

SENATE OF PAKISTAN



FIRST QUARTELY REPORT OF THE **SENATE COMMITTEE ON DELEGATED** **LEGISLATION**

Presented By:

Senator Farooq Hamid Naek, Chairman

**QUARTERLY REPORT OF THE COMMITTEE ON
DELEGATED LEGISLATION
(JUNE – AUGUST, 2021)**

I, Chairman of the Senate Committee on Delegated Legislation, have the honour to present first quarterly report of the Committee on Delegated Legislation under Rule 172E(3) of the Rules of Procedure and Conduct of Business in the Senate, 2012, for the period from June to August , 2021.

2. The composition of the Committee is as follows:

1.	Senator Farooq Hamid Naek	Chairperson
2	Senator Syed Yousaf Raza Gillani (Leader of the Opposition)	Member
3	Senator Dr. Muhammad Farogh Naseem	Member
4	Senator Muhammad Azam Khan Swati	Member
5	Senator Samina Mumtaz Zehri	Member
6	Senator Rubina Khalid	Member
7	Senator Keshoo Bai	Member
8	Senator Kauda Babar	Member
9	Senator Prof. Sajid Mir	Member
10	Senator Prof. Dr. Mehr Taj Roghani	Member
11	Senator Azam Nazeer Tarar	Member
12	Senator Molvi Faiz Muhammad	Member
13	Senator Syed Ali Zafar	Member

3. First meeting of the Committee was held on 8th July, 2021 with the following in attendance:-

1.	Senator Farooq Hamid Naek	Chairperson
2.	Senator Samina Mumtaz	Member
3.	Senator Keshoo Bai	Member
4.	Senator Kauda Babar	Member
5.	Senator Prof. Sajid Mir	Member

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| 6. | Senator Prof. Dr. Mehr Taj Roghani | Member |
| 7. | Senator Molvi Faiz Muhammad | Member |
| 8. | Minister of State for Parliamentary Affairs | Ex-Officio Member |

4. In its first meeting, the Secretary, Ministry of Law and Justice gave an extensive briefing on nature, scope and forms of Delegated Legislation. He submitted that under Article 142 of the Constitution of Islamic Republic of Pakistan, the Parliament has exclusive power to make laws in respect of any matter provided in the Federal Legislative List. He further explained that Acts passed by the Parliament ordinarily grant rule/regulation making powers to the Federal Government which power is called delegated legislation. Parliament makes a law wherein it provides basic principles and for details it delegates its powers to the Federal Government so that parliamentary time is saved and technical matters are dealt with in greater detail by the executive. According to the Rules of Business 1973, delegated legislation must be sent to Ministry of Law and Justice for legal vetting.


5. The Secretary Law & Justice further added that Mustafa Impex judgment brought major changes in functioning of the Federal Government. Previously, all rules/regulations were passed by Prime Minister in his discretion but after Mustafa Impex case all rules and regulations made by the Federal government has to be approved by the Cabinet. He further informed that Cabinet has formed a committee i.e. Cabinet Committee for Disposal of Legislative Cases (CCLC) which is chaired by Minister of Law and Justice. Purpose of the committee is to scrutinize and pass rules/regulations framed by the Federal Government. After extensive discussion and approval of rules and regulations by the cabinet committee, they are sent to Federal Cabinet for ratification under Rule 17(2) of Rules of Business 1973. After rectification, they are forwarded to Ministry of Law and Justice which gives them S.R.O no. and then publish 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.

6. The starred question & matter of public importance regarding existing criteria, conditions and procedures of postings as Chief Secretaries in the four provinces as well as in Azad Jammu & Kashmir and Gilgit Baltistan moved by Senator Kauda Babar in the House and referred to Committee for consideration & report was also discussed in detail. The representative of the Establishment Division explained that



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, including the Chairman Committee, expressed concerns over the Rules of 1954 and procedure for posting as Chief Secretaries in Kashmir, Gilgit-Baltistan and the four provinces of Pakistan. Addressing the Additional Secretary Establishment Division, the Chairman Committee Senator Farooq Hamid Naek highlighted with concern that if the rules were made in 1954 then why the Constitution of 1973 is mentioned and Baluchistan is even ignored in the said rules. Chairman Committee said that Article 146 of the Constitution of Pakistan, 1973, relied upon by the federal government, to frame said rules does not grant rule-making powers to the federal government regarding posting of Chief Secretaries. He explained that Article 146 of the Constitution simply provides that the federal government may entrust either conditionally or unconditionally on the provincial government functions in relation to matters to which executive authority of federal government extends. The Chairman of the committee told the Additional Secretary Establishment Division with the objection that Prime Minister has been given unbridled discretion in the rules. He further observed that, apparently, Rules of 1954 are without jurisdiction, inconsistent with the Constitution and beyond the scope and purpose of the Constitution. Consequently, the whole superstructure raised 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 detailed reply of the government regarding constitutionality of above rules.

