REPORT OF THE STANDING COMMITTEE ON LAW AND JUSTICE

"THE CONSTITUTION (AMENDMENT) BILL, 2017"

Report No. 43

PRESENTED BY

SENATOR MUHAMMAD JAVED ABBASI
CHAIRMAN

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, 2017" introduced by Senator Mian Muhammad Ateeq Shaikh on 13th February, 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 Dr. Muhammad Ali Khan Saif	Member
5.	Senator Syed Muzafar Hussain Shah	Member
6.	Senator Nehal Hashmi	Member
7.	Senator Ms. Ayesha Raza Farooq	Member
8.	Senator Nawabzada Saifullah Magsi	Member
9.	Senator Saeed Ghani	Member
10.	Senator Zaheer ud Din Babar Awan	Member
11.	Senator Mrs. Zahida Khan	Member
12.	Senator Farooq Hamid Naek	Member
13.	Minister for Law and Justice	Ex-Officio Member

3. The Committee considered the Bill in its meeting held on 27th March, 2017 and 5th April, 2017, under the Chairmanship of Senator Muhammad Javed Abbasi. Final consideration of the Bill was held in the meeting dated 5th April, 2017, which was attended by the following members:-

i. **Senator Muhammad Javed Abbasi**
ii. Senator Saleem Zia
iii. Senator Saeed Ghani
iv. Senator Mrs. Zahida Khan
v. Senator Farooq Hamid Naek

4. Senator Mian Muhammad Ateeq Shaikh, member in-charge, briefed the Committee that the 18th Amendment Act will have a significant impact on the Higher Education Sector nationally and provincially. At the national level, no legal and legislative protection is given to the Higher Education Commission as a Federal unit. As per Article 38 devolved Higher Education Commission may not justify its position as a single body on Higher Education. Devolution would encourage multiplicity of standards and regulations on admissions, and minimum quality requirement for appointment, promotion, quality assurance on academics, curriculum and scholarships and would impact on overall knowledge exchange.Higher Education Commission at the national level will face serious challenges on access, quality, relevance and equity that hold fundamental positions promoting national cohesion. Higher Education Commission will also face international challenges from international donor agencies on adopting economic and social change essential to education innovation at the institutional level. As devolution limits the Higher Education Commission's role in the Provincial Higher Education Sector, it would also limit its role in cross borders/ collaboration in sharing knowledge. The socio-economic development plan is very much connected with the country's Higher Education and Science and Technology Programmes. For instance the higher education requirements such as doctors, engineers, scientists and economists have to be determined at the national level and so is the funding that comes from the Federal Government. Devolution will have a negative impact on the process of national socio-economic development provincially and federally. The devolution of the education sector especially Article 38 will have a negative impact on the Higher Education Sector at the national and provincial level as it is challenging the mandate of Higher Education Commission. The Higher Education Commission and the Provinces will face national and international challenges. Article "The Provincial Government.-Subject to the Constitution, the executive authority of the Province shall be exercised in the name of the Governor by the Provincial Government, consisting of the Chief Minister and Provincial Minister, which shall act through the Chief Minister". Will deeply politicize the appointment of Vice-Chancellors, Rectors and Presidents. Uniformity, standards/ regulations compatible with the national/ international standards may not be maintained in the Higher Education Sector in all Provinces. The 18th amendment would be a failure as far as the Higher Education Sector is concerned. Challenges such as access, quality, relevance and equity require further

response from the Higher Education Commission. Hence entry 38 must be included in the Federal Legislative List Part-I.

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

The entry (curriculum, syllabus, planning, policy, centre of excellence and standard in education) was enlisted as entry 38 in the erstwhile concurrent legislative list in the Constitution. After 18th Amendment, the said entry was modified to read as follows in part II of the Federal Legislative List:-

> "12. Standards in institution for higher education and research, scientific and educational institutions".

It means that curriculum, syllabus, planning and policy were devolved upon the Provinces. The honourable Senator seeks to include the entry 38 of erstwhile concurrent legislative list in part I of the Federal Legislative List as entry 38. The proposed amendment is against the concept of devolution and can only be reversed if there is supporting data/ information/ analysis by the stakeholder Divisions that omission of said entry has damaged the educational development in the country.

