

[AS 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, 2012.

(2) It shall come into force at once.

2. Amendment of Article 9 of the Constitution.- In the Constitution of the Islamic Republic of Pakistan, hereinafter referred to as the Constitution, Article 9, shall be re-numbered as clause (1) and after the aforesaid re-numbered clause (1), the following new clause (2) shall be added, namely: -

“(2) No person shall be given in foreign custody without the permission of High Court of the province.”.

3. Amendment of Article 10 of the Constitution.- In the Constitution, in Article 10,-

(i) in clause (4),-

(a) for the words, “three months”, the words “one month” shall be substituted; and

(b) in Explanation I, in paragraphs (i) and (ii) the words, “or has been”, shall be omitted;

(ii) in clause (5), for the words, “within fifteen days” the words and comma, “as soon as may be, but not later than one week” shall be substituted and after the word, “made” the words, “and contact of such person shall be established with his family” and after the word, “order” the words “through legal practitioner of his choice” shall be inserted;

(iii) in clause (6), the words and commas “unless a certificate, signed by a Secretary to the Government concerned, to the effect that it is not in the public interest to furnish any documents, is produced” shall be omitted; and

(iv) after clause (9), the following new clause shall be added, namely: -

“(10) The Authority making order of preventive detention and acting in contravention of Constitution and provisions of any law for the time being in force and persons involved in implementing such order shall be tried in the Court of law for committing the offence of abduction or wrongful confinement and where ordering authority can not be determined the administrative head of the concerned law enforcing agency shall be so tried.”.

STATEMENT OF OBJECTS AND REASONS

1. “Forced Disappearance” through Intelligence Agencies or otherwise has taken form of State terrorism. Hundreds of Pakistanis are allegedly kept in the custody of State Agencies without any opportunity of being heard at any judicial forum; while their families never know anything about their loved ones. Recently some very violent incidents have occurred, the tales of which goes to agencies.
2. The Intelligence Agencies and ‘Law Enforcing’ Agencies have been misusing the provisions related to Preventive Detention in the Constitution of Pakistan, which are undoubtedly meant for exceptional circumstances.
3. In view of above said situation and to guarantee Human Rights to every citizen of Pakistan, it is necessary to cut short the powers of Intelligence Agencies in case of preventive detention to a reasonable limit and ensure the right of fair trial for every person detained.
4. This Bill proposes to reinstate the maximum duration of “one month” for preventive detention without being heard, as it was in the original text of the Constitution of Pakistan, 1973, before Third Constitutional Amendment made in 1975, that had increased this period to “three months”. Similarly, the Bill seeks the detained person to be informed of the charges against him “as soon as may be, but not later than one week”. Third Constitutional Amendment had increased such limit to “fifteen days”.

5. This Bill binds the detaining authority to establish contact between the detainee and his family within one week after his detention; as it obligates the presentation of such person before competent judicial authority within a maximum period of 'one month' for his defence. Presently the expression of "the earliest opportunity" being vague is widely misused by state agencies.

6. The Bill proposes that the Review Board shall consist of sitting judges of superior judiciary to ensure complete transparency and impartiality. It also seeks to abolish the illogical practice of non-disclosure of facts and non-production of relevant documents before the Review Board constituted by the High Court or Supreme Court under the Chairmanship of a serving member of superior judiciary.

7. In case, a person is detained without affording him the opportunity of fair trial and without informing his relatives or any of his rights is infringed, the authority making order of preventive detention and persons carrying out such illegal order shall be deemed to have committed the offence of abduction or wrongful confinement and shall be tried in the Court of law.

8. Through addition in Article 9 of the Constitution of Pakistan, handing over Pakistani citizens to foreign countries without permission of the High Court of the province concerned is sought to be prohibited. This proposal is aimed at abolishing the shameful practice that has brought bad name to the country as it has irreparably damaged the dignity of Pakistani nation.

9. This Bill seeks to achieve the above-said objective.

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SENATOR PROF. MUHAMMAD IBRAHIM KHAN
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Members-in-Charge