

REPORT OF THE STANDING COMMITTEE ON LAW AND JUSTICE



“THE CONSTITUTION (AMENDMENT) BILL, 2017 (INSERTION OF NEW ARTICLE 136A)”

Report No. 56

PRESENTED BY

**SENATOR MUHAMMAD JAVED ABBASI
CHAIRMAN**

SENATE SECRETARIAT

REPORT OF THE STANDING COMMITTEE ON LAW AND JUSTICE ON “THE CONSTITUTION (AMENDMENT) BILL, 2017”

I, Chairman of the Standing Committee on Law and Justice, have the honour to present report on “The Constitution (Amendment) Bill, 2017 (Insertion of new Article 136A)” introduced by Senator Muhammad Mohsin Khan Leghari on 11th September, 2017. 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 Farooq Hamid Naek	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 Dr. Muhammad Ali Khan Saif	Member
10.	Senator Mrs. Zahida Khan	Member
11.	Senator Syed Asif Saced Kirmani	Member
12.	Senator Barrister Murtaza Wahab	Member
13.	Minister for Law and Justice	Ex-Officio Member

3. The Committee considered the Bill in its meeting held on 7th November, 2017, under the Chairmanship of Senator Muhammad Javed Abbasi, which was attended by the following hon’ble Members:-

- i. Senator Farooq Hamid Naek
- ii. Senator Dr. Muhammad Ali Khan Saif
- iii. Senator Barrister Murtaza Wahab

4. Senator Muhammad Mohsin Khan Leghari, Mover briefed the Committee that Like the Office of the Chief Minister at the center, the office of a Chief Minister is a very powerful office in each Province. A Chief Minister is the Chief Executive and most powerful functionary of the Provincial Government. He is the head of the Cabinet at Province, which is the real executive. He exercises vast powers and plays a leading role in the Province. In view of above importance, the election for the office of a Chief Minister is not only a matter of general public interest; it largely determines the fate of a Province. As per the Constitution of Pakistan, a Chief Minister, after every general election, is elected by the Provincial Assembly concerned. However, the question arises, what should be the mode of election if the office of a Chief Minister falls vacant due to death or otherwise. The perusal of the Constitution reveals that no provision providing mechanism to fill in such vacuum is found. The only provision found provides solution in the event of resignation by a Chief Minister. Therefore, the legislative measures are urgently required to overcome such lacunae in the Constitution.

5. The Ministry of Law and Justice gave following input on the Bill:-

The subject Bill proposes Insertion of new Article 136A in the Constitution catering for a situation when the office of the Chief Minister is vacant by reason of death or his ceasing to be Member of Provincial Assembly or any other reason. In such an eventuality, it has been proposed that the most senior Provincial Minister for the time being shall be called upon by the Governor to perform functions of that office. The Bill reproduces Article 135 of the Constitution as it existed on the commencing day.

(Part IV – Provinces Chapter 3, - The Provincial Government)

135. (1) In the event of the death of the Chief Minister or of the office of Chief Minister or of the office of Chief Minister becoming vacant by reason of his ceasing to be a member of the Provincial Assembly, the most senior Provincial Minister for the time being shall be called upon by the Governor to perform the functions of that office and the Provincial Ministers shall continue in office until a new Chief Ministers has been elected and has entered upon his office.

(2) If the Provincial Assembly is in session at the time when the Chief Minister dies or the office of Chief Minister becomes vacant, the Assembly shall forthwith proceed to elect a Chief Minister, and if the Assembly is not in session the Governor shall for that purpose summon it to meet within fourteen days of the death of the Chief Minister or, as the case may be, of the office becoming vacant.

(3) When the Chief Minister, by reason of absence from Pakistan or any other cause, is unable to perform his functions, the most senior Provincial Minister for the time being shall perform the functions of Chief Minister until the Chief Minister returns to Pakistan or, as the case may be, resumes his functions.

(4) In this Article, "most senior Provincial Minister" means the Provincial Minister for the time being designated as such by the Chief Minister.