It has also been stated by the Mover in Statements of Objects and Reasons that as per Article 38 of the Constitution, the entry has to be in Part I of Federal Legislative List. It is important to clarify that the Fundamental Rights and Principles of Policy have to be construed under Article 7 of the Constitution defining "State" as follows:-

> **"PART II**
>
> **Fundamental Rights and Principles of Policy**
>
> 7. Definition of the State.- In this Part, unless the context otherwise requires, the State means the Federal Government, Parliament, Provincial Government, a Provincial Assembly, and such local or other authorities in Pakistan as are by law empowered to impose any tax or cess".

Hence the legislative list determines what is to be done by Parliament and what to be done by Provincial Assemblies.

Views from Higher Education Commission, Ministry of Education and Training and CADD are required with reliable supporting data for reversal of amendment made through Constitution (Eighteenth Amendment) Act, 2010.

6. Ministry of Federal Education and Provincial Trainings partially supported the Bill and briefed the Committee that the Ministry is of the view that the proposed Constitutional Amendment can resolve some prevailing issues in the management of Education sector like confusion about the respective jurisdiction of Federal and Provincial Governments, development of higher education and research in the country, as well as creation of new authorities in the shapes of Sindh and Punjab Higher Education Commissions, that have evolved in a state ambiguity. These developments can seriously hamper uniform quality compliance in learning and teaching, compromise international pacts and protocols for accreditation of qualifications, recognition of degrees, etc. Promulgation of proposed amendment can enable research on national and international priorities, planning and coordination for ensuring uniform and compatible development of Higher Education Sector and fostering national harmony. The prime area of concern, as detailed in the "Statement of Objects and Reasons" is Higher Education. As such, the proposed amendment needs to be restricted to the extent of Higher Education only, rather than including the education as a whole. The Higher Education has not been devolved under the 18th Amendment. Therefore, Ministry of Federal Education and Professional Training partially agrees to the viewpoint of Higher Education Commission and recommends that in order to ensure even, compatible and fast development of Higher Education and Research in the country, the entry # 38 of the defunct concurrent list is restored to the extent of higher education in the following areas i.e. "Curriculum, syllabus, planning, policy and standards of higher Education".

7. Chairman, Higher Education Commission (HEC) briefed the Committee that the HEC agrees to the proposed Constitutional Amendment in principle, and is of the opinion that its promulgation would resolve the prevailing serious issues in governance of Higher Education i.e. deceptive confusion and chaos about Federal vis-à-vis Provincial jurisdiction in post 18th Amendment period. The proposed amendment

attempts to invoke the entry # 38 of the Concurrent Legislative List i.e. "Curriculum, syllabus, planning, policy, centers of excellence, and standards of education" which was omitted under 18th Constitutional Amendment. Once restored, the original/ earlier role of the Federation in education – including Higher Education – shall be restored. The prime are of concern, as detailed in the "Statement of Objects and reasons" is Higher Education. As such, one possibility could be to restrict the proposed amendment to the extent of Higher Education only; rather than including the education as a whole. In terms of Order of the Supreme Court of Pakistan in C.P. # 33-35 of 2011, "the status of HEC as it has been assigned to it under HEC Ordinance of 2002 with its functions covered by the constitutional provisions namely entries at Sr. # 16, and 17 of the part-I and Sr. 7, 11 and 12 of Part-II of the Federal Legislative List, shall remain intact unless the same is changed by promulgation of legislation in this behalf", the Higher Education has not been devolved under the 18th Amendment. However, omission of concurrent list and presence of "standards in institution for higher education and research, scientific and technical institution" as entry # 12 of Part-II Federal Legislative List i.e. domain of CCI – Council of Common Interest – has given away the impression that Provinces may legislate on higher education which is not factual. Being a subject in the Federal legislative list, the first right to legislate rest with the Federation and Provinces at their own are not empowered to legislate in the same domain. As the matter relates to the interpretation of 18th Constitutional Amendment, the ambiguity may continue to prevail adversely impacting the development of Higher Education Sector. All the same, fragmentation of curriculum to the Provinces upon promulgation of 18th Constitutional Amendment has strongly dented the cause of promotion of uniform perceptions on issues of national significance such as Ideology of Pakistan, National Heroes, etc. besides creating variances in standards and quality of curriculum. The Ministry of Federal Education and Professional Training under the umbrella of IPEMC (Inter Provincial Education Ministers' Conferences) has successfully built realization to the matter and instituted a National Curriculum Council for addressing the challenge. Therefore, from HEC perspective, if it becomes difficult to completely restore the proposed amendment viz. "Curriculum, syllabus, planning policy, centers of excellence and standards of education" than the entry # 38 of the defunct concurrent list shall at least be restored to the extent of Higher Education and Curriculum. Such a limited amendment would remain successful in removing the confusion about Higher

Education governance and transfer the authority to prescribe curriculum back to the Federation.

