

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, 2021.

(2) It shall come into force at once.

2. Amendment of Article 63A of the Constitution.- In the Constitution of the Islamic Republic of Pakistan, hereinafter referred to as the Constitution, in Article 63A, in clause (1), in paragraph (b),-

(i) in sub-paragraph (ii), the word "or" occurring after the semi-colon (;) shall be omitted; and

(ii) sub-paragraph (iii) shall be omitted.

3. Amendment of Article 64 of the Constitution.- In the Constitution, in Article 64, after clause (2), the following new clause (3) shall be inserted, namely:-

"(3) A House may declare the seat of a Member-elect vacant, if he fails to make before the House oath in the form set out in the Third Schedule within the period of ninety days from the date of the first meeting of the House after his election."

4. Amendment of Article 160 of the Constitution.- In the Constitution, in Article 160,-

(i) in clause (2), in paragraph (c), the word "and" occurring in the end, shall be omitted and thereafter, the following new paragraph (ca) shall be inserted, namely,-

"(ca) the measures needed to enhance the Consolidated Fund of a Province for fair distribution of resources to the local governments on the basis of the recommendations made by the Finance Commission of the Province; and"

- (ii) for clause (3A), the following shall be substituted, namely:-

"(3A) Recommendations of the National Finance Commission shall ensure fair distribution of resources amongst the Federation and the Provinces based on population and principles of need and justice".

STATEMENT OF OBJECTS AND REASONS

Preamble to the Constitution of Pakistan provides that 'it is will of the people of Pakistan to establish an order and the "State shall exercise its powers and authority through the chosen representatives of the people". The preamble enunciates the intentions of the framers and the purpose of the document, which in the instant case provides that the parliamentarians, through legislation and policy guidance, shall be the primary source of establishing order and exercising State's powers and authority. Sub-paragraph (iii) of Paragraph (b) of Clause (1) of Article 63A of the Constitution is contrary to the spirit of the Constitution itself as legislation is the primary and foremost function of the Parliament and while taking part in the legislative process, the only consideration before a Member of Parliament should be the national and public interest and not whims and wishes of a particular party/party head. A Constitutional amendment and Money Bill shall be supported, opposed or amended only to protect and jealously guard the rights of citizenry; this noble duty of a Parliamentarian should not be subservient to party commands. Political parties are only mediums of steering the electioneering process and should not be the influencing factor in legislation negating the sanctity of the process.

Similarly, Parliamentarians represent the people and every parliamentarian elected to the National Assembly/Provincial Assembly is not an individual but representative of the aspirations of its constituents-individual nationals of the Islamic Republic of Pakistan. Most importantly, a Member of Senate represents the provincial assemblies and more so, as Member of Senate, represents the provincial assemblies and territories of the Federation. A member-elect, intentionally, not taking oath as Member of Parliament directly affects and impinges upon rights and representation of constituents. This can be corroborated by the fact that representation of province of Punjab in the Senate, the House of the Federation, is not equal to other provinces as a one Member-elect has chosen not to take oath hence depriving the Province as a whole from fair representation in the House of Federation. This tendency needs to be curbed; being a Parliamentarian is a sacred duty which should not be disbanded to gain personal or political gains. For this reason, a new clause in Article 64 of the Constitution is being proposed.

A new sub-paragraph in clause (2) of Article 160 is being proposed to provide assistance to the provincial Government by providing recommendations for enhancement of Consolidated Fund of a Province for fair distribution of resources to the local governments on the basis of the recommendations made by the Finance Commission of the Province. This amendment will ensure and provide enabling environment for effective implementation of Article 140 of the Constitution.

Moreover, the National Finance Commission (NFC) is a constitutionally established mechanism which lays the foundation for distribution of revenues between the federal and four Provincial Governments of Pakistan. The objective of constitution of NFC, in Pakistan and all over the world, is fair distribution of revenues between Federal and Provincial Governments. However, the fixation of the quantum of Award creates an imbalance between the resources of Federal Government and Provinces amidst the responsibility of Federal Government to make up the shortfall of Provinces, *force majeure* and natural calamities.

In terms of the an ideal constitutional scheme, the National Finance Commission has to give its recommendations without any duress or embargo of a cap limit, keeping in view the contributions, requirements and liabilities of the Federation and all or any of the Provinces. However, insertion of clause 3A in Article 160 of the Constitution has rendered this most important Centre-provincial forum almost redundant. Inclusion of clause (3A) in Article 160 is against the constitutional scheme as the NFC is a constitutional forum provided for distribution of the tax proceeds between the Centre and Provinces, as per the constitutional arrangement and present requirements.

In international scenario, the study of Constitution of Germany discloses that distribution of revenues between federation and Lander (states) is ought to be based upon circumstantial changes and needs of the Landers and their Municipalities. Rather than capping the limit for distribution of revenue, the Constitution of Germany prescribes fiscal equalization mechanism to provide uniform standards of living across the country. Similarly, the Nigerian Constitution provides that distribution shall be based upon needs of the state as it prescribes fiscal decentralization as an imperative necessity of empowering levels of government with financial resources to bring government closer to the people by the rendition of social services to people within their jurisdictions. This scheme is being followed throughout the world including Australia, Canada and even United States of America.

This makes imperative to introduce this Bill proposing substitution of clause (3A) of Article 160 of the Constitution, in order to include an enabling provision for varying the share of all or any of the Provinces in proportion to the variation in their requirements and liabilities and to create a balanced, harmonious, fair and equitable distribution of financial responsibilities between the Federal Government and the provinces while keeping in view their respective roles and spheres of responsibilities.

The Bill seeks to achieve the aforesaid objects.

**SENATOR DILAWAR KHAN
SENATOR AHMED KHAN
SENATOR HIDAYAT ULLAH
SENATOR KAUDA BABAR
SENATOR NASEEBULLAH BAZAI
MEMBERS-IN-CHARGE**