oversight is to persuade the executive to make their policies in accordance with the needs and demands of people.

#### **2.4.4. The Committee Arrangement: Consolidating the Monitoring Role of Parliaments**

In the world parliaments the committees have come with a number of examining the matters and proper check on the actions of the governments that also include the technical questions. In the bicameral parliaments both houses have entire structure of committees. In standing committees, the finance committees, public accounts committees are very vigilant on the public expenditure and the performance. The parliamentary committees while playing their oversight role, give its recommendations, to the government to be followed for the objectives of good governance showing a mutual cooperation between legislation and executive. Similarly, the business advisory committee, the committee on government assurances companies, the committee on subordinate legislation etc. have emerged as powerful instruments of holding the administrative accountability to parliament. Above assertions self-evidently prove the greater oversight of executive by the parliament is harbinger of good governance.<sup>89</sup>

---

<sup>89</sup> “Research Note On PLS- A Dimension of the Oversight Parliament. Research and Information Division of Lok Sabha Secretariat”, Accessed 5th September,

## LEGISLATIVE SCRUTINY: THE USE OF EVIDENCE; MEASURING SUCCESS AND FAILURE

The “journal of legislative studies” contains the legislative scrutiny process has great notable advantages which are produced by higher utility of Pre legislative scrutiny and the capacity of public bill committees to get evidence from a greater range of witnesses and on the whole bills including the bills initiated in the house of lords its subject and political facets shall be meant that the utility of claims of evidence shall continue to change extensively.<sup>90</sup>

### **2.5. Pre-Legislative Scrutiny: How Can Citizens Be More Actively Involved?**

A great need to establish link between citizens and the policy making process is required particularly firming scrutiny before a bill is laid in parliament as a result of the lack of citizens' participation in pre-legislative scrutiny in recent years, two main issues remain: greater transparency in the policymaking process and equal access for all stakeholders to engage in the process.

Many democracies enjoin many steps to increase the engagement of people in the procedure of pre legislative action which are as under:

- i. The bills are made available for the people for a particular time period before these are introduced in the legislative bodies which are published in forms to make it reachable to the grass root level.

---

2023, [https://loksabhadocs.nic.in/Refinput/Research\\_notes/English/04122019\\_174605\\_102120495.pdf](https://loksabhadocs.nic.in/Refinput/Research_notes/English/04122019_174605_102120495.pdf).

<sup>90</sup> “Legislative Scrutiny: The Use Of Evidence; Measuring Success And Failure”, (University of Lincoln, ParliLiic) , Accessed 5th , September, 2023

<https://parlilinc.blogs.lincoln.ac.uk/legislative-scrutiny-the-use-of-evidence-measuring-success-and-failure>

- ii. A report is made on the paper showing the clarity in legislation that shall address and the instrument is made available for the indigenous people.
- iii. Ad hoc committees are formed to examine the bill before it is produced in the house.
- iv. The standing committees are set to examine such a bill before it is initiated in the house.
- v. A monetary memo for every bill having been provided that specifies the allocation of the budget on the procedure all the body created by the bill.
- vi. An online media for debate is created for the stake holders and at the same the people who do not have access to internet they are consulted by other source.
- vii. Escalating the broadcast of people right to appeal where agents with legislative instruments.<sup>91</sup>

### **2.5.1. Law Making Requires Deliberation, Scrutiny:**

There are many ways in the hand of institutes that enact the laws to assure those before a bill to become law because a thorough examination is made on it on different features like the constitutional ground, clearness, pecuniary and other technicality and ability of the government to execute such provisions.

Pre legislative scrutiny is also known as the public feedback. The ministry concerned who is to introduce the bill can bring the draft on air for the people, the members on the introduction of the bill can point out the problems in the proposed bill. After the bills have been introduced the same are sent to the standing committees for scrutiny to be made. The committees provide the members to ponder over the provisions in a deep deliberation

---

<sup>91</sup> - OECD (2019). Open Government: Principles and Practices for Citizen Engagement.  
 - UK Parliament. (n.d.). Pre-legislative Scrutiny.

understanding of the spirit of the bill, constitutionality of the bill challenges and other problems with any provision. It also permits the skilled people and the relevant stake holders to measure the provisions identify the issues and assist in strengthening the law, but unfortunately the bills are passed in very hurry there are number of such bills for instances can be referred.<sup>92</sup>

## **2.6. What Can We Expect from The Pre-Legislative Scrutiny**

### **Phase:**

DCMS Digital, Culture, Media and Sport Committee of Scotland carries out the pre legislative scrutiny. This committee consists in 10 members of legislative body. Every one of the members is experienced in media regulation. The members are chosen from different parties 5 members are taken from conservative 4 members from labour party and one of them is from SNP (Scottish National Party). The committee is mandated to take evidence on the bill under debate and to make the recommendations on it and give its report.

The committee publishes a call for evidence to get the feedback from the stake holders concerned this process is held to intimate the advice of committee to the government. The committee asks for identification of any potential repercussions which may arise from the proposed bill in its current form. Pre legislative scrutiny facilitates a critical but narrow space for shareholders to get the attention of DCMS committee guaranteeing that its approvals profit from vast perceptions from different clans of society. The special focus disseminating service to the people, video on demand regulation and the radio aspect of the

---

<sup>92</sup>“Pre legislative scrutiny: how can be citizens be more actively involved,” (Pre legislative scrutiny the PRS blog, December , 2010) Accessed 7<sup>th</sup> September 2023, <https://prsindia.org/theprsblog/pre-legislative-scrutiny-how-can-citizens-be-more-actively-involved>.

bill is made in the call for evidence. It contains many questions for the stake holder the questions are like the power which has been given in the bill it proportionated whether the extent will be able to deliver its mandate whether the bill risks harming the competitiveness of the UK broadcasting industry on the globe stage.

## **2.7. What Next Steps Will the Bill Face Before It Becomes Law:**

It is expected that the DCMS committee shall broadcast its conclusions and endorsements for the consideration of the government and for which the government shall respond officially then the decisions for amending the bill is taken before the introduction of bill in the parliament in accordance with the recommendations made then when the bill is laid in the parliament the bill under goes the three different stages of legislative process in each house. These stages are

First reading

Second reading

Committee stage

Report stage

Third reading

And royal assent finally.

In the first reading no debate occurs but this is stage of the introduction of title of bill to the relevant house. In the second reading the debate is held on the thematic point of the bill and debate shall be closed by the government when the points have been addressed fully at this stage the amendment in the drafting of bill cannot be made. Usually at this stage the bill is not rejected but if it is rejected then it does not proceed further. In the

committee stage the bill under goes in a brief concentration on the basis of clause-by-clause reading. This is a stage where a bill may be amended in order to safeguard the job as per intention or to retrieve the aimed object. At this stage vote on the bill for passing it is also made if the amendments proposed at this stage are technical enough these will be sent to the parliamentary business and legislation committee.

The report stage is known as formula stage only if some amendments are made those amendments are discussed only. In the third reading stage where the house of common holds general discussion and also the amendments can be tabled in the House of Lords. Royal assent is the final stage where the bill after having been passed by the both houses is sent for royal assent the government also confirms that which are the proof the bill are going to be commenced immediately and what provisions thereafter.<sup>93</sup>

### **2.7.1. Pre-Legislative Scrutiny of Bill of Rights:**

150 civil societies' organizations wrote a letter to justice secretary showing their concern on the statement of government on 9 June 2022 that the government did not wish to send the bill of rights for pre legislative scrutiny in UK. The scheme of the bill of rights was of the supreme constitutional importance of which the far-reaching impacts on individual's rights were to emerge so the joint committee on human rights, the justice committee, the large constitutional committee the public administration and constitutional affair committee highlighted the same. Ministers of the devolved nations also highlighted that the government's proposals to substitute the human rights act are indeed a threat to

---

<sup>93</sup> Hogan Lovells: Engage, (UK Draft Media Bill (Part 3) - Pre-legislative scrutiny phase). (May, 2023), Accessed 11<sup>th</sup> September 2023, <https://www.engage.hoganlovells.com/knowledgeservices/news/uk-draft-media-bill-part-3-pre-legislative-scrutiny-phase>.

degrade the devolution settlement. So, the government's rejection calls from parliamentary committees are disappointing and worrying.<sup>94</sup>

Pre legislative scrutiny of these schemes is very important to review the operation of human rights act. The panel chaired by sir peter gross gave its finding that HRA is operating effectively to preserve parliamentary sovereignty and protect individual's rights. The government's subsequent proposals ignored this finding.<sup>95</sup>

Proposed legislation of such constitutional importance needs a cautious and vigorous deliberation which is only possible to achieve through the public representatives. So, the great number of public representatives urged the government to give respect to the parliamentary democracy of the UK and subject the proposed bill of rights to pre legislative scrutiny it needs greatly.<sup>96</sup>

### **2.7.2. The Pre-Legislative Scrutiny of the Draft Planning and Development Bill 2022 OF IRELAND:**

The draft bill 2022 is such a legislation that shall bear not less than upcoming 20 years to handle the requirements of people of the Ireland because this proposed legislation shall have the impact on legal and planning professionals. Similarly, the citizens and community. So, the committee welcomed the opportunity to scrutinize this essential draft bill to guarantee it that address is sufficient for the future of the public of the Ireland.

The draft bill objected to accumulate and explain to the advantage of all shareholders in process of planning in order to make the planning system more user-friendly and coherent,

---

<sup>94</sup>Article 19, UK Pre legislative scrutiny of bill of rights, June 2022, Accessed 15<sup>th</sup> September 2023. <https://www.article19.org/resources/uk-call-for-pre-legislative-scrutiny-of-bill-of-rights/>.

<sup>95</sup> ibid

<sup>96</sup> ibid

this legislation required that the decision-making process be clarified in a consistent and certain manner.

The draft bill suggested a comprehensible and completeness of the previous legislation with some of the reforms concerning with the time frame of process of the consent, judicial review and restructuring national planning policy statements and a shift planning of the board to a good planning system. The committee heard the great deals of ideas on the draft bill on having the large pre legislative scrutiny time frame.

The minister for housing, Local Government and Heritage referred the planning and development bill 2022 to the joint committee on housing heritage in accordance with standing order 173 on which the committee consented to do the pre legislative scrutiny of the draft bill and the committee did pre legislative scrutiny in the 9 successive meetings in which the officers from the housing department local government department were invited and a number of other witnesses with certain skill on planning related affairs were too called upon to discuss the bill in the committee. The committee in this process also welcomed the written proposals on the draft bill. The committee after detailed deliberation gave 14 recommendations on this draft bill and in other bill 69 recommendations 20, 18, 13,19, and 153 recommendations in different successive meetings.<sup>97</sup>

## **2.8. Government Should Give Parliament Proper Power to Scrutinize Legislation (Review of The UK Constitution):**

---

<sup>97</sup>“*Report on the Pre-Legislative Scrutiny of the Draft Planning and* ”,(03,04 ,n.d.), Accessed 7<sup>th</sup> September, 2023,, [https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint\\_committee\\_on\\_housing\\_local\\_government\\_and\\_heritage/reports/2023/2023-09-26\\_report-on-pre-legislative-scrutiny-of-the-draft-planning-and-development-bill-2022\\_en.pdf](https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_housing_local_government_and_heritage/reports/2023/2023-09-26_report-on-pre-legislative-scrutiny-of-the-draft-planning-and-development-bill-2022_en.pdf).

REPORT ON THE LEGISLATIVE PROCESS MAKES RECOMMENDATIONS TO EMPOWER PARLIAMENTS, TO GIVE THEM MORE OPPURTUNITIES, TO INFLUENCE LEGISLATION AND HOLD THE GOVERNMENT TO ACCOUNT:

A report published as *“the legislative process: how to empower parliament”* a report on a new bennet institute demands from the government to make the parliament powerful so that a parliament may scrutinize the legislation in proper way, it may provide a control on the administrative action and uphold a balance in UK constitution. It observed that in covid pandemic and Brexit acceleration has undermined the role of parliament because the existing arrangements of parliament the scrutiny is totally ignored. In the parliament the internal and external experts lack the exchange both between the parliament and executive, the members have no time, resources, chances and opportunities to scrutinize the important bills accordingly while in 1997 the eight parliamentary committee reports recommended that pre legislative scrutiny should be an integral part of the process which the government has hardly used it. Similarly, highly partisan public bill committee results in low quality debate and it also lack the involvement of members working in the concerned select committees and they do not turn to witness. The report gave recommendations as follows:

- i. The government needs to put the draft bills on air for pre legislative scrutiny with a flexible time period.
- ii. The common select committees should be given the charge to request pre legislative scrutiny in any bills in the concerned department.
- iii. Select committees may be permitted to create the chance to get evidence and make its idea on the bill.

- iv. The commission of House of Commons should appraise the capitals in hand for members to backup legislative scrutiny including expert policy and legal resources.<sup>98</sup>

Jess Sargent, is the author of the report stated that it is benefit of the government that all governing laws made by the parliament should have been scrutinized in a good way having a vast support as the whole UK is represented by parliament but unfortunately the whole process, the time scale for consideration of bills is under control of the government because most of the bills are passed with no resistant and a lesser parliamentary scrutiny has become the trend and the government through bill get more legislative powers. We recommend that the parliament should be empowered, it should get extra chances to impact legislation and the government should be held accountable.<sup>99</sup>

Barowness Smith, labor leader of the house said legislation is usually acknowledged as the main role of parliament debate enabling and examining but there are scarcity of time and resources for it. The ministers and government resent themselves in their frustration and they seldom make the scrutiny as a part of the said process. We can do better if we look into it.<sup>100</sup>

Sir David Lidington, former conservative cabinet minister said that our new legislation is full of flaws on seeing the report. The government that has complete majority in the house of commons that is of conservative labor or coalition government compels the law making even those laws which are full of controversy passed in haste manner without

---

<sup>98</sup>(The Bennett Institute for Public Policy: Department of Politics and International Studies, Government Should Give Parliament Proper Power To Scrutinize Legislation). (December 2022 university of Cambridge). Accessed 19th September, 2023 , <https://www.bennettinstitute.cam.ac.uk/blog/legislation> .

<sup>99</sup> Ibid

<sup>100</sup> ibid

giving the parliament a time to check the efficacy of bill or way the influence , consider or unwillingness that it might on the family, business and others, the authors urged that law making should be in better responsible way and the parliament should be given full opportunity to scrutinize and check the executive.<sup>101</sup>

## 2.9. Post Legislative Scrutiny:

Official website of UK parliament defines PLS as:

*“Post-legislative scrutiny is an inquiry by a parliamentary select committee into how a new law has worked in practice since it came into force”.*<sup>102</sup>

### 2.9.1. The Framework for Post Legislative Scrutiny

One of the roles of Congress is to create laws which aim to meet the needs of the people in the country. It is also Parliament's role in assessing whether such laws are appropriate, and whether these laws have successfully achieved the expected result(s). Post-legal supervision refers to the situation where legislative body reckons to the definite query: if a country's laws are meeting out the envisioned purposes effectively up to what extent, and if could not meet out, then why not? <sup>103</sup>

PLS as a tool of assessing the affectivity, identifying the inadvertent consequences,

---

<sup>101</sup> (The Bennett Institute for Public Policy: Department of Politics and International Studies, Government Should Give Parliament Proper Power To Scrutinize Legislation). (December 2022 university of Cambridge). Accessed 19<sup>th</sup> September, 2023 ,

<https://www.bennettinstitute.cam.ac.uk/blog/legislation>.

<sup>102</sup> Parliament UK, “Post Legislative Scrutiny ”, Accessed 22<sup>nd</sup> September, 2023,

<https://www.parliament.uk/site-information/glossary/post-legislative-scrutiny/>.

<sup>103</sup> Franklin De Vrieze, (Post-legislative Scrutiny Guide for Parliaments), (London, Westminster Foundation of Democracy, 2017), 9- Accessed 23<sup>rd</sup> September 2023, <https://www.wfd.org/what-we-do/resources/guide-post-legislative-scrutiny>.

PLS being a vast concept is acknowledged that members of parliament are authorized to evaluate and review the laws after it has been commenced to prevail. PLS examines the law making with the view that if the provisions of law had been made to be exercised, what interpretation of such law was going to be made by the courts and how was the use of this law being brought into force by the citizens and lawmen. Assessing the affectivity, identifying the inadvertent consequences, determination of impact on stakeholders, informing the future strategically verdicts are the thematic areas of PLS. In an extensive logic, PLS stares at the power of lawmaking. PLS aims at improving the quality of legislation. It focuses on the enhancement of accountability. It ensures that planned objects have met. It identifies the areas left to make the reformation. The parliamentarians while making the PLS plans focus on the following two points:

- a. Evaluation of the legislative work on its technical introduction and validation &
- b. Evaluation of its nexus with the result of planned strategy.<sup>104</sup>

PLS is an instrument to look into the parliamentary enactments regarding its effect on the inhabitants' ways of living and their interactions.<sup>105</sup>

### **2.9.2. What Is Relevancy of Parliament with PLS:**

It is an admitted fact that the greater devotion of parliaments is for the law making for which all sorts of resources including human resource are adopted so the examination of the stages of the implementing of that legislation is a common phenomenon. Process of implementing the laws is matter of complexity which depends on the resource mobilization along with many fold agents. Similarly, the promises to the devices and the enactments, the

---

<sup>104</sup> Ibid.

<sup>105</sup> Alhagie M. Dumbuya, *(Post-Legislative Scrutiny As A Tool For National Assembly Evaluation Of The Laws Of The Gambia)*, last accessed 1<sup>st</sup> December, 2024, <https://issuu.com/theparliamentarian/docs/parl2023iss2finalonlinesingle/s/25901125>

whole involved parties are made coordinating and cooperating. Implementing the laws is not an automatic process it includes different events in its course of action like transformation in ground realities, digression of means, rebounding of aims, confrontation from interested parties and alteration in the lawful canvas of concerned course of action. Uneven authority, rejection, national seizure and commercialism are too the factors which may effect on the way of implementing the legal substance.

In spite of the above said tests following few causes are hereby enumerated that force the parliaments to appraise and asses the process of implementing the statutes

- i. The need of democracy-based government is ensured and the statutes are to be executed within the frame work of legal principles and surety is also required.
- ii. Enabling the opposite influences of fresh law making to be understood speedily and easily.
- iii. Supporting a compact scheme of judgment for examining the level of effectiveness of law in the regulation and response to issues and incidents.
- iv. Supporting the betterments in nicety of legislation by having learnt from the past practices in the terms of its practicality, and in terms of the nexus with the goals and results.<sup>106</sup>

### **2.9.3. Selection of Laws to Be Made the Subject of PLS:**

PLS is a process of examining the laws. This process requires a careful selection by the parliament in order to neutralize the resources and the time frame effectively. As a matter of principle, the shorter laws should be allocated to be reviewed in a specific time frame that shall definitely be useful as the greater selection shall make greater challenge resulting less useful so the certain selected pieces of laws shall be producing the qualitative

---

<sup>106</sup>Vrieze, (*Post-legislative Scrutiny*),9.

and efficient post legislative reviews. More specifically speaking if one part one or some provisions are selected will be giving the adequate results but this is the matter of relevancy.

The laws are to be categorized with the specification that certain laws cannot be made the subject of PLS review suitably. What laws cannot be appropriate for the PLS examination may include

- i. Laws set for particular usage
- ii. Amalgamated legislation
- iii. Law making comprising of negligible alteration of technicalities only
- iv. Statutes containing an inner order of free analyzing and reporting.

While, the law making concerned with emergency provisions in the land in particular which affect the freedom of citizens and the laws made under the haste process must be brought to the PL review. Such law making usually is made beyond the reasonable process of scrutiny by the parliament due to the time constrained situations. Thus, it is always appropriate to make it certain that the law making under emergency has to be the subject matter of PLS. additionally, at the time of analysis of the impression of law making a person has to think over the combined result of legislative instruments. Similarly, what country matters within a plan had been framed by various legislative pieces. Effect of legislation is hardly the impact of soul legislative work so, the advantage of pondering over the combined result of legislation.

The complete understanding of the implementation and legislative impact is got only if the subordinate legislation is also reviewed along with the primary legislation. The statutes mostly confer the ministers “the rule making power” under the subordinate legislation. The best review of subordinate legislation is that which is reviewed at the time of review of

parent legislation from which that has been empowered. This situation usually appears where the provisions impacting the legislative work are put in the subordinate legislation instead of parent legislation because the primary legislation is easily prone to the committees in parliament to get under research regarding the impact of the certain delegated legislation even it may go to an inquiry.<sup>107</sup>

Strict scrutiny, intermediate scrutiny, and rational basis scrutiny are three levels of judicial scrutiny when courts take the laws into consideration. Strict scrutiny is utilized for laws restricting freedom of speech and involve compelling government interest. Intermediate scrutiny is used for laws having gender-based objects and reasons, and the lowest level of scrutiny is rational basis scrutiny, which are arbitrary and irrational, and also challenged on the said grounds.<sup>108</sup>

#### **2.9.4. Post Legislative Scrutiny asa Source of Tracking the Curtailed**

##### **Concerns:**

PLS paves a way for the parliament to observe the curtailed impressions decided by it to be treated preferably. For example, gender, human rights, regulatory or environmental bundles can be the topic of interests.

Usually, the initiations in legislative process often impacts male and female variously. Methodical study and examination of act and strategy that is embedded in its influence on male female and the concerned populated units that may contribute to find out and stop or restore the demerits which might be created by them. This technical method is known as gender analysis aids to guarantee the men and women have equal chances and

---

<sup>107</sup>Ibid.

<sup>108</sup>“*strict scrutiny*.”(Legal Information Institute), Accessed 7<sup>th</sup>Nov, 2024, [https://www.law.cornell.edu/wex/strict\\_scrutiny](https://www.law.cornell.edu/wex/strict_scrutiny).

access with total protective measures under and by the law. This analysis is also utilized to ensure the worth of wealth and develop the regime competence and transparency.

Gender analysis necessitates the gathering and investigation of proof such as sex-disaggregated data are qualitative assessment of government services. It also calls for the public manager to contend molds that in what way a public programmer may be organized and to inquire the extended questions about which segment is being affected by the problem and what impact by this proposed solution shall appear. So, this is the right strategy to undertake this process during the first and foremost periods of legislative process before the time of law being adopted, to guarantee the systems are well in order to gather the mandatory informative elements and the evidence.<sup>109</sup>

### **2.9.5. Which Questions Are Addressed in Exposit Facto Examination of the Enactment:**

- Whether the aims have been retrieved by the law in terms of qualitative, quantitative and timely measurement with the note that what adverse effects might had been emerged in the absence of this law?
- Up to which level the statute has brought about the successes of the objects with the introduction of this law and also indicating the effects which might have been caused without introduction of the law?
- Is the execution influencing other than the desired results due to the outer agents?
- Are there some notable but harmful outcomes appearing?

---

<sup>109</sup>Vrieze, *Post-legislative Scrutiny*. 11-13.

- Are the efforts needed from the public and the private segments being applied in accordance with the planning?
- Is there any wastage or misuse of the resources as allocated?
- Is any group of the community facing any unfairness or demerits during the course of execution?
- Can any extra lucrative method be used?
- What betterments can be made to the law and its execution that may cause it worthwhile?
- In totality has the law been applied suitably and how it has met the dreamed results?
- Are the assumed ends being met in the term of cost, timings and impact?
- Did the law affect differently to the different groups or unwanted methods?
- Are females, juveniles or some other people being burdened? <sup>110</sup>

The methodological steps in organizing Post-Legislative Scrutiny (PLS) in Parliament classically includes selection of legislation, launching a scrutiny committee, outlining scope and objectives, collecting evidence, analysis and evaluation, examining the gathered evidence to assess the legislation i.e. effectiveness, efficiency, impact, unintended consequences, identifying issues and recommendations, drafting the report, consultation and revision, finalizing the report, debate and consideration, government response, implementation and follow-up.

The following figure shows phases and steps taken and action taken by staff and member parliament as discussed above:

---

<sup>110</sup> Ibid. 13

**Methodological steps in organizing Post-Legislative Scrutiny in Parliament**

	<b>Phase</b>	<b>Steps</b>	<b>Staff action</b>	<b>MP's action</b>	
1	<b>Pre-planning phase</b>	Consider establishing binding requirement for Post-Legislative Scrutiny prior to adoption legislation	Drafting amendments to legislation	Adopt amendments or debate ministerial undertaking	
2		Identify trigger points for Post-Legislative Scrutiny if there is no binding requirement	Proposal on trigger-points	-	
3		Engage human resources for post-legislative Scrutiny	-	Decide on human resources needed	
4		Engage other financial resources for Post-Legislative Scrutiny	Draft budget for Post-Legislative Scrutiny inquiry	Decide on budget resources needed	
5		Select legislation for Post-Legislative Scrutiny and scope of legislation under review	Project outline for conducting Post-Legislative Scrutiny	Approve project outline	
6		Establish objectives for Post-Legislative Scrutiny inquiry and hearings	Legislative Scrutiny	Approve project outline	
7		<b>Planning phase</b>	Identify and review the role of implementing agencies	Research	-
8			Identify relevant stakeholders	Research	-

9		Collect background information and data	Prepare data collection plan	-
10		Determine timeframe for Post-Legislative Scrutiny	Project outline	Approve timetable
11		Consult stakeholders and implementing agencies	Organize	Conduct consultation or hearing
12		Review the effects of delegated legislation	Research	-
13	<b>Implementation phase</b>	Making the consultation public	Engage	-
14		Analysis of Post-Legislative Scrutiny findings	Analyze	-
15		Drafting the Report	Drafting report	Debate and approve report
16		Distributing the report and making it publicly accessible	Develop communication strategy	-
17	<b>Follow-up phase</b>	Conduct policy follow-up to the Post-Legislative Scrutiny inquiry	Post-inquiry monitoring mechanism	Seek government response to report
18		Evaluate the Post-Legislative Scrutiny inquiry results and process	Drafting Note	-

Figure 2.1<sup>111</sup>

### **2.9.6. Operational Stages in Forming Post Legislative Scrutiny in Parliament:**

The operational stages in forming post-legislative scrutiny (PLS) in parliament classically include planning and preparation, evidence gathering, analysis and evaluation, report writing, report consideration and debate, government response, implementation and follow-up, review and reflection.

Quadruplicate stages i.e. pre-arranged stage, arranged stage, application stage, and pursue stage may be followed by the parliament for conducting the post legislative scrutiny.<sup>112</sup>

i. Pre-arranged stage:

On this primary stage the parliament need to consider and clarify many main aspects i.e. deliberation on probable compulsory pre requisites for PLS, initiating arguments for PLS and the desired means to do PLS. Deciding these concerns the PLS body leads to the importance and relevance for the complete law-making procedure for the Parliament. Such decisions and debate usually are made within the politicians and the secretariat of the parliaments. This stage may be divided into following different steps

Step 1: contemplate instituting obligatory requisite for PLS before approval of legislation:

Contemplating the institution of obligatory requisite for PLS before approval of legislation is very much efficacious method to ensure that PLS occurs. This process may be established by different modes like first and foremost the administrative departments may be informed to have an undertaking for conducting a review process of piece of legislation

---

<sup>111</sup> Ibid.

<sup>112</sup> Ibid.15-16

with an endorsement what it covers and when it shall cover. In its alternative stage the members may introduce an amending bill for the bill before its passage by inserting a review clause which leads to the requirement of the workability of the act to be examined after a particular time period. This clause can be beneficial device because it is embedded in Acts. Thus, this contains the legal force. The clause may indicate a general or special provision of review with a time scale at the agent of its conduct. Or Inserting the SUNSET clause may be another suitable option as this clause is inserted to provide a ceasing effect to the act which remains operative for a specific time with certain objects and reasons.

A political vision or compromised is reflected through these two clauses i.e. sunset or review clause that represents the cost which the government shall be ready to grant for passage of bill in the parliament. Here a spontaneous recommendation comes in mind that the members should adopt a compulsory pre requisite i.e. the examination of the execution of legislation as greater as it may be possible. Similarly, on committee stage the members should possibly go to draft the amending bills for insertion either a sunset or review clause for which the staff should skillfully provide the support for drafting the amendments that may not be killed on the technical grounds.

The parliamentary staff should opt for the action to draft an instrument of amending bill comprising review clause or sunset clause along with an assertion to the government to have with the review of the act on ministry level while the members action should be to think on the large that some one wishes to set up a necessary pre requisite to examine the execution for and to hold the discussion and accept the amendments with insertion of

review clause or sunset clause in the draft bill or put a request during the session that a promise from the ministry to review the implementation of legislation.<sup>113</sup>

## STEP 2: RECOGNIZE ACTIVATING FACTS FOR PLS IF THERE IS NO COMPULSORY CONDITION:

Compulsory conditions to carry out PLS are not practicable in every situation. The other way is to hold it for future to do the examination of that law. To make it easier a verdict on PLS post enactment is beneficial to recognize and have an agreement on various activating for PLS, realizing that the parliament is duty bound to activate the PLS at the suitable time.

At the same time the role of the government to identify post enactment is also an important fact where government should also identify the acts need to be examined or put in to the processing the review on the department, sector or in the parliamentary where a decision may be made that the provision of the act as a whole may be reviewed.

Triggering points generating the consideration for initiating the PLS may be the citizens' representation or some organization representation that an Act is to be reviewed, the reports from the media are the application having the indications that PLS is needed, and judicial officers' comments about the laws that need to be reconsidered.

At this stage parliamentary staff required to analyzing the relevant triggering points in the committee meetings and preparing a draft of proposals for the committee or parliament on the policy issues and legal consideration by them while the members should adopt an action to be determined at this stage that the triggering points listed might be accepted as a working paper taken as a decision.

Triggering ideas to begin PLS in the legislatures.

---

<sup>113</sup> Ibid pg 17-18

- i. Personal or organizational observations-based applications regarding review of laws to the committees.
- ii. Media publication on the fact of PLS
- iii. Revisit of time period of sunset clause by the legislatures
- iv. Commentary of the judiciary
- v. The report from executive machinery on a certain provision of law required by the legislature
- vi. A request to review the present law in a particular subject matter
- vii. Decision on the committee to hold scrutiny regularly
- viii. Inquiry of the committee to undertake review of the present law <sup>114</sup>

#### STEP 3: INVOLVE HUMAN RESOURCES FOR PLS:

To involve the required work force and monitoring means in the legislature may occur variously. The employees of the committee may be assigned the task to do the research work to undertake the PLS. this work is already invoking in the House of Commons in the United Kingdom. On the other hand, if the PLS committee has been set up strictly the employees embedded in PLS committee ought to look in to the work of PLS carefully. More specifically a special directorate or even a secretariat for the PLS service separately may be assigned to hold this job. This model is already on job in parliaments of Indonesia and Switzerland.

The separate committee for PLS deployed with the special employees with job description of PLS research services with full devotion shall be an important conduct for ensuring the coordinated and thematic work smoothly and the work and conduct relation

---

<sup>114</sup> Ibid pg 19

with other committee staff. The coordinated task in this way shall guarantee the wise utilization of work force and shall escape the overlapping of the matter unnecessarily.

If the legislation intends to cause the research work for outsourcing this work from expert, then the staff for coordination with that party shall be required. This is the case found in South Africa.

Above said modesoprendi has its own pros and cons which also are to be reckoned according to available rules and procedures in the legislative body, committee interest and ability, culture of that parliament and the norms and practices of that area. The common and core function of all the model is to carry out the PLS is main obligatory act of the team. The ideals of the team should be to encompass the objectivity research ability and skillful combination and this team mostly uses to fetch the humans from various faculties, experience and genders. This team should have capacitated enough skillfully to coordinate with each other in this review procedure by distributing work and obligations among themselves to undertake successfully with full understanding and clearheaded for their useful outcome and initiating from a successful beginning.

The secretariat should plan for the deployment for such human resource for the successful conduct of PLS by the regular employment of committee staff as separate unit or a department for PLS or outsourcing a team for working with team of parliament. Similarly, the secretariat should ensure coordinated and consulted staff useful involvement in PLS embedded with their fruitful results for an administrative, controlled and systematic working with each other.<sup>115</sup>

STEP 4: INVOLVE FURTHER MONETARY SOURCE FOR PLS:

---

<sup>115</sup> Ibid pg 20

The expenditures additionally may be needed for carrying out PLS efficiently in which collection of data, various visits meeting or outsourcing the experts may be required as the available resources shall determine the gravity of assessment of PLS. it includes the working budget, various plans of visits , the knowledge based collection of reports, statistics coordination internationally and communications order to complete the work and identifying all factors for achieving the realistic results so the primary work for the resource allocation is necessary. Budget and budget management for the said scenario for achieving the positive results may also be obtained by external sources with the involvement of potential stake holders. These sources may be development banks, NGOS, development cooperation agencies, philanthropic foundations or research institutions. Parliamentary staff for this needs to verify the available monetary sources as well as to access what funding can be raised from external sources also accessing the capacity of civil society organizations, while the secretariat should take a decision for the recommendations, allocations and incurring of the possible funding. <sup>116</sup>

#### STAGE 2: ARRANGED STAGE:

The arranged stage for the PLS includes the matters to be addressed before PLS gets started. Those matters are selection of the laws for evaluation, goals to be defined or aims of the review, identification of the agencies of implementation and related stake holders, collection of the necessary information and data and determination of the time frame and schedule of PLS activity.

##### I. SELECTION OF THE LAWS FOR EVALUATION:

As per principles the legal documents can be the part of an ex-post examination but such an evaluation is not always needed or desirable. Practically selecting the laws or set of

---

<sup>116</sup> Ibid.

legal documents for legal examination is founded on many criteria that may include the identity and intricacy of the legal act, time required to examine the execution of the law, the unforeseen hardships on the way of execution, policy goals based on strategy, arising threats and problems in the execution of the law etc.

There is a piece of advice for PLS with reference to the time period is that PLS should be started after three years at least have passed after the law enacted. This time period is augmented as the initiation of scrutiny must be at the time when legal provisions have left some effects visibly. the verdict on the space of PLS will rest on the significances and calculated purposes of legislature and government, the intricacy and price of review, legal, political, economic and social effects, the innovative nature of the law normally, the whole legal provisions that leave impressions on inhabitants populated groups and commercial activity should be examined. Some laws that include little provisions are only a little new provision which never existed in past in legal frame work on this scenario the focus of evaluation will only be those particular laws or legal provisions. So, the aggregate effect of laws needs to be a paramount deliberation while on the time of selection of laws to be reviewed. The employees should prepare an outline of this project to make the subject of PLS with the analysis of situation in the policy matters, the plan of the laws to be reviewed, the scope of the enquiry and objective of conducting PLS and to discuss the same draft with the committee chairman and adjust it accordingly. And the committee's staff and members should adopt these policies for the PLS enquiry.<sup>117</sup>

## II. GOALS TO BE DEFINED OR AIMS OF THE REVIEW AND PUBLIC OPINION:

---

<sup>117</sup> Ibid pg 19

In general opinion PLS satisfies the appraisal of both enactment of the law and its impression. In the contracted logic, PLS stares at the enactment of the law, if the law has been enforced, how has the interpretation of law been made by the courts and how has the law been utilized by the government and the citizen in comprehensive logic, PLS gazes at the impact of legislation, if the planned aims of the law as were envisioned had been met and how successfully. Recommendation for the legislature is hereby declared to observe both forms i.e. the enactment of the law and its impact left by the PLS.

The law contains with the statement of objects and reasons its determination is very helpful in evaluating the law. Hence, it is proposed that the aims of PLS should be to inspect

- i. The control (legal, political, economic, social etc.) of statute.
- ii. Whether the parent and subordinate statute are completely implemented in the highly well-organized efficient mode.
- iii. Whether the policy objectives of the law have been fulfilled.
- iv. Whether the anticipation regarding the costs benefits and effects was correctly expected.
- v. Whether the effects (economic, social etc.) of the law appeared against the vision.
- vi. Whether the implementation process faced difficulties.
- vii. Whether the stake holders and beneficiaries were well aware of the law.
- viii. Whether someone challenged the law in the court.
- ix. Whether gender inequality emerged as an impact of the law.
- x. Whether there is still need of the law.<sup>118</sup> Ref.

---

<sup>118</sup> Ibid Pg 20

Organizing the public hearing to make it part of PLS may be beneficial. A care full consideration is required for the achievement of the objectives of the public hearing which needs to be clearly defined before the investment of the time energy and resources to make its use the best. The opinions, suggestions and recommendations from the expert, stake holders are public representative are sought in the public hearing that aims to retrieve the data about the fact to what degree implementation of the legislation has attained the envisioned objectives. Also, it aims to raise the public awareness. The committee's role to manage public hearing in order to seek the recommendations with the help of the staff is worth mentioning here.

The parliamentary staff should make a project outline for carrying out PLS along with proposed objectives to be gained from holding the plus also the list of laws set to be examined. There after the contributory factors for organizing the public hearing on the identified laws are to be assessed. The members should approve the project for the PLS enquiry.<sup>119</sup>

### **2.9.7. Identification of The Agencies of Implementation and Related Stake Holders:**

A good law always contains duties and obligations of implementing agencies while a law which deprived from this tenet i.e. weakly prepared law. In PLS finding out the exact role and efficiency of agency is main thing. PLS inquiry looks the drafter choice if he has assigned the role to existing agency or has prone to establish new agency. In a law court, minister, corporation and a private enterprise are prescribed to the implementing agencies. The assessment may be made by PLS enquiry with reference to its role and performance of

---

<sup>119</sup> Ibid pg 21-26

the agency of the law in which it has to look into duties and power of implementing agencies human resource of implementing agencies feedback functions as well as decision making process and appeal. a complete evaluation of the task of the executing agency as envisaged in the law to be prepared by the parliamentary staff and the same should be made available to the committees of PLS. while preparing the draft it should be noted that which responsibilities to the agencies has been assigned, is the agency performing those duties and to what extent the agency has succeeded in uprooting the dysfunctional behavior.

- i. The steps by the agency members have been taken in conformity and have these steps combated the problematic behaviors what the law objected to address.
- ii. Have the sanctions been proposed by implementing agency what were those what was mode of those and did those sanctions were helpful in identifying the problematic behavior.
- iii. Looking in to human resource of implementing agency the staff has to look in to the number of the official of the agency, the process and selection of those officials as per the law and whether the process has been followed and on what occasions was followed and why so process is of recruitment, retirement and removal.
- iv. Whether in put functions had been taken by the agency officio by consultation with stake holders was it demand of the law to concern with different segments and how and from who the agency officio have gathered the details.
- v. Likewise, in feedback functions it is looked that how the agency has learned about the E stake holders.

- vi. Was there any complaint mechanism who were actors, procedures and authorities of the complaint.
- vii. Finally, the decision-making process of appeals of the agency has been empowered and met with complete justification including findings and reasons of decisionmakers invites stake holder for their input.
- viii. Identify relevant stake holders<sup>120</sup>.

Planning a PLS enquiry necessitates the selection of stake holder importantly in this situation the assessment of the following questions may be in PLS which groups shall be affected the extent the laws impact on the group are this impact important how long with these impact stay. Compiling the stakeholder's overview who are to be affected and list of stake holders in public hearing to be made by the staff is essential step.

Collection of the necessary information: relevant data and back ground information to be collected paves a good way in planning a fear less enquiry it is of primary and secondary are the types of data. Both are important primary data is original hence of more importance, that also contains qualitative and quantitative form of data.

Following considerations need to be met while data collection is planned out

- i. fundamental data need to be collected giving reliability to the aims.
- ii. which extra data have to be gathered to aid the planned assessment.
- iii. What material in writing and what in oral is required?
- iv. What quality indicators needed next ?
- v. What plat forms should be engaged in collection of primary data?
- vi. What time frames for material gathering and evaluation is needed?

---

<sup>120</sup> Ibid pg 26-27

- vii. Fixing the obligation for collecting the data the way of assuring the consistency and quality of evaluation?
- viii. Which type of public hearings are mandatory?
- ix. Which field is to be visited for collection of data and its validation?

The interviews of stake holder’s workshops of focus groups participatory observations collections made by structured discussions and quantities surveys are the flexible ways by which data collection can be prepared by a parliament.

**DETERMINATION OF THE TIME FRAME AND SCHEDULE OF PLS ACTIVITY:**

Three to six months is ideally a completion time for the whole process. The intricacy of the objectives the extent of the assessment, the meetings frequency, expert’s quality committees plan of work are the depending factors of the time frame. The PLS committee should approve a time table for this whole process.<sup>121</sup>

Sample time table is as follows:

<b>TIMELINE</b>	<b>Post-Legislative Scrutiny inquiry</b> <b>PLANNING PHASE</b>	<b>WHO</b>
<b>Adoption of bill</b>	Draft legislative amendments aimed at inserting a review clause or sunset clause	Legal staff
	Draft language for possible request to Executive on ministerial commitment to review legislation	Legal staff
<b>Ongoing</b>	Analyze which trigger points are relevant for legislation in the remit of the respective parliamentary Committee	Legal staff / Cmt staff.(Committee staff)

<sup>121</sup> Ibid .28

	Draft a proposal to the Committee and/ or parliament on the legal and policy considerations relevant to the trigger points	Legal staff / Cmt staff
<b>Any time</b>	Make a recommendation to parliament leadership which human resources structure is best placed to conduct Post-Legislative Scrutiny	Cmt staff / HR Dep
<b>Ongoing</b>	Ensure coordination and consultation between all staff required to be involved in Post-Legislative Scrutiny	Cmt staff
<b>- 8 weeks</b>	Verify what financial resources are available or how many financial resources should be requested to conduct Post-Legislative Scrutiny	Cmt staff / budget dep.
	Assess whether external donor funding for the Post-Legislative Scrutiny assessment is needed and constructive	Cmt staff / budget dep.
	Prepare “project outline” for Post-Legislative Scrutiny inquiry, including situational analysis, law(s) to be examined, scope of inquiry and objectives	Cmt staff
<b>- 7 weeks</b>	Discuss the “project outline” with the chairperson of Committee	Cmt staff
	Prepare a proposal on a realistic timeframe for the entire Post-Legislative Scrutiny inquiry, with milestones	Cmt staff
<b>- 6 weeks</b>	Assess the possible contribution of a public hearing for the inquiry on the implementation of the identified law(s)	Cmt staff
	Prepare a thorough assessment of the role and performance of the implementing agency or agencies as foreseen in the act	Cmt staff
<b>- 5 weeks</b>	Compile an overview of relevant stakeholders, affected by the legislation	Cmt staff

- 4 weeks	Prepare a selection of stakeholders who can be invited as witnesses to a public hearing	Cmt staff
	Prepare a data collection plan	Cmt staff
<b>TBD</b>	Make a mid-term review of the data collection plan as the Post-Legislative Scrutiny inquiry is under way	Cmt staff

Figure 2.2<sup>122</sup>

APPLICATION STAGE:

In this stage there in the public hearing the implementing agencies, experts and stake holders are invited for expert opinion in order to best consultation to be determined for which the purposes of the proof to be sent before the consultation is to be held the proposals for the community has to be prepared. Implementing agency is regulated by the subordinate legislation authorized by the parent legislation for which following questions has to be satisfied.

- i. Has the secondary legislation proven correct in accordance with the parent legislation?
- ii. Has the problematic behavior been met out by the authorized secondary legislation?
- iii. Has the understood issues been addressed by the subordinate legislation in Line with the spirit of the parent legislation
- iv. What other ways of producing a set of rule have been met
- v. Has the prescribed standard been full filled by the agency?
- vi. Has the implementing agency misused the conferred power for their personal gain

---

<sup>122</sup> Ibid. 46

vii. Has the procedure led to the establishment of transparent accountable and participatory act by stake holders?

viii. Such analysis paper should be prepared by parliamentary staff by the input of the implementing agency?<sup>123</sup>

<b>Post-Legislative Scrutiny inquiry</b>		
<b>TIMELINE</b>	<b>IMPLEMENTATION PHASE</b>	<b>WHO</b>
<b>- 3 weeks</b>	Invite stakeholders, experts and implementing agencies for the stakeholder consultation / public hearing	Cmt staff
	Develop the agenda for the meeting and consult with the Committee chairperson	Cmt staff
	Request written evidence from stakeholders	Cmt staff
	Draft a proposal on questions and issues to be raised	Cmt staff
	Prepare an analysis paper on the balance between primary and secondary legislation for the Act(s) under review	Legal staff
<b>- 2 weeks</b>	Solicit input from the implementing agency on the regulations and decisions taken, and draft questions for further inquiry	Cmt staff
	Prepare proposal on inviting the media and information campaign	Press Dept.
<b>- 1 week</b>	Prepare briefing package and approach for consultation via the parliament's web page	Cmt staff, Press Dept.
<b>TBD</b>	Organize Post-Legislative Scrutiny public hearing or consultation	Cmt staff

Figure 2.3<sup>124</sup>

PURSUE STAGE

<sup>123</sup> Ibid. 29-39

<sup>124</sup> Ibid. 47

Many matters required to be looked after at the style of PLS inquiry completes this is known as follow up phase or pursue stage for a PLS enquiry. These matters include public access to the report, policy follow up conducted and evaluation of results and process.

