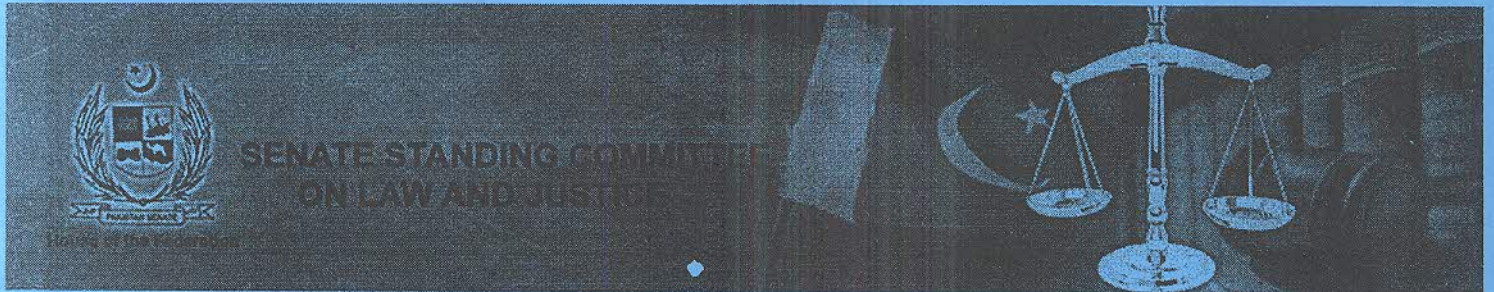


REPORT OF THE STANDING COMMITTEE ON LAW AND JUSTICE



"THE PAKISTAN COMMISSIONS OF INQUIRY BILL, 2016"

Report No. 36

PRESENTED BY

**SENATOR MUHAMMAD JAVED ABBASI
CHAIRMAN**

SENATE SECRETARIAT

REPORT OF THE STANDING COMMITTEE ON LAW AND JUSTICE ON "THE PAKISTAN COMMISSIONS OF INQUIRY BILL, 2016"

I, Chairman of the Standing Committee on Law and Justice, have the honour to present report on "The Pakistan Commissions of Inquiry Bill, 2016" as passed by the National Assembly and introduced in the Senate on 20th December, 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.	Senator Muhammad Javed Abbasi	Chairman
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 2nd January, 2017, 31st January, 2017, and 16th February, 2017, under the Chairmanship of Senator Muhammad Javed Abbasi. Final consideration of the Bill was held in the meeting dated 16th February, 2017, which was attended by the following members:-

- i. Senator Muhammad Javed Abbasi
- ii. Senator Saleem Zia
- iii. Senator Syed Muzafar Hussain Shah
- iv. Senator Ms. Ayesha Raza Farooq
- v. Senator Saeed Ghani



4. As per the Statement of Objects and Reasons, "The existing law relating to appointment of Commissions of Inquiry and empowering them for the purpose is the Pakistan Commissions of Inquiry Act, 1956 (VI of 1956). The Act has been invoked for setting up fact-finding Commissions on a number of important national issues in the past. However on some matters the need has been perceived for a Commission with greater powers than those that can be conferred under the Act. It is, therefore, considered desirable that a new law be enacted enabling the Government to confer additional powers on a Commission of Inquiry where the nature of the issue is being inquired into so requires. Accordingly the Pakistan Commission of Inquiry Bill, 2016 has been prepared to achieve the aforesaid object.

5. Furthermore, during the course of meetings, Ministry of Law and Justice briefed the committee on the following broad contours of the Bill:

- a) The Federal Government may, by notification, constitute a Commission of Inquiry on any definite matter of public importance.
- b) Membership of the Commission shall be by notification in the Official Gazette so that any person having requisite experience on a specific issue can be made member or Chairman of the Commission.
- c) The time period of the Commission can be extended on the request of the Chairman of the Commission.
- d) The Commission will be fully empowered, and shall have powers of a civil court under the CPC, powers to authorize entry and search, order police investigation, punishment and contempt, etc.
- e) Enhanced powers of the Commission include the following, namely:-
 - i. Powers of criminal court under the Cr.P.C.
 - ii. Powers to constitute special teams comprising officers from executive authorities and experts in specific field;
 - iii. Powers to constitute international teams and seek international cooperation from foreign countries or agencies to get information, documents and evidence etc;
 - iv. Powers to issue letters of request to foreign judicial authorities for recording evidence, etc; and
 - v. Such other powers as are deemed necessary for conducting the inquiry.
- f) It will be the duty of all executive authorities in the Federation and Provinces to act in aid of the Commission.
- g) Any person shall have the right to provide information or document to the Commission; and
- h) Final report of the Commission shall be made public.