8. All the members, present, were of the consistent view that curriculum, syllabus, planning and policy were devolved upon the Provinces vide the Eighteenth Constitutional Amendment. Inclusion of entry 38 of erstwhile concurrent legislative list in part I of the Federal Legislative List as entry 38 will amount to reversing the scheme of devolution. Therefore, the Committee recommended that the member in-charge may with draw the Bill; which was agreed upon by Senator Mian Muhammad Ateeq Shaikh, member in-charge. However, keeping in view the significance and challenges of the Higher Education, the Committee asked the member in-charge to draft a Bill in consultation with the Higher Education Commission and other relevant stakeholders in order to address the issue raised by the Chairman Higher Education Commission and Ministry of Federal Education and Provincial Trainings.

9. In terms of para 13, the Committee recommends that the House may grant leave to Senator Mian Muhammad Ateeq Shaikh to withdraw "The Constitution (Amendment) Bill, 2017", in terms of rule 115 of the Rules of Procedure and Conduct of Business in the Senate, 2012. (Copy of Bill as introduced in the Senate is annexed).

(RABEEA ANWAR)
J.S / Secretary Committee

(SENATOR MUHAMMAD JAVED ABBASI)
Chairman

[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, 2017.

(2) It shall come into force at once.

2. Amendment of Fourth Schedule to the Constitution.- In the Constitution of the Islamic Republic of Pakistan, in the Fourth Schedule, in the Federal Legislative List, in Part-I, after entry 37, the following new entry shall be inserted, namely:-

"38. Curriculum, syllabus, planning policy, centers of excelience and standards of education."

STATEMENT OF OBJECTS AND REASONS

1. The 18th Amendment Act will have a significant impact on the Higher Education Sector nationally and provincially. At the national level, no legal and legislative protection is given to the Higher Education Commission as a Federal unit. As per Article 38 devolved Higher Education Commission may not justify its position as a single body on Higher Education.

2. Devolution would encourage multiplicity of standards and regulations on admissions, and minimum quality requirement for appointment, promotion, quality assurance on academics, curriculum and scholarships and would impact on overall knowledge exchange.

3. Higher Education Commission at the national level will face serious challenges on access, quality, relevance and equity that hold fundamental positions promoting national cohesion. Higher Education Commission will also face international challenges from international donor agencies on adopting economic and social change essential to education innovation at the institutional level. As devolution limits the Higher Education Commission's role in the Provincial Higher Education Sector, it would also limit its role in cross borders/collaboration in sharing knowledge.

4. The socio-economic development plan is very much connected with the country's Higher Education and Science and Technology Programmes. For instance the higher education requirements such as doctors, engineers, scientists and economists have to be determined at the national level and so is the funding that comes from the Federal Government. Devolution will have a negative impact on the process of national socio-economic development provincially and federally. The devolution of the education sector especially Article 38 will have a negative impact on the Higher Education Sector at the national and provincial level as it is challenging the mandate of Higher Education Commission.

5. The Higher Education Commission and the Provinces will face national and international challenges. Article 129 ("**The Provincial Government**.- Subject to the Constitution, the executive authority of the Province shall be exercised in the name of the Governor by the Provincial Government, consisting of the Chief Minister and Provincial Ministers, which shall act through the Chief Minister." Will deeply politicize the appointment of Vice-Chancellors, Rectors and Presidents.

6. Uniformity, standards/regulations compatible with the national/international standards may not be maintained in the Higher Education Sector in all Provinces. The 18th amendment would be a failure as far as the Higher Education Sector is concerned.

7. Challenges such as access, quality, relevance and equity require further response from the Higher Education Commission. Hence entry 38 must be included in the Federal Legislative List Part-I.

8. This Bill seeks to achieve the above said objective.

SENATOR MIAN MUHAMMAD ATEEQ SHAIKH
Member In charge