A PLS process should be made publicly excusable after it had been publishing it should be made available on the website; committee may send it in hard copy for distribution. The PLS report having been adopted and distributed, let to be determined in a follow up to gather scout the happenings in the public. The committee may demand government response on the recommendations and report. The committee get these findings to be used. After certain time the committee should conduct an assessment of enquiry. It should be made after 9 to 12 months the committee can examine about the progress made. For this a draft evaluation, be prepared. <sup>125</sup>

<b>TIMELINE</b>	<b>Post-Legislative Scrutiny inquiry</b>	<b>WHO</b>
	<b>FOLLOW-UP PHASE</b>	
+ 1 week	Compile relevant preliminary findings of the Post-Legislative Scrutiny Inquiry	Cmt staff
+ 2 weeks	Discuss preliminary findings with parliament staff, external experts and implementing agencies.	Cmt staff
	Prepare a proposal on possible recommendations	Cmt staff, Legal staff
+ 3 weeks	Assist the chairperson in bilateral meetings with other committee members	Cmt staff

<sup>125</sup> Ibid.43-45

	in finding common ground on the possible recommendations	
	Prepare proposal on the outreach and communication for the Post-Legislative Scrutiny inquiry report and discuss the proposal with the Press and Public Information Department of parliament.	Cmt staff Press Dept.
+ 4 weeks	Distribute the report to all persons and implementing agencies involved in the inquiry	Cmt staff
	Prepare a proposal on policy follow-up to the inquiry.	Cmt staff
+ 6 months	Prepare a draft evaluation on the inquiry results and process	Cmt staff

Figure 2.4<sup>126</sup>

## 2.10. Conclusion:

Legislative scrutiny having two forms pre and post are interlinked, which is a close examination of the laws by the Parliamentarians in order to increase the usefulness and quality of legislation. Pre legislative scrutiny is the public feedback. The post legislative scrutiny is an enquiry that a new law has worked in practice since it came into force. It removes the burdens and promotes the regulatory functions. Scrutiny Committees are back-office setup that examines the legislative proposals in a special angle. Committees look into the proposals of delegated legislation and identify whether it trespasses rights and liberties, inappropriately delegates powers, or insufficiently subjects the exercise of legislative power to Parliamentary scrutiny.

First, the law provisions have been executed second the anticipated vision of law has achieved areas are the two aspects of post legislative scrutiny. Hence, PLS is dimensional i.e. Technical evaluation of legislative work and evaluation of its nexus with the

---

<sup>126</sup> Ibid.47

result of planned strategy. PLS is a source of tracking the curtailed concerns that address certain questions following the operational stages, i.e. pre-arranged stage, arrange stage application stage, and pursue stage.

### **3. CHAPTER 3. PRINCIPLES OF POST LEGISLATIVE SCRUTINY**

#### **3.1. Introduction:**

The fundamentally true steps are taken or the proposition to be followed or the methodology serves as the foundation of Post legislative scrutiny or a system of belief or behavior or for a chain of reasoning to be adopted for the post legislative scrutiny are known as the principles of PLS. The principles of Post-Legislative Scrutiny (PLS) consist of accountability, transparency, objectivity, evidence-based decision-making, inclusivity, proportionality, timeliness, respect for parliament's role and continuous improvement.

The London Declaration on Post-Legislative Scrutiny, made among the participants in the Academic Seminar on Post-Legislative Scrutiny on 10 July 2018. The participants put forward and endorsed the ten principles on legislative scrutiny which are known as the principles of post legislative scrutiny.

By signing up to the London Declaration, parliaments, institutions, NGOs and research organizations commit to promote, initiate, strengthen or support practices of Post-Legislative Scrutiny in a national or subnational parliament

The basic principles of PLS inquiry are not acknowledged in number or the comprehensively fixed. However, Mr. Franklin De Vrieze in the book "Principles of Post-Legislative Scrutiny by Parliaments" has given 15 (fifteen) methods for PLS. These principles are like a guide to the Parliamentarians. W5 formula, i.e., what, why, who, when, and how act like five walls of these principles amounting to the scope, mandate, participants, process, and timing of post legislative scrutiny. These five fundamentals generate fifteen guiding principles for Parliamentarians to be followed which further lead

them to create the useful, beneficial and effective laws that serve the nation in its well-being in order to maintain peace and order in society for the prosperity, tranquility, brotherhood, equality and justice that results in the greatest happiness for the greatest number known as the welfare for all.

London declaration on post legislative scrutiny was held on 10th July 2018 in the consequence of an academic discussion and a seminar between the different people regarding the awareness of the legislative function for its supervision and implementation of the lawmaking by the legislators, skilled persons and the inhabitants. It was the special initiative taken and supported by Westminster foundation for democracy which is a UK public body that has always been devoted to backing the democracy throughout the world. In fact, the academic discussion and seminar on post legislative scrutiny was held in London on 10th July 2018 where both WFD a UK body and the institute of advanced legal studies joined the hand to advance PLS by signing the London declaration and this declaration was signed by parliamentarians, Different institutes, NGOs and research organizations who were committed to initiate and for the promotion and advancement of the PLS in the national level parliamentarians. So, it can be said that post legislative scrutiny formally was initiated by the London declaration on post legislative scrutiny basically the parliamentarian's act of law making was to be reinforced who used to make laws and there was need of execution of those laws strictly in accordance with the intent of the law-makers. The execution of the laws was not a simple phenomenon this is complex one, because of nonpolitical commitment, lack of funding or weak economy may cause the lack of implementation of laws and this issue was to be put for tackling and overcoming truly in right orientation. The London declaration on post legislative scrutiny was made between the signatories who alleged that the democracy can only be successful if the lives

of the individuals in the state are improving. They also recognized that the whole legislative bodies and the parliaments are to be well established that can monitor and evaluate the laws to make it beneficial for the people. They further acknowledged the necessity of classifying the laws which are creating the unfavorable effects through the post legislative scrutiny. The focusing point of the PLS is to ensure the laws are to be applied as per intended goals and implementation is purely conforming the desire of the legislator and policy objective. The basic commitment of the post legislative scrutiny is the identification and to disseminate the good practice. The parliamentarians and all other actors who get involved in the implementing of the law and go or through both legislative scrutinies became concomitant and were fully committed on it. Accordingly, 10 principles on legislative scrutiny were put forward and in the London declaration those 10 principles became the principles of the post legislative scrutiny.

### **3.2.1. Ten fundamental principles under the London declaration:**

**1. Accountability of the executive & responsibility of the parliament:**

Post legislative scrutiny is significant to get the executive under accountability, parliament is responsible to look into the laws it has passed whether these laws have been executed in accordance with the intention and the desire of the legislator.

**The assessment of introduction and policy result of legislation is dual role of PLS:**

2. Parliament must search to carry out post legislative scrutiny in two ways 1. the valuation of the introduced an enforced piece of legislation 2. and the assessment of its intended policy results.

**3. Activate arguments for the parliament to initiate Post-Legislative Scrutiny:**

Legislative body is able to assume Post-Legislative Scrutiny on any matter that it so picks. Activate arguments for the parliament to initiate Post-Legislative Scrutiny contain mainly, desires of people or organizations that a piece of legislation be revised, media reports, appeals, members of the judiciary stressing gaps, loopholes or inconsistencies in legislation, and regular parliamentary committee work dealing with an issue.

**4. an open and consultative process to identify the pieces of legislation**

Parliament should follow an open and consultative process to identify the pieces of legislation that are nominated for appraisal, seeing the time and capitals available for Post-Legislative Scrutiny. If appropriate to the nationwide framework, lawmaking which effects on civil freedoms and legislation approved under accelerated procedures is comprised in the list of legislation designated for analysis.

**5. Scrutiny of parent act and delegated legislation at the same time:**

Parliament demands the Executive to deliver satisfactory access to information as this touches the competence of Post-Legislative Scrutiny by parliament to an important extent. This is vital when Parliament aims to review secondary or delegated legislation at the same time as scrutinizing parent act. In conditions where rule choices are made by the Executive at the time of delivering subordinate or delegated legislation, parliament needs suitable time for valuation.

**6. Post-Legislative Scrutiny & legislation on Marginalized class i.e. gender, minority, disability etc.**

Post-Legislative Scrutiny delivers a chance to measure the impression of legislation on the well-being of citizens and to speak on any unexpected drawbacks or disparities that may have been created based on gender, education, geographic location, disability, sexuality,

income, religion, ethnicity, language or other issues. Such a method also supports better observing and oversight of strategy promises to gender parity and human rights.

7. **Parliamentary committees play a key role in conducting Post-Legislative Scrutiny:**

Parliamentary committees play a key role in conducting Post-Legislative Scrutiny. Parliament will reflect the suitable construction to conduct Post-Legislative Scrutiny, whether it is allocated to standing (permanent) sectorial committees, to a dedicated committee, to ad hoc committees or to a parliamentary unit. Post-Legislative Scrutiny requires a comprehensive process in which all party groups can contribute.

8. **Parliament should seek to comprise outreach and public meeting as part of the Post-Legislative Scrutiny process**

Parliament should pursue to comprise outreach and public meeting as part of the Post-Legislative Scrutiny procedure as this empowers the access to supplementary sources of information and evidence. Committee public hearings or consultations which are part of the Post-Legislative Scrutiny inquiry can improve community trust in parliament and in other democratic institutions. Any Post-Legislative Scrutiny reports should be made available to the public, whenever possible

9. **Recommendations of Post-Legislative Scrutiny reviews are tracked and followed through**

Legislature must deliberate putting procedures in place to guarantee deliberation of the outcomes of Post-Legislative Scrutiny. Endorsements of Post-Legislative Scrutiny appraisals are chased and monitored through and, where needed, changes to legislation and policy are made in a timely manner. Parliaments must have clear procedures in place to change legislation following Post-Legislative Scrutiny reviews.

**10. Inclusion of Post-Legislative Scrutiny in the parliamentary delegates.**

Parliament must ponder institutionalizing its efforts in Post-Legislative Scrutiny by its inclusion in the parliamentary rules of procedures. This pays to making clarity, purpose and resources for Post-Legislative Scrutiny activities.<sup>127</sup>

Let us go through the principles of PLS as described by Franklin De Vrieze in his book "Principles of Post-Legislative Scrutiny by Parliaments", which are 15 methods of Post-Legislative Scrutiny (PLS) including Ex-post evaluation, Impact assessment, Performance monitoring, Public inquiries, Committee-based scrutiny, Sunset clause reviews, Regulatory impact assessments, Cost-benefit analysis, Stakeholder engagement, Expert reviews, Comparative analysis, Citizen engagement, Scrutiny of delegated legislation, Review of tribunal decisions, Evaluation of policy outcomes.

**3.3. Scope, Mandate, Participants,  
Process and Timing of PLS:**

To understand the principles of PLS one has to coin the five Ws formula. W 5 includes

- i. What= stands for the scope of the PLS
- ii. Why= is the mandate to do PLS in the parliament
- iii. Who= the participants in the PLS
- iv. How =the processes of the PLS
- v. When= is the timing of PLS Ref.

---

<sup>127</sup> “*The London Declaration On Post-Legislative Scrutiny*”, (London, Westminster Foundation for Democracy (WFD, 2018), last accessed 19<sup>th</sup> December, 2024.  
<https://www.wfd.org/sites/default/files/2021-12/2018-07-26-Declaration-on-PLS.pdf>

These principles shall be a torchbearer point for all the individuals connected with the parliament, whether they are members, staff, advisors and the experts. These principles shall be beneficial for all who intend to augment the parliamentary supervision on deliverance of the policy, revision of the parliamentary rules of procedure for clarification of its performance in PLS, an experimental program on PLS within parliament to be guided and introduced. And the identification of the related configuration and reserves require to setup Post legislative ability in parliament.

principles are not necessarily to be comprehensive. These are not exclusively final. These intend to become a guide for the parliamentarians to establish a real picture of post legislative Practices. Every parliament should follow these guidelines in accordance with its substantive and procedural legal canvas.

Westminster foundation for democracy which is a non-departmental body i.e. funded by the UK government observes the worth of the PLS which ought to be the entire part and parcel of the processes in parliament. WFD is well informed about the scarcity of resources among the parliaments. Accordingly, the PLS principles thus look forward to establish the available systems and procedures as much as it is possible.<sup>128</sup>

### **3.4. Scope, Mandate, Participants, Process and Timing of PLS in workshop by PIPS:**

---

<sup>128</sup>Franklin De Vrieze, (Principles of Post-Legislative Scrutiny by Parliaments), (London, Westminster Foundation of Democracy, January 2018), 2. Accessed November 7<sup>th</sup>, 2023, <https://www.wfd.org/what-we-do/resources/principles-post-legislative-scrutiny-parliaments>.

Guiding the Scope, Mandate, Participants, Process and Timing of PLS to the Members of the National Parliament and Provincial Assemblies of Pakistan and the officers working with them under the supervision of The Pakistan Institute for Parliamentary Services (PIPS).

PIPS organized a national workshop in Islamabad Pakistan consisting two days full length instructing lectures plan. It was funded by European Union MustehkamParlimaan (MuP).

**Effective Legislation: Post Legislative Scrutiny and Delegated Legislation was the topic of this** two-day comprehensive National Workshop. This was organized on 20<sup>th</sup> and 21<sup>st</sup> August, 2024 at PIPS, Islamabad. The goal of the workshop was to familiarize the contributors about the information and skills prerequisite to critically assess legislative consequences and the role of delegated powers in law-making process.<sup>129</sup>

### **3.4.1. Mandate:**

PRINCIPLE NO. 1: Ensuring whether legislative intent has been attained, is the duty of parliament, by monitoring its laws.

Procedure of adoption of legislation consumes much money and human resource in the parliaments so the execution of legislation can be examined by the parliaments should not be an uncommon fact. This is an intricate fact that the implementation is to be reckoned that depends on the resources mobilization and the actors involved. Similarly, the promise to the policies and legislation contribution and contact between the whole involved parties. Implementation is not an automatic procedure. It includes various courses like on ground factual changes, variation of reserves, refraction of aims, conflict from shareholders, and

---

<sup>129</sup> “National Workshop on Effective Legislation: Post Legislative Scrutiny (PLS) and Delegated Legislation (DL) 20th and 21st August, 2024,” (Pakistan Institute for Parliamentary Services (PIPS). accessed October 1<sup>st</sup>, 2024, [https://www.pips.gov.pk/capacity\\_building/national-workshop-on-effective-legislation-post-legislative-scrutiny-pls-and-delegated-legislation-dl-20th-and-21st-august-2024/](https://www.pips.gov.pk/capacity_building/national-workshop-on-effective-legislation-post-legislative-scrutiny-pls-and-delegated-legislation-dl-20th-and-21st-august-2024/)).

alterations in the legislative outline of concerned planning. Implementation of legislation and policies can also be damaged by power disproportionateness, segregation, state capture and consumerism.

In spite of the tests there four all-embracing causes why parliament must spotlight scrutinizing the implementation of legislation.

- i. To guarantee the needs of people government and the necessity to execute the law according to the formula of lawfulness and legitimate surety are fulfilled;
- ii. Enabling the opposite impacts of coming acts of parliaments to be checked within time and actively;
- iii. To Ameliorate the concentration on execution and transmission of policy objectives and;
- iv. Identification and dissemination of fair exercise in order to draw the instructions from the achievements and losses exposed by this job of reviewing and evaluation.

So PLS is a vital instrument to increase the governmental accountability, and is the part and parcel of the supervisory task of the legislature. <sup>130</sup>

In democracy the government has to be held accountable. Parliament bears the prime obligation for this role. It confirms that government is serving the people as per their need. The government comes under the ambit of the scope of parliamentary oversight. The formula given by John Locke under the model of “separation of power” the executive who works for the welfare of the people in accordance with the coal formalities conferred by the law maker, is the subservient to the legislature who works in the

---

<sup>130</sup> Ibid. 4

parliament according to the will of the people. Thus, the scope of parliament to check the executive is self-evident.<sup>131</sup>

PRINCIPLE NO. 2: the legislative tools including MINISTERIAL UNDERTAKING, REVIEW CLAUSES, OR SUNSET CLAUSES necessitate PLS to trigger optimal governance.

To certify that PLS befalls is safeguarding essential requisite to the evaluation of the execution of the law making is the most efficacious action of procedure before the approval of the law by parliament. A review of legislation, the insertion of review clause, and Sunset clauses are the tools to evaluate the efficacy of laws after it has been executed.

Different methods to setup this necessary prerequisite before adoption of law is as under

- i. The ministries concerned may be taken a commitment at any stage of passing of the bill about the conducting a review of legislation with indication that it should be covered with what and at what time.
- ii. Or otherwise, the members may introduce an amending bill seeking the insertion of review clause with the requirement to operate the act or the portion of the act should be reviewed after a specified set of time. The review clause can be a beneficial source as it is fixed in the act and so it has the vigor of law. A review in general or the special review or the review of particular provision may be provided for it, who should do it and the time frame for review.
- iii. Sunset clauses are another option which operates proactively while keeping the review in place. By the sunset clause a statute or the provision of the statute

---

<sup>131</sup> Hironori Yamamoto, (*Tools for parliamentary oversight, A comparative study of 88 national parliaments*), (London, Inter-Parliamentary Union 2007,), Accessed October 6th , 2024, <http://archive.ipu.org/PDF/publications/oversight08-e.pdf>.

comes to an end automatically after a specific time has passed because its effect ceases after certain time.

Mostly a sunset clause or review clause is result of political compromise, demonstrating the cost the government pays to get a bill through parliament. It is suitable the parliament setup as an essential requisite, or mandate, the review of the execution of the enactment to its maximum possibility. The notable fact to mention here is that UK government and UK parliament are in agreement of conducting PLS. this agreement is with the consideration that the government shall submit a dispatch to parliament from 3 to 5 years after the law has been enacted about its execution. It may not be probable to establish such mechanism in the whole parliaments but it can be advantageous to discover an arrangement in which the government pledges to give statistics to parliament and so paves the ways for what legislatures and administrative machineries look forward to the procedure.<sup>132</sup>

Currently, sunset clauses as a part of the statute are in vogue. These are well-known for two chief reasons first these are main precaution against ill-advised or small-minded lawmaking and another as an actual tool for encouraging independent negotiation in policy environments. U.S.A, U.K, Canada and India are the countries where the sunset clauses are a style.<sup>133</sup>

---

<sup>132</sup>Vrieze, (*Principles of PLS by Parliaments*), 2. Accessed November 7<sup>th</sup>, 2023, <https://www.wfd.org/what-we-do/resources/principles-post-legislative-scrutiny-parliaments>.

<sup>133</sup> Finn, John, (*Sunset Clauses and Democratic Deliberation: Assessing the Significance of Sunset Provisions in Antiterrorism Legislation*), (VL - 48, Columbia Journal of Transnational Law, 2010), Accessed October 7<sup>th</sup>, 2024

[https://www.researchgate.net/publication/290300020\\_Sunset\\_Clauses\\_and\\_Democratic\\_Deliberation\\_Assessing\\_the\\_Significance\\_of\\_Sunset\\_Provisions\\_in\\_Antiterrorism\\_Legislation](https://www.researchgate.net/publication/290300020_Sunset_Clauses_and_Democratic_Deliberation_Assessing_the_Significance_of_Sunset_Provisions_in_Antiterrorism_Legislation)

Ministerial undertaking, review clauses in legislation and sunset clauses are tools in the hands of parliament in order to carry out the PLS. Parliament has a key duty to superintend the application of legislation. For this parliament has to be cautious on the following points namely: selection of the pieces of legislation for reviewing to be identified; identification of triggering PLS time; To evaluate the subordinate legislation together with the parent act is very useful; the collective outcome of lawmaking; sufficient timeframe for PLS in order to collect evidence on PLS and some important issues such like gender equality etc. are the focusing subject matter to be selected for PLS.<sup>134</sup>

PRINCIPLE NO.3: parliament reserves the innate discretion to scrutinize any law even if no PLS has been obligated.

PLS has various trigger and the triggering PLS is the primary duty of parliament. Compulsory conditions to do PLS are not workable in every situation. Parliament must be capable to do PLS on the matter which it selects. Trigger ideas for the parliament could contain:

- i. People's petition about the law to get it reviewed
- ii. News, documentary pointing out the need of PLS through media
- iii. Observations on legal gaps, inconsistencies or lacunas to be looked in to
- iv. Jobs done by committee and its inquiry on some problem in parliament

Parliament, in this regard starts work of PLS on the bases of information received through above triggering points with the presumption that information found is correct, applicable, executable and within the time frame. Such PLS begins when an already

---

<sup>134</sup> “*Post Legislative Scrutiny (PLS) – A Dimension of the Oversight Function of Parliament*”, (Research and Information Division of Lok Sabha Secretariat). Accessed October 7<sup>th</sup>, 2024 [https://loksabhadocs.nic.in/Refinput/Research\\_notes/English/04122019\\_174605\\_102120495.pdf](https://loksabhadocs.nic.in/Refinput/Research_notes/English/04122019_174605_102120495.pdf).

commitment was not made and thus stands for post enactment evaluation for examination. Such PLS is an easy opportunity for parliament as regards undertaking it in an organizing way. However, parliament should go for carrying out such PLS where no compulsory condition had been imposed, and the certain laws had been identified.<sup>135</sup>

Parliament for PLS has to rely on the accurate DATA, for this object parliament may initiate to gather the relevant and reliable information by requesting government to come with informative data from the question answers, report of auditor general, other documents and open credible data. Thereafter, such PLS increase the public trust with fruitful and efficacious results.<sup>136</sup>

### **3.4.2. Scope for PLS by Parliaments**

PRINCIPLE NO. 4: Promotion of public good and refined laws are strengthened by PLS.

PLS is a vital concept which is acknowledged having the various things to diverse parliaments and stake holders in term of meaning. PLS in its narrow interpretation has its job description of looking into the enactment of law if the provisions of the law came in to operation how its interpretation was made by courts and how its use has been made by citizens and law practitioners. In its wider sense PLS views the effect of legislation. Whether the anticipated course of action purposes of the law have been convened and how successfully. These are two components of PLS:

- i. To appraise the methodological admittance and authorization of the part of law making;
- ii. To appraise its link with envisioned program conclusions.

---

<sup>135</sup>Vrieze, (*Principles of PLS by Parliaments*), 5.

<sup>136</sup>“(PLS) – A Dimension of the Oversight Function of Parliament”.

It is suggested that parliaments search to act upon these two types of PLS, the enactment of law and its impact. Thus, PLS causes towards improvement of law itself as well as people welfare.<sup>137</sup>

PLS inquiry must be ended in a published report for the public at large. The report should be comprehensive having been agreed upon by the members of the committee. This is often based on reforms. The same copy is shared with the ministry along with the request to respond the recommendations made by committee. UK government responds such recommendations within 60 days. Well planned PLS and well-planned execution of laws guarantee the wellbeing of public at large. PLS helps government to look into the drawbacks and effectiveness at the same time. It explores that the unexecuted laws are the sheer wastage of resources and time. It strengthens the parliamentary process. Thus, Parliament plays a great role in the lives of citizens by bringing a mechanism for the affected individual, affected citizens, and affected civil society groups and businesses to bring about the public good with refined laws after having the marvelous PLS plan.<sup>138</sup>

PRINCIPLE NO. 5: **Selection of legislation for PLS utilizing time and resources efficiently in order to evaluate the affectivity of laws**

As a matter of principle there may be advantages while doing the PLS on many a number of acts, a cautious choice for legislation shall be required provided the time and means needed, that brings a trial for the richest parliament even. It is desirable for rationed reservoirs to be applied in a method enabling the qualitative and efficacious Post legislative review of some portion of legislation within a year instead of the assessment of many

---

<sup>137</sup>Vrieze, (*Principles of PLS by Parliaments*)6.

<sup>138</sup>Alex Brazie, (*Guide to Parliaments. Paper 8., Post-Legislative Scrutiny*), Accessed October 10<sup>th</sup>, 2024, <https://gpgovernance.net/wp-content/uploads/2021/02/Guide-to-Parliaments.-Paper-8-Post-Leg-Scrutiny1.pdf>

years. For the reason mentioned here it may be suitable to review only one section of one provision on an act. This line of action might be an especially adequate for bigger acts that consists in many fold portions, and which define the objects differently. The suitability for assessment of any Act is variant which is decided as per circumstances. Nevertheless, identifying the kinds of acts is possible, generally, the suitability for Post legislative review is available. Following type of legislation usually is not appropriate for post legislative review

- i. Appropriation acts
- ii. Consolidated legislation
- iii. Legislation that makes minor technical changes only and
- iv. Legislation where the scheme of legislation contains its own method of independent analysis and reporting.

Nonetheless the enactment concerned with emergency provision in the country especially when it damages civil freedom the enactment having been adopted under fast-track processes must surely be made these object to PLS. additionally, considering the combined impact of legislation is useful; thus, think upon examining the different parts of legislation within the identical dogmatic part. <sup>139</sup>

All laws cannot be chosen for PLS. some appropriate time must have passed when the law is selected for PLS that may run from 3 to 5 years. Politically controversial and the widely disagreed law are not an adequate subject matter for PLS. Representations from individuals or organizations. Concerns about the operation of the law. Publicpetition.

---

<sup>139</sup>Vrieze, (*Principles of PLS by Parliaments*), 06.

Media coverage, Legal challenges, or comments from members of the judiciary identify that a law needs to get reviewed.<sup>140</sup>

PRINCIPLE NO.6 *Assessing parent and delegated legislation together increases the legislative usefulness and upshots.*

Prime legislation empowers the executive body to legislate subordinately. Ideally the time of assessment of subordinate legislation is similar with the primary legislation that authorizes it. This matter is specially dealt when some provisions in both the primary and secondary legislation go in consistent with each other, committee on delegated authority and regulatory reforms work there in some parliaments. While dealing the parent legislation the parliamentary committees may openly operate on it by doing the research with reference to the coming in to force of the particular subordinate legislation or doing an enquiry in it.

The level of parliamentary scrutiny is fixed by the parent Act specifically at the time when Parliament provides an authority to make delegated legislation. Occasionally, subsequent scrutiny is not needed, however, the instrument is required to be laid before Parliament, and sometimes Parliament decides that the statutory instrument may put in the parliamentary procedure. Parliament acknowledges the necessity to delegate some legislative powers. The first ever Delegated Powers Scrutiny Committee report was circulated in March 1993. Sir Jonathan Jones commented: “Under our constitution, with the doctrine of parliamentary sovereignty at its heart, it is open to Parliament to confer whatever powers it wants on ministers, subject to whatever conditions, limitations and

procedures Parliament wishes to impose”. The executive makes the Delegated legislation and Parliament is not mandated to make amendment in the delegated legislation.<sup>141</sup>

**PRINCIPLE NO. 7: *PLS provides a chance of comprehensive assessment of certain laws effecting the gender and minorities***

System of PLS previous legislation permits a parliament to examine the cross-cutting effects which had been decided by it to deal as a prioritizing element. The subjects of interest for examination can be regarding the regulatory or environmental burdens, gender or human rights.

For an instance, the men and women in different way are frequently affected by the legislative initiatives. An organized examination of law and policy on the basis of how that influences female, male and other concerned demographic groups can assist in identifying and averting or compensates major demerits they can produce. This mechanical method, referred to as Gender analysis, also assists to guarantee male female have approached to the similar chances and; lawful safeguards. Gender analysis is also referred as protective value for income and boost public proficiency and unambiguousness.

Gender analysis needs the combination and review of evidence as that is sex-disaggregated data or qualitative assessment of government services. It also necessitates the executive to test presumptions about how a government program should be formed, and to demand the extended question about an effecting problem and how the proposed solutions would affect them. Thus, preferably a planning for this procedure during the

---

<sup>141</sup> “*Reasons For and Against Delegated Legislation*”, UK Parliament,” Parliament.UK. n.d., accessed October 12, 2024, <https://publications.parliament.uk/pa/ld5802/ldselect/lddelreg/106/10605.htm>

initial time of the legislative process, before the law is adopted, to guarantee systems or in place to gather and arrange mandatory evidence and pieces of information.<sup>142</sup>

PLS offers an occasion to evaluate the impression of legislation on subjects which cut across diverse Acts e.g. the topics of gender equality and rights of minorities. As lawmaking often marks men and women inversely, regular study and assessment of law and policy, founded on how they influence women, men and other appropriate demographic assemblies can benefit to recognize and stop any possible difficulties they may generate. Collection of evidence is needed on the subjects of sex-disaggregated data or qualitative assessments of government services in order to do a gender analysis of the impact of legislation.<sup>143</sup>

### 3.4.3. Participants

for

### PLSbyParliament

PRINCIPLE NO.8:

*There should be parliamentary decision that PLS either should be conducted by the standing committees or by the dedicated team of experts to ensure that this process has allowed every stake holder to participate*

Parliament necessities to determine on the duty and obligation of its present permanent standing committees to do PLSanalysis, along support of “regular committee staff” (as this occurs in the house of common of UK), and what can be the utility of openly allocating the rest of the area of PLS to a devoted committee (as this is going on in

---

<sup>142</sup>Vrieze, (*Principles of PLS by Parliaments*), 07.

<sup>143</sup>“(PLS) – A Dimension of the Oversight Function of Parliament”.

Scotland and Lebanon) or two ad hoc committees (as it is conducted in UK house of lords). In Indonesia and other parliaments, the committees commit the examination of the enactment of legislation whether subordinate legislation has been circulated and what are the concerned verdicts of courts relatable to law. Thematic committees on the other hand reviews the influence of the law in term of achieving its objects to what extent. Options mentioned have values equally the selection of the approach is based on the matters and problems as per the rule of procedure in concerned parliament, the capability and capacity of committee, culture and oversight of parliament, established norms and practices, and the human resource available to it work out. Additionally, PLS must be complete procedure in all parties ruling as well as opposition benches must be able to take part. Because PLS is a portion of the oversight role of parliament, a comprehensive line of action will solidify the liability of the governance system and increase welfare services to the citizens.<sup>144</sup>

PRINCIPLE NO.9:

***To administer the PLS effectively the parliament should take following crucial steps including human resources enhancement, leverage technology, dedicated service and external assessment team***<sup>145</sup>

For making PLS successful in terms of delivery of benefits at a suitable price of time and money, the parliaments have to deploy the capacitated staff importantly equipping them with the required mandate to meet with concerned organizations and shareholders in the homeland. This is significant for many reasons including collection of the requisite pieces of information, obtaining the needful documents might be into the national language or understandable language.

---

<sup>144</sup>Vrieze, (*Principles of PLS by Parliaments*)8.

<sup>145</sup>Parliamentary Committees - Indian Polity Notes, <https://byjus.com/>, accessed October 10<sup>th</sup>, 2024 <https://byjus.com/free-ias-prep/parliamentary-committees/>

In India the committees to scrutinize and control include the committees on government assurance, subordinate legislation, empowerment of women and office of profit are the best example of parliamentary *dedicated service and getting the external opinion and assessment from the government team.*<sup>146</sup>

Committee on Human Resource Development	<ul style="list-style-type: none"> <li>• Human Resource Development</li> <li>• Youth Affairs and Sports</li> </ul>
Committees to Scrutinize and Control	<ul style="list-style-type: none"> <li>• Committee on Government Assurances</li> <li>• Committee on Subordinate Legislation</li> <li>• Committee on Papers Laid on the Table</li> <li>• Committee on Welfare of SCs and STs</li> <li>• Committee on Empowerment of Women</li> <li>• Joint Committee on Offices of Profit</li> </ul>

147

PLS is a task that can only be undertaken by a staff of capacity and skills. The parliaments need to be equipped with the staff technically sound who might run committees and have the knowledge of running committees and carrying out PLS. take an example of Indonesia and Switzerland where a separate secretariat research service for Post Legislative Scrutiny has been set up. While South Africa is the country where a direct

---

<sup>146</sup> Ibid.

<sup>147</sup> Ibid .

an independent organization undertakes legislative assessment. Every practice has its reason and its profits.<sup>148</sup>

PRINCIPLE NO.10:

***Community meetings play vital role i.e. collection of additional data, credible results, excess in public trust and better decision making in PLS***

By the meetings of the committee with the people as a part of the post legislative procedure for the opinion of the people as public hearings, by this act of the committee, the committees get approach towards the more required information which enlarge the reliability of the total results of the post legislative examination. Moreover, public opinion and community meetings can increase people trust in legislature along with the organization working in the supervision of the public representative. The outcomes of the post legislative discoveries for example the reports coming out of the post legislative scrutiny, making it available for the people, by the possibility of utilizing the data openly and detailed documents having the complete guidelines.<sup>149</sup>

#### **3.4.4. Processes to Be Adopted byParliaments forPost-Legislative Scrutiny**

PRINCIPLE NO. 11.

**Simplifying the evaluation process, clarifying the goals and establishment of effective methods should be incorporated in PLS procedure by the Parliament**

Various parliaments have setup the legal and policy structure for Post-Legislative Scrutiny in several official papers. UK parliament is the unique example for PLS it has

---

<sup>148</sup>Vrieze, (*Principles of PLS by Parliaments*),08.

<sup>149</sup>Ibid. 10 .

setup PLS unit that works as its main job UK parliament is also in agreement with UK government for its assistance in the task of PLS activities. Similarly, Canada does the main task through its conduct of rules and procedures of parliament as well as by its standing orders. Indonesia has law on parliament for the operation of PLS. Switzerland is a country where constitution contains the activity of PLS.<sup>150</sup>

The strong PLS acts in a parliament can be made possible through the inclusion of PLS activities in the rules of procedure of parliament. The scripture containing PLS officially shall provide clearness, simplicity and the object to PLS which most of the time facilitates the resource allocation needed to do PLS. Nevertheless, these referred documents are not necessary to do PLS, so if a legal or policy framework separately is absent the parliamentary rules reference is not hampering factors to parliament to do the PLS as its role of supervision. However, it as an adequate step of parliament to incorporate a clarity-based reference to PLS in the rules and conduct of procedure of the parliament.<sup>151</sup>

There are numerous diverse kinds of committees in parliaments throughout the world. The scrutiny committees aim at overseeing the Executive and monitoring its efficiency, generally through a proof collecting procedure which may include collecting written documents and holding hearings with Ministers, government officials and other interested parties. These are also known as oversight or investigative committees. forexample, the UK select committee system or the US congressional standing committees ‘shadow’ the relevant government department and hold it accountable for its work.<sup>152</sup>

---

<sup>150</sup> Ibid.

<sup>151</sup> Vrieze, (*Principles of PLS by Parliaments*), 10 .

<sup>152</sup> Alex Brazie , Guide to Parliaments. Paper 8., Post-Legislative Scrutiny, Accessed October 10th , 2024, <https://gpgovernance.net/wp-content/uploads/2021/02/Guide-to-Parliaments.-Paper-8-Post-Leg-Scrutiny1.pdf>

PRINCIPLE NO.12:

*Assessing impact, identification of gaps and future decision information are served by PLS after a quality control measure*

For the efficient PLS and its wider supporting conclusions, the PLS must look towards the operation and influence of the law contemplating the proof of how it has practically worked. One has to think the entire impact of enactment in the light of the utility of contemplating the overall impact of legislation. Process of PLS considers the issues formed within the strategically arena from the several statutory instruments at the time of analysis of the effect of the law making. The debate on post-legislative scrutiny must empower an exhaustive expression on the effect of the lawmaking, observing it to what extent the aims have been retrieved as the legislative effect rarely contains the impact of legislative instrument solely. Few of the examples of Myanmar's assessment of past statute, which may intimate running debate discussion if the aims were prime.<sup>153</sup>

The exception can be given to the provisions relatable to the emergency enactment. The rules of permitting the re-assessment of the strategy in the bill do not attract by the re-examination. The provisions of emergency enactment are usually time bound introduced under influence and under the emergency circumstances so the proper scrutiny in the parliament cannot be held. Thus, it is desirable to make it guaranteed that a sunset clause for emergency legislation has been included.<sup>154</sup>

PRINCIPLE NO. 13:

---

<sup>153</sup>Alex Brazie , Guide to Parliaments. Paper 8., Post-Legislative Scrutiny, Accessed October 10th , 2024, <https://gpgovernance.net/wp-content/uploads/2021/02/Guide-to-Parliaments.-Paper-8-Post-Leg-Scrutiny1.pdf>

<sup>154</sup>Vrieze, (*Principles of PLS by Parliaments*), 10 .

***Public machinery knowledge, engagement of stake holders and timely approach secures transparency, law quality and public confidence to ensure that laws serve the needs of citizen***

At the time of adaptation of legislation parliament has to explain the way to have an access to the public machinery knowledge on the execution of the enactment. The mechanism for this process is to guarantee that the public functionaries of each division give the knowledge-based data regularly or with interval but at the time agreed upon. The example of UK government is citable here the concerned government departments perform the preliminary examination, within five years but not before three years after the law has been enacted and the same is reported by publishing it and thereafter it is laid before the parliament.<sup>155</sup>

The concerned select committee then assesses the published report and if the committee thinks it adequate that might do its own assessment of the influence of that enactment. If such a charter is missing, then the parliament on its own requires to initiate together the relatable data- at that point approach to government information rests significant. The capacity of parliament to accept, assimilate and process the official and other statistics available is of much importance. Thus, the interconnectivity with executive databanks, incorporation the open data and production of executive gadgets for the support of parliament are necessary elements for the effective execution of PLS.

Furthermore, the efficient PLS needs the opinions of vast sphere of the shareholders also the civil society groups and parliament must fix the mechanism and chances to approach Civil Society Organizations opinions and informational data.

---

<sup>155</sup>Ibid.

It is notable to be highlighted here the parliaments are at usual point the focusing point of a vast system of examination that there must be selecting in to that organization and operating interconnect with external systems not just for PLS work.<sup>156</sup>

PLS is an exercise wherein the process has to take many things into consideration including current legislation and policies, to save the time and energy of government officials during the time when the process of post-legislative scrutiny is taken up, to avoid reopening the original debate that happened when the enactment was made, PLS must be an evaluation of how a law has operated and not a repetition of the whole same policy, not an isolate examination, and the PLS plan must bear a standard model.<sup>157</sup>

PRINCIPLE NO. 14

***PLS should seek the establishment of clear mandates, setting the time frames, gathering the different perspectives, facilitating the data and information and transparency and accountability***

Legislatures required to guarantee that the outcomes of the PLS assessment are tackled. PLS results may be a beneficial foundation for drafting amendments as it gives data about the condition of execution of laws: these outcomes may also anticipate other parliamentary steps. PLS results may intimate non legislative tools i.e. motions, questions, applications for government statements and the answers of the ministries. Taking the example of UK parliament, the time limit given to government in UK for answering a written answer on a report of PLS is fixed between 3 to 6 months which is deemed thereafter a public document as per the right provided under freedom of information act.

---

<sup>156</sup>Ibid.

<sup>157</sup>Alex Brazie , Guide to Parliaments. Paper 8., Post-Legislative Scrutiny, Accessed October 10th , 2024, <https://gpgovernance.net/wp-content/uploads/2021/02/Guide-to-Parliaments.-Paper-8-Post-Leg-Scrutiny1.pdf>

The parliament then becomes able to examine the sequel to approvals of the body that committed the PLS within the time frame of 6 to 12 months after it has been completed.<sup>158</sup>

### **3.4.5. Timing for Post-Legislative**

#### **Scrutiny by Parliaments:**

PRINCIPLE NO.15: THREE YEARS IS THE TIME FRAME FOR DOING POST-LEGISLATIVE SCRUTINY:

*Time for implementation, avoiding pre mature evaluation and flexibility for conducting PLS enables law makers to reach to decision*

Whereas this is difficulty to make an opinion about the time limitation for the assessment of all sorts of law making in the whole situation, it is however endorsed that laws to be made the subject of assessment after a time frame of at least three years after the enactment has been made. The cases might be having strong political pressures and political motivations for the prompt assessment of the certain laws. Example of such cases is enactment of emergency provisions. An early assessment may cause a demerit as the lack of time or the lessor rime to allow an authentic judgment on the impact of the law. Whether the law appeared in political contention an early assessment might give a consequence in a continuity of the reasons about the strategy of object and reason behind the law making rather than a doctrinal assessment on the impacts. The other aspect is that a great number of acts will mostly pertain a chain of beginning time for various portion of the statute, that gives an outcome in the law making as a rolled out progressively over

---

<sup>158</sup>Vrieze, (*Principles of PLS by Parliaments*), 11.

many months or more than a year in such matters an assessment can on the other hand be fruitful to recognize evidently which have not been started and why.<sup>159</sup>

A review of the legislative procedure was undertaken by the constitution committee in 2004 and a report was issued that the PLS has been carried out very rare. A recommendation of the committee was proclaimed that there should be a regular practice of PLS in order to know that the purposes of legislation had been gained. Regarding time, the recommendation of committee was issued that besides finance Acts, the Acts must be reviewed within the three years of their beginning or within six years subsequent their enactment. It was also recommended by the committee that the departments should carry out the PLS as they are richer in resources. Thereafter the reports must be shared with the select committee of the department concerned for the purposes of its examination to know whether it is appropriate or more assessment is essential.

In the year, 2012–13 the first House of Lords post-legislative scrutiny committee was employed in order to scrutinize adoption legislation. Two other post-legislative committees were selected in 2013–14 and one has been chosen in every succeeding year. A full sum of eight House of Lords post-legislative scrutiny committees has reported currently, and this work is now well-established.<sup>160</sup>

#### THE CONTEXT OF SCRUTINY BY PARLIAMENTS:

PRINCIPLE NO.15 refers to the principle that three years is the recommended time frame for conducting Post-Legislative Scrutiny (PLS) of laws passed by parliaments. This principle is part of a broader framework for ensuring effective lawmaking and accountability in governance.

---

<sup>159</sup>Ibid.

<sup>160</sup>“Legislative Scrutiny”, UK Parliament,” parliament.uk. n.d., accessed October 12, 2024, <https://publications.parliament.uk/pa/ld201719/ldselect/ldliaison/398/39809.htm>

Post-Legislative Scrutiny is a crucial process where parliaments review the implementation and impact of laws after they have been enacted. The three-year time frame allows sufficient time for laws to be implemented and their effects to become apparent, while also ensuring that scrutiny is timely and relevant.

This principle is likely part of a set of guidelines or best practices for parliaments to enhance their oversight and scrutiny functions, promoting transparency, accountability, and good governance.

### **3.5. Post-legislative scrutiny in Indonesia:**

The Indonesian case study on Post-Legislative Scrutiny (PLS) is an interesting example of how countries are working to improve their lawmaking processes. Indonesia's approach involves establishing a Standing Committee on PLS to review the implementation and impact of laws.

Key aspects of Indonesia's PLS approach:

- The House of Representatives (DPR) has set up a Standing Committee on Legislation, known as Badan Legislasi (BALEG), which plays a crucial role in the legislative process, including PLS.

- BALEG checks whether the government has formulated implementing regulations and assesses the law's impact on the public.

- The committee also monitors court challenges to laws and evaluates their effectiveness .

Indonesia's experience offers valuable lessons for other countries, including Pakistan, on how to strengthen PLS mechanisms and improve lawmaking.

Parliaments carry out the PLS as a customary role but do not perform it all the time regularly. PLS is performed in the standing committees as an organized way in most of the parliaments. DPR (Dewan Perwakilan Rakyat - DPR) is the name of the parliament of the Indonesia which is the house of representative, this house has adopted the PLS. DPR has tried to adopt the novel methodology of enhancement of the PLS effectively and efficiency.

The PLS in Indonesia evolved from 2004. The formal process of PLS in Indonesia was conducted by the legislative committee in 2014. This committee focused on legal sides mainly looking in to the fact that if some of the legislations have been questioned in the court of law on the constitutional ground. It utilizes the findings of the PLS to look ahead the further legislative point in a way to find out that a special point of legislation requires to be put in to amendment or send it under the repealing clause.