7. In the same meeting, the Representative from DRAP while giving a detailed briefing informed the Committee that there are no specific rules for alternative medicines. Alternative medicines are covered by DRAP Act and Drugs Act. Chairman Committee commented that Ministry and DRAP have not provided required information to the committee therefore they are asked to bring copies of relevant acts and rules for the next meeting. Representative from DRAP stated that they have created a national task force that includes federal government, four provinces, AJK and Gilgit Baltistan that has conducted lot of raids and inspection in recent times. The Chairman Committee directed DRAP to prepare a working paper accompanied by relevant laws and share it with the Committee.



8. Another meeting of the Committee was held on 25th August 2021 which was attended by the following:-

9.	Senator Farooq Hamid Naek	Chairperson
10.	Senator Rubina Khalid	Member
11.	Senator Keshoo Bai	Member
12.	Senator Kauda Babar	Member
13.	Senator Prof. Sajid Mir	Member
14.	Senator Prof. Dr. Mehr Taj Roghani	Member
15.	Senator Molvi Faiz Muhammad	Member
16.	Minister of State for Parliamentary Affairs	Ex-Officio Member

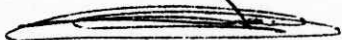
9. In this meeting, the Chairman Committee asked the Secretary Establishment to explain viewpoint of the division in the light of recommendations of the Committee in its last meeting vis-à-vis posting of Chief Secretaries. The Secretary Establishment submitted that whatever is being done regarding appointment of PAS officers as Chief Secretaries is according to the Constitution and the rules framed thereunder. He further informed that the matter under consideration is sub-judice before the judicature as twelve cases wherein vires of Civil Service of Pakistan (Composition and Cadre) Rules 1954 are challenged are pending in FST and High Courts. Therefore, any discussion over it in the Committee is likely to prejudice decision making in the courts of law and tribunal. Upon which, Chairman Committee enquired Secretary, Law and Justice as to whether any embargo is imposed upon parliamentary committees to not touch a matter pending in a court of law. Secretary, Law and Justice, while referring to rule 50 of Rules of Procedure and Conduct of Business in the Senate 2012, responded that matters pending in courts are beyond the gaze of or scrutiny by the legislature. Whereafter, the Chairman Committee directed Secretary Establishment to share copies of memo of petitions and comments filed in return by Establishment Division before next meeting of the Committee to check as to whether matter being agitated before the courts is similar or not.

10. Committee also deliberated upon TORs of the Cabinet Committee for Disposal of Legislative Cases (CCLC) regarding its role in formulation of delegated legislation. Secretary Law and Justice submitted that in order to expedite the process of delegated legislation CCLC meetings are held on weekly basis to assess proposals received from different ministers. He further informed that CCLC is overseeing work of all ministries and it supervises, scrutinize and review delegated legislation made by all ministries. Chairman Committee being satisfied with the briefing of the ministry

observed that establishment of CCLC is within the ambit of Mustafa Impex case and resultantly this agenda item was disposed of.

11. Delegated legislation pertaining to regulation of alternative medicines in Pakistan was also scrutinized by the committee. Chairman Committee asked DRAP officials to explain regulation of Homeopathic, Ayurvedic and Tib practice and education in Pakistan. Representative from DRAP informed the Committee that DRAP deals with manufacturing and import of alternative medicines, whereas respective councils such as Tib Council and National Homeopathic Council deals with education and practice of Alternate Medicines. Chairman Committee expressed concern over unprecedented proliferation of quackery in Pakistan. Representative from DRAP informed the Committee that quackery is regulated by provincial health care councils. He further informed that for Islamabad there is a Islamabad Health Care Regulatory Authority which besides providing health care facilities for Federal Capital Territory also deals with menace of quackery. Finally, the Committee decided to invite National Homeopathic Council, Tib Council and Islamabad Health Regulatory Authority in next meeting to brief Committee about education and practice of alternative medicines.

12. This quarterly report of the Committee is presented for the perusal of the House, in terms of rule 172E (3) of the Rules of Procedure and Conduct of Business in the Senate, 2012,



(MUHAMMAD JAVED IQBAL)

Secretary Committee



SENATOR FAROOQ HAMID NAEK)

Chairman

Islamabad, the 28th October, 2021