



SENATE SECRETARIAT

**Report of the
Committee of the Whole**

on

***“The Supreme Court and High Court (Extension of Jurisdiction to Federal Administrated
Tribal Areas) Bill, 2018”***

**Senate of Pakistan
(April-2018)**

SENATE SECRETARIAT

REPORT OF THE COMMITTEE OF THE WHOLE HOUSE ON “THE SUPREME COURT AND HIGH COURT (EXTENSION OF JURISDICTION TO FEDERAL ADMINISTRATED AND TRIBAL AREAS) BILL, 2018”

The Senate of Pakistan, on 15th September, 2015, constituted a Committee of the Whole to consider the “Legislative, Administrative and other measures required for mainstreaming and ensuring constitutional rights to the people of Federally Administered Tribal Areas (FATA)”.

2. The Supreme Court and High Court (Extension of Jurisdiction to Federal Administrated and Tribal Areas) Bill, 2018, was passed by the National Assembly on 12th January, 2018 and transmitted to Senate on 16th January, 2018. On 23rd January, 2018, Senate referred the Bill to the Committee of the Whole, already working on the FATA Reforms, for consideration and report.

3. The Bill seeks to extend jurisdiction of the Supreme Court and Peshawar High Court to the Federally Administrated Tribal Areas in order to bring the people of FATA into the mainstream in accordance with their wishes and aspirations, for safeguarding their rights and providing them proper administration of justice in accordance with the Constitution.

4. A meeting of the Committee of the Whole was held on 25th January, 2018, however, same had to be adjourned without consideration of the Bill due to lack of quorum.

5. Next meeting was held on 13th April, 2018, to consider the Bill. Gist of deliberations held in the meeting is as under:-

Senator Raja Muhammad Zafar-ul-Haq, Leader of the House made reference to a Press statement of the meeting of the National Implementation Commission on FATA Reforms dated 18th December, 2017, wherein it was decided that all necessary steps should be taken, including the legislation, to extend the normal judicial system to FATA. FATA reforms involve four different dimensions i.e. political mainstreaming, legal mainstreaming, economic

mainstreaming and security mainstreaming, these are interdependent and therefore have to be carefully planned and dovetailed.

Senator Siraj-ul-Haq, while making reference to the issues being faced by the people of FATA, termed FCR as a black law. He supported the Bill and appreciated that this is a point of initiation in the FATA reforms.

Senator Muhammad Azam Khan Swati supported the Bill and termed it as a historic day in the history of Pakistan.

Chaudhry Muhammad Bashir Virk, Minister for Law and Justice shared that this is a first step towards merger of Fata.

Lt. Gen.(R) Abdul Qadir Baloch, Minister for States and Frontier Regions explained the detailed process of consultations involved in the conception of Bill and other FATA reforms. This Bill is the mother of all recommendations made by the FATA Reforms Committee as legal mainstreaming will help in administrative and political mainstreaming. The Minister assured that the FATA merger Bill will be passed at once in the next Cabinet meeting.

Senator Aurangzeb Khan, supported the Bill, however, raised certain legal points of interpretation in terms of clauses (3), (6) and (7) of Article 247, Constitution, 1973 which included,-

- (i) What will be the legal status of this Bill after passage in terms of clause (3) of Article 274, Constitutions, 1973?
- (ii) In terms of proviso to clause (7) of Article 247, Constitution, 1973, the jurisdiction of courts cannot be extended if they don't already have certain jurisdiction in those areas.
- (iii) Clause (7) is placed in the scheme of Article 247 after clause (6), therefore, technically and principally requirements of clause (6) will have to be applied.

Senator Usman Khan Kakar, in terms of clause (3) of Article 247, Constitution, 1973, did not support the Bill. this is not the right of the Parliament but the President. This Bill should be taken into consideration during the terms of next Government., there should be a separate distinct judicial system for FATA.

Senator Sajjad Hussain Turi, supported the Bill and stated that the Government should bring other reforms before the Parliament as early as possible including omission of Article 247 from the Constitution. He appreciated the consultation process carried out by the Government with the people of FATA in this regard.

Senator Taj Muhammad Afridi also raised the legal points raised by Senator Aurangzeb Khan and requested that the constitutional experts should be invited before further consideration of the Bill.

Senator Atta Ur Rehman, raised observations as to consultative process adopted by the Government with the people of FATA regarding this Bill and other reforms. He also challenged the constitution of Committee on FATA Reforms as the same had to be constituted by the President and not by the Prime Minister. This Bill and other reforms will not support the cause of people of FATA rather will worsen the situation.

Senator Sitara Ayaz, supported the Bill and stated that this Bill should be passed as early as possible to ensure protection of rights of people of FATA.

Senator Hidayat Ullah supported the Bill and appreciated this legislative proposal for extending the fundamental rights to the people of FATA. He stated that in addition to this the Government should also bring legislation to omit Article 247 of the Constitution, 1973.

Senator Dr. Sikandar Mandhro supported the Bill and asked the Government to bring other socio economic reforms for the people of FATA as early as possible.

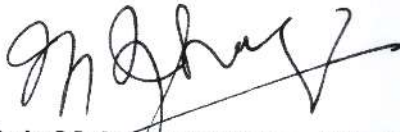
Senator Sherry Rehman, Leader of the Opposition, stated that this process is spread over a long period of time as she herself and her party leadership has also held consultations with the people of FATA through *jirgas*. People Party was the first to introduce this Bill in a more comprehensive form in the National Assembly last year which has been amended by the Government, however, she is even satisfied with the amended version as it's better to have at least a point of initiation rather than complete marginalization. She supported the Bill with the following conditions,-

- (i) The Government should ensure 3% share of FATA in the NFC
- (ii) The Government should review Article 247, Constitution, 1973, as per the aspiration of people of FATA

- (iii) The Government should abolish the existing system of levying of taxes, rahdari etc.
- (iv) Pakistan Penal Code should be extended
- (v) The Government should immediately bring in other FATA reforms.