**Parliamentary Expert Support Agency**, a professional support center, has been set up in DPR which performs the PLS functions providing the aid relating to the research and legal support to standing committee, subject committees and other professionally, concerned with the legislative and post legislative scrutiny services. This center establishes a scheme annually to examine and assess the laws of a public importance having the effect greatly on the budget, and the laws which are put in to the public litigation in the courts on the constitutional vires. In the year 2019 the month of September the certain amendments were adopted by DPR, whereby the PLS as a process was declared as necessary portion under the local and national level laws. It was a land mark mile stone in furthering the significance of PLS in the DPR and guaranteeing the PLS became a portion of the law-making procedure formally in the Indonesia.

### **3.5.1. External Support**

The Westminster Foundation for Democracy (WFD) is on the support to the increase and innovation in PLS in Indonesia since 2015. There is a focus on the projects regarding making the plans and to hold accountability after gathering the proofs. The object is to safeguard that PLS is held in an organized and official manner in the precinct of parliament. The standing committee on legislation and on PLS follows the approach given in the guide for parliaments on PLS compiled by WFD.

### **3.5.2. Strengths, Benefits and Challenges of PLSfortheDPR**

The DPR is well equipped with the parliamentary staff and expert professionals. This human resource conducts PLS aptly so its importance is notable here. 10 to 20 skilled personnel are attached with every committee all the time. The DPR is still facing a challenge regarding expert support is that the professor doing the research for are promoted by the Indonesian institute for sciences after the determination of the standard. Accordingly, these standards sometimes may stand in conflict with the activity of parliament. So, there are many indications show the requirement of conformity among academic research in DPR.

Indeed, the PLS has been included recently and it is still in evolution. Its aim is improvement in law making and encouragement of better regulation. The evolution of PLS in DPR remains till a long, ultimately now the PLS is governed by the law. As far as the future prospects are concerned it envisages that PLS process may be linked with the civil society. The efforts made by DPR are self-evident of the proof that the betterment in PLS

can be made from time to time in an increasing way from the decreasing situation, and the lack of resources or the few legal frame works. But, as far as the political will is, PLS is under the continuity to the extremely important particularity well the aims to ameliorate the law making to meet out the human rights organized set standards.<sup>161</sup>

### **3.6. Case study of “Post Legislative Scrutiny Report on the Myanmar Microfinance Law 2011”:**

In Myanmar the PLS international best practices with the help of WFD were initiated in 2017. Being PLS new, completely fresh practice for the Myanmar Parliament the WFD supplied the aid by various sources including scriptures of guidance technical seminars and skilled persons on the subject matters. Coming on the case study directly the PLS inquiry committee under the instructions of lower house took up matter of banks and monetary development and started PLS examination on the microfinance law. for this PLS the committee summoned ministry of planning and finance and the financial regulatory department to come up with their own self-contained opinion on the law including the challenges faced by it during the implementation of this law. The decision of the committee was declared as that this law on micro finance and its problem have a solid effect on the people of lesser income so, this law needs a complete review. Accordingly, an

---

<sup>161</sup> (*Post-legislative scrutiny in Indonesia*), (Issue 4, Parliament, Indonesia).12 Feb 2020, <https://www.ipu.org/innovation-tracker/story/post-legislative-scrutiny-in-indonesia>. Accessed 24<sup>th</sup> November, 2023.

inquiry was started. Terms of references (TORS) were made. TORs focused to form the parent law and its subordinate law effectively operated for the masses. TORs also aimed to make amendments in the directives and make it in conformity of the prime legislation. Promotion of the participatory attendance of the officials of the parliament and the increasing their capacity were also part of TORs. So, the committee after reasonable work having met with the stake holders and shareholders made a legal examination of the statute. The directives under the statute and orders made thereunder for the identification of powers, flaws and boundaries. Committee mapped the stakeholders recognize the concerned executing agencies and the same were consulted. The committee after meeting these relevant bodies made a questionnaire and met with the concerned quarters including the clients' ministries and the operational agencies after having met with all these quarters the committee made a comprehensive description on the microfinance law and it was named as the "Post Legislative Scrutiny Report on the Myanmar Microfinance Law 2011".

The said report was classified into three heads

- a. problems in execution
- b. proposed substitution in law
- c. The requirement of creation of awareness among the people.

The committee held different meetings at different places with the ministry concerned on the agendas of the said law where PLS report has been developed. These meetings were 10 in number between 2017 to 2019 and finally there appeared a consensus between committee and the ministry on the proposed alterations in the said law. the committee withdrew one section with the condition that same withdrawn section shall be made part of the draft developed by the ministry naming as the new microfinance bill in accordance

with the committee recommendations. On October 16, 2019 at the website of Union Assembly of Myanmar the bill was uploaded for general information and feedback and the same bill was transmitted to lower house for discussion. Consequently, the bill after debate and discussion was passed in the lower house on February 5, 2020.<sup>162</sup>

### **3.7. Global practices on PLS by committees in different parliaments:**

The system of monitoring the laws whether to be implemented or not and the progressive and functional stages of the law is run by the parliamentary committees which are to bear the burden of proof regarding the PLS. Parliaments consist different committees. These committees perform the responsibility of overseeing the governmental tasks. Usually, one committee deals with the one ministry. In some parliaments the PLS task had been conferred to the committees concerned, whereas the special committees on PLS have also been setup in some of the parliaments. Lebanon parliament has set up a PLS committee with a special role to that committee. Speaker of the Lebanon parliament has established this committee by his directive orders. This committee is not a permanent committee in nature. This committee shall operate only within the regime of the speaker said. The mandate of this committee shall seize as soon as the regime end however, the

---

<sup>162</sup> Franklin De Vrieze, FotiosFitsilis, *(Applying Post-Legislative Scrutiny to the Analysis of Legislation and SDGs in South and Southeast Asia, Journal of Southeast Asian Human Rights)*, Vol.4 Issue. 1 June 2020. 1-22, Accessed 20<sup>th</sup> November, 2022, <https://www.agora-parl.org/sites/default/files/agora-documents/document-2.pdf>

speaker can reestablish the same special committee on PLS with the commencement of the new regime.

The EU parliaments are classified in to **Passive, Informal, Formal, and independent school of thoughts** in term of scrutinizing the laws by the parliamentary committees. *Lisbon Treaty* is worth mentioning here through which the EU parliament have pledged to focus the function of scrutiny of laws by the member's state proactively.

### 3.7.1. Passive School of Thought:

**Passive school of thought:** only Belgium parliament is referable in this school of thought. As far as passive school of thought of scrutinizing the law is concerned it totally relies on the reviews of the laws made by the outer bodies or the government agencies with little contribution of parliamentary system. Belgium parliament is one of the parliaments that follows the passive approach of scrutiny. In Belgium the process of PLS is supported by parliament with apt law making but very limited staff support with it for the said function.<sup>163</sup>

**According to Quito and Ecuador Passive scrutinizers** are the feeble methodology of scrutiny because all the data in this method is procured by other agency and the checking is made by third party mediation that the government or outer organization may be the party. Estonia

The parliament of Estonia is the example of passive scrutinizer. The legislative drafting rules of the government transpires that each bill must look into whether mandatory PLS clause is required and when PLS should be made kinds of the effect to be assessed, the standard for assessment, the essential material for the PLS report. In Estonia the

---

<sup>163</sup> Ibid.

government transmits the report of PLS to parliament, shareholders and the law and justice department.

## GERMANY

The Bundestag is German federal parliament directly elected by the people of German carries out PLS by a paradigm supervisory structure that includes, reports a study, question making, enquiries member parliament. Bundestag involves in PLS by the assessment made by Government of ex post evaluation done by the Federal statistical office and the national regulatory reform. The Scientific Service, the Office of Technology Assessment (OTA) and the Parliamentary Advisory Council on Sustainable Development are three bodies of the Bundestag have expertise on impact assessment.<sup>164</sup>

### 3.7.2. Informal Scrutinizers:

German parliament and Italian parliament follow informal scrutinizer school of thought.

The next school of thought is informal scrutinizers. This approach focuses on the latest configurations of the parliament itself. Attached with obligations who implement the legislative and impact analysis. Parliaments of Germany and Italy are the model parliaments wherein, the committees are bound to prove the burden. It is however notable that German parliament contains the inclination to develop the effect of the scrutiny and thus it seldom relies on passive scrutiny. This occurs in Germany as matter of fact owing to the parliament's dependence on the intimation given by the Government regarding effect of law making and German parliament is less capacitated to step forward in this field as

---

<sup>164</sup> Quito, Ecuador, (*Post-Legislative Scrutiny*), (London, ParlAmericas Open Parliament Network, 2019) 12, Accessed 20<sup>th</sup> November, 2023, [https://parlAmericas.org/uploads/documents/4OPNGathering\\_Franklin\\_introduction\\_for\\_ParlAmericas\\_ENG.pdf](https://parlAmericas.org/uploads/documents/4OPNGathering_Franklin_introduction_for_ParlAmericas_ENG.pdf).

well. Whereas Italian parliament believes in administrative approach thus there are two centers in each house are operating.<sup>165</sup>

**According to Quito and Ecuador Informal scrutinizers** are more skilled. The assessment of ex post laws is made skillfully. The informal scrutinizers are abler than the others but it is not always true that the assessment and its result after the research shall activate the supplement.

**South-Africa** the follower of informal scrutinizer school of thought has developed an external team of 17 skilled persons. They include main academic and planning specialized persons. This penal is headed by ex-speaker and the Speaker's Forum of National Assembly commissions the team.

Poverty; joblessness and disparity, Formation and equal division of resources, territorial reshaping, restoration, rearrangement and safety of time, Nation-building and societal solidity are the segments for the planning.

In Italy the administration runs the PLSas PLS is completely embedded in the management in Italian parliament. There is unbalanced method of PLS in Italy in both two hoses the PLS is operated with different methods and in different scope. The public and other institutional census leads the legal dimension of PLS in the parliamentary supervision there in the chamber of Deputies. Senate of the Republic, Quality of Regulations service and impact dimension of PLS, lead the full capacitated parliament bureaucrats analytically. Although there is weak follow-up politically and procedurally. There are certain websites where the reports are displayed dedicatedly. Member's parliament give their decision if any.<sup>166</sup>

---

<sup>165</sup>Vrieze, Fitsilis, (*Applying Post-Legislative Scrutiny to the Analysis of Legislation*).

<sup>166</sup>Quito, Ecuador, (*Post-Legislative Scrutiny*), 11.

### 3.7.3. Formal Scrutinizer School of Thought:

**Formal Scrutinizer school of thought:** Swedish and French parliaments crave the formal scrutinizer school of thoughts.

Formal scrutinizers are well organized and systematic school of thoughts of scrutinizer. This school of thought carries out PLS in an organized way. There are PLS department for doing PLS systematically. A regular procedure for the operation of PLS is given in this school of thought. It focuses on the planning, organizing and reporting back on the task to be under taken under the ambit of PLS. it believes in the report came out of the results of the scrutiny. Parliament of Sweden and France are model parliaments for formal school of thought of scrutinizing. These parliaments follow the modes, manner and techniques due to which theses are known as formal scrutinizers. Importantly these parliaments have constitutional backing for formal PLS. the Sweden Parliament contain these provisions in the constitutions and same provisions are implemented through the statutes they have passed and parliamentary rules of procedure also mandates the same. Conversely, the French parliament under goes the same modes oprendi wherever supervision contains official confirmation of the execution of the law and of the impressions created. <sup>167</sup>

**According to Quito and Ecuador Formal scrutinizers** follow a method which generate a hard oversight result. These scrutinizers always involve the formal presence of political organizations. The political bodies conduct the primary factual tracing and assessment very formally. Formal scrutinizers channelize the consequences of scrutiny in a systematic way and in formal shape. as an approach that might result in a ‘hard’ oversight, given the

---

<sup>167</sup>Vrieze, Fitsilis, (*Applying Post-Legislative Scrutiny*).

formal involvement of political bodies both in conducting the preliminary fact-finding and evaluation and in channeling scrutiny outcomes.

**Indonesia:** BALEG is Standing Committee on Legislation in Indonesian parliament and DPR is the House of Representatives in Indonesia. BALEG the standing committee on legislation observes implementing regulations, contentions at the court of law under Constitutions, appropriateness by implementing agencies, effect of laws on people. BALEG mentions conclusions of its Post-Legislative Scrutiny to the committee concern which is focal point of PLS.

The UK system safeguards necessary PLS for all acts. Acts are specifically bound to be scrutinized within the precinct of the parliament. Parliamentary scrutiny of some acts is made in to the depth. The scrutiny where is needed i.e. that is tried proportionately. Scrutiny is entire responsibility of the government. This is the complete obligation of the government to supply over the main information for PLS examination on every law to the parliament i.e. the House of Commons.

In UK, House of Lords equity works on PLS temporarily that committee has to submit its report on PLS within one year. This committee works like the committee of House of Commons. House of lords publishes an invitation for information in black and white. The house of lords holds meetings with skilled persons. It effects citizens and the other bodies. It also moves on government official and ministers. The house generates the report having recommendations to the governments. The report is made public. The government has to answer within two months.

A temporary committee is appointed to conduct PLS and is required to report within a year.<sup>168</sup>

### 3.7.4. Independent Scrutinizers:

UK and Switzerland Parliament follow this approach.

Focus of the independent scrutinizers is very high in term of the oversight. The oversight by this school of thought is very organized and systematic. This school operates pro-actively and transparent approach is their motto. The scrutiny starts from parliament leads with the follow up and it pursues the recommendations made by the committee and findings to be implemented. UK and Switzerland parliament utilize this methodology of PLS. in the parliament of UK and Switzerland PLS is one of the major functions of the parliamentary committee. Importantly the UK parliament invites the skilled persons in the relatable field to hire their services in different level of their fields. British and Switzerland parliament gives much importance to the final evaluation of the analysis that is why these are the parliaments which have included the relevant provisions of legislative evaluation in their constitutions.

**Post-legislative scrutiny in the Republic of Kosovo:** The assembly of the Kosovo gives big place to PLS. In Kosovo the oversight role regarding the implementation is performed by the PLS. Parliamentary Committees, in Kosovo are authorized to supervise the execution of the laws. The Committees under the extent of its authority are also supposed to look into the effectiveness of laws while emphasizing on the implementing condition of the laws annexing the reference paper of solid suggestions to ameliorate the effectiveness. Whole reports of the Committees on the evaluation of the execution of the laws have to qualify by a vote in plenary session. Rules of procedure of the assembly of

---

<sup>168</sup>Quito, Ecuador, (*Post-Legislative Scrutiny*),12.

Kosovo provides a very significant aspect about the submission of the report by the ministry concerned before the committees is that the ministry should submit a report of implementation of laws once a year at least. It is notable here that this provision has not been implemented by the ministries and also the parliamentary committee are not questioning it for its non-implementation in the plenary session. Rules of procedure further provides that if ministry does not follow the rule of submission of the report or if it submits the incomplete report the committee may raise the issue in the agenda of the upcoming plenary session.

**The constitution of Kosovo** in the canvass of the separation of power assigns and determine the responsibility of Government for the execution of the law at the same time the assembly to make sure the control of parliament over the administrative machinery i.e. the Government. Moreover, article 93 of the constitution of Kosovo envisages that the executive pillar of the state of Kosovo decides and makes legal deeds or guidelines essentials for the execution of the enactment. These provisions of the constitution of the Kosovo are self-evident of the wisdom of the framers of the constitution to go for the execution of the laws and all other acts necessary for the execution under the parliamentary control in order to safe guard the better implementation of laws. These two legal documents i.e. constitution of Kosovo and rules of procedure of assembly have ensured the parliamentary oversight of implementation of laws. **“Manual on the oversight function of the parliamentary committees”** published in 2011 by the assembly of Kosovo. It is scripture of ten pages’ chapter of guidelines on the monitoring and implementation of laws.<sup>169</sup>

---

<sup>169</sup> *ibid*

### **3.8. Application of PLS by Assembly of the Republic of Kosovo.:**

- At the commencement of every year the committees give approval to its work to be done.
- These work plans contain oversight acts generally exclusion of laws which shall be evaluated with reference to its execution.
- Managing time and actions in good way, working teams may be established by Committees for drafting and revising draft laws along with overseeing the application of laws.
- The participants of working team have varied from three to five and function in the light of established limits for performing the overseeing procedure and concocting the pertinent report.
- Events like arranging field visits, arranging public hearings, running investigation, referring with NGOs and other stake holder groups, recognition and analysis of bylaws (secondary legislation) calling for exceptional consideration should be planned by the Working teams responsible of supervising the execution of the law.
- The assessment of bylaws must decide:
  - a. Has the secondary legislation been released in accordance with the original law's requirements?
  - b. What are the implications of secondary legislation?

- i. Does the secondary law accomplish the objective that the primary law set forth?
  - ii. Main causes in case of non-accomplishment of the objectives? In order to determine if bylaws are completely compliant or contain inconsistencies, their provisions are compared to those of the applicable law from which they were produced.
- At many occasions the executive institutions make such kind of secondary legislation that it surpasses their legislative authorities. The inconsistency between parent law and subordinate law is initial phase of issues in execution.

**Different phases:** following are four phases in execution procedure of overseeing.

- i. First Phase: recognizing the responsibilities written in by law for executers and evaluating the conformity of by-laws with the law;
- ii. Second phase: arranging field supervising visits
- iii. Third phase: announcing by the serve or dependable official to the committee assembly, organizing the supervisory hearing, planning the report with proposals from the oversight working bunch, checking on the report with suggestions within the committee and checking on the report with suggestions within the entire session of the Gathering;
- iv. Phase four: declaring by the assist or tried and true official to the committee gathering, organizing the oversight hearing, arranging the report with recommendations from the oversight working bunch, checking on the report with proposals inside the committee and checking on the report with proposals inside the complete session of the Gathering;<sup>170</sup>

---

<sup>170</sup> Ibid.

GUIDELINES ON EX-POST EVALUATION OF LEGISLATION IN THE REPUBLIC OF KOSOVO.

1. The government of Kosovo has adopted Guidelines on Ex-Post Evaluation of Legislation
2. The government has required to assign the ministries to analyses the laws as ex post evaluation in accordance with the guidelines
3. The prime minister office established a supervisory office to take in to task of the evaluation in accordance with the guide lines under the supervisory role of the legal personnel
4. The guide lines, guide this as a chance for the public management to gather the census on the issues given below
  - i. How the implementation of legal impact was made?
  - ii. Have the policy goals as per intention been obtained through legislation
  - iii. Is the cost-effective legislation being introduced?
5. The basic object of post leg appraisal is to assist policy framers and the responsible agents for implementation as well as measuring a legal frame work is in effective way

**3.9. Methodology for ex post evaluation for legislation**

The evaluation of legislation must go five main steps

**Step one: Should legislation be evaluated?**

This is the point where the standard for choosing the laws which are to be made a subject of PLS is adopted. Laws are prioritized particularly laws which deals with the basic rights.

**Step 2: Timeframe for the evaluation?** The time limitation for the Ex-post evaluation is usually appreciated to be one to two years after the law has been come in to force.

**Step 3: What should be evaluated/ the scope of evaluation?** At this step the evaluator has to look in to if all the law is to be evaluated or some portion is to be evaluated.

**Step 4: Who are the implementers?** It has big scope. It deals with a large number of stake holders. The public functionaries, individuals, companies and businesses are the main implementers.

**Step 5: Sources of information and data needed for the ex-post evaluation?** Importantly the ministry concerned makes the identification of the media of informational data where careful determination regarding data collection requires to be made for the relying measures about the data collection, its time frame, for the data and verification of the data.

### **3.10. Challenges of the Assembly in Post Legislative Scrutiny**

1. Committees are not fulfilling the planned work for the implementation.
2. The assembly is totally failed to safe guard the essential coral to convene meetings during its regime.
3. The reports have neither been laid nor been adopted in plenary sessions. Accordingly, reports are forceless.

4. On the review of the reports annually the finance on the working is consumed, time of the assembly is consumed. Committees budgeted finances are not utilized the outsource the skilled persons for assistance of the committee in doing research and the analytical work in the field due to which most of the reports are unauthenticated without depth and accuracy and having no effect. Resultantly the reports pertain no special recommendatory suggestions.<sup>171</sup>

### **3.11. PLS Case studies:**

#### **3.11.1. Successful PLS:**

Case Study 1: Review of Anti-Terrorism Legislation in the UK

### **3.12. PLS Case studies: Anti-Terrorism Legislation in the UK:**

#### **3.12.1. Successful PLS**

- Context: The UK Parliament conducted a comprehensive post-legislative scrutiny of its anti-terrorism laws to assess their impact on civil liberties and public safety
- Findings: The review identified several areas where the laws were overly restrictive and infringed on civil liberties. The findings led to significant amendments that balanced security concerns with human rights protections

---

<sup>171</sup>Pristina, (Post-legislative scrutiny International principles and oversight in Kosovo), Accessed 22 November, 2023., <https://www.kas.de/documents/286052/0/Publication+20-09-30+Post-legislative+scrutiny+International+principles+and+oversight+in+Kosovo+%28Eng%29.pdf/5085c598-6ef2-3959-552a-243cc210b17c?version=1.0&t=1609943885902>

## Case Study 2: Environmental Legislation in Canada

- Context: Canada's post-legislative scrutiny of its environmental laws focused on assessing the effectiveness of regulations designed to protect natural resources and reduce pollution
- Findings: The review identified gaps in enforcement and compliance, leading to the introduction of new regulations and stronger enforcement mechanisms

## Case Study 3: Equality Act 2010 -Disability provisions (UK)

- Committee set up in June 2015 and report by March 2016 Equality Act 2010 covers all form of equality (gender, age, race, disability, etc.)
  - examination was restricted to disability
  - Request for Information received 144 written responses
  - All published on the website, incl. Memorandum from the Government.
  - Public hearings with 53 stakeholders in 13 meetings, transcripts published online
  - End-result: comprehensive 170+ pages report on how the Act affects
- The Equality Act 2010 is a UK law that protects people with disabilities from discrimination. In the context of Pakistan's laws and social context, it's worth noting that Pakistan has its own laws and regulations regarding disability rights, such as the Disabled Persons (Employment and Rehabilitation) Ordinance, 1981, and the Rights and Protection of Persons with Disabilities Act, 2018. However, focusing on the UK context, the Equality Act 2010 defines a person with a disability as someone who has a physical or mental impairment that has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. The Act requires employers, service providers, and others to make reasonable adjustments to accommodate people with disabilities .

The Act also prohibits discrimination against people with disabilities in areas such as employment, education, and access to goods and services. It covers a range of conditions, including physical disabilities, mental health conditions, and learning disabilities.

Some key aspects of the disability provisions in the Equality Act 2010 include:

- Definition of Disability: A person is considered disabled if they have a physical or mental impairment that has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.
- Reasonable Adjustments: Employers and service providers must make reasonable adjustments to accommodate people with disabilities.
- Non-Discrimination: Discrimination against people with disabilities is prohibited in areas such as employment, education, and access to goods and services.

### 3.13. Conclusion:

Fifteen principles act as a guide for parliamentarian to set up a real portrayal of post legislative practices. PLS is an important tool to hold the government accountable, which is part and parcel of the supervisory task of the legislature. A review clause may be provided with the actor and the time frame. A sunset clause or review clause is usually an outcome of political compromise.

People's petition, news documentary, legal gaps observation, and committee enquiry are the ideas for parliamentarians to do PLS. the time limit of PLS is fixed between 3 to 6 months by these principles. The PLS in Indonesia evolved from 2004. The formal process of PLS in Indonesia was conducted by the legislative committee in 2014.

PLS examines equally the legislation of an act and its impression on society, thus adding to enrich the law itself and public good. The PLS causes improvement of law itself as well as people welfare. Appropriation acts, consolidated legislation, and legislations with minor errors need not get for post legislative review. The most important principle of all is that the parliament should plan whether PLS should vest with some standing committee or with a devoted team. However, PLS should be a complete mechanism where all counsels may join.

## **4. CHAPTER 4: PROCESS OF LEGISLATIVE SCRUTINY AND PAKISTAN:**

### **4.1. Introduction:**

A bill to become law has to undergo various processes of scrutiny. During this process, one of the stages is a third stage known as committee's stage where debate in detail is made the scrutiny by debate on line to line, section to section and clause by clause is made. The final stage of this process is presidential assent. This process as a whole is reiterated on every bill to become law, which is known as pre-legislative scrutiny.

Post legislative scrutiny is the process of monitoring the implementation and evaluating the impacts of law. PLS aims at addressing the effects of the legislation in terms of the examination of the intended purposes, whether met or not, and if met, then up to what extent they are met.

There are reasons for low quality of legislation in Pakistan like *Poor Legislative Drafting Skills, Lack of adequate time, resources and skills for legislative analysis, inconsistency of sub-ordinate legislation with principal law, Lack of consultation with the relevant stakeholders & experts, Dispensation with rules pertaining legislative analysis by Committees, Indemnification of ordinances without parliamentary scrutiny, Inconsistency of legal provisions with constitutional framework And most importantly Insufficient Pre-Legislative Scrutiny as there is no mechanism for the process of post-legislative scrutiny in Pakistan. 740 laws in Pakistan are prevailing, the rules of 68 laws have not still been made.*

Further implementation status of Pakistan laws is weak for the reason that Pakistan faces lack of legislative scrutiny due to delay, inadequacy in delegated legislations e.g.

Rules Of Business, lack of allocation of sufficient financial and human resources, lack of capacity building of implementers, lack of coordination amongst various stakeholders, lack of awareness & trust amongst masses about the laws, multiplicity of laws and overlapping, contradictory provisions, weak investigations and prosecution, lack of access to legal assistance and unstructured and very limited post-legislative scrutiny.

Generally, the process of Post-Legislative Scrutiny (PLS) typically involves the following four phases: Pre-Scrutiny Phase, Scrutiny Phase, Reporting and Recommendation Phase, Implementation and Follow-up Phase.

Pre-Scrutiny Phase includes Selection of Legislation i.e. to Recognize laws to be studied, seeing factors like worth, disagreement, or operation challenges. Secondly creating Scrutiny Committees i.e. to Allocate or form parliamentary committees liable for leading PLS. Thirdly Outlining Scope and Objectives i.e. to clearly outline the emphasis, goalmouths, and predictable outcomes of the scrutiny process.

In Scrutiny Phase, first of all stage of Evidence Gathering i.e. to Assemble related statistics, proofs, and skilfulviews through several means, such as Public hearings, Written submissions, Research reports, Site visits and Stakeholder engagement comes. Secondly Analysis and Evaluation i.e. to Inspect the congregated evidence to measure the legislation's Efficacy, Competence, Impression, Unintentional consequences. Thirdly Identification of Issues i.e. to Determine parts where the legislation may needperfection, alteration, or repeal.

In the next Reporting and Recommendation Phase, the steps Drafting the Report, Consultation and Revision, Finalizing the Report comes.

And finally the Implementation and Follow-up Phase contains Debate and Consideration i.e. to Present the report to the parliament for conversation, argument, and deliberation of the recommendations, Government Response i.e. to receive an official reply from the government, delineation their position on the recommendations, Implementation and Monitoring i.e. To Track the implementation of accepted recommendations, ensuring that necessary actions are taken and finally Review and Reflection i.e. to Periodically review the PLS process to identify areas for improvement and enhance its effectiveness.

## **4.2. Pakistan and Legislative Scrutiny:**

### **4.2.1. Legislation And Stages of**

#### **Scrutiny in Pakistan:**

There are six stages which has to be followed and undertaken for a bill to be a law. At the first stage bill arises in the house. This stage is known as 1<sup>st</sup> reading stage. In the second stage known as second reading the discussion mainly on aims and objective with the important points of the bill has to be held. Third stage which is also an important stage names as the committee stage is the stage where extensive debate takes place. At this stage the scrutiny of the bill is made. The scrutiny at this stage is made by reading and discussing line by line and section to section and clause to clause of bill. At this stage the bill may contain amendments. Amendments are basically the proposed changes in the previous bill. After detailed discussion the committee has to take decision on the acceptance, adaptation, or rejection of text under discussion. This decision is usually taken on the basis of votes.

Next stage is fourth stage named as report stage on this stage the proposed amendments are examined further. The debate is enlarged and amendments are to be

considered in depth and on the need basis further vote taking is made. After taking votes the decision is made whether to adopt the amendments or to reject the amendments. On this basis the bill is either adopted or passed by the majority of the votes or it is passed unanimously or it is rejected on the basis of the taking the votes. <sup>172</sup>

Third reading stage comes across at the 5<sup>th</sup> level an important stage that is named as third reading stage. At this stage clause by clause consideration of the bill is made. Here the member in charge of the bill or any other person on the behalf of the member in charge of the bill can move a leave of motion that a bill, either a full bill, or an amending bill or as the case may be, be it passed. The member in charge moves the motion with prayer to pass the bill presented for the third reading. This stage is the stage where bill has either to be passed or to be rejected. All the arguments define to the stance either to be in support of the bill or against the bill without going into details of the bill. Next stage is final stage i.e. presidential assent of the bill. On this stage after the agreement on the final content of the bill where both houses have showed their agreement finally. Then the bill is sent to the president and assented by him thus this bill having been passed through various stages becomes a law which is known as the act of the parliament. <sup>173</sup>

Mr. RiazFatiana then member of the national assembly of Pakistan during his address in meeting of national assembly observed that we lack in the post legislative scrutiny process so our legislation should be made in the strengthening way. He threw light that the 740 laws in Pakistan are prevailing, the rules of 68 laws have not still been made. The debate on the Transfer of Evacuee Land (KatchiAbadi) (Amendment) Act, 2020, The Constitution

---

<sup>172</sup>Senate of Pakistan, “Legislation: Stages”: Accessed 11 October, 2023, <https://www.senate.gov.pk/en/messence.php?id=1106>,

<sup>173</sup> Ibid.

(Amendment) Act, 2020, The Constitution (Amendment) Act, 2020, The Marine Insurance (Amendment) Act, 2020, and The National University of Technology (Amendment) Act, 2020 was made in that meeting which were laid in the House while the bills the Foreign Exchange (Prevention of Payments) (Amendment) Bill, 2020 and the National Skills University Islamabad (Amendment) Bill, 2020 were rejected by the House whereas Three other bills in the same meeting that includes the Trade Organizations (Amendment) Bill, 2020, the Institute for Bio-resources Research Bill, 2020 and the Constitution (Amendment) Bill, 2020 (Articles 1, 51, 59, 106, 175A, 198 and 218) were discussed and deferred.<sup>174</sup>

Pakistan's legislative process can benefit from strengthening post-legislative scrutiny (PLS). PLS ensures laws are effective, relevant, and meet their intended objectives. To improve PLS, Pakistan can adopt international best practices, such as:

- Establishing a Standing Committee on PLS: To review laws and their impact.
- Public Participation: Engaging citizens, experts, and stakeholders in the PLS process.
- Transparency and Accountability: Ensuring openness and accountability throughout the PLS process.

#### **4.2.2. PLS Is the Process to Monitor the Implementation and Evaluating the Impacts of Law**

Citizens can hold the accountability of the responsible people through the civil society and parliament usually in the political system where the accountability is the essential part. It shows that there are some results when the matters become wrong, the

---

<sup>174</sup> Ibid.

improvement is made through the lesson learnt by that wrong decision, consequently it helps the ameliorated public service delivery.

To make and the change laws are the mandate of the parliaments, also the assumed the role of checking the implementation of laws with the objective that if the desired results have been obtained. Complexity involves in the process of implementation as it is not an automatic process of happening. Mostly the members are less aware about the fact of happening after law has been adopted. Thus, the parliaments require the mechanisms to examine the process of implementing the legislation effectively.

PLS is the rehearsal of examining the execution and assessment of the impression of laws. The purpose is to guarantee that Acts of parliaments aid the citizens in the manner initially envisioned by lawgivers. Parliamentary committees habitually take away PLS and this is acknowledged that UK parliamentary democracy along with other features contain the PLS as its conspicuous characteristic. There PLS has been recognized as an essential chunk of lawmaking sequence, it is an embryonic aspect within the lawmaking and surveillance character of parliament.<sup>175</sup>

#### **4.3. Effect of Repeal as form of PLS indicated by Constitution of Pakistan:**

Evaluation of enactment after being passed is known as post-legislative scrutiny which can result in repeal, amendment, or reinforcement of the existing law. Repeal which is completely eliminating a law that's no longer operational or necessary,

---

<sup>175</sup> Westminster foundation for democracy, home/ Accountability and transparency /post legislative scrutiny. <https://www.wfd.org/accountability-and-transparency/post-legislative-scrutiny>. Accessed 24<sup>th</sup> October,2023.

Amendment involves making changes to a law to improve its effectiveness or clarity. Policy Review, on the other hand, examines the broader policy implications of a law. These are two important types of Post-Legislative Scrutiny, which helps ensure laws are working as intended." In simpler terms, Post-Legislative Scrutiny is like a check-up for laws after they're passed. It helps identify areas for improvement and ensures laws are achieving their goals. The spirit is that post-legislative scrutiny is very vital constituent of the legislative cycle that guarantees that laws remain pertinent, operative, and line up with social necessities. States can polish their legislative structure and promote better governance by repealing laws that no longer serve their purpose. Here are some repealed laws in Pakistan:

- The Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975: This act repealed several laws, including the Registration of Claims (Displaced Persons) Act, 1956, and the Displaced Persons (Claims) Supplemental Act, 1957.
- Concurrent Legislative List: The 18th Amendment to the Constitution of Pakistan repealed the entire Concurrent Legislative List, which included subjects like environment and ecology.
- NAB Ordinance: Although not entirely repealed, the Supreme Court of Pakistan upheld its provisions with certain directions and observations in 2001.

In view of above it is totally wrong to state that there is no PLS in Pakistan. The seeds of PLS are found in article 264 "Effect of Repeal of Laws" of the Constitution of Pakistan.

"264"Where a law is repealed, or is deemed to have been repealed, by, under, or by virtue of the Constitution, the repeal shall not, except as otherwise provided in the Constitution,— (a) revive anything not in force or existing at the time at which the repeal takes effect; (b) affect the previous operation of the law or anything duly done or suffered under the law; (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under the law; (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against the law;

or (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the law had not been repealed.”

#### **4.3.1. “General Clauses Act 1897”:**

“6. Effect of repeal. Where this Act, or any [Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or
- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

[6A. Repeal of Act making textual amendment in Act or Regulation. Where any Central Act ] or Regulation made after the commencement of this Act repeals any enactment by which the text of any [Central Act] or Regulation was amended by the express omission, insertion or substitution of any matter, then, unless a different intention appears, the repeal shall not affect the

continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.]

7. Revival of repealed enactments. (1) In any [ Central Act] or Regulation made after the commencement of this Act, it shall be necessary, for the purpose of reviving, either wholly or partially, any enactment wholly or partially repealed, expressly to state that purpose.

(2) This section applies also to all [Central Acts] made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

These ready references show that Pakistan contains the post legislative scrutiny theoretically, practically a number of laws are also repealed within the parameters of PLS as the effect of repeal is one of the types of PLS. However, mechanism formally and informally both is missing. It has been learnt through the *EFFECT OF REPEAL* that PLS doesn't disturb anybody's rights, privileges, liabilities, it also does not intrude into the previous operation of law. All the legal proceedings, enquiries, investigations, penalties or obligation shall remain unaffected.

#### **4.4. Knowledge Sharing Session on Post Legislative Scrutiny and Delegated Legislation:**

In December 2017 in Pakistan, at Islamabad the institute of parliamentary services joined hand to hand with the Westminster democracy foundation and managed a program with the agenda of Knowledge Sharing Session on Post Legislative Scrutiny and Delegated Legislation. Mr. TajHaider the then chairman Senate Committee on delegated legislation chaired the session at Pakistan Institute of Parliamentary Service. For the said session the expert panelist Mr. Franklin De Vrieze the senior government advisor **WFD** and Mr. David Thirlby, senior program manager, Asia programs WFD were invited as guest speaker to deliver their views on the topic PLS. the employees of National assembly Pakistan and

senate secretariat dealing with the legislative drafting were the audience for this session. The aim of the said session was to deliberate upon the process of PLS and delegated legislation in Pakistan in line with the best practices internationally.<sup>176</sup>Ref.

Mr. Franklin De Vrieze was the main exponent of PLS. he emphasized the function of PLS in fruitful performance of edicts. A relative breakdown of the prevailing PLS tools in various states was presented by him. While explaining the mechanism in different areas, he described that permanent committees have been setup for PLS in several countries. A number of parameters for legislative scrutiny were identified by respected guest speaker. The Pakistan parliamentary staff also opined on the need of the PLS for which a plan to carry out the PLS review was suggested to be made in comprehensive workshop.<sup>177</sup>

#### **4.5. Environmental Protection Act 1997 under PLS in a Blog:**

PLS being a vast concept aims at addressing the effects the legislation in term of the examining the intended purposes whether met or not and if met then up to what extent they are met. PLS particularly examines the enactment of laws, legal provisions, whether the legal provisions come in to force, how the interpretation of these provisions is being made by courts, legal practitioners and citizens. PLS is also important because it gauges the effectiveness of a certain law with changing circumstances and fixes that whether there is any gap existing in that certain law. PLS practices are also important for the useful execution of law and to trace out whether primary intention of a law is going to be

---

<sup>176</sup>Pips, home, capacity. “Building Knowledge Sharing Session On The Post Legislative Scrutiny And Delegate Legislation”. DECEMBER 18, 2017. Accessed 30th October 2023, [https://www.pips.gov.pk/capacity\\_building/knowledge-sharing-session-on-post-legislative-scrutiny-and-delegated-legislation/](https://www.pips.gov.pk/capacity_building/knowledge-sharing-session-on-post-legislative-scrutiny-and-delegated-legislation/).

<sup>177</sup>Ibid.

fulfilled. As a principal the PLS of a law should be made within a suitable time and that suitable time may extend for three to ten months.

Universally, the features that may mark the about timing include

- i. Choice of representatives
- ii. Varying dynamics concerning lawmaking impression
- iii. Mutual, all-party agreements
- iv. Appraisal time of public organization
- v. Sundown clauses
- vi. Administrative call
- vii. Civic call<sup>178</sup>

Coming to Pakistan Environment Protection Act 1997 (PEPA), the intent of this act was clearly visible on the surface as under

- i. To protect the environment
- ii. To conserve the environment
- iii. To rehabilitate and improve the environment of country.

The dangerous substance, harmful waste, lethal seepages, noise pollution and environmental damages have been indicated as the factor damaging the environment needs to be guarded the risk factors and all these are guaranteed in this law to be protected and neat and clean environment to be provided under this law. Another intention in this law that it intends to promote the developmental sustainability in the country.

---

<sup>178</sup> Standing committee on climate change, Blog on Post Legislative Scrutiny of Pakistan Environmental Protection Act, 1997, March 27, 2022, Accessed 30<sup>th</sup> October 2023, <https://climatechangePakistan.com/post-legislative-scrutiny-of-environmental-protection-act-1997/>.

“Environmental pollution and ecology” are a subject to be legislated upon by the provincial governments under the constitutional 18<sup>th</sup> amendment act 2010. Prior the 18<sup>th</sup> amendment PEPA 1997 was the federal law it has the overriding effect. The provisions having contradictions in other laws were null and void by the PEPA act being the law of overriding effect. Now this is the provincial law and now the federal law has overriding effect on it.

The PEPA 1997 was a governing law of all sort of environmental damaging factors including the nuclear power. But now the case is different. Now the nuclear power is in the federal legislative list and federal government has the exclusive power to legislate on the nuclear power. While the PEPA has become the provincial law. Many other subjects that cause the hazard to the environment and that must be regulated by the PEPA law but those subjects are regulated by the federal government.

Provincial government now has the power of the legislation on environmental issue to the extent of their territory of the province concerned. Thus, this matter is intricate enough that needs to be thought upon at the legislative action.

Many analytically significant concerns will be required to be thought upon prior to any of the action taken at the provincial level. No doubt the PEPA 1997 is widespread but, the scheme given in it, many provisions within the body of the statute can only be come into force when the subordinate legislation under the law has been made because the prescription of the rules and regulation is necessary for the operationalization of the act. Being the first particular and complete enactment on the environmental issue it pertains the

special provisions to direct the present and upcoming issues of environment due to the change in climate. <sup>179</sup>

Pakistan committed to UN at the time of participation in the conference on environment headed by UNDP conference held in Rio de Janeiro in 1992, consequently Pakistan signed the pact in accordance with agenda 21 RIO declaration. After the implementation of 18<sup>th</sup> amendment and the devolution the federal laws were devolved to the province which led to the execution of the protection of environment act and strategy at province level.

A broad influence on the execution of the act shall appear by the PLS of PEPA 1997 as it shall help in the climate alleviation policy of the country. Pakistan is one of those country which are suffering most by the climate change but this change in climate shall bring environmental catastrophe and decay. Pollution based on environment is very old in the world. The world environmental pollution is a phenomenon for which the countries whether advance or under developed are answerable for it. PLS of PEPA at one side shall trace out the cavities in the prevailing laws on the second side, it shall spotlight the growing category of the grieves of the climate transformation. Pakistan is in dreadful requirement of computed and forceful act against climate change and PLS of the PEPA shall contribute the homeland in taking vigorous deed.

Standing committee on climate change is resolute to contend climate the problems introduced by the country. WFD has joined hand with SCC for conducting the PLS of PEPA 1997. The arrangements for the consultative sessions with federal and provincial EPA have been made by WFD to do an analysis of the gap in PEPA 1997. The committee members were also consulted as a chunk of the endeavors made for efficient PLS of the

---

<sup>179</sup> *ibid*

PEPA. While the EPAs of the provinces and the federal had been taken on board which have given an awareness in to the trials and the issues being faced by them as regard to the climate change and the useful execution of current environmental enactments. The gaps in the prevailing laws were identified with such consultation and the ways of common alliance for proof bearing schemes were also explored. Bridging over the gap between federally administered EPAs and provincially EPAs through that series of workshop was another intention. During these consultative workshops the significance of analysis of legislation and the significance of fortifying the federal EPA in order to coordinative mechanism between federal and provincial EPAs was also pointed out. There was no such a chance for the federal and provincial EPAs to have an interaction for debate and discussion collaboratively before these consultative workshops.<sup>180</sup>

PLS workshop was held after having been organized by the Westminster Foundation for Democracy (WFD) at Marriott Hotel, Islamabad Pakistan for Standing Committee on Climate Change which was chaired by Ms. Munaza Hassan who cheered the individuals of the subcommittee and threw the light on importance of doing PLS while discussing the important functions of the parliament that is to make the laws. She emphasized the dynamic function of analogous seminars concerned with post legislative scrutiny and accentuated how the members of parliament particularly the women members can absorb from it.<sup>181</sup>

At the very outset Ms. Emma Armshaw from Head of Office- Scottish National Party at Westminster Foundation for Democracy (WFD) appeared with happy statement

---

<sup>180</sup> *ibid*

<sup>181</sup> Standing committee on climate change, Post Legislative Scrutiny Workshop Standing Committee on Climate Change, March 5, 2022 <https://climatechangePakistan.com/post-legislative-scrutiny-workshop-standing-committee-on-climate-change/> Accessed 30th October, 2023.

remarking that the standing committee on climate change that has adopted PLS is in fact a matter of thrilling expression for the reason behind it, not the practice found commonly throughout the world. Retreating more she vowed to support on such steps at every level.<sup>182</sup>

‘Conceptualizing Post-Legislative Scrutiny Process’, was the session declamation. Mr. Mujtaba Zaidi was the expert on PLS. Accordingly he delivered his thoughts on PLS while expressing the significance of carrying out the PLS procedure. The participants were given a brief introduction of the Pakistan Environmental Protection Act 1997, its role object and purpose.<sup>183</sup>

The methodology of PLS were discussed and how these techniques can be applied on the different sections of the act for making it more suitable, fruitful, beneficial and improved law. Mr. Zaidi further explained the process of PLS assisting the members of the Committee and a vision in to the process leading toward the doing an evaluation. It was matter of concern that the environmental quality standards is missing. The hazardous substance which must be treated in the rules these have not been brought into the notified regulations. The day to day industrial effluent is another nuisance and the same lacks guide lines. Solid waste management is a technique which is operating without the direction.

Thereafter he contributed the conclusions of the preliminary evaluation of the Pakistan Environmental Protection Act 1997 with the committee, giving an explanation on the function of the federal environmental protection agency in suggesting fresh laws on the subject, arrangements of the pecuniary ends for these fresh schemes, make a framework regulation, establishment of information desk by which the supervision of the whole

---

<sup>182</sup> Ibid.

