

The Federal Law Courts

BY JUSTICE (R) QURBAN SADIQ IKRAM

The Ministry of Law and Justice, Government of Pakistan, envisages to establish a Federal Court "in fulfilment of constitutional obligations as provided in Articles 3, 37 read with Article 175 of Constitution". The object is to have a forum for expeditious and speedy justice in matters relating to commercial and financial discipline. The preamble and the statement of objects and reasons aim establish court to try cases and hear appeals and references which would facilitate investment in the country and provide speedy justice, and satisfy concern of WTO.

Article 3 of the Constitution states that the "state shall ensure the elimination of all forms of exploitation and the gradual fulfilment of the fundamental principle, from each according to his ability, to each according to his work." This has no relevancy to the establishment of a court. Article 37 is one of the principles of policy to burden "each organ and authority of the state, and of each person performing functions on behalf of an organ or authority of the state, to act in accordance with those principles in so far they relate to the functions of the organ or authority. This provision requires the government to ensure inexpensive and speedy justice but does not empower the government to set up a parallel judicial system, in contravention of Constitution. It seems proper to examine various constitutional provisions:-

Art: 175. Establishment and jurisdiction of Courts.

(1) There shall be a Supreme Court of Pakistan, a High Court for each province and such other courts as may be established by Law.

(2) No court shall have any jurisdiction save as is or may be conferred on it by the Constitution or be or under any law.

(3) The Judiciary shall be separated progressively from the Executive within fourteen years from the commencing day.

Clause (1) of this Article is relevant for present discussion. This provision establishes two classes of courts. One: The courts constituted by Constitution. Two: The courts constituted by Law i.e; by an Act of Parliament. The Supreme Court of Pakistan, a High Court for each province and the Federal Shariat Court are the only courts established by the Constitution. The Jurisdiction and powers of these courts are also provided in Constitution. These Constitutional courts also have powers/jurisdiction under various statutes. Articles 212 and 212-A enables the government to establish Administrative Courts and Tribunals as well as Military Courts or Tribunals.

These are special class of courts in respect of matters relating to terms and conditions of persons who are or have been in service of Pakistan or matters relating to claims arising from tortuous acts of government or person in the service of Pakistan etc; empowered by law to levy any tax or cess etc or matters relating to acquisition, administration and disposal of any property which is deemed to be enemy property under any law. These special courts have been established for limited purposes. As such the appeal to Supreme Court from judgement, decree, order or sentence of an Administrative Court or Tribunal lie only if the Supreme Court is satisfied that the case involves a substantial question of law of public importance and, leave to appeal is granted. The appeal is not allowed as of right.

The Federal Court will be a statutory court. Section 11 provides that "except where an appeal has been provided under the laws specified in schedule II or schedule III, an appeal to Supreme Court from a judgement, decree or order of the court shall lie if the SC grants leave to appeal. "A perusal of the proposed

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statute indicate that the Federal Court will have original jurisdiction in at least seven statutes in schedule II of the Act. This means that there will be no right of appeal original jurisdiction cases.

Section 5 of the proposed legislation relates to "appointment of Chief Judge and other Judges" of Federal Court. The appointment is to be made by the President "after inviting a panel from the Chief Justice of Pakistan and Professional bodies including public organisations as the Federal Government may deem fit." It has been provided that a person eligible to be judge of High Court or BPS 21 grade officer or a retired Judge of High Court or Supreme Court or retired member or judge of a Tribunal or a court established under a Federal Law and has experience in commercial matters etc. may be appointed a judge of Federal Court under this Act. The oath of office has been specified in Schedule I.

The retiring age has been fixed as 68 years. It will be appreciated that there is no provision for recommendation or even consultation with the Chief Justice of Pakistan. It will only be a panel which will be considered along with panel from professional bodies (not named in Act) and also public organisation (government departments). This means that Supreme Court will have no say in appointments. The civil servants in BPS 21 or above have been made eligible. The civil servants have no judicial experience. A judge should have a developed judicial mind, which will be missing in case of executive officers. How the professional qualification and experience in commercial, economic or financial matters will be assessed.

