

Subject: **PAS-CONSTITUTIONAL AND LEGAL STATUS**

Chapter I Article 240 and 241 of 1973 Constitution deal with the Services.

Article 240 - Appointment to Services of Pakistan and Conditions of service.

Subject to the constitution, the appointments to and the conditions of service of persons in the service of Pakistan shall be determined.

(a) In the case of the services of the Federation, posts in connection with the affairs of the Federation and All-Pakistan Services, by or under Act of [Majlis-e-Shoora (Parliament)] and

(b) In the case of the services of Province and posts in connection with the affairs of a Province, by or under Act of the Provincial Assembly. Explanation. - In this Article, "All-Pakistan Service" means a service common to the Federation and the Provinces, which was in existence immediately before the commencing day or which may be created by Act of [Majlis-e-Shoora (Parliament)].

Article 241 – Existing rules, etc. to continue.

Until the appropriate Legislature makes a law under Article 240, all rules and orders in force immediately before the commencing day shall, so far as consistent with the provisions of the Constitution, continue in force and may be amended from time to time by the Federal Government or, as the case may be the Provincial Government.

Thus (a) appointments and (b) Conditions of service of persons in case of the

(i) Services of the Federation (ii) Posts in connection with the affairs of the Federation and (iii) All-Pakistan Services shall be determined by, or under Act of Parliament.

In the explanation {Article 240 (b)}, it has been clarified that "All-Pakistan Service" means a service common to the Federation and the Provinces which was in existence immediately before the commencing day or which may be created by Act of Parliament. Thus, the Constitution does envisage an All-Pakistan Service, which is common to the Federation and the Provinces. It is equally applicable to PAS and PSP.

- Federal Government may appoint, and determines the conditions, an All-Pakistan Service which may be common to Federation and Provinces and connected to affairs of the Federation.
- ii) Whether after Eighteenth Amendment, Federal Government is completely detached from the management of Provinces in regard to Administration, Service delivery, Law and Order and national security? Article 142 of Constitution demarcates subject matter of Federal and Provincial laws. Federal Government is competent to legislate with respect to any matter in the Federal Legislative List. Parliament and a Provincial Assembly have concurrent jurisdiction to make laws with respect to criminal law, Criminal Procedure and evidence. In case of inconsistency between Federal and Provincial laws, whereas both the Federal Parliament and a Provincial Assembly are competent to legislate, the Act of Parliament shall prevail and the Act of the Provincial Assembly shall, to the extent of repugnancy, be void (Article 143). To ensure uniformity parliament may legislate for one or more Provinces by consent. (Article 144). One such recent example is passage of Drug Act, by the Parliament after the 18th amendment, when all the Provincial Assemblies passed resolution to authorize the Federal Government to legislate.
- iii) Affairs of Federation have been explained in Chapter 2 (Articles 145-152) of the Constitution.

Article 145. Power of President to direct the Governor to discharge certain function as his Agent.

(1) The President may direct the Governor of any Province to discharge as his Agent, either generally or in any particular matter, such functions relating to such areas in the Federation which are not included in any province as may be specified in the direction.

(2) The provisions of Article 105 shall not apply to discharge of functions by the Governor under clause (1).

The President may direct the Governor of any Province to discharge as his Agent, such functions relating to such areas which are not included in any Province. Example Federally Administered Tribal Areas and Gilgit Baltistan. Under Article 148 the executive authority of the Province shall be so exercised as to secure compliance with Federal Laws. It shall be the duty of each Province to Protect every Province against external aggression and internal disturbances and to ensure that the Government of each Province is carried on in accordance with the provisions of the Constitution {(Article 148 (3)}

It is also a misconception that law and order is purely a Provincial subject. It is, but the Constitution does not envisage complete detachment of Federal Government from the affairs of the Province and these are very much the “affairs” of the Federation.

As per Article 149 the executive authority of every Province shall be so exercised as not to impede or prejudice the executive authority of the Federation and such authority shall also extend to the giving of directions to a Province as to the manner in which he executive authority thereof is to be exercised for the purpose of preventing any grave menace to the peace or tranquility or economic life of Pakistan or any post thereof {(Article-149 (4)}Federal Government is competent to regulate Inter-Provincial trade . Federal Government may proclaim emergency on account of War or internal disturbance beyond the power of a Provincial Government to control but subject to resolution from the Provincial Assembly (Article 232 (1). If the President acts on his own the Proclamation shall be laid before the Parliament.