<sup>183</sup> Ibid.

concerned administrative bodies can be made, the developmental sustainability by the resources be ensured and assurance of national and international coordinating and collaborating associative behavior. The briefing to the members of the committee was also made about the international covenants and agreements which Pakistan has pledged with other countries on the subject of climate change. The law was basically introduced after getting inspired from the stockholm convention, Paris agreement, Basel convention and convention on climate change. Pakistan being a signatory of the many of the global environmental treaties has to adopt the policies proposed in these conventions for legislation on climate change. Members were keen enough to put questions on PLS accordingly the question answers session was made interactively.<sup>184</sup>

To explain the laws, statutes concerned with the environment and climate change is intended by the legislative mapping particularly the law making having the direct or indirect relation with the climate change.

Enforcement and implementations, coordination among agencies, public awareness and education and limited resources and capacity are the major challenges on the proper execution of the law. These challenges hamper this law to be an effective law. It informs on the series of all laws on the environment. The diagram not only gives a whole scene of the existing environmental legislation in Pakistan but also it gives information to the shareholders to asses and substitute the enactments to retrieve neat environment.<sup>185</sup>

The governing laws on the environment available in federal level as well as adopted and made by the provinces after 18<sup>th</sup> amendment in Pakistan are as under according to list given in the Pakistan code.

---

<sup>184</sup>Ibid.

<sup>185</sup> Standing committee on climate change, Legislative Mapping, <https://climatechangePakistan.com/> Accessed 30<sup>th</sup> october,2023.

The Cutting of Trees (Prohibition) Act, 1992(Act No. XVIII OF 1992) is an Act to cater for proscription of cutting of trees in the region in proximity of external frontiers of Pakistan. The main object of this law was to impede the needless cutting of trees and to encourage viable forestry practices. Cutting of trees has been fully banned from the forests, national park and wild life sanctuaries and reserve forest, however bonafide agricultural purposes, domestic fuel wood, approved forest management plants and emergency situations allow the cutting of trees. For which a permit has to be retrieved otherwise a penalty for contravention both in the fine and imprisonment have been provided.

1. Ministry of climate change, provincial forest department and district administration are the agencies for implementation. Corruption, lack of public awareness and deforestation and land degradation are basic challenges on the way of implementation. United Nations Convention on Climate Change, Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and United Nations Forum on Forests have been signed by Pakistan and the same became the harbinger of this enactment<sup>186</sup>

2. Elephants' Preservation Act, 1879 ACT No. VI OF 1879 for conservation of elephants living in wild. Before we assess the Elephant's Preservation Act 1897, we must know that Pakistan is a signatory to Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Convention on Migratory Species (CMS) and Asian Elephant Specialist Group (AESG). The enactment of The Elephant Preservation Act, 1897, was made in the colonial era. To protect and conserve elephant populations was the Main Objectives as well as Prevention of elephant poaching and habitat devastation, Regulation of capturing and trading elephants Ensuring the conservation and welfare of elephants. This Colonial-era legislation Focused on protection and conservation, Regulation

---

<sup>186</sup> The Cutting Of Trees (Prohibition) Act, 1992, (ACT NO. XVIII OF 1992)

of human-elephant interactions. Although this law takes penal action for its enforcement yet it had limited scope as it did not address human-wildlife conflict. So, it was repealed by the Pakistan Wildlife Protection Act, 1972. Currently, The Elephant Preservation Act, 1897, is no longer in force in Pakistan. The Pakistan Wildlife Protection Act, 1972, and succeeding amendments provide well run regulations for elephant conservation. National Conservation Strategy (2013), Elephant Conservation Action Plan (2015) and Provincial wildlife departments' initiatives were the efforts which have been made for the welfare of the elephants. For this welfare although the previous enactments could not fulfil the purposes yet they became the seeds of the struggle.<sup>187</sup>

3. The Exclusive Fishery Zone (Regulation of Fishing) Act, 1975 ACT No. XXXII OF 1975. This is an Act for regulation of fishing within the distinct fishery zone of Pakistan. The post legislative scrutiny of the Exclusive Fisheries Zone (Regulation of Fishing) Act, 1975, unfolds that Pakistan is a signatory to various international organizations including United Nations Convention on the Law of the Sea (UNCLOS), Food and Agriculture Organization (FAO), Code of Conduct for Responsible Fisheries and Regional Fisheries Management Organizations (RFMOs). Overfishing, Illegal, and unreported, and Unregulated (IUU) fishing. Lack of enforcement capacity and Climate change impacts on fisheries are the challenges for the fishing accomplishments in Pakistan. Exclusive Fisheries Zone (Regulation of Fishing) Act, 1975, Pakistani law regulates fishing activities within its Exclusive Economic Zone (EEZ). To Save and manage fish capitals, to Standardize fishing processes, to Guard marine atmosphere and to Guarantee supportable fishing practices are the goals and objects of this Act. Regulatory framework for fishing, Conservation-focused, Zonal management approach, Enforcement through licensing and inspections and

---

<sup>187</sup> The Elephants' Preservation Act, 1879, (ACT No. VI of 1879)

international cooperation (compliance with UN Convention on the Law of the Sea) have fully been covered by this act.

In 1992 Amendment increased penalties for violations and in 2015 Amendment introduced new licensing fees. Ministry of Maritime Affairs, Pakistan Maritime Security Agency (PMSA), and Provincial fisheries departments are principal implementing agencies in Pakistan. Fisheries Policy, 2015, National Plan of Action for Conservation and Management of Fisheries Resources and Provincial fisheries rules and regulations are the subordinate legislation empowered by the Act.<sup>188</sup>

4. The Fisheries Act, 1897 Act No. IV OF 1897 An Act to provide for certain matters relating to Fisheries in Pakistan. The Fisheries Act, 1897, was a colonial-era law in British India, including present-day Pakistan, regulating fisheries and conserving fish resources. The evaluation of this law expounds that this is to regulate fishing operations, Conserve fish populations, protect fish habitats and to promote sustainable fishing practices.

Section 3 Commands approvals for fishing boats, nets, and equipment. Section 4 Forbids fishing during listed days. Section 5 Creates fish reserves, Section 6 Controls minimum fish, Section 7 Prohibits injurious fishing equipment, Section 8 Allow examination of fishing pots and apparatus, Section 10): Levies penalties. It has been repealed by the Pakistan Fisheries Act, 1959

The Fisheries Act, 1897, is no longer in force in Pakistan. The Pakistan Fisheries Act, 1959, and subsequent amendments deliver modernized regulations for fisheries administration.<sup>189</sup>

---

<sup>188</sup> The Exclusive Fishery Zone (Regulation Of Fishing) ACT, 1975. (ACT No. XXXII OF 1975)

<sup>189</sup> The Fisheries Act, 1897, ACT No. IV OF 1897.

5. The Forest Act; 1927 Act No. XVI OF 1927 An Act to fuse the law relating to forests, the transportation of forest produces and the duty leviable on timber and other forest produce. This law is to Consolidate and amend laws related to forests, Regulate Forest management, Conserve Forest resources and Protect forest-dwelling communities. Deforestation, Forest degradation, Land encroachment and Climate change impacts on forests were the challenges on the way of its implementation.

(Section 3): Divides forests into Reserved Forests, Protected Forests and Village Forests

This statute is Colonial-era legislation, Centralized Forest management, Focus on revenue generation, Limited community involvement, and outdated provisions. It was Amended in 1935, 1957, and 1972 and repealed in Pakistan by the Pakistan Forest Act, 1959

The Forest Act, 1927, is no more prevailing in Pakistan these days. The Pakistan Forest Act, 1959, and succeeding improvements are available in modernized regulations for forest management.

6. The Pakistan Fish Inspection and Quality Control Act, 1997 Act No. XXXV OF 1997 An Act to regulate quality and promote export of fish and fishery products from Pakistan. Pakistan is a signatory to World Trade Organization (WTO) Agreement on Sanitary and Phytosanitary Measures (SPS), Codex Alimentarius Commission and Food and Agriculture Organization (FAO) Code of Conduct for Responsible Fisheries which became the harbinger of the Pakistan Fish Inspection and Quality Control Act, 1997. It transpires To Safeguard fish worth and safety for human consumption, to Regulate fish inspection and quality control, to Promote exports and international trade and to Protect public health are Main Objectives.

Establishment of Fish Inspection Authority is found in Section 3 of the Act, Fish Inspection and Certification is there in Section 5, Quality Standards is in Section 6 ,Section 7 Prohibits Fishing Practices , Food Safety and Hygiene is found in Section 8, Section 9 speaks about Labeling and Packaging while Section 12 envisages Penalties for Non-Compliance:: Ministry of Maritime Affairs, Pakistan Fish Inspection and Quality Control Authority (PFIQCA), Provincial fisheries departments are its Implementing Agencies.

Incomplete capitals and volume, Lack of attentiveness among fishermen and processors, Corruption and non-compliance and Climate change impacts on fisheries are Challenges on its way of effective execution. On the other hand, Regulatory framework for fish inspection and quality control, focus on food safety and public health, highlighting on exports and international trade, Agreement with international standards (e.g., HACCP, ISO 22000), Enforcement through inspections and certification are basic Characteristics of this Act. Amendments in 2003, amendment introduced stricter penalties for non-compliance and in 2015, Amendment updated quality standards and inspection procedures. Pakistan Fish Inspection and Quality Control Regulations, 2000, Fish and Fish Products Regulations, 2016, Food Safety and Hygiene Regulations, 2018 are Regulations made by executive in the exercise of the power given under this Act. Improved fish quality and safety, increased exports and international trade, enhanced public health protection and better regulation and enforcement are the Benefits.<sup>190</sup>

7. The Pakistan Plant Quarantine Act, 1976. Act No. LXXV of 1976 An Act to furnish result in Pakistan to the International Plant Protection Convention, 1951. The Pakistan Plant Quarantine Act, 1976, aims to stop the introduction and spread of plant pests and diseases, for ensuring the country's agricultural sector remains healthy and productive. To Protect Pakistan's agriculture

---

<sup>190</sup> The Pakistan Fish Inspection And Quality Control, Act, 1997, (Act No. XXXV OF 1997).

from harmful pests and diseases, Prevention of the spread of plant diseases, Promotion of export of healthy plant products, Ensuring compliance with international plant health standards. Ministry of National Food Security and Research, Department of Plant Protection, Pakistan Plant Quarantine Service are Implementing Authorities for this statute.

Regulation of plant imports and exports, Inspection and certification of plants and plant products, Quarantine measures for infected plants, Prohibition of certain plant species and Enforcement powers for authorities are administrative clauses.

Section 3 Prohibits importation of plants without permit, Section 4 authorizes inspection and detention of plants, Section 6: Empowers authorities to quarantine infected area, Section 8 Prescribes penalties for non-compliance. In 1993, an Amendment to Strengthen enforcement provisions and in 2010 Amendment to Updated plant quarantine regulations were codified.

This law has good impact overall like it has caused to Reduce risk of plant disease outbreaks. it has Improved agricultural productivity. It has Enhanced export competitiveness it complies with international standards.<sup>191</sup>

8. The Wild Birds and Animals' Protection Act, 1912 Act No. VIII of 1912 An Act to make better provision for the protection and preservation of certain wild birds and animals. To conserve wildlife populations and habitats, to Prevent overhunting and exploitation, to Promote sustainable use of wildlife resources, to Protect ecosystem balance are the intended purposes of this law. These had background of the international world like Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and Convention on Conservation of Migratory Species of Wild Animals (CMS).
9. The Wild Birds and Animals' Protection Act, 1912, is a landmark legislation in Pakistan aimed at conserving wildlife and protecting endangered species. Protection of specified wild

---

<sup>191</sup> The Pakistan Plant Quarantine Act, 1976. Act No. LXXV of 1976,

birds and animals, Prohibition on hunting, capturing, or selling protected species, Regulation of trade in wildlife products, Establishment of wildlife sanctuaries and reserves, Protected Species, and Penalties for violations are the main administrative clauses. Mammals: Markhor, Urial, Snow leopard, Asiatic black bear, Birds: Peafowl, Chukar partridge, See-see partridge, Houbara bustard and Reptiles: Crocodiles, Turtles are covered under protected species. It has good impact on society that is Conservation of endangered species, Protection of habitats and ecosystems, Regulation of wildlife trade, Promotion of sustainable tourism. Ministry of Climate Change, Provincial Wildlife Departments and Pakistan Wildlife Foundation are Implementing Authorities. In 1927 an Amendment for Expanded protected species list, in 1965 Amendment for Strengthened enforcement provisions and in 1975 Amendment Established wildlife sanctuaries. The Wild Birds and Animals' Protection Act, 1912, has played a crucial role in Pakistan's wildlife conservation efforts.<sup>192</sup><sup>193</sup>

## **Punjab**

Before deliberation on the Punjab law, it is notable that Punjab is a part of international agreements and initiatives, including United Nations Environment Programmed (UNEP), South Asian Association for Regional Cooperation (SAARC) Environmental Cooperation and Climate and Clean Air Coalition (CCAC)

The Punjab Environmental Protection Act, 1997 (XXXIV of 1997) is An Act to cater for the safety, preservation, recuperation and restitution of the environment, for the stoppage and control of pollution, and promotion of sustainable development. The Punjab Environmental Protection Act (PEPA), 1997 came into force with Main Objectives to Protect and improve

---

<sup>192</sup> The Wild Birds And Animals' Protection Act, 1912, Act No. VIII of 1912.

<sup>193</sup> The Pakistan Code, Ministry of Law and Justice, Home/Category/General Laws, <https://pakistancode.gov.pk/english/LGu0xVD-apaUY2Fqa-a5k%3D&action=primary&catid=23>, Accessed November 4, 2023

the environment in Punjab, to Prevent and control pollution, to promote sustainable development and to ensure public health and safety. An examination of this law shows that this is a Comprehensive environmental legislation, it focuses on pollution prevention and control, it emphasizes on sustainable development and public participation and awareness and it gets its enforcement through inspections and penalties. However, it faces challenges including Limited resources and capacity, lack of public awareness, corruption and non-compliance and industrial and agricultural pollution. Punjab Environmental Protection Agency (EPA), Punjab Pollution Control Board, District Administration and Local Governments are its implementing agencies. Establishment of Punjab Environmental Protection Agency (EPA), Environmental Impact Assessment (EIA), Pollution Control Measures, Waste Management, Noise Pollution Control, Environmental Standards are the administrative clauses of this law.,<sup>194</sup>

### **Khyber Pakhtunkhwa**

The Khyber Pakhtunkhwa Environmental Protection Act, 2014. Act No. XXXVIII OF 2014)

An Act to cater for the safety, preservation, recuperation and restitution of the environment, for the stoppage and control of pollution, and promotion of sustainable development in the Province of the Khyber Pakhtunkhwa. The Khyber Pakhtunkhwa (KPK) Environmental Protection Act, 2014, aims to protect and conserve the environment in KPK, Pakistan. This law can be stated as Comprehensive legislation as it has Integrated approach to environmental management, it Emphasizes on sustainable development, it believes in Public-private partnerships it works Community-based initiatives, Enforcement mechanisms have been provided, there are Penalties for non-compliance and Regular review and updating is made. Environmental policy objectives

---

<sup>194</sup>The Punjab Environmental Protection Act, 1997, Act No. XXXIV of 1997.

Establishment of KPK EPA, EIA requirements, Pollution control measures, Waste management regulations, Conservation of natural resources and Climate change mitigation and adaptation are the key administrative clauses. This law has established a provincial environmental policy, the KPK EPA.

Environmental Impact Assessment (EIA) Mandates EIA for projects, Pollution Control measures like Regulates air, water, soil, and noise pollution, Waste Management unit Ensures proper waste disposal and on Conservation-based it Protects natural resources, biodiversity, and ecosystems, in the ambit of Climate Change, it Addresses climate change mitigation and adaptation in the area of Public Participation, it Encourages public involvement in environmental decision-making.

Khyber Pakhtunkhwa Environmental Protection Agency (EPA), Khyber Pakhtunkhwa Government, District Administrations and Local Governments are its Implementing Authorities while discussing the Penalties the penal clauses are unique like that of it provides Fines (up to PKR 1 million), Imprisonment (up to 5 years) and both fine and imprisonment. The KPK Environmental Protection Act, 2014, serves as a vital tool for environmental conservation and sustainable development in the province.<sup>195</sup>

## **Baluchistan**

1. Baluchistan Environmental Protection Act 2012<sup>196</sup> (Baluchistan Act No. VIII of 2012) An Act to provide for the protection, conservation, rehabilitation and improvement of the environment, for the prevention and control of pollution, and promotion of sustainable development.

---

<sup>195</sup> The Khyber Pakhtunkhwa Environmental Protection Act, 2014. Act No. XXXVIII OF 2014)

<sup>196</sup> Balochistan Environmental Protection Agency, Home Balochistan Environmental Protection Act 2012, <https://bepa.gob.pk/balochistan-environmental-protection-act-2012/>. Accessed 4th November, 2023.

The Baluchistan Environmental Protection Act, 2012, aims to protect and conserve the environment in Baluchistan, Pakistan. Like other laws this is also Comprehensive legislation having Integrated approach to environmental management, emphasizes on sustainable development, believes in Public-private partnerships, works on Community-based initiatives, possess Enforcement mechanisms, Penalties for non-compliance has been provided, Regular review and updating is made. Environmental Policy, Environmental Protection Agency (EPA), Environmental Impact Assessment (EIA), Pollution Control, Waste Management, Conservation, biodiversity, and ecosystems, Climate Change are its Key Features: like other provinces the province of Baluchistan has Implementing Authorities namely: Baluchistan Environmental Protection Agency (EPA, Government of Baluchistan, District Administrations and Local Governments. Its penal clause provides for Fines (up to PKR 1 million), Imprisonment (up to 5 years) and both fine and imprisonment its Impact on society is as under it has improved environmental governance, it has Enhanced public awareness it has Reduced pollution it has Conserved natural resources it has Promoted sustainable development.<sup>197</sup>

## **Sindh**

SEPA Act 2014 Sindh Act No. VIII OF 2014 legislation to account for the safeguard, preservation, restoration and development of the environment, for the prevention and control of pollution, and promotion of sustainable development. Main Objectives of this law surround around to Protect and improve the environment in Sindh, to Prevent and control pollution, to Promote sustainable development, to Ensure public health and safety. Sindh is a part of international agreements and initiatives, including: United Nations

---

<sup>197</sup>[https://pabalochistan.gov.pk/pab/pab/tables/alldocuments/actdocx/2021-03-30\\_08:36:38\\_7dd9a.pdf](https://pabalochistan.gov.pk/pab/pab/tables/alldocuments/actdocx/2021-03-30_08:36:38_7dd9a.pdf)

Environment Programme (UNEP), South Asian Association for Regional Cooperation (SAARC) Environmental Cooperation, Climate and Clean Air Coalition (CCAC). This law like the other ones is a Comprehensive environmental legislation that focuses on pollution prevention and control. It emphasizes on sustainable development, Public participation and awareness has been generated in it. Enforcement through inspections and penalties has been preserved. In 2017 an Amendment introduced stricter penalties for non-compliance and Amendment updated environmental standards and pollution control measures has also been introduced.

Sindh Environmental Protection Agency (SEPA), Sindh Pollution Control Board, District Administration and Local Governments are Implementing Agencies. Sindh Environmental Protection Regulations, 2015, Sindh Pollution Control Regulations, 2018 and Waste Management Regulations, 2020 are the Regulations under operation to achieve the purposes of the Act. Limited resources and capacity, Lack of public awareness, Corruption and non-compliance, Industrial and agricultural pollution are some of the Challenges on the way of its proper implementation. Even then there are some Benefits which have been achieved like those of the Improved environmental quality, the Reduced pollution, the Enhanced public health and safety, the Increased public awareness and participation, the Better regulation and enforcement on its Comparison with PEPA 1997 it is found that SEPA Act 2014 has stricter penalties, updated environmental standards, and a stronger focus on sustainable development compared to PEPA 1997.<sup>198</sup>

**RULES REGULATIONS PERTAINING TO THE ENVIRONMENTAL LAWS:**

---

<sup>198</sup> The Sindh Environmental Protection, Act, 2014, Civil Law, ACT NO. VIII OF 2014,

The Authorities concerned have, with the approval of the Government, by notification in the official Gazette, made following different rules to carry out the purposes of the various Acts on the subject of environment. These rules have provided for altogether or some of substances. Sometime these have prescribed the forms for the licenses etc. or to prescribe the terms and conditions of the license including fee to be charged in connection with the issuance of licenses and related matters or to prescribe standards and measures for the establishment of some agency etc. or to prescribe terms and conditions for such agency etc.; and to define the circumstances constituting undue concentration for various factual realities.

The Authority has, by notification in the official Gazette, made regulations not inconsistent with the provision of the parent Law, and the rules for carrying out the purposes of these Acts in respect of its internal matters or as such required by any provision of these laws. Such rules and regulations in Federal include Forest Policy, 2015, National Forest Programme.

While in, Punjab Environmental Protection Regulations, 2000, Punjab Pollution Control Regulations, 2010 and Waste Management Regulations, 2015 are the delegated legislation<sup>199</sup>

In Baluchistan Such rules and regulations include The Baluchistan Environmental Quality Standards (Self-Monitoring and Reporting by Industry) Rules, 2014 The Baluchistan Environmental Quality Standards (Certification of ,Environmental Laboratories) Regulations, 2020, The Baluchistan Environmental Protection Agency (Review of IEE and EIA) Regulations 2020, Baluchistan Quality Standards for Noise 2020, Baluchistan Poultry Regulations 2020, Baluchistan Hospital Waste Management Rules 2020, Baluchistan

---

<sup>199</sup> Punjab Code, Home Departmental Listing of Laws Environment Protection, [https://punjabcode.punjab.gov.pk/en/articles\\_by\\_department/8](https://punjabcode.punjab.gov.pk/en/articles_by_department/8), Accessed 4<sup>th</sup> November, 2023

Hazardous Substances Rules 2020, Baluchistan Environmental Tribunal Rules, 2020, Baluchistan Environmental Sample Rules 2020, Baluchistan Environmental Protection (Motor Vehicles) Rules 2020, Baluchistan Environmental Protection (BTS) Regulations 2020, Baluchistan Environmental Protection (Administrative Penalty) Rules 2020, Balochistan Environmental Pollution Charge for Industry (Calculation and Collection) Rules 2020, Baluchistan Bio Safety Rules 2020.<sup>200</sup>

In Sindh, Environmental Assessment Regulations 2021, EIA IEE Regulations 2014, Hazardous Substance Rules 2014, Sindh Environmental Protection Tribunal Rules 2014, Sindh Hospital Waste Mgmt. Rules 2014, Sindh Laboratory Certification Rules 2014, Sindh prohibition of non-degradable plastic products (sale and Manufacturing Rules 2014, Environmental Samples Rules 2014 are the rules related to environmental protection.<sup>201</sup>

## **4.6. Implementation Status of Environmental Laws:**

### Structure of the Pakistan Environmental Protection Agency

A number of the laws were adopted by government of Pakistan to subdue the negative effects of the environment but many issues regarding the impactful implementation of the laws and environmental contrast adjudicating for their adjudication.

In the wake of the augmentation of pollution many advanced countries have become successful in endorsement of laws of environment but the countries like Pakistan

---

<sup>200</sup>Balochistan Environmental Protection Agency, Home Rules & Regulations <https://bepa.gob.pk/rules-regulations/>, Accessed 4th November,2023.

<sup>201</sup> Sindh environmental protection agency, <https://epa.sindh.gov.pk/sepa-act-2014rules>, Accessed 5<sup>th</sup> November,2023.

are facing a number of challenges in enactment of environmental regulations which is because of number of factors like capacity issue less resourcefulness and the non-willingness of the authorities.

When the mechanism of good governance is absent that can force industry to comply with essential pledge towards the protection of the environment then this sector of industry rather will not incline to consider the requirement of complying in implementing the laws of environment as their legal and moral duty. The people attach with the industry think that protection of environment is compulsion that has been imposed by the alien buyers and they willfully ignore to establish the quality of the products used by the domestic consumer in particular, as the compliance needs a big chunk of socio-economic obligation with complete supervising, maintenance duty and resources.

The study of environmental laws and field observation lead us to assert that

- a. The workman is ignorant of the laws and education of environment.
- b. The haphazard extent of zones for industry usage of land without plan beyond the liaison of environmental assessments
- c. EPA does neither advise nor the commercial and industrial activities apply for the assistance of the EPA, the set norms and the standards by law on environment are not ensured to be complied with.
- d. Scarcity in the production of energy and power.

EPA Environmental Protection Agency is mandated with the administration and implementation of the PEPA 1997, Punjab protection agency is responsible to the extent of Punjab and Baluchistan is up to the Baluchistan territory. Baluchistan environmental protection agency has devolved its task to district levels. Punjab has not delegated such powers to the district level. Director General is the head of the agency, who is appointed by

the federal government. DG enjoys all the powers and functions under the act, further DG has power to decentralize his authority to the staff of the agency. Punjab Act gives powers to the Punjab DG which are similar to federal powers and Baluchistan agency gives power to Baluchistan DG. The PEPA does not empower to the agency at province level separately. Federal government under the PEPA act can further confer the powers to the provincial protection agency and the agencies at provincial level specifically serving and implementing PEPA 1997. EPAs power mostly have been transferred to provinces and the provincial agencies are basically doing the job of PEPA if we observe in depth. The EPAs agencies at provincial level resemble with EPA as at the head of its structure there is DG who enjoys all the powers along with all the authorities confer the delegation to the staff recruited by the provincial government. In Baluchistan act all the provincial level powers had been given the district level power where in the Authority is bestowed to the DG to the district environmental protection agency or to the other officers appointed by the government of Baluchistan. The district level agencies bear the same structure as to the structure of provincial level. In Punjab the district agencies lack only one agency prevails i.e. provincial environmental protection agency.

There are number of shortcomings those are inefficiency, ambiguity non transparency. In the administrative structure of environmental protection agencies. Foremost the whole powers under PEPA rest with DG whether of Federal or provincial. The power in one hand is found as it confirms much discretion to the individual and it does many decisions subjectively and is deprived of the objectivity i.e. collective wisdom. Moreover, it takes towards the inordinate delay in the deeds needed, that slows down the procedure of efficiency and enforcement furthermore the progress of the institute is impeded by way of the accumulation of authority on one hand. The similar weak

construction has been adopted by the Punjab Act without any amendment except that under PEPA federal and provincial environmental protection agencies. Baluchistan Act is somehow better than that of the Punjab because of the district environmental protection agencies in it having got the authority through delegation of power by the province, thus the provincial environmental agency can set up multiple district agencies i.e. 26 districts through delegation of power. Nevertheless, the fact in both tiers i.e. is provincial and district lies in the hands of the DG. Ironically the DG possess no criteria, qualification for the appointment of seat in either of the three acts. For the appointment of DG, the federal or provincials' government has been empowered to appoint any person on such terms and conditions that federal and provincial government may deem fit. No institutional structure has been provided in any of the three Acts. These Acts are unable to provide office or post or any criteria for the appointment of the staff. Such omissions impede the growing pace of institutions. Budget allocation is a great problem in it. The budget is allocated by the federal government under PEPA so the environmental protection agencies are competing with other developmental agencies. Similarly, Punjab and Baluchistan are facing alike problems. Importantly, the budget allocation is annexed with the effective operation of agencies. The penalties and fine fees etc. must be deposited in independent fund instead of public exchequer. The legislative scheme of the three Acts is as rules regulations must be made for the operation of the law while many of rules and regulations have not yet been notified. The agencies are authorizing to take action against the offenders directly on the complaint or on its own motion which thereafter they demand to furnish the date, investigate the data, summoning and searching the building land on reasonable ground,

taking the sample, or confiscating any article. These powers are conferred under the Act to both federal and provincial agencies.<sup>202,203</sup>

#### **4.7. Responsibility methods, gender developmental perspective and PLS:**

Shirkat partnership for development conducted a webinar on 12 August 2020 via Zoom at 3.30 pm to 5.30 pm for expert debate on the various approaches on gender transformation for its institutionalization and developing a structure to make it accountable along with PLS.

The seminar held on the said date needed with an inference on pro women legislation in Pakistan and deploying men at different levels of legislative and execution processes. The expert speakers emphasized the trials encountered in the execution of enactments that favor women. The speaker enumerated the social norms around gender as the biggest challenge in the way of implementation of pro women laws. He also shared the visions on

---

<sup>202</sup>Irum Ahsan and Saima Amin Khawaja, (*Development of Environmental Laws and Jurisprudence in Pakistan*), (Law, Justice, and Development Program, Office of the General Counsel, Asian Development Bank, 2013). <https://www.adb.org/publications/development-environmental-laws-and-jurisprudence-pakistan> Accessed on 8<sup>th</sup> November, 2023.

<sup>203</sup>Sardar Aasif Sial, (*Review of Existing Environmental Laws and Regulations in Pakistan as well as Focus on the Impacts of Non-Compliance of such Laws on Various Sectors Including Health, Business Development, and Resource Loss*), (WWF-Pakistan 2018), [https://wwfasia.awsassets.panda.org/downloads/review\\_of\\_existing\\_environmental\\_laws.pdf](https://wwfasia.awsassets.panda.org/downloads/review_of_existing_environmental_laws.pdf). Accessed 10<sup>th</sup> November, 2023

how to establish gender transformative approaches. Having a look on the current responsibility methods and PLS, the debate focused the feminist gender experienced violence could be enhanced saved and aiding could be fortified. The conversation on PLS considered the benefits of accountability mechanisms available to evaluate the condition of public organizations mandated with protecting the women. The orators discussed too how the men could be involved to intensify these devices and foundations. The whole discussion revolved around the questions as follows

- i.** In what way significant is a gender transformative approach in tackling Violence against women and girls? How it can be regulated?
- ii.** What modifications are needed in accountability methods to safeguard efficiency of women supporting enactments?
- iii.** How do men recognize responsibility while addressing problems of women? How with a gender transformative approach is linked with it?
- iv.** What policies can be approving to reinforce accountability mechanisms in a gender outline as soon as it becomes due enactment comes in to force?
- v.** How can it be guaranteed that job in coworkers including men and boys maintains the women rights and gender minorities and aids to their authorization?
- vi.** In a post legislative situation, how are gentlemen's functions in authoritative control, judicial system and public functionary's organizations, connected with answerability and obligations?

**4.8. : Third Meeting of the Sub-  
Committee on Post-  
Legislative Scrutiny (PLS)  
With Anthro Insights:**

Women Parliamentarian Caucus (WPC) office is situated at National Assembly of Pakistan in Parliament house Islamabad. There is a subcommittee on PLS at WPC Office. In WPC office a meeting on the subcommittee on PLS with Anthro Insight was held. This meeting of the subcommittee was the third meeting. Mr. Mujtaba Zaidi the exponent of Anthro insight also an expert on PLS gave briefing to the subcommittee regarding the remarkable legal canvass on the inheritance laws which are prevailing right now in Pakistan that aims to provide the inheritance mutation for its shareholders, furthermore, the subcommittee also held the discussion and review of the punishments provided by law, women laws, intent of the laws on women and the inheritance briefed in these laws.<sup>204</sup>

**4.9. Fourth Meeting of the Sub-  
Committee on Post-  
Legislative Scrutiny (PLS)  
With National Commission**

---

<sup>204</sup> Women Parliamentary Caucus, News Letter, July to August, 2022. <https://wpc.org.pk/wp-content/uploads/2023/01/July-August-NewsLetter-WPC.pdf> . Accessed 12<sup>th</sup> November, 2023.

## **onthe Rights of Child (NCRC):**

The fourth meeting of the committee was chaired by the treasure WPC and convener subcommittee on PLS. this meeting was held with National Commission on the Rights of Child (NCRC) and legal practitioners from Islamabad and Rawalpindi. Dr. ShahidaRehmani, Secretary WPC, attended the meeting along with the team of WPC. The total focus of the meeting was on the inheritance laws. The inheritance laws were discussed at length. The chairperson of NCRC gave her opinion vehemently that the inheritance laws should safeguard the women societal protection and the children with an intention that they should be fully secured on the ends of the rights of inheritance. This consultation on PLS was very much admired by the practicing lawyer from the Islamabad and Rawalpindi cities. The practicing laws were invited to give their input on inheritance laws as to become the part of the PLS consultative team. Accordingly, the law men encouraged the NADRA involvement and the facility given by NADRA in giving the claims concerning the inheritance. They also gave some notable suggestions to make the law better in order to aid the heirs along with the judiciary and legal fraternity.

The chairperson intimated the audience regarding the WPC efforts to assess the inheritance laws thereafter she emphasized the troubles of women and children in acquiring their inheritance on account of multiple formalities along with many other impediments faced by the people. The convener subcommittee explained the invitees about the objective of doing PLS and getting the commissions like NCRC and lawyers engaged

for identifying the problems in execution of the laws discussed and the problems in procedure arose in legacy demanding courses.

Subsequently, the chairperson NCRC characteristically underlined that although the Constitution, NADRA Act and Ombudsperson Act have been enacted to ease the inhabitants but, the whole these laws obviously absent the application devices. There is an extreme necessity to familiarize operation as well as surveillance means to assure that the laws are efficiently bringing on their intention. Then, the legal fraternity suggested their point that how contribution of NADRA is an effective inventiveness, but it is not capable to work for its real aim due to some lawful and procedural hurdles. Moreover, it was included that women and children definitely necessitate communal and ethical backing to not relinquish their hereditary right but to entitled and obtain it by means of probable mediums. The conference was ended with some questions on Succession Act, 1925 and its execution in the courts of law.<sup>205</sup>

#### **4.10. Women Laws inPakistan**

A number of laws with the intent to safe guard women rights have been codified and have come into operation in Pakistan in last decades:

The Protection for Women (Criminal Law Amendment) Act 2006, Protection against Harassment of Women at Workplace 2010, 2011, and Domestic Violence (Prevention and Protection) Act, 2012,

---

<sup>205</sup> WPC Office, Parliament House, Islamabad, 25th October, 2022, Meeting With Ncrc And Lawyers On PLS Of Inheritance Laws, <https://wpc.org.pk/2022/10/27/meeting-with-NCRC-and-lawyers-on-PLS-of-inheritance-laws/>, Accessed 15<sup>th</sup> November, 2023

The Sindh Domestic Violence (Prevention and Protection) Act 2013, Baluchistan Domestic Violence (Prevention and Protection) Act, 2014 and Punjab Protection of Women against Violence Act 2016, the Hindu Marriage Act 2016 are the instances of such legislation.

These laws are the examples which have been introduced, legislated and finally prevailed in the country, thinking it as the need of the hour in Pakistan for safeguarding the rights of women. The legislature has taken wonderful steps for the wellbeing of the women against the gender-based violence, the attempt of legislature is highly admirable because by the Attempt the women shall be saved from violence. By these legislations the economic and social status of women in Pakistan has been endeavored to be safeguarded a lot. Although the matter of implementation of these laws is still facing differences as the GBW cases are still threatening the prosperity of the society.<sup>206</sup>

#### **4.10.1. Provisions of Pakistan Penal**

**Code 1868 Act XLV of 1860**

**Supporting Women:**

PPC defines Gender in section 10 as the any person male or female its pronouns or the derivatives of pronouns are included in the gender. Section 10 equalize women to the men as it defines that man is male of any age and women is female of any age:

---

<sup>206</sup> Women Parliamentary Caucus, News Letter, October 2022, <https://wpc.org.pk/wp-content/uploads/2023/01/October-NewsLetter-WPC-2.pdf> Accessed 16<sup>th</sup> November, 2023.0

Section 310 PPC provides the compounding of qisas in qatl I amd where in qatl e amd may be compounded on the acceptance of badl e sulh the same section puts an embargo in the proviso that a female shall not be given in such badl esulh. Section 310A declares it not only it is prohibitory act but also this is a punitive act if someone gives as female as a badle sulhvani or sawara or if some female is compelled into enter a marriage even in civil matters the female is made consideration in any dispute such an act is punishable to the seven years imprisonment and the fine of 500,000 rupees.<sup>207 208</sup>

Section 314 PPC gives privilege to woman who is pregnant to adjourn visas till two years after the birth of the child.

Section 354 PPC protects a woman from criminal force or Assault by declaring it a punitive act against a person who outrages modesty of woman with two years' imprisonment. While 354A PPC declares stringent punitive action against a person who uses criminal force to woman on public place by stripping her cloths. Such person shall be punished with death or imprisonment of life.<sup>209</sup>

Section 361 PPC provides that if a female of sixteen years of age is kidnapped the offender shall be while the 365B deals with the person involved in kidnapping. Abducting or inducing oman to compel for marriage such person shall be punished with imprisonment for life<sup>210211</sup>

---

<sup>207</sup>section 8 and 10 The Pakistan Penal Code, Act No. XLV OF 1860..

<sup>208</sup> Ibid.

<sup>209</sup>section 354 ,The Pakistan Penal Code, Act No. XLV OF 1860.

<sup>210</sup>section 361.The Pakistan Penal Code, Act No. XLV OF 1860

366A PPC deals with the minor girl if a person induces any minor girl to go from any place or seduces her to illicit intercourse with any person shall be punished with 10 years of imprisonment while 366 B PPC deals with import of girl from foreign country culprit of such act shall be punished with imprisonment of 10 years.<sup>212,213</sup>

371A.PPC deals with selling person for purposes of prostitution. This is punishable to the imprisonment of 25 years while 371B PPC deals with buying person for prostitution. This is also punishable for 25 years.<sup>214,215</sup>

377 PPC deals with Unnatural offences. This is punishable to 10 years while 493A deals with a person who deceitfully causes any woman who is not lawfully married to him to believe that she is lawfully married to him. Such offender is also punishable to 25 years of imprisonment.<sup>216,217</sup>

---

<sup>211</sup> Ins. by Act. VI of 06, ss. 2 & 3, Protection of Women (Criminal Laws Amendment) Act, 2006, December 1, 2006, Pakistan Printing Press, Islamabad, [https://na.gov.pk/uploads/documents/1321341579\\_812.pdf](https://na.gov.pk/uploads/documents/1321341579_812.pdf) Accessed 18<sup>th</sup> November,2023.

<sup>212</sup> ACT No. XX OF 1923. [PASSED BY THE INDIAN LEGISLATURE.] :(Received the assent of the Governor General on the 2<sup>nd</sup> April, 1323.) Calcutta , 1923, [https://www.indiacode.nic.in/repealed-act/repealed\\_act\\_documents/A1923-20.pdf](https://www.indiacode.nic.in/repealed-act/repealed_act_documents/A1923-20.pdf). Accessed 19<sup>th</sup> November,2023

<sup>213</sup> Section 366B as amended by A. 0., 1949, Ord. 21 of 1960. Ord. 1 of 1961 have been subs. by the Federal Laws (Revision and Declaration) Ordinance, 1981 (27 of 1981), s. 3 and II Sch., to read as above. The Pakistan Penal Code Act No. XLV of 1860 [6th October, 1860]. Pakistan printing press, Islamabad. <https://www.refworld.org/pdfid/485231942.pdf> Accessed 19<sup>th</sup> November,2023

<sup>214</sup> Ins. by Act. VI of 06, s. 4., Protection of Women (Criminal Laws Amendment) Act, 2006, December 1, 2006, Pakistan Printing Press, Islamabad, [https://na.gov.pk/uploads/documents/1321341579\\_812.pdf](https://na.gov.pk/uploads/documents/1321341579_812.pdf) Accessed 20<sup>th</sup> November,2023.

<sup>215</sup> Ibid.

<sup>216</sup> section 377, The Pakistan Penal Code, Act No. XLV OF 1860.

<sup>217</sup> Ins. by Act VI of 2006,s.6. Protection of Women (Criminal Laws Amendment) Act, 2006, December 1, 2006, Pakistan Printing Press, Islamabad, [https://na.gov.pk/uploads/documents/1321341579\\_812.pdf](https://na.gov.pk/uploads/documents/1321341579_812.pdf). Accessed 22<sup>nd</sup> November,2023.

496A PPC deals with. Enticing or with Detaining with criminal intent a woman shall be punished with seven years of imprisonment.<sup>218</sup>

498A PPC is prohibitory section on deprivation of the woman from the property inherited. Any person who illegally deceitfully causes deprivation of any woman from her property from the inheritance which is to be conferred her from succession such person shall be punished with imprisonment of 10 years also with the fine of 1 million rupees. Section 498B deals with the forced marriage which is the prohibitory act. Culprit of such act shall face imprisonment of 7 years or with fine of 500,000 Rs. In proviso of this section, it has been provided that a female child as defined in the Child Marriage Restraint Act, 1929 (XIX of 1929), or a non-Muslim woman, shall be punished with imprisonment of ten years.

498C PPC deals with. Prohibition of marriage with the Holy Quran. The person who arranges or the person who facilitates the marriage of woman with holy Quran every such person shall be punishable with seven years and fine of five hundred thousand rupees.<sup>219</sup>

Section 509 PPC deals with Insulting modesty or causing sexual harassment. Punishment of culprit of such act is imprisonment of three years or with fine up to five hundred thousand rupees or with both.<sup>220</sup>

Above provisions are self-evident that the penal statute has experienced many amendments in order to incorporating the women protecting provisions. Which shows that such

---

<sup>218</sup> Ibid.

<sup>219</sup> ins. by Act XXVI of 2011, s. 3. The Criminal Law (Third Amendment) Act, 2011, Pakistan Printing Press, Islamabad, December 28, 2011,

[https://na.gov.pk/uploads/documents/1329729400\\_262.pdf](https://na.gov.pk/uploads/documents/1329729400_262.pdf) Accessed 23<sup>rd</sup> November, 2023

<sup>220</sup> section 509, The Pakistan Penal Code, (Act No. XLV OF 1860).

provisions are for the protection of rights of the women and the promotion of the gender equality throughout the Pakistan.

## **4.11. List of Federal and Provincial Pro-Women Laws**

### **4.11.1. Federal Laws:**

1. The Anti-Rape (Investigation and Trial) Act, 2021 Act No XXX OF 2021 An Act to guarantee speedy redressal of rape and sexual abuse crimes in respect of women and children through special investigation teams and special Courts providing for effective procedures, speedy trial, evidence and matters connected therewith or incidental thereto;<sup>221</sup>
2. The Zainab Alert, Recovery and Response Act, 2020 ACT NO. XV OF 2020 An Act to make provisions for raising alert, response and recovery of missing and abducted children.<sup>222</sup>
3. The Enforcement of Women's Property Rights Act, 2020 ACT NO. XII OF 2020 An Act to protect and secure the rights of ownership of women in the property<sup>223</sup>
4. The Punjab Women Hostels Authority Act 2023 (Act VII OF 2023) An Act to regulate women hostels established in the private sector.<sup>224</sup>

---

<sup>221</sup> The Anti-Rape (Investigation And Trial) Act, 2021, Act No XXX OF 2021,

<sup>222</sup> The Zainab Alert, Response And Recovery Act, 2020.

<sup>223</sup> <https://pakistancode.gov.pk/pdffiles/administrator080fe2813f4e31fb566cb0385a414fe1.pdf>

<sup>224</sup> The Punjab Women Hostels Authority Act 2023, Civil Law, (ACT VII OF 2023).

5. The Prevention of Trafficking in Persons Act, 2018 ACT NO, XXXIV OF 2018  
An Act to prevent and combat trafficking in persons especially women and children<sup>225</sup>
6. National Commission on the Status of Women Act, 2012 ACT NO. VIII OF 2012  
An Act to provide for the setting up of National Commission on the status of Women<sup>226</sup>
7. The Dowry and Bridal Gift (Restriction) Act, 1976 ACT No. XLIII OF 1976 An  
Act to provide for restrictions on dowry and bridal gifts.<sup>227</sup>
8. Hindu Married Women's Rights to Separate Residence and Maintenance Act,  
1946 The Hindu Married Women's Right to Separate Residence and Maintenance  
Act, 1946. (ACT NO. XIX OF 1946) An Act to give Hindu married women a  
right to separate residence and maintenance under certain circumstances.<sup>228</sup>

#### **4.11.2. Punjab:**

1. The Punjab Maternity Benefit Ordinance, 1958 An Ordinance to consolidate the  
law relating to employment of women in establishments in the Punjab.<sup>229</sup>
2. The Protection of Breast-Feeding and Child Nutrition Ordinance, 2002, (XCIII  
OF 2002) An Ordinance to provide for protection of breast-feeding and nutrition  
for infants and young children.<sup>230</sup>

---

<sup>225</sup>The Prevention Of Trafficking In Persons Act, 2018,(ACT NO, XXXIV OF 2018),

<sup>226</sup> National Commission On The Status Of Women Act, 2012, Civil Law, (Act No. VIII OF 2012).

