

SENATE OF PAKISTAN



REPORT NO. 23

REPORT OF THE SENATE STANDING COMMITTEE ON LAW AND JUSTICE



“THE CONSTITUTION (AMENDMENT) BILL, 2022”

(Amendment of Articles 142 and 175-A)

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, 2022"

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, 2022" (Amendment of Articles 142 and 175-A) moved by Senator Farooq Hamid Naek, in the Senate sitting held on 1st August, 2022, 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 various meetings previously and held conclusive discussion in the meeting on 14th December, 2022, under the Chairmanship of Senator Syed Ali Zafar, with the following in attendance:

1.	Senator Farooq Hamid Naek	Member/Member-In-Charge
2.	Senator Rana Maqbool Ahmad	Member/Member-In-Charge
3.	Senator Mian Raza Rabbani	Member
4.	Senator Kamran Murtaza	Member
5.	Senator Palwasha Mohammad Zai Khan	Member-In-Charge
6.	Senator Mushtaq Ahmed Khan	Member In-Charge

7. Senator Engr. Rukhsana Zuberi	Member-In-Charge
8. Senator Sardar Muhammad Shafiq Tareen	Member-In-Charge
9. Senator Fawzia Arshad	Member-In-Charge
10. Minister for Law and Justice	Ex-Officio Member

4. The Committee extensively deliberated upon the Constitution (Amendment) Bill, 2022 in various meetings. Chairman briefly discussed the background, development and variations made in the procedure for appointments and removal of Judges of higher judiciary from time to time. Afterwards, Members shared their views regarding effectiveness and efficacy of the role played by the Judicial Commission and Parliamentary Committee for the process of judicial appointments, and also discussed the problems arises, due to conflict of interests of both stakeholders and situation further deteriorated, when decision of such bodies challenged before the Supreme Court. Moreover, the issue of enhancement of legislative competence of Parliament was also discussed by the Committee Members' at great length.

5. On Article 142 of the Constitution, Members discussed the subjects, mentioned in the draft bill, and expressed diverse views on the same. After considerable debate upon this issue, the said amendment has been approved without any changes. However, Senator Kamran Murtaza submitted his vote of dissent on the amendment pertaining to Article 142, as the same usurp his principle stance on the concept of provincial autonomy, as provided through Constitution (18th Amendment) Act, 2010.

6. The Committee also discussed the amendments in Article 175-A of the Constitution in several meetings, and debated upon advantages and disadvantages of this amendment, and after considerable deliberations, agreed on the following amendments in the said bill:

- a. In proposed clause (4) of the draft bill, in paragraph (iv), for entry at column no. 2, the following shall be substituted:
"A senior Advocate of Supreme Court to be nominated by the concerned Bar Council for a term of two years who shall not be eligible to become a candidate for appointment as Judge of High Court during his term of two years as a Member."
- b. In proposed clause (4) of the draft bill, after paragraph (iv), the following proviso shall be inserted:
"Provided that for appointment of the Chief Justice of a High Court, the most senior Judge mentioned in paragraph (ii) shall not be member of the Commission."
- c. In proposed clause (5) of the draft bill, in paragraph (iv), for the entry at column no. 2, the following shall be substituted:
"A senior Advocate of the Supreme Court to be nominated by the Islamabad Bar Council for a term of two years who shall not be eligible to become a candidate for appointment as judge of High Court during his term of two years as a Member."
- d. In proposed clause (5) of the draft bill, after paragraph (iv), the following proviso shall be inserted:

"Provided that for appointment of the Chief Justice of Islamabad High Court, the most senior Judge mentioned in paragraph (ii) shall not be member of the Commission."

- e. In proposed clause (10) of the draft bill, in paragraph (iv), for the entry at column no. 2, the following shall be substituted:

"An Advocate Supreme Court having not less than twenty five years of practice in the High Court nominated by the concerned Bar Council for a term of two years."

- f. In proposed clause (10) of the draft bill, in the proviso, for the words "fifteen years", the words *"twenty five years"* shall be substituted.

- g. In proposed clause (11) of the draft bill, after the words "send nominations", the words *"two nominations against each vacancy"* shall be substituted.

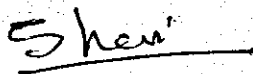
- h. In proposed clause (18) of the draft bill, for the first paragraph, the following shall be substituted:

"The Parliamentary Committee on receipt of a nomination from the Commission shall examine the nomination and may either confirm or reject the nominee by majority of its total membership within thirty working days failing which the nomination shall be deemed to have been confirmed."

- i. In proposed clause (19) of the draft bill, the following shall be substituted:

"Notwithstanding any judgment of High Court and Supreme Court, decision of the Parliamentary Committee or Initiation Committee shall be invalid or called in question in any court including High Court and Supreme Court on any ground whatsoever."

