

**REPORT OF THE SENATE STANDING  
COMMITTEE ON DEFENCE**

**Reconsideration of "The National  
Command Authority (Amendment)  
Bill, 2016"**

***Report No. 12  
(Thirteenth Parliamentary Year)***

**PRESENTED BY  
(SENATOR MUSHAHID HUSSAIN SAYED)  
CHAIRMAN**

## SENATE SECRETARIAT

### REPORT OF THE SENATE STANDING COMMITTEE ON DEFENCE

I, Senator Mushahid Hussain Sayed, Chairman of the Standing Committee on Defence, have the honour to present the second report, on behalf of the Committee, on "**The National Command Authority (Amendment) Bill, 2016;**" which was referred to the Standing Committee for reconsideration and report on 23<sup>rd</sup> November, 2016 vide observation of the Chairman Senate "**whether the particular amendment in the Bill is hitting the fundamental rights of the employees of that Organization**".

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

1.	<b>Senator Mushahid Hussain Sayed</b>	<b>Chairman</b>
2.	Senator Ilyas Ahmad Bilour	Member
3.	Senator Hidayat Ullah	Member
4.	Senator Atta Ur Rehman	Member
5.	Senator Col. (R) Syed Tahir Hussain Mashadi	Member
6.	Senator Lt. Gen. (R) Salahuddin Tirmizi	Member
7.	Senator Lt. Gen. (R) Abdul Qayyum	Member
8.	Senator Muhammad Javed Abbasi	Member
9.	Senator Farhatullah Babar	Member
10.	Senator Farooq H. Naek	Member
11.	Senator Mrs. Sehar Kamran	Member
12.	Senator Brig (R) John Kenneth Williams	Member
13.	Minister for Defence	Ex-Officio Member

3. The Hon'ble Chairman Senate while referring the National Command Authority (Amendment) Bill, 2016 back to the Standing Committee on Defence during the 255<sup>th</sup> Session of the Senate dated 23<sup>rd</sup> November, 2016, made the following observations:-

"In accordance with the provisions of Rule 166, A Standing Committee shall examine a Bill, subject or matter referred to it by the Senate or the Chairman and shall submit its report to the Senate or to the Chairman, as the case may, be with such recommendations, including suggestions for legislation, if any, as it may deem necessary. In case of a Bill, the Committee shall also examine whether the Bill violates, disregards or is otherwise not in accordance with the provisions of the Constitution. This requires to examine whether this Bill is or is not in consonance with the provisions of the Constitution of the Islamic Republic of Pakistan. A tentative reading of the Bill shows that it is prima facie hit by Article 4, Article 17, Article 25 and then finally Article 8 of the Constitution. The





Committee is advised to reconsider the Bill on the particular point "**whether the particular amendment in the Bill is hitting the fundamental rights of the employees of that Organization**"

4. A meeting of the Senate Standing Committee on Defence was held on 8<sup>th</sup> December, 2016 whereby this point was placed on the agenda and discussed in detail. The following members of the Committee attended the meeting:-

i.	Senator Mushahid Hussain Sayed	Chairman
ii.	Senator Col. (R) Tahir Hussain Mashhadi	Member
iii.	Senator Farhatullah Babar	Member
iv.	Senator Lt. Gen. (R) Salahuddin Tirmizi	Member
v.	Senator Muhammad Javed Abbasi	Member
vi.	Senator Ilyas Ahmad Bilour	Member
vii.	Senator Ata ur Rehman	Member
viii.	Senator Hidayat ullah	Member
ix.	Senator Lt. Gen. (R) Abdul Qayyum	Member

5. The representative of the Strategic Plans Division (SPD) was invited first to give a legal response to the points raised by the Chairman Senate. According to the SPD representative, the amendments being brought in the NCA Act are more of a clarification and declaratory in nature rather than adding new sections. Its main objective is to guard against proliferation of sensitive information in the public domain & protect the employees. The nuclear scientists and engineers have been declared as legitimate military targets by hostile agency. The aim is to prevent them from being identified as a potential target. This amendment in no way is aimed at usurping the legal rights and privileges of the employees. The nuclear scientists, engineers and other professionals are national assets who have contributed to the national security and are required to be treated as such. To look after and provide justice to the employees the organization provides them a number of facilities which include.

