

SENATE OF PAKISTAN



REPORT NO. 37

REPORT OF THE SENATE STANDING COMMITTEE ON LAW AND JUSTICE



“THE CONSTITUTION (AMENDMENT) BILL, 2020”

(Amendment of Articles 213 & 215)

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, 2020,"

I, Senator Muhammad Javed Abbasi, Chairman Standing Committee on Law and Justice, have the honor to submit, on behalf of the Committee, this report on "The Constitution (Amendment) Bill, 2020", introduced by Senator Lt. General Abdul Qayyum HI (M) Retd., in the Senate sitting held on 26th October, 2020 and referred to the Committee for consideration and report.

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

1. Senator Muhammad Javed Abbasi	Chairman
2. Senator Mian Raza Rabbani	Member
3. Senator Farooq Hamid Naek	Member
4. Senator Zeeshan Khanzada	Member
5. Senator Sirajul Haq	Member
6. Senator Syed Muzafar Hussain Shah	Member
7. Senator Ayesha Raza Farooq	Member
8. Senator Dr. Ghous Muhammad Khan Niazi	Member
9. Senator Mustafa Nawaz Khokhar	Member
10. Senator Sana Jamali	Member
11. Senator Walid Iqbal	Member
12. Senator Muhammad Ali Khan Saif	Member
13. Senator Musadik Masood Malik	Member
14. Minister for Law and Justice	Ex-Officio Member

3. The Committee considered the Bill in its meeting on 28th December, 2020, with the following in attendance:

1. Senator Muhammad Javed Abbasi	Chairman
2. Senator Sana Jamali	Member
3. Senator Zeeshan Khanzada	Member
4. Senator Walid Iqbal	Member
5. Senator Sirajul Haq	Member
6. Senator. Lt. General Abdul Qayyum Rtd.	Member-In-Charge

4. Senator. Lt. General Abdul Qayyum Rtd. elaborated the rationale of amendment and said that the Election Commission plays vital role in general or by-elections held from time to time in National Assembly, Provincial Assemblies and the Senate. Hence, the continued presence of Members and Chief Election Commissioner is important for smooth functioning of the Parliament of Pakistan and Provincial Assemblies. He deliberated that the amendment proposed by him provides that the filling of vacancies of the posts of Members and Election Commissioner ought to be started six months prior to the retirement of incumbents. Chairman Committee, with the sense of the Members, suggested that process to fill vacant post of Chief Election Commissioner and Members should be initiated three months earlier instead of six months which would be too early. He also suggested that timeframe for confirmation of nomination(s) by the Chairman Senate and Speaker National Assembly should be 14 days instead of proposed 7 days. Member In-Charge agreed to both the amendments.

5. After thorough discussion, the Committee recommended following amendments in the Bill:

Amendment of Article 213 of the Constitution.- In the Constitution of the Islamic Republic of Pakistan, hereinafter referred to as the Constitution, in Article 213, after clause (2B), the following new clauses shall be inserted, namely: -

“(2C) When there is no consensus among the members of Parliamentary Committee for the appointment of members, all the names proposed, from both sides in the Committee, within seven days shall become forwarded to the Committee duly constituted under clause (2D).

(2D) The Committee shall consist of the Chairman Senate and the Speaker National Assembly, who shall confirm the names for appointment from the list so forwarded within fourteen days with consensus.”

Amendment of Article 215 of the Constitution.- In the Constitution, in Article 215, in clause 4, for the full stop “.” at the end a colon “:” shall be substituted and thereafter the following proviso shall be added, namely:-

“Provided that the process to fill an anticipated vacancy to be caused by the retirement of the Commissioner or a Member shall be initiated **three months** prior to the occurrence of such vacancy and shall be completed before the due date of retirement of the Commissioner or Member as the case may be.”

6. With the above amendments, the Bill was passed unanimously. The Committee recommends that "The Constitution (Amendment) Bill, 2020" (Amendment of Article 213 and 215) as reported by the Committee may be passed by the Senate of Pakistan. The Committee also gave approval for presentation of this report to the House.

7. The Bill as reported by the Committee is at Annex-A and the Bill as introduced in the Senate is at Annex-B.



(Haris Rehman)

DS / Secretary Committee



(Senator Muhammad Javed Abbasi)

Chairman, Standing Committee on Law and Justice

[AS REPORTED BY THE COMMITTEE]**A****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, 2020.

(2) It shall come into force at once.

2. Amendment of Article 213 of the Constitution.- In the Constitution of the Islamic Republic of Pakistan, hereinafter referred to as the Constitution, in Article 213, after clause (2B), the following new clauses shall be inserted, namely: -

“(2C) When there is no consensus among the members of Parliamentary Committee for the appointment of members, all the names proposed, from both sides in the Committee, within seven days shall become forwarded to the Committee duly constituted under clause (2D).