<sup>227</sup> The Dowry And Bridal Gifts (Restriction) Act, 1976 (ACT No. XLIII OF 1976).

<sup>228</sup> The Hindu Married Women's Right To Separate Residence And Maintenance Act, 1946 ( ACT NO. XIX OF 1946 )

<sup>229</sup>The Punjab Maternity Benefit Ordinance, 1958, (Ordinance XXXII Of 1958)

<sup>230</sup> The Protection Of Breast-Feeding And Child Nutrition Ordinance, 2002, (XCIII OF 2002)

3. The Protection against Harassment of Women at the Workplace Act, 2010 (IV of 2010) An Act to make provisions for the Protection against Harassment of Women at the Workplace.<sup>231</sup>
4. The Punjab Commission on The Status of Women Act 2014, (Act I of 2014) An Act to provide for the establishment of Punjab Commission on the Status of Women.<sup>232</sup>
5. The Punjab Fair Representation of Women Act 2014, (Act IV of 2014) An Act to amend certain laws of the Punjab for purposes of fair representation of women in decision-making process and their empowerment.<sup>233</sup>
6. The Punjab Reproductive, Maternal, Neo-Natal and Child Health Authority Act 2014 (Act VIII of 2014), An Act to provide for the establishment of the Punjab Reproductive, Maternal, Neo-natal and Child Health Authority.<sup>234</sup>
7. The Punjab Protection of Women Against Violence Act 2016, (Act XVI of 2016), An Act to establish an effective system of protection, relief and rehabilitation of women against violence.<sup>235</sup>
8. The Punjab Women Protection Authority Act 2017 (Act X of 2017) An Act for the establishment of the Punjab Women Protection Authority.<sup>236</sup>

---

<sup>231</sup> The Protection Against Harassment Of Women At The Workplace Act, 2010, (Act No. IV Of 2010).

<sup>232</sup> The Punjab Commission On The Status Of Women Act 2014, (Act I Of 2014)

<sup>233</sup> The Punjab Fair Representation Of Women Act 2014,(Act IV Of 2014).

<sup>234</sup> The Punjab Reproductive, Maternal, Neo-Natal And Child Health Authority Act 2014 (Act VIII Of 2014),

<sup>235</sup> The Punjab Protection Of Women Against Violence Act 2016,(Act XVI Of 2016).

<sup>236</sup> Lahore, Punjab Provincial Assembly ,The Punjab Women Protection Authority Act 2017 (Act X Of 2017).

### **4.11.3. Sindh:**

1. The Sindh Reproductive Healthcare Rights Act, 2019. Act No. XV OF 2019 to facilitate reproductive healthcare and promote reproductive health rights in the Province of Sindh.<sup>237</sup>
2. Sind Commission on the Status of Women Act, 2016 ACT NO. XX OF 2015. AN ACT to provide for the setting up Provincial Commission on the Status of Women.<sup>238</sup>
3. Sindh Domestic Violence (Prevention and Protection) Act, 2013. ACT NO. XX OF 2013.to make provisions for protection against domestic violence.<sup>239</sup>

### **4.11.4. Khyber Pakhtunkhwa:**

1. Khyber Pakhtunkhwa Domestic Violence against Women Act, 2021 ACT NO. III OF 2021) AN ACT to curb the menace of Domestic Violence against Women in the Province of Khyber Pakhtunkhwa.<sup>240</sup>
2. The Khyber Pakhtunkhwa Reproductive Healthcare Rights Act, 2020 (Act No. XXVIII of 2020) AN ACT to provide for the reproductive healthcare and promote reproductive health rights in the Province of the Khyber Pakhtunkhwa.<sup>241</sup>
3. Khyber Pakhtunkhwa Enforcement of Women Ownership Act, 2012 (ACT NO. III OF 2012) to protect and secure the right of ownership of women in the property<sup>242</sup>

---

<sup>237</sup>The Sindh Reproductive Healthcare Rights Act, 2019. (Act No. XV OF 2019).

<sup>238</sup>The Sindh Reproductive Healthcare Rights Act, 2019. (ACT NO. XV OF 2019)

<sup>239</sup> Sindh Domestic Violence (Prevention And Protection) Act, 2013. (ACT NO. XX OF 2013).

<sup>240</sup> The Khyber Pakhtunkhwa Reproductive Healthcare Rights Act, 2020 (ACT NO. XXVIII OF 2020).

<sup>241</sup> The Khyber Pakhtunkhwa Reproductive Healthcare Rights Act, 2020 (ACT NO. XXVIII OF 2020).

#### **4.11.5. Baluchistan:**

1. . The Baluchistan Protection Against Harassment of Women at Work Place Act No.01 of 2016 AN Act to provide for the protection of women against harassment at the workplace<sup>243244</sup>

#### **4.12. ‘Post-Legislative Scrutiny Is Nicety of Advanced Democracy’:**

Former chairman of Senate MianRazaRabbani is a senior parliamentarian who has also been a chairman of senate of Pakistan. Once he was answering a session of PLS on at the time of question he explained that PLS is beyond any doubt a finesse of acts of the advanced democracies. Every developed and advanced functioning demarcated country shall adopt the mechanism of PLS. in fact he was chairing a seminar that seminar was dealing with the notion of PLS. the seminar was titled with the “Law’s Enactment and Legal Aspects of Post-Legislative Scrutiny”. This seminar was held at the University of London and he sent a message from London to Islamabad with the feeling that PLS is novelty of advanced democracy. According to his point of view pre and post legislative scrutiny are new organisms so the bifurcation between pre and PLS cannot be made. The parliaments require to adopt the scrutiny as a whole process and this concept is not dealt by

---

<sup>242</sup> Khyber Pakhtunkhwa Enforcement Of Women Ownership Act, 2012 (ACT NO. III OF 2012).

<sup>243</sup> The National Commission On The Status Of Women (NCSW), List Of Pro Women Laws, List Of Federal And Provincial Pro-Women Laws, <https://ncsw.gov.pk/detail/owyxm2u1mwytzdzhns00yta3lwiwotitnzbhmmzlmidxnzlj>, Accessed On 10<sup>th</sup> November 2023.

<sup>244</sup> The Balochistan Protection Against Harassment Of Women At Work Place (Act No.01 Of 2016).

parts but this is the oneness of the process. Mr. Rabbani explained the legislative process in Pakistan by saying that in Pakistan the legislature adopts a peculiar mechanism for the pre legislative scrutiny objective that involves an extensive procedure which starts from the bill introduced till it becomes a law. He further explained that the legislature has to perform its main and vital functions of enactment of the laws and for legislative scrutiny the legislature has to give respect to principle of trichotomy of power. Legislature is of two types unicameral and bicameral. In most of the bicameral legislature the pre legislative scrutiny is practiced where each house performs the duty of the watch dog. He further stated that in Pakistan on PLS by parliament no modus oprendi or special mechanism is available to cater for PLS however the senate standing committee on delegated legislation under takes certain TasksOF PLS. in Many short-lived democracies, here in Pakistan executive organs of the state looks to dodge the text of the statutes and most of the time releases statutory regulatory orders (SROs) damaging with or superseding specific provisions of the law.<sup>245</sup>

### **4.13. Pakistan: Role of National Commissions in Post-Legislative Scrutiny:**

Laws enacted during the colonial period (1836-1947) and inherited by the country, second the presidential ordinances promulgated during the four military regimes (1958-1971, 1977-1988, and 1999-2002) and Acts of Parliament are three types of laws found in

---

<sup>245</sup>The Dawn, 'Post-legislative scrutiny is nicety of advanced democracy' July 12, 2018, Karachi <https://www.dawn.com/news/1419538/post-legislative-scrutiny-is-nicety-of-advanced-democracy> Accessed on 12<sup>th</sup> November 2023.

the history of the legislation of Pakistan. First type of the laws is directly connected with and made by colonial period and the same were penned down to Pakistan. Second type of the laws are the production of military regime. These laws do not have any connection with the parliament or parliamentary procedures. These laws do not have any backing of the parliamentary wisdom. Third type of laws known as the act of the parliament are the laws production of the cameral legislation. These are connected with the parliamentary procedure. These laws have the backing of the debate and discussion of the parliament.

These three categories of Pakistani laws lead us to conclusion that legal canvass of Pakistan is lacking a production of parliament and consequently missing the spirit of democracy. The manifold laws contain in the book of statutes can be said as the country of the over legislation. The intent visible in the most of the laws produced during colonial law was just to subdue the people. The wisdom seems in the ordinances of the military regime was just to by-pass the system and the laws enacted during the governments of parliament seem with object of social, political and economic engineering. During the time of democracy now the country has begun to adopt modern laws.

Amazingly, there is no genuine list or the text of the laws are found on the website of government or any consolidated form of the codes in the hard copy. This fact was explored by the supreme court of Pakistan in a suomoto case that pertained to erroneous laws. On February 10, 2016 the Supreme Court of Pakistan declared in its judgment that the primary duty of the government is to ascertain that all the laws which are applicable should have the easy approach of the citizens that are in easy and understandable language.

The Supreme Court observed that no publication forum governed by the government is available that may publish the laws in hard form or the laws are available on internet in an error free version that may be easily approachable to the people.

The Pakistan Code till 1966 was compiled as a traditional work and the publication of 16 volumes of federal laws compendium in a friendly using way contained the index of chronology and alphabetic laws appeared in statutes book that also include the commending laws to the parent laws. The publication of Pakistan code in 2010 was not as helpful as required. The provincial laws were also haphazard. The publication of Sindh code was made till 1956 and Baluchistan code till 1990 and the KPK code till 2014 but the laws in it from 1988 to 2013 were missing out. The Punjab code was published and updated on internet till 2016 but the provincial laws ministry pledged that some error free work on laws is left accordingly the work of rectification on errors and omissions is continued.

The S.C decisions caused in enactment of the laws of Pakistan act 2016 by the parliament. This verdict of S.C also resulted in the creation of dedicated cell and bi-lingual (English and Urdu) website which the federal ministry of law and justice launched for the provision of error free versions of laws, delegated legislation, etc. there is also a NORM OF repealing the redundant laws is missing as many of the dormant laws ate still persisting the Federal Court Act of 1937 is one of the example that was the redundant law but it was repealed in 2014.

The federal government is empowered to make rules by the federal laws and these rules may be notified in official gazette. These rules are made to carry out the purposes of the

parent legislation. It has been observed that the government has not framed the rules in time that ultimately hampered the operation of the legislation. Same authority lies with the provincial government where the situation is not different in the provincial laws and rules. An information to the Supreme Court was given in 2016 that the federal government as well as the provincial governments have not done the exercise of codification of the subordinate legislation which is to be made in pursuance of rulemaking powers to the executive pillars of the state by the legislature.<sup>246</sup>

The statutory instruments and notifications in properly codifying form was unavailable. The laws to be translated and published is the obligation of ministry of law and justice under the government Rules of Business 1973.

The law and Justice Commission is a creation by an Ordinance introduced in the military regime in 1979. The primary task which was given to the commission to study and review the statute and the laws continuously and make the recommendation to the federal and provincial governments in order to improve modernized and reform the laws. Following eight functions were assigned to the commission.

- i. To make or bring the laws in accordance with the change of time and necessity of the society
- ii. Make the laws in conformity with the Pakistani ideology and basing on social justice and concept of Islam.

---

<sup>246</sup> Franklin De Vrieze, & Victoria Hasson Comparative study of practices of Post-Legislative Scrutiny in selected parliaments and the rationale for its place in democracy assistance. (London, Westminster Foundation of Democracy,2017),31-34. <https://www.wfd.org/wp-content/uploads/2018/07/Comparative-Study-PLS-WEB.pdf>. Accessed 6<sup>th</sup> December,2023.

- iii. To adopt the simplest and efficient process to administering the laws in order to ensuring the substantially, justice with speed and low cost.
- iv. Arrange the codified and unified laws for elimination of multiple faces of laws on the same subject
- v. To remove the inconsistencies in the law to repeal the redundant provisions in law.
- vi. To simplify the laws in order to comprehend it easily and devise steps to make the people lawmen.
- vii. Introducing the reforms to administer the justice and
- viii. Removal of anomalies between the laws within the parliamentary competence of legislation and the laws which lie within the provincial subjects.

In Pakistan in march 2016 the Publication of Laws of Pakistan Act, 2016 was passed by the parliament to guarantee the publication of textual concepts of the law of Pakistan and the publication must be error free and go to update and print to make it available easily for the citizen. The provincial assemblies of Baluchistan, Khyber Pakhtunkhwa, Punjab and Sindh entrusted the task of regulating the publication of laws by private publishers to the Federal Parliament through the passed resolution under Article 144 of the Constitution. The law demands the checks internally by the both Government federal and provincial, the parliament and the provincial assemblies are required to assure the correctness of the laws they published.

The law has introduced the establishment of the laws of Pakistan in federal ministry of law for registering the publishers and monitoring the publication of books and documents relateable to the law. Only a registered publisher can publish a book of law. the cell shall

review the propose publication of the law and issue the certificate that the publication in hand is error free, correct and up to date from the issue and certificate date. As per the law it is the duty of the federal government to compile and maintain the updated accurate version of the federal laws of the Pakistan. Also to translate the same in Urdu language and it should be available both in paper and electronically. The law has many objectives including the repository maintained would be used in accuracy of the material forwarded buy publishers for examination under this act. The similar assignment to the provincial government viz a viz provincial laws has been entrusted. The federal government and the provincial government have been required under the law to guarantee the custodial safety of gazette of Pakistan and provinces pertaining with the laws of Pakistan and provincial along with the updated and error free laws.

Senate standing Committee on Delegated Legislation is the response to this challenge. The same was created in 2016. This is mandated with checking the past and present delegated legislation. this is a great parliamentary initiative which will scrutinize the subordinate legislation on government ministries and divisions and the same to be reported to the Senate whether the government has timely and properly exercised the powers to frame the rules regulations, by laws and schemes etc. and whether this is within the parameter of such delegation or otherwise.

The main function of the committee is to examine the laws on the bench marks which are eight in number and the committee is authorized to give recommendations to annul full or

by part or suggestions of amending it in some respect. This committee shall ensure the culture of post legislative scrutiny in true letter and spirit.<sup>247</sup>

#### **4.14. Pakistan Senate Committee on Delegated Legislation:**

The rules of procedure and business of senate 2012 empowers the committee with certain functions as follows. These functions may be fixed from time to time.

- (I) The legislation and formulation of policies for applying of rules regulation by laws schemes or other legislative instruments shall be proposed by the committee. Made as pursuant of the constitutional or the legislation functional authorized by parliament.
- (II) After the rules had been laid before the committee in shall consider the rules in particular
  - a) If the rules in conformity of the constitutional or the acts sections in pursuance to which these have been framed.
  - b) If the rules deal the aspect appropriately which the act of parliament desires
  - c) If the tax and taxation has been contained in the rules
  - d) If the jurisdiction of the courts has been barred by the rules
  - e) If the retrospective effect is given through the rules
  - f) If the rules have used unexpected power
  - g) If there is any inordinate delay in publishing the rules
  - h) If any elucidation is requiring under the rule

---

<sup>247</sup> Ibid.

Besides the committee the publication an ‘Alphabetical Catalogue of Federal Laws of Pakistan-1836 to 2014’ is good step of Senate of Pakistan the same was compiled by ex-senator Ch. Muhammad Anwar Bhinder in 2016.<sup>248</sup>

#### **4.15. Conclusion:**

The legislature is supposed to look into the efficacy of laws after these have been sent out to the public. This act is the spirit of the PLS. Mr. Franklin De Vriez, the main exponent while giving briefing, described permanent committees have set up in several countries for PLS. In the UK, PLS is taken as a conspicuous parliamentary character. A knowledge sharing session on post legislative scrutiny was managed by WFD by joining hand to hand with the Pakistan Institute of Parliamentary Studies Islamabad in December 2017. To make and change laws are the mandate of parliaments. They also assumed the role of checking the implementation. Thus, PLS is the rehearsal of examining the execution and assessment of the impression of laws. WFD also joined hands with SCC to conduct PLS 1997 as it is important because it gauges the effectiveness of laws with changing circumstances and fixes the gap.

A webinar under shirkat partnership in 2020 held to institutionalize responsibility, gender development by PLS. A number of laws with intent to safeguard women rights have been codified and have come into operation in Pakistan in the last decade as a result of PLS studies.

---

<sup>248</sup> Ibid.

## **5. Chapter 5 Delegated Legislation:**

### **5.1. Introduction:**

Legislation is of two types one is supreme legislation known as primary Legislation i.e. all legislation made in the Parliament is known as primary legislation, Acts, Laws, statutes are the primary Legislation whereas all the Legislation that takes place outside the Parliament is known as secondary legislation it is also called as subordinate or delegated legislation. Rules, regulations, bye laws, schemes, orders etc. come under the ambit of subordinate Legislation.

The legislature does supreme legislation known as the prime legislation, while the executive does the subordinate legislation known as delegated legislation which is empowered by the legislature. In Acts or Statutes, the legislature provides that the government may make rules for carrying out the purposes of this Act. Accordingly, the executive has to do legislation within the spirit of the parent legislation that empowers it to do legislation. If the legislation by the executive is beyond the boundaries of the rule making laws, it becomes void, invalid, and unlawful, which are liable to be struck down.

In *Khawaja Ahmad Hassan v. Government of Punjab and others* the Hon'ble Supreme Court of Pakistan held:

*“It is a well-recognized principle of interpretation of statutes that if the rules framed under the statute are in excess of the provisions of the statute or are in contravention of or inconsistent with such provisions then those provisions must be regarded as ultra vires of the statute and cannot be given effect to.”<sup>249</sup>*

---

<sup>249</sup>*Khawaja Ahmad Hassan v. Government of Punjab and others* (2005 SCMR 186)

Delegated legislation means and includes rules, regulations, bylaws, schemes, warrants, notifications, orders, guidelines, policy, and all other subordinate legislation or statutory instruments framed in exercise of the powers conferred under a statute.

In the present era, the need for delegated legislation has increased manifold, this fact has been explored in the case law *ZaraiTaraqiati Bank etc vs. Said Rehmanetcon* the grounds of extra work load on parliament, technicalities of modern state affairs and flexible atone to tackle unexpected happenings.<sup>250</sup>

## 5.2. Definition and introduction to delegated legislation

According to Salmond<sup>251</sup>

*“Legislation is either supreme or subordinate. Whereas the former proceeds from sovereign or supreme power, the later flows from any authority other than the sovereign power, and is, therefore, dependent for its existence and continuance on superior or supreme authority.”*

As stated in Halsbury’s laws of England, “when an instrument of a legislative nature is made by an authority in exercise of power delegated or conferred by the legislature it is called subordinate legislation.”<sup>252</sup>

---

<sup>250</sup>*ZaraiTaraqiati Bank etc vs. Said Rehmanetcon* (2013 SCMR 642),

<sup>251</sup>*Salmond on Jurisprudence (12thEdn.) 116; Craies on Statute Law (7thEdn.) 297-298. “When an instrument of a legislative nature is made by an authority in exercise of power delegated or conferred by the legislature, it is called ‘subordinate legislation’”.*(Halsbury’s Laws of England, Vol.44 (4thEdn.) 981-984. quoted in C.K. Takwani, Lectures on Administrative,2012Eastern Book Company, Lucknow, )63. Library of Senate of Pakistan. Accessed 14<sup>th</sup> December 2023.

According to Jain & Jain, “delegated legislation is used in two senses: (a) the exercise by a subordinate agency of the legislative power delegated to it by the legislature, or (b) the subsidiary rules themselves which are made by the subordinate agency in pursuance of the power as mentioned in(a). As Administrative lawyers, we are more interested in the “technique”, rather than the actual rules made, and so the term “delegated legislation” is used here in the first sense.<sup>253</sup>

In the senate of Pakistan first QUARTERLY REPORT OF THE year 2016, COMMITTEE ON DELEGATED LEGISLATION was presented by Senator TajHaider the then Chairman committee. First report of the committee contains the Introduction to the Committee on Delegated Legislation, the composition of the committee. Agenda of the Committee meetings held on 20th April, 2nd May, 18th May and 3rd June 2016 and recommendations and decisions of Committee.

### **5.3. Establishment of the committee on delegated legislation**

The Rules of Procedure and Conduct of Business in the Senate, 2012, was amended to incorporate vide S.R.O. 1323, dated 31-12-2015 The Committee on Delegated Legislation as a novel step taken by the Senate of Pakistan a first-hand Congressional idea.

---

<sup>252</sup>Halsbury’s Laws of England, 4thEdn, Vol. 44, pp. 981-84. Quoted in Dr. J.J.R. Upadhyaya,Administrative Law 2004 Central Law Agency, 59. Library of Senate of Pakistan. Accessed 15<sup>th</sup> December 2023.

<sup>253</sup> M.P. Jain & S.N. Jain, (*Principle of administrative Law*),26, (Wadhwa and Company Nagpur, 2004). Library of Senate of Pakistan. Accessed 16<sup>th</sup> December 2023.

The Rules 172C, 172D & 172E were introduced in the Rules of Procedure and Conduct of Business in the Senate, 2012, to examine the subordinate legislation of Ministries/Divisions.

172C tells the setup of the Committee on Delegated Legislation, rule 172D introduces us the Functions of the committee and 172E envisages the Report of the opinion of the committee.

Main functions given in the rule 172 D are as under

- a) The legislation shall be proposed by the Committee as well as policy shall be formulated by it for placing of the rules, regulations, bye-laws, schemes or any statutory instrument.
- b) When the rules are so placed, the consideration by the Committee shall be made in particular -
  - The conformity of Rules with the Constitution.
  - Its conformity with the Act of Parliament.
  - Content of Rules to pertain with main matter of the opinion of the Committee.
  - imposition of taxation;
  - jurisdiction of the Court;
  - retrospective effect
  - unusual use of the power
  - unjustifiable delay in publication
  - Rules require any elucidation <sup>254</sup>

---

<sup>254</sup>Senate of Pakistan, Committee on Delegated Legislation, First Quarterly Report of Committee on Delegated Legislation, (Islamabad, Publishing Department, 2016)  
[https://senate.gov.pk/uploads/documents/1473264371\\_847.PDF](https://senate.gov.pk/uploads/documents/1473264371_847.PDF) . Accessed 16<sup>th</sup> December 2023.

In the composition of the Committee Senator TajHaider was the Chairman of the committee on delegated legislation. Senator Farooq Hamid Naek, Senator Saeed Ghani, Senator Ayesha Raza Farooq, Senator Syed MuzaffarHussain Shah, Senator Muhammad Azam Khan Swati, Senator Muhammad Ali Khan Saif, Senator Muhammad Daud Khan Achakzai, Advocate, Senator Muhammad TalhaMahmood, Senator KalsoomPerveen, Senator Muhammad Mohsin Khan Leghari and Senator Muhammad JavedAbbasi were the member of the first Committee.

On 20th April, 2nd May, 18th May and 3rd June 2016 the Committee Meeting was held. There were two agenda points in the meeting of 20/4/2016. First agenda point pertains to ministry of law and justice who was to brief the delegate legislation under the scheme of constitution while the second agenda point was concerned with the privatization commission who was too brief about the rules, regulations etc. made by it under the authority of the act.

In the first meeting a notable recommendation of committee was given to ministry of law particularly while declaring that ministry of law and justice is duty bound for vetting allthe laws and cooperation of the ministry shall imperatively be required to the committee. Committee also observed that there is legal expert in every ministry and division so the legal team of every ministry should assure the reviewing of their governing laws that shall amount to the process of the committee.<sup>255</sup>

In the meeting of 02/05/2016, the agenda point was about the cabinet division which briefed the rules, regulations notifications and SROs utilized by the Ministry for its policy running.

---

<sup>255</sup> Ibid.

The committee directed to share the whole of the Rules and Regulations, in order to maintain its data bank. The committee further instructed that three tier systems of review of delegated legislation must be assured in which the department legal team shall perform as first tier, ministry of law and justice shall do the role of second tier and the senate committee on delegated legislation shall be third and final tier for the review of the subordinate legislation. The committee further directed that in the matter of any amendments in the parent legislation after the review the law division shall share the recommendations if any.

The chairman senate on 18/05/2016 attended the Consultative Meeting where the committee decided that the reports given by the ministries and divisions shall not be relied upon. All the work shall be done by the members of committee on its own with the help of interns and legal professionals as their team members. The senate chairman shall issue the orders of constitution of new subcommittees and the committee shall look into the old and the upcoming secondary legislation.<sup>256</sup>

Three subcommittees for scrutinizing the delegated legislation of privatization commission were constituted in meeting held on 3rd June, 2016, for the discussion of the matters of urgent nature.

The three subcommittees as well as the main committee started to work on different laws and the rules as part of their examination the committee ultimately felt that many laws and rules are in dire need to amend themselves through amending laws and rules. Rule 173 sub rule 3 of senate rules demands the quarterly report from the committee on delegated legislation<sup>257</sup>.

---

<sup>256</sup>Ibid .

<sup>257</sup> Ibid.

In the 3rd QUARTERLY REPORT OF THE COMMITTEE ON DELEGATED LEGISLATION OCTOBER-DECEMBER, 2016, it was illustrated that the committee had written a letter to the Chairman Senate of Pakistan on 4th November 2016. The committee declared that the letter was of urgent nature. The delegated legislation committee started to work with the mandate of collection and scrutinizing all the past and present rules. This task was only possible with the help of the experts. Accordingly, the committee did a decision of writing again a letter to the chairman senate unanimously emphasizing that at least four persons with seven years' experience are in dire need to provide the services to the committee on the said mandate as the mandated task shall be hindered if the experts are not availed. Accordingly, the said report revolved around the outsourcing of the legal experts.<sup>258</sup>

(JANUARY-MARCH, 2017 the fourth QUARTERLY REPORT OF THE COMMITTEE ON DELEGATED LEGISLATION revolves around the public petitions i.e. subordinate legislation to protect pensioners' Benefits Account Rules 2003 as they apply to government servants and the mode of distribution among a pensioner's heirs/dependents in case of the pensioner's death. The petitioner came up with suggestions that after the pensioner's death, the amount deposited by them in (Pensioners' Benefit Account PBA) ought to be transferred to the heirs account under the Muhammadan law or as per Pensions and Gratuity Rules of Civil Service Law, to his nominee but not to both of those thus the secondary legislation as mentioned prior might be made promptly. Accordingly, the National Savings sought time for making amendments to the Pensioners Benefit Account Rules, 2003.

---

<sup>258</sup> Senate of Pakistan, Committee on Delegated Legislation, Third Quarterly Report of Committee on Delegated Legislation, (Islamabad, Publishing Department, 2016) [https://senate.gov.pk/uploads/documents/1482832937\\_545.pdf](https://senate.gov.pk/uploads/documents/1482832937_545.pdf). Accessed 17<sup>th</sup> December, 2023.

## 5.4. Pakistan Telecom (Re-organization) Act 1996

The report also discussed the proposed amendment in Pakistan Telecom (Re-organization) Act 1996 with the decision that an agreed scripture on operational autonomy of SCO be submitted to the sub- committee. It was also proclaimed that the rules should enunciate the employees' status as government servant.

The Committee also observed the Ministry of Information Technology and Telecom must streamline and oversee pension process, pension rules of PTCL and PTET in telecom organizations.<sup>259</sup>

In FIFTH QUARTERLY REPORT OF YEAR 2017 OF THE COMMITTEE ON DELEGATED LEGISLATION (APRIL-JUNE, 2017) presented by Senator TajHaider. Some of the public petitions were discussed as agenda points of the meetings pertaining to regulations of the Privatization Commission Ordinance and the Rule 6(I) of the Privatization Commission (Valuation of Property) Rules, 2007 was lawfully examined. During the discussion the committee was of the view that change in the rules is necessary and the Privatization Commission pledged to resolve the issue, meanwhile in the meeting of 24/04/2017 sub-committee recommended that SCO and MITT to deliberate the previously proposed amendments in Pakistan Telecom (Re-organization) Act, 1996 and share the response. The report shows that the executive machinery was unable to satisfy the Committee particularly in compliance of the recommendation on the rules, notifications

---

<sup>259</sup> Senate of Pakistan, Committee on Delegated Legislation, forth Quarterly Report of Committee on Delegated Legislation, (Islamabad, Publishing Department, 2017) [https://senate.gov.pk/uploads/documents/1507808641\\_846.pdf](https://senate.gov.pk/uploads/documents/1507808641_846.pdf). Accessed 19<sup>th</sup> December,2023.

and SROS in pursuance of existing acts of the Parliament of Telecommunications Trust (PTET).<sup>260</sup>

In SIXTH QUARTERLY REPORT OF YEAR 2017 OF THE COMMITTEE ON DELEGATED LEGISLATION (JULY-SEPTEMBER, 2017) presented by Senator TajHaider. the report envisages in the meeting of 18/09/2017 the standard operating procedures SOPS of committee as the agenda point were discussed and approved wherein following SOPs were approved.

- i. The minutes of the meetings must be completed within 7 working days by the secretary committee.
- ii. The chairman committee shall approve minutes in two minutes.
- iii. The next agenda of the meeting by the director staff to secretary committee.
- iv. Secretary committee will interact with government departments will collect working papers on agenda points
- v. Director staff shall circulate working paper and the final agenda with the members.
- vi. In the same meeting the functions of LDU of the senate of Pakistan regarding the delegated legislation was also discussed and finalized as under
  - a. Preparation of the comments on the agenda item under the committee mandate.
  - b. Examination of gazette notifications of subordinate legislation in juxta position of parent legislation and finding out the contradictions
  - c. Submission of findings basing on inconsistency to the committee

---

<sup>260</sup>Senate of Pakistan, Committee on Delegated Legislation, fifth Quarterly Report of Committee on Delegated Legislation, (Islamabad, Publishing Department, 2017)  
[https://senate.gov.pk/uploads/documents/1507808319\\_150.pdf](https://senate.gov.pk/uploads/documents/1507808319_150.pdf). Accessed 20<sup>th</sup> December,2023.

While discussing the scope and mandate of the committee, the committee declared that examination of delegated legislation is main object of standing committee. The then Chairman Committee claimed that the review of delegated legislation has to be made mainly by this committee and the Committee showed its agreement on the decision that the LDU shall examine the existing rules regulations notifications byelaws acts and the report of the examination shall be prepared by LDU for the committee and the committee shall refer such report to the relevant standing committee for further action to be taken at their own end.<sup>261</sup>

## **5.5. Regulations No. 3, 9 And 14 Of the Privatization Commission Ordinance 2000**

In Eighth QUARTERLY REPORT OF YEAR 2018 OF THE COMMITTEE ON DELEGATED LEGISLATION (JAN-MARCH, 2018) presented by Senator TajHaider. While holding the discussion in the meeting of 27/02/02018 on the basis of the Petitions concerning with Regulations No. 3, 9 and 14 of the Privatization Commission Ordinance 2000 which are deemed to be ultra vires of the said basic Ordinance.

The Committee considered functions of the Privatization Commission and the Board, as narrated in the Privatization Commission Ordinance, 2000. The Committee detected that Privatization Commission has become superfluous and the Commission'

---

<sup>261</sup>Senate of Pakistan, Committee on Delegated Legislation, sixth Quarterly Report of Committee on Delegated Legislation, (Islamabad, Publishing Department, 2017) [https://senate.gov.pk/uploads/documents/1507808214\\_675.pdf](https://senate.gov.pk/uploads/documents/1507808214_675.pdf). Accessed 21<sup>st</sup> December,2023.

powers are conferred in the Chairman of the Commission. Separation between Chairman, Commission and Board has actually come to an end. The Commission works under the office of Chairman. Members viewed that final verdict must be made by the Commission, instead of the Board, because the executive powers lie with the Commission. The members enquired about the constitution, obligations and extent of the Board and the Commission. The Officials concerned explained that Privatization Commission Ordinance, 2000, is silent concerned with the composition of the Commission. Members shocked on the anomaly in this Ordinance. The Committee came up with the conclusion that Privatization Commission Ordinance, 2000, is not specifying the role of Privatization Board, that amounts that privatization process in general and actions of Privatization Commission in particular as invalid. The Committee observed that this basic law is seriously full of flaws, because of not prescribing the qualifications for the membership of the Commission. Currently no Commission is working. The Ministry also endorsed the same in its official statement. That makes it as factitious and artificial entity. The official from the Commission consented that the objections raised in petition pertaining to Regulations No. 3, 9 and 14 are justified. He suggested that the said Regulations may be amended in such a way that the Chairman should submit summary to the Board rather than the existing scheme i.e. the Commission submits summary to the Board. The committee declared and recommended that the whole law, with regard to composition of the Commission, should be revisited, amended and improved and there after placed before the Committee.<sup>262</sup>

## **5.6. Rules and Regulations Governing National Police Foundation,**

---

<sup>262</sup> Senate of Pakistan, Committee on Delegated Legislation, eight Quarterly Report of Committee on Delegated Legislation, (Islamabad, Publishing Department, 2018) [https://senate.gov.pk/uploads/documents/1521005626\\_516.pdf](https://senate.gov.pk/uploads/documents/1521005626_516.pdf). Accessed 22<sup>nd</sup> December, 2023.

The report contains about briefing to the Committee of Ministry of Interior regarding the rules and regulations pertains to National Police Foundation, after the adjudication made in the case by the Supreme Court of Pakistan in *Suo Moto* case No. 11 of 2011 (PLD 2014, Supreme Court, 389) and observation made therein.

The Representatives of National Police Foundation explained the Committee about current situation after the observations made by the Supreme Court of Pakistan in *Suo Moto* case No 11 of 2011. Justice (R) Muhammad Raza Khan, explained the Committee on the decision of the Supreme Court. He reported that Supreme Court's decision that all illegal allotments of plots in the National Police Foundation were cancelled and the highest court instructed that the amount may be recovered from illegal allottees. So, the letters were written by foundation to all the relevant to vacate houses. Accordingly, the stake holders i.e. the allottees, purchasers or transferees knocked at the door of Supreme Court by review petitions. The judgment of the Supreme Court was partially reviewed by it and observed that the money from allottees be only recovered and the transferees may not be disturbed because the transfer of land was on the basis of bonafide purchase and consideration.

In December, 2013 Supreme Court of Pakistan took *suomoto* in the case of Federation of Pakistan vs. Ministry of Interior (Case No. 11 of 2011) a case reported as PLD 2014, Supreme Court, 389<sup>263</sup>. Article 184(3) of the Constitution empowers the Supreme Court to exercise *suomoto* powers. Supreme court invoked this section in matters of public interest issues related to corruption, misuse of authority, and human rights. Court elucidated Articles 4, 9, 14, 25, and 37 of the Constitution. The Court emphasized guard of human rights, particularly right to life (Article 9) and dignity (Article 14), accountability of public

---

<sup>263</sup> Pakistan vs. Ministry of Interior (Case No. 11 of 2011) a case reported as PLD 2014, Supreme Court, 389

officials and organizations were given emphasis by the Court. Court endorsed separation of powers between judiciary, executive, and legislature. Interpretation of Constitution, Directive Principles, Human Rights, Accountability and Separation of Powers were clarified in it. However, Court exposed judicial activism by taking cognizance of matters not directly brought before it. Precedent for suo motu jurisdiction and judicial activism were effects of this hall mark judgment. As a result of this judgment avenues opened for Anti-corruption campaign, firming up accountability mechanisms by expressing accountability of public officials and reinforced human rights protections. The Court ordered protection for whistleblowers, recommended reforms in investigation agencies, directed action against corrupt officials, found evidence of widespread corruption and misuse of authority, Court held NRO unconstitutional. Court also faced condemnations on the view that it surpassed its jurisdiction, discrimination by targeting certain persons and political drives behind the judgment.<sup>264</sup>

In the same judgment it was ordered that the unauthorized occupied land belonging to National Police Foundation (NPF) should be returned to legal owners.

The Court ordered the restoration of NPF land for its original purpose, the removal of unlawful occupiers from NPF land, inquiry into the land grab and action against those responsible. The decision created the impact on NPF by recovery of grabbed land, restoration of NPF's original purpose, improved management and governance and enhanced welfare services for police personnel.

A point was raised by Senator Farhatullah Babar that the mandate of Senate Committee on Delegated Legislation is to review rules and bye laws regulating National Police

---

<sup>264</sup> Ibid.

Foundation, but the Foundation gave its view that being private entity, the Senate Committee on Delegated Legislation lacks jurisdiction to review its Rules and Regulations. So, the, Committee may not poke into affairs of National Police Foundation. The senator asked the Foundation to explain their legal status. He inquired about it whether this has been created by act of parliament or is a government entity. Then in both cases the Committee is authorized to review these legislations. At the same time Ministry of Interior expressed that National Police Foundation falls is the subject body of the Ministry of interior under rules of business. Thus the, claim of NPF of being a private entity was rejected. Further Justice (R) Muhammad Raza Khan explained Police foundation is not a formal body. However, Government has control over public as well as private bodies, in present case it is a charitable endowment entity. Senator FarhatullahBabar then pointed out the concerns about allotment to the police employees. He gave his views that only the employees, their dependents, retired and deceased employees of the police Foundation must be given the allotment. The Committee directed the police foundation to share the rules and regulations to the Committee for its scrutiny.

## **5.7. National School of Public Policy Rules 2017 Framed Under NSPP Amendment Ordinance 2017:**

It was informed by the Establishment division to the committee that the rules are in process to be made after consultation with National School of Public Policy. The rules shall be made in the light of instructions given by the delegated legislation Committee and the Finance Division. They sought some more time for this process. The Committee on

delegated legislation conceded to the request, and the matter was disposed of. However, the direction was given that complete the said process within the time span of two months and the rules after accomplishment be reported to the Committee.<sup>265</sup> .

The National School of Public Policy Rules 2017 formulated under the National School of Public Policy Ordinance, 2002, through S.R.O. 126(I)/2017 with the objective of promoting effective public policy and governance in Pakistan. These rules sketch the framework for the school's operations, including its budget, accounts, and audit procedures and establishment of the National School of Public Policy. The school's budget is to be approved, and its accounts are to be maintained and audited in a prescribed manner. The rules were amended through the National School of Public Policy (Amendment) Act, 2017 (XXXI of 2017), which came into effect on May 6, 2017. The National School of Public Policy Rules 2017 demonstrate the government's commitment to strengthen public policy and governance in Pakistan. By establishing a clear framework for the school's operations, these rules aim to promote effective policy-making and implementation.

#### **5.7.1. Rules in The Light of Section 5 And 5-A of The Federal Service Tribunal Act, 1973:**

Section 5 envisages the Jurisdiction of the Tribunal that explains the Tribunal shall have complete jurisdiction to hear and determine appeals against decisions of federal government agencies. The Appeals are related to recruitment, promotion, transfer, and disciplinary actions. On the other hand, Section 5A transpires limitation on Jurisdiction that is the Tribunal shall not have jurisdiction over matters related to Policy decisions

---

<sup>265</sup> Ibid.

of the federal government, Appointments made by the President or Prime Minister and decisions of the federal government related to national security. Sections 5 and 5A ensure that the Tribunal cannot interfere with executive discretion in policy matters. The Tribunal's decisions are subject to judicial review by higher courts. The Tribunal's limited jurisdiction ensures efficient decision-making in service-related matters. The Tribunal provides a forum for federal employees to challenge administrative decisions. Interpretation of 'Policy Decisions': Ambiguity surrounding the scope of policy decisions may lead to conflicts. Ensuring the Tribunal's independence and impartiality is crucial and Potential overlap with other courts and tribunals may arise are grave Challenges.

The principal accounting officer is governed by the Rules that have been framed under Section 5-A of the Act while the tribunal with the executing powers has not been empowered with the rules yet under section 5. These rules are to be framed in consultation with the Law & Justice Division before it is declared to be invoked. The Committee desired that the frame of rules should not go beyond the period of three months.

## **5.8. The National Command Authority Act NCA Act 2010 Was Passed inan Open Debate So Subordinate Legislation Should Be Discussed Openly:**

In agenda item no .11 in meeting held on 27/02/2018 report no. eight, some observations were made. When Senator TajHaider intimated the Committee that Secretary Defense requested to postpone the agenda items. Secretary defense intimated that the

matter being very significant would be apprised to Committee by him himself. Senator Tajhaider also, intimated to committee that defense ministry requested to hold the meeting in camera because the rules and regulations of defense ministry are sensitive in nature. The Chairman desired from the ministry of defense to place the rules and regulations before the committee but no representative came up from ministry with the rules and regulations on which the then chairman committee senator Tajhaider offered the discussion on the said scenario. The senator Farhatullah Babar because of the view then the NCA act was passed by parliament it was passed after a detailed debate and discussion of parliament the transparency also demands the open discussion so the open parliamentary debate led to pass the NCA Act 2010 if the act 2010 was passed by an open discussion then why not subordinate legislation made under this act is being brought before the committee for an open discussion, he also informed that where is a ruling of chairman senate that the procedure is to be followed for placement of sensitive or classified information before the parliament but despite of the agreeing of the in camera discussion nobody did appear before the committee to explain the rules and regulations made under the act to run the affair and purposes of the act. The defense ministry ostensibly wishes not to appear before the committee with the rules. Parliamentarian sitting in committee were surprised that why the subordinate legislation is being made so secret, why it is being guarded from the parliamentary committee. Why parliamentary committee has created its parent law. Why is the mother of parent law being avoided to discuss the child of that parent law? These questions will always live to ask the executive ministry the delegated power may not be hide from the empowering platform.

The NCA Act 2010 was passed to establish a statutory framework for Pakistan's nuclear command and control structure. - Nuclear policy-making, Command and control, Strategic

assets management and nuclear safety and security are its primary functions. Strategic Plans Division (SPD), National Strategic Forces Command and Strategic Forces Headquarters are the Nuclear Command Authority Structure. Civil-Military Coordination, Parliamentary Oversight, International Cooperation, Nuclear Safety and Security and Transparency and Accountability are its key features. National Command Authority Rules, 2011, Strategic Plans Division (SPD) Regulations, 2012, Nuclear Safety and Security Regulations, 2013 and Command and Control Procedures, 2014 are Rules and Regulations thereunder for the fulfilment of the purposes of the Acts. Ensuring Civil-Military Balance, Maintaining Nuclear Security, Addressing International Concerns and Balancing National Security and International Obligations are Challenges the Amendments National Command Authority (Amendment) Act, 2016 and Strategic Plans Division (Amendment) Regulations, 2018 have been made. Pakistan Nuclear Regulatory Authority (PNRA) Act, 2013 and Export Control on Goods, Technologies, Materials and Equipment Related to Nuclear and Biological Weapons Act, 2004 are the Related Laws.<sup>266</sup>

### **5.8.1. Time Frame of 6 Months for Rule Making:**

Discussion of the possibility of inclusion of time frame of six months the committee desired to fix the time frame for upcoming subordinate legislation, the committee desired that all the upcoming subordinate legislation, made within the time frame of 6 months. The committee made it realized that all the subordinate legislation is made under the power given in the primary legislation. So, it may be made a necessary provision in primary legislation that the rule making powers should include the time frame of those rules to be made within that specified time. The subordinate legislation after having been framed

---

<sup>266</sup> Ibid.

within that period of time might be submitted before the senate committee on delegated legislation for the purposes of its scrutiny. In future legislation for making of rules, regulations, under various acts or ordinances and thereafter submitting these rules and regulations to the Committee for their scrutiny. Members of the Committee endorsed the said provision, and suggested to make it part of every primary legislation that provides rule-making powers.

#### **5.8.2. Time Frame for Rule-Making under the Act:**

According to Section 31(2) of the General Clauses Act, 1897, rules to be made within 6 months to 1 year after enactment immediately and according to Section 32(2) of the General Clauses Act, 1897: 3-6 months for notification.<sup>267</sup>

At times Act itself provides Specific Time Frames for rule making. For example, National Command Authority Act, 2010 in its section 22 provides 6 months<sup>268</sup> and Pakistan Nuclear Regulatory Authority Act, 2013 provides in its section 33 provides 3 months for rules making. In exceptional and special cases Federal Government, Relevant Ministry may grant Extension of Time Frame. In case of non-compliance consequences like invalidity of rules, judicial review and Legislative intervention arise.

