

SENATE OF PAKISTAN



REPORT NO. 31

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



“THE ISLAMABAD HIGH COURT (AMENDMENT) BILL, 2020”

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 ISLAMABAD HIGH COURT (AMENDMENT) BILL, 2020,"

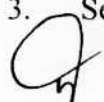
I, Senator Muhammad Javed Abbasi, Chairman Standing Committee on Law and Justice, have the honor to submit, on behalf of the Committee, this report on "The Islamabad High Court (Amendment) Bill, 2020" introduced by Senator Muhammad Javed Abbasi, in the Senate sitting held on 27th July, 2020 and referred to the Committee for consideration and report.

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

1.	Senator Muhammad Javed Abbasi	Chairman
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 10th August 2020, under the chairmanship of Senator Muhammad Javed Abbasi. However, at the time of consideration of the Bill, Senator Muhammad Javed Abbasi recused himself from presiding the meeting and Senator Sana Jamali occupied the Chair as acting Chairperson, with the following in attendance:

1. Senator Muhammad Javed Abbasi
2. Senator Ayesha Raza Farooq
3. Senator Zeeshan Khanzada



4. Senator Sirajul Haq
5. Senator Musadik Masood Malik
6. Senator Dr. Ghous Muhammad Khan Niazi
7. Senator Mustafa Nawaz Khokhar
8. Senator Sana Jamali

4. The Committee had detailed discussion on the Bill. Member In-Charge briefed the Committee that appointment of Judges in all High Courts is done under Article 193 of the Constitution, which does not specifically provide that appointments of High Court Judges should be from the provinces and other territories of Pakistan, rather being a Pakistani citizen is the simple specification along with qualifications as provided in the same Article. However, Section 3 of the Islamabad High Court Act, 2010, in its present form, creates an anomaly in appointment of Judges in Islamabad High Court by specifically including the words “from the provinces and other territories of Pakistan”. He added that the purpose of the Bill is to bring Section 3 of the Islamabad High Court Act, 2010 in conformity with Article 193 of the Constitution.

5. The Ministry of Law and Justice presented the view that existing scheme of appointment for Judges in the Islamabad High Court under Section 3 of the Islamabad High Court Act, 2010, gives representation to all the federating units as the said High Court is for country’s Capital. Moreover, Members of Islamabad Bar Council and Islamabad High Court Bar Association can be appointed in other High Courts as a Judge, there is no bar for such appointments. The Secretary Law added that rationale behind the specific words being proposed to be omitted was to avoid the norm that Judges in Islamabad High Court are appointed only from ICT.

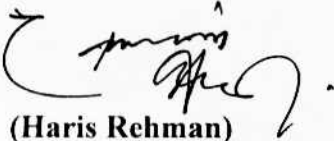
6. Senators Musadik Masood Malik and Ayesha Raza Farooq opined that Statement of Objects and Reasons of the Bill creates an impression as though the amendment aims to confine appointments of Judges in Islamabad High Court to lawyers registered with Islamabad Bar Council, Islamabad High Court Bar Association and Judges of the lower judiciary, and if so, it would be a discriminatory provision. Member In-Charge replied that Statement of Objects and Reasons gives only a background of the requirement of proposed amendment while the real purpose of the Bill is to bring Section 3 of the Islamabad High Court Act, 2010, in conformity with Article 193 of the Constitution, as already stated. He also suggested that Statement of Objects and Reasons can be readily amended by the Committee to reflect the purpose better. Accordingly, following substitute Statement of Objects and Reasons of the Bill was proposed by the Committee and duly supported by the Member In-Charge:




STATEMENT OF OBJECTS AND REASONS

Appointment of Judges in all High Courts is done under Article 193 of the Constitution. However, Section 3 of the Islamabad High Court Act, 2010, in its present form, creates an anomaly in appointment of Judges in Islamabad High Court. This Bill seeks to address this anomaly, whereby Judges of the Islamabad High Court shall be appointed in accordance with the provisions of Article 193 of the Constitution.

7. With the above substitution of Statement of Objects and Reasons the Chairperson put the Bill to vote, whereupon all members present in the meeting voted in favour of the Bill.
8. The Committee recommends that "The Islamabad High Court (Amendment) Bill, 2020" as reported by the Committee may be passed by the Senate of Pakistan. The Committee also gave approval for presentation of this report to the House. The Bill as reported by the Committee is at Annex-A, and the Bill as introduced in the Senate is at Annex-B.


(Haris Rehman)
Secretary Committee


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

[As Reported by the Committee]

A

BILL

further to amend the Islamabad High Court Act, 2010

WHEREAS it is expedient further to amend the Islamabad High Court Act, 2010 (XVII of 2010), for the purposes hereinafter appearing;

It is hereby enacted as follows:-

1. Short title and commencement.- (1) This Act may be called the Islamabad High Court (Amendment) Act, 2020.

(2) It shall come into force at once.

2. Amendment of Section 3, Act XVII of 2010.- In the Islamabad High Court Act, 2010 (XVII of 2010), in section 3, in sub-section (1), the words "from the provinces and other territories of Pakistan" shall be omitted.

STATEMENT OF OBJECTS AND REASONS

Appointment of Judges in all High Courts is done under Article 193 of the Constitution. However, section 3 of the Islamabad High Court Act, 2010, in its present form, creates an anomaly in appointment of Judges in Islamabad High Court. This Bill seeks to address this anomaly, whereby Judges of the Islamabad High Court shall be appointed in accordance with the provisions of Article 193 of the Constitution.

SENATOR MUHAMMAD JAVED ABBASI
Member-in-Charge

As
~~[TO BE INTRODUCED IN THE SENATE]~~

ANNEX - B

A

BILL

further to amend the Islamabad High Court Act, 2010

WHEREAS It is expedient further to amend the Islamabad High Court Act, 2010 (XVII of 2010), for the purposes hereinafter appearing;

It is hereby enacted as follows:-

1. Short title and commencement.- (1) This Act may be called the Islamabad High Court (Amendment) Act, 2020.

(2) It shall come into force at once.

2. Amendment of Section 3, Act XVII of 2010.- In the Islamabad High Court Act, 2010 (XVII of 2010), in section 3, in sub-section (1), the words "from the provinces and other territories of Pakistan" shall be omitted.

STATEMENT OF OBJECTS AND REASONS

Since the establishment of the High Courts in Pakistan, the practice for the appointment and elevation of the Judges of the High Courts of provinces is that the lawyers registered with the provincial Bar Councils, High Courts Bar Associations and the Judges of the Lower judiciary of the respective provinces are considered for such appointments and elevation. But due to section 3 of the Islamabad High Court Act, 2010 the lawyers registered with the Islamabad Bar Council and Islamabad High Court Bar Association as well as the judges of the lower judiciary hardly get a chance to be appointed or elevated as the judge of the Islamabad High Court which is against the principle of legitimate expectancy and the practice being followed in all other High Courts. Therefore, this Bill seeks to address this anomaly.

SENATOR MUHAMMAD JAVED ABBASI
 Member-In-Charge