(2D) The Committee shall consist of the Chairman Senate and the Speaker National Assembly, who shall confirm the names for appointment from the list so forwarded within fourteen days with consensus.”

3. Amendment of Article 215 of the Constitution.- In the Constitution, in Article 215, in clause 4, for the full stop “.” at the end a colon “:” shall be substituted and thereafter the following proviso shall be added, namely:-

“Provided that the process to fill an anticipated vacancy to be caused by the retirement of the Commissioner or a Member shall be initiated **three months** prior to the occurrence of such vacancy and shall be completed before the due date of retirement of the Commissioner or Member as the case may be.”

STATEMENT OF OBJECTS AND REASONS

The Election Commission of Pakistan (ECP) is a key institution constitutionally charged with the responsibility of holding elections honestly, justly, fairly, and in accordance with law. The procedure for appointment of Chief Election Commissioner and members of the Commission is provided in Articles 213 and 215 of the Constitution. Article 213 says the Prime Minister shall, in consultation with the Opposition Leader, forward three names for appointment of the Commissioner or a member of the Commission to a Parliamentary Committee for confirmation of any one. This is the first step. The second step arises when there is no consensus between the Premier and Opposition Leader and then each forwards separate lists to the Parliamentary Committee for consideration which may confirm any one name in both cases, the names are to go to the Parliamentary Committee for confirmation. The constitutional provision doesn't say what will happen if the Committee is unable to confirm any names. Therefore, the matter shall stand referred to **the Committee comprising of the Chairman Senate and the Speaker, National Assembly for final decision.** It has also been felt that this process of appointments in the Commission is time taking and has potential to make the Commission practically a dysfunctional body. To deal with such an undesirable situation, there is need to provide for completion of process for appointments prior to occurrence of actual vacancy so as to ensure continuity in the Commission.

2. The Bill has been designed to achieve the aforesaid objectives.

**SENATOR LT. GENERAL ABDUL QAYYUM HI (M) RETD.
MEMBER-IN-CHARGE**

^{AS}
~~[TO BE INTRODUCED IN THE SENATE]~~

A

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, 2020.

(2) It shall come into force at once.

2. Amendment of Article 213 of the Constitution.- In the Constitution of the Islamic Republic of Pakistan, hereinafter referred to as the Constitution, in Article 213, in clause 2(A), in the existing proviso, for the full stop "." at the end a colon ":" shall be substituted and thereafter the following second proviso shall be added, namely:-

"Provided further that in case the Parliamentary Committee is unable to confirm any one name, the matter shall stand referred to the Committee consisted of Chairman Senate and Speaker National Assembly for final decision within seven days."

3. Amendment of Article 215 of the Constitution.- In the Constitution, in Article 215, in clause 4, for the full stop "." at the end a colon ":" shall be substituted and thereafter the following proviso shall be added, namely:-

"Provided that the process to fill an anticipated vacancy to be caused by the retirement of the Commissioner or a Member shall be initiated six months prior to the occurrence of such vacancy and shall be completed before the due date of retirement of the Commissioner or Member as the case may be."

STATEMENT OF OBJECTS AND REASONS

The Election Commission of Pakistan (ECP) is a key institution constitutionally charged with the responsibility of holding elections honestly, justly, fairly, and in accordance with law. The procedure for appointment of Chief Election Commissioner and members of the Commission is provided in Articles 213 and 215 of the Constitution. Article 213 says the Prime Minister shall, in consultation with the Opposition Leader, forward three names for appointment of the Commissioner or a member of the Commission to a Parliamentary Committee for confirmation of any one. This is the first step. The second step arises when there is no consensus between the Premier and Opposition Leader and then each forwards separate lists to the Parliamentary Committee for consideration which may confirm any one name in both cases, the names are to go to the Parliamentary Committee for confirmation. The constitutional provision doesn't say what will happen if the Committee is unable to confirm any names. Therefore, the matter shall stand referred to **the Committee comprising the Chairman Senate and the Speaker, National Assembly for final decision.** It has also been felt that this process of appointments in the Commission is time taking and has potential to make the Commission practically a dysfunctional body. To deal with such an undesirable situation, there is need to provide for completion of process for appointments prior to occurrence of actual vacancy so as to ensure continuity in the Commission.

2. The Bill has been designed to achieve the aforesaid objectives.

**SENATOR LT. GENERAL ABDUL QAYYUM HI (M) RETD.
MEMBER-IN-CHARGE**