

# SENATE OF PAKISTAN



## REPORT NO. 6

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



#### **“THE CONSTITUTION (AMENDMENT) BILL, 2021”**

**(Amendment of Article 9)**

#### **PRESENTED BY**

**Senator Syed Ali Zafar**

**Chairman**

**Standing Committee on Law and Justice**

## SENATE SECRETARIAT

### REPORT OF THE STANDING COMMITTEE ON LAW AND JUSTICE ON "THE CONSTITUTION (AMENDMENT) BILL, 2021"

I, Senator Syed Ali Zafar, Chairman Standing Committee on Law and Justice, have the honor to submit, on behalf of the Committee, this report on "The Constitution (Amendment) Bill, 2021" (Amendment of Article 9) moved by Senator Saadia Abbasi, in the Senate sitting held on 12<sup>th</sup> July, 2021 and referred to the Committee for consideration and report.

2. The composition of the Committee is as under:-

1. Senator Syed Ali Zafar	Chairman
2. Senator Syed Shibli Faraz	Member
3. Senator Azam Nazeer Tarar	Member
4. Senator Mian Raza Rabbani	Member
5. Senator Farooq Hamid Naek	Member
6. Senator Syed Muzafar Hussain Shah	Member
7. Senator Kamran Murtaza	Member
8. Senator Muhammad Azam Khan Swati	Member
9. Senator Walid Iqbal	Member
10. Senator Manzoor Ahmed Kakar	Member
11. Senator Musadik Masood Malik	Member
12. Senator Samina Mumtaz Zehri	Member
13. Senator Mustafa Nawaz Khokhar	Member
14. Minister for Law and Justice	Ex-Officio Member

3. The Committee considered the Bill in its meeting held on 3<sup>rd</sup> November, 2021, under the Chairmanship of Senator Syed Ali Zafar, with the following in attendance:

1. Senator Farooq Hamid Naek	Member
2. Senator Muhammad Azam Khan Swati	Member
3. Senator Mustafa Nawaz Khokhar	Member
4. Senator Walid Iqbal	Member
5. Senator Musadik Masood Malik	Member

4. Senator Saadia Abbasi briefed the Committee about Bill and elaborated that Right of Bail should be a fundamental right. Anyone can be charged or accused of something, but that may not amount to conviction. To deny a person liberty merely because he is an accused denotes to punishment for an offence which is yet to be proven. This is evident from the cases dealt under NAB law whereby people are sent to jail without any proof of offence and bail is denied. Supreme Court has also laid down that "the object of bail is to ensure the attendance of accused at the trial. The object is neither punitive nor preventive. Hence, imprisonment of a person and deprivation of liberty cannot be described other than a punishment, unless no less restrictive alternative is available to ensure that the accused will stand his trial when called upon to do so." She further explained that if a person is accused of an offence and summoned by the Court of law, he has to face the trial. It is a practice everywhere in the world that for all sort of offences bail is granted by considering the gravity of the act. However, in Pakistan the accused is put behind bars for months and whenever the bail is granted the amount is very excessive that tantamounts to punitive measure.

5. Senator Azam Khan Swati referred to the Article 9 of the Constitution that reads; "no person shall be deprived of life or liberty, save in accordance with the law". He said that the American jurisprudence also prescribes that no person shall be deprived of life, liberty and pursuit of happiness without law. He further added that it has been practiced globally that liberty of the people is protected in accordance with law. He was of the view the Constitution has provided very comprehensive provision to address the issue through law and relevant laws already exist. Hence, there is no need of such amendment.

6. Senator Walid Iqbal identified that Bail and cruel and unusual punishments are two different issues, therefore the later ought to be dealt in Article 14 clause (1) of the Constitution. As far as the issue regarding right of bail is concerned, the real objective is to oblige the accused to attend the trial. He supported the concept of mover with respect to the recognition of bail as a right. He further recommended that the trial should go on and no one should be incarcerated rather movement can be restricted. Senator Farooq Hamid Naek stressed upon the need to read Article 9 carefully that states that life and liberty of a person shall not be barred except in accordance with law. The proposed amendment provides that, "any person charged with an offence shall not be denied bail except in accordance with law", which is similar to provisions of the existing Article of the Constitution. Additionally, Sections 497 and 498 of CrPC exist, in line with the provisions of Article 9, whereunder grounds and reasons of post and pre arrest bail, and provisions regarding surety are

addressed, and in case of excess, the court has all the right to reduce it. He also supported the view point of mover regarding NAB and said that section 24 of the NAB Ordinance empowers the Chairman NAB to arrest the accused during inquiry or investigation that contradicts the provisions of Article 9. Hence, the actual need is to amend the law not Constitution. He further referred to the maxim of Islamic jurisprudence whereby it is provided that "it is better that ten guilty persons go free than one innocent person is convicted".

7. Senator Musataf Nawaz Khokhar supported the view of Senator Farooq Hamid Naek and said that prosecution is not working in the country in the way it ought to. He further recommended that in order to address the subject matter of right to bail, amendments should be made in criminal laws of Pakistan.

8. Senator Musadik Masood Malik endorsed the proposed amendment, asserting that it is based on ground realities. However, there is a need of practical implementation of the suggestions given by other members of committee regarding amendments in laws.

9. The Chairman Committee enquired about the interpretation of the phrase "cruel and unusual punishment". He explained that many judgments of the Supreme Court indicate that under trial bail should not be barred unless there is a reason to refuse it. He also noted that significant jurisprudence and case law is available on the subject that no person shall be deprived of life and liberty save in accordance with law.

10. After detailed deliberations, the Chairman put the Bill to vote, whereupon it was rejected by majority vote except Senator Musadik Masood Malik, who voted in favor. Accordingly, the Committee recommended that the Constitution Amendment Bill, 2021 (Amendment of Article 9) moved by Senator Saadia Abbasi may not be passed by the Senate. Copy of the Bill is annexed.

  
(Haris Rehman)  
DS / Secretary Committee

  
(Senator Syed Ali Zafar)  
Chairman, Standing Committee on Law and Justice

*As*  
**[~~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, 2021.

(2) It shall come into force at once.

**2. Amendment of Article 9 of the Constitution.-** In the Constitution of the Islamic Republic of Pakistan, in Article 9,-

- (i) In the marginal note, after the words "Security of person", the words "and right to bail and personal liberty", shall be inserted; and
- (ii) the existing clause after the marginal note as amended shall be numbered as "(1)", and thereafter the following new clauses shall be inserted, namely:-

"(2) Any person charged with an offence shall not be denied bail except in accordance with law.

(3) Excessive bail shall not be required nor excessive fines imposed, nor cruel and unusual punishments inflicted."

**STATEMENT OF OBJECTS AND REASONS**

The vital importance of personal liberty cannot be denied in a civilized world. Deprivation of liberty of an individual must be founded on the most serious considerations relevant to welfare objectives of the society as envisaged in Article (s) 9, 14 and 25 of the Constitution of the Islamic Republic of Pakistan. The August Supreme Court of Pakistan has laid down that, "The object of bail is to ensure the attendance of accused at the trial. This object is neither punitive nor preventive. Hence, imprisonment of a person and deprivation of liberty cannot be described other than punishment, unless no less restrictive alternative is available to ensure that the accused will stand his trial when called upon to do so".



This amendment in the Constitution aims at provision of grant of bail as a matter of "Fundamental Right" to ensure that personal liberty is not curbed except in accordance with the procedures established by law in order to strike a balance between the right to individual liberty and the interest of society.

**SENATOR SADIA ABBASI  
MEMBER-IN-CHARGE**