Federal Government may also assume administration of Province in case of failure of Constitutional machinery in a Province. (Article 234).

iv). **Continuation of office of persons in Service of Pakistan (Article 275).**

Until law is made, under Article 240, any person who immediately before the commencing day was in service of Pakistan, shall, continue in the service of Pakistan on the same terms and conditions as were applicable to him under Interim Constitution of the Islamic Republic of Pakistan immediately before the day. Article {275 (4) (a)} All the civil, criminal and revenue courts exercising jurisdiction and functions immediately before the commencing day shall, as from that day, continue to exercise their jurisdiction and (b) all authorities and all offices (whether judicial, executive, revenue or ministerial) throughout Pakistan exercising functions immediately before the commencing day shall, as from that day, continue to exercise their functions. Article 241 clearly states that until appropriate legislature makes a law under Article 240, all rules and orders in force immediately before the commencing day shall, so far as consistent with the provision of the Constitution, continue in force and may be amended from time to time by the Federal Government or as the case may be, the Provincial Government. Provincial Governments have created Provincial Management service through the Act / Rules. Cadre of CSP was abolished in 1974 through an executive order and not through legislation as required under Article 240 of the Constitution. Provisions of Article 240 (a) and (b) are, being, construed narrowly. While Provincial Assembly is competent to legislate in regard to creation of service of Province and posts in connection with the affairs of a Province the powers of Parliament to legislate for an All-Pakistan Service common to the Federation and the Provinces are extensive. Unless such legislation is done an All-Pakistan Service, which was in existence prior to commencing day, shall continue under the same rules and conditions (Article 241 and Article 275).

- PSP and CSP were in existence prior to Commencing day of Constitution. There is long history of creation of ICS and CSP under the laws, and given protection under Article 240, 260, 275, 268, 269, 270, 270A and 270AA of the Constitution.

v) **Article 260 Definitions.**

Service of Pakistan means any Service or post or office in connection with the affairs of the Federation or of a Province, and includes an All-Pakistan Service.

Article 268 envisages continuation and adaptation of all existing laws so far as applicable and with necessary adaptation until altered, repealed or amended by the appropriate legislature

vi) **All-Pakistan Service. Constitutional Evolution Govt of India Act, 1935**

Article 240 - His Majesty Service was given protection under 241 (a)

Governor General was empowered to make appointment to the posts in connection with affairs of the Federation. Secretary of State was competent to make appointments to Indian Civil Service (ICS) Article 244(1).

Independence Act, 1947 (Pakistan).

Section 10 (2). Civil Servants appointed by the Secretary of State or Secretary of State in Council to a civil service of the crown in India Continues on to serve under the Governor of the either of the dominions or of any Province or part thereof with the same rights and emoluments.

➤ In 1954 the Central Govt issued CSP (Cadre and Composition Rules).

vii) **1956 (Constitution).**

Part 10. **Services.**

Article 179.

10 (2). Except as expressly provided by the Constitution, the appointment of persons in the Service of Pakistan may be regulated by Act of the appropriate legislature. Except as Expressly provided by the Constitution.

(a) Every person who is member of a defence service, or of a civil service of the Federation of an All-Pakistan Service, or a civil post in connection with the affairs of the Federations shall hold office during the pleasure of the President.

Article 183.

(1) In the Constitution “All-Pakistan Services” means the services common to the Federation and the Provinces which were the All-Pakistan Services immediately before the constitution day.

(2) President shall have the exclusive power to make laws with respect to the All-Pakistan Services.

viii) 1958 Martial Law.

The Law (Continuance in the Force) Order, 1958, provided that, notwithstanding the abrogation of the constitution and subject to any order of the President, or Regulation made by the Chief Martial Law Administrator, Pakistan would be governed as nearly as may in accordance with the late constitution.

➤ It means provisions in regard to services in 1956 Constitution were intact. Martial Law Regulations and orders were given protection under the 1962 Constitution.

ix) 1962 Constitution.

Terms and conditions of service

Article 178 [a,b,2(a), (b), 3 (a)].

(1) Subject to this Constitution and law -

(a) appointments to an All-Pakistan Service or to a civil service of the Centre, or to a civil post in connection with the affairs of the Centre, shall be made by the President or a person authorized by the President in that behalf; and

(b) appointments to a civil service of a Province, or to a civil post in connection with the affairs of a Province, shall be made by the Governor of the Province or a person authorized by the Governor in that behalf.

(2) Subject to this Constitution and law, the terms and conditions of service of persons serving in a civil capacity in the service of Pakistan (other than persons whose terms and conditions of service are specified in this Constitution) shall be as prescribed-

(a) in the case of a person who is a member of an All-Pakistan Service or who is serving in connection with the affairs of the Centre- by rules made by the President or by a person authorized by the President in that behalf;

x) Martial Law 1969.

In March, 1969 Martial Law imposed and Constitution of 1962 abrogated. LFO and Interim Constitution given.

xi) **Interim Constitution of Pakistan (April, 1972).**

Part IX . The Service of Pakistan.

Article 221(a). Subject to this Constitution and law the terms and conditions of service of persons serving in civil capacity in the service of Pakistan shall be as prescribed:-

2 (a) In case of a person, who is member of an All-Pakistan Service or who is serving in connection with the affairs of the Federation, by rules made by the President or by a person authorized by the President in that behalf.

(03) Rules made for the purpose of clause 2 shall be so framed as to ensure

(a) that the terms and conditions of service of a person are not varied to his disadvantage (except those terms and conditions which relates to remuneration or age fixed for superannuation).

xii) **1973 Constitution**

It is clear that there is continuity (constitutional and legal) in regard to civil service right from 1935 Act to 1973 Constitution and the Eighteenth Constitutional amendment has not alerted this position.

As per Article-241 of the Constitution Federal Legislature may legislate further and until such legislation is made the Federal Government is competent to frame rules.

Current SRO regarding PAS may be viewed in the above legal context.

March, 2014.

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