

# 2106

**REPORT OF THE SENATE STANDING  
COMMITTEE ON DEFENCE**

**“The National Command Authority  
(Amendment) Bill, 2016”**

***Report No. 11  
(Thirteenth Parliamentary Year)***

**PRESENTED BY  
(SENATOR MUSHAHID HUSSAIN SAYED)  
CHAIRMAN**



## SENATE SECRETARIAT

### REPORT OF THE SENATE STANDING COMMITTEE ON DEFENCE

I, Senator Mushahid Hussain Sayed, Chairman of the Senate Standing Committee on Defence, have the honour to present the report, on behalf of the Committee, on "**The National Command Authority (Amendment) Bill, 2016;**" which was referred to the Standing Committee for consideration and report.

2. The Agenda before the Committee was as follows:-

- i. The National Command Authority (Amendment) Bill, 2016;
- ii. Any other item with permission of the Chair;

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

1.	<b>Senator Mushahid Hussain Sayed</b>	<b>Chairman</b>
2.	Senator Ilyas Ahmad Bilour	Member
3.	Senator Hidayat Ullah	Member
4.	Senator Atta Ur Rehman	Member
5.	Senator Col. (R) Syed Tahir Hussain Mashadi	Member
6.	Senator Lt. Gen. (R) Salahuddin Tirmizi	Member
7.	Senator Lt. Gen. (R) Abdul Qayyum	Member
8.	Senator Muhammad Javed Abbasi	Member
9.	Senator Farhatullah Babar	Member
10.	Senator Farooq H. Naek	Member
11.	Senator Mrs. Sehar Kamran	Member
12.	Senator Brig (R) John Kenneth Williams	Member
13.	Minister for Defence	Ex-Officio Member

4. The Senate Standing Committee on Defence discussed the National Command Authority (Amendment) Bill, 2016 in its meetings held on 20<sup>th</sup> October & 28<sup>th</sup> October, 2016. The following members of the Committee attended the meeting:-

i.	Senator Mushahid Hussain Sayed	Chairman
ii.	Senator Col. (R) Tahir Hussain Mashhadi	Member
iii.	Senator Farhatullah Babar	Member
iv.	Senator Ilyas Ahmed Bilour	Member
v.	Senator Lt. Gen. (R) Salahuddin Tirmizi	Member
vi.	Senator Muhammad Javed Abbasi	Member
vii.	Senator Mrs. Sehar Kamran	Member

5. The meeting commenced with recitation from the Holy Quran by Senator Farhatullah Babar, followed by a brief introduction by the Chairman, Senate Standing Committee on Defence.





6. The Director General, Strategic Planning Division (SPD) gave a detailed briefing about the proposed amendments to the legislation. He briefly highlighted the requirements for the proposed amendments and the sensitivity of the issues involved. He requested the Committee to approve the proposed amendments.

7. The Committee then held a detailed discussion. Hon'ble Senators Muhammad Javed Abbasi, Mrs. Sehar Kamran, Lt. Gen (R) Salahuddin Tirmizi & Col. (R) Tahir Hussain Mashhadi spoke in favour of the Bill and emphasized the importance of the sensitivity of the issue. It was made clear that the employees involved in the sensitive work at the SPD were a valuable human resource & an asset for the organization, and were highly respected as such. The Personnel Reliability Programme is also very important for our national interest. The Master-Servant relationship between the organization and its employees was also in the grater national interest, keeping in view the sensitivity of the jobs being performed there. The employees while seeking jobs in this sensitive institution were fully aware of its sensitive nature and had willingly given up their statutory rights. It was our duty to protect the national interest and in the instant case confidentiality was a core issue.

8. It was highlighted that despite the fact that the matter pertaining to the rules governing the employees being "Statutory or Non-Statutory" was subjudice before the Supreme Court, the Parliament, being a supreme institution, was not bound to legislate based on the decisions of the Court. The Parliament legislates through a multifaceted approach whereas courts decide matters only on the basis of record provided to them, the evidence recorded, and arguments heard. In this way "Legislation" is a much more comprehensive process than "Decisions" by the Courts.

9. The Parliament being the primary institution had itself created the Supreme Court by enacting the Constitution of Pakistan and, therefore, had the powers to enact any law that it may deemed fit.

