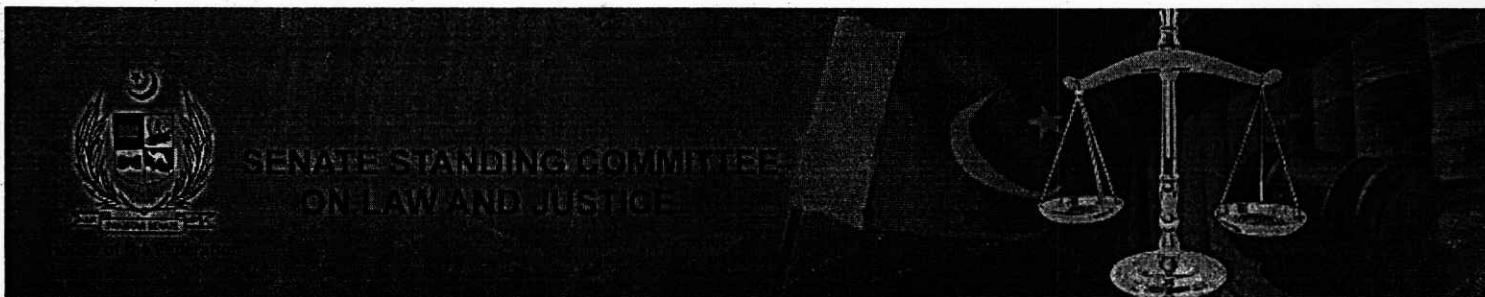


SENATE OF PAKISTAN



REPORT NO. 7

REPORT OF THE SENATE STANDING COMMITTEE ON LAW AND JUSTICE



“THE CONSTITUTION (AMENDMENT) BILL, 2021”

(Insertion of Article 24A)

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" (Insertion of Article 24A) moved by Senator Saadia Abbasi, in the Senate sitting held on 12th 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 3rd 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

6. Senator Samina Mumtaz Zehri

Member

7. Senator Saadia Abbasi

Member In-Charge

4. Senator Saadia Abbasi explained the proposed amendment and informed the Committee that the subject matter addresses the issue of right to inheritance for women and recognizes it as a fundamental right. She briefed the Committee that unfortunately in the country this right is denied, curtailed, overlooked, and through intimidation and coercion circumscribed to the detriment of female family members, and is the story of almost every second household. The right to inheritance for women is a divine right and relates to their dignity. Hence, this right should be recognized as a fundamental right in the Constitution as the denial of that right shall entail consequences which can reach up to the Supreme Court to take cognizance. Honorable Senator further stressed upon the importance of instant amendment and explained that the Constitution provides two types of rights i.e. the constitutional and the fundamental rights. She added that Article 199 can be invoked for the adjudication of constitutional rights, on the other hand in case of violation of fundamental rights the Supreme Court can be approached directly.

5. Senator Azam Khan Swati opposed the amendment and informed that the government has already enacted the "Enforcement of Women's Property Rights Act, 2020", to address the need of protection of inheritance rights of women. He added that the Constitution should provide a gist to explain the rights rather than detailed provisions. He informed that the subject right is already provided in the Constitution and relevant laws provide penalties for whoever denies and bars its execution. Hence, the purpose of implementation of the right to inheritance has already been served through legislation.

6. Senator Mustafa Nawaz Khokhar supported the amendment and pointed out that despite opposition from Ministry of Law & Justice, the Ministry of Human Rights has supported the said amendment in the comments provided to the Committee. It was further deliberated by him that it has become a cultural practice in Pakistan that women are denied of their rights in inheritance. According to him, there was a need to reinforce this right as fundamental right, in harmony with the international commitments such as CEDAW, so as to open an avenue for women to invoke the redressal of violation of their fundamental right under the provisions of Article 184(3) of the Constitution.

7. Senator Farooq Hamid Naek asserted that there was a need to review the amendment in the light of Constitution. As far as deprivation of women from their rights is concerned, the laws addressing this particular issue already exist, such as Muslim family Laws Ordinance, 1961 and Enforcement of Women's Property Rights Act, 2020. He added that in the instant amendment mere

deprivation of women from their right of inheritance is made a reason to recognize it as a fundamental right. This right is a directory right not a mandatory one without penalty. However, Article 25 of Constitution addresses the issue and provides that special provisions regarding women shall be made. As far as invoking Article 184(3) is concerned, the grounds must be related to public importance, but in the instant case the issue pertains to personal matter. He recommended that the actual need was to address this issue in the laws dealing with inheritance. Stringent measures to be taken by prescribing penalties to ensure the implementation of such laws. Considering the aforesaid, he opposed the amendment.

8. Senator Musadik Masood Malik elaborated that there is no harm in insertion of this right into the Chapter of fundamental rights, if the same is already accorded and articulated in Islam. He further said that it would rather reaffirm the importance of this right. The dynamism of the Constitution is articulated in such a way to address the issues of society. If the laws made for women had provided sufficient remedy, the discussion on this issue would not have been required. The exploitation of women with respect to their rights in Pakistan is self-evident, which gives rise to the need to enshrine this right in the Constitution as fundamental right. Senator Walid Iqbal, expressed his support to the view point of Ministry of Law and Justice and opposed the amendment.

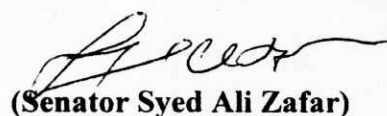
9. The Chairman Committee noted that laws exist to address the issue but the question is whether such right ought to be recognized as a fundamental right or not. He also held that the purpose of Article 184(3) is to provide a remedy for issues related to public at large, not to a particular person, therefore the purpose of providing a speedy remedy from the Supreme Court in inheritance matters by including it in fundamental rights will not be served.

10. The Ministry of Law & Justice was of the view that section 498A of PPC provides punishment for denial of women's right to inheritance. Furthermore, the Enforcement of Women Property Rights Act, 2020, also provides remedies and mechanism for such issues.

11. After detailed deliberations, the Chairman put the Bill to vote, whereupon it was rejected by majority vote except Senator Musadik Masood Malik and Senator Mustafa Nawaz Khokhar, who voted in the favor. Accordingly, the Committee recommended that the Constitution Amendment Bill, 2021 (Insertion of Article 24A) 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]

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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. Insertion of new Article 24A in the Constitution.- In the Constitution of the Islamic Republic of Pakistan, after Article 24, the following new Article shall be inserted, namely:-

"24A. Right of Women to inheritance.- No Women shall be deprived of her share from inheritance in Pakistan."

STATEMENT OF OBJECTS AND REASONS

Islam has prescribed well-defined shares for the male and female descendants of a deceased person. The Quran clearly states: "Men shall have a share in what parents and kinsfolk leave behind, and women shall have a share in what parents and kinsfolk leave behind." (Quran, Surah Al-Nisha 4:7) Islamic law (Shariah) entitles women to inherit immovable and movable property, yet the practice has been to deny women their share in inheritance, particularly, in the matter of landed estates where their entire claim is often denied and male heirs tend to enjoy the right of receiving almost all the assets of the deceased. It is an undeniable reality, and unjustified practice that it has become a norm that women either do not receive legal inheritance, or are obliged to surrender their legal rights. The purpose of this amendment is to acknowledge, declare, and assert the right of women in inheritance as a Fundamental Right in consonance with Principles of Islam and Article 23, and Article 24 of Constitution of Islamic Republic of Pakistan.

SENATOR SADIA ABBASI
MEMBER-IN-CHARGE