6. Senator Barrister Murtaza Wahab was of the opinion that the Constitution provides no mention of senior Minister, furthermore, Cabinet is a team of the Chief Minister; the day the Chief Minister ceases to exist, accordingly his team, i.e. the Cabinet also ceases to exist.


7. Senator Farooq H. Naek stated that a Chief Minister is always elected and not nominated, it is for this reason that there is no concept of acting Chief Minister at National or International level.

8. The Committee took note that identical provisions were provided in the original Constitution, 1973, however, same were omitted vide Presidential Order of 1985. All Member were of the opinion that in the case of death of a sitting Chief Minister or if he ceases to be a Member of Parliament then the cabinet will also cease to exist and there will be no senior Minister hence this provision will be ultra-varies concept of Chief Minister" "Cabinet" and the "Federal Government".


9. The Committee also made recourse international practices in this regard, where in Senator Dr. Muhammad Ali Khan Saif informed that there is only one such

example in the British history during the second world war, wherein, the assassination attempts were likely to be made on Churchill, therefore, it was decided that in case of assassination of President Churchill a war Cabinet of three to four Members will regulate affairs till the end of war. Senator Barrister Murtaza wahab also made reference to Indian practice, wherein, Pundit Nehru died while he was holding the office of the Chief Minister and Lal Bahadur Shastri, afterwards, elected as the Chief Minister.

10. Accordingly, the Committee recommends that "The Constitution (Amendment) Bill, 2017(Insertion of new Article 136A)", may not be passed by the Senate. (Copy of Bill is annexed).



(RABEEA ANWAR)
J.S / Secretary Committee



(SENATOR MUHAMMAD JAVED ABBASI)
Chairman
Standing Committee on Law and Justice

[AS INTRODUCED IN THE SENATE]

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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, 2017.

(2) It shall come into force at once.

2. Insertion of a new Article in the Constitution.- In the Constitution of the Islamic Republic of Pakistan, 1973, after Article 136, the following new Article shall be inserted, namely:-

"136A. Provincial Minister performing functions of Chief Minister.- (1) In the event of the death of the Chief Minister or of the office of Chief Minister becoming vacant by reason of his ceasing to be a Member of the Provincial Assembly, the Most Senior Minister for the time being shall be called upon by the Governor to perform the functions of that office and the Provincial Minister shall continue in office until a new Chief Minister has been elected and has entered upon his office.

(2) If the Provincial Assembly is in session at the time when the Chief Minister dies or the office of Chief Minister becomes vacant, the Assembly shall forthwith proceed to elect a Chief Minister, and if the Assembly is not in session the Governor shall for that purpose summon it to meet within fourteen days of the death of the Chief Minister or, as the case may be, of the office becoming vacant.

(3) When the Chief Minister, by reason of absence from Pakistan or any other cause, is unable to perform his functions, the Most Senior Provincial Minister for the time being shall perform the functions of Chief Minister until the Chief Minister returns to Pakistan or, as the case may be, resumes his functions.

(4) In this Article, "Most Senior Provincial Minister" means the Provincial Minister for the time being designated as such by the Chief Minister."

STATEMENT OF OBJECTS AND REASONS

Like the Office of the Prime Minister at the center, the office of a Chief Minister is a very powerful office in each Province. A Chief Minister is the Chief Executive and most powerful functionary of the Provincial Government. He is the head of the Cabinet at Province, which is the real executive. He exercises vast powers and plays a leading role in the Province.

In view of above importance, the election for the office of a Chief Minister is not only a matter of general public interest; it largely determines the fate of a Province. As per the Constitution of Pakistan, a Chief Minister, after every general election, is elected by the Provincial Assembly concerned. However, the question arises, what should be the mode of election if the office of a Chief Minister falls vacant due to death or otherwise. The perusal of the Constitution reveals that no provision providing mechanism to fill in such vacuum is found. The only provision found provides solution in the event of resignation by a Chief Minister. Therefore, the legislative measures are urgently required to overcome such lacunae in the Constitution. Hence, this Bill.

SENATOR MUHAMMAD MOHSIN KHAN LEGHARI
Member-in-charge