

# SENATE OF PAKISTAN



REPORT NO.28

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



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

**(AMENDMENT OF ARTICLE 213)**

**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 213)"

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 213)" (Private Member's 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 multiple meetings but conclusive deliberations were held in its meeting on 13<sup>th</sup> July 2020, with the following in attendance




1.	Senator Muhammad Javed Abbasi	Chairman
2.	Senator Mian Raza Rabbani	Member
3.	Senator Farooq Hamid Naek	Member
4.	Senator Dr. Ghous Muhammad Khan Niazi	Member
5.	Senator Zeeshan Khanzada	Member
6.	Senator Sana Jamali	Member
7.	Senator Musadik Masood Malik	Member
8.	Senator Mustafa Nawaz Khokhar	Member
9.	Senator Walid Iqbal	Member

4. At the outset, the Committee observed that appointment of Chief Election Commissioner and Members of Election Commission of Pakistan (ECP) was a function vested in the Parliament by the Constitution. It was also noted that reaching consensus was a democratic process therefore it cannot be used as a justification for transferring this function to any other institution, such as the Judiciary. The Chairman Committee opened the floor for the Committee to deliberate upon alternate parliamentary forums of finalizing appointment of Chief Election Commissioner and Members of ECP in case of deadlock under the existing Constitutional provisions, however no particular alternate received consensus. Ministry of Law and Justice also opined that the Constitution gives this mandate to the Parliament to appoint Chief Election Commissioner and Members of ECP and it should rest with the Parliament.

5. Member-In-Charge, Senator Sirajul Haq, did not attend the meeting on 13<sup>th</sup> July 2020. However, the Committee observed that all the discussion held on the bill moved by Senator Lt. Gen (R) Abdul Qayyum was also applicable on the bill by Senator Sirajul Haq, as the two bills were identical in proposing the appointments of Chief Election Commissioner and Members ECP to be referred to Supreme Court in case of deadlock. The Committee had unanimous view that Parliament is supreme and no law can be promulgated to give any of Parliament's functions to other institutions, including Supreme Court, as proposed in the bill. It was unanimously agreed that the function of appointing Chief Election Commissioner and Members of Election Commission should stay with Parliament. Therefore, it was decided that Senator Sirajul Haq should also withdraw his bill and bring in a fresh bill in the House in the light of discussions held in the Committee.

  
 (Haris Rehman)  
 DS / Secretary Committee

  
 (Senator Muhammad Javed Abbasi)  
 Chairman, Committee on Law and Justice

Islamabad  
 the 23<sup>rd</sup> July 2020

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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, 2019

(2) It shall come into force at once.

**2. Insertion of new clauses in Article 213 of the Constitution:** In the Constitution of the Islamic Republic of Pakistan, in Article 213, after clause (2B), the following new clauses shall be inserted, namely:-

“(2C) When there is no consensus among the members of Parliamentary Committee for the appointment of members, all the names proposed, from both sides in the Committee, within seven days shall become forwarded to the Judicial Committee duly constituted under clause (2D).

(2D) The Judicial Committee shall consist of Chief Justice and two senior most Judges of the Supreme Court and Chief Justice of High Courts of respective provinces and consider the names for appointment from the list so forwarded as early as possible.”

**STATEMENT OF OBJECTS AND REASONS**

Two seats in Election Commission of Pakistan had been lying vacant since January 26, 2019. The Government was bound to fill the seats in 45 days.

Prime Minister and opposition leader did not reach consensus and names were referred to Parliamentary Committee duly constituted under Article 213 (2B).

There was no consensus in Parliamentary Committee too for appointments.

The Government had announced the appointment of two new members of the Election Commission and the appointment was about seven months after the retirement of ECP members from Sindh and Balochistan.

Chief Election Commissioner refused to administer oath to the new members stating that their appointment has not been carried out as per the Constitution of Pakistan.

In above situation, there is no provision in the constitution to deal with the matter.

Through above amendment, it is proposed in case there is also no consensus among the members of Parliamentary Committee for the appointment of members, all the names proposed, from both sides in the Committee, within 7 days, shall become forwarded to the Judicial Committee duly constituted under newly inserted clause (2D) and it is proposed that the Judicial Committee shall consist of Chief Justice and two senior most Judges of Supreme Court and Chief Justice of High Courts of respective provinces and consider the names for appointment from the list so forwarded as early as possible.

Amendment is proposed to achieve above objects.

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