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PART III

Other Notifications, Orders, etc.

SENATE SECRETARIAT

Islamabad, the 9th March, 2020

No. F. 24(50)/2018-Legis.— Pursuant of sub-rule (4) of Rule 194 of the Rules of Procedure and Conduct of Business in the Senate, 2012, the following reports of the Standing Committee on Law and Justice presented to the Senate on 4th March, 2020, is published for information:—

**REPORT OF THE STANDING COMMITTEE ON LAW AND JUSTICE
ON “THE CONSTITUTION (AMENDMENT) BILL 2018” (AMENDMENT
OF ARTICLE 27)**

I, Chairman of the Standing Committee on Law and Justice, have the honour to present report on “The Constitution (Amendment) Bill 2018” (Amendment of Article 27) introduced by Senator Mian Raza Rabbani in the Senate sitting held on 18th December, 2018. The Bill, upon introduction, was referred to the Standing Committee for consideration and report.

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[5297(2020)/Ex. Gaz.]

2. The composition of the Standing Committee on Law and Justice is as under:

1.	Senator Muhammad Javed Abbasi	<i>Chairman</i>
2.	Senator Mian Raza Rabbani	<i>Member</i>
3.	Senator Farooq Hamid Naek	<i>Member</i>
4.	Senator Ghous Muhammad Khan Niazi	<i>Member</i>
5.	Senator Siraj-ul-Haq	<i>Member</i>
6.	Senator Syed Muzafar Hussain Shah	<i>Member</i>
7.	Senator Ayesha Raza Farooq	<i>Member</i>
8.	Senator Muhammad Ali Khan Saif	<i>Member</i>
9.	Senator Mustafa Nawaz Khokar	<i>Member</i>
10.	Senator Sana Jamali	<i>Member</i>
11.	Senator Walid Iqbal	<i>Member</i>
12.	Senator Zeeshan Khanzada	<i>Member</i>
13.	Minister for Law and Justice	<i>Ex-Officio Member</i>

3. The Committee considered the Bill in its meetings held on 14th January, 2019, 12th February, 2019, 5th March, 2019, 4th April, 2019, 18th April, 2019, 16th May, 2019, 17th July, 2019, 19th September, 2019, 28th November, 2019, 22nd January, 2020 and 13th February, 2020, under the Chairmanship of Senator Muhammad Javed Abbasi. Final consideration of the Bill was held in the meeting dated 13th February, 2020, which was attended by the following members:—

- i. Senator Muhammad Javed Abbasi
- ii. Senator Ghous Muhammad Khan Niazi
- iii. Senator Siraj-ul-Haq
- iv. Senator Syed Muzafar Hussain Shah
- v. Senator Zeeshan Khanzada
- vi. Senator Sana Jamali

4. Senator Mian Raza Rabbani, Member-in-Charge briefed the Committee that the quota system prescribed in the Constitution of the Islamic Republic of Pakistan, 1973 to ensure representation of under-developed provinces, expired on August 13, 2013. This amendment aims at providing 20 years extension to the time period prescribed for quota in the proviso of Article 27 of the Constitution. The objective is to provide a cover to the appointments made from August, 2013 and reservation of quotas for further recruitments by the Federal or Provincial Governments.

5. The Secretary, Ministry of Law and Justice informed the Committee that the Supreme Court in its decision in 2016, has interpreted Article 27 of the Constitution and declared that the expiry of time period for quota provided in the first proviso of said Article does not need any further extension as the third proviso of same Article empowers the Parliament to enact a law to redress under representation of any class or area in the services of Pakistan. Hence the provisions of the Federal Public Service Commission Act and Rules made thereunder sufficiently address the issue of representation by people of under privileged areas in Pakistan. However, if the parliament so desires, an exclusive legislation can be enacted in terms of third proviso to Article 27 of the Constitution.