10. Senator Farhatullah Babar while disagreeing with the proposals stated that we were up against a daunting task. He stated that he has decided to give his note of dissent in the matter. The Hon'ble Senator declared national security as being of utmost importance but that the concept had been misused in the past. The nuclear programme needed to be protected but the concept of "No questions asked" was not appropriate. Matters should be transparent and open to questions. Amendments in Section 15 were



aimed at preventing a breach of security. The Hon'ble Senator did not disagree with the goals but criticized the means to achieve them. He stated that Supreme Court has ruled against this amendment in as many as fifty one cases. A review petition was still pending before the Court of competent jurisdiction. Enacting laws on matters subjudice before the Court would bring the Parliament in conflict with the judiciary thereby creating an embarrassment for the Parliament. He stressed that a confrontation between the institutions of the state was not desirable. We must wait for the decision of the Supreme Court. The Parliament being the supreme body has the authority to strike down decisions of the Supreme Court as envisaged under Article 270 AA of the Constitution. In the opinion of the Hon'ble Senator it was not the appropriate time for this legislation. He termed an absolute control over the employees as a violation of United Nations Resolutions on Human Rights. The Hon'ble Senator questioned whether the Bill provided the only solution to maintain secrecy when there was a provision that such matters can be heard in-camera by the Courts as demonstrated by them in the past where issues of national importance were dealt with in-camera.

11. The Hon'ble Senator also referred to the matter pertaining to the nuclear proliferation and our previous conduct in the matter. He objected to the language used in the "Statement of Objects and Reasons" and declared the human resource of the institution as a valuable asset. The patriotism of our nuclear Scientists cannot be doubted. The Hon'ble Senator also objected to the unfettered powers in financial matters being given to the SPD through this legislation. He said earlier, through the Finance Ministry, being under the purview of the Federal Cabinet, a check & balance was available which was now being removed. This was highly objectionable. He termed it a recipe for disaster.

12. Senator Col. (R) Tahir Hussain Mashhadi once again reiterated that in the greater national interest the Bill should be passed in totality. He also agreed that the Parliament being supreme had itself created the Supreme Court by enacting the constitution and had the powers to enact any law that it may deemed fit.

13. Senator Ilyas Ahmed Bilour advised caution in the matter and that the Committee should wait for the decision of the Supreme Court.

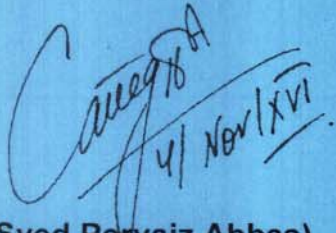
14. Senator Maulana Ata-ur-Rehman supported the point of view of Senator Farhatullah Babar.



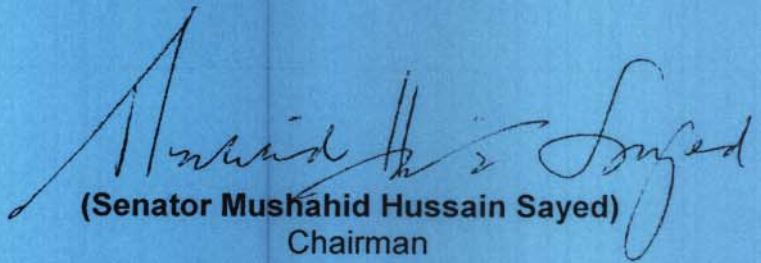
15. Concluding the discussion the Chairman Senate Standing Committee on Defence, Senator Mushahid Hussain Sayed stated that the Committee understood the importance of our national interests and the issues pertaining to our nuclear programme, being very sensitive.

16. Senator Farhatullah Babar added a dissenting note which is a part of the minutes of the meeting held on 28<sup>th</sup> October, 2016 & is attached.

17. The Bill was then put to vote by the Hon'ble Chairman Defcom and cleared by a majority vote with two members dissenting i.e. Senators Farhatullah Babar and Maulana Ata-ur-Rehman. The same is laid before the House.



**(Dr. Syed Pervaiz Abbas)**  
Addl. Secretary / Secretary Committee



**(Senator Mushahid Hussain Sayed)**  
Chairman



### **"Note of Dissent"**

The NCA (Amendment) Bill 2016 seeks to make the NCA Rules non-statutory so as to bar the courts from taking up cases of its employees. It is claimed that it will enable the NCA to exercise effective control over the employees, materials and information about strategic assets and prevent any breach of national security. The has come at a time when the Supreme Court ruled early this year that NCA rules are statutory and directed that all the over 50 cases be referred to relevant benches for adjudication. The government filed a review petition which is pending adjudication. Clearly the matter is sub judiced. Rules do not permit even discussion on sub judiced matters lest it influences court proceedings. By taking it up at this stage the Parliament will not only be discussing a subjudiced matter but will be seen as going as far to stop a judicial process in the tracks. This will pit the two state institutions against each other and is best avoided.