6. During the meeting dated 31st January, 2017, Senator Farooq H. Naek certain observation with regard to power of the Government to grant extension of time period of inquiry and non provision of time frame for making public the report of the Commission,

7. During the same meeting Senator Muhammad Ali Khan Saif referred to Clause 3 and stated that the term "matter of public importance" is a vague term; therefore, the same should be defined in order to determine basic contours of matters to be taken up by the Commission. He made reference to clauses 4, 5, 6, 7 and 10 and stated that the Commission is being given wide powers under the Code of Civil Procedure, 1908, which would result in duplicity of mandate of various agencies including the NAB and FIA.

8. In the light of observations made by the hon'ble members, the Ministry of Law and Justice was directed to review the Bill in order to improvise the same. Accordingly, Ministry of Law and Justice proposed certain amendments in clauses 3, 7 and 15 of the Bill.

9. The amendments, proposed by the Ministry of Law and Justice, were placed before the Committee in its meeting dated 16th February, 2017. The Committee, after extensive discussion, approved the amendments. During the said meeting, Senator Syed Muzaffar Hussain Shah made reference to clause 16 of the Bill and desired that the said provision should be clarified in order to ensure that relevant law will be applicable in cases of giving 'false evidence'. The Committee endorsed the hon'ble member's view point and drafted an amendment to the said clause.

10. In juxtaposition, the Committee proposed following amendments in the Bill:-

(i) In clause 3,

a) in sub-clause (1), the following explanation shall be added at the end, namely:-

"Explanation.- "matter of public importance" includes a matter of general interest or direct or vital concern to the public"

b) in sub-clause (5), in the proviso, after the word "Commission" the words and comma "for reasons to be recorded," shall be inserted;

(ii) In clause 7, sub-clause (2) shall be omitted.

(iii) In clause 15,-

a. After the word "public" occurring at the end, the following proviso shall be inserted, namely:-

“provided that Final Report of the Commission shall be made public within thirty days of the submission of the report to the Federal Government:”; and

- b. In the existing proviso, after the word “provided” the word “further” shall be inserted and after the word “may occurring for the first time, the commas and the words”, in the public interest,” shall be added.
- (iv) In clause 16 after the words “Commission shall” the words and commas “,except in accordance with law,” shall be inserted.

11. The Bill, as amended, was put to the vote of members, wherein all members present voted in favour of the Bill.

12. In view of the above- mentioned, the Committee recommends that “The Pakistan Commissions of Inquiry Bill, 2016”, as reported by the Committee, may be passed by the Senate. (Copy of Bill as reported by the Committee is Annexed as “A” and Bill as passed by the National Assembly and introduced in the Senate is annexed as “B”).



(Rabeea Anwar)
J.S / Secretary Committee



(Senator Muhammad Javed Abbasi)
Chairman

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

to provide for the constitution of Commissions of Inquiry

WHEREAS it is expedient to provide for the constitution of Commissions of Inquiry and to provide for matters connected therewith and ancillary thereto;

It is hereby enacted as follows:-

1. Short title, application, extent and commencement. – (1) This Act may be called the Pakistan commission of Inquiry Act, 2016.

(2) It shall apply to all Commissions of Inquiry constituted by the federal Government.

(3) It extends to the whole of Pakistan.

(4) It shall come into force at once.

2. Definitions.– In this Act, unless there is anything repugnant in the subject or context,-

(a) “Commission” means a Commission of Inquiry appointed under section 3;

(b) “Chairperson” means the Chairperson of the Commission;

(c) “CrPC” means the Code of Criminal Procedure, 1898 (Act V of 1898);

(d) “PPC” means the Pakistan Penal Code, (Act XLV of 1860); and

(e) “rules” means rules made under this Act.

3. Constitution of Commission of Inquiry.– (1) Whenever it is expedient to conduct an inquiry into any definite matter of public importance, the Federal Government may, by notification in the official Gazette, constitute a Commission of Inquiry in accordance with the provisions of the Act.

“Explanation.– “matter of public importance” includes a matter of general interest or direct or vital concern to the public”

(2)

(2) The Federal Government shall, by Notification in the official gazette, appoint the member of the Commission and where more than one member are so appointed, the Federal Government shall designate one of the member to be the Chairman of the Commission.

(3) The Commission shall conduct the inquiry and perform its functions in accordance with the Terms of Reference specified in the notification.

(4) The Commission shall have all the powers vested in it under this Act.