The qualifications must be specific and not vague. I was sad to read the form of oath specified in Sch I. It was not in accordance with the forms of oath in Constitution. The words in Constitution are "in accordance with the Constitution of Islamic Republic of Pakistan and the Law". In this Act the words used are "in accordance with Law." The words Constitution of the Islamic Republic of Pakistan have been omitted. Section 18 of this Act provides that the judge will not be removed from office except "in the manner as provided under Article 209 of Constitution. A judge of the Supreme Court or High Court takes oath to "abide by the code of conduct issued by the supreme judicial council. However in the oath under this Act the Judge is to "abide by code of conduct issued by the President.

The oath under this Act does not have the words that "I will reserve, protect and defend the Constitution of the Islamic Republic of Pakistan". In face there is no reference to the Constitution of Pakistan in oath under this Act. The judge under this Act will not considered to be holding a Constitutional Office. He also will not take oath under constitution. In fact no oath at all is needed for entering the office of judge under this Act, who will be deemed to be only civil servants under Civil Servants Act 1975. The provisions of Article 209 are attracted exclusively to action against a judge of the Supreme Court or of a High

urt. The Supreme Judicial Council will have no jurisdiction under this Act.

Section 26 empowers the Supreme Court to supervise and control the Federal Court. It is surprising that the Supreme Court has no say in appointment of judges. The appeal before the Supreme Court is not of right. It is through leave to appeal. The decisions under this Act may become a subject matter in litigation under article 199 of Constitution in High Court. The Supreme Court has not been given power to transfer cases from one court to other court or transfer a judge from one court to another court. It is incorrect that the Supreme Court can pass any order "doing complete justice" but in view of above points one fails to understand the nature of supervision and control of Federal Court by the Supreme Court. The provisions of section 26 of this Act seem to be in violation of Article 203 of Constitution of Pakistan. The Federal Court will be a creation of a statute. It will and should be treated as a subordinate court. A study of the Bill makes a clear impression that it will not be possible to achieve the desired results. It will also subject the government to huge unnecessary expenses.

Before conclusion a few suggestions are being made to achieve the desired aims and objects:

We should have Arbitration Council headed by a serving / retired judge of Supreme Court. All matters or some of the matters relating to all / some statutes in schedule III of Act may be filed before the Council. The chairman of the Council should maintain a panel of Arbitrators and refer the matter to any one or two arbitrators. The panel should have names of the retired judges of Supreme Court of Pakistan and retired Judges of all provincial High Courts. The rules need to be framed only. OR The institution of ombudsman needs to be reorganised. The Federal Ombudsman should always be a serving / retired judge of Supreme Court. He should have the services of retired judges, financial experts, economists, professors, industrialists etc., and refer the disputes to any of them for decision.

- I have since long held the view of establishing the Divisional Appellate Courts. Each big city (old divisional headquarters) should have a Divisional Appellate Court. Each court may have at least four judges. All civil FAQ, RSA, RFA, appeals, revisions having value for purposes of jurisdiction as Rs 50 crores (or as may be determined) should be transferred to Divisional Courts. All criminal matters except cases of death sentence be transferred to Divisional Courts. The number of High Court Judges may be reduced. The High Court will then deal with death sentence cases, corporate cases, civil matter of above Rs 50 crore value and all Constitutional matters.
4. The post of District Judge and Sessions Judge be separated. A District Judge to deal with corporate matters should be in addition to the regular District Judge. This will be done only keeping in view the quantum of cases in each discipline. The special courts (federal or provincial) should be abolished. The supervision/control of subordinate courts by High Court need be improved.
 5. In appointment of judges in Supreme Court and High Courts the role of politicians be abolished. The proposal should originate from Chief Justice of High Court. It should be sent direct to the Chief Justice of Pakistan, who will forward the same to President through Law Secretary, for orders. In fact we need excellent "Pakistan judicial service".