

# **REPORT OF THE STANDING COMMITTEE ON LAW AND JUSTICE**



## **“THE SUPREME COURT NUMBER OF JUDGES (AMENDMENT) BILL, 2016”**

**Report No. 23**

**PRESENTED BY**

**SENATOR MUHAMMAD JAVED ABBASI  
CHAIRMAN**

## SENATE SECRETARIAT

### **REPORT OF THE STANDING COMMITTEE ON LAW AND JUSTICE ON “THE SUPREME COURT NUMBER OF JUDGES (AMENDMENT) BILL, 2016”**

I, Chairman of the Standing Committee on Law and Justice, have the honour to present report on “The Supreme Court Number of Judges (Amendment) Bill, 2016”, introduced by Senator Zaheer-ud-Din Babar Awan on 16<sup>th</sup> May, 2016. 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.	<b>Senator Muhammad Javed Abbasi</b>	<b>Chairman</b>
2.	Senator Saleem Zia	Member
3.	Senator Aitzaz Ahsan	Member
4.	Senator Dr. Muhammad Ali Khan Saif	Member
5.	Senator Syed Muzafar Hussain Shah	Member
6.	Senator Nehal Hashmi	Member
7.	Senator Ms. Ayesha Raza Farooq	Member
8.	Senator Nawabzada Saifullah Magsi	Member
9.	Senator Saeed Ghani	Member
10.	Senator Zaheer ud Din Babar Awan	Member
11.	Senator Mrs. Zahida Khan	Member
12.	Senator Farooq Hamid Naek	Member
13.	Minister for Law and Justice	Ex-Officio Member

3. The Committee considered the Bill in its meetings held on 31<sup>st</sup> May, 2016, 2<sup>nd</sup> August, 15<sup>th</sup> August 23<sup>rd</sup> August, 2016.

4. In the meeting dated 31<sup>st</sup> May, 2016, the Mover defended the Bill in the following terms:-

“Women constitute more than half of our demography in numeric strength, but are unfortunately enough being still under-represented in almost all the institutions, particularly in public sector. Despite heterogeneous in ideologies, women improvement remained common agenda of successive governments across the party affiliations. Women are proportionally taken in almost every sphere of life including Civil Services district Government, Provincial Assemblies, and National Assembly and in the Senate. Notwithstanding the fact that the women are still deprived of their share in the third and





most important branch of the government viz Judiciary. The instant Bill is aimed at providing due share to this deprived gender in the higher Judiciary like other organs of the State referred to above.

5. Ministry of Law and Justice opposed the Bill on the following grounds:-

- a) Article 176 of the Constitution of Islamic Republic of Pakistan says that the Supreme Court shall consist of a Chief Justice and so many other judges as may be determined by Act of Majlis-e-Shoora (Parliament). Invoking the aforesaid provision the Parliament has enacted the Supreme Court (Number of Judges) Act, 1997 (XXXIII of 1997). The Bill provides for qualifications which are in fact provided in clause (2) of Article 177 of the Constitution which do not make any distinction on the basis of sex and only require that a person shall not be appointed a Judge of the Supreme Court unless he is citizen of Pakistan. In this connection reference may be made to Article 263 of the Constitution wherein it has been provided that words in constitution importing the masculine gender shall also include females. Therefore, females are already eligible for appointment as judges of the Supreme Court subject of course to the criteria laid down in Article 177 of the Constitution.
- b) Similar Private Member's Bill moved by Ms. Saman Sultana, MNA already stands rejected by the Standing Committee on Law and Justice on 02-05-2016. The Bill is, therefore, beyond the scope of the Principal Act and may be opposed.

6. Senator Aitzaz Ahsan, Leader of the Opposition, principally supported the Bill, however, he made an observation that achieving the 1/3<sup>rd</sup> number might be difficult.

7. Secretary, Ministry of Law and Justice stated that given the prescribed qualifications for appointment as Judge of the Supreme Court of Pakistan, practical difficulties will be a major hurdle.

8. The Committee decided to invite representatives of Bar Councils, Supreme Court Bar Association, National Commission on the Status of Women (NCSW) and lady members of various Bar Councils to receive their input on the Bill.

9. In the meeting dated 2<sup>nd</sup> August, 2016, the Committee heard the important stakeholders including President, Supreme Court Bar Association, President Islamabad High Court

Bar, Chairman Islamabad Bar Council, Vice Chairman Punjab Bar Council and Secretary, National Commission on the Status of Women.

10. Mr. Ali Zafar, President Supreme Court Bar Association (SCBA), supported the spirit of the instant Bill, however, termed it as premature at this stage. He stated that the Bar Association is not against the direction of the Bill but is against the speed of said direction. Quota system is anti thesis of merit which is justified in employment however, cannot form the basis of judicial system. He further stated that SCBA fully supports the representation of women at all spheres of life and especially in the judiciary. He made reference to two theories namely critical mass theory and critical mass marker theory. In terms of these theories there must be a pool available to affect policy and make a change not as the token but as an influential body. In the existing circumstances/realities this pool/critical number is missing; we do not have the required pool female can be appointed on reserved seats in the Supreme Court of Pakistan. We need to improve the mass, for which following affirmative actions are proposed to be taken:-

- i. There shall be Bar Associations of Women;
- ii. Quota/reserved seats for women may be initiated at the district judiciary level;
- iii. Appointment of judges to the High Courts shall be made more transparent and merit based.