7. Afterwards, the Committee decided to vote upon the said bill, and all members except Senator Kamran Murtaza opposed the bill, and subsequently the bill, as amended, stood passed by majority of members. Copy of the Bill is annexed (Attached as annexure-B).



(Mir Shai Mazar Baloch)
DG/Secretary Committee



(Senator Syed Ali Zafar)
Chairman Committee

PINKA

INTRODUCED ON 01.08.2022.
[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 titled and commencement:— (1) This Act may be called the Constitution (Amendment) Act, 2022.

(2) It shall come into force at once.

2. Amendment of Article 142 of the Constitution.— In the Constitution of the Islamic Republic of Pakistan, hereinafter referred to as the Constitution, in Article 142, in paragraph (b), after the word "procedure" the words "civil procedure, limitation, contract, arbitration, family laws" shall be inserted.

3. Substitution of Article 175A of the Constitution.— In the Constitution of the Islamic Republic of Pakistan, for Article 175A, the following shall be substituted, namely,—

"175A. Appointment of Judges to the Supreme Court, High Courts and the Federal Shariat Court.—(1) There shall be a Judicial Commission of Pakistan, hereinafter in this Article referred to as the Commission, for appointment of Judges of the Supreme Court, High Courts and the Federal Shariat Court, as hereinafter provided.

(2) For appointment of Judges of the Supreme Court, the Commission shall consist of—

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|-------|---|----------|
| (i) | Chief Justice of Pakistan; | Chairman |
| (ii) | three most senior Judges of the Supreme Court; | Members |
| (iii) | Federal Minister for Law and Justice; | Member |
| (iv) | Attorney-General for Pakistan; and | Member |
| (v) | a senior Advocate of the Supreme Court nominated by the Pakistan Bar Council for a term of two years. | Member |

(3) Notwithstanding anything contained in clause (1) or clause (2), the President shall appoint the most senior Judge of the Supreme Court as the Chief Justice of Pakistan.

(4) For appointment of Judges of a High Court, the Commission in clause (2) shall also include the following, namely:-

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|-------|---|--------|
| (i) | Chief Justice of High Court to which the appointment is being made; | Member |
| (ii) | the most senior Judge of that High Court; | Member |
| (iii) | Provincial Minister for Law; and | Member |
| (iv) | an advocate having not less than fifteen years practice in the High Court to be nominated by the concerned Bar Council for a term of two years. | Member |

(5) For appointment of judges of the Islamabad High Court, the Commission in clause (2) shall also include the following, namely:-

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|-------|---|--------|
| (i) | Chief Justice of the Islamabad High Court; | Member |
| (ii) | the most senior Judge of that High Court; and | Member |
| (iii) | Advocate General | Member |
| (iv) | an advocate having not less than fifteen years practice in a High Court to be nominated by the Islamabad Bar Council for a term of two years. | Member |

(6) Notwithstanding anything contained in clause (1), clause (4) and clause (5), the President shall appoint the most senior judge of a High Court as the Chief Justice.

(7) For appointment of Judges of the Federal Shariat Court, the Commission in clause (2) shall also include the Chief Justice of the Federal Shariat Court and the most senior Judge of that Court as its members:

Provided that for appointment of the Chief Justice of the Federal Shariat Court, the most senior Judge of that Court shall not be member of the Commission.

(8) The Commission by majority of its total membership shall nominate to the Parliamentary Committee one person, for each vacancy of a Judge in the Supreme Court, a High Court or the Federal Shariat Court, as the case may be, within sixty days of receipt of the nomination from the Initiation Committee.

(9) The Commission may make rules regulating its procedure.

(10) There shall be an Initiation Committee in each High Court to initiate nominations for appointment of Judges of the High Courts. The Initiation Committee shall consist of the following members, namely:-

- (i) Chief Justice of the High Court to Which the Chairman appointment is being made;
- (ii) Two most senior judges of that High Court; Members
- (iii) Advocate General; Member
- (iv) an advocate having not less than fifteen years practice in the High Court nominated by the concerned Bar Council for a term of two years. Member

Provided that for the Islamabad High Court an advocate having not less than fifteen years practice in a High Court may be nominated by the Islamabad Bar Council for a term of two years.

(11) The Initiation Committee shall send nominations to the Commission within sixty days of occurrence of a vacancy:

Provided that in case of non-confirmation of nomination by the Commission or the Parliamentary Committee, as the case may be, the Initiation Committee shall, upon receipt of intimation to this effect from the Commission or Parliamentary Committee, as the case may be, send another nomination within sixty days.

(12) The Registrar of the concerned High Court shall act as the Secretary of the Initiation Committee.

(13) There shall be a Committee consisting of Chief Justices of all High Courts to make uniform rules regulating the procedure of the Initiation Committees.

