

# EXORDIUM OF LEGISLATIVE FUNCTION

RANA AZHAR SIDDIQUE<sup>1</sup>

Dr. ATTAULLAH WATTOO<sup>2</sup>

## ABSTRACT:

*Legislative function is a crucial aspect of the modern welfare state, where the legislative body performs its duties according to the constitution or precedents. Post-legislative scrutiny, a concept that has been little discussed globally, is a growing need in Pakistan. The concept of legislation is defined by the French philosopher Charles-Louis de second at, who introduced the separation of power theory, which divided the political authority of the state into legislative, executive, and judicial powers. The legislative function is focused on enacting laws, while the executive handles implementation. The judiciary plays a specific role in adjudication for protecting people's rights and ensuring the smooth functioning of the social system. There is limited academic literature on post-legislative scrutiny, but the need for this concept is becoming increasingly evident in various articles, papers, and discourses.*

---

**INTRODUCTION:** Legislative function is one of the three core functions of the state staying on the top of the stature of the state in the modern welfare state functions where the legislative body performs this function as per the given legislative competence in the constitution or the set standard of the precedents in the lands of unwritten constitution. The concept of post-legislative scrutiny

---

<sup>1</sup> Incharge Legislative Drafting Unit. Senate of Pakistan, PhD Law Scholar, Roll No. 113-SF/ PhDLAW/S19. IIUI

<sup>2</sup> Assistant Professor IIUI

stands on no principle its working across the globe has been discussed very little. There is need of establishment of systemic and organized forum for post-legislative scrutiny in Pakistan as a whole and Concept of Legislation, Primary legislation i.e. Acts of Parliament or Statutes, Secondary legislation, quasi legislations, Bill which is the most common type of legislation.

### **Overview of Paper:**

After the French revolution the jurist of the world agreed upon theory of separation of power specified by a French social and political philosopher namely **Charles-Louis de Secondat, baron de La Brede ET de Montesquieu** in 18th century. The history of political theory and jurisprudence after His publication, *Spirit of the Laws*, is self-evident that the great work inspired the Declaration of the Rights of Man and the Constitution of the United States. The political authority of the state is divided into legislative, executive and judicial powers under this model, these three powers must be separate and act independently. The obligatory functions of government were divided into three distinguished wings on the bases of this theory, out of which, the Legislative function was considered for enactment of laws only and its implementation was left for executive and the judiciary was on the specific role of adjudication for protection of the rights of people and smooth functioning of social system. There is no principle on the concept of post-legislative scrutiny however its working across the globe has been discussed very little as a theory. Conversely, the seeds of the need in various articles, papers and discourses are becoming harbinger of the fact that post legislative scrutiny is the need of hour. Currently there is limited

academic literature found on papers on the subject the post-legislative scrutiny.<sup>66</sup>

### **Concept of Legislation:**

Before discussing the procedure of legislation in various countries it is necessary to have the basic concept of legislation i.e., what does legislation mean. The Encyclopedia Britannica defines legislation as:

*“Legislation, the preparing and enacting of laws by local, state, or national legislatures. In other contexts, it is sometimes used to apply to municipal ordinances and to the rules and regulations of administrative agencies passed in the exercise of delegated legislative functions.”<sup>67</sup>*

The dictionary by Merriam Webster defined legislation as following.

*“1: the action of legislating  
specifically: the exercise of the power and function of making rules (such as laws) that have the force of authority by virtue of their promulgation by an official organ of a state or other organization.*

*The major function of Congress is legislation*

— *W. S. Sayre*

*2: the enactments of a legislator or a legislative body  
Legislation to help distressed homeowners*

---

<sup>66</sup> “Separation of Powers: An Overview,” national conference of state legislatures. May 1, 2021. Accessed May 20, 2022, <https://www.ncsl.org/about-state-legislatures/separation-of-powers-an-overview>.

<sup>67</sup> “Legislation | Definition, Types, & Examples | Britannica,” britannica.com, February 6, 2018, Accessed 26 May 2022, <https://www.britannica.com/topic/legislation-politics>.

