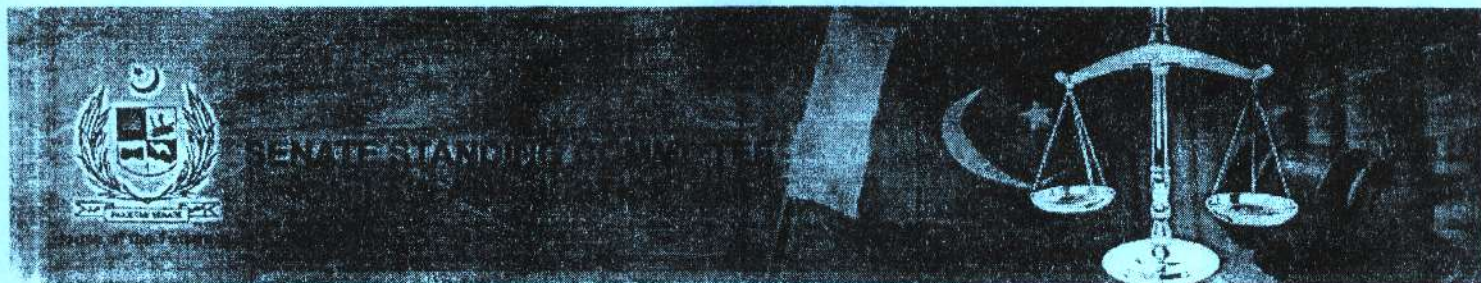




SENATE SECRETARIAT

Report No. 61

REPORT OF THE SENATE STANDING COMMITTEE ON LAW AND JUSTICE



**“THE CONSTITUTION (AMENDMENT) BILL, 2017
(AMENDMENT OF ARTICLE 255)”**

PRESENTED BY

**Senator Muhammad Javed Abbasi
Chairman
Standing Committee on Law and Justice**

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, 2016 (Amendment of Article 255)" introduced by Senator Mohammad Azam Khan Swati on 20th March, 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 Ms. Ayesha Raza Farooq	Member
7.	Senator Nawabzada Saifullah Magsi	Member
8.	Senator Dr. Muhammad Ali Khan Saif	Member
9.	Senator Mrs. Zahida Khan	Member
10.	Senator Syed Asif Saeed Kirmani	Member
11.	Senator Barrister Murtaza Wahab	Member
12.	Minister for Law and Justice	Ex-Officio Member

3. The Committee considered the matter in its meetings held on 5th April, 2017, 13th April, 2017, 28th April, 2017, 10th May 2017, 4th July, 2017, 18th December, 2017, 6th February, 2018, 21st February, 28th February and 8th March, 2018, under the Chairmanship of Senator Muhammad Javed Abbasi. Final consideration of the matter was held in the meeting dated 8th March, 2018, which was attended by the following members:-

- i. **Senator Muhammad Javed Abbasi**
- ii. Senator Syed Muzafar Hussain Shah

- iii. Senator Barrister Murtaza Wahab
- iv. Senator Saleem Zia

4. Senator Mohammad Azam Khan Swati, Member-in-charge of the Bill briefed the Committee that the Constitution of the Islamic Republic of Pakistan guarantees every citizen the right to profess, practice and propagate his religion within the boundaries of law, public order, and morality. International Law also guarantees every person the right to profess his religion and no one can be compelled to do an act required by religion other than his own. Oaths prescribed in the third schedule of the Constitution begin with Tasmiyah and also contains the provisions to strive for the protection of Islamic Ideology of Pakistan. It is one of the sacred, basic and fundamental duties of the Muslims of Pakistan to protect the Islamic Ideology of Pakistan; however a non-Muslim cannot be compelled to protect the same as he has not accepted Islam as his religion. Therefore, through this amendment, the non-Muslims shall not be required to initiate oath with Tasmiyah and to strive for the protection of Islamic Ideology.

5. Ministry of Law and Justice gave following input:-

- i. The Constitution (Amendment) Bill, 2017 has been proposed by Senator Mohammad Azam Khan Swati, further to amend Article 255 of the Constitution of Islamic Republic of Pakistan. The purpose of the amendment is to facilitate non-Muslims while taking oath under Article ibid so that they are not compelled to recite Tasmiyah etc.
- ii. It is proposed that comments of non-Muslim community through their chosen representatives be taken and view of Council of Islamic Ideology may also be sought.

6. In the meeting dated 4th July, 2017, religious and prominent leaders belonging to other religions were invited for seeking their input being major stakeholders. Synopsis of their input in as under:-

- Professor Mehar Dad from Bahai Community stated that we believe in oneness of God, therefore, there is no need for this amendment.
- Mr. Satramdas Ravi Dawani, General Secretary all Pakistan Hindu Panchayat (APHP) made reference to international practices prevailing regarding administration of Oath and stated that in majority of international countries Oath for the Member Parliament stipulates elegance / loyalty / commitment with the

Country and persons belonging to different religions are allowed to take Oaths under their religion in these terms, he sported the amendment.