6. Members belonging to Pashtoonkhwa Milli Awami Party and Jamiatul-Ulema-e-Islam staged walk out, whereas, all other Members present voted in favour of the Bill.

7. The Committee of the Whole recommends that the Supreme Court and High Court (Extension of Jurisdiction to Federal Administrated Tribal Areas) Bill, 2018, as passed by the National Assembly and transmitted to the Senate, may be passed by the Senate of Pakistan (Copy of Bill as passed by the National Assembly and introduced in the Senate is annexed).



(Senator Raja Muhammad Zafar ul Haq)

Leader of the House



(Senator Sherry Rehman)

Leader of the Opposition



(Amjed Pervez)

Secretary Senate

[AS PASSED BY THE NATIONAL ASSEMBLY]

A

BILL

to extend the jurisdiction of the Supreme Court of Pakistan and the Peshawar High Court to the Federally Administered Tribal Areas

WHEREAS it is expedient to extend the jurisdiction of the Supreme Court of Pakistan and the Peshawar High Court to the Federally Administered Tribal Areas;

It is hereby enacted as follows:-

1. **Short title and commencement.**- (1) This Act may be called the Supreme Court and High Court (Extension of Jurisdiction to Federally Administered Tribal Areas) Act, 2018.

(2) It shall come into force on such date or dates and in such Federally Administered Tribal Areas or part thereof, as the Federal Government may, by notification in the official Gazette, determine from time to time.

2. **Extension of jurisdiction of Supreme Court.**- The Supreme Court of Pakistan shall have, in relation to the Federally Administered Tribal Areas, the same jurisdiction as it has in relation to the province of the Khyber Pakhtunkhwa.

3. **Extension of jurisdiction of High Court.**- The Peshawar High Court shall have, in relation to the Federally Administered Tribal Areas, the same jurisdiction as it has in relation to the province of the Khyber Pakhtunkhwa.

STATEMENT OF OBJECTS AND REASONS

In order to bring the people of FATA into the mainstream in accordance with their wishes and aspirations, it is necessary that the jurisdiction of the Supreme Court and Peshawar High Court should be extended to such areas for safeguarding their rights and providing them proper administration of justice in accordance with the Constitution.

The Bill is designed to achieve the aforesaid objects.

**Minister for Law and Justice
Member-in-Charge**

[قومی اسمبلی سے منظور کردہ صورت میں]

وفاق کے زیر انتظام قبائلی علاقہ جات تک عدالت عظمیٰ پاکستان اور عدالت عالیہ پشاور کے
اختیار سماعت میں توسیع کرنے کا عمل۔

ہر گاہ کہ یہ قرین مصلحت ہے کہ وفاق کے زیر انتظام قبائلی علاقہ جات تک عدالت عظمیٰ پاکستان اور عدالت عالیہ
پشاور کے اختیار سماعت میں توسیع کی جائے؛
بذریعہ ہذا حسب ذیل قانون وضع کیا جاتا ہے:-

۱۔ مختصر عنوان اور آغاز نفاذ:- (۱) ایکٹ ہذا عدالت عظمیٰ اور عدالت عالیہ (وفاق کے زیر انتظام قبائلی علاقہ جات
تک اختیار سماعت کی وسعت) ایکٹ، ۲۰۱۷ء کے نام سے موسوم ہوگا۔

(۲) یہ وفاق کے زیر انتظام قبائلی علاقہ جات یا اس کے کسی بھی حصے میں ایسی تاریخ یا تواریخ پر نافذ العمل ہوگا،
جیسا کہ وفاقی حکومت، سرکاری جریڈے میں اعلان کے ذریعے وقتاً فوقتاً تعین کر سکتی ہے۔

۲۔ عدالت عظمیٰ کے اختیار سماعت میں توسیع:- عدالت عظمیٰ پاکستان، وفاق کے زیر انتظام قبائلی علاقہ جات کی
نسبت، ویسے ہی اختیار سماعت کی حامل ہوگی جیسا کہ اُسے صوبہ خیبر پختونخوا کی نسبت حاصل ہے۔

۳۔ عدالت عالیہ کے اختیار سماعت میں توسیع:- عدالت عالیہ پشاور، وفاق کے زیر انتظام قبائلی علاقہ جات کی
نسبت، ویسے ہی اختیار سماعت کی حامل ہوگی جیسا کہ اُسے صوبہ خیبر پختونخوا کی نسبت حاصل ہے۔

بیان انغرائض و وجوہ

فاٹا کے لوگوں کو ان کی خواہشات اور امنگوں کی مطابقت میں مرکزی دھارے میں لانے کے لئے یہ ضروری ہے کہ
عدالت عظمیٰ اور عدالت عالیہ پشاور کے اختیار سماعت کو مذکورہ علاقہ جات تک توسیع دی جائے تاکہ ان کے حقوق کا تحفظ ہو
سکے اور انہیں دستور کی مطابقت میں انصاف کے صحیح انصرام کا اہتمام کیا جاسکے۔
اس بل کا مقصد مذکورہ بالا اغراض کا حصول ہے۔

وزیر برائے قانون و انصاف

رکن انچارج