(5) The Federal Government shall specify the time period within which such inquiry shall be concluded:

Provided that the Federal Government may, on the request of the Chairman of the Commission **for reason to be recorded**, extended the time so specified.

(6) The Commission shall cease to exist on the conclusion of the inquiry conducted by it and submission of Final Report in respect thereof to the Federal Government.

4. Powers under the Code of Civil Procedure, 1908. - (1) The Commission shall have the powers of a civil court under the Code of Civil Procedure, 1908 (Act V of 1908) for the purposes of this Act.

(2) Notwithstanding the generality of the powers given under sub-section (1), the Commission shall have the following powers, namely:-

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of any documents;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses or documents; and
- (e) requisitioning any public record or copy thereof from any court or office.

(3) The Commission shall also have the power to require any person or authority, subject to any privilege which may be claimed by that person or authority under any law for the time being in force, to furnish information or documents on such points or matters as, in the opinion of the commission, may be useful for, or relevant to, the subject-matter of the inquiry.

(5) Powers to forward case to magistrate.- When any offence as is described in section 175, section 178, section 179, section 180 or section 228 of the PPC is committed in the view or presence of the commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the CrPC, forward the case to a magistrate having jurisdiction to try the same, who shall proceed to hear the complaint against the accused as if the case had been forwarded to him under section 482 of the CrPC.

6. Powers of entry, search etc.- (1) The Chairman or any officer, not below the rank of an officer of BS-18, specially authorised in this behalf by the Chairman,-

- (a) may enter any building or place where the Commission has reason to believe that any books of account or other documents relating to the subject matter of the inquiry may be found; and
- (b) may seize any such books of account or documents or take extracts or copies therefrom, subject to the provisions of section 102 and section 103 of the CrPC, in so far as they may be applicable.

7. Power to order police investigation.- The Commission shall, for the purposes of this Act, have the power to order a police investigation into any matter coming before it.

8. Power to punish for contempt.- (1) The Commission shall have the same powers as that of a High Court to punish any person who-

- (a) abuses, interferes with or obstructs the process of the Commission in any way or disobeys any order of the Commission;
- (b) scandalizes the Commission or otherwise does anything which tends to bring the Commission or a member of the Commission in relation to his office into hatred, ridicule or contempt;
- (c) does anything which tends to prejudice the determination of a matter pending before the Commission; or
- (d) does any other thing which, by any other law, for the time being in force constitutes contempt of court;

Provided that fair comments made in good faith and in the public interest on the working of the Commission or on its Final Report after the completion of the enquiry shall not constitute contempt of the Commission:

Provided further that if the Chairperson of the Commission is a Judge of the Supreme Court the Commission shall have the powers of Supreme Court for the purposes of this sub-section:

Explanation:- For the purposes of this sub-section, "Judge" includes the Chief Justice.

(2) Exercise of the powers conferred on a Commission by this section shall be regulated by rules made by the Supreme Court.

9. Power to receive information:- A person shall have the right to provide any information or document, relating to a matter before the Commission, and the Commission may consider such information or document.

10. Additional powers of the Commission:- In case the specific nature of the inquiry so requires, the Federal Government may, by notification in the official gazette, confer the following additional powers on the Commission for the purposes of this act, namely:-

- a) All the powers of a criminal court under the CrPC;
- b) Power to constitute special teams, consisting of officers from the executive authorities and experts in specific fields, for the purposes of assisting the Commission in conducting an inquiry. The special teams shall have such powers as may be prescribed;
- c) Powers to constitute an international team and seek international cooperation from foreign countries or agencies to get information, documents, evidence and record or issue letters and interrogatories in accordance with applicable international instruments;
- d) Powers to issue, in accordance with the provisions of Order XXVI of the Code of Civil Procedure, 1908 (Act V of 1908), a Letter Rogatory or Letter of Request to the competent judicial authority in another country seeking its assistance in examination and recording evidence of a witness residing within the jurisdiction of such authority; and
- e) Such other powers as are deemed necessary for conducting the inquiry.

(S)

11. Judicial proceedings:- Any proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of PPC.

12. Members etc., to be public servant.- Every member of the Commission and every officer appointed or authorised by the Commission to exercise functions under this Act shall be deemed to be a public servant within the meaning of section 21 of PPC.

13. Executive authorities to act in aid of Commission.- (1) It shall be the duty of all executive authorities in the Federation and the Provinces to act in aid of the Commission in the discharge of its functions and to comply with any of its directions.

(2) The Federal Government shall provide all necessary funds and facilities to enable the Commission to perform its functions under this Act.