It is claimed that it is necessary for effecting full control over the nuclear program and its employees and in this connection a reference to UN SC Resolution 1540 has also been made. It has also been argued that discussion in courts on employees' issues will compromise secrecy.

Genuine issues of secrecy can be addressed by pleading for in camera court proceedings. The courts and the Parliament have been generous in this regard. Even today's meeting of the Committee is being held in camera on our initiative and not on the request of the government.

The UNSC Resolution 1540 relates to tightening controls to prevent pilferage and proliferation. Instead of exposing and bringing to justice all those involved in proliferation in the past the said Resolution 1540 is now touted to stifle the voice of the employees. It is difficult to accept this argument.

As for funds for the Authority it has been argued that the word "Finance Ministry" in the Act of 2010 has been substituted with the words "Federal Government" and that it should be appreciated instead of being criticized. Unfortunately this is a flawed argument.

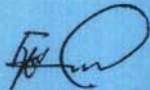
The Finance Ministry is subordinate to the Cabinet and any decision of the finance ministry is liable to be reviewed and questioned by the cabinet. Thus in the Act



of 2010 the financial allocations made by the Finance Ministry were opened to be questioned and even reviewed by cabinet. By binding the federal government now instead of the finance ministry to make unlimited funds available just on demand will neutralize a source of oversight and review.

Clause 4 of the NCA Act empowers the Chairman to delegate any of the powers and functions of the Authority to Chairman JCSC and DG SPD. If such powers have actually been transferred it would mean too much concentration of powers in one or two hands. The proposed Bill will further add to this concentration of powers. Too much of powers in strategic matters in one or two hands is strategic miscalculation.

I am therefore not inclined to support the Bill. If at all the employer seeks more powers over the employees then at a minimum a balance must be struck between the considerations of secrecy of the employer and the rights of the employees against arbitrariness of the employer. The Bill should not be considered till a verdict in the review petition has been announced.



Senator Farhatullah Babar  
October 28, 2016



**[AS PASSED BY THE NATIONAL ASSEMBLY]**

A

Bill

*further to amend the National Command Authority Act, 2010*

WHEREAS, it is expedient further to amend the National Command Authority Act, 2010 (V of 2010), for the purposes hereinafter appearing;

It is enacted as follows:-

**1. Short title and commencement.**—(1) This Act may be called the National Command Authority (Amendment) Act, 2016.

(2) It shall come into force at once and the provisions of this Act shall be deemed always to have been part of the National Command Authority Act, 2010 (V of 2010).

**2. Amendment of section 7 Act V of 2010.**— In the National Command Authority Act, 2010 (V of 2010), hereinafter referred to as the said Act, in section 7, in clause (d).—

- (a) for the words “prescribed specific”, the words “determine and provide for the”, shall be substituted; and
- (b) after the word, “matters”, the words “as it may deem fit and proper in the interests of the Authority”, shall be added.

**3. Amendment of section 15 Act V of 2010.**— In the said Act, in section 15, the following new proviso shall be added, namely:-

“Provided that notwithstanding anything contained in any judgment decree, order, direction or declaration of any Court including the Supreme Court of Pakistan or in this Act or in any other law for the time being in force, the rules, instructions or orders already made, or which may be made, in respect of the employees and strategic organizations of the Authority shall be non-statutory unless approved by the Federal Government and Published in the Official Gazette of Pakistan.”

**4. Substitution of section 17 Act V of 2010.**—In the said Act, for Section 17, the following shall be substituted, namely:-

“17. **Funds of the Authority.**—The Federal Government shall ensure provision of funds and make contributions in local and foreign currencies to the Authority through Strategic Plans Division as may be necessary to the Authority.”

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### **STATEMENT OF OBJECTS AND REASONS**

It is necessary and expedient to amend the National Command Authority Act, 2010 (V of 2010) (hereinafter the Act) to provide more clearly that the Federal Government shall ensure provision of funds and to further reiterate the original intent of the NCA Ordinance 2007 and NCA Act 2010 that the employees in service of the Authority are not civil servants and that legal relationship of the Authority with its employees is governed under the doctrine of master and servant and further the proposed amendment shall also prevent the abuse of legal process in respect of affairs of state.

**Khawaja Muhammad Asif**  
Minister for Defence