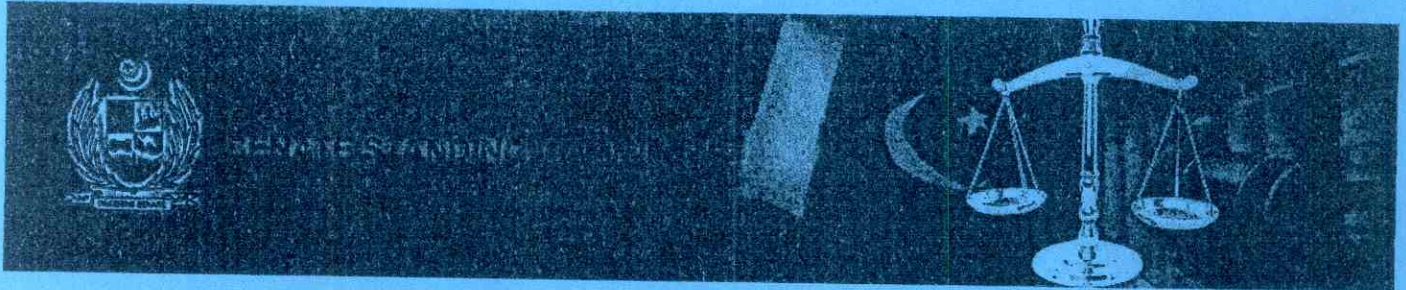


**REPORT OF THE STANDING COMMITTEE ON
LAW AND JUSTICE**



“THE CONSTITUTION (AMENDMENT) BILL, 2016”

PRESENTED BY

**SENATOR MUHAMMAD JAVED ABBASI
CHAIRMAN**

SENATE SECRETARIAT

REPORT OF THE STANDING COMMITTEE ON LAW AND JUSTICE ON "THE CONSTITUTION (AMENDMENT) BILL, 2016"

I, Chairman of the Standing Committee on Law and Justice, have the honour to present report on "The Constitution (Amendment) Bill, 2016" introduced by Senator Zaheer-ud-Din Babar Awan on 11th January, 2016. 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.	<i>Senator Muhammad Javed Abbasi</i>	<i>Chairman</i>
2.	<i>Senator Saleem Zia</i>	<i>Member</i>
3.	<i>Senator Aitzaz Ahsan</i>	<i>Member</i>
4.	<i>Senator Dr. Muhammad Ali Khan Saif</i>	<i>Member</i>
5.	<i>Senator Syed Muzafar Hussain Shah</i>	<i>Member</i>
6.	<i>Senator Nehal Hashmi</i>	<i>Member</i>
7.	<i>Senator Ms. Ayesha Raza Farooq</i>	<i>Member</i>
8.	<i>Senator Nawabzada Saifullah Magsi</i>	<i>Member</i>
9.	<i>Senator Saeed Ghani</i>	<i>Member</i>
10.	<i>Senator Zaheer ud Din Babar Awan</i>	<i>Member</i>
11.	<i>Senator Mrs. Zahida Khan</i>	<i>Member</i>
12.	<i>Senator Farooq Hamid Naek</i>	<i>Member</i>
13.	<i>Minister for Law and Justice</i>	<i>Ex-Officio Member</i>

3. The Committee considered the Bill in its meetings held on 18th March, 2016, 31st March, 2016, 14th April, 2016 and 31st May, 2016. The Report was finalized in the meeting dated 31st May, 2016, which was attended by the following Members:-

1.	<i>Senator Muhammad Javed Abbasi</i>	<i>Chairman</i>
2.	<i>Senator Saleem Zia</i>	<i>Member</i>
3.	<i>Senator Aitzaz Ahsan</i>	<i>Member</i>
4.	<i>Senator Dr. Muhammad Ali Khan Saif</i>	<i>Member</i>



5	<i>Senator Saeed Ghani</i>	<i>Member</i>
6	<i>Senator Zaheer ud Din Babar Awan</i>	<i>Member</i>

4. According to the Statement of Objects and Reasons "Ad-hoc-ism in all its form is discharged in contemporary era, from all spheres of the Government, for it responds to the urgent instead of important and based on firefighting scheme than establishing a system and procedures. Ad-hoc-ism in higher judiciary has negative impact over dispensation of justice as well as independence of the judicature. The fate of the people may be left over at the discretion of Ad-hoc Judges, having vested interests including that of their continuation in the office. Moreover, it also militates against the "doctrine of lawful expectancy" qua the members of higher judiciary and Chief Justices of the High Courts whose elevation/ promotion to the Supreme Court in particular is blocked by the appointment of Ad-hoc Judges. At present the highest lawyers' representative bodies i.e., Pakistan Bar Council, Supreme Court Bar Association and Provincial Bar Councils have shown concerns and strong reservations over appointment of Ad-hoc Judges. The legal fraternity understands this invades and transgresses upon independence of bar and takes away the right of senior lawyers who under the Constitution can be appointed in the higher judiciary including the Apex Court."