(14) The meetings of Initiation Committee shall be held in camera.

(15) The Parliamentary Committee shall consist of the following eight members, namely:-

- (i) four members from the Senate; and
- (ii) four members from the National Assembly:

Provided that when the National Assembly is dissolved, the total membership of the Parliamentary Committee shall consist of the members from the Senate only mentioned in paragraph (i) and the provisions of this Article shall, *mutatis mutandis*, apply.

(16) Out of the eight members of the Parliamentary Committee, four shall be from the Treasury Benches, two from each House and four from the Opposition Benches, two from each House, The nomination of members from the Treasury Benches shall be made by the Leader of the House and from the Opposition Benches by the Leader of the Opposition.

(17) Secretary, Senate shall act as the Secretary of the Parliamentary Committee.

(18) The Parliamentary Committee on receipt of a nomination from the Commission shall examine credentials, capability, moral and financial integrity of the nominee and may confirm the nominee by majority of its total membership within thirty working days, failing which the nomination shall be deemed to have been confirmed:

Provided that the Parliamentary Committee may not confirm the nomination by three-fourth of its total membership within the aforesaid period:

Provided further that if a nomination is not confirmed by the Parliamentary Committee it shall forward its decision to the Commission through the Prime Minister:

Provided further that if a nomination is not confirmed, the Commission shall send another nomination within forty-five days from the date of receipt of nomination from the Initiation Committee.

(19) Decision of the Parliamentary Committee shall not be called in question in any court on any ground whatsoever.

(20) The Parliamentary Committee shall send the name of the nominee confirmed by it or deemed to have been confirmed to the Prime Minister who shall forward the same to the President for appointment.

(21) The meetings of the Parliamentary Committee shall be held in camera and record of the proceedings shall be maintained.

(22) The Parliamentary Committee may make rules for regulating its procedure.

(23) The provisions of Article 68 shall not apply to the proceedings of the Parliamentary Committee.

(24) No action or decision taken by the Commission or Parliamentary Committee or Initiation Committee shall be invalid or called in question only on the ground of the existence of a vacancy therein or of the absence of any member from any meeting thereof.

(25) The provisions of this Article shall have effect notwithstanding any order or judgment of any court.

STATEMENT OF OBJECTS AND REASONS

Pursuant to the 18th Constitutional Amendment, appointments in the superior courts are processed through two forums: Judicial Commission (JC) and Parliamentary Committee (PC). The role of the Parliamentary Committee which was carved out cautiously by the drafters of 18th Constitutional Amendment assigned only 14 days timeframe to it to confirm or not to confirm a nomination by three fourth majority of its total membership failing which the nomination shall be deemed to have been confirmed. The role was further eroded by the changes enacted through 19th Constitutional Amendment and judgments of the superior courts in different cases overturning the decisions of the Parliamentary Committee.

The Parliamentary Committee members across the party lines had apprehensions that the role of the Committee and its members has been marginalized to the extent of elimination and the Committee has become a mere post office. Voices from different segments of the society most important and relevant ones from the Pakistan Bar Council and different Bar Associations were echoing the same concerns.

The Parliamentary Committee in its meeting held on 23rd August, 2013 constituted a Sub Committee comprising of Senator Farooq Hamid Naek, Senator Malik M. Rafique Rajwana and Ch. Mahmood Bashir Virk, MNA to draft the amendment to Article 175A of the Constitution for reforming the constitutional system of judicial appointments with an aim to ensure independence of judiciary by appointment of most suitable persons as judges of superior courts. The Sub Committee held nationwide consultations and invited elected representatives of Bar Associations and Councils as well as other legal luminaries and framers of 18th Constitutional Amendment to solicit opinion and views.

The report of the sub-committee containing Draft Constitutional Amendment Bill was approved by the Parliamentary Committee on

Appointment of Judges in the superior Courts after due consultation with the Ministry of Law. As decided by the Committee, the bill was sent to the Ministry of Law and Justice to introduce in either of the Houses as Government Bill. The Committee after getting response from the Federal Law Minister that the Government do not intend to introduce the Bill in near future, decided that the Bill be introduced as Private Members Bill on behalf of the Committee Members / Parliamentary Party Leaders. The amendments being proposed in Article 175A are primarily related to the role and functioning especially the timeframe available to the Parliamentary Committee. The only new thing being recommended is Initiation Committees for the initiation of nomination(s) for appointment of judges of the High Courts.

SENATOR FAROOQ HAMID NAEK
Member-in-Charge

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 titled and commencement:— (1) This Act may be called the Constitution (Amendment) Act, 2022.

(2) It shall come into force at once.

