

SENATE OF PAKISTAN



REPORT NO 28.

REPORT OF THE SENATE STANDING COMMITTEE ON LAW AND JUSTICE



"THE CONSTITUTION (AMENDMENT) BILL, 2023"

(Amendment of Article 203-D)

PRESENTED BY

Senator Syed Ali Zafar

Chairman

Standing Committee on Law and Justice

SENATE SECRETARIAT

REPORT OF THE STANDING COMMITTEE ON LAW AND JUSTICE ON "THE CONSTITUTION (AMENDMENT) BILL, 2023"

I, Senator Syed Ali Zafar, Chairman Standing Committee on Law and Justice, have the honor to submit, on behalf of the Committee, this report on "The Constitution (Amendment) Bill, 2023" (Amendment of Article 203-D) moved by Senator Mushtaq Ahmed, in the Senate sitting held on 16th January, 2023, and referred to the Committee for consideration and report.

2. The composition of the Committee is as under:-

1. Senator Syed Ali Zafar	Chairman
2. Senator Syed Shibli Faraz	Member
3. Senator Rana Maqbool Ahmad	Member
4. Senator Mian Raza Rabbani	Member
5. Senator Farooq Hamid Naek	Member
6. Senator Syed Muzafar Hussain Shah	Member
7. Senator Kamran Murtaza	Member
8. Senator Muhammad Azam Khan Swati	Member
9. Senator Walid Iqbal	Member
10. Senator Manzoor Ahmed Kakar	Member
11. Senator Musadik Masood Malik	Member
12. Senator Samina Mumtaz Zehri	Member
13. Minister for Law and Justice	Ex-Officio Member

3. The Committee considered the Bill in its meeting held on 15th February, 2023, under the Chairmanship of Senator Syed Ali Zafar, with the following in attendance:

1. Senator Rana Maqbool Ahmad	Member/Member-In-Charge
2. Senator Syed Muzafar Hussain Shah	Member
3. Senator Mushtaq Ahmed Khan	Member In-Charge
4. Senator Fawzia Arshad	Member-In-Charge
5. Minister of State for Law and Justice	Ex-Officio Member

4. The Committee extensively deliberated upon the Constitution (Amendment) Bill, 2023, which seems to omit the proviso of Article 203D (under which proviso the decision of the Federal Shariat Court is not to be implemented until the appeal, if any, which has been filed against the decision has been disposed off by the Supreme Court of Pakistan). The Proviso is being reproduced as below:

“Provided that no decision shall be deemed to take effect before the expiration of the period within which an appeal therefrom may be preferred to the Supreme Court or, where an appeal has been so preferred, before the disposal of such appeal.”

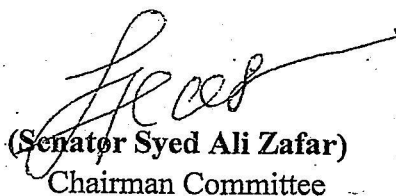
5. Senator Mushtaq Ahmad explained that the said proviso needs to be omitted as the decision of the Federal Shariat Court becomes ineffective where an appeal is so preferred to the Court of appellate jurisdiction which takes a number of years to dispose of the case in timely manner, and thereby delaying the cases for indefinite period of time. Senator Syed Muzaffar Hussain Shah was of the view that the right to appeal is the cardinal principle of jurisprudence, so in case of deletion of such proviso, the decision of Federal Shariat Court may be implemented even during pendency of appeal which will deprive one from the right of appeal. He suggested that the matter may be taken up at administrative level with Shariat Appellate Bench of the Supreme Court to decide the case efficiently. He added that the deletion of the proviso may not be the viable remedy at this stage. Senator Shahadat Awan, Minister of State Law and Justice, was of the view that since the delay in expeditious disposal of cases that went in appeal against the decision of Federal Shariat Court is the issue we are facing with, the timeframe in this regard, may be introduced for such disposal of cases on time but there is no need to change the proviso.

6. The Chairman Committee opined that the concept of Federal Shariat Court was introduced during Zia-ul-Haq's time and that Federal Shariat Court was given immense powers to examine all laws to ensure that they are compliant with Shariah and any law that is not so compliant may be declared to be void by FSC. The Chairman stated that the Federal Shariat Court had in the 1980's and 1990's undertaken massive exercise of examining the laws and those, which were contrary to the injunctions of Islam, were declared to be so and have become void. The Chairman opined that in his view the proviso was necessary as it gives an opportunity to the higher appellate forum, which is the Supreme Appellate Bench of the Shariat Court, to examine the matter and till then the law which has been declared void by Federal Shariat Court remains intact. Otherwise, there would be mass confusion because a law would be declared void by Federal Shariat Court and become ineffective but if at a later stage Federal Shariat Appellate Bench found that the law was valid, all the matters that have been decided in the meantime would have to be re-visited. The proviso was added in order to ensure that this confusion did not take place. In the opinion of the Chairman, the deletion of the proviso is not the practical solution to address the delay in the timely disposal of the cases by the Appellate Bench of the Federal Shariat Court. After due deliberations, the Committee decided that the mover may draft a new legislation on fixing a timeframe for disposing of an appeal, instead of bringing an amendment into the Constitution for omission of such proviso.

7. Afterwards, the Committee decided to vote upon the said bill, and none of members supported it, and subsequently the bill, stood not passed by the Committee and recommended it for the report to the House. Copy of the Bill is annexed (Attached as annexure-A).



(Mir Shai Mazar Baloch)
DG/Secretary Committee



(Senator Syed Ali Zafar)
Chairman Committee

INTRODUCED ON 16.01.2023.

[AS 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, 2023.

(2) It shall come into force at once.

2. Amendment of Article 203D of the Constitution.- In the Constitution of the Islamic Republic of Pakistan, in Article 203D, in clause (2), for the colon ":" occurring after the words "the decision shall take effect" a full stop "." shall be substituted and thereafter, the proviso shall be omitted.

STATEMENT OF OBJECTS AND REASONS

The Federal Shariat Court, since its inception in 1980, dedicated itself to the sacred task of serving the glory of Islam. Armed with the provisions of the Constitution that all the existing laws shall be brought in conformity with the injunctions of Islam as laid down in the Holy Quran and Sunnah of the Holy Prophet (peace be upon him). In the Constitution of Pakistan, in Article 203D, in clause (2) the proviso has been proved itself as a stumbling block to enforce the decisions of the Federal Shariat Court. Under the said proviso the decision of the Federal Shariat Court becomes ineffective where an appeal is so preferred to the Court of appellate jurisdiction. Keeping in mind the Constitutional jurisdiction of the Federal Shariat Court and adding more strength to the Court's prerogative this Amendment seeks to omit the said proviso.

2. This Bill seeks to achieve the above-said objectives.

SENATOR MUSHTAQ AHMED
Member-in-Charge