5. Ministry of Law and Justice opposed the Bill on the following grounds:-

- 1) Ad hoc judge can be appointed under Article 182 of the constitution. The reason for appointment of ad hoc Judges is that if at any time it is not possible to hold or continue any sitting of the Supreme Court for shortage of Judges and ad hoc Judges may be appointed by Chief Justice of the Supreme Court after consultation with the Judicial commission as provided in clause (2) of Article 175A and with the approval of the President and in case of judge of the High Court qualified as Judge of the High Court with the approval of the President and with the consent of the Chief Justice of the High Court.



- 2) This aspect of the matter has already been settled by the Al-Jehad Trust Vs. the Federation of Pakistan PLD 1996 SC 324 wherein it has been held that under Article 182 for want of quorum Judges in the Supreme Court or for any other reason if it is necessary to increase temporarily the number of Judges the Chief Justice may in writing with the approval of the President (now after consulting the Judicial Commission also) a retired Judge of the Supreme Court can be appointed if three years have not been elapsed from the date of his retirement. A serving Judge of the High Court can also be appointed provided he is qualified for appointment as Judge of the Supreme Court. It, therefore, appears from the perusal of the Article 182 that appointments cater for temporarily situation in which the number of the Judges is to be increased after sanctioned strength of the Court is filled with permanent appointments. The Supreme Court went further in that case and held that practice of appointing ad hoc Judge against the permanent vacancies is violative of the Constitution as it militates against independence of judiciary [PLD 1996 SC 324 at p.365]
- 3) It would, therefore, appear that since ad hoc Judges cannot be appointed against the permanent vacancies, therefore, Article 182 is not violative of doctrine of lawful expectancy. Even in India the Chief Justice of India is empowered to appoint ad hoc Judge in the similar circumstances as mentioned in Article 182 of our Constitution with the previous consent of the President and in consultation with the Chief Justice of the High Court exists under Article 127 of the Constitution of the India whereas very recently another safeguard has been provided against the possible misuse of powers that the appointment shall be made after consulting the Judicial Commission of Pakistan.

6. The Committee invited the Bar Councils in order to seek their input on the proposed omission of Article 182. Ch. Muhammad Hussain, Advocate Supreme Court, represented the Punjab Bar Council and supported the Bill. He also shared that the Punjab Bar Council has passed a Resolution in this regard. Mr. Salahuddin Ahmed, Vice Chairman Sindh Bar Council supported the Bill with the caveat that if this provision is genuinely utilized in clearing the backlog of pending cases, then, the provision can be retained by making it more stringent. Mr. Tariq Mehmood Jahangiri,



President Islamabad High Court Bar Association, supported the Bill and termed it as ethically and professionally wrong. Mr. Afnan Karim Kundi, Additional Attorney General of Pakistan stated that the Constitution provides all provisions under a specific scheme, therefore, difference between Articles 181 & 182 needs to be looked into. If there is any difficulty in application of the Article 182, then the same can be addressed through amendments.

7. Senator Javed Abbasi, Chairman Committee proposed that instead of omitting Article 182, the conditions of appointment may be made stern in order to stop the misuse of this provision, if any. He further suggested that instead of retired Judges, Senior Lawyers from the Supreme Court Bar Association, Pakistan Bar Councils and other Bar Councils may be appointed.

9. After extensive discussion, the Bill was put to the vote of Committee and all members present voted in the favour of the Bill.

10. Accordingly, the Committee recommends that "The Constitution (Amendment) Bill, 2016", as introduced in the Senate, may be passed. (Copy of Bill is annexed)



(RABEEA ANWAR)
J.S / Secretary Committee



(SENATOR MUHAMMAD JAVED ABBASI)
Chairman

[AS REPORTED BY THE STANDING COMMITTEE]

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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, 2016.

(2) It shall come into force at once.

2. Omission of Article 182 of the Constitution.- In the Constitution of the Islamic Republic of Pakistan, Article 182, shall be omitted.

STATEMENT OF OBJECTS AND REASONS

Ad-hoc-ism in all its form is discharged in contemporary era, from all spheres of the Government, for it responds to the urgent instead of important and based on firefighting scheme than establishing a system and procedures.

2. Ad-hoc-ism in higher judiciary has negative impact over dispensation of justice as well as independence of the judicature. The fate of the people may be left over at the discretion of Ad-hoc Judges, having vested interests including that of their continuation in the office. Moreover, it also militates against the "doctrine of lawful expectancy" qua the members of higher judiciary and Chief Justices of the High Courts whose elevation/promotion to the Supreme Court in particular is blocked by the appointment of Ad-hoc Judges.

3. At present the highest lawyers' representative bodies i.e., Pakistan Bar Council, Supreme Court Bar Association and Provincial Bar Councils have shown concerns and strong reservations over appointment of Ad-hoc Judges. The legal fraternity understands this invades and transgresses upon independence of bar and takes away the right of senior lawyers who under the Constitution can be appointed in the higher judiciary including the Apex Court.

4. This Bill has been designed to achieve the aforesaid objectives.

SENATOR ZAHEER-UD-DIN BABAR AWAN
Member-in-Charge