

# REPORT OF THE STANDING COMMITTEE ON LAW AND JUSTICE



## “THE CONSTITUTION (AMENDMENT) BILL, 2016 (AMENDMENT OF ARTICLE 209)”

Report No. 35

PRESENTED BY

SENATOR MUHAMMAD JAVED ABBASI  
CHAIRMAN



## SENATE SECRETARIAT

### REPORT OF THE STANDING COMMITTEE ON LAW AND JUSTICE ON "THE CONSTITUTION (AMENDMENT) BILL, 2016 (AMENDMENT OF ARTICLE 209)"

I, Chairman of the Standing Committee on Law and Justice, have the honour to present report on "The Constitution (Amendment) Bill, 2016 (Amendment of Article 209)", introduced by Senator Zaheer-ud-Din Babar Awan on 21<sup>st</sup> November, 2016. 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 Dr. Muhammad Ali Khan Saif	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 Saeed Ghani	Member
10.	Senator Zaheer ud Din Babar Awan	Member
11.	Senator Mrs. Zahida Khan	Member
12.	Senator Farooq Hamid Naek	Member
13.	Minister for Law and Justice	Ex-Officio Member

3. The Committee considered the Bill in its meetings held on 13<sup>th</sup> December, 2016, 20<sup>th</sup> December, 2016 and 19<sup>th</sup> January, 2017, Final consideration of the Bill was held in the meeting dated 19<sup>th</sup> January, 2017, which was attended by the following members:-

i.	<b>Senator Muhammad Javed Abbasi</b>	<b>Chairman</b>
ii.	<i>Senator Syed Muzafar Hussain Shah</i>	<i>Member</i>
iii.	<i>Senator Nehal Hashmi</i>	<i>Member</i>
iv.	<i>Senator Ms. Ayesha Raza Farooq</i>	<i>Member</i>
v.	<i>Senator Mrs. Zahida Khan</i>	<i>Member</i>
vi.	<i>Senator Saleem Zia</i>	<i>Member</i>



4. Senator Zaheer-ud-Din Babar Awan, mover, in the meeting dated 20<sup>th</sup> December, 2016, briefed the Committee that in order to make it more effective and elaborative, the checks over higher judiciary guaranteed under the provisions of the Constitution need to be further improved. Accordingly, the instant constitutional amendment Bill is proposed to remove the ambiguities through:-

- (a) Extending the applicability of Article 209 to the Chief Justice of Pakistan/ Chief Justice of High Courts;
- (b) Stipulating time lines for expeditious disposal of the complaints; and
- (c) Identifying minimum punishment for a judge against whom charge is established by the Council.

5. Ministry of Law and Justice opposed the Bill on the following grounds:-

- (a) The Bill seeks to make special provisions where the conduct being enquired into the Council is that of the Chief Justice of Pakistan. This aspect of the matter came up for consideration before the Supreme Court in the case reported as Chief Justice Iftikhar Muhammad Choudhary Vs. the President of Pakistan [PLD 2010 SC 61]. In that case it was held that the Supreme Judicial Council is an exclusive body constituted under Article 209 of the Constitution of the Islamic Republic of Pakistan which consists of the Chief Justice of Pakistan, two next most senior Judges of the Supreme Court and two most senior Chief Justice of High Courts.
- (b) The Supreme Judicial Council if at any time is enquiring into capacity or conduct of a Judge who is member of the Council or a member of the Council is unable to act due to any reason in case such member is a Judge of the Supreme Court the next Judge in seniority and in case he is a Chief Justice of the High Court the Chief Justice of another high Court next in seniority shall act as a member of the Council in his place.
- (c) Article 260 of the Constitution provides that the Chief Justice in relation to the Supreme Court or a High Court includes the Judge for the time being acting as Chief Justice of the Court and the Judge includes Chief Justice of the Court. In view of the aforesaid provisions the Supreme Court concluded that clause (3) of Article 209 read with Article 260 of the Constitution the debate with reference to clause (2) of Article 209 that in the absence of Chief Justice of Pakistan the Constitution and composition of the Supreme Judicial Council may not be proper is of no significance.





(d) For the aforesaid reasons the proviso proposed to be added to clause (2) for Article 209 ibid is of no significance and does not serve any purpose.

(e) Another amendment proposed is that the complaint received against a Judge of the Supreme Court of a High Court by the Council shall be made to be disposed of within forty-five days. The proposals does not provide for a situation where the complaint is no disposed of within forty-five days. Such provisions are always treated as directory and mean as soon as may be possible. Further, Article 254 of the Constitution provides that failure to comply with requirement as to time does not render an act invalid.

(f) Further, amendment proposed by the mover is that the final order of the Council shall be appealable before the full Bench of the Supreme Court which shall again decide within thirty days. The proposed amendment is contrary to, and in conflict with, the Article 211 of the Constitution which says that the proceedings before the Council, its report to the President and the removal of a Judge under Article 209 shall not be called in question in any Court. Lastly the Bill proposes that in case of dismissal or removal of Judge of Supreme Court or of a High Court he shall not be entitled to any post-retirement benefits. In this connection it is stated that the Supreme Court Judges (Leave, Pension and Privileges) Order, 1997 and the High Court Judges (Leave, Pension and Privileges) Order, 1997 provided for post retirement benefits to only those Judges who are physically or mentally incapacitated. Hence there is already no post-retirement benefit for removed or dismissed Judges.

