

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



## **“THE CONSTITUTION (AMENDMENT) BILL, 2017 (AMENDMENT OF ARTICLE 63A)”**

**Report No. 54**

**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(Amendment of Article 63A)” introduced by Senator Nawabzada Saifullah Magsi, on 21<sup>st</sup> August, 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.	<b>Senator Muhammad Javed Abbasi</b>	<b>Chairman</b>
2.	Senator Aitzaz Ahsan	Member
3.	Senator Saleem Zia	Member
4.	Senator Farooq Hamid Naek	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 Dr. Muhammad Ali Khan Saif	Member
10.	Senator Mrs. Zahida Khan	Member
11.	Senator Syed Asif Saeed Kirmani	Member
12.	Senator Barrister Murtaza Wahab	Member
13.	Minister for Law and Justice	Ex-Officio Member

3. The Committee considered the Bill in its meeting held on 2<sup>nd</sup> October and 19<sup>th</sup> October, 2017, under the Chairmanship of Senator Muhammad Javed Abbasi, which was attended by the following hon’ble Members:-

- i. Senator Saleem Zia
- ii. Senator Nehal Hashmi
- iii. Senator Mrs. Zahida Khan
- iv. Senator Farooq Hamid Naek



4. Senator Nawabzada Saifullah Magsi, Mover briefed the Committee that Article 63A was added to the Constitution by the passage of the 18<sup>th</sup> Constitutional Amendment in 2010. The main purpose and aim of the 18<sup>th</sup> Amendment was to restore the Constitution, as far as was practicable, to its original spirit, as envisaged by the framers of the original 1973 Constitution. Article 63A aims to restrict members of the Parliament or Provincial Assemblies to use their power of voting in certain matters, by making them bound by the decision of the Party Head. This may be necessary in certain matters to make some corrupt parliamentary practices of the past, commonly known as 'horse trading' or 'floor crossing' are discouraged and penalized; and ensure smooth running of both the Government and of Parliament. However, such restriction on members of Parliament with regards to voting or abstaining to vote on bills relating to a Constitutional Amendment is against the very essence of parliamentary democracy and parliamentary norms. It is an established custom of parliamentary practice, that a Parliamentarian is only bound by his conscience, when he/ she is to exercise his/her vote while enacting laws. A Parliamentarian is not even bound by his/her voters or constituents in this regard. Article 63A, (b) (iii) gives unfettered powers to political 'Party Heads' and effectively weakens the institution of Parliamentary democracy as envisioned and envisaged by the authors of our Constitution.

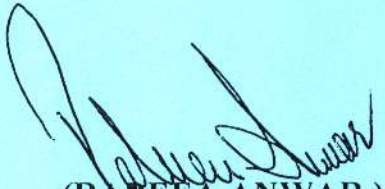
5. The Ministry of Law and Justice gave following input on the Bill:-

- 1) The instant Constitutional (Amendment) Bill is for the purpose of empowering the Members with regards to voting or abstaining from vote on bills relating to a constitutional Amendment or a money Bill, against the policy of party heads. According to him, it is against parliamentary democracy that a Member cannot exercise vote according to his own wisdom.
- 2) However, one more fact has to be kept in mind that Article 63A ibid was inserted vide Article 22 of the Constitution (Eighteenth Amendment) Act, 2010 (X of 2010) owing to its importance that the Constitution provides basic structure of the state and its amendment, like a money Bill, plays an important role in formulation of policy by a political party.



6. Members supported the Bill to the extent of omission of "Constitutional amendment" from sub-paragraph (iii) of paragraph (b) of clause (1) of Article 63A, Constitution, 1973, however, did not agree with the omission of entire sub-paragraph (iii).

7. Accordingly, the Committee recommends that "The Constitution (Amendment) Bill, 2017 (Amendment of Article 63A)", may not be passed, in its present form, by the Senate. (Copy of Bill 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 Article 63A of the Constitution.-** In the Constitution of the Islamic Republic of Pakistan, in Article 63A, in clause (1), in sub-clause (b), paragraph (iii), shall be omitted.

**STATEMENT OF OBJECTS AND REASONS**

Article 63A was added to the Constitution by the passage of the 18<sup>th</sup> Constitutional Amendment in 2010. The main purpose and aim of the 18<sup>th</sup> Amendment was to restore the Constitution, as far as was practicable, to its original spirit, as envisaged by the framers of the original 1973 Constitution.

Article 63A aims to restrict members of the Parliament or Provincial Assemblies to use their power of voting in certain matters, by making them bound by the decision of the Party Head. This may be necessary in certain matters to make some corrupt parliamentary practices of the past, commonly known as 'horse trading' or 'floor crossing' are discouraged and penalized; and ensure smooth running of both the Government and of Parliament.

However, such restriction on members of Parliament with regards to voting or abstaining to vote on bills relating to a Constitutional Amendment is against the very essence of parliamentary democracy and parliamentary norms.

It is an established custom of parliamentary practice, that a Parliamentarian is only bound by his conscience, when he / she is to exercise his / her vote while enacting laws. A Parliamentarian is not even bound by his / her voters or constituents in this regard.

Article 63A, (b) (iii) gives unfettered powers to political 'Party Heads' and effectively weakens the institution of Parliamentary democracy as envisioned and envisaged by the authors of our Constitution.