- a. **Special Pay Scales.** The NCA employees have special pay packages under which salaries given to them are higher than the comparable officials in the civil service.
- b. **Appellate Forums.** Although NCA employees are governed under the NCA Employees Efficiency & Discipline Rules, 2010, which are very comprehensive and at par with any of the Rules currently applicable to any set of employees working in any organization. The employees have



been given a right to file an appeal to the prescribed appellate authorities for redressal of their grievances even of minor nature.

- c. **NCA Foundation** NCA Foundation has been established for the welfare of its employees and families and their post retirement rehabilitation etc.

6. Commenting on the observations of the Chairman Senate the following submissions were made:-

The National Command Authority (Amendment) Bill, 2016 was passed by the National Assembly which was then introduced in the Senate. The Senate referred the Bill to the Senate Standing Committee on Defence and the Standing Committee after clearing the Bill made an endeavour to submit its Report in the House. At the time of submission of Report on 23 November 2016 on the floor of the House Chairman Senate made certain observations regarding National Command Authority (Amendment), Bill 2016. According to the Chairman Senate, the Bill seems to be hit by Articles 4,8,17 and 25 of the Constitution. The second observation by the Chairman Senate is that the content of legislation is subjudice before the Supreme Court. The Government has also filed a review petition against the earlier decision of the Supreme Court. The Chairman Senate referred the Bill back to the Standing Committee for further consideration on these points.

7. A point to point submission by the organization is as follows:-

i. **Subjudice Nature of The Case / Review Petition**

- a. It is submitted that the legislation by Parliament on subjudice matters is an exception to the general principles that any action detrimental to the court proceedings shall not be taken in subjudice matters. In this regard "Practice and Procedure of Parliament written by M. N. Kaul, Page No 1124 is referred.

"The rule of subjudice cannot stand in the way of legislation. Where legislation has to be brought, the law making has to be done, the rule of subjudice does not apply".

ii. **The Bill is not Violative of the Constitution**

- a. The NCA Amendment Bill is not suggesting any new enactment rather it is primarily adding a proviso to Section 15 of the Act to remove ambiguities,



to make clarifications and to draw a clear line to exercise jurisdiction by the Honourable Constitutional Courts to entertain the affairs of NCA employees as per the original intent of the legislature.

- b. The amendment is declaratory in nature so as to highlight the original intent of the legislature i.e. to keep the rules as non statutory.

iii. **Article 8 of the Constitution**

- a. Article 8 of the Constitution applies to a law which is against the fundamental rights. Fundamental rights are enumerated in the Constitution. The Ruling of the Chairman has pointed out Articles 17 and 25 of fundamental rights which prima facie seem to have been violated in the instant case.
- b. It is further submitted that NCA Act, or the proposed amendment, do not violate the fundamental rights in terms of not only Articles 4, 17 and 25 but also all the fundamental rights as contained in Chapter 1 of the Constitution, therefore, Article 8 of the Constitution is not triggered in this case.
- c. It is further clarified that the existing Section 7 of the NCA Act simply reflects the exceptions to the exercise of fundamental rights, where deemed appropriate.

iv. **Article 4 & 25 of the Constitution**

- a. Article 4 deals with rights of the individual to be dealt with in accordance with law. The employees of National Command Authority & its Strategic Organizations are being dealt with under the National Command Authority Act, 2010. In 2016 an amending Ordinance was promulgated clarifying the status of rules of NCA as non statutory as per original intent of the legislature.
- b. To reinforce the original intent of the legislature, Federal Government filed a CMA in the Supreme Court in which it was highlighted that the rules to be framed under Section 15 of the Act were intended to be "non statutory".
- c. The same Ordinance is before the Parliament in the form of a Bill. As long as any amendment in the National Command Authority Act, 2010 is perpetuated only through an act of Parliament, therefore, it will not be

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violative of Article 4 of the Constitution.

