



SENATE SECRETARIAT

Report No. 08

REPORT OF THE SENATE STANDING COMMITTEE ON LAW AND JUSTICE



“THE CONSTITUTION (AMENDMENT) BILL 2018”

PRESENTED BY

**Senator Muhammad Javed Abbasi
Chairman
Standing Committee on Law and Justice**

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REPORT OF THE STANDING COMMITTEE ON LAW AND JUSTICE ON "THE CONSTITUTION (AMENDMENT) BILL 2018"

I, Chairman of the Standing Committee on Law and Justice, have the honour to present report on "The Constitution (Amendment) Bill 2018" introduced by Senator Muhammad Ali Khan Saif in the Senate sitting held on 14th May, 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	Chairman
2.	Senator Mian Raza Rabbani	Member
3.	Senator Farooq Hamid Naek	Member
4.	Senator Mir Hasil Khan Bizenjo	Member
5.	Senator Siraj ul Haq	Member
6.	Senator Syed Muzafar Hussain Shah	Member
7.	Senator Ayesha Raza Farooq	Member
8.	Senator Dr. Muhammad Farogh Naseem	Member
9.	Senator Musadik Masood Malik	Member
10.	Senator Dr. Ghous Muhammad Khan Niazi	Member
11.	Senator Mustafa Nawaz Khokar	Member
12.	Senator Sana Jamali	Member
13.	Senator Walid Iqbal	Member
14.	Minister for Law and Justice	Ex-officio Member

3. The Committee considered the Bill in its meeting held on 8th August, 2018, 5th September, 2018, 24th October, 2018, 21st December, 2018, 14th January, 2019, 22nd January, 2019, 12th February, 2019 and 5th March, 2019 under the Chairmanship of Senator Muhammad Javed Abbasi.

4. It is pertinent to mention that the Member-in-Charge did not attend any of the above-mentioned meetings and the Committee twice had to seek extension in the time for presentation of report from the House. The Committee also examined the Standing Order No. 2.23 and decided to consider the Bill in the absence of the Member-in-Charge and present a report in the House as ample opportunities of presenting and

defending the stance/ legislative proposal had already been provided to the member-in-Charge. Standing Order No. 2.23 is reproduced as under:-

"2.23 Where the mover whose legislative or non-legislative business is referred from the House to the Committee, fails to attend two consecutive Committee meetings in which his/her business is taken up on the agenda, the Committee may, if the mover absents himself from the third consecutive Committee meeting, despite telephonic intimations and Notices, the said matter may be taken up and disposed off in absence of the mover and a report in this context be laid in the House within the stipulated time period for which the matter was originally referred."

5. The Bill was finally considered in the meeting dated 5th March, 2019, which was attended by the following Members:-

i.	Senator Muhammad Javed Abbasi	Chairman
ii.	Senator Syed Muzafar Hussain Shah	Member
iii.	Senator Ayesha Raza Farooq	Member
iv.	Senator Dr. Ghous Muhammad Khan Niazi	Member
v.	Senator Sana Jamali	Member

6. The Committee took serious note of absence of the mover once again and given the fact that already three extensions of time period had been obtained from the House, decided that the Committee shall formulate its recommendations and present a report before the House within the given time period.

7. Secretary Ministry of Law and Justice briefed the Committee that the Bill is aimed at amending the Constitution of Islamic Republic of Pakistan to ensure relief to victims of incident of war in 1947, 1965 and 1971 and the management and control over the related properties. In this regard, it is pointed out that Constitution is the supreme document which provides for the fundamental and not the nitty-gritty and details are to be filled in by Acts of Parliament. Laws regarding the aforesaid properties are already in force like the Evacuee Trust Properties (Management and Disposal) Act, 1975 (XIII of 1975) and the Abandoned Properties (Management) Act, 1975 (XX of 1975). If required, the concerned Division i.e. the Cabinet Division may finalize the amendment in consultation with the Mover and thereafter a fresh Bill may be moved for amending the respective law.

