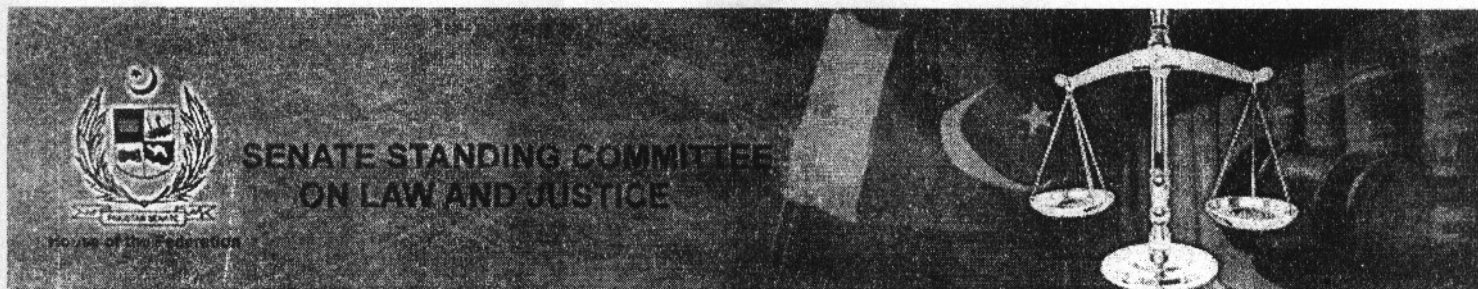


REPORT OF THE STANDING COMMITTEE ON LAW AND JUSTICE



“THE CONSTITUTION (AMENDMENT) BILL, 2017 (AMENDMENT OF ARTICLE 228)”

Report No. 52

PRESENTED BY

**SENATOR MUHAMMAD JAVED ABBASI
CHAIRMAN**

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SENATE SECRETARIAT

REPORT OF THE STANDING COMMITTEE ON LAW AND JUSTICE ON "THE CONSTITUTION (AMENDMENT) BILL, 2017 (AMENDMENT OF ARTICLE 228)"

I, Chairman of the Standing Committee on Law and Justice, have the honour to present report on "The Constitution (Amendment) Bill, 2017 (Amendment of Article 228)" introduced by Senator Sehar Kamran, in the Senate sitting held on 21st August, 2017. 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	Chairman
2.	Senator Aitzaz Ahsan	Member
3.	Senator Saleem Zia	Member
4.	Senator Farooq Hamid Naek	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 Dr. Muhammad Ali Khan Saif	Member
10.	Senator Mrs. Zahida Khan	Member
11.	Senator Syed Asif Saeed Kirmani	Member
12.	Senator Barrister Murtaza Wahab	Member
13.	Minister for Law and Justice	Ex-Officio Member

3. The Committee considered the Bill in its meeting held on 2nd October, 2017, under the Chairmanship of Senator Muhammad Javed Abbasi, which was attended by the following hon'ble Members:-

- i. Senator Ayesha Raza Farooq
- ii. Senator Saleem Zia
- iii. Senator Nawabzada Saifullah Magsi
- iv. Senator Barrister Murtaza Wahab
- v. Senator Nehal Hashmi




4. Senator Sehar Kamran, Member in-Charge, briefed the Committee that the Council of Islamic Ideology, a Constitutional body for advising the Government on issues related to Islam, does not have an equal and adequate representation of female scholars and experts. The current law on the composition of the Council required that at least one woman shall be the member of the council. In view of the fact that the proportion of women in the population is more or less equal to men, it is essential that their representation on this important body be adequately raised. In order to enhance the role of women in Constitutional interpretation in the light of Sharia, women representation must be increased. This is especially important in cases where the matters under consideration have direct relevance to women (for instance, zina or unlawful sexual relations, or the so called "honour-killings). The amendment bill aims to amend the current composition of the Council of Islamic Ideology by increasing minimum number of women from "one" to "one third" member of the Council.

5. The Member-in-Charge further briefed the Committee that it has been learned that the only female Member is not invited to the meetings wherein, important issues pertaining to females are being discussed and decisions in this regard are being taken by the Council without giving due representation to the women representatives.

6. Secretary Ministry of Law and Justice opposed the Bill and stated that the current law on the composition of the Council requires that at least one woman shall be the member of the Council. There is no limit on appointing more than one female Member in the Council as the Constitution does not provide any upper limit.

7. The Committee took note that previously such like legislative proposals, intending to give/increase quota of female in the lower and upper judiciary, were placed before the Committee, wherein, the Committee after holding consultations with all stakeholders, including women representatives, did not support the Bills as the women representations and other stakeholders were of the view that women are equally competent and at par with their male counterparts and can compete on the open merit, furthermore, appointments in such like institutions/bodies should be made purely on the basis of merit.