11. Mr. Tariq Mehmood Jahangiri, President Islamabad High Court Bar, opposed the instant Bill. He endorsed the observations made by President Supreme Court Bar Association and stated that at the moment there is paucity of female judges in the High Courts as well as senior lawyers.

12. Mr. Fiaz Ahmad Anjum (Jandran), Chairman Islamabad Bar Council, informed the Committee that there are 4000 registered members of Islamabad Bar Council out of which only 615 are female, therefore, the proposed quota of 33% has no rationale. He opposed the fixing of quota at the Supreme Court, being the apex forum and termed it against the scheme of dispensation of justice.

13. Ch. M. Hussain, Vice Chairman Punjab Bar Council, stated that ladies belonging to legal fraternity are competitive and believe in merit. Till date all ladies lawyers have been elected to the Bar Council on the basis of voting. Therefore, Punjab Bar Council is one voiced that quota shall be discouraged.

14. Secretary, National Commission on the Status of Women (NCSW) supported the Bill on the ground that pool might not be available, however, there is need to create enabling circumstances for creating gender balance. Further consideration of the instant agenda item was deferred.



15. In the meeting dated 15<sup>th</sup> August, 2016, consideration of the instant Agenda Item was deferred due to absence of the Mover.

16. The Committee took final decision regarding the Bill in the meeting dated 23<sup>rd</sup> August, 2016, wherein, following Members attending the meeting:-

- i. Senator Saleem Zia
- ii. Senator Dr. Muhammad Ali Khan Saif
- iii. Senator Nehal Hashmi
- iv. Senator Ms. Ayesha Raza Farooq
- v. Senator Mrs. Zahida Khan
- vi. Senator Saeed Ghani
- vii. Senator Farooq Hamid Naek

17. Due to divergence of opinion between the Members of Committee, the Bill was put to vote in the Meeting dated 23<sup>rd</sup> August, 2016.

Following Members voted in opposition/ against the Bill:-

- i. Senator Saleem Zia
- ii. Senator Dr. Muhammad Ali Khan Saif
- iii. Senator Nehal Hashmi
- iv. Senator Ms. Ayesha Raza Farooq
- v. Senator Mrs. Zahida Khan

Following Member voted in favour of the Bill:-

- i. Senator Saeed Ghani

Senator Farooq Hamid Naek abstained himself from voting due to absence of the mover.

18. In terms of the deliberations and decision of the Committee, the **Committee recommends that "The Supreme Court Number of Judges (Amendment) Bill, 2016", as introduced in the Senate, may not be passed by the Senate.** (Copy of Bill is annexed), **however,** the Committee further recommends that seats may be reserved for female Judges in the Lower Judiciary in order to create enabling circumstance for elevation as Judges of the High Courts and Supreme Court.



(RABEEA ANWAR)  
J.S / Secretary Committee



(SENATOR MUHAMMAD JAVED ABBASI)  
Chairman

A-3  
**[TO BE INTRODUCED IN THE SENATE]**

**A**

**Bill**

*further to amend the Supreme Court (Number of Judges) Act, 1997*

**WHEREAS** it is expedient further to amend the Supreme Court (Number Judges) Act, 1997 (XXXIII of 1997) for the purposes hereinafter appearing;

It is hereby enacted as follows:-

**1. Short title and Commencement.-** (1) This Act may be called the Supreme Court (Number of Judges) (Amendment) Act, 2016.

(2) It shall come into force at once.

**2. Amendment of Section 2, Act XXXIII of 1997.-** In the Supreme Court (Number Judges) Act, 1997 (XXXIII of 1997), in section 2, for the full stop occurring at the end a colon shall be substituted and thereafter the following proviso shall be added, namely:-

“Provided that there shall be at least one-third female Judges, one each from four provinces, Islamabad Capital Territory (ICT) and Federally Adminstrated Tribal Areas (FATA).”

**STATEMENT OF OBJECTS AND REASONS**

Women constitute more than half of our demography in numeric strength, but are unfortunately enough being still under-represented in almost all the institutions, particularly in public sector. Despite heterogeneous in ideologies, women improvement remained common agenda of successive governments across the party affiliations. Women are proportionally taken in almost every sphere of life including Civil Services, district Governments, Provincial Assemblies, and National Assembly and in the Senate. Notwithstanding the fact that the women are still deprived of their share in the third and most important branch of the Government viz; Judiciary.

2. The instant Bill is amid at providing due share to this deprived gender in the higher Judiciary like other organs of the State referred to above.
3. This Bill has been designed to achieve the aforesaid objectives.

**SENATOR ZAHEER-UD-DIN BABAR AWAN**  
Member-in-Charge



**ORIGINAL SECTION OF THE SUPREME COURT (NUMBER OF JUDGES) ACT,1997, WHICH THE SUPREME COURT (NUMBER OF JUDGES) (AMENDMENT) BILL, 2016, SEEKS TO AMEND [MOVED BY SENATOR ZAHEER-UD-DIN BABAR AWAN]**

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**2. Maximum number of Supreme Court Judges other than Chief Justice.-** The number of Judges of the Supreme Court of Pakistan other than the Chief Justice shall be sixteen.

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