SENATE OF PAKISTAN

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House of the Federation

FINAL REPORT

REPORT OF THE SENATE SPECIAL COMMITTEE ON LAW REFORMS

Presented By:

Senator Farooq H. Naek, Convener

SENATE SECRETARIAT

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I, Senator Farooq H. Naek, Convener Senate Special Committee on Law Reforms, have the honor to submit, on behalf of the Committee, this final report of the Committee on the tasks performed by it from 29th May, 2018 to date regarding reforms in the laws of the land. The Committee was constituted vide Circular dated 29th May, 2018 based on a Motion under Rule 203 of the Rules of Procedures and Conduct of Business in the Senate, 2012 passed by the House on 10th May, 2018.

2. The composition of the Committee is as under:

1. Senator Farooq H. Naek	*Convener*
2. Senator Muhammad Javed Abbasi	*Member*
3. Senator Rana Maqbool Ahmed	*Member*
4. Senator Muhammad Azam Khan Swati	*Member*
5. Senator Anwar ul Haq kakar	*Member*
6. Senator Muhammad Ali khan Saif	*Member*

3. *The following persons were attached with the Committee as Expert/Consultant/ Advisor by the Chairman Senate:-*

i. Former Senator Ch. Muhammad Anwar Bhinder

ii. Raja Inam Amin Minhas

iii. Justice ® Muhammad Raza Khan, Advisor

4. According to the above Circular, the Committee was mandated to frame its own Terms of References in its first meeting. Accordingly, the Committee after due deliberations and consultations finalized its TORs in its meeting held on 22nd January, 2019 (Annex-A). Importantly, the Committee decided to accord high priority to those laws which are directly concerned with the general public hence demand urgent attention of the Parliament. The letters were also written to 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 whereby they were asked to share their inputs regarding law reforms so that future strategy is designed by taking into account their responses. As a whole, 09 meetings of the Committee were held and issues pertaining to tiers in the judicial system, compliance of courts judgments, family laws, merger of special courts into ordinary courts, NAB law, civil service laws, NADRA law, appointment & accountability mechanisms for judges of constitutional courts, etc. were discussed in detail.

5. In its meeting held on 06th February, 20 March & 27 March 2019, the Committee considered tiers of judicial system and merger of special courts into ordinary courts. The Convener of the Committee was of the view that there is an urgent need to bring the special courts under the ordinary jurisdiction as presently they are under the supervision of no one. He further stated that special courts should be under the direct control of respective high courts. Senator Muhammad Azam Khan Swati stressed the need to modernize the courts on international lines. Former Senator Mr. Muhammad Anwar Bhinder submitted that in his observation lower courts in Pakistan lie under heavy burden which adversely affects disposal of cases and quality of work. Justice (R) Muhammad Raza Khan as a subject expert

suggested that remedy of Revision causes delay in disposal of cases, therefore, its deletion would reduce burden on courts to some extent.

6. The Committee also considered amendments in the Guardian and Wards Act, 1890, the Muslim Family Laws Ordinance, 1961, and the Succession Act, 1925. The Convener of the Committee on his own drafted amendments in the Guardian and Ward Act and got it circulated among Members for their input. The Ministry of Law was asked to review the draft and the same was also sent to the Council of Islamic Ideology (CCI) for their opinion in the light of Injunctions of Islam. The Committee also discussed Column Nos.16, 17 and 20 of the Nikkahnama with the view to fix certain share for a divorcee in the property of her ex-husband. The Convener of the Committee was of the view that by introducing amendments in the appropriate columns of the Nikkahnama a kind of financial relief could be granted to a divorcee as is in vogue in the Europe.

7. In its meeting held 27th March 2019, the Committee took up for discussion implementation of decision of the Supreme Court regarding amendment in section 14(3) of the Pakistan Citizenship Act, 1951, section 11 of the National Data Base and Registration Authority Ordinance, 2000. The representative of the Ministry of Interior apprised the Committee that the draft has been prepared and is in the process of Secretary's approval. The Ministry of Interior was directed by the Committee to finalize and move the bill within three weeks in National Assembly in the light of direction issued by Supreme Court in the case of M.Ibrahim vs. Government of Pakistan. The representative of the Ministry of Interior was of the view that section 14 of the Pakistan Citizenship Act 1951 does not need amendment as only guidelines are required to be issued after vetting from Ministry of Law.