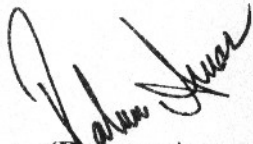
8. Senator Barrister Murtaza Wahab drew attention towards Article 231 of the Constitution, 1973, which provides that "the proceedings of the Islamic Council shall be regulated by rules of procedure to be made by the Council with approval of the President" and stated that if there is any issue as to the conduct of Meetings or non-inviting of female Member



to the meetings, the same can be addressed through amendments in the said Rules. Secretary Ministry of Law and Justice assured that the Ministry will look into the Rules of Procedure of the Council of Islamic Ideology to rectify issues raised by the Member in Charge.

9. All Members supported the spirit and principles of the Bill, however, did not support a Constitutional Amendment in this regard as they were of the view that there is no bar on appointment of more than one female member and administrative issues, if any, can be resolved by amending the Rules of Procedure of the Council.

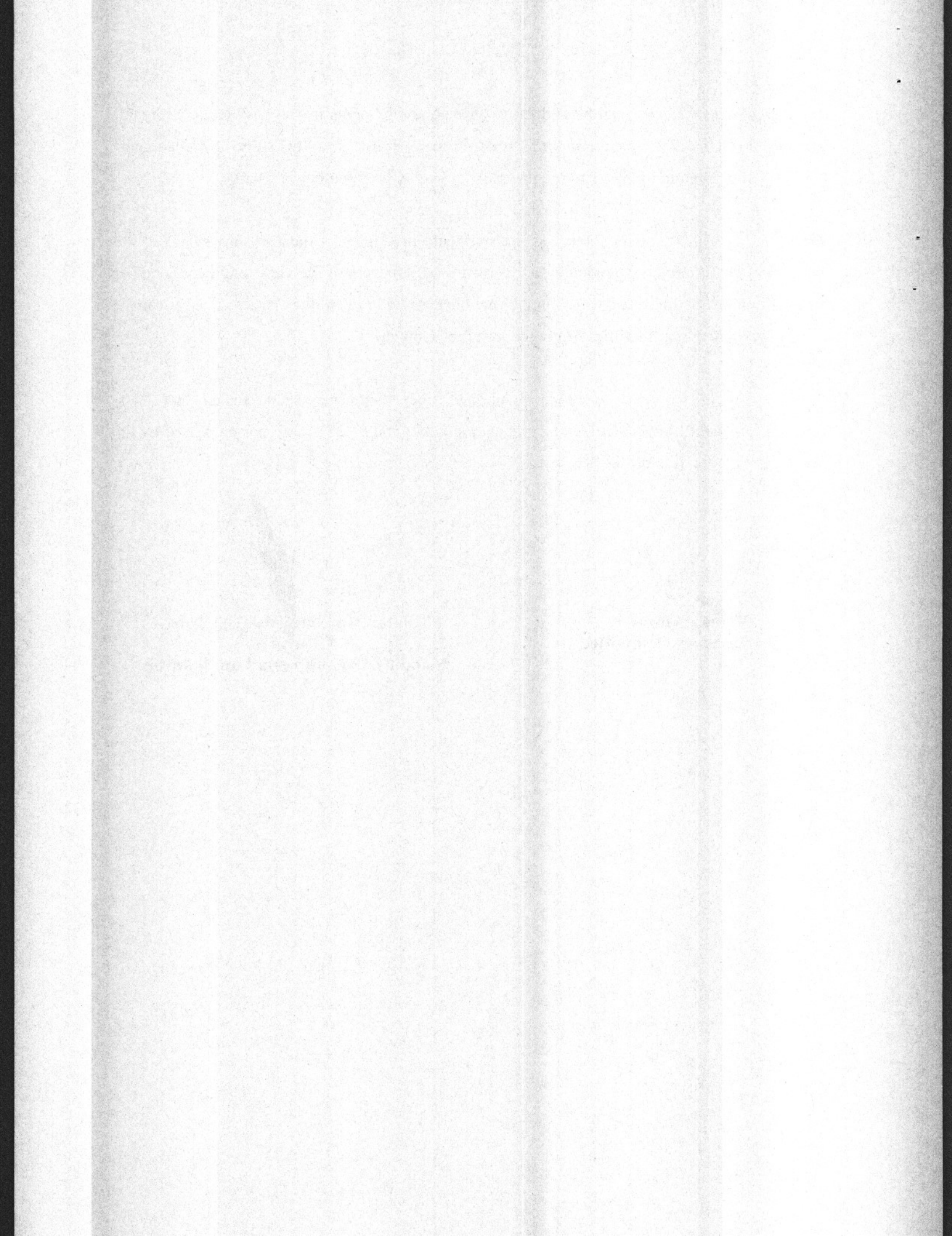
10. In view of the abovementioned, the Committee recommends that "The Constitution (Amendment) Bill, 2017 (Amendment of Article 228)" may not be passed by the Senate. (Copy of Bill annexed).