14. Procedure of the Commission.- (1) The commission shall have the power to regulate its own procedure.

(2) The Commission shall fix the places and times of its sittings and decide whether its proceedings shall be open or in camera.

(3) The Commission shall act notwithstanding the temporary absence of any member or the existence of a vacancy among its members.

15. Report to be public.-The Final Report or an interim report of the commission shall be made public:

Provided that Final Report of the Commission shall be made public within thirty days of the submission of the report to the Federal Government:"; and

Provided further that the Commission may, **in the public interest**, recommend to the Federal government that all or any part of the Final Report or an interim report may not be made public.

16. Statements made by persons before the Commission.— No statement made by a person in the course of giving evidence before the Commission shall, **except in accordance with law**, subject him to, or be used against him in any civil or criminal proceeding except a prosecution for giving false evidence by such statement:

Provided that the statement—

(6)

- a. is made in reply to a question which he is required by the Commission to answer; or
- b. is relevant to the subject matter of inquiry.

17. Protection of action taken in good faith.- No suit or other legal proceedings shall lie against the Federal Government, the Commission or any member thereof, or any person acting under the direction either of the Federal Government or of the commission in respect of anything which is in good faith done or intended to be done in pursuance of this act or of any rules or orders made thereunder or in respect of the publication, by or under the authority of the Federal Government, or the Commission, of any report, paper or proceedings.

18. Power to make rules.- The Federal Government may, by notification in the official Gazette, make rules to carry out the purposes of this Act.

19. Repeal.- (1) The Pakistan Commissions of Inquiry Act, 1956 (VI of 1956) is hereby repealed.

(2) Notwithstanding the provisions of sub-section (1), the Pakistan Commissions of Inquiry Act, 1956 (VI of 1956) shall continue in force for purposes of clause (3) of Article 155 of the Constitution of Islamic Republic of Pakistan.

STATEMENT OF OBJECTS AND REASONS

The existing law relating to appointment of Commissions of Inquiry and empowering them for the purpose is the Pakistan Commission of Inquiry Act, 1956 (VI of 1956). The Act has been invoked for setting up fact-finding Commissions on a number of important national issues in the past. However on some matters the need has been perceived for a Commission with greater powers than those that can be conferred under the Act. It is, therefore, considered desirable that a new law be enacted enabling the Government to confer additional powers on a commission of Inquiry where the nature of the issue is being inquired into so requires. Accordingly the Pakistan Commission of Inquiry Bill 2016 has been prepared to achieve the aforesaid object.

[AS PASSED BY THE NATIONAL ASSEMBLY]

A
BILL

to provide for the constitution of Commissions of Inquiry

WHEREAS it is expedient to provide for the constitution of Commissions of Inquiry and to provide for matters connected therewith and ancillary thereto;

It is hereby enacted as follows:-

1. Short title, application, extent and commencement. - (1)

This Act may be called the Pakistan Commissions of Inquiry Act, 2016.

(2) It shall apply to all Commissions of Inquiry constituted by the Federal Government.

(3) It extends to the whole of Pakistan.

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2. Definitions.- In this Act, unless there is anything repugnant in the subject or context,-

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3. Constitution of Commission of Inquiry.- (1) Whenever it is expedient to conduct an inquiry into any definite matter of public importance, the Federal Government may, by notification in the official Gazette, constitute a Commission of Inquiry in accordance with the provisions of this Act.

(2) The Federal Government shall, by Notification in the official gazette, appoint the members of the Commission and where more than one member are so appointed, the Federal Government shall designate one of the members to be the Chairman of the Commission.

(3) The Commission shall conduct the inquiry and perform its functions in accordance with the Terms of Reference specified in the notification.

(4) The Commission shall have all the powers vested in it under this Act.

(5) The Federal Government shall specify the time period within which such inquiry shall be concluded:

Provided that the Federal Government may, on the request of the Chairman of the Commission, extend the time so specified.

(6) The Commission shall cease to exist on the conclusion of the inquiry conducted by it and submission of Final Report in respect thereof to the Federal Government.

4. Powers under the Code of Civil Procedure, 1908. – (1) The Commission shall have the powers of a civil court under the Code of Civil Procedure, 1908 (Act V of 1908) for the purposes of this Act.

(2) Notwithstanding the generality of the powers given under sub-section (1), the Commission shall have the following powers, namely:-

- (a) summoning and enforcing the attendance of any person and examining him on oath;

- (b) requiring the discovery and production of any documents;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses or documents; and
- (e) requisitioning any public record or copy thereof from any court or office.

