

# **SENATE OF PAKISTAN**



## **NINTH QUARTERLY REPORT OF THE COMMITTEE**

**ON**

## **DELEGATED LEGISLATION**

**PRESENTED BY**

**SENATOR AYESHA RAZA FAROOQ  
CHAIRPERSON COMMITTEE**



## **SENATE SECRETARIAT**

### **QUARTERLY REPORT OF THE COMMITTEE ON DELEGATED LEGISLATION (MAY – JULY 2018)**

I, Chairperson of the Senate Committee on Delegated Legislation, have the honour of presenting the ninth 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 of May to July 2018.

2. The composition of the Committee is as follows: -

1.	Senator Ayesha Raza Farooq	Chairperson
2.	Senator Raja Muhammad Zafar -ul-Haq	Member
3.	Senator Dr. Muhammad Farogh Naseem	Member
4.	Senator Hasil Khan Bizenjo	Member
5.	Senator Kalsoom Perveen	Member
6.	Senator Mian Raza Rabbani	Member
7.	Senator Muhammad Azam Khan Swati	Member
8.	Senator Dr. Asad Ashraf	Member
9.	Senator Robina Khalid	Member
10.	Senator Rukhsana Zuberi	Member
11.	Senator Saleem Zia	Member

3. The Committee on Delegated Legislation was notified on 11<sup>th</sup> May 2018 and Senator Ayesha Raza Farooq was elected as Chairperson Committee. The first meeting of the Committee on Delegated Legislation, was held on 4<sup>th</sup> July 2018.

4. The following members of the Committee attended the above-said meeting:

i.	Senator Ayesha Raza Farooq	Chairman
ii.	Senator Mian Raza Rabbani	Member
iii.	Senator Kalsoom Perveen	Member
iv.	Senator Hasil Khan Bizenjo	Member
v.	Senator Mohammad Azam Khan Swati	Member
vi.	Senator Dr. Asad Ashraf	Member
vii.	Senator Rukhsana Zuberi	Member
viii.	Barrister Syed Ali Zafar, Caretaker Minister for Law & Justice	Ex-Officio Member
ix.	Justice (R) Muhammad Raza Khan	Advisor (LDU)

5. The Committee discussed the following agenda items: -

Sr. No.	Agenda Items	Discussions / Decisions
<b>04-07-2018</b>		
I	A detailed and comprehensive briefing	A comprehensive briefing on the functions and significance of the concept of Delegated Legislation was



<p>by Ministry of Law and Justice on Delegated Legislation.</p>	<p>presented by Additional Draftsman, Ministry of Law, Sheikh Sarfaraz Ahmed, who explained that it has been drafted in exercise of the powers conferred by the legislature to the executive through the Constitution, National Assembly &amp; Senate Rules, Rules of Business 1973, and Council of Common Interests etc. He stated that the subordinate legislation ought not to be inconsistent with parent legislation.</p> <p>With reference to the judgment given by Justice Pir Shafi-ur-Rehman in 1991, the Caretaker Minister for Law and Justice, the concept and principles of structural discretion were discussed in detail by Barrister Ali Zafar, with the hope that the Parliament would introduce legislation for managing and streamlining the process of subordinate legislation, for bringing transparency and overseeing the role of the Executive.</p> <p>The members of the Committee were briefed by Senator Mian Raza Rabbani about the background of the Senate Committee on Delegated Legislation. The Committee on Sub-Ordinate legislation has been in existence in many parliaments of the world where various methods have been adopted for the efficient and smooth functioning of this committee to ensure that delegated legislations may be completed in time. While talking of international best practices, he observed that in Canada and other countries the legislature puts a sundown clause while passing acts under which framework and time deadlines are stipulated to ensure that the executive formulates relevant rules in a timely manner. It was further mentioned by the honorable Senator that he is going to attend an international conference on the concepts and principles of post-legislative scrutiny at the University of London. Afterwards, it was decided by the Chairperson Committee that Senator Mian Raza Rabbani should share his experience of the above-mentioned conference with this committee in future meeting.</p> <p>It was acknowledged by Senator Muhammad Azam Khan Swati that there are some laws that provide a time limit for rule-making provisions, but not all. Therefore, it was proposed that the Ministry of Law and Justice may ensure that all newly-made Acts with rule-making clauses must be time-barred. The Ministry of Law and Justice agreed to do the needful.</p> <p>It was suggested by Malik Hakim Khan, Senior Legislative Advisor, that a new law for timely rule-making be enacted, based on the recommendations made</p>
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		by this committee, to be followed by ministries, to improve the effectiveness and efficiency of legislation.
II	To work out a plan and working of the committee	<p>Four kinds of work plans were put forth by the Chairperson to be adopted for the Senate Committee on Delegated Legislation:</p> <ul style="list-style-type: none"> <li>a. <i>Review of subordinate legislation by the Legislative Drafting Unit.</i></li> <li>b. <i>Briefings by all Ministries regarding their respective subordinate legislations.</i></li> <li>c. <i>Public Petitions</i></li> <li>d. <i>Review of Judgments</i></li> </ul> <p>It was further added by the Chairperson that as per the experience of the Legislative Drafting Unit (LDU), the first option is better than the second one, because it had been observed that ministries showed resistance in discussing their respective rules for different reasons. Furthermore, Public Petitions and Reviews of Judgments must also be made part of the work plan for the Senate Committee on Delegated Legislation.</p> <p>Afterwards, the Chairperson Committee invited the honorable members to share their views about the plan and working of the Committee, which are stated below:</p> <ul style="list-style-type: none"> <li>a. Members suggested inviting ministries to brief the committee about their subordinate legislations because the committee itself does not have enough human resources to review the year-wise delegated legislation.</li> <li>b. Sub-committees may be established for improving the efficiency and overall performance of the Senate Committee on Delegated Legislation.</li> <li>c. The Committee may hire legal experts or utilize the services of the LDU team by attaching them with each subcommittee, to scrutinize the subordinate legislation and submit their reports to their respective sub-committees.</li> </ul> <p>These recommendations may be compiled in the form of a document, as a future work plan. The said document may be prepared and circulated among members prior to the next meeting of the committee.</p> <p>In the light of above-mentioned discussions, following decisions were made:</p> <ul style="list-style-type: none"> <li>1. Draft Way Forward may be formulated and</li> </ul>