- d. Articles 4 & 25 are equal protection clauses that require non-discriminatory treatment to all citizens. In other words, the Constitution's intention is that the law should have a uniform application on all concerned. The only exception is the "Doctrine of Reasonable Classification".
- e. The NCA law is precisely based on "Reasonable Classification Doctrine" that permits classifying nuclear scientists and engineers into a category separate from regular civil servants. This classification has been permitted under the Constitution.
- f. In numerous litigations in which NCA Ordinance of 2007 & the Act of 2010 have come up for discussion, none of the Courts have held that the NCA Ordinance or the Act are violative of Art 4 or 25 of the Constitution. In fact they have appreciated the basis of reasonable classification and have endorsed the principles followed under the NCA Act and Rules wherein the principle of "Similarly Situated to be Similarly Treated" has been followed.
- g. In other words, even the sub-classification within the NCA employees in respect of certain persons who hold highly classified assignments under the Personnel Reliability Program (PRP) viz-a-viz other employees has been duly communicated to the Courts and they have never questioned the basis of such classification amongst the NCA employees.
- h. Since the current proposed amendment is merely declaratory in nature and reaffirms the intent of the Federal Government, therefore, the same also does not violates article 4 or 25 of the Constitution.
- v. **Article 17 of the Constitution**
  - a. Article 17 of the Constitution defines that every citizen shall have the right to form an associations, subject to any "reasonable restrictions" imposed by law "in the interest of sovereignty or integrity of Pakistan, public order or morality".
  - b. It may be appreciated that the said Article does not give free hand to every citizen to form an association etc rather they are subjected to reasonable restrictions as per law. The Section 7g of the NCA Act is in conformity of the said Article of the Constitution and allows NCA to impose reasonable



restrictions on its employees which are necessary in the interest of confidentiality of the functions, assignments, jobs etc being performed by the said employees or the class of employees. Therefore the employees of NCA have not been given right to form associations or unions.

8. The fundamental rights of an employee to adjudicate against a grievance is well looked after and catered for through the establishment of a robust appellate authority pursuant to Section 11 of the NCA Act. The said appellate authority's jurisdiction can be invoked by an employee under specially issued appellate authority rules according to which an employee is entitled to a personal hearing before the appellate authority. The same is an adequate remedy for the resolution of grievances of the employees.

9. The Joint Secretary/Additional Draftsman, Ministry of Law & Justice explained that the proposed amendments in the National Command Authority (Amendment) Bill, 2016 have been very carefully examined and vetted by the Ministry of Law & Justice and the observations of the Hon'ble Chairman Senate regarding these amendments being not in conformity with the provisions of the Constitution of Pakistan have also been examined in detail. It is pointed out that the Bill is not in contravention of Articles 4, 8, 17 and 25 of the Constitution of Pakistan. The Industrial Relations Act which provides for freedom of association does not apply to the employee of a strategic organization like the SPD. No element of equality of employees, being citizens of Pakistan, is being disturbed by these amendments. While interpreting the concept of equality the Supreme Court has laid down the principle that there could be no discrimination between the people belonging to the same class, as all employees of National Command Authority are being treated as one class of people. The amendments to the NCA Act do not provide for any discrimination amongst the employees and all are being dealt with in accordance with law i.e. The National Command Authority (Amendment) Bill, 2016.

10. Article 8 of the Constitution applies to a law which is against the fundamental rights. Fundamental rights are enumerated in the Constitution. The Ruling of the Chairman has pointed out Articles 17 and 25 of fundamental rights which seem to be violated for invoking Article 8 of the Constitution for making the Bill void.





11. Article 25 of the Constitution speaks of equality of citizens but this Article does not mean that a class of citizens shall be treated at par with another class of citizens. It has been already held by superior judiciary that treatment meted out to any class of citizens as a whole which is different from another class of citizens, is not violative of Article 25 of the Constitution. In the instant case no discrimination is being made among the class of employees working in the strategic organizations under the auspices of National Command Authority. As long as a uniform and harmonious treatment as to the status of employees is envisaged, it is not violative of Article 25 of the Constitution.

12. Article 17 of the Constitution provides freedom of association with reasonable restrictions as imposed by law. Section 14 of the National Command Authority Act, 2010 states that the Industrial Relation Law does not apply to any of the employees in the service of the Authority and the strategic organizations. Hence forming of unions / collective bargaining agents are precluded from the purview of National Command Authority employees. All this has been done under the enabling provision of the Constitution, therefore, the Act of 2010 is not violative of Article 17 of the Constitution. It would not be out of place to mention here that the Bill under consideration does not contain any proposed amendment falling in the ambit of Article 17 of the Constitution.