### **5.9. To scrutinize/examine Delegated Legislation of the Ministry of Information Technology and Telecommunication:**

To scrutinize/examine Delegated Legislation of the Ministry of Information Technology and Telecommunication were the TORs of the Sub-Committee on Information Technology and Telecommunication Sub-Committee on Privatization. Contemplated in the Report of

---

<sup>267</sup>The General Clauses Act, 1897, (Act No. X OF 1897),

<sup>268</sup>National Command Authority Act, 2010, (ACT No. V OF 2010)

the subcommittee of the senate committee on delegated legislation which was made in pursuance of Rules 263 of the Rules of Procedure and the Conduct of Business in the Senate, 2012, the pre requisites of Rule 183 of the Rules of Procedure and the Conduct of Business in the Senate, 2012, was dispensed with so that enabling the Committee on Delegated Legislation to create multiple committees. Besides, the said sub-committees were also from exempted from dissolution on two months of time period.

The Ministry of Information Technology and Telecommunications in Pakistan is governed by several laws and regulations. Important Laws governing the business of this ministry include The National Information Technology Board Act, 2022, which establishes the National Information Technology Board to promote e-governance and regulate IT services, Pakistan Telecommunication (Re-Organization) Act, 1996, which reorganized the telecommunications sector and established the Pakistan Telecommunication Authority. These rules and regulations demonstrate the Ministry's efforts to promote the growth of the IT sector while ensuring accountability, transparency, and cyber security in Pakistan.

National Cyber Security Policy 2021, which aims to protect Pakistan's information assets from cyber threats. Furthermore, the Ministry also follows Policies and Regulations such as Rules of Business, 1973, which outline the functions and responsibilities of the Ministry, National IT Policy, which provides a framework for the development of the IT sector in Pakistan. These laws and policies ensure the Ministry's functions are carried out efficiently and effectively, promoting the growth of the IT and telecommunications sector in Pakistan.<sup>269</sup>

The IT Ministry in Pakistan has established several rules in exercise of the powers given by the Acts governing information technology. Significant Rules are The Information

---

<sup>269</sup> Ibid.

Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021; These rules were formed under the Information Technology Act, 2000, and outline guidelines for digital media and intermediaries, Freedom of Information Rules, 2004: These rules aim to promote transparency and accountability in government institutions<sup>3</sup>. Other Relevant Rules and Regulations are The Pakistan Telecommunication (Re-Organization) Act, 1996, which reorganized the telecommunications sector and established the Pakistan Telecommunication Authority.

Sub-Committee on Cabinet Secretariat, Sub-Committee on IT & Telecommunication and Subcommittee on privatization were three sub-committees constituted by the Senate Standing Committee on the Delegated Legislation in an in-house meeting which was held on 3rd June 2016, to plan a scheme for design of sub-committees to review and scrutinize the rules, regulations and orders made or required to be made under the Acts of the Parliament.

Senator Muhammad Daud Khan Achakzai, Advocate Convener, Senator Kalsoom Perveen Member, and Senator Muhammad Javed Abbasi member were in the composition of the Sub-Committee on IT & Telecommunication.

In number of meetings held by the subcommittee and following agenda points were discussed in the meeting

- i. Rules, Regulations, Notifications and SROs in pursuance of the existing Acts of the Parliament to be briefed by the Information Technology and Telecommunication Ministry;
- ii. Rules, Regulations, Notifications and SROs regarding Pakistan Telecommunication Authority (PTA) in pursuance of the existing Acts of the Parliament to be considered;

- iii. Consideration of Rules, Regulations, Notifications and SROS regarding Universal Service Fund (USF) in pursuance of the existing Acts of the Parliament;
- iv. Deliberation of Rules, Regulation, Notifications and SROS regarding Pakistan Telecommunication Employees Trust (PTET) in pursuance of the existing Acts of the Parliament of Pakistan;
- v. Consideration of Rules, Regulations, Notifications and SROs regarding Special Communication Organization (SCO) in pursuance of the existing Acts of the Parliament;

In 2016 subcommittees held 3 meetings, while in 2017 number of meetings held were 12 and in 2018 meetings held were three. Resultantly 18 meetings were held by subcommittees in total.

The officials of the Ministry of Information and Telecommunication (MoITT) briefed to the sub-committee and statutory bodies working there under.

270

A detailed discussion on the working and Rules/Regulations of the Pakistan Telecommunication Authority (PTA) and the Universal Service Fund (USF) was made extensively and concluded that the delegated legislations related to the above-said bodies are not required to be amended being in line with the parent law.

Section 40 of the Pakistan Telecom (Re-Organization) Act, 1996 creates Special Communications Organization (SCO) was the focusing point of discussion of the subcommittee because SCO wanted augmentation in the extent of action from the area of AJ&K and GB to the whole of Pakistan. On MoITT's concern that SCO

---

<sup>270</sup> Ibid.

cannot be permitted to operate in zones other than AJ&K and GB because the provision circumscribes its extent to AJ&K and GB only, the amendments in Section 40 (A) & (B) of the said Act were proposed by SCO. The proposals were reviewed by MoITT and following observations were made

- i. Telecom Act is a primary legislation, Special Communication Organization's (SCO) proposal for amendment in the said Act does not pertain to the Committee on Delegated Legislation.
- ii. The procedure laid down in the Rules of Business 1973 in order to make amendments in Acts of Parliament through official bills, need to be followed.
- iii. There is inconsistency between SCO's proposed amendments in the Pakistan Telecom (Re-Organization) Act 1996 and the Pakistan's telecom regime. Which is less prone to the acceptance as it will necessitate a huge alteration in present telecom policy of Pakistan.
- iv. The policy of government, international commitments and other commercial agreements practiced in telecom sector does not match with the amendments suggested by the SCO in Section 40 (A & B).

After full conversation, it was decided in opinion that there was not essential to present amendments to the Pakistan Telecom (Re-Organization) Act, 1996. Though, the feature if Section 40 certainly impede SCO from working in other parts of Pakistan was settled to be debated more.

SCO informed the sub-committee about the fiat, operational, contextual and space of the SCO. Under section 40 of the Pakistan Telecommunication (Re-organization) Act, 1996,

SCO offers telecom facilities in the Northern Areas of Pakistan and AJK. Section 40 of the Act is copied underneath:<sup>271</sup>

*"Special Communication Organization. Notwithstanding anything contained in section 39, the telecommunication services within the Northern Areas and Azad Jammu & Kashmir shall be operated by the Special Communication Organization and the Authority shall issue license to the Organization accordingly"*

MOITT detained the opinion that under Section 40 of PTR, 1996, SCO has been restricted to function in AJ&K and GB merely. The Ministry further resisted that under Clause 10.2 of the Shareholders Agreement between Government of Pakistan (GoP) and M/s Etisalat, GoP had stretched agreement that "it shall not be concerned directly with the business in Pakistan which is competitive with or likely to be competitive with the business then carried on by the Company, provided that this restriction shall not apply to the NTC or SCO to the extent of the business carried on by those businesses at the date of this Agreement," so SCO cannot be permissible to run in the rest of Pakistan.

After getting equally MoITT and SCO, the sub-committee focused that MoITT shall hold inside meeting with all related investors and submit the consequence of deliberations in the meeting/final opinion to the sub-committee for deliberation. Such guidelines to hold inner get-togethers were given on manifold times from early 2017. Finally, MoITT held a meeting with SCO and other stakeholders including Finance Division, Law Division, PTA and NTC on 24th October 2017. After thorough discussions, it was decided that SCO, NTC and PTA would put forward their opinions on the issue in writing to MoITT, which, will make an inclusive reference for Law Division to acquire

---

<sup>271</sup> Ibid.

their official legal opinion to establish precision or otherwise of the posture taken by SCO and MoITT and hence settle the issue.

The sub-committee took a decision to go fast with the suggestions. In its meeting held on 14th November 2017, the sub-committee noted that MoITT had established views from SCO, NTC and PTA, the Committee directed MoITT not to postpone the issue any more and send the reference to Law Division latest by 17th November 2017 and follow up such that opinion of Law Division was received to the Committee by 24th of November 2017.<sup>272</sup>

On 29th December 2017, in the meeting, the Ministry of Law and Justice imparted that they had shared their view on the matter to MoITT on 15th December 2017. Expounding the opinion of MOLJ he said the provisions of Pakistan Telecommunication (Re-Organization) Act, 1996, cannot be interpreted as imposing a bar on SCO to operate in Pakistan. Moreover, Clause 10.2 of the Shareholders Agreement between Federal Government and M/s Etisalat, which MoITT reflects as a preventive clause for SCO's actions crossways Pakistan, is in clash with section 3 of the Competition Act, 2010. He also emphasized that Shareholders Agreement itself contains a provision that it shall be governed by the laws of Pakistan.

MoITT was not going to agree with the view of MoLJ. It resisted that Stockholders Contract had been arrived into by Government of Pakistan therefore it wanted to be experiential. If changed, it could have grave consequences for the state in numerous means. The matter wanted to be seen as a whole captivating into reason altogether features and deliberations. Furthermore, in 2009 MOLJ had given view in alternative matter connecting Etisalat that the agreement desired to be 'solemnly followed.' Therefore, MoITT was of the

---

<sup>272</sup> Ibid.

view that opinion of MOLJ in the instant case was inconsistent and accordingly they had moved to seek opinion of the Attorney General on 22nd December 2017. Once the opinion of Attorney General (AG) was received, the Committee will be informed. In reply to another query by the Convener, MOLJ representative informed that as per Rules of Business, the concerned ministry (MoITT in this case) has the right to seek opinion of the AG in case the ministry differs with the opinion of MOLJ. If AG's opinion on the matter is the same as MoLJ's, the matter stands finalized. If AG's opinion is different from MoLJ's, the matter is placed before Federal Cabinet for a decision.

In the meeting held on 8th January 2018, the Attorney General for Pakistan appeared before the sub-committee and stated that the agreement with Etisalat was flawed. He showed grave objections on Etisalat is not honoring its commitments under the Agreement And placing of restrictions on national institutions.<sup>273</sup>

In the sub-committee meeting held on 9th February 2018, PTA opined that according to Section 40 of PTR, 1996, SCO had been bestowed Certificate to function and perform tasks of telecommunication in AJ&K and GB, and for the endowment of Authorization to work in rest of Pakistan, the prerequisite of existence of a lawful unit needed to stand met by the SCO. That is, SCO had to be combined with SECP for award of such a card. Additionally, PTR, 1996, assigns roles to different organizations such as PTCL, NTC, SCO, PTA and accordingly SCO had to effort inside its command and achieve altogether codal procedures for award of LDI license,

The Additional Attorney General expounded on the view given by the Attorney General for Pakistan and stated that it is a measured view of AG that Section 40 defines AJ&K and GB as areas where SCO has the special right to activate but the same does not

---

<sup>273</sup> Ibid.

bound SCO to work outside of its exclusive area. Furthermore, in their opinion, intent of legislature at the time of framing the said Act was to stretch SCO an exclusive position that is why it was not made a company through the Act while PTCL was made a company. License was granted to both PTCL and SCO. Therefore, in their opinion, there is no restriction under the said Act on the operations of SCO.

The Advisor Legislative Drafting, Senate Secretariat, Justice (R) Muhammad Raza Khan on the matter was of the view that legally if it is provided in the Act that an institution will operate in specified areas it does not mean that it cannot operate in the other areas.

Section 40 of PTR, 1996, In the light of wide discussions on the issue of enhancement of SCO's area of process, and after hearing all concerned, the sub-committee gave the following observations:

- i. Minister of State for Information Technology and Telecommunication did not attend any meeting of the sub-committee or inform the sub-committee of her stance on the matter.
- ii. M/S Etisalat did not honor any of its own commitments despite of the Attorney General for Pakistan aptly defend decision to grant LDI license to SCO for the whole of Pakistan .it.
- iii. Section 40 of the Pakistan Telecommunication (Re- Organization) Act, 1996, confers special rights to SCO to confer in AJ&K and GB, does not restrain it from the other parts of Pakistan so there is no legal hitch in grant of LDI license to SCO for the all over the of Pakistan.

- iv. SCO has accepted that after getting LDI license for whole of Pakistan, they will not come into fixed-line operations and would not be contending with Etisalat, and Government offices connections, which is the special field of NTC.<sup>274</sup>
- v. Grant of LDI license to SCO for the whole of Pakistan is in the nationwide interest. Secure communication lines are country's need. The income by SCO will also go to public fund.

It is notable that Brief background of the matter is as follows:

(a) The establishment of Pakistan Telecommunication Company Limited (PTCL) was done in 1996. The legal backing was Section 34 of the Pakistan Telecommunication (Re- organization) Act, 1996 (Telecom Act). Under section 39 (2) of the Act, empowered PTCL for providing telecom services to whole of Pakistan in consideration of the license fee determined by the Authority. Issuance of a license to SCO for working in AJK and Northern areas was made under section 40 of the Telecom Act.

(c) After privatization of PTCL in 2006 the 26% shares were divested by Pakistan to Etisalat international telecommunication group for. 2.6 billion US dollars.

To conclude The AG for Pakistan AstherAusafAli gave his opinion that there is no hindrance in the way of proceeding an application penned with the PTCL Authority to give a license which furthers the cause of national security subject business is confined to carry out by the SCO.<sup>275</sup>

## **5.10. Examination of Rules and Regulations by LDC in Senate:**

---

<sup>274</sup> Ibid.

<sup>275</sup> Ibid.

The establishment of the Senate Committee on Delegated Legislation has emerged in pursuance of Rules 172 (C, D & E) of the Rules of Procedure and the Conduct of Business in the Senate, 2012. in order to review and scrutinize rules, regulations and orders made or required to be made under Acts of the Parliament. A setup known as Legislative Drafting Cell (LDC) in senate secretariat for assistance Senate Committees in legislative matters in generally and the Committee on Delegated Legislation specially.

Accordingly, Legislative Drafting, the Cell has been examining legislation for the period 2015-2017 and till now following 18 rules, regulations and orders have been reviewed.

Review of rules:

<b>Sr.no.</b>	<b>Name of rule</b>	<b>Parent legislation</b>	<b>Remarks</b>
1	The Access to Inside Information Regulations, 2016	The Securities and Exchange Commission of Pakistan Act, 1997	No major contradictions
2	The Balloters and Transfer Agent Rules, 2015	The Securities Act, 2015	No major contradictions
3	The Bankers to an Issue of Securities Rules, 2015	The Insurance Ordinance, 2000	No major contradictions
4	The Brand and Certification Development Support Order,		No major contradictions

	2016		
5	The Central Depository (Licensing and Operations) Regulations, 2016		No major contradictions
6	The Civil Servants (Service in International Organizations) Rules, 2016	The Civil Servants Act, 1973	warranting consideration
7	The Drawback of Local Taxes and Levies (Non-Textile) Order, 2016	The Imports and Exports (Control) Act, 1950	No major contradictions
8	The Employees' Provident Fund (Investment in Listed Securities) Rules, 2016		No major contradictions
9	The Evacuee Trust Property Board's Vice Chairman (Appointment and Qualifications) Regulations, 2016	The Evacuee Trust Properties (Management and Disposal) Act, 1975	No major contradictions
10	The Inland Revenue Reward Rules, 2016	The Income Tax Ordinance, 2001	warranting consideration
11	The Insurance Rules, 2017		warranting consideration

12	The Licensed Persons (Obligation under Voluntary Winding-Up) Regulations, 2016	The Companies Ordinance, 1984	No major contradictions
13	The National Commission for Human Rights (Complaint) Rules, 2015	The National Commission for Human Rights Act, 2012	No major contradictions
14	The NEPRA (Market Operator Registration, Standards and Procedure) Rules, 2015	The Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997	warranting consideration
15	The Pakistan Oil (Refining, Blending, Transportation, Storage and Marketing) Rules, 2016	The Oil and Gas Regulatory Authority Ordinance, 2002	warranting consideration
16	The Premium Prize Bond (Registered) Rules, 2017	The Public Debt Act, 1944	warranting consideration
17	The Supreme Court Establishment Service Rules, 2015	The Article 208 of the Constitution of	No major contradictions

		Islamic Republic of Pakistan, 1973	
18	The Underwriters Rules, 2015	The Securities and Exchange Ordinance, 1969	warranting consideration

Table 5.1<sup>276</sup>

In the 9<sup>th</sup> QUARTERLY REPORT OF THE COMMITTEE ON DELEGATED LEGISLATION for May to July 2018 the following was discussed.

### **5.11. Functions and Significance of the Delegated Legislation**

The then care taker Minister for Law and Justice keeping in view of the judgment of 1991 of Justice PirShafi- Ur-Rehman, a discussion on the concept and principles of structural discretion was made by barrister Ali Zafar, hoping that parliament would be able to legislate on the management and streamline of the process of subordinate legislation, to bring transparency and oversight of the executive.

Senator MianRazaRabbani explained the circumstances of the Senate Committee on Delegated legislation to the members

Many parliaments in the world have setup the committee on subordinate legislation and the committees have their own particular modus oprendi accomplished within the time. He discussed the international best practices and refer Canada among many other countries where the parliaments incorporate the sunset clause with the passage of acts by which the time limit is given for the assurance that the executive frames the relevant rules within the

---

<sup>276</sup> Ibid.

specified time. He further explained before the committee that he is moving to university of London to attend the conference on the subject of principles of PLS.

Senator Azam Swati acknowledging the fact that some laws provide a time limit for rule-making proposing that ministry of law and justice should guarantee that the whole new laws must contain time bound provisions, of rulemaking.

The senior advisor of law ministry Malik hakim khan opined that this committee should issue the recommendation that a new law for timely rulemaking be enacted and the same must be followed by ministries to ameliorate the efficacy and efficiency of legislation.<sup>277</sup>

### **5.11.1. Work Out Plans and Working of the Committee**

Four types of work strategies were put forwarded by the Chairperson to be embraced for the Senate Committee on

- a. LDU to examine the subordinate legislation
- b. All ministries to brief the relevant legislation
- c. Public petitions and
- d. examination of the judgments

The Chairperson explained that as the Legislative Drafting Unit (LDU) has shared the experience first option is better than the second one, because it had been detected that ministry showed conflict in debating their own rules for diverse motives. Also, Public Petitions and Reviews of Judgments Should also be made part of the work scheme for the Senate Committee on Delegated Legislation.

---

<sup>277</sup> Senate of Pakistan, Committee on Delegated Legislation, ninth Quarterly Report of Committee on Delegated Legislation, (Islamabad, Publishing Department, 2018) [https://senate.gov.pk/uploads/documents/1536647445\\_192.pdf](https://senate.gov.pk/uploads/documents/1536647445_192.pdf) . Accessed 24<sup>th</sup> December,2023.

The members gave their opinion about the plan and working of the Committee as under:

1. Members suggested to invite the ministries/ department to explain the Committee because the committee lack the human resources to examine the year-wise delegated legislation.
2. Establishment of a Sub-committee be made into existence to improve the competence and general recital of the Senate Committee on Delegated Legislation.
3. The Committee must outsource the law specialists or use the facilities of the LDU team by assigning them with each subcommittee, to inspect the secondary legislation and acquiesce their intelligences to their particular sub- committees. <sup>278</sup>

In the 10<sup>th</sup> QUARTERLY REPORT OF THE COMMITTEE ON DELEGATED LEGISLATION for August to October 2018 following was deliberated.

### **5.11.2. Three Periods of Examination of the Legislation by the Committee on Delegated Legislation.**

The Committee discussed that i) the pre-partition period (ii) the period from Independence to the 18th Amendment and (iii) the post 18th Amendment period shall be the three periods of examination of the legislation by the committee.

The committee constituted two sub-committees for the first two periods, with the directive that to identify the primary legislation for which rules, regulations were not

---

<sup>278</sup> Ibid.

formed by the concerned Ministry, Division or Department if made, whether such rules meet the vires of the Constitution or the parent legislation. Sub-committees shall access the alphabetical catalogue of Federal Laws of Pakistan (1836-2014) assembled by ex-Senator Chaudhary Mohammad Anwar Bhinder. The main Committee shall go through the third period and analyze it within the contours of the legislation.<sup>279</sup>

In the meeting a comprehensive discussion by The Committee was made on the "Report on Academic Seminar Co-organized by the Institute for Advanced Legal Studies, University of London and Westminster Foundation for Democracy". The same report was delivered by Senator MianRazaRabbani. The Committee praised Senator MianRazaRabbani for his contribution in the seminar and demonstration of a paper on behalf of Pakistan at the session. The Committee recognized the London Declaration totally, which emphasizes upon authorizing Parliament for post-legislative scrutiny of laws.<sup>280</sup>

In the 11th QUARTERLY REPORT OF THE COMMITTEE ON DELEGATED LEGISLATION for October to December 2019 it was demonstrated

The Committee took decision to review the delegated legislation which involved the community as a whole in routine. Committee shall take up matters in such an order so the respite can be delivered to the aggrieved parties at the earliest. The Committee took decision to setup sub-committees to examine delegated legislation relating to separate Ministries while the main Committee emphases on institution structure by consolidating and increasing the part of the Committee on delegated legislation. The Committee took

---

<sup>279</sup> Senate of Pakistan, Committee on Delegated Legislation, tenth Quarterly Report of Committee on Delegated Legislation, (Islamabad, Publishing Department, 2018) [https://senate.gov.pk/uploads/documents/1545217051\\_867.pdf](https://senate.gov.pk/uploads/documents/1545217051_867.pdf). Accessed 27<sup>th</sup> December,2023.

<sup>280</sup>Ibid.

decision to check topic specialists for evolving a full plan that can be utilized while assessing the delegated legislation.

The Committee constituted a Sub-Committee including Senator Dr. Ashok Kumar, Senator Dr. Asad Ashraf and Senator Mir Yousaf Badini to appraise the delegated legislation dwelling under the ambit of Ministry of National Health Services, Regulations and Coordination. The Sub-Committee organized two meetings. The Sub-Committee in its first meeting studied altogether the rules, regulations given by the Ministry relating to numerous organizations that falls under its realm. The Sub-Committee was informed by the agents from the National Institute of Health (NIH), Drug Regulatory Authority of Pakistan (DRAP), Pakistan Health Research Council (PHRC), Shaheed Zulfikar Ali Bhutto Medical University (SZABMU), Human Organ Transplant Authority (HOTA), Pakistan Nursing Council (PNC), Pharmacy Council, TIBB Council, and Health Services Academy (HSA). Whereas attending to the session by the agents from these organizations, the Committee renowned with disappointment that even though organizations like Pakistan Nursing Council had been formed in 1973, no rules, regulations in carrying out of the Act of the Parliament had yet been reported. The Sub-Committee opined that this carelessness over such an extended period of time has showed harmful for the nursing profession. The Committee directed the Ministry to frame the rules in consultation with the PNC and report the same immediately. The Sub-Committee also perceived that some of the organizations under the Ministry had overlying area and some had even stopped to serve their purpose post devolution, so it was vibrant that the effort of numerous organizations under the Ministry be combined.

The Sub-Committee shaped for revising the delegated Legislation under the purview of the Ministry of national health Services, regulations and Coordination

following its first meeting decided to embrace a thorough updating with the Pakistan Nursing Council, Human Organ Transplant Authority and the Pakistan Health Research Council. The Committee studied the current construction of the Pakistan Nursing Council and departed through the draft of Rules presented by the Ministry in the light of the Sub-Committee's commendations from the previous meeting. The Committee focused that keeping in view the position nursing profession holds, it's active that the state in the backward parts of the country be also kept in mind. The Committee further fixed the Ministry to present before its monthly report about the position of the notification of rules. The Committee determined to follow-up the subject until and the rules are notified and employed. The Sub-Committee though deliberating the rules relating to the Human Organ Transplant Authority noted that the rules relating to the penalty were not satisfactory. The representative from the authority while clarifying a new case of misconduct more supported the Sub-Committee's posture, as the act was silent about the authority which could re-open a hospital after it had been closed. Also, the clauses related to the penalties likewise required explanation.<sup>281</sup>

In the 1st QUARTERLY REPORT OF THE COMMITTEE ON DELEGATED LEGISLATION June to August, 2021 it was discussed

#### NATURE, SCOPE AND FORMS OF DELEGATED LEGISLATION IN PAKISTAN

The Secretary, Ministry of Law and Justice gave a widespread session on nature, scope and forms of Delegated Legislation. He explained that Article 142 of the Constitution of Islamic Republic of Pakistan, provides that Parliament has special power to make laws in respect of any substance provided in the Federal Legislative List. He more elucidated that

---

<sup>281</sup> Senate of Pakistan, Committee on Delegated Legislation, eleventh Quarterly Report of Committee on Delegated Legislation, (Islamabad, Publishing Department, 2018) [https://senate.gov.pk/uploads/documents/1545217051\\_867.pdf](https://senate.gov.pk/uploads/documents/1545217051_867.pdf). Accessed 29<sup>th</sup> December, 2023.

Acts passed by the Parliament ordinarily grant rule/regulation making powers to the Federal Government that power is called the power of delegated legislation. Parliament enacts a law wherein it confers basic principles and for particulars it delegates its powers to the Federal Government so that parliamentary time is protected and mechanical matters are distributed with in better feature by the executive. Delegated legislation has to be sent to Ministry of Law and Justice for legal vetting as a prerequisite under the Rules of Business 1973,

The Secretary Law & Justice more supplemented that Mustafa Impex judgment carried major fluctuations in operative of the Federal Government. Before, all rules/regulations were passed by Prime Minister in his will but after Mustafa Impex case all rules and regulations made by the Federal government has to be approved by the Cabinet. He supplementary informed that Cabinet has formed a committee

The Cabinet Committee was chaired by Minister of Law and Justice for Disposal of Legislative Cases (CCLC) the Drive of the committee is to scrutinize and pass rules/regulations outlined by the Federal Government. After extensive argument and authorization of rules and regulations by the cabinet committee. They are upstretched before Federal Cabinet for approval under Rule 17(2) of Rules of Business 1973. Later change in it. They are sent to Ministry of Law and Justice which gives them S.R.O no. and then issue it in the official Gazette. The Chairman Committee directed the Secretary, Ministry of Law and Justice to place TORs of the CCLC before this Committee so that

they are discussed in next meeting. He also directed Establishment Division to amend the Rules of Business 1973 in the light of above judgment.<sup>282</sup>

The starred question consisting a matter of public importance concerning current standards, settings and measures of placements as Chief Secretaries in all the provinces also in Azad Jammu & Kashmir and GilgitBaltistan put forward by Senator Kauda Babar in the House and referred to Committee for deliberation & report was also conversed in detail. The individual from the Establishment Division clarified that 4 posting or transfer as Chief Secretaries is made in consultation with provinces as per provisions contained in Rule 15 of the Civil Service of Pakistan (Composition and Cadre) Rules, 1954 read with Inter-Provincial Agreement of 1993. Committee members and the Chairman Committee, uttered concerns over the Rules of 1954 and process for stationing as Chief Secretaries in Kashmir, Gilgit-Baltistan and the four provinces of Pakistan. Speaking the Additional Secretary Establishment Division, the Chairman Committee Senator Farooq Hamid Naek emphasized with apprehension that if the rules were prepared in 1954 then why the Constitution of 1973 is mentioned and Baluchistan is even overlooked in the said rules. Chairman Committee held that Article 146 of the Constitution of Pakistan, 1973, trusted upon by the federal government, to structure said rules does not grant rule-making powers to the federal government regarding posting of Chief Secretaries. He explicated that Article 146 of the Constitution just delivers that the federal government could entrust either conditionally or unconditionally on the provincial government functions in relation to matters to which executive authority of federal government spreads. The Chairman of the

---

<sup>282</sup> Senate of Pakistan, Committee on Delegated Legislation, First Quarterly Report of Committee on Delegated Legislation, (Islamabad, Publishing Department, 2021) [https://senate.gov.pk/uploads/documents/1637319396\\_241.pdf](https://senate.gov.pk/uploads/documents/1637319396_241.pdf) . Accessed 30<sup>th</sup> December,2023.

committee voiced the Additional Secretary Establishment Division with the objection that Prime Minister has been given uncontrolled choice in the rules. He additionally detected that, seemingly, Rules of 1954 are without jurisdiction, inconsistent with the Constitution and outside the possibility and resolution of the Constitution. Consequently, the entire building elevated over these rules falls to the ground and all postings of Chief Secretaries and Inspector Generals of Police being made by the Establishment Division are violative of the Constitution. The Committee directed the Additional Secretary Establishment Division to share comprehensive answer of the government regarding constitutionality of above rules.<sup>283</sup>

## **5.12. General principles for scrutiny of Delegated Legislation:**

Following steps should be considered while reviewing delegated legislation.

- i. If previous provisions were considered or not. Previous provisions are to be considered as given in section 23 of General Clauses Act.
- ii. If delegated legislation instrument were published in accordance with section 20-A of General Clauses Act 1897.<sup>284</sup>
- iii. If delegated legislation instrument was issued by competent authority.
- iv. If delegated legislation instrument was issued by competent authority as elucidated in Rules of Business 1973.
- v. If consultation was done by other stake holders like relevant administrative division and law department.

---

<sup>283</sup> Ibid.

<sup>284</sup> Section 20A -23, The General Clauses Act, 1897, Act No. X OF 1897, Accessed 3rd November, 2024.

- vi. Whether all Schedules of Government Rules of Business were complied with by the administrative Department.
- vii. If authorization of Council of Common Interests was obtained before issuing a Policy.
- viii. If fines, penalties, etc. being imposed through delegated legislation without any such authorization under the Act.
- ix. Exemptions should be based on logic and government decision and be given by speaking order and should not be arbitrary decision.
- x. The reasons for retrospective operation of delegated legislation and was it authorized under the Act.
- xi. Whether Removal of Difficulty Order is consistent with the Act or not.
- xii. At times approval of parliament needed for delegated legislation especially in tax matters.
- xiii. The discretion in delegated legislation should be according to set principles and the power should not be capricious.
- xiv. The powers under delegated legislation should be used for good faith.
- xv. Delegate cannot further delegate.
- xvi. A statutory instrument will not be able to relax any provision of its parent law unless expressly provided by parent law.
- xvii. If a statute provides for anything to be done by means of delegated legislation, then that particular thing shall not be carried out through non-statutory executive orders or office memoranda or by issuing a non-statutory policy instead of delegated legislation.

- xviii. In case a statute is repealed and re-enacted then the delegated legislation issued under the repealed statute shall be brought in conformity with the provisions of the Act re-enacted, within a period of two months from the date of commencement of the Act so re-enacted.
- xix. Delegated legislation shall not contain any provision which could not have been incorporated into a statute, or which was struck down by the Parliament during its debates in the House or in Standing Committees or as not to form part of a statute, or which is against the decision of superior judiciary on any provision of a statute.

### **5.13. The rule 50 of Rules of Procedure and Conduct of Business in the Senate 2012**

The Chairman Committee questioned the Secretary Establishment to describe perspective of the division under the shade of recommendations of the Committee in its last meeting regarding the relocation of Chief Secretaries. The Secretary Establishment yielded that whatsoever is actuality regarding appointment of PAS officers as Chief Secretaries is in accordance with the Constitution and the rulebooks outlined thereunder. He intimated more that the issue under deliberation is sub-judice before the court for adjudication by way of twelve cases where vires of Civil Service of Pakistan (Composition and Cadre) Rules 1954 have been challenged and the same are pending in FST and High Courts. So, any debate over it in the Committee is tantamount to bias verdict taking in the courts of law and tribunal. On it, the Chairman Committee asked Secretary, Law and Justice as if any

restriction is imposed on parliamentary committees to exclude from its discussion a matter undecided in a court of law. Secretary, Law and Justice, referred the rule 50 of Rules of Procedure and Conduct of Business in the Senate 2012. replied that matters pending in courts are outside the observation of or scrutiny by the legislature.

## **5.14. Establishment of CCLC**

**CCLC** is Cabinet Committee for Disposal of Legislative Cases (CCLC). CCLC made its TORs. The CCLC was set up and the establishment of CCLC is within the ambit of Mustafa Impexcase. Deliberation upon TORS were made by Committee with reference to the Cabinet Committee for Disposal of Legislative Cases (CCLC) concerning its part in preparation of delegated legislation. Secretary Law and Justice explained that in order to accelerate the progression of delegated legislation CCLC meetings are arranged on the basis of every week to evaluate suggestions received from various ministers. He further intimated that CCLC is supervising work of all ministries and it oversees, scrutinize and review delegated legislation made by all ministries.<sup>285</sup>

### FOURTH QUARTERLY REPORT OF 2022 OF THE COMMITTEE ON DELEGATED LEGISLATION (SEPTEMBER - DECEMBER, 2022)

#### The Procedure of Formation of Subordinate /Delegated Legislation

The Ministry for Law & Justice briefed the Committee on delegated legislation. The Secretary, Ministry of Law & Justice imparted the Committee regarding the method of creation of delegated legislation by the Ministry Division concerned of the Federal Government in case of enabling provision in the parent legislation. The role of Ministry of

---

<sup>285</sup> Ibid.

Law & Justice and Cabinet Committee for Legislative Cases (CCLC) was emphasized during the process. Additionally, the repetition of drafting subordinate legislation in case of previous publication was briefed to the Committee.<sup>286</sup>

### **The publication requirement of draft u/s 23(4) of the General Clauses Act, 1897**

Chairman Committee asked about the publication requirement of draft u/s 23(4) of the General Clauses Act, 1897 which demands that by-laws or rules after having been published if some objections or suggestions from general public come those to be considered. Secretary Law & Justice apprised the Committee that inclusion of such provision is ascertained in the laws of regulatory bodies containing customers and further shareholders included. It was revealed that draft by-laws or rules are notified but, most of time the general public do not get information of it. Most of the time the draft containing the rules regulations are published on the concerned official websites where the comments from wide spread are gathered too. Yet presently Standard Operating procedures for the previous publication of bylaws are missing.

Committee advised the authorities that the recommendations appearing here to be incorporated as the annexures in the Federal Government Rules:

Annexure A: It is commended that henceforward the whole Bills placed before Parliament shall be escorted by the rules or regulations, to be 'made' under the Bill, or otherwise the rules/regulations have to be drafted within the time period of six months right from the date of assent of the President and these have to be laid before both Houses of Parliament mandatorily.

---

<sup>286</sup>Senate of Pakistan, Committee on Delegated Legislation, Fourth Quarterly Report of Committee on Delegated Legislation, (Islamabad, Publishing Department, 2022) [https://senate.gov.pk/uploads/documents/1698728442\\_431.pdf](https://senate.gov.pk/uploads/documents/1698728442_431.pdf). Accessed 31<sup>st</sup> December,2023.

Annexure B: It is declared that, at the time of introducing a Bill. The Federal Government will, place the monetary influence of the lawmaking to be presented / passed, as a memo too, covering particulars as to entrustment of power/lawmaking to the Government by the Legislature.

Annexure C: It is made recommendatory that, hereafter the Federal Government in the concert of every Ordinance promulgated under Article 89, Constitution, 1973. Illustrate the explanations of reasons and circumstances under which the President arose to the inference that such a condition happens to permit the declaration of an Ordinance. Such part of the concert shall be deleted at the time of passage of the Bill by either House.

On the pointation of the reason of delay and whether the Ministry of Law & Justice has any mechanism in place to expedite the rules or by-laws formation. The Secretary Ministry of Law & Justice was of the view that the delay is merely on part of concerned Ministries / Divisions which are responsible to draft the said by- laws or rules under the provisions of parent Act.

Ministry of Law & Justice Safeguards that no delay be produced in vetting process of rules sent to it and that the same may be empty within two weeks from the Ministry.

Additionally in many meetings of Senate Standing Committee joined by the officers of Ministry of Law & Justice it was mentioned that rules or by-laws which had not been framed for few Acts, Ministry is to write to the concerned Division to accelerate the process of same.<sup>287</sup>

In the light of Rule 172 C of the Rules of Procedure and Conduct of Business in the Senate, 2012 the Committee took decision to examine the present by-laws or rules framed by all Ministries of the Federal Government to date in alphabetical order. In order to

---

<sup>287</sup> Ibid.

achieve the said aim two sub-committees were made the task can be accomplished well in time.

In FIRST QUARTERLY REPORT OF 2023 OF THE COMMITTEE ON DELEGATED LEGISLATION different acts were discussed(JANUARY-MARCH, 2023)

THE ISLAMABAD CAPITAL TERRITORY PRIVATE EDUCATIONAL INSTITUTIONS (REGISTRATION AND REGULATION) ACT, 2013

The Islamabad Capital Territory Private Educational Institutions (Registration and Regulation) Act, 2013 the committee discussed the statute completely in the presence of Ministry of Federal Education and its respective departments in presence of Secretary, Law & Justice.

- i. The National Vocational and Technical Training Commission Act, 2011
- ii. The Pakistan Institute of Fashion & Design Act, 2011.

It was informed by Chairman Committee the Rules i.e. Private Educational Institutions (Registration and Fee Determination) Rules 2016 which have been framed under the Islamabad Capital Territory Private Educational Institutions (Registration and Regulation) Act, 2013 are not appropriate because these are not in conformity with the act. The same has been adjudicated in Islamabad High Court where these rules were challenged on the ground of being ultra vires to the statute. The Court also instructed the ministry concerned to remove the anomaly between the Rules and the Act. Accordingly, Chairman asked if the Ministry substituted the relevant provision in pursuance of the instructions of the court. In reply to the question, the officials from the Private Educational Institutions Regulatory Authority (PEIRA) said that after the contemplation and consultation with all the relevant shareholders the planned revisions to the Rules had been forwarded to the Ministry of Federal Education, the same would be forwarded to the Law Ministry for vetting. The

Committee instructed that the revised draft must be sent to Law Ministry expeditiously and one copy must be supplied to the Committee. Also, it was instructed that the draft must be evaluated and sent back to the Ministry of Federal Education at the earliest.<sup>288</sup>

THE FEDERAL BOARD ON INTERMEDIATE AND SECONDARY EDUCATION ACT, 1975

The status of the Federal Board of Intermediate and Secondary Education Employees Service Regulations, 1989 was inquired about the repealed status by the Chairman Committee. The Federal Board of Intermediate and Secondary Education Employees Service Regulations, 2005 were prevailing but there was no repealing clause in it. Accordingly, the previous one was not repealed by it. Besides, the Chairman fixed the FBISE officials to deliver the Committee with the copy of authorization from the Federal Government that the Ministry needs to structure Rules under the parent Act. Additionally, the Committee participants were intimated that Ministry of Federal Education & Professional Training has shared the numerous rules of Federal Board of Intermediate and Secondary Education (FBISE); nevertheless, the FBISE ACT, 1975 has not been shared in its totality with the meeting.

NATIONAL VOCATIONAL & TECHNICAL TRAINING COMMISSION (NAVTTTC)

Act 2011

The **National Vocational & Technical Training Commission (NAVTTTC) 2011 Act was discussed** wherein amending Acts were shared while the parent Act was missing. So, decision was made that the Ministry may be requested to share the parent Act. Secretary Ministry of Law & Justice clarified that the amendment in the Act was prepared

---

<sup>288</sup> Senate of Pakistan, Committee on Delegated Legislation, First Quarterly Report of Committee on Delegated Legislation, (Islamabad, Publishing Department, 2023) [https://senate.gov.pk/uploads/documents/1698725933\\_156.pdf](https://senate.gov.pk/uploads/documents/1698725933_156.pdf). Accessed 1<sup>st</sup> January,2024.

to create National Vocational & Technical Training Commission (NAVTTTC) institute while National Training Bureau (NTB) was already operational. The idea was to combine the two in one unit conversely it could not be appeared so the two are functioning as distinct units under two detached laws. Chairman Committee focused the Ministry of Federal Education & Professional Training to provide both the laws along with the rules/regulations framed under those Acts.

VOCATIONAL AND TECHNICAL TRAINING COMMISSION EMPLOYEES (SERVICE) REGULATIONS, 2018

During the scrutiny of Vocational and Technical Training Commission Employees (Service) Regulations, 2018 made in the exercise of the power given by The National Vocational and Technical Training Commission Act. 2011,

The committee examining during the meeting, pointed out that the provisos of some rules were in contradiction with the regulations of 2018. The National Vocational and Technical Training Commission Employees (Service) Regulations, 2018 thus were objected upon. However, The DG NAVTTTC guaranteed that a report would be provided within ten days, after necessary amendments, for circulation to the members.<sup>289</sup>

In SECOND QUARTERLY REPORT OF 2023 OF THE COMMITTEE ON DELEGATED LEGISLATION (APRIL-JUNE, 2023) the miscellaneous rules were discussed as follows

INTER-BOARDS COORDINATION COMMISSION ACT 2023

The senate Committee observed, while in case of Inter-Board Committee of Chairmen, that said Act reflects upon the management of the Federal Government on matters connected to prospectuses, schoolbooks and upkeep of morals of education. Yet,

---

<sup>289</sup> Ibid.

the subject rules relate to terms and conditions of service of employees of the Inter-Board Committee of Chairmen (IBCC). Section 7 of the Act deliberates inclosing of rules for carrying out purpose of the Act, but these rules should deal with matters allied with the prospectuses, schoolbooks and maintenance of values of teaching, not with the service structure of employees of IBCC. Therefore, the status of Curriculum Rules under the Act remained unclear.

Moreover, it was noticed that these rules must be formed in the light of act connected with to the IBCC, instead of Federal Supervision of Curricula, Text-books and Maintenance of Standards of Education Act, 1976. Further, after these rules having been framed, Federal Government circulated Inter-Boards Coordination Commission Act 2023, which was accessible in the Gazette of Pakistan on 15th April 2023, but this Act has introduced the re-constitution and transformation of the Inter-Boards Coordination Committee into Inter-Boards Coordination Commission. This Act has repealed the erstwhile Ministry of Education's Resolution No. F. 10-11/86-CEI, dated the 30th day of June, 1987. In order to long appraisal and scrutiny of these rules, the Ministry must arrange for the gazette copies of the afore-cited resolution and Federal Supervision of Curricula, Text-books and Maintenance of Standards of Education Act, 1976 and also review these rules in the light of the said resolution, Acts of 1976 and 2023 and share its progress with this Committee.<sup>290</sup>

#### THE AIRPORT SECURITY FORCE ACT, 1975

---

<sup>290</sup> Senate of Pakistan, Committee on Delegated Legislation, Second Quarterly Report of Committee on Delegated Legislation, (Islamabad, Publishing Department, 2023) [https://senate.gov.pk/uploads/documents/1698728185\\_928.pdf](https://senate.gov.pk/uploads/documents/1698728185_928.pdf) . Accessed 2<sup>nd</sup> January,2024.

The Committee also examined the sub-ordinate legislation of attached departments of Ministry of Aviation namely; Airport Security Force (ASF) and Pakistan Civil Aviation Authority (PCAA), while deliberating the comments of the Committee on The Airport Security Force Act, 1975 and the Officers and Members of the Airports Security Force (Service) Rules, 1978, the Committee asked about the inaccuracy in sub-section (b) of section 4 of the said rules regarding reference of Director General. The Ministry agreed with the observation of the Committee, termed it a typo and promised to correct the same. The remark of Committee on Section 9 of the Airport Security Force Act, 1975 was pondered in detail relating to the delegation of powers by the Federal Government. After full discussion the Committee recommended that Section 9 of the said Act be omitted in light of Mustafa Impex case and that the amendment be initiated by the Ministry of Aviation and forwarded to Ministry of Law & Justice.

Supplementary, through the debate on section 9 of the Airport Security Force (Service) Rules, 1978 the Committee detected that selection in Grade 17 was the power of the Advisor for the Establishment Division, while the post of advisor was empty, constructing the procedure of selection dubious and vague. The Committee declared that this glitch be isolated and that appointment in Grade-17 should be made in accordance with the law and must follow to the civil Servants Act, 1973.<sup>291</sup>

Committee declared that the amendment in rule 11 sub-rule d, and omission of mention of annexure in rule 10 sub-rule 2 of the Airport Security Force (Service) Rules, 1978. The Committee recommended to add reference of ESTA Code in rule 13 of the said rules relating to the validation period of the officers and members.

---

<sup>291</sup> Ibid.

Committee further probed into the process of departmental inquiries being steered under the Act. It was learnt that punitive actions are being taken under the Army Act, while for other managerial and diverse matters, the associates of force are dealt under civilian laws. Such mixture system is not the individuality of Airports Security Force merely; numerous other divisions have alike amalgam models such as Pakistan Coastal Guards.