		<p>presented for consideration, discussion and approval in the next meeting of the Senate Committee on Delegated Legislation.</p> <p>2. The salient features of draft way forward would be as under:</p> <p>a. The Senate Committee on Delegated Legislation will deal with three broad time periods of legislation: <b><i>Pre-Partition, Post-Independence and Post 18<sup>th</sup> Amendment.</i></b></p> <p>b. Main Committee would take-up Post 18<sup>th</sup> Amendment phase and review delegated legislation made during this period.</p> <p>c. Two sub-committees, dealing with Pre-Partition and Post-Independence era would be formed, and suitable human resource would be provided to each sub-committee.</p> <p>d. The Committees may also consult <b>Alphabetical Catalogue of Federal Laws of Pakistan (1836-2014)</b> and make a list of all Acts with rulemaking provisions and check whether these rules and regulations have been made or not.</p> <p>e. The Committee may also examine those laws for which Rules are yet to be framed, as well as Public Petitions, moved by honorable members of the Senate and Judgments of High Court and Supreme Court, to be discussed as separate agenda items in the meetings of Senate Committee on Delegated Legislation.</p>
III	Any Other Item with the permission of Chair	<p><b><u>Report of Unfinished/Pending Business of the Senate Committee on Delegated Legislation</u></b></p> <p>After extensive discussions and deliberations on the report of unfinished business of the Committee, following decisions were made:</p> <p>a. As directed by the Committee the Establishment Division has made some amendments in Rule 9 (ii) of CSS Rules 2018, which now allow disabled persons to opt for any occupational group as per their relative merit position. The members hailed this as one of the Committee's biggest achievements.</p> <p>b. While discussing a Civil Appeal No. 654 of 2007</p>



		<p>(PLD 2017 Supreme Court 173) by petitioner Khush Dil Khan regarding legal instrument that was directed to be issued by the competent authority in the Federal Government, for setting out the essential details regarding rights, privileges and terms and conditions of service of the civilian employees working in the Directorate of Education of the Garrison and in the Defence Division and other attached departments thereto. Committee desired the provisions of amended rules governing DHA. However, Ministry of Defence has not yet complied with the directions of committee. Hence, Committee suggested issuing a reminder to the ministry of defense for prompt provision of amended DHA rules.</p> <p>c. After reviewing Regulations no. 3, 9 and 14 of the Privatization Commission ordinance, 2000, it was agreed that the Committee on Delegated Legislation would not review the basic ordinance because it does not come under the domain/functions of this committee. However, the committee decided to send a reminder to the Privatization Commission to review the Privatization Commission Ordinance, 2000 and place it before the committee.</p> <p>d. In light of the decision of the Supreme Court, which has set aside the decision taken by the Lahore High Court on 26<sup>th</sup> October 2016, which ruled that the Pakistan Electronic Media Regulatory Authority (PEMRA) had violated the rules of its own ordinance by conducting bidding for Direct-to-Home (DTH) licensing and set aside the auction, The PEMRA rules under which the auction was held in November 2016 have been restored.</p> <p>Considering the above-cited decision of the Supreme Court announced on 8<sup>th</sup> May 2018, the above-cited matter stood disposed of.</p> <p>e. The Committee directed to send a reminder to Capital Administration and Development Division (CADD) to report back to this committee on proposed amendments in the CDA Ordinance, 1960, pertaining to joint ventures of public-private partnerships under CDA Ordinance, 1960.</p> <p>f. While discussing the Suo Moto case No. 11 of</p>
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	<p>2011 (PLD 2014, Supreme Court, 389), the committee desired to receive copies of the constitution and rules governing National Police Foundation, which have not yet been furnished to the committee. Hence, the Committee suggested issuing a reminder to the foundation for prompt provision of constitution and rules of National Police Foundation.</p> <p>g. The Establishment Division has consented to provide update on the National School of Public Policy Rules 2017 framed under the National School of Public Policy Amendment Ordinance 2017, in light of the Committee's observations on a public petition moved by Senator Farhatullah Babar. However, the said rules have not been framed yet. The Committee directed to send a reminder to the Establishment Division to finalize the amendments in NSPP Rules and submit the same to this committee.</p> <p>h. The Establishment Division has not framed rules under sections 5 &amp; 5-A of the Federal Service Tribunal Act, 1973. The Committee had instructed that the Establishment division may formulate the same within three months and report back to this Committee. However, the matter is still pending with the said Division. Hence, the Committee directed Establishment Division to promptly finalize the Rules and report back to this committee.</p> <p>i. It is pertinent to note that the above-cited reminders have been sent to the relevant ministries.</p>
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6. In terms of Rule 172E (3) of the Rules of Procedure and Conduct of Business in the Senate, 2012, the quarterly report of the Committee is presented for perusal of the House.

*Sara*  
(Sara Saleem)  
Acting Secretary Committee

*Ayesha Raza Farooq*  
(Senator Ayesha Raza Farooq)  
Chairperson