6. Senator Syed Muzafar Hussain Shah endorsed the proposal of Senator Mian Raza Rabbani and argued that the objective of amendment under consideration is justified as the under-privileged and under-represented areas and classes persist in Pakistan as yet. He further added that period of forty years was given to the State/Governments to ensure a mechanism for adequate representation of all classes and areas in the service of Pakistan, however, if the Governments have been failed to fulfill their constitutional obligations then this failure shall not affect the representation of people belonging to less developed and under-represented areas of Pakistan. While comparing the merit system of Pakistan with other states in the world, he deliberated that Pakistan has its own peculiar circumstances, hence the quota should remain intact till the conditions change in the country.

7. Senator Ghous Muhammad Khan Niazi did not support the amendment and opined that it would be unjust for the people of under-privileged areas to be recruited or given representation on the basis of quota as it is against the essence of competition. He further added that it will adversely affect the capacities of such people by getting a position without merit.

8. Senator Zeeshan Khanzada opposed the Amendment by endorsing the stance of Ministry of Law and Justice.

9. Senator Siraj-ul-Haq deliberated against the proposal of extension in time period for the provision of quota in instant Bill. He was of the view that State shall take all steps to provide enabling environment to the people of the under-developed areas and provision of quota will not serve the purpose.

10. The Committee also took note that the Federal Shariat Court in its judgment given in 1992 has declared the quota system as against the Islamic concept; however, the Government had filed an appeal in the Supreme Court against the said judgment; status of which is still unknown.

11. The Chairman Committee put the Bill to vote of the Committee, wherein all Members present except Senator Syed Muzafar Hussain Shah voted against of the Bill.

12. The Committee recommends that “The Constitution (Amendment) Bill 2018” (Amendment of Article 27), as introduced in the Senate, may not be passed by the Senate of Pakistan. (Copy of Bill is annexed).

Sd/-
RABEEA ANWAR,
J.S/Secretary Committee.

Sd/-
SENATOR MUHAMMAD JAVED ABBASI,
Chairman
Standing Committee on Law & Justice.

Introduced in 18-12-2018

[AS INTRODUCED IN THE SENATE]

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BILL

further to amend the Constitution of 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, 2018.

(2) It shall come into force at once.

2. **Amendment of Article 27 of the Constitution.**— In the Constitution of Islamic Republic of Pakistan, 1973, in Article 27, in clause (1), in the first proviso, for the expression “forty” the expression “sixty” shall be substituted.

STATEMENT OF OBJECTS AND REASONS

The quota system prescribed in the Constitution of the Islamic Republic of Pakistan, 1973 to ensure representation of under-developed Provinces, expired on August 13, 2013. This amendment aims at providing 20 years extension to the time period prescribed for quota in the proviso of Article 27 of the Constitution. The objective is to provide a cover to the appointments made from August, 2013 and reservation of quotas for further recruitments by the Federal or Provincial Governments.

SENATOR MIAN RAZA RABBANI,
Member-in-Charge.

**REPORT OF THE STANDING COMMITTEE ON LAW AND JUSTICE
ON "THE RATIFICATION OF FOREIGN AGREEMENTS BY PARLIAMENT
BILL, 2018"**

I, Chairman of the Standing Committee on Law and Justice, have the honour to present report on "The Ratification of Foreign Agreements by Parliament Bill, 2018" introduced by Senator Mian Raza Rabbani in the Senate sitting held on 12th November, 2018. 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	<i>Chairman</i>
2.	Senator Mian Raza Rabbani	<i>Member</i>
3.	Senator Farooq Hamid Naek	<i>Member</i>
4.	Senator Ghous Muhammad Khan Niazi	<i>Member</i>
5.	Senator Siraj-ul-Haq	<i>Member</i>
6.	Senator Syed Muzafar Hussain Shah	<i>Member</i>
7.	Senator Ayesha Raza Farooq	<i>Member</i>
8.	Senator Muhammad Ali Khan Saif	<i>Member</i>
9.	Senator Mustafa Nawaz Khokar	<i>Member</i>
10.	Senator Sana Jamali	<i>Member</i>