2. Amendment of Article 142 of the Constitution.— In the Constitution of the Islamic Republic of Pakistan, hereinafter referred to as the Constitution, in Article 142, in paragraph (b), after the word “procedure” the commas and the words “,code of civil procedure, limitation, contract, arbitration, family laws” shall be inserted.

3. Substitution of Article 175A of the Constitution.— In the Constitution of the Islamic Republic of Pakistan, for Article 175A, the following shall be substituted, namely,—

“175A. Appointment of Judges to the Supreme Court, High Courts and the Federal Shariat Court.—(1) There shall be a Judicial Commission of Pakistan, hereinafter in this Article referred to as the Commission, for appointment of Judges of the Supreme Court, High Courts and the Federal Shariat Court, as hereinafter provided.

(2) For appointment of Judges of the Supreme Court, the Commission shall consist of—

(i)	Chief Justice of Pakistan;	Chairman
(ii)	Three most senior Judges of the Supreme Court;	Members
(iii)	Federal Minister for Law and Justice;	Member
(iv)	Attorney-General for Pakistan; and	Member
(v)	A senior Advocate of the Supreme Court nominated by the Pakistan Bar Council for a term of two years.	Member

(3) Notwithstanding anything contained in clause (1) or clause (2), the President shall appoint the most senior Judge of the Supreme Court as the Chief Justice of Pakistan.

(4) For appointment of Judges of a High Court, the Commission in clause (2) shall also include the following, namely:-

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|-------|--|--------|
| (i) | Chief Justice of the High Court to which the appointment is being made; | Member |
| (ii) | The most senior Judge of that High Court; | Member |
| (iii) | Provincial Minister for Law and; | Member |
| (iv) | A senior advocate of Supreme Court to be nominated by the concerned Bar Council for a term of two years who shall not be eligible to become a candidate for appointment as Judge of High Court during his term of two years as a Member. | Member |

Provided that for appointment of the Chief Justice of a High Court, the most senior Judge mentioned in paragraph (ii) shall not be member of the Commission.

(5) For appointment of judges of the Islamabad High Court, the Commission in clause (2) shall also include the following, namely:-

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|-------|--|--------|
| (i) | Chief Justice of the Islamabad High Court; | Member |
| (ii) | The most senior Judge of Islamabad High Court; | Member |
| (iii) | Advocate General and; | Member |

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|------|--|--------|
| (iv) | A senior Advocate of the Supreme Court to be nominated by the Islamabad Bar Council for a term of two years who shall not be eligible to become a candidate for appointment as judge of High Court during his term of two years as a Member. | Member |
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Provided that for appointment of the Chief Justice of Islamabad High Court, the most senior Judge mentioned in paragraph (ii) shall not be member of the Commission.

(6) Notwithstanding anything contained in clause (1), clause (4) and clause (5), the President shall appoint the most senior judge of a High Court as the Chief Justice.

(7) For appointment of Judges of the Federal Shariat Court, the Commission in clause (2) shall also include the Chief Justice of the Federal Shariat Court and the most senior Judge of that Court as its members:

Provided that for appointment of the Chief Justice of the Federal Shariat Court, the most senior Judge of that Court shall not be member of the Commission.

(8) The Commission by majority of its total membership shall nominate to the Parliamentary Committee one person, for each vacancy of a Judge in the Supreme Court, a High Court or the Federal Shariat Court, as the case may be, within sixty days of receipt of the nomination from the Initiation Committee.

(9) The Commission may make rules regulating its procedure.

(10) There shall be an Initiation Committee in each High Court to initiate nominations for appointment of Judges of the High Courts. The Initiation Committee shall consist of the following members, namely:-

- | | | |
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| (i) | Chief Justice of the High Court to which the appointment is being made; | Chairman |
| (ii) | Two most senior Judges of that High Court; | Members |
| (iii) | Advocate General and; | Member |
| (iv) | An Advocate Supreme Court having not less than twenty five years of practice in the High Court nominated by the concerned Bar Council for a term of two years. | Member |

Provided that for the Islamabad High Court, an Advocate having not less than twenty five years practice in a High Court may be nominated by the Islamabad Bar Council for a term of two years.

(11) The Initiation Committee shall send nominations, two nominations against each vacancy, to the Commission within sixty days of occurrence of a vacancy:

Provided that in case of non-confirmation of nomination by the Commission or the Parliamentary Committee, as the case may be, the Initiation Committee shall, upon receipt of intimation to this effect from the Commission or Parliamentary Committee, as the case may be, send another nomination within sixty days.

(12) The Registrar of the concerned High Court shall act as the Secretary of the Initiation Committee.

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Provided that when the National Assembly is dissolved, the total membership of the Parliamentary Committee shall consist of the members from the Senate only mentioned in paragraph (i) and the provisions of this Article shall, mutatis mutandis, apply.

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Senator Farooq Hamid Naek
Member-in-Charge