

REPORT OF THE STANDING COMMITTEE ON LAW AND JUSTICE



“THE CONSTITUTION (AMENDMENT) BILL, 2017 (INSERTION OF NEW ARTICLE 95A)”

Report No. 55

PRESENTED BY

**SENATOR MUHAMMAD JAVED ABBASI
CHAIRMAN**

SENATE SECRETARIAT

REPORT OF THE STANDING COMMITTEE ON LAW AND JUSTICE ON "THE CONSTITUTION (AMENDMENT) BILL, 2017"

I, Chairman of the Standing Committee on Law and Justice, have the honour to present report on "The Constitution (Amendment) Bill, 2017 (Insertion of new Article 95A)" introduced by Senator Muhammad Mohsin Khan Leghari on 11th September, 2017. The Bill, upon introduction, was referred to the Standing Committee for consideration and report.

2. The composition of the Standing Committee on Law and Justice is as under:-

1.	Senator Muhammad Javed Abbasi	Chairman
2.	Senator Aitzaz Ahsan	Member
3.	Senator Saleem Zia	Member
4.	Senator Farooq Hamid Naek	Member
5.	Senator Syed Muzafar Hussain Shah	Member
6.	Senator Nehal Hashmi	Member
7.	Senator Ms. Ayesha Raza Farooq	Member
8.	Senator Nawabzada Saifullah Magsi	Member
9.	Senator Dr. Muhammad Ali Khan Saif	Member
10.	Senator Mrs. Zahida Khan	Member
11.	Senator Syed Asif Saeed Kirmani	Member
12.	Senator Barrister Murtaza Wahab	Member
13.	Minister for Law and Justice	Ex-Officio Member

3. The Committee considered the Bill in its meeting held on 7th November, 2017, under the Chairmanship of Senator Muhammad Javed Abbasi, which was attended by the following hon'ble Members:-

- i. Senator Farooq Hamid Naek
- ii. Senator Dr. Muhammad Ali Khan Saif
- iii. Senator Barrister Murtaza Wahab

4. Senator Muhammad Mohsin Khan Leghari, Mover briefed the Committee that the office of the Prime Minister of Pakistan is central to the working of federal government. The powers of the Prime Minister are enormous and his authority is onerous. He has been rightly termed as the 'key-stone of the Cabinet-arch' 'a moon amongst the lesser stars' or 'a sun around whom ministers revolve like planets'. He is likened to the Prime Minister of England whose powers are over-whelming. The Constitution of Pakistan lays down procedure of initial appointment of Prime Minister. According to it, the National Assembly shall meet on the twenty-first day following the day on which a general election to the Assembly is held, to elect, after the election of the Speaker and the Deputy Speaker, one of its members to be the Prime Minister. But it is totally silent on how to fill in vacancy to the office of the Prime Minister caused by the death or otherwise. Resultantly, when the Office of Prime Minister falls vacant by death or otherwise, the country undergoes through a period of uncertainty and without being headed by someone. Such situation is undesirable for the smooth functioning of government and, more importantly, for the integrity of the country.

5. The Ministry of Law and Justice gave following input on the Bill:-

The subject Bill proposes insertion of Article 95A in the Constitution catering for a situation when the office of the Prime Minister is vacant by reason of death or his ceasing to be Member of National Assembly or any other reason. In such an eventuality, it has been proposed that the most senior Federal Minister for the time being shall be called upon by the President to perform functions of that office. The Bill reproduces Article 95 of the Constitution as it existed on the commencing day.

6. Senator Barrister Murtaza Wahab was of the opinion that the Constitution provides no mention of senior Minister, furthermore, Cabinet is a team of Prime Minister; the day the Prime Minister ceases to exist, accordingly his team, i.e. the Cabinet also ceases to exist.

7. Senator Farooq H. Naek stated that a Prime Minister is always elected and not nominated, it is for this reason that there is no concept of acting Prime Minister at National or International level.

8. The Committee also examined the Judgment of the Supreme Court in the Mustafa impex case, especially the operative paras which provide as under:-

“(ii) The Federal Government is the collective entity described as the Cabinet constituting the Prime Minister and Federal Ministers.