13. Initiating the discussion, Senator Col. (R) Tahir Hussain Mashhadi reiterated that the Bill has been discussed in detail in the previous meetings of the Committee and all relevant issues were taken into account. It was clearly spelled out that while seeking employment in the NCA, the employees accept voluntarily to forgo some of their basic rights and these self imposed restrictions are in accordance with rules which govern working of this sensitive organization.

14. The provisions of Constitution pertaining to fundamental human rights in general are not applicable here. This legislation is in the greater national interest keeping in view the requirements of national security. If the law places reasonable restrictions within the frame work of the Constitution the same could not be declared as non constitutional.

15. Senator Lt. Gen. (R) Abdul Qayyum appreciated the observations by the Hon'ble Chairman Senate being very pertinent in nature but reiterated that the SPD



being an organization with a special assignment demands special legal safeguards. This takes the rules governing its operations out of the purview of certain constitutional obligations. He again emphasized that these constitutional obligations pertaining to basic human rights are voluntarily surrendered by the employees while taking service with the SPD.

16. At the outset, Senator Farhatullah Babar expressed reservations over the decision to discuss in-camera a legislative proposal of public importance. He said that legislation is public property and the matter has already been publically discussed in the National Assembly Standing Committee, in the plenary of National Assembly and reported extensively in the media. He stressed that there may be reasons for holding briefings on LOC situation in-camera, there was no reason why the media has been kept out of discussion on a legislation of public importance. By doing so, the Committee is depriving the employees of NCA of the satisfaction that there are some voices, however feeble, in the Parliament being raised for the protection of their rights.

17. Senator Farhatullah Babar opposed the Bill and gave detailed reasons as also contained in his note of dissent.

18. Senator Farhatullah Babar while speaking on the issue reaffirmed the contents of his previous note of dissent and emphasized that a Master-Slave relationship with the employees is not supported. Criticizing the endorsement by Law Division, he reiterated that the Parliament needs to legislate keeping in view the greater national interest. United Nations Resolution 1540 pertains to the issues of nuclear proliferation. This resolution in no way provides any guidelines relating to service matters of the employees and cannot be used to circumvent their basic rights. The SPD and other organizations engaged in works of nuclear and other sensitive nature have a large number of employees whose basic rights cannot be done away with. Every organization is supposed to have their own service rules and has a robust mechanism in place whereby national security is not compromised. It is only after some nuclear proliferation has taken place after which the employees are being targeted and being deprived of their basic rights. According to law the service structure cannot be changed to the detriment of the employees. The organization has itself failed to protect nuclear proliferation and it should not punish its employees for something which they did not do. This proposed legislation would dishearten these employees by trampling upon their





basic rights. It would undermine national security by de-motivating and traumatizing a very motivated work force. A frustration in this work force could lead to undesirable consequences. As a way forward the Hon'ble Senator proposed to strengthen the institution. He referred to Section 11 of the NCA Act 2016 whereby an appellate authority has been provided for the employees to cater for their grievances in cases of service related actions against them. The Hon'ble Senator proposed that there should be a "Services Tribunal" within the organization to handle service matters. Proceedings of this Services Tribunal may be held in-camera. The TORs leading to the formation of this Services Tribunal should be discussed in Parliament and it should be delinked from the Administrative Authority. A non-Government controlled Services Tribunal would address the needs of basic human rights of the employees and the appellate authority would lie with the Supreme Court of Pakistan. The Hon'ble Senator emphasized that the Committee should not grant a blanket approval while employees rights were being usurped in the name of proliferation. The Hon'ble Senator then submitted another note of dissent in this respect which is attached as Annexure.

19. Senator Muhammad Javed Abbasi while speaking on the observations of the Hon'ble Chairman Senate stated that we must look into the background of the legislation that was originally introduced in the year 2010. Any legislation can have amendments arising out of legal requirements and the same is the case in this instance. The original NCA Act of 2010 intentionally left a space for the organization to devise rules relating to service matters of the organization keeping their status as non-statutory, which was a deliberate. The Hon'ble Supreme Court of Pakistan in its judgment thought otherwise and interpreted these laws to be statutory. The NCA has approached the Parliament that keeping in view the sensitive nature of work and to avoid prolonged litigations in courts, a clarity should be brought in the law and the laws we declared non-statutory, as was the original intention of the legislation. The doctrine of master-servant relationship is a legal term and determines the status of the employees.