8. The mechanism for the appointment and impeachment of judges of superior judiciary through Majlis-e-Shoora (Parliament) came up for discussion in the meetings of the Committee held on 27th December 2019 & 24th September 2020. Senator Farooq H Naek, the Convener of the Committee, apprised the members that a subcommittee of the Parliamentary Committee on Appointment of Judges had once prepared a draft bill asking for strengthening mechanism for appointment and accountability of judges. The Convener said that the committee had diligently worked on the draft bill by consulting all stakeholders and that the same had been handed over to then Law Minister Zahid Hamid. Senator Muhammad Javed Abbasi, by endorsing viewpoint of the Convenor of the Committee, said that the draft bill was prepared after thoroughly considering all aspects of the matter and hearing of experts and relevant stakeholders. He emphasized the need for involvement of Parliament in the process of accountability of judges in the light of best international practices adopted by different countries, e.g., India, Australia.

9. The Committee also termed the existing mode of accountability of judges of superior courts dormant and stressed the need for evolving a transparent and effective mechanism to hold them accountable over the allegations of misconduct. Senator Muhammad Ali Khan Saif explained that confusion in this regard is due to absence of proper definition of the term *'misconduct'*. Consequently, several cases involving the alleged misconduct of the judges are pending in the supreme judicial council awaiting adjudication. Senator Muhammad Javed Abbasi emphasized that the American model wherein the US Senate plays central role in the removal of judges is most relevant to Pakistan. Senator Anwar ul Haq Kakar proposed that as the issue of accountability of judges is both political and constitutional in nature therefore all stakeholders including Bar Councils, media and civil society should be taken into the loop before any step forward is taken in this regard.

10. The issue of jurisdiction of National Accountability Bureau with regard to offences falling under money laundering law was thoroughly discussed in the meeting held on 27th December 2019. The Convener of the Committee expressed that the National Accountability Bureau can take action against money laundering if it falls within the ambit of section 9 of the Anti-Money Laundering Act, 2010. He observed that the NAB, however, could not take action against all types of money laundering, particularly when it does not involve graft. He stated that it is important to define which cases come under the Act and what powers the Federal Investigation Agency and NAB have in this regard. He further stated that a kind of overlapping is found on the powers of both agencies. The Convener also drew attention of the members towards placement of Pakistan on grey list by Financial Action Task Force (FATF) on account of money laundering and terror financing. He was of the view that there is need to thrash out reasons for such placement and removal of shortcomings in the domestic laws.

11. The report is being presented for perusal of the House, in the light of approval for submission granted by the Committee in its meeting held on 28th January, 2021.

28.01.2021

(Muhmmad Javed Iqbal)
DD/ Secretary Committee

(Senator Farooq H.Naek)
Convener

Annexure - A

TERMS OF REFERENCE

In pursuance of Circular issued by Senate Secretariat dated 29th May, 2018 the Special Committee on Law Reforms hereby frames the following Terms of Reference:-

Scope and mandate of the Committee:

An important challenge for every lawmaker is to reform the law as per needs and aspiration of the citizens. Law reform is the process of changing and updating laws so that they reflect the current values and needs of modern society. Those responsible for making laws must identify and study shifts in values, behaviors and expectations; they must consider whether new or amended laws are required and they must develop and implement these changes. Law reform is a perpetual and ongoing process, it never finishes. The law must be flexible and receptive to change, so that it stays fair, relevant and up to date. Above all, it must serve the needs of the people. A law based on outdated or irrelevant values will only let down the people it is intended to serve and protect.

Terms of Reference of Law Reform Committee

1. To review the laws for reformation and recommend amendments/changes in the laws, where necessary, in consultation with concerned Ministry, to the Senate of Pakistan.

2. To see and examine whether Legislature or Authority has amended, modified or changed any law or rules as held by the Supreme Court of Pakistan or a High Court in its judicial verdict, if not, then propose necessary amendments & modifications.

3. To examine the applicability of international laws in Pakistan.

4. To oversee the process of availability of updated laws on the website of Senate.

5. To submit six monthly report to the Senate detailing the performance and work that has been carried out by the Committee.