8. The Cabinet Division, represented by Additional Secretary opposed the Bill on the following grounds:-

- i. Private Member Bill regarding proposed amendment of Article 24 of the Constitution was received in the Cabinet Division on 31.08.2018 vide Senate Secretariat Notice No. 17(1)/2018-21-C-I(4), dated 30.08.2018. Law and Justice Division was accordingly approached for consultation in terms of sub-rule (1) of the rule 28 of the Rules of Business, 1973. That Division vide their note No. 2878/2018-D&L, dated 19th September 2018 conveyed that:

“The provision proposed to be incorporated into the Constitution by the Mover should not be made part of the Constitution but shall be analyzed by Cabinet Division whether to be made part of the Acts of Parliament or not. The Acts relating to Evacuee Property/Abandoned Property are being administered by Cabinet Division and under Rules of Business, 1973 administrative Division have to take policy decision of opposing or supporting the proposed amendments in their relevant laws”.
- ii. We are bound by international commitment to manage and retain abandoned properties of former citizens, who later migrated to Bangladesh. Similarly in Bangladesh, Abandoned Properties (left by the Pakistanis) are managed under Bangladesh Abandoned Properties (Control, Management Disposal) Order, 1972. The matter is therefore, being taken up with the Ministry of Foreign Affairs to elicit their advice, whereafter the matter would be examined afresh.
- iii. Furthermore, as indicated in comments of the Law and Justice Division, Abandoned Properties Organization is already being governed under the Abandoned Properties (Taking over the Management) Act (XX of 1975), being administered through a Board of Trustees. Thus the proposition floated in the Private Members' Bill may result in legal and administrative complication. In view of above, Cabinet Division opposes the proposed amendment in Article 24 clause (3) of the Constitution of the Islamic Republic of Pakistan.
- iv. Keeping in view the international commitment and advice of Law Division, a Summary for the Prime Minister, being Minister-in-Charge of the Cabinet Division was submitted to seek his decision in terms of Sub Rule 3 of Rule 28 of the Rules of Business 1973, wherein it was stated that:-

“The abandoned Properties (Taking over and Management) Act (XX of 1975) has been enacted to provide for taking over and management of abandoned properties. The Abandoned Properties Organization consists of Board of Trustees, servants appointed under section 26 ibid. Since the Abandoned Properties Organization has been established through an Act of Parliament, it can only be wound up through an Act of Parliament. Abandoned Properties (Management) Act (XX of 1975) does not contain any provision for winding up of the Organization. It is for this reason that if the Abandoned Properties Organization is to be wound up then it can be wound up through an Act of Parliament which may provide for winding up of the Organization and transfer of its employees.”



9. The Members present supported the viewpoint taken by the Cabinet Division regarding the proposed amendment and hence did not support the Bill.

10. Accordingly, the Committee recommends that "The Constitution (Amendment) Bill, 2018" as introduced in the Senate, may not be passed by the House.
(Copy of Bill is annexed).



(RABEEA ANWAR)
J.S / Secretary Committee



(SENATOR MUHAMMAD JAVED ABBASI)
Chairman
Standing Committee on Law & Justice

[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 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 24 of the Constitution.- In the Constitution of the Islamic Republic of Pakistan, in Article 24, in clause (3), for paragraph (c), the following shall be substituted, namely:-

“(c) the subjects of the evacuee, enemy and abandoned properties stand transferred to an elected Board of seventeen members chosen by the relevant, affected victims and / or their legal heirs, whose similar properties were taken over by India in the aftermath 1947 and 1965 and by Bangladesh, after 1971:

Provided that till the members are chosen, the President shall nominate the members from amongst the Parliamentarians who qualify to be the members of the Board and Chief Justice, Supreme Court of Pakistan and Army Chief may also nominate two representatives each to be member of the Board.”

STATEMENT OF OBJECTS AND REASONS

The object of the amendment is to protect the affected victims of exodus, displacement, replacement and exchange of population whose properties were taken over similarly by the Governments of India and Bangladesh after the events in 1947, 1965 and 1971 respectively and ensure their participation in the affairs of the management and control over the properties taken over by the Government of Pakistan in exchange of their properties and for them.

2. The Bill seeks to achieve the above objective.

**SENATOR MUHAMMAD ALI KHAN SAIF
MEMBER-IN-CHARGE**