

# SENATE OF PAKISTAN



**REPORT NO.26**

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



**“THE CONSTITUTION (AMENDMENT) BILL, 2020”**

**(AMENDMENT OF ARTICLE 45)**

**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" (AMENDMENT OF ARTICLE 45).

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" (Amendment of Article 45)" (Private Members' Bill), introduced in the Senate by Senator Sirajul Haq on 20<sup>th</sup> January 2020 and referred to the Committee for consideration and report.

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

1. <b>Senator Muhammad Javed Abbasi</b>	<b>Chairman</b>
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 held on 9<sup>th</sup> March 2020, with the following in attendance:

Senator Muhammad Javed Abbasi	Chairman
Senator Dr. Ghous Muhammad Khan Niazi	Member
Senator Sirajul Haq	Member / Member In-Charge
Senator Ayesha Raza Farooq	Member
Senator Zeeshan Khanzada	Member
Senator Sana Jamali	Member
Senator Muhammad Ali Khan Saif	Member
Senator Mustafa Nawaz Khokhar	Member

4. Senator Sirajul Haq said that under the Islamic law sentences under Hudood or Qisas cannot be pardoned by the President, hence the proposed amendment. Chairman Council of Islamic Ideology, Dr. Qibla Ayaz, opined that in all cases of Hudood or Qisas, and in penal matters involving Haqooq-ul-Ibad particularly, the President could not grant pardon because these principles have been unequivocally settled in Quran. The experts from International Islamic University, Dr. Qasim Ashraf and Dr. Abdul Karim Usman, also endorsed the viewpoint that the Presidential power of pardon cannot be exercised in Hudood or Qisas cases as that would be against Islamic injunctions. Chairman Committee inquired as to whether any such pardon had been granted in Hudood or Qisas cases, to which the experts mentioned one instance but Senator Muhammad Ali Khan Saif pointed out that it was a penal matter and not a case of Hudood or Qisas. The Senator also pointed out that Presidential Pardon did not mean full pardon from a sentence rather it was about reduction in sentence.

5. Senator Mustafa Nawaz Khokhar remarked that absolute powers for pardon were not appropriate however a state can face situations in which such a power becomes useful. Ministry of Law and Justice opposed the Bill and argued that Qisas is to the extent of suffering while Hudood also has many aspects. Article 45 of the Constitution isn't about pardon only, it is about respite, reduction and delay as well. At this point, the Chairman Committee proposed to go through Constitutional debates of 1973 so as to see what the intent of legislators was behind Article 45. However, the Member In-Charge pressed for voting on the Bill.




6. After detailed discussion, the Chairman Committee put the Bill to vote of the Committee. Senators Sirajul Haq, Ayesha Raza Farooq, Dr. Ghous Muhammad Khan Niazi, Muhammad Ali Saif and Sana Jamali voted in favour of the Bill while Senators Mustafa Nawaz Khokhar and Zeeshan Khanzada opposed it. Hence the Bill was passed by the majority vote.

7. The Committee recommends that "The Constitution (Amendment) Bill, 2020" (Amendment of Article 45) (Private Member's Bill), as introduced in the Senate may be passed. Copy of the Bill is annexed.



(Haris Rehman)  
DS / Secretary Committee



(Senator Muhammad Javed Abbasi)  
Chairman

Islamabad  
The 23<sup>rd</sup> June 2020

**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 45 of the Constitution.-** In the Constitution of the Islamic Republic of Pakistan, in Article 45, for the full stop occurring at the end, a colon shall be substituted and thereafter the following proviso shall be inserted, namely:-

"Provided that the President would not exercise this power in cases of punishments awarded under Hudood or Qisas."

**STATEMENT OF OBJECTS AND REASONS**

Article 227 (1) of the Constitution of the Islamic Republic of Pakistan states as "All existing laws shall be brought in conformity with the injunctions of Islam as laid down in the Holy Quran and Sunnah, in this part referred to as the injunctions of Islam, and no law shall be enacted which is repugnant to such injunctions".

**2.** According to the Article 45, "The President of Pakistan has power to grant pardon, reprieve and respite, and to remit, suspend or commute any sentence passed by any court, tribunal or other authority".

**3.** This Article does not conform to the Shari'ah as there is clear command of Shari'ah in respect of punishments given under Hudood and Qisas, and as such no remission can be given in respect of these by any human authority.

**4.** Under the Islamic law of Diyyat and Qisas, the legal heirs of a deceased have the sole right to pardon or not the convicted person.

**5.** The Bill seeks to achieve the afore-mentioned objectives.

**SENATOR SIRAJUL HAQ**  
**Member-in-Charge**