**Finance Bill and constitutional contraventions**

[Dr Ikramul Haq](https://dailytimes.com.pk/writer/dr-ikramul-haq/%22%20%5Co%20%22More%20Articles%20by%20Dr%20Ikramul%20Haq)

June 20, 2021

The Finance Bill, 2021 proposes a highly lamentable and unconstitutional amendment. In effect, it provides that the aggrieved taxpayer will have to deposit 100 percent of the demand upheld by any appellate authority prior to exercising the right to appeal before the next available forum under the Income Tax Ordinance, 2001 [“the Ordinance”]. The adjudicating officers mostly pass harsh, arbitrary, illegal and excessive orders to show performance and/or higher collection rates. These orders can only be quashed at the level of Appellate Tribunal Inland Revenue (ATIR), higher courts and the Supreme Court.

In the majority of cases, it is almost impossible to secure relief at the first level of appeal. The Commissioners of Appeals of Inland Revenue work directly under the administrative control of the Federal Board of Revenue (FBR). This is against Article 175(3) of the Constitution of Islamic Republic of Pakistan. It is elaborated by the Supreme Court of Pakistan in Government of Baluchistan v Azizullah Memon PLD 1993 SC 31 that “separation of judiciary from executive is the cornerstone of independence of judiciary”.

Sub-section (2) of section 137 of the Ordinance provides that where tax is payable under an assessment or an amended assessment order — or any other order issued under the Ordinance — a notice shall be served specifying the amount of tax payable which must be paid within thirty days from the date of services of notice. A new proviso is proposed by Finance Bill, 2021 stipulates that the thirty-day limit will not be applicable in case an order is passed in consequence of or to give effect to any findings of any appellate authority. This should be only where order attains finality.

If approved, the proposed amendment would be in violation of the Constitution — the supreme law of the land. It will also give a free hand to the officers of the FBR Inland Revenue Service to collect 100 percent of disputed tax bills upheld by the Commissioners of Appeals. This also contravenes Article 10A of the Constitution which puts forth: “For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process.” Demanding 100 percent of disputed tax payment before final adjudication by an independent appellate forum is a gross violation of fundamental constitutional rights that safeguard free access to justice as enshrined in Article 4 of the Constitution. Parliament and/or Government cannot curtail. The Finance Bill, 2021, prepared by a cabinet-approved FBR team, exposes the level of incompetence in understanding the Constitution!

The condition of full payment of a disputed tax bill curtails fundamental citizen rights. Yet by presenting this proposed amendment — the PTI has demonstrated disrespect for the supreme law of the land and judgements of the superior courts

Similarly, this unconstitutional proposed amendment is against the binding judgements of the Supreme Court and High Court under Article 189 and 201, respectively, which provide that the unfettered right of appeal before an independent court/tribunal cannot be denied or made conditional.

The condition of payment in full of a disputed tax bill amounts to curtailing fundamental citizen rights. Moreover, the collection of which is prone to abuse through capricious orders creating exorbitant demands. By presenting such an amendment, the PTI government, like its predecessors, has demonstrated disrespect for the supreme law of the land and judgements of the superior courts with impunity.

The Supreme Court in Mehram Ali and Others v. Federation of Pakistan and others PLD 1998 SC 1445, held: “That the right of ‘access to justice to all’ is a fundamental right, which right cannot be exercised in the absence of an independent judiciary providing impartial, fair and just adjudicatory framework i.e. judicial hierarchy. The Courts/Tribunals which are manned and run by executive authorities without being under the control and supervision of the High Court in terms of Article 203 of the Constitution can hardly meet the mandatory requirement of the Constitution.”

All judicial/quasi-judicial organs and appellate authorities as a matter of principle and in consonance with the Constitution should remain entirely distinct from the executive to ensure independence in the true sense of the word.

When it comes to justice no preconditions can be imposed. Thus, the contrary amendment suggested in Finance Bill, 2021 should be recalled. Any law repugnant to fundamental right guaranteed in the Constitution is ultra vires and void ab initio.

The FBR, Ministry of Law and Justice and the Cabinet have obviously overlooked that in a number of reported cases, such as Sonia Silk v. CBR 2001 PTD 1789 and Chenab Cement Products (Pvt.) Ltd v Banking Tribunal, Lahore and others PLD 1996 Lah 672 — the superior courts held that condition to deposit a portion of tax to avail the right of appeal, if mandatory, would be violative of fundamental rights of free and unfettered justice guaranteed under the Constitution.

It is hoped that the ruling PTI and all opposition lawmakers will take note of the proposed amendment and that it will be withdrawn. Or better still, that the Attorney General of Pakistan, after reading this article, will advise the government to do the needful.

*The writer, Advocate Supreme Court, is Adjunct Faculty at Lahore University of Management Sciences (LUMS), member Advisory Board and Visiting Senior Fellow of Pakistan Institute of Development Economics (PIDE) He tweets @DrIkramulHaq*