(Rabeca Anwar)
J.S / Secretary Committee



(Senator Muhammad Javed Abbasi)
Chairman
Standing Committee on Law & Justice



[TO BE 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, 2017.

(2) It shall come into force at once.

2. Amendment of Article 228 of the Constitution.- In the Constitution of the Islamic Republic of Pakistan, in Article 228,-

(i) in clause (3), for paragraph (d), the following shall be substituted, namely:-

"(d) not less than one third of the members are women.";

(ii) after clause (6), the following new clause shall be inserted, namely:-

"(7) For the purpose of quorum for meetings, at least one third of women members shall be present."

STATEMENT OF OBJECTS AND REASONS

In Islam, seeking advice and consultation from amongst the believers is emphasized as a governance principle, Verse 42:38 reads

وَالَّذِينَ اسْتَجَابُوا لِرَبِّهِمْ وَأَقَامُوا الصَّلَاةَ وَأَمْرُهُمْ شُورَى بَيْنَهُمْ وَمِمَّا رَزَقْنَاهُمْ يُنفِقُونَ

"And those who have responded to their lord and established prayer and whose affair is [determined by] consultation among themselves, and from what we have provided them, they spend".

This verse uses the words "those (people) who have responded to their Lord. No interpretation of this verse has ever barred any category of persons from those who can be consulted in matters of import to the Believers. Hence the Quran praises the people of righteousness and virtue by saying, "and whose affair is [determined by] consultation among themselves". Therefore, the word "themselves" includes both men and women without any further distinction and condition. Further, when Muhammad (P.B.U.H) was sent first revelation, Hazrat Khadijah was the first person whom he informed about the event. The Qur'an also narrates the conversation between the Prophet Suleiman and the Queen of Sheba as well as between her and her subjects which indicates that women are allowed to voice their opinion publicly.

There are many traditions in the Sunnah of the Holy Prophet which support the above argument. One such interesting report is the conversation between the Holy Prophet and Umm-e-Salma after the treaty of Hudaibiyah. When the Prophet (peace and blessings of Allah be upon him) made a treaty with Quraysh and agreed to go back and not to enter Makkah that year, he said to his companions: "Get up and offer your sacrifices." To His surprise, nobody stood up and offered the sacrifices. The Prophet went to Umm-e-Salma and told her what happened. Umm-e-Salma replied: "O Prophet of Allah is that what you want? Go out and do not speak a word to any one of them until you have slaughtered your sacrifice and called your barber to shave your head." Seeing the Prophet offering his sacrifices, people got up and followed his commands. Imam Al-Haafiz-ibn-Hajar (may Allah have mercy on him) said about this incident: "This (incident) states the virtue of consultation, and that it is permissible to consult a virtuous wife".

When Umar ordered the people not to give too much in the dowry, an elderly woman stopped him and asked him about the verse of Holy Quran which says; "But if you want to replace one wife with another and you have given one of them a great amount [in gifts], do not take [back] from it anything"(4:20). Umar replied: "May Allah forgives me; all the people have more understanding than Umar". He then ordered the people to give as much in Mahr as they want without any limit. This shows that anybody, without any distinction between men and women, who is an expert and scholar of Islam can give an advice on matters pertaining to Sharia.

Council of Islamic Ideology, a Constitutional body for advising the Government on issues related to Islam, does not have an equal and adequate representation of female scholars and experts. The current law on the composition of the Council requires that at least one woman shall be the member of the council. In view of the fact that the proportion of women in the population is more or less equal to men, it is essential that their representation on this important body be adequately raised. In order to enhance the role of women in Constitutional interpretation in the light of Sharia, women representation must be increased. This is especially important in cases where the matters under consideration have direct relevance to women (for instance, zina or unlawful sexual relations, or the so called "honour-killings").

This amendment bill aims to amend the current composition of the Council of Islamic Ideology by increasing minimum number of women from "one" to "one third" members of the Council.

The Bill seeks to achieve the above said objects.

SENATOR SEHAR KAMRAN
Member-In-Charge