- Dr. Alexander John Malik, Bishop Emeritus of Lahore, stated that there is need to amend the Oath and give example of other Islamic countries in this regard. He stated that since the entire constitution is based on Islamic ideology which rules out the need of words "Islamic Ideology" in the Oath. He proposed that instead of substituting Islamic Ideology with the words "Ideology of Pakistan" the entire sentence may be omitted as "Ideology of Pakistan" is not defined anywhere.
- Sebastian Francis Shaw OFM Archbishop of Lahore, sent his written input in the following terms:-
 - (i) That a non-Muslim should not be required to take the Oath prescribed under the third Schedule of the Constitution by beginning it with Tasmiyah, therefore, provision of taking Oath with Tasmiyah should be exempted for the non-Muslims, and the proposed amendment in supported in this regard.
 - (ii) That, however, as far as striving for the protection of Islamic Ideology of Pakistan by non-Muslims is concerned, the undersigned is of the view, that it should still be part of the Oath, as it is the very basis and root of the existence of Pakistan.

6. Input received from Council of Islamic Ideology is annexed.

7. The Committee also requested input from former Senator S.M. Zafar, a constitutional expert, which was provided, in writing, in the following terms:-

"The tasmia in the prescribed oath under Article 65 should also have Urdu authentic translation by Maulana Modudi or Imam Raza or Ghamdi in addition to the Quranic verse.

Coming to the real issue 'Ideology of Pakistan or Islamic ideology'.

Since on independence the state of Pakistan became a nation state as a state is no longer is a part of Ummah but an independent Muslim state is ably argued by Allama Iqbal, Mufakkar-e-Pakistan in his Reconstruction of Muslim Thought. The Islamic ideology be termed as Pakistan ideology not only for non-Muslims but also for Muslims. If one reads the speech of Quaid-e-Azam Muhammad Ali Jinnah delivered on 11th of August, 1947 as the Chairman of Constituent Assembly it will

be clear that he is not making any distinction between Muslims and non-Muslims as a citizen. I need not quote many paragraphs leading to the same conclusion except a phrase that "from now on Muslims have ceased to be Muslims and Hindus ceased to be Hindus, Christians ceased to be Christians, not in religious sense but as a citizen of Pakistan". Accordingly every citizen belonging to any religion has equal right in Pakistan. If one reads the Constitution and the speech of Quaid-e-Azam carefully, Senators will also find that it declares women equal to man as there can be no discrimination between the two.

But some conservative religious scholars interpret Islam somewhat differently and believe that non-Muslims are Zimis (2nd class citizens) and Women are not to be treated with equality to others whereas according to Constitution, Article 25(2) reads "There shall be no discrimination on the basis of sex".

My view is that in a constitution there cannot be two ideologies, one for Muslim citizens and the other for non-Muslims. As such if any amendment is to be made, it should prescribe oath for all using Pakistan ideology instead of Islamic ideology. If this view is acceptable to the Honorable Members there need not be any amendment discriminating between Muslims and non-Muslims.

Amendment should be restricted to prescribe tasmia's with Urdu translation by some authentic religious scholar.

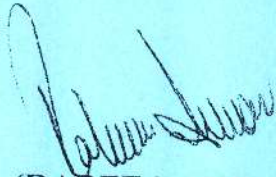
All should believe in single ideology that is Pakistan ideology which no doubt include all the principles of Islam including 'oneness of humanity'.

If two ideologies instead of one is prescribed in the oath, the very basis of Pakistan will be shaken leading to adverse political consequences as if there are two Pakistans under one state."

7. The Member-incharge was invited in the meetings dated,- 6th February, 21st February, 28th February and 8th March, 2018, however he did not attend any of the said meetings.

8. The members were of the considered view that keeping in view the input received from the religious and prominent leaders belonging to other religions and the Council of Islamic Ideology, the amendment being proposed is not required.

9. Accordingly, the Committee recommends that "The Constitution (Amendment) Bill, 2017 (Amendment of Article 255)", as introduced in the Senate, may not be passed. (Copy of Bill is annexed).