*3: a matter of business for or under consideration by a legislative body She proposed new legislation to protect the environment.*”<sup>68</sup>

The Definition given in UK Parliament official website is: *“Legislation is a law or a set of laws that have been passed by Parliament. The word is also used to describe the act of making a new law.”*<sup>69</sup>

### **Types of legislation:**

Oxford law faculty talks about two main types of legislation

1. Primary legislation - Acts of Parliament or Statutes
2. Secondary legislation - Statutory Instruments (SIs, which are often called Codes, Orders, Regulations, Rules)<sup>70</sup>

Hobnob defines bills, simple resolutions, joint resolutions and concurrent resolutions as type of legislation:

- i. Bill the most common type of legislation. Bill can be of many types like permanent or temporary, general or special in nature; public or private. Except for the revenue bills which only originate in House of Representatives all other bills can originate in either house i.e. the Senate or the House of Representatives.
- ii. Joint resolution is not much different from a bill, except joint resolution can include a preamble that precedes the resolving clause.

---

<sup>68</sup>“Legislation Definition & Meaning - Merriam-Webster,” merriam-webster.com. n.d., accessed May 26, 2022, <https://www.merriam-webster.com/dictionary/legislation>.

<sup>69</sup>“Glossary - UK Parliament,” parliament.uk. n.d., accessed May 26, 2023, <https://www.parliament.uk/site-information/glossary/>.

<sup>70</sup>“Law Reports | Faculty of Law,” law.ox.ac.uk. n.d., accessed June 10, 2022, <https://www.law.ox.ac.uk/legal-research-and-mooting-skills-programme/law-reports>.

- iii. Simple resolution is one that is considered in the House in which it is introduced.
- iv. Concurrent resolution is introduced in issue affecting the processes of both chambers.<sup>71</sup>

Laws, news and network tell following types of legislation:

- a) Supreme legislation i.e. legislation by state or supreme authority
- b) Subordinate legislation i.e. legislation by anybody sanctioned by Supreme authority
- c) Delegated legislation is one which is done by executive on the authorization of supreme authority.<sup>72</sup>

Primary legislation and secondary legislation are main kinds of legislation in the United Kingdom. Primary legislation includes the laws made by Parliament or the statutes **and the** secondary legislation includes but not limited to the rule, regulations, orders, codes and bylaws made subordinate to the acts of Parliament. Quasi legislation and European community legislation is also a form of Secondary legislation.

While speaking on primary legislation Public General Acts and Local and personal acts are known as the types of Primary Legislation. Public general acts are the acts which are annexed with the explanatory notes of achieving the objective of the act with its context while local and personal acts are the acts which are relatable to the boroughs, railways, canal companies and enclosed land.

---

<sup>71</sup> “Understanding the 4 Basic Types of Legislation - Hobnob Blog,” hobnobblog.com. n.d., accessed June 10, 2022, <https://hobnobblog.com/2010/09/understanding-the-4-basic-types-of-legislation/>.

<sup>72</sup>Admin Lawnn, “Types of Legislation, Merits, Supremacy under Jurisprudence,” lawnn.com. December 24, 2018, [Accessed 10th June, 2022.](https://www.lawnn.com/types-of-legislation/)

Secondary legislation is also called as sub ordinate, subsidiary or delegated legislation. The common terms of this legislation are known Orders, Regulations, Rules, and Codes etc. as this legislation is made by government, the executive pillar of the state. Such legislation is authorized by the parliament.

Quasi legislation has no classification however the circulars issued by the Government, rules provided by the regulatory bodies and the codes bringing in to force are the forms of legislation.

### **C onclusion:**

The obligatory functions of government were divided into three distinguished wings on the bases of theory of separation, theory, out of which, the Legislative function was considered for enactment of laws only and its implementation was left for executive and the judiciary was on the specific role of adjudication for protection of the rights of people and smooth functioning of social system.

Legislative function or legislation means the preparing and enacting of laws by local, state, or national legislatures. Legislation is divided in many types like Primary legislation includes the laws made by Parliament or the statues and the secondary legislation includes rule, regulations, orders, codes and bylaws made subordinate to the acts of Parliament. Public General Acts and Local and personal acts are known as the types of Primary Legislation. Statutory Instruments (SIs, which are often called Codes, Orders, Regulations, and Rules) are also known as type of secondary legislation.

Another classification of legislation includes bills, simple resolutions, joint resolutions and concurrent resolutions.