20. This Bill has been cleared by the National Assembly after taking into consideration all legal aspects and keeping in view the original sense of legislation. A close study of Article 8 sub Article 3-A-iii makes it clear that a space has been provided where this current amendment, can be parked. The national interest is supreme and





nothing new is being sought by SPD. This amendment is only to streamline matters that had already been approved by the Parliament. The National Assembly through its Committee has already deliberated upon these issues and has cleared the Bill.

21. Senator Farhatullah Babar did not agree to this point of view and said that these amendments were clearly aimed at blocking all decisions of all courts including the Supreme Court of Pakistan. He further stated that if we would see the draft legislation, it did not contain the words "the Supreme Court" in the amended. These words in Section 3, pertaining to amendment of Section 15 in the Act of 2010, seems to have been added by the Committee of the National Assembly.

22. Senator Mushahid Hussain Sayed, Chairman Standing Committee on Defence, Senate of Pakistan while concluding the discussion reiterated that the point of view of the majority of members of DEFCOM has not changed in respect of this law being in conformity with the Constitution and that it should be passed as such.

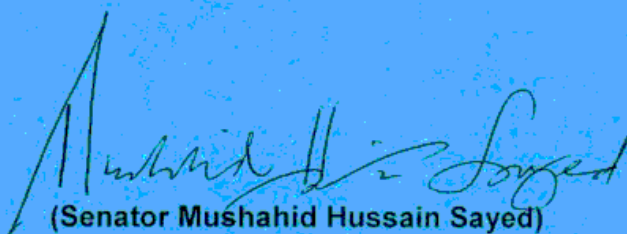
23. The Chairman Standing Committee on Defence than put the Bill to vote which was again passed by a majority vote with one dissenting note by Senator Farhatullah Babar.

24. The Chairman & members of the Senate Standing Committee on Defence adopted this report and approved its laying before the Honourable House.



13/DEC/XVI

(Dr. Syed Pervaiz Abbas)  
Addl. Secretary / Secretary Committee



(Senator Mushahid Hussain Sayed)  
Chairman

NCA Amendment Act 2016  
Note of Dissent cum Proposal  
December 08, 2016

After the Senate Chairman's observations about the weaknesses in the Bill and referral back to the Committee for reconsideration I am even more convinced that the said Bill should be rejected for the following reasons.

1. **Illegality of altering the agreed terms of service of employees**

The employees of all organizations under the NCA (like the PARC, NESCOM and SUPARCO etc) were, prior to placement under it, governed by their respective service rules. Changing the rules to the detriment of employees is contrary to the principle of law which stipulate against making any such substantive legislation/ rules. Whenever such changes are made the employees are also given an option whether they wanted to opt for the new set up or wished to continue under the previous terms and conditions at the time of recruitment. Not long ago the PTCL's employees were given such option and today there are two categories of employees in the PTCL.

There is no reason why such a model cannot be adopted by the NCA, if at all it is necessary to change the terms and conditions is necessary.

2. **Adverse Impact on Employees**

There is a large number of employees working in different organizations under NCA/SPD including a significant number of highly qualified professionals responsible for building strategic assets of Pakistan.

It is critical that they are kept motivated and treated respectfully and NOT, as the avowed objective of the Bill states, in a "Master-Servant" relationship. Who is the master and who is the slave, one may ask?



Respectful treatment demands that the employee should have the right to challenge the arbitrary, whimsical, dictatorial and unjust decisions militating against them before a judicial or quasi-judicial independent authority. The Bill if enacted will result in a demotivated and frustrated workforce and undermine the strategic program itself.

I implore the authorities not to be so blinded by the quest of absolute power over the employees that may result in undermining, instead of advancing, the very purpose for which NCA was created.

### 3. **Fallacy of Proliferation argument**

A reference has also been to UN Resolution 1540. The said Resolution calls for tightening controls to prevent pilferage and proliferation of strategic materials. The implied argument in reference to Resolution 1540 is that 'master-servant' relationship is needed for keeping a check on the employees is spurious and not tenable and amounts to rubbing salt into the wounds.