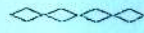


(RABEEA ANWAR)
J.S / Secretary Committee



(SENATOR MUHAMMAD JAVED ABBASI)
Chairman

حکومت پاکستان
اسلامی نظریاتی کونسل



اسلام آباد، مورخہ ۱۳ / فروری ۲۰۱۸ء

نمبر: ایف-۱ (۱۸۷) / ۲۰۱۸ء۔ آر۔ سی۔ آئی۔ آئی / ۲۰۱۸ء

عنوان: آئینی ترمیمی بل ۲۰۱۷ء (بابت غیر مسلم کا حلف نامہ)۔ کونسل کی رائے

بحوالہ سینٹ سیکرٹریٹ، حکومت پاکستان، اسلام آباد سراسلہ ۱۸ (۱) / ۲۰۱۵ء۔ سی۔ ۱ (۶۵)،
مورخہ ۱۱ ستمبر ۲۰۱۷ء

اسلامی نظریاتی کونسل نے اپنے اجلاس نمبر ۲۰۹ بتاریخ ۱۷ جنوری ۲۰۱۸ء میں
درج بالا ریفرنس پر غور و خوض کیا اور اس بل کے بارے میں حسب ذیل رائے مرتب
کی:-

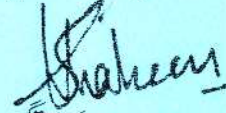
”آئین کے آرٹیکل ۲۵۵ کی ذیلی دفعہ ۳ کے بعد ذیلی دفعہ ۴ کے اضافہ، جس میں
غیر مسلم کے لیے حلف نامہ سے ”تسمیہ“ اور ”اسلامی نظریہ“ کے الفاظ کو
”نظریہ پاکستان“ کے الفاظ سے تبدیل کرنا تجویز کیا گیا ہے، کی ضرورت نہیں۔
اس لیے کہ ”نظریہ پاکستان“، ”اسلامی نظریہ“ ہی ہے اور تسمیہ یا اس کے
انگریزی وار دو ترجمے پاکستان میں غیر مسلموں کے عقیدے پر کوئی زد نہیں پڑتی۔
تاہم حلف کے آغاز سے قبل اگر کوئی غیر مسلم اپنے مذہب کے مطابق کلمات ادا
کرنا چاہتا ہے تو آئین کے متعلقہ آرٹیکل میں ایک استثنائی جملہ (proviso)
شامل کیا جاسکتا ہے کہ ”اگر کوئی غیر مسلم اپنے مذہب کے موافق کلمات سے
حلف اٹھانا چاہتا ہے تو اٹھالے۔“

۲۔ کونسل نے اپنے اجلاس نمبر ۲۱۰ بتاریخ ۱۸ جنوری ۲۰۱۸ء میں درج بالا رائے کی توثیق
کی۔ کونسل کی توثیق شدہ رائے برائے اطلاع و ضروری کارروائی ارسال خدمت ہے۔

۳۔ سراسلہ ہذا محباز اہتار کی منظوری سے جاری کیا جا رہا ہے۔

والسلام مع الاحکام

خیر اندیش



(ڈاکٹر غلام دستگیر شاہین)

سینئر ریسرچ آفیسر

جناب ربیعہ انور،

جوائنٹ سیکرٹری / سیکرٹری قائمہ کمیٹی،

سینٹ سیکرٹریٹ، حکومت پاکستان، اسلام آباد

INTRODUCED ON 20-03-2017

[AS INTRODUCED IN THE SENATE]

**A
BILL**

further to amend the Constitution of the Islamic Republic of Pakistan, 1973

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. Amendment of Article 255 of the Constitution.- In the Constitution of the Islamic Republic of Pakistan, hereinafter referred to as the Constitution, in Article 255, after clause (3), the following new clause shall be inserted, namely:-

"(4) Where, under the Constitution, a non-Muslim person is required to make an oath before he enters upon an office or assumes any responsibility, he may not initiate oath with *Tasmiyah* or its translation given in the oath, and he may use the words "Ideology of Pakistan" instead of the words "Islamic Ideology" given in the oath."

STATEMENT OF OBJECTS AND REASONS

The Constitution of the Islamic Republic of Pakistan guarantees every citizen the right to profess, practice and propagate his religion within the boundaries of law, public order, and morality. International Law also guarantees every person the right to profess his religion and no one can be compelled to do an act required by religion other than his own. Oaths prescribed in the third schedule of the Constitution begin with *Tasmiyah* and also contains the provisions to strive for the protection of Islamic Ideology of Pakistan. It is one of the sacred, basic and fundamental duties of the Muslims of Pakistan to protect the Islamic Ideology of Pakistan; however a non-Muslim cannot be compelled to protect the same as he has not accepted Islam as his religion. Therefore, through this amendment, the non-Muslims shall not be required to initiate oath with *Tasmiyah* and to strive for the protection of Islamic Ideology.

The Bill has been designed to achieve the aforesaid objectives.

SENATOR MOHAMMAD AZAM KHAN SWATI
Member-in-Charge