#### PAKISTAN CIVIL AVIATION ORDINANCE, 1982

The Pakistan Civil Aviation Ordinance, 1982, was discussed at length along with its subordinate legislation including The Civil Aviation Authority Employees (Appointment, Promotion, Transfer and other Service Terms and Conditions) Regulations, 2014. The Committee asked about the Regulation 7 that deals with designation of competent authority against various posts in different pay groups, whereas regulation 14 proposes upon composition of selection board for recruitment and promotion to the posts. But there is difference between the final merit lists of both authorities. Consequently, it was directed by the Committee that regulation 7 of the Civil Aviation Authority Employees (Appointment, Promotion, Transfer and other Service Terms and Conditions) Regulations, 2014, may be reexamined and revised. The Ministry promised to correct it.<sup>292</sup>

### **5.15. Conclusion:**

The rules 172C, 172D, and 172 E of the senate rules of procedure and conduct of business 2012 have set up the Committee on delegated legislation to check the conformity of rules in accordance with the spirit of the constitution and the Act. The content of the rules, retrospectively and the inordinate delay of the rules framed by the ministries is also part of the committee's

---

<sup>292</sup> Ibid.

mandate. The Senate Committee on delegated legislation has been holding meetings and submitting its tri monthly reports containing different recommendations to be followed by the ministries and departments. Among the standing operating procedures of the committee on delegated legislation, the tasks including the completion of minutes within seven days, the agenda point's preparation by director staff, the interaction with government departments by secretary committee, the Circulation of working paper and the role of legislative drafting unit are importantly mentionable.

The Privatization Commission Ordinance 2000, Rules and Regulations Governing National Police Foundation, National Policy Rules 2017, Rules of Federal Civil Service, National Command Authority About 2010, NCA Act 2010 had been subject of the discussion by the Committee. The Committees had been submitting the report before the upper house, i.e., the senate session, together with its observations and recommendations. The legislature drafting unit is a cell of qualified law professionals having law practice background assists the Committees on delegated legislation in identifying the anomalies of the rules with Acts, the discrepancies of the subordinate Legislation with the parent legislation and any other inconsistencies made by the executive to the intent of legislature. The cell also assists the members, i.e., legislature, in pointing them out the illegality, unlawfulness, ultra vires, and the extra constitutionality made by the executive. The important function of the interpretation of the ratio decendi of the honorable courts and, if any per in curium, is found that too is briefed by the cell to the Committee in order to maintain the smooth functioning of the Committee.

Post-Legislative Scrutiny (PLS) application on Delegated Legislation involves reviewing and evaluating the implementation of laws and regulations created under the authority of a parent law. The key differences in PLS application on Delegated Legislation include:

- Scope: PLS for Delegated Legislation focuses on the rules, regulations, and statutory instruments made under the authority of a parent law, whereas PLS for primary legislation reviews the parent law itself.
- Purpose: The purpose of PLS for Delegated Legislation is to ensure that the delegated powers are exercised within the bounds of the parent law and do not exceed the intended scope.
- Mechanisms: PLS for Delegated Legislation often involves parliamentary committees reviewing and scrutinizing the delegated legislation to ensure it aligns with the parent law and does not have unintended consequences.

In Pakistan, the Senate Committee on Delegated Legislation as discussed above is responsible for reviewing delegated legislation to ensure it complies with the parent law

Anybody to conduct PLS on delegated legislation? In Pakistan, the Senate Committee on Delegated Legislation is responsible for reviewing and scrutinizing delegated legislation to ensure it aligns with the parent law and doesn't exceed authority. This committee plays a crucial role in ensuring accountability and transparency in the legislative process <sup>1 2</sup>.

The Pakistan Institute for Parliamentary Services (PIPS) also collaborates with international organizations to promote best practices in Post-Legislative Scrutiny (PLS) and delegated legislation, providing training and capacity-building programs for parliamentarians and officials .

## **6. CHAPTER 6: POST-LEGISLATIVE SCRUTINY IN PAKISTAN: EFFORTS AND INITIATIVES**

### **6.1. Introduction:**

This chapter will discuss the efforts made in Pakistan for the purposes of PLS. Appropriate examination of the laws in order to provide apt suggestions to reform and modernize the laws by a permanent Law Commission was proposed to set up accordingly the Law Commission was created through the ordinance. THE LAW AND JUSTICE COMMISSION OF PAKISTAN ORDINANCE, 1979 was a good move mandated with to review and keep under review on a continuing systematic basis the statutes and other laws with a view to make, recommendations to the Federal Government and the Provincial Governments for the improvement, modernization and reform thereof. The senate Committee on law reforms with its certain TORs like to evaluate the laws for restructuring and suggesting modifications in the laws along with its different findings, observation and recommendations also these steps of the committee emanated from the persuasive observations of the superior courts of Pakistan shall also be made part of discussion in this chapter.

The Law Commission of Pakistan plays a vital part in rereading laws and has a important connection with post-legislative scrutiny. The Commission is responsible for recognizing obsolete, terminated, or unsuccessful laws and suggesting improvements to advance the total legal outline .In the context of post-legislative scrutiny, the Law Commission's role involves:

- Assessing the efficiency of laws: The Commission assesses whether laws have attained their envisioned aims and detects parts for upgrading.

The Commission appraisals laws to fix if they have had any unintentional consequences, such as unduly affecting certain groups or creating unforeseen problems comes under the ambit of Identifying unintended consequences. The ambit of proposing reforms is grounded on its assessments, the Commission acclaims reforms to laws, which can contain modifications, revokes, or new legislation. The Law Commission's effort is thoroughly knotted to post-legislative scrutiny, as it delivers a precarious appraisal of laws and supports to confirm that they are effective, proficient, and attain their envisioned resolutions. By classifying ranges for development, the Commission's recommendations can apprise post-legislative scrutiny procedures, enabling parliamentarians to make knowledgeable verdicts about laws and their implementation.

In the **Report to the Government on Law Reforms, in 1967-70** the Hamoodur Rehman Commission recommended the setting up of a permanent Law Commission with the object to carry out, on the basis of systematical and regularly, appropriate examination of the laws so as to provide apt suggestions to reform and modernize the laws. The Government accepted the proposal lastly after its examination. An Ordinance (Ordinance XIV of 1979) was promulgated in 1979 and the Law Commission was created through the ordinance.

The purposes of the Commission comprise improvement and transformation of laws composed with their amalgamation and systematization. The Commission may propose reforms too in the ranges of legal teaching and system of management of justice. The Commission is also obligatory to eliminate discrepancy, if any, between the laws within the lawmaking capability of Parliament and those of the Assemblies of provinces.

The Federal Government or a Provincial Government may therefore mention to the Commission any substance relevant to its purposes for view and guidance.

The ex-officio Chairman and Member of the Commission is the Chief Justice of Pakistan and Secretary, Law & Justice Division, respectively. Moreover, 10 associates are selected for a time period of three years by the Federal Government on the endorsement of the Chairman. The Chief Justice of Federal Shariat Court, four Chief Justices of the Provincial High Courts and Chairman, Council of Islamic Ideology are ex-officio members of the Commission. A distinct Secretariat controlled by a Secretary shall assist The Commission including the posts in two Joint Secretaries, two Deputy Secretaries, two Research Officers and other ministerial staff.

The working of the Commission and the efficient use of the expertise of the research team in the Secretariat is the specialty of considerations midst the associates of the Commission in many consecutive conferences. The matter appeared for debate in front of the Commission in its meeting held on 15.2.1994. The Commission inspected the composition of it and fixed it as per the current norm, and made following asex-officio members through appropriate amendment in the Ordinance:

- i. the Chief Justice of Federal Shariat Court,
- ii. 4 Chief Justices of High Courts and
- iii. Chairman,
- iv. Council of Islamic Ideology

The Commission additionally took decision to enlarge its constitution by suggestion to include following as ex office members:

- i. WafaqiMohtasib and

- ii. Chairman, Law Reform Committee of the Pakistan Bar Council

The Commission additionally fixed the quantity of non-ex-officio members raising to from 4 to 5. The Likewise Commission with intent to progress its role and supervision took decision, generate a new full-time post of a Member/Vice Chairman. In this method the membership of the Commission would be enlarged from 12 to 16 members. The Commission additionally decided that a yearly report to be formulated by the Commission and presented to the Government for deliberation.<sup>293</sup>

## **6.2. Law Reforms Ordinance 1972**

THE LAW REFORMS ORDINANCE, 1972 was the ORDINANCE NO. XII OF 1972 came in to force on 14th April, 1972, for achieving purposes of giving effect to specific sanctions of the Law Reforms Commission given during 1967—70 for amending exclusive laws, also in the matter the uniform Central legislation was to be achieved was the need of the national interest of Pakistan.

The name of the Ordinance is as under

*“The Law Reforms Ordinance, 1971”.*

The section 2 of the said Ordinance envisages that the code of criminal procedure 1898 specified in the schedule of the Ordinance was amended in the manner given in the fourth column in the schedule.

The substitution or omission, otherwise expressly provided, and certain words substituted omitted were main focus of the said Ordinance.

---

<sup>293</sup>Senate of Pakistan, Committee on Law and Justice, Report No. 43. (Islamabad, Publishing Department, 2016) Law and Justice Commission of Pakistan, (Islamabad, 2021) <http://www.ljcp.gov.pk/Menu%20Items/Publications/Reports%20of%20the%20LJCP/reports/report21.htm>. Accessed 4<sup>th</sup> January, 2024.

Section 3 of the said Ordinance provided appeal to High Court in certain cases. The Ordinance has provided right of an appeal to two or more Judges Bench of a High Court against a single Judge of that Court who has passed a decree passed or made final order in the exercise of the power of its civil jurisdiction.

The same ordinance also provided the Computation of period of limitation for filing an appeal before the double bench. It has also provided the saving clause where certain warrant cases and other cases are saved.<sup>294</sup>

The Chairman of the commission is the Chief Justice of Pakistan. the Chief Justice of the Federal Shariat Court, the Chief Justice of the High Courts, Attorney General for Pakistan, the Secretary, Ministry of Law, Justice and Human Rights, Chairperson for Commission on Women Status, four members, one from each Province, and the members appointed by chairman are the members of the commission under section 3 of the ordinance. Its head office is in Islamabad with a separate secretariat with the secretary of Federal Government.

Section 6 of the Ordinance contemplates the Functions of the Commission. The Commission shall review and keep under review on a continuing systematic basis the statutes and other laws with a view to make, recommendations to the Federal Government and the Provincial Governments for the improvement, modernization and reform thereof and, in particular, for- making or bringing the law s into accord w ith the changing needs of the society, consistent with the ideology of Pakistan and the concept of Islamic social justice; adopting of simple and effective procedure for the administration of laws to ensuresubstantial, in-expensive and speedy justice; arranging the codification and

---

<sup>294</sup>The Law Reforms Ordinance, 1972, (Ordinance No. XII OF 1972),

unification of laws in order to eliminate multiplicity of laws on the same subject; removing anomalies in the laws; repealing obsolete or unnecessary provisions in the laws; simplifying laws for easy comprehension and devising steps to make the society law-conscious. Introduction of reforms in the administration of Justice; And removing inconsistencies between the laws within the legislative competence of Parliament and those within the legislative competence of a Provincial Assembly.

The Commission shall take appropriate measures for—developing and augmenting human resources for efficient court administration and case management; coordination of judiciary and executive, and preparing schemes for access to justice, legal aid and protection of human rights.

The Access to Justice Improvement Account shall be supervised and worked by the Commission.

The Commission will examine the current scheme of education of law and recommend the directives to the federation for advancing the level of education in law.

The Commission shall advise and tender opinion on any matter relevant to its functions referred by The Federal Government, or a Provincial Government if it seeks so.

The Commission is mandated to enter into a Memorandum of Understanding with the Law Commission of any country, subject to the sanction of the Federal Government, or, as the case may be, with any legal or human rights form or group of any republic to cooperate, liaise and contribute through consultation in doing legal research in joining with their own purposes, ease one another in the gathering of information and resources in leading legal research; have two-sided and mutual conversation of reports, study material and other books; enable calls, exercise and interchange of representatives, associates and officers of the respective Commissions or, as the case may be, the respective law or human

rights form or society; And equally settle, on case-by-case basis, on monetary preparations for holding conferences undertaking interchange visits and other actions as imagined in the Memo. The commission is bound to publish a report containing its activities annually. The reports may also be published periodically or the commission shall also publish the special reports necessitating the legislative or implementation effect under the law.

Pakistan Law Commission (PLC), formerly branded as Pakistan Law Commission (PLC), is an organization set up under the Law Commission Ordinance, 1979. It switched the previous Law Commission of Pakistan 1969. It is a Self-governing legal body having the Advisory role to the government on legal matters. To Review and reform laws, to Simplify and modernize legislation, to Promote uniformity in laws, to Advise on international law and treaties, to Conduct research and studies, to Review existing laws and suggest amendments, to Draft new legislation, to Advise on law reform, to Conduct research on legal issues and to Collaborate with international organizations are its main Functions. Such functions effect on publishing the reports on law reform, adopted as Recommendations on legislation, influence significant legislation e.g., Code of Civil Procedure, 1908, Contributes to law reform, Improves access to justice and work as Contributions to policy-making.

Conducting inquiries and investigations, seeking public input and consultations, Publishing reports and recommendations, advising government on legislation are the core mandate of the commission. It has undergone Amendments twice, Law and Justice Commission of Pakistan (Amendment) Act, 1997 and Law and Justice Commission of Pakistan

(Amendment) Ordinance, 2002. The thematic Relevance of these amendments plays a vital role in encouraging law reform, renovating legislation, and safeguardingentree to justice.<sup>295</sup>

Looking into the Background the Law and Justice Commission of Pakistan (Amendment) Act, 1997, amended the original Law and Justice Commission of Pakistan Ordinance, 1979. Act No. VII of 1997 was amended and new was Enacted on April 1, 1997 Aiming to strengthen the Commission by Expanding Commission's scope with insertion of Alternative Dispute Resolution (ADR) mechanisms, Judicial reforms, Law enforcement agencies' efficiency, Greater Commission's powers, Investigation and reports on judicial delays, Recommending reforms in judicial procedures, Advising on international law and treaties, the membership Increased by Additional members from judiciary, bar councils, and government and Representation from provincial governments along with the Establishment of research centers and Collaboration with national and international organizations. Improving justice delivery system, enhancing efficiency of law enforcement agencies, Promotion of ADR mechanisms and strengthening judicial reforms are basic Objectives of this amendment. Accordingly, its positive Impact can be seen like that of Commission's role has grown stronger, there are enriched judicial reforms, Greater ADR mechanisms and Healthier law enforcement coordination. However, Implementation of recommendations, Limited resources and Coordination with stakeholders are still the Challenges need to be subdued.<sup>296</sup>

Examining the Background the Law and Justice Commission of Pakistan (Amendment) Ordinance, 2002, further amended the Law and Justice Commission of

---

<sup>295</sup>Law & Justice Commission, REPORTS NO. 90 – 102,2007-2008. (Islamabad, Publishing Department, 2008 Law and Justice Commission of Pakistan, (Islamabad, 2008) <http://www.ljcp.gov.pk/Menu%20Items/Publications/Reports%20of%20the%20LJCP/90-102.pdf>. Accessed 21st November,2024.

<sup>296</sup>Ibid.

Pakistan Ordinance, 1979., so it Amended Ordinance No. IX of 2002, Promulgated on October 12, 2002 aiming to enhance Commission's effectiveness. It Extended Commission's space by including the acts of Legal aid services, Judicial training and research, Law and justice policy formulation, Improved Commission's powers by Monitoring implementation of recommendations, Evaluation of performance of judicial institutions,, Advising on law reform, Revised membership by Increasing representation from judiciary, Inclusion of experts in law, justice, and human rights and Improved research capabilities by Founding of research centers, Collaboration with national and international organizations. Accordingly, this amendment has Enhanced autonomy, increased focus on judicial reforms, improved research capabilities and expanded scope. Strengthening Commission's role, improving the judicial reforms, enhancing access to justice and better law and justice policy are its positive impacts. But the Challenges like. Implementation of recommendations, Limited resources and Coordination with stakeholders are still there.<sup>297</sup>

**The Senate Special Committee on law reforms:**

The final report of the Senate Special Committee on law reforms encompasses TORs of Committee which were as follows:

1. To evaluate the laws for restructuring and suggesting modifications in the laws, in discussion if needed with Ministry involved.
2. To watch that if in the light of directions or decision given by superior and apex courts the law makers or executive has complied with the directions and if not then suggest essential changes.
3. To study the applicability of international laws in Pakistan.

---

<sup>297</sup> Ibid.

4. To supervise the procedure of accessibility of up-to-date laws on the website of Senate.
5. To present biannually report to the Senate encompassing the functioning and function that has been done by the Committee.

In the first meeting, Committee agreed to give preference to those laws which affect the people and is high priority of Parliament. In this regard letters were also written various ministries including the Ministry of Law and Justice, National Commission for Women, National Commission for Human Rights, Law and Justice Commission, Pakistan Bar Council and Provincial Bar Councils for their suggestions in the process of law reforms.

Total nine meetings were held and amendments in different laws were discussed. The members were requested to impart their view points on the reformation of laws variously. During the discussion of the law reforms among the members following issues remained the focusing point and the need to resolve the anomalies lying between the lines of these areas

- i. tiers in the judicial system,
- ii. compliance of courts judgments,
- iii. family laws,
- iv. merger of special courts into ordinary courts,
- v. NAB law,
- vi. civil service laws,
- vii. NADRA law,
- viii. appointment & accountability mechanisms for judges of constitutional courts

**Tiers of judicial system and merger of special courts:**

Tiers of judicial system and merger of special courts into ordinary courts was the topic of debate during the meeting held on 06th February, 20 March & 27 March 2019. In these three meetings the members of the upper house debated a lot on the need of novelty and modernization of the courts system wherein the Convener of the Committee gave his view point to get the special courts under the ordinary jurisdiction as currently they are not organized by the judiciary. He narrated that high court should have a control on special courts. Senator Muhammad Azam Khan Swati emphasized the necessity to update the courts in accordance with international best practices. Former Senator Mr. Muhammad Anwar Bhinder explained that in his idea inferior courts in Pakistan bear the hefty load which undesirably shakes decision of cases and worth of work. Justice (R) Muhammad Raza Khan professional on issue recommended that removal of revision remedy would decrease delay and load on courts.

**The Guardian and Wards Act, 1890:**

The Guardian and Wards Act, 1890 came under consideration before the Committee, where different aspects of this act were discussed and amendments in the said act were proposed to be replaced in existing provisions. The Muslim Family Laws Ordinance, 1961, was another law for the point of consideration before the committee where certain provisions were debated and the Succession Act, 1925 a statute having a number of anomalies in its structure were the point of contention of the members of the committee. Consequently, a draft, of amendments in the guardian and wards act which was consolidated by the convener himself was circulated among the Members of the committee to consult the same and opine thereof. The said draft was sent to the Ministry of Law with request to examine the draft. The Council of Islamic Ideology (CCI) was contacted to

examine the draft of amendments in the act *ibid* in the light of Injunctions of Islam and solicited its opinion within the contours of Islam. Column Nos.16, 17 and 20 of the Nikkahnama came in to debate of the Committee and member's views were taken in the light of fixing definite part of her ex-husband's property for the divorcee. The Convener of the Committee exclaimed that on the analogy of the Europe the introduced amendments in the relevant columns of the Nikkahnama shall bestow a kind of monetary respite to a divorcee.<sup>298</sup>

### **The Pakistan Citizenship Act, 1951**

In the meeting of 27th March 2019, the Committee debated on the verdict of supreme court in a case titled of Ibrahim vs. Government of Pakistan the discussion was made on the direction of the court given in this case regarding the implementation of the said decision of the Supreme Court in order to amend the section 14(3) of the Pakistan Citizenship Act, 1951, section 11 of the National Data Base and Registration Authority Ordinance, 2000. The interior minister gave his opinion that the Pakistan citizenship Act 1951 with the premium of section 14th is not in the need of amending it because the Guidelines about it already have been issued in accordance with the letter and spirit of the requirement, and those guidelines were vetted by the ministry of law similarly, the mechanism for the. Appointing and impeaching the judges of the higher Judiciary. By the majlis e Shoora was the topic of discussion in the meeting of the set committee in 27th on 27th December. 2000 on 24th September 2000, Senator Farooq Ahmed naik, who was the convener of the members that a subcommittee of the parliamentary committee on the appointment of Japanese. Was preparing a drop build wheel. It had settled the most appointment follow the same mechanism as for the appointment and accountability of the

---

<sup>298</sup> *Ibid.*

judges. The committee had very deliberately planned of word on that drafted, will after consultation of all the stakeholders, and which had been also given to the long minister, the then anterior minister Zahid Hamlet. Senator Muhammad JavidAbassi by the endorsement of this view of the committee, removed that the draft bill, which was prepared after thorough consideration of all the aspects of the matter and hearing of experts and the concern stakeholders. Who emphasized the requirement for the involvement of parliament? The procedure of accountability of judges in the light off. The proper and unknown global practices, which have already been adapted by various countries, for example, the country like Australia and India.

**The process of accountability of the judges;**

While discussing the process of accountability of the judges to make them accountable the committee expressed despair and expressed that the present process of accountability of judges of superior courts is extinct and dormant that is found nowhere in the advanced countries and focusedthe necessity for developing a neat and clean, efficient methodology to make their accountability against the alleged act of misconduct. Senator Muhammad Ali Khan Saifclarifiedthat the situation becomes confusing in this matter because of the absentia of apt definition of the term 'misconduct'. Resultantly, many cases that involve the allegation of misconduct of the judges remain pend in the supreme judicial council body and wait for its adjudication. Senator Muhammad JavedAbbasi focused that the American model is a relevant model regarding the accountability of judge's where the US Senate performs key function in the termination of judges. The model may be adopted in Pakistan. Senator Anwar ulHaqKakarthe then senator who became care taker Prime Minister thereafter suggested that the problem of accountability of judges is not only political but also constitutional in nature so all shareholders that may include the Bar

Councils, the media and the civil society might be got into confidence in order to step forward for the resolution of the said issue.

**The NAB & the Anti-Money Laundering Act, 2010**

The subject of authority of National Accountability Bureau regarding the offences relating to the money laundering law was meticulously deliberated in the meeting held on 27th December 2019. The Convener of the Committee stated that the National Accountability Bureau is mandated to take action against the act of money laundering if section 9 of the Anti-Money Laundering Act, 2010 attracts it. He gave his observation that the NAB, nonetheless, cannot take action against all sorts of money laundering, principally when it is not going to involve act of graft. He specified that it is significant to delineate which cases come under the Act and what powers the Federal Investigation Agency and NAB have been conferred regarding this. He additionally expressed that a type of overlying is found on the powers of both investigating agencies. The Convener also sketched devotion of the members to the posting Pakistan on grey list by Financial Action Task Force (FATF) on account of money laundering and terror financing. He opined that there is need to sift the reasons from the chaff for such posting and elimination of inadequacies in the national laws.<sup>299</sup>

**6.3. Case Law: Muhammad Ibrahim Shaikh---Petitioner Versus Government of Pakistan Through Secretary Ministry of Defence and Others---**

---

<sup>299</sup>Senate of Pakistan, Committee on Law Reforms, Final Report of Committee on Law Reforms, (Islamabad, Publishing Department, 2018)  
[https://senate.gov.pk/uploads/documents/1612431457\\_795.pdf](https://senate.gov.pk/uploads/documents/1612431457_795.pdf). Accessed 12<sup>th</sup> January, 2024.

P L D 2019 Supreme Court 133 is a case that revolves around the Dual Nationality of all officials of all services of Pakistan. This judgment scrutinizes the section 14 of citizen ship act 1951, NADRA... and.... in this judgment MUHAMMAD IBRAHIM SHAIKH--- Petitioner Versus GOVERNMENT OF PAKISTAN through Secretary Ministry of Defense and others--- Respondents also SuoMotu Case No.3 along with Civil Petitions., the chief justice:MianSaqibNisar, C.J., in the company of Umar Ata Bandial and Ijazul Ahsan, after a detail scrutiny of the above provisions give certain observations for parliament as follows.<sup>300</sup>

***The proposals presented by the Supreme Court with regard to dual nationals***

Following are the proposals presented by the Supreme Court with regard to dual nationals or persons whose spouses were two nationals or whose spouses were foreign nationals that were to be considered by the Parliament.

Dual nationals fell within the definition of citizens (of Pakistan). It was for the Federal and Provincial Governments to consider whether they should: -

- i. Make negative list(s) of posts of that Government service where personnel or their partners having two nationalities, must not usually be posted reason thereby to safeguard the statesafety and important public interest, excepting the approval of the relevant Cabinets;
- ii. List(s) of Government personnel whose nationalities or their partner's nationalities are double along with their current post may Present the report before the majlis e Shoora and the assembly concerned at the eve of financial year comes to an end

---

<sup>300</sup> Muhammad Ibrahim Shaikh Versus Government Of Pakistan Through Secretary Ministry of Defence and others--- P L D 2019 Supreme Court 133

- iii. Expressbad list(s) of posts (executive/top decision-making posts possibly) inside independent/semi-autonomous constitutional bodies/administrations and corporations etc. which were possessed/measured/ruled by the Central and Local Governments, to which people holding double nationalities or whose partners were twofold nationals, must not generally be chosen for motives of protection of national safety or vibrant state interest, but with the acquiescence of the own group or parental section; and
- iv. Propoundbeforehand the individual governments or parental sections at the finish of separately monetary year list(s) of staffs of self-directed/semi-autonomous legal bodies/administrations and corporations etc. which were possessed/controlled/ruled by the Central and/or Provincial Managements who were twin nationals and/or wedded to double residents, and the postings detained by themRegarding to the public functionaries whose partners haunted nationalities other than that of Pakistan, i.e. who were aliens (with those of Pakistan origin), the particular Governments may deliberate that the suggestions stated above must too apply to the concerned officers.<sup>301</sup>

### **6.3.1. The suggestions given by the Supreme Court regarding the immigrants ---**

While having scrutinized section 11 of the ordinance along with other provisions and rule the Supreme Court bench issued proposal for the parliament which are as follows:

---

<sup>301</sup> Ibid.

Next are the suggestions given by the Supreme Court regarding the immigrants, plus those of Pakistan origin who detained Pakistan Origin Cards that were to be well-thought-out by the Parliament.

With respect to outsiders, which comprised those of Pakistan origin who detained Pakistan Origin Cards (POC), it was for the Central and Provincial Governments to deliberate whether they should: -

- i. Levy a comprehensive prohibition on service of non-citizens, i.e. aliens (of Pakistan or non-Pakistan origin) on service inside the Government package;
- ii. The Central and Provincial Administrations must, rather in combination with each other, advance standards and standard operating procedures regarding the service of non-citizens inside the Administration service anywhere lessening after the over-all ban was thought essential in the public interest. The service of non-citizens should be matter to endorsement of the particular Cabinets;
- iii. Express bad list(s) of posts (executive/top decision-making posts possibly) inside independent/semi-autonomous constitutional bodies/administrations and corporations etc. which were possessed/measured/ruled by the Central and/or Local Governments, to which people holding double nationalities or whose partners were twofold nationals, must not generally be chosen for motives of protection of national safety and/or vibrant state interest, but with the acquiescence of the own group or parental section and

Propound beforehand the individual governments or parental sections at the finish of separately monetary year list(s) of staffs of self-directed/semi-autonomous legal bodies/administrations and corporations etc. which were possessed/controlled/ruled by the Central and/or Provincial Managements who were twin nationals and/or wedded to double residents, and the postings

detained by them. regarding to the public functionaries whose partners had nationalities other than that of Pakistan, i.e. who were aliens (with those of Pakistan origin), the particular Governments may deliberate that the suggestions stated above must to apply to the concerned officers.<sup>302</sup>

### **Section 14 of Citizenship Act, 1951**

The Plain language of section 14 of CITIZENSHIP ACT, 1951 envisages that **Dual citizenship or nationality is not permitted. Sub-section 1 of section 14 transpires that** under the command of this section if any of the persons is inhabitant of Pakistan and is at the similar time a native or national of some additional state, he will end to be a national of Pakistan, however if he submits a statement in accordance with the laws of that additionalstaterejecting his position as inhabitant or national thereof then he shall remain a citizen.

The above sub-section-1 does not apply to certain personslike a person who is minor and has not attained the age of majority, an Acceding State person, a person who, being or having at any time been, a citizen of Pakistan, is also the citizen of the United Kingdom and Colonies or of such other country as the Federal Government may, by notification in the official Gazette, postulate in this behalf. And a female citizen of Pakistan who is married to a person who is not a citizen of Pakistan.<sup>303</sup>

---

<sup>302</sup> Ibid.

<sup>303</sup> The Pakistan Citizenship Act, 1951, (Act No. IIOf 1951).

### **6.3.2. Section 10 Of the National Database and Registration Authority Ordinance, 2000**

The Plain language of the section 10 of The National Database and Registration Authority Ordinance, 2000, speaks on Pakistan Origin Cards that envisages that an Authority will issue cards according to an approved criteria to the foreigners and the citizens with dual nationality if they get themselves registered<sup>304</sup>

### **6.4. Report of The Senate Standing Committee on Law Reforms:**

The, the Chairman Standing Committee on Law and Justice presented the report on “The Guardian and Wards (Amendment) Bill, 2019”, introduced by Senator Farooq Hamid Naek, in the Senate sitting held on 6<sup>th</sup> January, 2020 and referred to the Committee for consideration and report.

The composition of that Committee was as Senator Muhammad Javed Abbasi, Senator Mian Raza Rabbani, Senator Farooq Hamid Naek, Senator Zeeshan Khanzada, Senator Siraj al-Haq, | Senator Syed Muzaffar Hussain Shah, Senator Ayesha Raza Farooq, Senator Dr. Ghous Muhammad Khan Niazi, Senator Mustafa Nawaz Khokhar, Senator Sana Jamali, Senator Walid Iqbal, Senator Muhammad Ali Khan Saif, Senator Musiek Masood Malik, Minister for Law and Justice Ex-Officio.

The Committee deliberated the Bill in its different sittings and arranged definite conversation in the meeting on 29<sup>th</sup> January 2021. The Chairman Committee shared with the Members that the Guardian and Wards (Amendment), Bill

---

<sup>304</sup> The National Database and Registration Authority Ordinance, 2000, (Ordinance No. VIII of 2000).

2019, having been introduced by Senator Farooq Hamid Naek, as had been under the debate in detail by the Members and concerned ministries.

Senator Farooq Hamid Naek, apprised regarding Hizanat (the upbringing of a minor child by the mother or by some legally entitled to it) in the meeting held on 13<sup>th</sup> July 2020. He deliberated that the amendment seeks to resolve the issue of Hizanat because the same has been focused upon in many cases. Case that the issue of Hizanat, the upbringing of a minor child by the mother or by some legally entitled to it lacks the express legislative provisions on it. Senator Musadik Masood Malik observed that the difference of age for a male and female child for the purpose of custody by mother is objectionable accordingly he proposed to fix the age similar i.e. either 7 years or 16 years for both male and female children in order to secure the gender equality; Senator Naek asserted that the justification of fixation of the ages i.e. 7 years and adolescence or 16 years for male and female youngsters separately was that a male child wants his father more afterward he attains the age of 7 years since whereas he grows up he can converse numerous questions with father more restfully than his mother, and a female child has the similar ease with her mother than her father. Though, he thought that if Committee settled to fix the age of 16 years for both male and female children, he would have no objection to it.

Senator Musadik Masood Malik also raised objections on father's right of Hizanat that has been proposed subsequently all female relatives, that is not logical. At this, the Member-In-Charge approved that right of Hizanat of father should come instantaneously after mother.<sup>305</sup>

---

<sup>305</sup>Senate of Pakistan, Committee on Law and Justice, Report No. 43. (Islamabad, Publishing Department, 2016 Law and Justice Commission of Pakistan, (Islamabad, 2021) [https://senate.gov.pk/uploads/documents/1612435275\\_931.pdf](https://senate.gov.pk/uploads/documents/1612435275_931.pdf). Accessed 21<sup>st</sup> January, 2024.

Ministry of Religious Affairs unfilled two main objections on the Bill. First, the Guardian and Wards Act, 1890, is applicable on all Pakistanis regardless of their religions while the provisions on hizanat projected in the Bill under deliberation principally convey the focus of Islamic principles, and in that too only the Hanafiqah. Secondly, Sections 7 & 17 of the Act authorize the Courts to engage and announce a guardian of a person/property of 'minor child' keeping in view wellbeing of the kid regarding his or her age, gender, religion, character and capacity of the proposed guardian and his immediacy of kin to minor. With this elasticity, the courts decide the custody and guardianship on case-to-case base whereas keeping specific conditions of the parties. It was up-to-date to the Committee that amendments might block the latitude of the statute to one sect or religious minority. Senator Mustafa Nawaz Khokhar protested to the detail that Ministry of Religious Affairs had founded its explanations on areas old book of a religious scholar from a specific clique, which was neither appropriate to altogether nor was adequate to encounter the trials of the contemporary time. He also opposed to cancelation of mother's right to Hizanat in case she remarries or remarries someone exterior to the family and termed them against the law of natural eye as well as Islam.<sup>306</sup>

A BILL the Guardians and Wards (Amendment) Act, 2020 was introduced on 06-01-2020 in the Senate in order to amend the Guardians and Wards Act thinking it expedient to amend the same for the purposes hereinafter appearing that was enacted in its extent to the Islamabad Capital Territory for coming into force at once. The bill consists of three clauses, in clause 2 Amendment of section 4, has been drafted. In section 4 sub-section (6), has been inserted which is basically definition of "Hizanat" which has been defined as the legal right of custody of a child.

---

<sup>306</sup> Ibid.

In clause 3 new sections 19A: Hizanat of Children, 19B: Right of Hizanat after mother, of women relatives, 19C: male relative Hizanat, 19D: Right of Hizanat of other Relatives, 19E: Lapse of women hizanat, 19F: Preference of child, 19G: power to make interlocutory orders.

New section 19A. Hizanat of Children intends to incorporate that the male child till age of 7 and female child till puberty or attainment of 16 years of age is basically the entitlement for custody of the real mother

19B. Right of Hizanat after mother, of women relatives intends to incorporate that if there is no real mother due to any reason, the guardian ship of male child till age of 7 and female child till puberty or attainment of 16 years of age shall be transferred to female relatives in following order: Maternal Grandmother however so high in Degree, Paternal Grandmother however so high in degree, full sister, uterine sister, consanguine sister, full sister's daughter, uterine sister's daughter, consanguine sister's daughter, mother's sister end father's sister.

19C: male relative Hizanatintends to incorporate that in case of absence due to any reason of any entitled women forHizanat then the guardian ship shall be transferred to male relatives in the following order:

Father, Maternal Grandfather however so high in decree, Paternal grandfather however so high in degree, full Brother, uterine brother, consanguine brother, full Brother's son, Uterine Brothers son, consanguine brother son.

19D: Right of Hizanat of other Relatives intends to incorporate that if none of the person cited in section 19A, 19B, 19C and 19 D is available for any reason then the guardian ship of will be transferred to closest relative in order of inheritance.

19E: Lapse of woman hizanat intends that the right of hizanat will cease in one case and that is when wellbeing of minor is compromised.

19F: Preference of child, intends that as soon as male child will gain age of 7 and female child will gain age of 10 then the right of hizanat will be given on the choice of child. And 19G: power to make interlocutory orders intends that court can pass interim order concerning the child custody.

Basically, the mover SENATOR FAROOQ HAMID NAEK after scrutiny of the said act Guardians and Wards Act 1890 and after going through the judgment of Supreme Court felt the need of the insertion of new section. These amendments pursue to codify and elucidate current case laws and provide Guard to mothers in nexus to the guardianship of their kins. Moreover, its significances to array the pyramid of preference in relation to safekeeping.<sup>307</sup>

### **6.5. Observation of S C of Pakistan, Sou Moto Case No.1 Of 2005 Judgment PLD 2015 SC257 , Make the Laws Accessible to The Public with Translation and Error Free:**

This case was taken up as Suomoto case no. 1 in 2005 and finalized in 2015. In this case Mr. Justice jawed SKhawaja, Mr. justice Ejaz Afzal khan and Mr. justice Qazifaez Esa while the matter taken up in its original jurisdiction, the federation of Pakistan the government of Baluchistan, the Government of KPK, the government of the Punjab, the government of Sindh were on the courts notice. Brief fact of the Suomoto case is as under

---

<sup>307</sup> Ibid.

Once in 2004 a Suomoto case no.4 was taken then in 2007 case no. 1, 2, 6. And 7 was taken and in 2007 again case no. 17 was taken up because there were a number of law books which were published by some private agency that were presented in courts citation and the same books had serious mistakes in the text of the laws so much so the bare act of the laws were printed full of errors so the bar councils were issued notices on this. The said Suomoto cases were observed by Ifthekar Muhammad chadaury then chief justice observed by chief justice who disposed the matter with directions to the bar council to take actions under the legal practitioners and bar council act 1973 against all those authors and publishers who had made mistakes in bare acts and law books while printing it out on the ground that these law books should not be erroneous.

With the due course of time same facts remained coming in the knowledge of the court for example

- a. The official publication for law is a book titled Pakistan code which was published by the manager of publication Government of Pakistan Karachi 2010.
- b. Provinces were also in disorder while appearing before the court
- c. None of the government took exercise of codification of delegated legislation
- d. Initial instructions on 8.01. 2015, were given to all law secretaries of all governments to make the laws in hard and soft form of every law department.
- e. This is the mannerism of every civilized government to facilitate its citizen with all applicable laws to be made it approachable, understandable for the general public,
- f. The matter of great concern was referred at the point that the article 251 of the constitution of the Pakistan requires that the laws also to be translated in to

national language. It might have been published in to the national language in light of the article 28 of the constitution.

- g. The federal and provincial public functionaries from the law departments assisted lesser to the courts and the presiding officer of the court also had a question to as to why the federal and the provincial laws had not been made available to the general public. They were given time to do accordingly.
- h. The five Governments i.e. federal and 4 provincial Governments were feeble enough to explain favorably the glaring mistakes and omissions having far-reaching results were there in the law.

Finally, after hearing a detailed discussion and debates along with examples from the officers from the federal and provincial governments related to law departments, the honorable bench of Supreme Court under the headship of justice jawed Khawaja, the following directions to be acted upon:

1. Provide all the transcribed laws as Pakistan Code on the website of law ministry.
2. In expensive prices for binded hardcopies of the code have to be made available all over the country in order to make it approachable for the people.
3. An index in the word form alphabetically and consolidate of all statutes to be provided with the statutory definitions in alphabetical form.
4. The Pakistan code published by the manager of publication, Government of Pakistan, Karachi (1968) vol 16 shall be used as the sample for the consolidated word index they should also be put in the procedure of improvement as this is a basic sample.

5. The foot notes peculiarities of amendment made from time to time in different laws printed in the code must be included in the code.
6. The sample of Pakistan code published by manager of publication 1968 must be adapted an improved. Marginal notes shall be made to cross reference the provision of one statute with related provisions in other statute.
7. National language translation would be accomplished and must be shown in simple understanding form with low price.
8. Provinces shall translate the code in to provincial language when they feel it reasonable.
9. Delegated legislation i.e. rules and regulations made under the power conferred by the act will also be assembled in the shape of the code having a combined word index.
10. A collection of whole statutory orders and notifications shall be accumulated and shall be made accessible to the people at low rates.
11. An administrative system shall be set up to assure that all the books published and issued for the public are error free and the patent rights have been allowed
12. The provinces shall follow the instructions as given to the federation for publicizing the soft and hard copies of laws, rules and notifications. Ref.

**6.6. Post Legislative Scrutiny Seeks to Ensure the Text of Laws of Pakistan Accessible to Citizens in Error Free Printing and Publishing.**

For the enactment of this statute the observation of the supreme court of Pakistan in a soumoto case no.1 of 2005 and the judgment in this case reported as judgment PLD 2015 SC 257 is noteworthy as the S.C observed in this case that legislation for the regulation of the publication of books containing laws and the legal materials along with its translations must be enforced to check on the trade of law books with mistakes and materials with errors to the people, this material sometime guide towards glaring results that cause damage to one of the parties in litigation. It is notable here the parliament's competence to legislate on the federal legislative list appearing in the fourth schedule of the constitution does not contain the subject and content of the Acts. Therefore, article 144 of the constitution has been attracted to do this legislation after retrieving the resolutions from all the assemblies in Pakistan after having it passed in order to get this bill introduced for further processing.<sup>308</sup>

### **6.7. Legislation through article 144 of the Constitution:**

Article 144 of the constitution confers the parliament to legislate on the domain of the provinces except to the resolution of the provinces **144 speaks on the Power of [Majlis-e-Shoora (Parliament) to legislate for one or more Provinces by consent i.e. when one or more Assemblies of any province in Pakistan adopt resolutions that Parliament may pass an Act for regulating the matter which is not numbered in either List in the Fourth Schedule. it shall be lawful for Parliament to regulate that matter by law.**<sup>309</sup>

### **6.8. Free from errors text of the law of Pakistan**

---

<sup>308</sup>Sou Moto Case No.1 of 2005--- P L D 2015 SC 257.

<sup>309</sup>Article 144. The Constitution of The Islamic Republic of Pakistan 1973.

Parliament has passed The Publication of Laws of Pakistan Act, 2016 for ensuring the publication of content of the existing laws in Pakistan to be accessible free from errors in order to reproduce, update and print the laws. Parliament took up this issue for the whole of Pakistan and legislated it concurrently for the whole provinces as all the Assemblies including Baluchistan, Khyber Pakhtunkhwa, Punjab and Sindh mandated Parliament after passing Resolutions under Article 144 of the Constitution to the effect to regulate the issue by law; Accordingly, the parliament while contemplating it an expedient act for providing the publication of the textual contents of the laws of Pakistan by reproduction, updating and printing as error-free. The Act was named as the Publication of Laws of Pakistan Act, 2016 which extends to the whole of Pakistan and it has come into force with immediate effect. In particular this Act does not apply to the publication of laws of Pakistan by the Federal Government, a Provincial Government, any House of Majlis-e-Shoora (Parliament) or a Provincial Assembly, but the Governments and Legislatures are bound to preserve interior scrutiny in order to guarantee correctness of the laws printed by them.<sup>310</sup>

### **6.8.1. Registration of publishers**

Under the Publication of Laws of Pakistan Act, 2016 publishers for the law books have to fulfill certain conditions then they shall be eligible to publish the book of law under section 3 of the Act *ibid*. First and foremost, the publishers had to be registered with the Cell; he shall present his publication he has to present his publication before the cell for the purpose of its review and thereafter the Cell shall give him certificate with the endorsement that his

---

<sup>310</sup>Section 1, The Publication Of Laws Of Pakistan Act, 2016, (Act No. XIII OF 2016)

planned book is correct and rationalized. The Cell will, on expense of set fee and satisfaction of the set conditions, register an editor.<sup>311</sup>

It is however notable that some publishers like a public sector organization, a legislature have been exempted from registration under section 4 of this Act but the top leadership of the public sector organization or the secretary Senate, secretary National Assembly, secretary Provincial Assembly, as the case may be, shall guarantee correctness of the contents of a law of Pakistan printed by the public sector organization or, as the case may be, a legislature.<sup>312</sup>

### **6.8.2. Maintenance of Laws of Pakistan**

Section 5 of the Act *ibid* bounds the administrative division and each administrative department that they will uphold true and rationalized form of laws of Pakistan linking to their own area in hard and soft form along with translation thereof minimum in Urdu language and will safeguard harmless care thereof.<sup>313</sup>

### **6.8.3. Laws of Pakistan Cell**

Section 6 of the Act *ibid* envisages Laws of Pakistan Cell commanding that a Laws of Pakistan Cell shall operate in every administrative division and administrative department in their own area which will contain of such officers and staff members to be selected as civil servants under the corresponding laws ready pursuant to Article 240 of the

---

<sup>311</sup> *Ibid*, Section 3

<sup>312</sup> *Ibid*. section 4

<sup>313</sup> *Ibid*. section 5

Constitution of the Islamic Republic of Pakistan for act of their tasks in accord with the requirements of this Act and the relevant rule thereunder.<sup>314</sup>

**6.8.4. The cell has been conferred with certain Powers and functions under the Act.**

Section 7 of the act *ibid* envisages following Powers and functions of the Cell.