11.	Senator Walid Iqbal	<i>Member</i>
12.	Senator Zeeshan Khanzada	<i>Member</i>
13.	Minister for Law and Justice	Ex-Officio <i>Member</i>

3. The Committee considered the Bill in its meetings held on 12th February, 2019, 18th April, 2019, 16th May, 2019, 17th July, 2019, 19th September, 2019, 28th November, 2019, 22nd January, 2020 and 13th February, 2020 under the Chairmanship of Senator Muhammad Javed Abbasi. Final consideration of the Bill was held in the meeting dated 13th February, 2020, which was attended by the following members:

- i. Senator Muhammad Javed Abbasi
- ii. Senator Ghous Muhammad Khan Niazi
- iii. Senator Siraj-ul-Haq
- iv. Senator Syed Muzafar Hussain Shah
- v. Senator Zeeshan Khanzada
- vi. Senator Sana Jamali

4. Senator Mian Raza Rabbani, Member-in-Charge briefed the Committee that the Parliament is unaware of the various economic and other foreign agreements signed by the Government of Pakistan. Under the Rules of Business 1973 of the Federal Government only Cabinet ratifies these agreements. As some of these Agreements have serious consequences on the economic, political and fundamental rights of citizen of Pakistan it is essential that they be subjected to a national debate and scrutiny through Parliament. In democracies parliamentary ratification is an accepted norm which provides transparency, public awareness and ensures the supremacy of Parliament.

5. The Ministry of Law and Justice was of the view that clause (2) of Article 99 of the Constitution empowers the Federal Government to specify the manner in which orders and other instruments made and executed in the name of the President shall be authenticated, and the clause (3) empowers the Federal Government to make rules for allocation and transaction of its business. Invoking the aforesaid provisions of the Article 99 of the Constitution the Federal Government has made the Rules of Business, 1973. Clause (h) of sub-rule (1) of rule 16 of the Rules of Business, 1973 provides that all proposals involving negotiations regarding treaties and agreements with foreign powers shall be placed before the Cabinet for its consideration and approval. Under clause (6) of Article 91 of the Constitution, the Cabinet, together with the Ministries of State, shall be collectively responsible to the Senate and the National Assembly. Therefore, any agreement or treaty entered into by the

Government of Pakistan with a foreign government can on a motion by a Member be subjected to debate and discussion by the Parliament and the Parliament can express its views freely and even pass a resolution for consideration of the Government. The Private Member's Bill moved by Senator Mian Raza Rabbani provides that all Agreements, Treaties, Contracts, and Trade Protocol signed by the Government of Pakistan with the foreign Governments, Banks, Donors or lending Agencies should be laid before the Parliament within fifteen days of such signing. The Bill further provides that both Houses of Parliament may pass such Foreign Agreements or may make recommendations to the concerned Division proposing amendment in the Foreign Agreements. On receipt of the recommendations of the Parliament proposing amendment in the agreement the Government of Pakistan shall approach the other Party to the foreign Agreement to incorporate the same. The Bill also has a rider clause providing that if a Resolution withholding ratification is passed by fifty-five percent of the Members of each House, such Foreign Agreement shall not have received the ratification of Parliament. The Bill as designed would create legal and financial implication and, at times, may place the Government of Pakistan in an embarrassing situation if the amendments recommended by the Parliament are not accepted by the other Party or the Parliament does not pass the Foreign Agreement signed by the Government of Pakistan. It would have far reaching repercussions on the relations of Government of Pakistan with the Foreign States and the Donor and Lending Agencies. The Constitution divides powers amongst the Executive, Legislature and the Judiciary. The proposed Bill is an encroachment on the field allocated by the Constitution to the Executive and is violative of the separation of powers among the aforesaid pillars of the State. Unlike USA, Pakistan is a dualistic State where domestic legislation is revised or enacted pursuant to the International treaties/ conventions entered into/ signed by Government of Pakistan. Under the Constitution, the Government of Pakistan can enter into treaties and agreements with foreign countries and has the power to implement any treaty, agreement and convention with any other country or countries or any decision made at any international conferences, association or other body. Therefore, it is within the purview of the Government of Pakistan to enter into treaties but is not obligatory on the Government under the Constitution to seek approval of the Parliament to such treaties. However, if there is a provision in a treaty in itself for ratification by the legislature of contracting parties the treaty is submitted to the House for approval. Entry 3 of Part-I of the Federal Legislative List in the Fourth Schedule to the Constitution gives the Parliament the power to make laws to give effect to treaties. Though treaty making is a legislative subject in the Federal Legislative List, it does not necessarily follow that a treaty negotiated and entered upon by the Head of the State in Pakistan will not be binding unless it is ratified by the Parliament. In other words, the position in Pakistan is similar to that of England but for the fact that we have a written Constitution which requires legislative provision for a treaty to bind the citizens and also the State itself in certain case. Thus, in

