

Consequential Amendments Essential for Law Making Processes in Pakistan

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Laws and legal systems are a vital part of a civilization. These laws are framed as per the needs and suitability of the citizens of a society. As the time moves forward, the needs of the people evolve as well. Laws must be transformed and amended gradually with respect to the evolving needs of the people. All over the world, the legal systems are reformed to suit the necessities of the people instead of the people reshaping themselves to fit in the framework of a legal system.

Pakistan is a country who has initially inherited the British colonial laws after independence. Gradually and afterwards, the country has not only amended the adopted laws but also framed new law(s) as per the needs of country and society. However, the amendment(s) and / or new law(s) framing is largely on ad-hoc approach, thus gave rise to different problems and issues for society; and justice in its legal truth has been questioned over time.

Even when a suitable and potentially perfect law exists to respond to a legal query, there is often a question of it being dependent on other existing laws(s), that being the case, the confusion still remains regarding the extent and mode of dependency. These missing elements are often used by law users to take certain benefits that are not legally or ethically justifiable. These include the use of ambiguous wordings of the legislature to obscure the provisions of the law that would collide with a case inevitably.

Whenever a law is promulgated that conflicts with (an) existing law(s); the relation between the former and latter law(s) should be made firm by the framers of that fresh law(s) / amendment(s) so that it cannot be wrongly used to override any existing provision. This problem persists either because of short sightedness of the personnel responsible, missing research work on the subject and / or law making with undesirable haste. This issue creates several voids in the laws of Pakistan, questions that are not always answered sufficiently.

Use of inadequate and ambiguous legal terminology by framers of law means leaving a lot of interpretative burden on the shoulders of the persons responsible to interpret and impose the law. The examples of the most commonly used ambiguous legal expressions used in the framing of laws are 'Notwithstanding', 'Subject to' and 'without prejudice to'. The broader version for 'Notwithstanding', 'Notwithstanding any other provision', allows the lawmakers to escape the need to do some research and mention each and every law that has been affected by the new provision. This might not look like much in writing but it creates an anomalous situation in practice.

Use of this term causes an unnecessary usage of time in the search of contradictions as the person concerned will have to look into all of the laws in force which, in other case, would have been easier if the contradictions were suggested in the provision by the lawmaker instead of letting go of the burden. While the term 'subject to' is used to indicate that the law in question is subservient to another law mentioned afterwards. If a provision contains the term "subject to (*)", it means that the law will impose whatever it contains except anything to the contrary given in (*). The term 'without prejudice to', is used to indicate that the provision with which it appears, does not affect the law/s it refers to. For example, clause (1) states that without prejudice to anything in the clause (2), a court will hear the

cases of every nature but clause (2) provides for the list of cases a court cannot hear. In such case, clause 1 will be applied while considering anything to the contrary provided in clause 2.

Use of these terms along with others of this kind, cause a confusion among the legal officers and this confusion results in different judgments in similar cases as in one case an advocate was successfully able to provide the answer, but in other case an advocate could not do so. The answers, a court demands from an advocate in the cases with such ambiguities present in them, should have been addressed by the lawmakers in the first place. A solution is eminently needed to overcome the problems caused by the use of ambiguous statements as they pose a threat to equality in law and justice. In some cases, use of such ambiguous words and terms can prove to be critical.

"Consequential amendments" are the list of laws that may have to be amended in the consequence of adoption of a particular amendment(s) and / or law(s) and considered necessary for coherence. In other words: amendments which are followed as a consequence of the adoption of a new law(s) and / or any amendment in existing law(s). It is a paragraph and /or schedule added in the end of law(s) which includes the list of all existing laws along with details that are affected by an amendment and / or a new law(s).

The schedule employs an in-depth analysis regarding the laws that are amended and / or repealed by the new law(s). It neutralizes the effects of any widely scoped terminology used in the drafting of any existing law that conflicts and / or, is in any manner, linked to the new law(s).

This paragraph and / or schedule being along the law(s); create a lot of ease for the judicial officers in the interpretation. This might be cause of a little bit of inconvenience for the lawmakers in short-term but on the other hand, it saves a lot of time, effort and resources of the courts and law users in the long run and also reduces the chances of improper judgments based on misconceptions caused by an ambiguity.

United Kingdom, being among the countries that faced the issue of ambiguities, has utilized the "consequential amendments" as a solution to this problem. In United Kingdom, a consequential amendment paragraph is provided in the end of every act or amendment. That paragraph aids the judiciary and other users in staying up to date with the legal framework of the country. Australia has also been on the receiving end in this matter.

In Australia, they enact a consequential amendment act for one or more new laws and announce the amendments consequential to be made to existing law(s) by a new law. Canada uses "consequential amendments" to overcome this issue as well. Canada also admits this paragraph at the end of every new act or amendment. In the mentioned countries, consequential amendments paragraph has proven to be extremely helpful in the reformation of their legal systems.

Pakistan is a country with a comparatively moderately paced judicial system. People of Pakistan have been observed to lose their faith in it because of its inadequacies. When this judicial system actually works and justice gets sidelined by any lack of research by the drafters of the laws, it would not be any good for the cause. This issue has been among the many problems linked with the country's judiciary for decades.

Pakistan has spectated different judgments coming out of similar cases, mainly on account of uncertain and ambiguous terms tend to use unnecessarily in law making / amendments in Pakistan. Many law users over the years have used their treachery to puzzle our legal system with these ambiguities and helped their clients escape justice. To address this problem, Pakistan should, like

many other developed countries, adopt the system of "consequential amendments" in its legal drafting.

Among the numerous reforms that are repeatedly suggested to be made for the betterment of the judicial system of Pakistan, the addition of "consequential amendments" should also be considered. A mere "Statement of objects and reasons" paragraph has not proven to be sufficient. The addition of "consequential amendments" paragraph in the end of an act would complete an act in terms of interpretation. The framers of the laws should also take keen steps to reduce the usage of ambiguous wordings in the written part of the legislation. There is also a conception that the laws are sometimes drafted by those who do not have training in drafting laws. In fact the curriculum of Law degree in Pakistan is missing drafting aspect and focuses largely on the use of law. Thus, those who are responsible for law making / drafting of law add such ambiguous words to save some time and effort. That time saved may bring some short-term satisfaction to the drafter but ultimately the legal system pays the price of such ignorance. Therefore, consideration of such aspects while drafting any law or amendment is highly important in the best interest of the country and masses. The employment of "consequential amendments" paragraph may require efforts from the framers of laws as it would demand in-depth analysis and research but it will prove to be extremely helpful in the long run.

(The writers are associated with Manzil Pakistan (www.manizlpakistan.org). Manzil Pakistan is a national non-profit think tank dedicated to developing and advocating public policy that contributes to the development of Pakistan).

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