- (a) Registration of publishers of laws of Pakistan is the mandate of the cell.
- (b) Regulation of the publication of the benchmark translation of laws of Pakistan;
- (c) Scrutinize all planned publication of a law of Pakistan;
- (d) Circulate certification of correctness up to the extent that the contents of a law of Pakistan put forward by an editor are reliable, exact and modernized till day of such accreditation;
- (e) Seizure of somewhat unlawful journal of a law of Pakistan that encompasses with mistakes and destruction of the same if, in the view of the Cell, the mistakes cannot be remedied is within the power of the cell ;
- (f) Imposition of executive punishment as provided in by the Act *ibid*;
- (g) Orders of de-registration of a producer/publisher or initialization of prosecution under this Act is the mandate of the council.
- (h) Guarantee that, after this Act has been commenced, any of the bookseller cannot sell any journal or publication covering a law of Pakistan without bearing a credential of accurateness is the authority of the cell ; And

---

<sup>314</sup> *Ibid.* section 6

(i) Performing any other role that is related to aforementioned tasks or as might be recommended.<sup>315</sup>

### **6.8.5. Assessment of publications**

Section 8 of the Act contemplates the Review of publications. A registered publisher shall submit a publication of a law of Pakistan the Cell will mandatorily do scrutiny this anticipated instrument within the maximum time period of three months from that date of publication on which it was submitted. The publisher shall pay the prescribed fee for scrutiny of the publication. The Cell shall through the assessment, rectify the mistakes and give the certificate of correctness of the publication.

The Cell shall solitarily evaluate the contents of the law of Pakistan and the certificate of correctness shall also be interpreted to contain responsibility only to the extent of laws other material like commentary shall not be the subject of the cell.

The Cell will keep the authentic duplicate of the publication in harmless protection. Afterward appraisal of a publication has been made. The cell shall be duty bound to deliver a copy of the genuine copy of the publication to publisher for publication and, the publisher shall have satisfied all the fee for the said purposes.<sup>316</sup>

### **6.8.6. Responsibilities of publishers and booksellers**

Section 15 of the Act describe the Duties and responsibilities of publishers and booksellers.

- i. A law of Pakistan in off-set, Photostat, photo-block or any other contemporary scheme of printing including uploading on websites may be designed by a publisher instead of printing it in lithmethod.

---

<sup>315</sup> Ibid. section 7

<sup>316</sup> Ibid. section 8

- ii. A publisher will obtain his sample duplicate of the planned publication of a law of Pakistan matched with the text of the Gazettes and official publication of laws of Pakistan, by a trained person in the work of proof reading of legal publications before the submission to the Cell trained person shall make a declaration in writing that the contents of the laws of Pakistan imitated in the publication are error-free.
- iii. The cover page of all version or publication of a law of Pakistan obviously stands with the name and registration number of the publisher, the batch number of the publication, the name of the printing or database operator, and the day, month and year till which it has been updated shall be confirmed by the Publisher.
- iv. The publisher will, in situation of laws of Pakistan printed after the beginning of this Act, design the certificate of correctness connecting to that publication on the title page of that publication.
- v. The publisher will be duty bound to print within two months the well-run type of law of Pakistan covering all the modifications in respect of which a certificate of accuracy has been delivered by the Cell and where a succeeding adjustment is made after issuance of the certificate of accuracy in the law of Pakistan, the publisher will be bound to pursue within two months of the amendment new certificate of accuracy for publication of the restructured law of Pakistan within two months after issuance of the new certificate of accuracy.
- vi. A bookseller will, after the start of this Law, return the whole publications covering law of Pakistan, to the publisher for publishing the certificate of accuracy thereon

and after this Act gets start a bookseller will confirm that each obtaining of publication covering a law of Pakistan must bear a certificate of precision.<sup>317</sup>

#### **6.8.7. Disclaimer by the publisher**

Section 16 of this law tells the reality Disclaimer by the publisher. No exoneration from the civil and criminal liability has been shaped for the disclaimer by the publisher under this Act Any disclaimer specified by the publisher in his publication containing a law of Pakistan does not attract exoneration of the liability.<sup>318</sup>

#### **6.8.8. Translation of the laws of Pakistan**

Translation of the laws of Pakistan as a comprehensive task has been assigned to The Cell in section 17 of the Act with the responsibility to control the publication of translation of laws of Pakistan. The cell shall issue guidelines, for standard translation of laws of Pakistan in Urdu in its respective domain. The translations of the laws of Pakistan and the publications thereof are subject to all the provisions applicable to the laws of Pakistan under this Act and the rules made thereunder.<sup>319</sup>

#### **6.8.9. De-registration**

Section 18empowers the cell the function of der-registration. The Cell can, in the approved method, de-register a publisher by an order stipulating detail for the order and it is essential for cell that notice to the publisher must be served as well as an opportunity of hearing must be afforded to the publisher.<sup>320</sup>

---

<sup>317</sup> Ibid. section 15

<sup>318</sup> Ibid. section 16

<sup>319</sup> Ibid. section 17

<sup>320</sup> Ibid. section 18

### **6.8.10. Penalty**

Section 19 of the act is a penal clause. It describes the Penalty for non-obedience of the provisions of the Act. That is If some person prints or sells a law of Pakistan in desecration of all or any of the requirements under section 15, the Cell might after giving the notice and providing the opportunity of hearing, instruct the person to pay a fine of a sum which may range to fifty thousand rupees the repeater person shall suffer the penalty which may extend to one hundred thousand rupees.

### **6.8.11. Offences. —,**

Publishing a law of Pakistan without registration and publishing a law of Pakistan without gaining review and certificate of accuracy are offences under section 20 of the Act which are punishable to the fine in term of rupees up to certain limit such published copies of the laws of Pakistan are subject to be seized by the Cell. The police will aid of the Cell, when the Cell requires it in order to fulfil the purposes of this Act.<sup>321</sup>

## **6.9. Post Legislative Scrutiny by Sunset Clause:**

### **6.9.1. CONSTITUTION OF PAKISTAN 1973 PLS BY SUNSET CLAUSE**

A number of suns set clauses are there in the constitution of Pakistan among which few are cited here where the parliamentarian has given the effect of repeal to certain provisions before the commencement of the same with the view that after its operation it shall go redundant, the legislature uses the sunset clause in order to avoid that redundancy.

---

<sup>321</sup> Ibid. section 19

1. **Article 51 of the constitution** gives the criteria of ceasing the operation of the provision after it comes into enforcement while speaking on the seats for members in the National Assembly it has fixed the three hundred and thirty-six number of the members that also includes reserved seats for female and minorities with certain conditions of being Pakistani, of eighteen years of age, listed in electoral roll and of sound mind.

The allocation of the seats in the National to each Province and the Federal Capital are with the division of General Seats Baluchistan 16, Women Seats 4 and Total Seats are 20 while for Khyber Pakhtunkhwa General Seats 45, Women Seats 10 and total 55, Punjab with the ratio of 141 as general, 32 for women and 173 are total, Sind having 61 generals 14 for women and 75 are total, in Federal Capital 3 general only, the Total sum of 266generals 60 for women and 326 as an aggregate.

The clause 3A here is a sunset clause that has pronounced that despite whatever thing controlled in clause (3) or any other law, the National Assembly members elected from the Federally Administered Tribal Areas in the general elections, 2018 would carry on until the closure of the National Assembly and after that this clause will place lost.<sup>322</sup>

**2. Article 8 clause 4:** If Any law, custom or usage having the force of law is inconsistent with the rights conferred by this Chapter, shall, to the extent of such inconsistency be void the suitable Parliament will carry the laws specified in Part II of the First Schedule into conformism with the rights discussed by this Chapter within a period of two years from the commencing day, However, the suitable Parliament can by resolution prolong the said period of two years by a period not exceeding six months<sup>323</sup>

---

<sup>322</sup> Article 51 ,The Constitution of The Islamic Republic of Pakistan 1973.

<sup>323</sup> Ibid. Article 8

The proviso of clause 5 of article 51 provides that for purposes of the next general elections to be held in 2018 and bye-elections related thereto, the allocation shall be made on the basis of provisional results of the 2017 census which shall be published by the Federal Government.

**89. Ordinance:**Article 89 provides a form of constitutional sunset clause by fixing the power of the president. The President may make and promulgate an Ordinance, an Ordinance circulated under this Article shall have the same force and effect as an Act of Parliament every such Ordinance shall stand repealed at the expiration of one hundred and twenty days from its promulgation.<sup>324</sup>

**Power of Governor to promulgate Ordinances: In article 128 sun set clause is visible while power of** The Governor is contained an Ordinance promulgated under Article 128 shall have the same force and effect as an Act of the Provincial Assembly and shall stand repealed at the expiration of ninety days from its promulgation.<sup>325</sup>

## **6.10. The Constitution (Twenty-first Amendment) Act, 2015 (I of 2015)**

The Constitution (Twenty-first Amendment) Act, 2015 is an amendment further to amend the Constitution of the Islamic Republic of Pakistan; while strange disorder and conditions happen which claim distinct actions for quick trial of certain offences connecting to violence, conducting of war or insurgence against Pakistan and stoppage of doings intimidating the safety of Pakistan by any terrorist or terrorist group, armed group, wing and militia or their members using the name of religion or a sect; sad and terrible terrorist

---

<sup>324</sup> Ibid. article 89.

<sup>325</sup> Ibid. article 128.

attack on the Army Public School at Peshawar on 16 December 2014 demands forever wipe out and eliminate terrorists.

The preamble of this amendment envisages that it will stop to be the part of the Constitution and will stand repealed on the end of two years. As a result of this amendment The Pakistan Army Act, The Pakistan Air Force Act, 1953, The Pakistan Navy Ordinance, 1961 and The Protection of Pakistan Act, 2014. Were inserted in the serial No. 5 in sub-part III of Part I of the First Schedule of the Constitution. Resultantly The Provisions of this Article i.e. — Laws inconsistent with or in derogation of Fundamental Rights to be void shall not apply to the laws inserted in schedule for the years.<sup>326</sup>

### **6.11. The Constitution (Twenty-third Amendment) Act, 2017 (XII of 2017)**

23 amendment act is an act that further amends the constitution of Islamic republic of Pakistan. 23<sup>rd</sup> amendment was act XXII of 2017 which came in to force on 30 March 2017. The act was extended in the national interest to continue to special measures adopted pursuant to constitution 21<sup>st</sup> amendment act 2015 (I of 2015) which came in to force on 7 Jan 2015 and stood repealed on expiry of two years on 6 Jan 2017.the provisions of this act remained in force for further period of two years which came in to force at once and deemed to have taken effect on and from 7 Jan 2017. Again, the act received assent of president on 30<sup>th</sup> march 2017. The act was a creation in the society as a result of extra ordinary situation and circumstances.<sup>327</sup>

### **6.12. TheProtectionofPakistanAct,2014 ActNo. X of2014**

---

<sup>326</sup> The Constitution(Twenty first) Amendment Act, 2015.

<sup>327</sup>Constitution(Twenty Third) Amendment Act, 2017.

The Protection of Pakistan Act, 2014 Act No. X of 2014 is an act to provide for protection against waging of war or insurrection against Pakistan and the prevention of acts threatening the security of Pakistan and for speedy trial of offences falling in the schedule and for matters connected therewith or incidental thereto it was enacted to extend to the whole of Pakistan to come into force at once. The proviso of sub-section 3 of section 1 provides that this act shall remain in force for a period of two years from the date it comes into force.

This sunset clause is statutory sun set clause.<sup>328</sup>

### **6.13. Conclusion:**

Above brief discussion busters us to proclaim that Pakistan has taken numerous steps for the scrutiny of existing laws. Law Reforms Ordinance 1972, The Law And Justice Commission Of Pakistan Ordinance, 1979 and the Senate Committee on law reforms with its certain TORs like to evaluate the laws for restructuring and suggest modifications in the laws, to watch that if in the light of directions or decision given by superior and apex courts the law makers or executive has complied with the directions and if not then suggest essential changes, to study the applicability of international laws in Pakistan, To supervise the procedure of accessibility of up to date laws on the website of Senate and to present biannually report to the Senate are wonderful efforts made in Pakistan. The **observation** of supreme court of Pakistan in A Sou Moto case no.1 of 2005 reported as judgment PLD 2015 SC 257 to make the laws accessible to the public with translation and error free is commendable part of the apex court and resultantly passage of an act by Parliament of Pakistan The Publication Of Laws Of Pakistan Act, 2016 act no. XIII OF 2016 for ensuring the publication of content of the existing laws in Pakistan to be accessible free

---

<sup>328</sup>The Protection Of Pakistan Act, 2014, (ACT NO. X OF 2014).

from errors in order to reproduce, update and print can be titled as the marvelous step on the way to **post-legislative scrutiny in Pakistan**.

## **7. CONCLUSION, ANALYSIS & RECOMMENDATIONS**

### **7.1. Conclusion:**

Findings of the dialogues made in the light of the data gathered from different studies including local, regional and global laws, acts rules, regulations and reports of the Committees as discussed above have enabled us to announce the concluding remarks that PLS is a process that must be adopted by the legislative body in Pakistan in the formal mechanism in order to save the sanctity of the laws in term of effectiveness, efficacy, goodness and prosperous based.

### **7.2. Analysis:**

#### **7.2.1. Low Cost:**

Keeping in view the low-cost factor we can look into the role of our legislative institutions i.e. senate and national assemblies as bicameral and the provincial assemblies as unicameral which are attached with the house. As the committees in senate are known as the extension of the house. In the Upper House, A Committee for each Ministry of the Government is operative and the senate of Pakistan also includes Functional and other Committees. In the house, the Senate business also includes business linking to Committees. The executive is duty bound to give pieces of manifold information needed by the upper House and the Committees working under it. A great deal of function in whole sectors of business and functioning of the House has been entrusted to the House Business Advisory Committee. The different Committees attach the upper house with the citizens and to bring in the notion of self-assessment. A Committee of the Whole to consider the matters of greater national interest is a big invention in the upper house.

Formation of standing Committees on Devolution as well as the Delegated Legislation, the public hearings to be held by the Committee concerned, the assessment of allocated budget and its use of various departments of Government by the Committee are the committees to make sure the good governance and the oversight of the executive by the public representatives. The present findings shall not incur financial cost as the committees who shall listen the matter have not to be established afresh but these are to assign the roles with different portfolio.

The Upper House of the Parliament is the Senate of Pakistan. The Senate of Pakistan confers equivalent demonstration to every one of the federating units being the House of the alliance. The Senate, a permanent House, promotes national unity and accord. Senate counterbalances the arithmetical disparity among provinces in the National Assembly. Senate of Pakistan represents the process of continuity in the national affairs. A principle of 'Chamber of continuity was embedded with Senate of Pakistan at the time of its formation ' senate of Pakistan remains intact to keep an eye the operation so as to guarantee the changing of power of national assembly and government as flat as a pancake.

### **7.2.2. Committees:**

Committees have well-established heritage of supremacy of the legislative body since long and have dealt with widespread matters of nationwide importance and community interest. The Senate of Pakistan comprises a well-prepared Committee scheme which is known as political nerve ends. It gathers information. It sifts the alternatives. It refines the legislative feature. It acts like the eyes and ears of Parliament. The Committees handle much of the business of the House. Standing Committees, Functional Committees, Domestic Committees, Other Committees, Special Committees and Library Committee are the living committees in the Senate of Pakistan.

### **7.3. Different Models to be followed:**

#### UK WESTMINSTER PARLIAMENT MODEL

UK or the west minister Parliament, works with the further decentralization of Committee work. This Parliament consists in Committee system including select Committees. There is a select Committee on the work of Post-Legislative Scrutiny (PLS) which work on the Post-Legislative Scrutiny (PLS) in a consolidated and solidifying method.

#### SCOTTISH PARLIAMENT MODEL

The Parliament of Scotland believes in providing its individuals an opportunity to raise their voices through its public petition after its submission and on it's being validity the government of Scotland has to be answerable on the said issue in the petition.

#### BELGIAN FEDERAL PARLIAMENT MODEL

The Parliament of Belgium is a federal Parliament. It does an indirect scrutiny as it relies on reports more than engaging itself physically thus it may be known as passive scrutinizer. However, it goes under three triggers which are receipt of petitions containing the issues creating from laws implementation. Appraising the court's ruling and annual report that is submitted by the General Prosecutor to Parliament. This report system prevailed in Belgium can also help the Parliament for it Post-Legislative Scrutiny (PLS).

#### CANADIAN MODEL

The Parliament should go to do the sunset clause as a compulsory clause. Sun set clause is a mechanism that operates in an auto system terminating or repealing a law thereafter a certain time period. The sunset clause empowers the legislature to think again laws following a standard period of time and reclassify them as temporary stipulating this review shows that they are no longer cooperative, or on the other hand advise their continuation if the review shows that they are still productive.

As in Canada, the usual performing the sunset legislation authorizes the federal Parliament to think again laws following a recognized era of time and reassessing them as provisional if This review shows that they are no more helpful, or on the other hand urge their continuation if the review shows that They are still helpful.

#### INDIAN MODEL

A diversity of Commissions exterior to the legislature e.g., The “Law Commission” performs the scrutiny of statutes. The Commission seeks advices from the group of people, arranges symposia and workshops, and gathers evidence.

As, In India, there is no obligatory prerequisite. For ex-post assessment of legislation. A variety of Commissions exterior of legislature, such as the Law Commission, carry out examines the law making. The Commission takes advice from the public, arranges symposia and workshops, and gathers evidence.

#### INDONESIAN MODEL

The Parliament might possibly set up a Standing Committee on Post-Legislative Scrutiny to conduct the needful functions on Post-Legislative Scrutiny. The Committee shall have to

check whether the government formulates implementing regulations or not, in addition to keep an eye on if the law is being challenged at the Constitutional Court, and assess the apropos of the laws by the executive apparatus and the impression of the laws to the public. As in Indonesia, (BALEG) BadanLegislasi is a Standing Committee has been set up by the House of Representatives (DPR) on Legislation. This Committee has a very important function in the legislative process inside the DPR, mainly in description of process of Post-Legislative Scrutiny. The Committee superintends if the government formulates government formulates implementing regulations or not, in addition to it keeps an eye on if the law is being challenged at the Constitutional Court, and assess the apropos of the laws by the executive apparatus and the impression of the laws to the public. BALEG shares the consequences of its Post-Legislative Scrutiny to related subject matter Committees, which then get additional events to government ministries/ public apparatus or judicial wing inside their jurisdictions. The DPR has too set up the Centre for Post-Legislative Scrutiny which is hosted by seventeen legal investigators. The Centre answers to the needs of BALEG and subject Committees. Adding it, the Centre maintains a yearly plans of Post-Legislative Scrutiny work, chiefly to watch and assess laws of Pressing countrywide significance such as those with a muscular impact on the countrywide financial plan or those which are subject to challenge by the Constitutional court. In in addition post-legislative scrutiny takes place at a administrative level the Chair of BALEG often needs the Committee's expert staff to carry out some form of Post-Legislative Scrutiny analysis.

## LEBANON MODEL

The Parliament may possibly create a particular Committee on the task of Post-Legislative Scrutiny that may be a temporary Committee, and then its authorization would terminate at

the end of the Parliamentary year as in Lebanon, the Speaker of Parliament recently recognized a unique Committee on Post-Legislative Scrutiny. It is a temporary Committee would not work as a permanent Committee; so, its authorization shall come to an end at the end of the Parliamentary years. Although the Speaker shall be able to re-establish it in the next Parliament. Though the Post-Legislative Scrutiny (PLS) Committee doesn't hires personnel on a regular bases it depends on the assistance of existing the Parliament's secretariat staff.

#### MONTENEGRO MODEL "Consultative Hearing"

Legislatures may create extraordinary Committee on "consultative hearing" with the mandate to examine the execution of law frequently occur in the shape of "consultative hearing". In these proceedings, the executive apparatus is invited to account for the execution of the law, as other audiences might too be called upon to partake. In the pursue the Committees share definite recommendations to the House during session. The main object of such Recommendations and its approval is to get more concentration to a number of provisions of the law on the way of implementation. As in Montenegro, the EU's framework for accession has preempted greater investment in post-legislative scrutiny for scrutinizing the execution of law usually occurs in the form of "consultative hearing"., the executive apparatus is invited to account for the execution of the law, as other audiences might too be called upon to partake. In the pursue the Committees share definite recommendations to the House during session. The main object of such Recommendations and its approval is to get more concentration to a number of provisions of the law on the way of implementation.

#### PAKISTAN MODEL

the Parliaments may pass the statute namely Publication of Laws Act that should seek to ensure the text of laws of Pakistan, error-free, are brought in black and white and made available to citizens.

As in Pakistan, no genuine catalog and text of all laws in force in the country were available on any official website or in hard forms a consolidated regulation. This impacted the ability of any state or non-state actor to evaluate the effective implementation of legislation. The Parliament of Pakistan passed the Publication of Laws of Pakistan Act In year 2016 that seeks to ensure the text of laws of Pakistan, error-free, are printed and made available to citizens. The Parliament of Pakistan also adopted new legislation such as the National Commission for Human Rights Act, 2012, the National Commission on the Status of Women Act, 2012, and the Right to Information laws aimed at overseeing relevant legislation, through Commissions face resource challenges.

#### SOUTH AFRICA MODEL

Parliaments may channelize an external panel of senior experts to carry out a systematic examination of the effects of laws passed by the Parliament, as in South Africa, the Parliament has made to order an outside panel of senior experts to conduct a systematic examination of the effects of laws passed by the National Assembly since non-racialized majority-rule was established in 1994.

#### SWITZERLAND MODEL

The establishment might set up direct duty for the Parliament to appraise the efficiency of the legislation and other measures adopted. As in Switzerland, the organization may establish

straight responsibility for the Parliament to assess the efficiency of the legislation and other actions adopted. The federal Parliament setup in 1991 the Parliamentary Control of the Administration (PCA), a specialized service which carries out evaluations on behalf of the Parliament. The PCA works based on mandates on behalf of Parliamentary Committees. The Unit cannot decide to conduct research on its own. The Unit has fewer than five staff and issues approximately three (large) research reports per year. The Unit has a budget to hire experts and outsource part of the work. Its evaluation methods are based on the standards set by the Swiss Evaluation Society and international associations.

Only Parliamentary systems discussed, not Committees and commissions and their analysis on Post-Legislative Scrutiny (PLS).

#### **7.4. Recommendations:**

- Finally the above findings, analysis, and discussion have capacitated us to announce the comparative recommendations for Pakistan Parliament particularly and for all Parliament generally that shall prove hopefully the conclusive recommendations for the purpose of attaining the effectiveness.
- The Pakistan's Parliament should adopt The UK Westminster Parliament model to carry out Post-Legislative by all Committees in general and to carry out Post-Legislative Scrutiny (PLS) work by someone special Committee. Particularly a Committee on Post-Legislative Scrutiny (PLS) in Senate, National Assembly, all provincial assemblies of Pakistan need to be set up for the efficient laws and proper evaluation of laws for upcoming need of the laws.

- The Parliament should follow Scottish model to establish trigger points to sensitize Committees to take on Post- Legislative Scrutiny to hold the Executive to account as Scottish Parliament do Post-Legislative Scrutiny through public petitions.
- The report system prevailed in Belgium can also help the Parliament for it Post-Legislative Scrutiny (PLS).
- The Parliament should go to do the sunset clause as a compulsory clause as in Canada, the usual performing the sunset legislation authorizes the federal Parliament to think again laws following a recognized era of time and reassessing them as provisional if this review shows that they are no more helpful, or on the other hand urge their continuation if the review shows that they are still helpful.
- In India, there is no obligatory prerequisite. For ex-post assessment of legislation. A variety of Commissions exterior of legislature, such as the Law Commission, carry out examines the law making. The Commission takes advice from the public, arranges symposia and workshops, and gathers evidence.
- Indonesian Model is another model to be followed. In this the Parliament might possibly set up a Standing Committee on Post-Legislative Scrutiny to conduct the needful functions on Post-Legislative Scrutiny.
- The Parliament may possibly create a particular Committee on the task of Post-Legislative Scrutiny that may be a temporary Committee, and then its authorization would terminate at the end of the Parliamentary year as in Lebanon. Where justified???
- Legislatures may create extraordinary Committee on “consultative hearing” with the mandate to examine the execution of law frequently occur in the shape of “consultative hearing”.

- The Parliaments may pass the statute for error free publications as in Pakistan which passed the Act namely Publication of Laws Act that should seek to ensure the text of laws of Pakistan, error-free, are brought in black and white and made available to citizens.
- Parliaments may channelize an external panel of senior experts to carry out a systematic examination of the effects of laws passed by the Parliament, as in South Africa.
- The establishment<sup>???</sup> might set up direct duty for the Parliament to appraise the efficiency of the legislation and other measures adopted like that of Switzerland.

#### **7.4. Peculiar Perspective of Pakistan:**

Permanent Committees are established in several countries to examine the execution and assessment of laws. The “Senate Rules of Procedure and Conduct of Business 2012” has established Committees on Delegated Legislation to check the conformity of rules with the constitution and the Act. The Committee submits reports to the Senate session, highlighting inconsistencies made by the executive. The Legislative Drafting Unit assist in identifying anomalies, discrepancies, and inconsistencies, and also interprets the ratio decendi of the courts.

So we have come to know through our above thorough discussion the current status of both post and pre-legislative scrutiny in Pakistan is present like scattered seeds that needs to bring in the systematic form along with a mechanism. the post legislative scrutiny in Pakistan foremost needs the strong recommendations having the certain elements like usual appraisal, Stakeholder meetings, Impact appraisal, data-driven decisions, clearness and responsibility, community contribution and incessant development need to be made part and parcel of the process of assessing the efficacy of the laws of Pakistan.

Secondly, we explored that there has been gap in Post-Legislative Scrutiny (PLS) in Pakistan on account of overburdened and excessive legislation, also the breakage in the role of Parliament,

the maximum arrival of ordinances created such gaps. The Regularity in the agenda of scrutiny of legislation to guarantee it remains effectual and pertinent is the need of the time to combat the said the existing Committee on delegated legislation in Senate of Pakistan made certain recommendations as discussed above that was not exhaustive which could contribute comprehensively and frequently in post-legislative scrutiny. However , the special Committee on Post-Legislative Scrutiny (PLS) must Engage itself with stakeholders, together with general public, business leaders, and experts, to collect criticism and vision. The special Committee on Post-Legislative Scrutiny (PLS) must carry out careful impact assessments to weigh up the legislation's societal, economic and environmental effects. No recommendations have arisen from post-legislative scrutiny inquiries and other Committees, however, the same task was undertaken nicely by the Law and Justice Commission in Pakistan and the same can be done by Federal Government if it is systemized by following the law The Publication of Laws of Pakistan Act, 2016 Act No. XIII of 2016. The recommendations of the Law and justice Commission and the federal government must be submitted to the anticipated Post-Legislative Scrutiny (PLS) special Committee. The special Committee on Post-Legislative Scrutiny (PLS) must employ information and proof to tell decisions and get better the legislation in order to permit the flexibility and adaptation in the legislation to deal with unexpected results or varying state of affairs. The special Committee on Post-Legislative Scrutiny (PLS) must make sure transparency and accountability all the way through the Post-Legislative Scrutiny (PLS) process, including openly obtainable information and assessments along with availability of Independent Evaluation in order to think free evaluations or reviews by intermediary experts to supply purposeful reaction. The special Committee on Post-Legislative Scrutiny (PLS) must give confidence to public participation and feedback mechanisms to engage people in the Post-Legislative Scrutiny (PLS) process. The special Committee on Post-Legislative Scrutiny (PLS) must adopt the lessons

learned from best practices and best practices from Post-Legislative Scrutiny (PLS) to get better prospect lawmaking processes inculcating a culture of nonstop upgrading, encouraging ongoing reform and enhancement of legislation. The special Committee on Post-Legislative Scrutiny (PLS) must ensure cross-party consensus on a new review, implementation of actions to guarantee fulfillment with global obligations to address political background and administrative aspects.

## Bibliography

### News/Journals/ Articles/Reports:

AasifSardarSial, Review of Existing Environmental Laws and Regulations in Pakistan as well as Focus on the Impacts of Non-Compliance of such Laws on Various Sectors Including Health, Business Development, and Resource Loss, WWF-Pakistan 2018, [https://wwfasia.awsassets.panda.org/downloads/review\\_of\\_existing\\_environmental\\_laws.pdf](https://wwfasia.awsassets.panda.org/downloads/review_of_existing_environmental_laws.pdf)

Ahsan irum, and Amin Saima, Development of Environmental Laws and Jurisprudence in Pakistan, Law, Justice, and Development Program, Office of the General Counsel, Asian Development Bank, 2013, Philippines. <https://www.adb.org/publications/development-environmental-laws-and-jurisprudence-pakistan>.

AttshanAbbasi, Ali. “The Parliament of Pakistan an Analytical Research Study of Strength, Weaknesses, Opportunities and Challenges.” International Journal of Youth Economy 2, no. 2 (November 1, 2018): 119-143. <https://doi.org/10.18576/ijye/020204>

Business recorder, Post legislative scrutiny: Government agrees to defer bill on opposition’s request, 15<sup>th</sup> January 2020. [Brecorder.com/news/561831/](https://www.brecorder.com/news/561831/).

parliament.uk. “Research Briefings Publications - House of Commons Library.” n.d. Accessed July 7, 2022. <https://commonslibrary.parliament.uk/research-briefings/>.

Reports of Senate Standing Committee on Delegated Legislation, Senate of Pakistan

Report of Senate Standing Committee on Law and Justice

Report of Senate Standing Committee on Law Reforms, Senate of Pakistan

The Dawn, 'Post-legislative scrutiny is nicety of advanced democracy' July 12, 2018, Karachi <https://www.dawn.com/news/1419538/post-legislative-scrutiny-is-nicety-of-advanced-democracy> Accessed on 12<sup>th</sup> November 2023.

Women Parliamentary Caucus, News Letter, July to August, 2022. <https://wpc.org.pk/wp-content/uploads/2023/01/July-August-NewsLetter-WPC.pdf> .

### **Books**

Bandyopadhyay, sruti. "the process of lawmaking in india - accountability initiative." Accountabilityindia.in. August 10, 2010. <https://accountabilityindia.in/blog/the-process-of-lawmaking-in-india/>.

CaygillThomas ,Legislation Under Review: An Assessment of Post-Legislative Scrutiny Recommendations in the UK Parliament, (New Castle, New Castle University 2019).<https://theses.ncl.ac.uk/jspui/bitstream/10443/4626/1/Caygill%20T%202019.pdf>

De Vrieze, F &Hasson, V. (2017). Post-legislative scrutiny: Comparative study of practices of Post-Legislative Scrutiny in selected parliaments and the rationale for its place in democracy assistance. London: Westminster Foundation for Democracy

De Vrieze Franklin, Post-legislative Scrutiny Guide for Parliaments (London, Westminster Foundation of Democracy, 2017), 9-10. [https://www.wfd.org/wp-content/uploads/2018/07/WFD\\_Manual-on-Post-Legislative-Scrutiny.pdf](https://www.wfd.org/wp-content/uploads/2018/07/WFD_Manual-on-Post-Legislative-Scrutiny.pdf)

De Vrieze Franklin, Overview of Legislative Scrutiny UK, India, Indonesia and France, (London, Westminster Foundation of Democracy,2018) 5-7 [https://www.wfd.org/wp-content/uploads/2018/12/WEB\\_Legislative-Scrutiny\\_UK\\_India\\_Indonesia\\_France.pdf](https://www.wfd.org/wp-content/uploads/2018/12/WEB_Legislative-Scrutiny_UK_India_Indonesia_France.pdf)

De Vrieze, Post-Legislative Scrutiny in the Americas, (London, Westminster Foundation of Democracy,2019)<http://www.parlamericas.org/uploads/documents/2019-03->

De Vrieze & Norton, The significance of post-legislative scrutiny (Journal of Legislative Studies), 2020, vol 26:issue 3,(London, Tylor and Francis online ,2020)349-361  
<https://doi.org/10.1080/13572334.2020.1780008>

Dicey, A. V. Introduction to the Study of the Law of the Constitution. London: Macmillan and Co., 1885.

Enhancement of Role and Powers of Senate of Pakistan for Participatory Federalism, (Islamabad, Printing Corporation of Pakistan, 2017) 4-5  
[http://www.senate.gov.pk/uploads/documents/Enhancement%20of%20Role%20and%20Powers%20\(Green\).pdf](http://www.senate.gov.pk/uploads/documents/Enhancement%20of%20Role%20and%20Powers%20(Green).pdf)

Fitsilis Fotios, Parliamentary Oversight of Sustainable Development Goals and the Application of Post-Legislative Scrutiny Principles, , (London, Westminster Foundation of Democracy, 2019) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3429635](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3429635)

Herman, De Jager, “importance of legislation” , , gov.au accessed 1st July, 2022,  
<https://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks/legislation-handbook/context/why-its-needed.aspx>

Jain, Jain, Principle of administrative Law, 2004 Wadhwa and Company Nagpur., Library of Senate of Pakistan.

Lasswell, Harold D. The Decision Process: Seven Categories of Functional Analysis. College Park, MD: Bureau of Governmental Research, College of Business and Public Administration, University of Maryland, 1956.

Levels, hogan. “uk draft media bill (part 3) - pre-legislative scrutiny phase - hogan ...” May 2023. <https://www.engage.hoganlovells.com/knowledgeservices/news/uk-draft-media-bill-part-3-pre-legislative-scrutiny-phase>.

Montesquieu, Baron de. *The Spirit of the Laws*. New York, the USA: Cambridge University Press, 1989

Mulgan, Richard. *Holding Power to Account: Accountability in Modern Democracies*. New York: Palgrave Macmillan, 2003.

Quito, Ecuador, POST-LEGISLATIVE SCRUTINY, 12 March 2019, London, ParlAmericas Open Parliament Network, pg 12,n.d,

Raz, Joseph. "The Rule of Law and Its Virtue." *Law Quarterly Review* 93 (1977): 195–211.

Salmond, John , “Jurisprudence (12thEdn.)” Eastern Book Company, Lucknow, Library of Senate of Pakistan..

Schumpeter, Joseph A. *\*Capitalism, Socialism, and Democracy\**. New York: Harper & Brothers, 1942.

USAID Handbook on Legislative Strengthening, Washington D.C, the USA: Center for Democracy and Governance , February 2000. <https://www.usaid.gov/sites/default/files/2022-05/200sbb.pdf>.

### **Case laws**

Muhammad Ibrahim Shaikh---Versus Government of Pakistan through Secretary Ministry of Defence and others--- P L D 2019 Supreme Court 133

Sou Moto Case No.1 of 2005--- P L D 2015 Supreme Court 257.

ZaraiTaraqiati Bank etc p. Said Rehmanetc (2013 SCMR 642),

Government Of Sindh vs Sharaf Faridi 1994 PLD 105 Supreme-Court

Federation of Pakistan vs. Ministry of Interior (Case No. 11 of 2011) PLD 2014

**Laws/Acts/statutes:**

Legislative and Regulatory Reform Act 2006.

National Commission On the Status of Women Act, 2012, Act No. VIII of 2012.

Punjab Government Rules of Business 2011,

*Rules of Procedure and Conduct of Business in The National Assembly, 2007*

Rules of Procedure and Conduct of Business in The Senate, 2012.

Sindh Domestic Violence Prevention and Protection Act, 2013. Act No. XX of 2013.

The Anti-Rape Investigation and Trial Act, 2021, Act No XXX of 2021.

The Baluchistan Protection Against Harassment of Women at Work Place Act No.01 Of 2016.

The Constitution of Pakistan, 1973.

The Cutting of Trees Prohibition Act, 1992, Act No. XVIII of 1992.

The Dowry and Bridal Gifts Restriction Act, 1976, Act No. XLIII of 1976.

The Elephants' Preservation Act, 1879, Act no.VI.

The Exclusive Fishery Zone Regulation of Fishing Act, 1975., Act No. XXXII of 1975.

The Fisheries Act, 1897, Act No. IV of 1897.

The Forest Act; 1927, Act No. XVI of 1927.

The Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946 Act No. XIX of 1946.

The Khyber Pakhtunkhwa Enforcement of Women Ownership Act, 2012 Act No. III of 2012.

The Khyber Pakhtunkhwa Environmental Protection Act, 2014, Act No. XXXVIII of 2014.

The Khyber Pakhtunkhwa Reproductive Healthcare Rights Act, 2020 Act No. XXVIII of 2020.

The Law and Justice Commission of Pakistan, 1979, Ordinance No. XIV of 1979.

The Law Reforms Ordinance, 1972, Ordinance No. XII of 1972.

The National Database and Registration Authority Ordinance, 2000, Ordinance No. VIII of 2000.

The Pakistan Citizenship Act, 1951, Act No. II of 1951.

The Pakistan Fish Inspection and Quality Control, Act, 1997, Act No. XXXV of 1997.

The Pakistan Penal Code, Act No. XLV of 1860.

The Pakistan Plant Quarantine Act, 1976. Act No. LXXV of 1976.

The Prevention of Trafficking in Persons Act, 2018, Act No, XXXIV of 2018.

The Protection Against Harassment of Women at The Workplace Act, 2010, IV of 2010.

The Protection of Breast-Feeding and Child Nutrition Ordinance, 2002, XCIII of 2002.

The Protection of Pakistan Act, 2014, Act No. X of 2014.

The Publication of Laws of Pakistan Act, 2016, Act No. XIII of 2016.

The Punjab Commission On the Status of Women Act 2014, Act I of 2014.

The Punjab Environmental Protection Act, 1997, XXXIV of 1997.

The Punjab Fair Representation of Women Act 2014, Act IV of 2014.

The Punjab Maternity Benefit Ordinance, 1958, Ordinance XXXII of 1958.

The Punjab Reproductive, Maternal, Neo-Natal and Child Health Authority Act 2014 Act VIII of 2014.

The Punjab Protection of Women Against Violence Act 2016, Act XVI of 2016.

The Punjab Women Protection Authority Act 2017 Act X of 2017.

The Punjab Women Hostels Authority Act 2023, Act VII of 2023.

The Sindh Environmental Protection, Act, 2014, Act No. VIII of 2014.

The Sindh Reproductive Healthcare Rights Act, 2019. Act No. XV of 2019.

UK Bill of Rights 1688.

Wild Birds and Animals' Protection Act, 1912, Act No. VIII of 1912

Zainap Alert, Response and Recovery Act, 2020.

## **Website**

Bbc.co.uk. "how are UK laws made? - bbcnewsround." September 5, 2019.

<https://www.bbc.co.uk/newsround/47029982>.

Britannica. "legislation | definition, types, & examples | britannica." February 6, 2018.

<https://www.britannica.com/topic/legislation-politics>.

Cpj.ca. "advocacy toolkit | citizens for public justice." N.d. Accessed June 14, 2022.

<https://cpj.ca/cpjs-advocacy-toolkit/>.

Hobnobblog.com. "understanding the 4 basic types of legislation - hobnob blog." N.d.

Accessed June 10, 2022. [https://hobnobblog.com/2010/09/understanding-the-4-basic-types-](https://hobnobblog.com/2010/09/understanding-the-4-basic-types-of-legislation/)

[of-legislation/](https://hobnobblog.com/2010/09/understanding-the-4-basic-types-of-legislation/).

House.gov. “the legislative process | house.gov.” N.d. Accessed June 14, 2022. [Http://www.house.gov/the-house-explained/the-legislative-process](http://www.house.gov/the-house-explained/the-legislative-process).

Inter-parliamentary union.org. “guidelines on the rights and duties of the opposition in parliament.” N.d. Accessed June 12, 2022. [Http://archive.ipu.org/dem-e/opposition.pdf](http://archive.ipu.org/dem-e/opposition.pdf).

Ipu.org. “parliament and democracy in the twenty-first century: a guide to ..” N.d. Accessed July 14, 2022. [Https://www.ipu.org/resources/publications/handbooks/2016-07/parliament-and-democracy-in-twenty-first-century-guide-good-practice](https://www.ipu.org/resources/publications/handbooks/2016-07/parliament-and-democracy-in-twenty-first-century-guide-good-practice).

“judiciary - britannica,” n.d., accessed October 06, 2023, <https://www.britannica.com/topic/judiciary>.

Law.ox.ac.uk. “law reports | faculty of law.” N.d. Accessed June 10, 2022. [Https://www.law.ox.ac.uk/legal-research-and-mooting-skills-programme/law-reports](https://www.law.ox.ac.uk/legal-research-and-mooting-skills-programme/law-reports).

Lawnn, admin. “types of legislation, merits, supremacy under jurisprudence.” Lawnn.com. December 24, 2018. [Https://www.lawnn.com/types-of-legislation/](https://www.lawnn.com/types-of-legislation/).

Learn.parl.ca. “how a bill becomes a law.” N.d. Accessed June 14, 2022. [Https://learn.parl.ca/understanding-comprendre/en/how-parliament-works/how-a-bill-becomes-a-law/](https://learn.parl.ca/understanding-comprendre/en/how-parliament-works/how-a-bill-becomes-a-law/).

Merriam-webster.com. “legislation definition & meaning - merriam-webster.” N.d. Accessed May 26, 2022. [Https://www.merriam-webster.com/dictionary/legislation](https://www.merriam-webster.com/dictionary/legislation).

National conference of state legislatures. “separation of powers: an overview.” May 1, 2021. [Https://www.ncsl.org/about-state-legislatures/separation-of-powers-an-overview](https://www.ncsl.org/about-state-legislatures/separation-of-powers-an-overview).

Parliament.uk. “constitution committee - summary - committees - uk parliament.” N.d. Accessed june 16, 2022. <https://committees.parliament.uk/committee/172/constitution-committee/>.

Parliament.uk. “glossary - uk parliament.” N.d. Accessed may 26, 2023. <https://www.parliament.uk/site-information/glossary/>.

Parliament.uk. “how does a bill become a law? - uk parliament.” N.d. Accessed june 12, 2022. <https://www.parliament.uk/about/how/laws/passage-bill/>.

Parliament.uk. “research briefings publications - house of commons library.” N.d. Accessed july 7, 2022. <https://commonslibrary.parliament.uk/research-briefings/>.

“parlilinc – the lincoln parliamentary research centre.” N.d. Accessed april 22, 2024. <https://parlilinc.blogs.lincoln.ac.uk/>.

“pre-legislative scrutiny: how can citizens be more actively involved?.” N.d. Accessed april 22, 2024. <https://prsindia.org/theprsblog/pre-legislative-scrutiny-how-can-citizens-be-more-actively-involved>.

Pips, home, capacity. “building knowledge sharing session on the post legislative scrutiny and delegate legislation”. December 18, 2017.

[https://www.pips.gov.pk/capacity\\_building/knowledge-sharing-session-on-post-legislative-scrutiny-and-delegated-legislation/](https://www.pips.gov.pk/capacity_building/knowledge-sharing-session-on-post-legislative-scrutiny-and-delegated-legislation/)

“post-legislative scrutiny international principles and oversight in kosovo “, september 2020, <https://www.kas.de/documents/286052/0/publication+20-09-30+post->

legislative+scrutiny+international+principles+and+oversight+in+kosovo+%28eng%29.pdf/5085c598-6ef2-3959-552a-243cc210b17c?version=1.0&t=1609943885902

“report on the pre-legislative scrutiny of the draft planning and ...” N.d. Accessed april 22, 2024.

[https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint\\_committee\\_on\\_housing\\_local\\_government\\_and\\_heritage/reports/2023/2023-09-26\\_report-on-pre-legislative-scrutiny-of-the-draft-planning-and-development-bill-2022\\_en.pdf](https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_housing_local_government_and_heritage/reports/2023/2023-09-26_report-on-pre-legislative-scrutiny-of-the-draft-planning-and-development-bill-2022_en.pdf).

“research note on role of legislators in the development process,” loksabhadocs.nic.in. N.d., accessed july 15, 2022, [https://loksabhadocs.nic.in/refinput/research\\_notes/english/04122019\\_171611\\_102120495.pdf](https://loksabhadocs.nic.in/refinput/research_notes/english/04122019_171611_102120495.pdf).

“role and contribution of legislative scrutiny committees ...” N.d. Accessed april 22, 2024. [https://www.aph.gov.au/about\\_parliament/senate/powers\\_practice\\_n\\_procedures/pops/pop54/c05](https://www.aph.gov.au/about_parliament/senate/powers_practice_n_procedures/pops/pop54/c05).

Standing committee on climate change, blog on post legislative scrutiny of Pakistan environmental protection act, 1997, march 27, 2022. <https://climatechangePakistan.com/post-legislative-scrutiny-of-environmental-protection-act-1997/>

Supremecourt.gov.pk. “history – supreme court of pakistan.” N.d. Accessed october 6, 2023. <https://www.supremecourt.gov.pk/about/history/>.

Undp.org. “human development | human development reports.” N.d. Accessed july 16, 2022. <https://hdr.undp.org/about/human-development>.

Whitehouse.gov. “the legislative branch | the white house.” N.d. Accessed june 15, 2022.

<https://www.whitehouse.gov/about-the-white-house/our-government/the-legislative-branch/>.