6. The Committee invited Members of Supreme Court Bar Association, Pakistan Bar Council, Provincial and Islamabad Bar Councils and High Courts Association. The meeting dated 19<sup>th</sup> January, 2017, was attended by Mr. Tariq Mehmood Jehangiri, President Islamabad High Court Bar Association and Mr. Fiaz Ahmad Anjum, Chairman, Executive Committee, Islamabad Bar Council. Both the hon'ble members of Bar supported a time frame for disposal of grievance, however, did not agree with the proposed period of forty five days. They did not support the other amendments.

7. The Committee considered the Bill, clause by clause, in its meeting dated 19<sup>th</sup> January, 2017. The Committee unanimously agreed that a time frame shall be provided for disposal of reference in terms of Article 209, Constitution of Pakistan, 1973, however the time period may be extended to ninety days instead of forty five days. The Committee did not agree

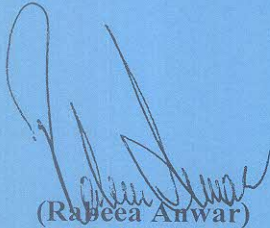


with the other amendments. Accordingly, the Committee recommended that for Clause 2, the following shall be substituted, namely,-

**“2. Amendment of Article 209 of the Constitution.- In the Constitution of the Islamic Republic of Pakistan, in Article 209, after clause (3), the following new clause (3A) shall be inserted, namely,-**

**(3A) If a complaint is received against a Judge of the Supreme Court or of a High Court, the Council shall dispose it within a period of ninety days.”**

6. The Committee recommends that “The Constitution (Amendment) Bill, 2016 (Amendment of Article 209)”, as reported by the Committee, may be passed by the Senate (Copy of Bill “As reported by the Committee” is annexed as “A” and Copy of Bill “As introduced in the Senate” is annexed as “B”).



(Rabeeha Anwar)  
J.S / Secretary Committee



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



**[AS REPORTED BY THE COMMITTEE]****A****Bill**

further to amend the Constitution of the Islamic Republic of Pakistan, 1973

**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, 2016.

(2) It shall come into force at once.

**2. Amendment of Article 209 of the Constitution:-** In the Constitution of the Islamic Republic of Pakistan, in Article 209, after clause (3), the following new clause (3A) shall be inserted, namely, -

“(3A) If a complaint is received against a judge of the Supreme Court or of a High Court, the Council shall dispose it within a period of ninety days.”

**STATEMENT OF OBJECTS AND REASONS**

in order to make it more effective and elaborative, the checks over higher judiciary guaranteed under the provisions of the Constitution need to be further improved. Accordingly, the instant constitutional amendment Bill is proposed to remove the ambiguities through Stipulating time lines for expeditious disposal of the complaints.



[TO BE INTRODUCED IN THE SENATE]

A

BILL

*further to amend the Constitution of the Islamic Republic of Pakistan, 1973*

**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, 2016.

(2) It shall come into force at once.

**2. Amendment of Article 209 of the Constitution.-** In the Constitution of the Islamic Republic of Pakistan, in Article 209,-

(i) in clause (2) for the full stop, occurring at the end, a colon shall be substituted and thereafter the following proviso shall be inserted, namely:-

“Provided that in case of complaint against the Chief Justice of Pakistan, the senior most Judge of the Supreme Court shall head the Council, with two next senior judges as its members. Similarly, the accused Chief Justice of a High Court shall be replaced with the senior Chief Justice of another High Court in the Council.”

(ii) after clause (3), the following new clauses shall be inserted, namely:-

(3A) If a complaint is received against a Judge of the Supreme Court or of a High Court, the Council shall,-

(a) make the complaint public; and

(b) dispose it within a period of forty-five days.

(3B) In case of a frivolous complaint, the complainant shall be prosecuted for making a false complaint.

(3C) An appeal against the final order of the Council shall lie to the full bench of the Supreme Court, which shall be decided within a period of thirty days.”.



(iii) after clause (7), the following new clause shall be inserted, namely:-

“(7A) In case of dismissal or removal of a Judge of the Supreme Court or of a High Court from his office, he shall not be entitled to the perks, privileges and pension and shall not have any immunity from further or consequential legal proceedings.”.

#### **STATEMENT OF OBJECTS AND REASONS**

In order to make it more effective and elaborative, the checks over higher judiciary guaranteed under the provisions of the Constitution need to be further improved. Accordingly, the instant constitutional amendment Bill is proposed to remove the ambiguities through:-

- (a) Extending the applicability of Article 209 to the Chief Justice of Pakistan / Chief Justices of High Courts;
- (b) Stipulating time lines for expeditious disposal of the complaints; and
- (c) Identifying minimum punishment for a judge against whom charge is established by the Council.

2. This Bill has been designed to achieve the aforesaid objectives.

**SENATOR ZAHEER-UD-DIN BABAR AWAN**  
Member-in-Charge