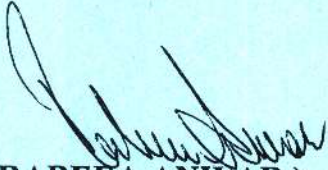
(iii) Neither a Secretary, nor a Minister and nor the Prime Minister are the Federal Government and the exercise, or purported exercise, of a statutory power exercisable by the Federal Government by any of them, especially, in relation to fiscal matters, is constitutionally invalid and a nullity in the eyes of the law. Similarly budgetary expenditure, or discretionary governmental expenditure can only be authorized by the Federal Government i.e. the Cabinet, and not the Prime Minister on his own.”

9. The Committee also took note that identical provision were provided in the original Constitution, 1973, however, same were omitted vide Presidential Order of 1985. All Member were of the opinion that in the case of death of a sitting Prime Minister or if he ceases to be a Member of Parliament then the cabinet will also cease to exist and there will be no Senior Minister hence this provision will be ultra-varies concept of Prime Minister” “Cabinet” and the “Federal Government”.

10. The Committee also made recourse^{to} International practices in this regard, where in Senator Dr. Muhammad Ali Khan Saif informed that there is only one such example in the British history during the second world war, wherein, the assassination attempts were likely to be made on Churchill, therefor, in was decided that in case of assassination of President Churchill a war cabinet of three to four Members will regulate affairs till the end of war. Senator Barrister Murtaza wahab also made reference to Indian practice, wherein, Pundit Nehru died while he was holding the office of the Prime Minister and Lal Bahadur Shastri, afterwards, elected as the Prime Minister.

11 All Members present did not support the Bill.

12. Accordingly, the Committee recommends that "The Constitution (Amendment) Bill, 2017(Insertion of new Article 95A)", may not be passed by the Senate. (Copy of Bill is annexed).



(RABEEA ANWAR)
J.S / Secretary Committee



(SENATOR MUHAMMAD JAVED ABBASI)
Chairman
Standing Committee on Law and Justice

[AS INTRODUCED IN THE SENATE]

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BILL

further to amend the Constitution of the Islamic Republic of Pakistan

WHEREAS it is expedient further to amend the Constitution of the Islamic Republic of Pakistan for the purposes hereinafter appearing;

It is hereby enacted as follows:-

1. Short title and commencement. - (1) This Act may be called the Constitution (Amendment) Act, 2017.

(2) It shall come into force at once.

2. Insertion of a new Article in the Constitution.- In the Constitution of the Islamic Republic of Pakistan, 1973, after Article 95, the following new Article shall be inserted, namely:-

"95A. Federal Minister performing functions of Prime Minister.- (1) In the event of the death of the Prime Minister or the office of Prime Minister becoming vacant by reason of his ceasing to be a Member of the National Assembly, the most senior Federal Minister for the time being shall be called upon by the President to perform the functions of that office and the Federal Ministers and Ministers of State shall continue in office until a new Prime Minister has been elected and has entered upon his office.

(2) If the National Assembly is in session at the time when the Prime Minister dies or the office of Prime Minister becomes vacant, the Assembly shall forthwith proceed to elect a Prime Minister, and if the Assembly is not in session the President shall for that purpose summon it to meet within fourteen days of the death of Prime Minister, or, as the case may be, of the office becoming vacant.

(3) When the Prime Minister, by reason of absence from Pakistan or any other cause, is unable to perform his functions, the most senior Federal Minister for the time being shall perform the functions of Prime Minister until the Prime Minister returns to Pakistan or, as the case may be, resumes his functions.

(4) In this Article, "most senior Federal Minister means the Federal Minister for the time being designated as such by the Prime Minister."

STATEMENT OF OBJECTS AND REASONS

The Office of the Prime Minister of Pakistan is central to the working of federal government. The powers of the Prime Minister are enormous and his authority is onerous. He has been rightly termed as the 'key-stone of the Cabinet-arch' 'a moon amongst the lesser stars' or 'a sun around whom ministers revolve like planets'. He is likened to the Prime Minister of England whose powers are over-whelming.

The Constitution of Pakistan lays down procedure of initial appointment of Prime Minister. According to it, the National Assembly shall meet on the twenty-first day following the day on which a general election to the Assembly is held, to elect, after the election of the Speaker and the Deputy Speaker, one of its members to be the Prime Minister. But it is totally silent on how to fill in vacancy to the office of the Prime Minister caused by the death or otherwise. Resultantly, when the Office of Prime Minister falls vacant by death or otherwise, the country undergoes through a period of uncertainty and without being headed by someone. Such situation is undesirable for the smooth functioning of government and, more importantly, for the integrity of the country. Hence, this Bill.

SENATOR MUHAMMAD MOHSIN KHAN LEGHARI
Member-in-charge