(3) The Commission shall also have the power to require any person or authority, subject to any privilege which may be claimed by that person or authority under any law for the time being in force, to furnish information or documents on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject-matter of the inquiry.

5. Powers to forward case to magistrate.- When any offence as is described in section 175, section 178, section 179, section 180 or section 228 of the PPC is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the CrPC, forward the case to a magistrate having jurisdiction to try the same, who shall proceed to hear the complaint against the accused as if the case had been forwarded to him under section 482 of the CrPC .

6. Powers of entry, search etc.- (1) The Chairman or any officer, not below the rank of an officer of BS- 18, specially authorised in this behalf by the Chairman,-

- (a) may enter any building or place where the Commission has reason to believe that any books of account or other documents relating to the subject matter of the inquiry may be found; and

- (b) may seize any such books of account or documents or take extracts or copies therefrom, subject to the provisions of section 102 and section 103 of the CrPC, in so far as they may be applicable.

7. Power to order police investigation.- (1) The Commission shall, for the purposes of this Act, have the power to order a police investigation into any matter coming before it.

(2) In conducting an investigation ordered under sub-section (1), the Police shall exercise the powers conferred on it in respect of a cognizable case by Chapter XIV of the CrPC.

8. Power to punish for contempt.- (1) The Commission shall have the same powers as that of a High Court to punish any person who-

- (a) abuses, interferes with or obstructs the process of the Commission in any way or disobeys any order of the Commission;
- (b) scandalizes the Commission or otherwise does anything which tends to bring the Commission or a member of the Commission in relation to his office into hatred, ridicule or contempt;
- (c) does anything which tends to prejudice the determination of a matter pending before the Commission; or
- (d) does any other thing which, by any other law, for the time being in force constitutes contempt of court:

Provided that fair comments made in good faith and in the public interest on the working of the Commission or on its Final Report after the completion of the enquiry shall not constitute contempt of the Commission:

Provided further that if the Chairperson of the Commission is a Judge of the Supreme Court the Commission shall have the powers of Supreme Court for the purposes of this sub-section:

Explanation.- For the purposes of this sub-section, "Judge" includes the Chief Justice.

(2) Exercise of the powers conferred on a Commission by this section shall be regulated by rules made by the Supreme Court.

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- (a) all the powers of a criminal court under the CrPC;
- (b) power to constitute special teams, consisting of officers from the executive authorities and experts in specific fields, for the purposes of assisting the Commission in conducting an inquiry. The special teams shall have such powers as may be prescribed;
- (c) power to constitute an international team and seek international cooperation from foreign countries or agencies to get information, documents, evidence and record or issue letters and interrogatories in accordance with applicable international instruments;

- (d) power to issue, in accordance with the provisions of Order XXVI of the Code of Civil Procedure, 1908 (Act V of 1908), a Letter Rogatory or Letter of Request to the competent judicial authority in another country seeking its assistance in examination and recording evidence of a witness residing within the jurisdiction of such authority; and
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Provided that the Commission may recommend to the Federal Government that all or any part of the Final Report or an interim report may not be made public.

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Provided that the statement-

- (a) is made in reply to a question which he is required by the Commission to answer; or
- (b) is relevant to the subject matter of inquiry.

17. Protection of action taken in good faith.- No suit or other legal proceedings shall lie against the Federal Government, the Commission or any member thereof, or any person acting under the direction either of the Federal Government or of the Commission in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or orders made thereunder or in respect of the publication, by or under the authority of the Federal Government, or the Commission, of any report, paper or proceedings.

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19. Repeal.- (1) The Pakistan Commissions of Inquiry Act, 1956 (VI of 1956) is hereby repealed.

(2) Notwithstanding the provisions of sub-section (1), the Pakistan Commissions of Inquiry Act, 1956 (VI of 1956) shall continue in force for purposes of clause (3) of Article 155 of the Constitution of Islamic Republic of Pakistan.

STATEMENT OF OBJECTS AND REASONS

The existing law relating to appointment of Commissions of Inquiry and empowering them for the purpose is the Pakistan Commissions of Inquiry Act, 1956 (VI of 1956). The Act has been invoked for setting up fact-finding Commissions on a number of important national issues in the past. However on some matters the need has been perceived for a Commission with greater powers than those that can be conferred under the Act. It is, therefore, considered desirable that a new law be enacted enabling the Government to confer additional powers on a Commission of Inquiry where the nature of the issue is being inquired into so requires. Accordingly the Pakistan Commissions of Inquiry Bill, 2016 has been prepared to achieve the aforesaid object.

Mr. Zahid Hamid
Minister for Law and Justice