No proliferation took place when these employees were working in their respective strategic organizations and governed by respective service rules like the PAEC, NESCOM etc. Let us not forget that while working independent of the NCA/ SPD these organizations and these very employees gave the nation nuclear and strategic capability.

Unfortunately proliferation took place years later and under the nose of NCA/SPD - a fact duly acknowledged by General Pervez Musharraf in his book "In the Line of Fire".

Mistreating these employees and forcing them to enter into a master- servant relationship with NCA/SPD seems to be scapegoating and tarnishing them black for no fault. It is pregnant with grave implications as it may result in a huge collateral damage to the strategic program itself and must be avoided.

4. **Finally** I should also like to reiterate that the issue is already before the honorable SC in a review petition. Although the parliament has the powers to legislate at any time it would be unwise and imprudent to adopt this legislation in undue haste in a manner that appears to scuttle a judicial process under way.

5. **Proposal** Having said this, I also offer the following way out for consideration.

Section 11 of the NCA Act 2010 provides for the setting up of an Appellate Authority for redressal of grievances of employees against arbitrary decisions in service matters.

It is therefore proposed as a way out that **Special Service Tribunal** may be established on the pattern of Federal Services Tribunal of Pakistan (FST) to deal exclusively with the service matters of employees of NCA/SPD. The proposed Tribunal should be required to give due consideration to the sensitivity of the issues involved in the petitions before it. The decision of this Special Tribunal shall only be challengeable before the Supreme Court where the NCA/SPD may also plead for in-camera proceedings.

I therefore propose that NCA/SPD may consider this way out and bring up before this Committee a draft proposal and legislation for the setting up of such a **Special Tribunal** that is independent and credible enough to arouse the confidence of its employees and prevent them from falling into the bottomless pit of frustration and demotivation.



**Farhatullah Babar**  
**Member**  
**Standing Committee on Defence**  
Dec 8, 2016



[AS PASSED BY THE NATIONAL ASSEMBLY]

A  
Bill

*further to amend the National Command Authority Act, 2010*

WHEREAS, it is expedient further to amend the National Command Authority Act, 2010 (V of 2010), for the purposes hereinafter appearing;

It is enacted as follows:-

1. **Short title and commencement.**—(1) This Act may be called the National Command Authority (Amendment) Act, 2016.

(2) It shall come into force at once and the provisions of this Act shall be deemed always to have been part of the National Command Authority Act, 2010 (V of 2010).

2. **Amendment of section 7 Act V of 2010.**— In the National Command Authority Act, 2010 (V of 2010), hereinafter referred to as the said Act, in section 7, in clause (d).—

(a) for the words “prescribed specific”, the words “determine and provide for the”, shall be substituted; and

(b) after the word, “matters”, the words “as it may deem fit and proper in the interests of the Authority”, shall be added.

3. **Amendment of section 15 Act V of 2010.**— In the said Act, in section 15, the following new proviso shall be added, namely:-

“Provided that notwithstanding anything contained in any judgment decree, order, direction or declaration of any Court including the Supreme Court of Pakistan or in this Act or in any other law for the time being in force, the rules, instructions or orders already made, or which may be made, in respect of the employees and strategic organizations of the Authority shall be non-statutory unless approved by the Federal Government and Published in the Official Gazette of Pakistan.”

4. **Substitution of section 17 Act V of 2010.**—In the said Act, for Section 17, the following shall be substituted, namely:-

“17. **Funds of the Authority.**—The Federal Government shall ensure provision of funds and make contributions in local and foreign currencies to the Authority through Strategic Plans Division as may be necessary to the Authority.”

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### **STATEMENT OF OBJECTS AND REASONS**

It is necessary and expedient to amend the National Command Authority Act, 2010 (V of 2010) (hereinafter the Act) to provide more clearly that the Federal Government shall ensure provision of funds and to further reiterate the original intent of the NCA Ordinance 2007 and NCA Act 2010 that the employees in service of the Authority are not civil servants and that legal relationship of the Authority with its employees is governed under the doctrine of master and servant and further the proposed amendment shall also prevent the abuse of legal process in respect of affairs of state.

**Khawaja Muhammad Asif**  
Minister for Defence