

SENATE OF PAKISTAN



REPORT NO.27

REPORT OF THE SENATE STANDING COMMITTEE ON LAW AND JUSTICE



“THE CONSTITUTION (AMENDMENT) BILL, 2020”
(AMENDMENT OF ARTICLES 213 AND 215)

PRESENTED BY

Senator Muhammad Javed Abbasi

Chairman

Standing Committee on Law and Justice

SENATE SECRETARIAT

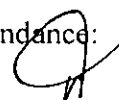
REPORT OF THE STANDING COMMITTEE ON LAW AND JUSTICE ON "THE CONSTITUTION (AMENDMENT) BILL, 2020 (AMENDMENT OF ARTICLES 213 & 215)"

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 Constitution (Amendment) Bill, 2020 (Amendment of Articles 213 and 215)" (Private Member's Bill), introduced in the Senate by Senator Lt. General (R) Abdul Qayyum HI (M), on 13th January 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 multiple meetings but conclusive deliberations were held in its meeting on 13th July 2020, with the following in attendance:



1.	Senator Muhammad Javed Abbasi	Chairman
2.	Senator Mian Raza Rabbani	Member
3.	Senator Farooq Hamid Naek	Member
4.	Senator Dr. Ghous Muhammad Khan Niazi	Member
5.	Senator Zeeshan Khanzada	Member
6.	Senator Sana Jamali	Member
7.	Senator Musadik Masood Malik	Member
8.	Senator Mustafa Nawaz Khokhar	Member
9.	Senator Walid Iqbal	Member
10.	Senator Lt. Gen (R) Abdul Qayyum, HI(M)	Member-In-Charge

4. At the outset, the Committee observed that appointment of Chief Election Commissioner and Members of Election Commission of Pakistan (ECP) was a function vested in the Parliament by the Constitution. It was also noted that reaching consensus was a democratic process therefore it cannot be used as a justification for transferring this function to any other institution, such as the Judiciary. The Chairman Committee opened the floor for the Committee to deliberate upon alternate parliamentary forums of finalizing appointment of Chief Election Commissioner and Members of ECP in case of deadlock under the existing Constitutional provisions, however no particular alternate received consensus. Ministry of Law and Justice also opined that the Constitution gives this mandate to the Parliament to appoint Chief Election Commissioner and Members of ECP and it should rest with the Parliament.

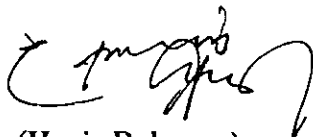
5. Member-In-Charge, Senator Lt. Gen (R) Abdul Qayyum pressed for passage of bill contending that Constitution is silent in case of deadlock in the parliamentary committee on appointments of Chief Election Commissioner and Members of Election Commission. All Committee members, however, had unanimous view that Parliament is supreme and no law can be promulgated to give any of Parliament's functions to other institutions, including Supreme Court, as proposed vide amendment of Article 213 in the bill under consideration. It was unanimously agreed that the function of appointing Chief Election Commissioner and Members of Election Commission should stay with Parliament. The Committee also considered an alternate proposal that instead of referring the matter to Supreme Court, a committee may be formed comprising Speaker National Assembly and Chairman Senate to resolve the deadlock. however after detailed discussion it was decided that alternate proposals, if any, would be considered if a bill containing such a proposal is introduced in the House and referred to the Committee for consideration.

6. With respect to amendment in Article 215, Senator Farooq Hamid Naek proposed the following amendment in the bill:

“provided that the process to an anticipated vacancy to be caused by the retirement of the Chief Election Commissioner or a member shall be initiated six months prior to occurrence of such vacancy and shall be completed before due date of retirement of the Chief Election Commissioner or member, as the case maybe”.

However, this amendment was also not agreed to by majority of members. After further discussion, the Committee decided to reject the amendment of Article 215 proposed in the bill, as it was not in consonance with clause (4) of Article 215.

7. In conclusion, it was proposed that the Member-In-Charge may withdraw the bill and bring a fresh bill in the House in the light of discussions held in the Committee. Member-In-Charge, Senator Lt. Gen (R) Abdul Qayyum, agreed to the proposal of withdrawing the instant bill and bringing in a fresh bill in due course.



(Haris Rehman)
D.S. / Secretary Committee



(Senator Muhammad Iqbal Abbasi)
Chairman, Committee on Law and Justice

Islamabad
the 23rd July 2020

18-01-2019

AS
[TO BE 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, 2019.

(2) It shall come into force at once.

2. Amendment of Article 213 of the Constitution. - In the Constitution of the Islamic Republic of Pakistan, hereinafter referred to as the Constitution, in Article 213, in clause (2A), in the existing proviso, for the full stop at the end a colon shall be substituted and thereafter the following second proviso shall be added, namely:-

“Provided further that in case the Parliamentary Committee is unable to confirm any one name, the matter shall stand referred to the Supreme Court whose decision shall be final.”

3. Amendment of Article 215 of the Constitution. - In the Constitution, in Article 215, in clause (4), for the full stop at the end a colon shall be substituted and thereafter the following proviso shall be added, namely:-

“Provided that the process to fill an anticipated vacancy to be caused by the retirement of the Commissioner or a member shall be completed prior to the occurrence of such vacancy.”

STATEMENT OF OBJECTS AND REASONS

The Election Commission of Pakistan (ECP) is a key institution constitutionally charged with the responsibility of holding elections honestly, justly, fairly, and in accordance with law. The procedure for appointment of Chief Election Commissioner and members of the Commission is provided in Articles 213 and 218 of the Constitution. Article 213 says the Prime Minister shall, in consultation with the Opposition Leader, forward three names for appointment of the Commissioner or a member of the commission to a Parliamentary Committee for confirmation of any one. This is the first step. The second step arises when there is no consensus between the Premier and Opposition Leader and then each forwards separate lists to the Parliamentary Committee for consideration which may confirm any one name. In both cases, the names are to go to the Parliamentary Committee for confirmation. The constitutional provision doesn't say what will happen if the Committee is unable to confirm any names. Therefore, it would be appropriate to provide for referral of matter to the Supreme Court, in case there is an impasse in the committee. It has also been felt that this process of appointments in the commission is time taking and has potential to make the commission practically a dysfunctional body. To deal with such an undesirable situation, there is need to provide for completion of process for appointments prior to occurrence of actual vacancy so as to ensure continuity in the commission.

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

LT. GENERAL ABDUL QAYYUM HI (M) RETD.

Member-in-Charge