Pakistan legislation would be required to give effect to treaty in the following cases:—

- (a) Where the treaty provides for a payment of money to a foreign country/body from the Federal Consolidated Fund (Article 79);
- (b) Where the treaty affects justiciable right of a citizen of Pakistan;
- (c) Where it requires taking of private property (Article 23) and life or liberty (Article 9) or the imposition of tax which can be done by legislation (Article 77).

Outside these exceptional cases it is component for the executive in Pakistan to enter into treaties binding on the State.

6. The Ministry of Foreign Affairs opposed the Bill on the following grounds:—

- i. States pursue various approaches towards signing or ratification of international agreements or treaties, regardless of the form of governance or democratic system. Countries which follow common law such as Australia, India and South Africa have a well-established practice *i.e.* the authority to sign, ratify and / or accede to international treaties and agreements rests with the executive branch of the Government.
- ii. Pakistan's current practice, in place since independence, is also in sync with these and many countries. The current approach has worked quite well in terms of securing national interests.
- iii. *Prima facie*, the draft Bill defines "Foreign Agreements" as, "agreements, treaties, contracts and trade protocols signed with foreign governments or banks or donor or lending agencies". This formulation seemingly excludes international/ UN-led multilateral treaties and conventions. It is important to seek clarification to avoid any confusion or possibility of various interpretations.
- iv. Transferring this authority, as envisaged under the proposed bill, from the Cabinet to the Parliament may pose diplomatic and

political challenges. Some agreements, treaties and contracts are time sensitive in terms of entry into force. Agreements and treaties emerge out of a long process of negotiations and represent a delicate outcome. Adding another layer of Parliamentary scrutiny which has the potential to amend the already finalized product, would engender un-certainty among foreign governments, leading to the possibility of not engaging with Pakistan on key subjects.

- v. Some agreements, treaties and contracts entail intricate technical, legal and diplomatic aspects for which necessary oversight may or may not be available, resulting in avoidable delays for signing or ratifications. Such a situation would also create diplomatic and political challenges for Pakistan.

7. Secretary, Economic Affairs Division opposed the Bill on the grounds that EAD is responsible for procurement of foreign assistance for development and to bridge the fiscal deficit in the budget through loan agreements which are signed after seeking approval of the Cabinet/ECNEC, as required under the Rules of Business, 1973. All relevant data of these agreements is already available on EAD's Website. Economic Affairs Division does not accept the bill in its matter. Economic Affairs Division is of the view that placing routine external loan and grant agreements before the Parliament for approval/ ratification will potentially delay such signing of the agreements and consequently inflow of external economic assistance in the country. However, Economic Affairs Division supports placing of other agreements (*i.e.* other than external loan and grant agreements) before the Parliament for its approval/ ratification.

8. Senator Syed Muzafar Hussain Shah opposed the Bill and said that it is the prerogative of the executive throughout the world to consider and approve international treaties, conventions and agreements. Senators Zeeshan Khanzada and Ghous Muhammad Khan Niazi also opposed the Amendment by endorsing the stance of Senator Syed Muzafar Hussain Shah.

9. The Committee was of the opinion that the parliament should not impinge upon the right of executive in rectification of treaties and conventions. However, the oversight of such treaties and conventions may be exercised by the Houses in their respective sessions or the committees. The Committee was of the considered opinion that all treaties, agreements and conventions signed/ratified by the Government should be placed before the Parliament for the purposes of oversight in terms of their implementation.

10. The Chairman Committee put the Bill to vote of the Committee, wherein all Members present voted against the Bill.

11. Accordingly, the Committee recommends that “the Ratification of Foreign Agreements by Parliament Bill, 2018”, as introduced in the Senate, may not be passed by the Senate of Pakistan. (Copy of Bill is annexed).

Sd/-
RABEEA ANWAR,
J.S/Secretary Committee.

Sd/-
SENATOR MUHAMMAD JAVED ABBASI,
*Chairman,
Standing Committee on Law & Justice.*

Introduced on 12-11-2018

[AS INTRODUCED IN THE SENATE]

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BILL

to provide for the ratification of foreign agreements by Parliament

WHEREAS it is expedient to provide for the ratification of foreign agreements by Parliament for the purposes hereinafter appearing;

It is hereby enacted as follows:—

1. **Short title, extent and commencement.**— (1) This Act may be called the Ratification of Foreign Agreements by Parliament Act, 2018.

(2) It shall extend to the whole of Pakistan.

(3) It shall come into force at once.

2. **Definitions.**— In this Act unless there is any thing repugnant in the subject or context,—

- (i) **“Foreign Agreements”** means and includes all Agreements, Treaties, Contracts and Trade Protocols signed with foreign Governments or Banks or Donor or Lending agencies by the Government of Pakistan.

- (ii) **“Ratification”** means passed by a simple majority of each House of Parliament.

3. **Foreign agreement to be laid before Parliament.**— (1) Any Agreement, Treaty, Contract or Trade Protocol signed with a foreign Government or Bank or Donor or Lending agency by the Government of Pakistan shall be laid before Parliament within fifteen days of the finalization with the other party *i.e.*, before it is signed by the parties.

(2) All Agreements, Treaties and Contracts other than those initiated by the Finance or Commerce’s Divisions shall be laid before Parliament by the Foreign Affairs Division.

(3) All Agreements, Treaties, Contracts or Trade Protocols initiated by the Finance or Commerce’s Division shall be laid before Parliament by the respective Division.

4. **Procedure of ratification by Parliament.**— (1) Either House of Parliament may take up for discussion the Foreign Agreement laid before it under section 3 of this Act.

(2) Both the Houses shall pass the Foreign Agreement within fifteen days each or make a recommendation to the concerned Division about an amendment in the Foreign Agreement.

(3) The concerned Division on receipt of the recommendation in sub-section (2) above will on its own or through the Government of Pakistan approach the other Party to the Foreign Agreement to incorporate the same.

(4) A detailed report of the proceedings under sub-section (3) above will be placed before Parliament and it will be deemed that Parliament has ratified the said Foreign Agreement:

Provided that if a Resolution withholding ratification is passed by 55% of the members of each House such Foreign Agreement shall not have received the ratification of Parliament.

(5) A Cultural Agreement shall only be laid before Parliament:

Provided that if a Resolution withholding ratification is passed by 55% of the members of each House such Cultural Agreement shall not have received the ratification of Parliament.

5. **Power to make Rules.**— The Parliament and the Federal Government may by notification in the official Gazette, make rules for the carrying out the purposes of this Act.

STATEMENT OF OBJECTS AND REASONS

Parliament is unaware of the various economic and other foreign agreements signed by the Government of Pakistan. Under the Rules of Business 1973 of the Federal Government only Cabinet ratifies these agreements. As some of these Agreements have serious consequences on the economic, political and fundamental rights of a citizen of Pakistan it is essential that they be subjected to a national debate and scrutiny through Parliament. In democracies parliamentary ratification is an accepted norm which provides transparency, public awareness and ensures the supremacy of Parliament.

SENATOR MIAN RAZA RABBANI,
Member-in-Charge.

DR. AKHTAR NAZIR,
Secretary.