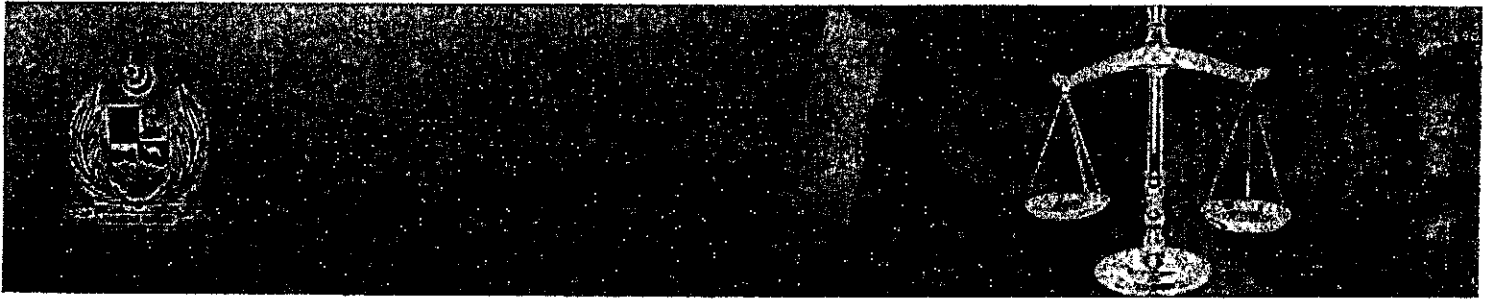


# SENATE OF PAKISTAN



## REPORT NO. 13

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



#### **“THE CONSTITUTION (AMENDMENT) BILL, 2022”**

**(Amendment of Articles 175A, 181, 182, 183, 184, 195, 196, 197 and 209)**

#### **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, 2022"

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, 2022" (Amendment of Articles 175A, 181, 182, 183, 184, 195, 196, 197 and 209) moved by Senator Farooq Hamid Naek, in the Senate sitting held on 17<sup>th</sup> January, 2022 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 9th March 2022, under the Chairmanship of Senator Syed Ali Zafar, with the following in attendance:

1. Senator Farooq Hamid Naek	Member
2. Senator Manzoor Ahmed Kakar	Member
3. Senator Kamran Murtaza	Member

4. The Chairman Committee directed for clause by clause reading of the Bill and asked Senator Farooq Hamid Naek to explain the proposed amendments. Senator Farooq Naek briefed the

Committee that amendments proposed in Article 175A were about appointment of judiciary based on seniority. Upon the question of appointment on the basis of seniority without competency; the Member deliberated that it would be travesty of justice, if a judge has served the High Court for ten years and not considered for appointment in the Apex Court on the grounds of being unfit for such position. After detailed discussion, it was unanimously decided by the Committee that the condition of fitness ought to be added with seniority in the proposed amendment in Article 175A. Senator Farooq Naek further described that amendment in Article 181 was proposed to prescribe the role of Parliamentary Committee in appointment of temporary judges to which the Committee agreed. As regard to amendment in Article 182; the Chairman Committee and members agreed upon the proposed draft as the same was also conferring the role of Parliamentary Committee in appointment of Ad-hoc judges.

5. Amendment in Article 184 was discussed in detail and Senator Kamran Murtaza proposed to amend and substitute the prescribed limit of "five judges" with "seven Judges", to which the Chairman Committee and members agreed. Further, the Amendment in Article 195 was not agreed upon by the Committee and it was unanimously decided to be omitted. As far as the proposed amendment in 196 is concerned, Senator Farooq Naek informed the Committee that it has been prescribed that in case of the vacancy of the seat of Chief Justice, the senior most Judge of the High Court to be appointed as an acting Chief Justice by the President. The Ministry of Law and Justice objected the amendment in Article 196, by saying that such mandate might create practical difficulty in its execution. However, the Committee took the view point of Senator Farooq Naek by adding the recommendation of Senator Kamran Murtaza, that the word "available" to be added before the words "senior most".

6. Last but not the least, the Committee unanimously proposed that the amendment in Clause 3 of Article 209 ought to be placed in clause 5 of the same Article. After thorough deliberations as provided above, following amendments were proposed in the Bill:


In the Constitution (Amendment) Bill, 2022;


- i. **"2. Amendment of Article 175A of the Constitution.-** In the Constitution of the Islamic Republic of Pakistan, hereinafter referred to as "the Constitution", in Article 175A, before the words "seniority" the words "**fitness and seniority**" shall be inserted."
- ii. **" 6. Amendment of Article 184 of the Constitution.-** In the Constitution, in Article 184, in the proviso, for the words "five judges", the words "**seven judges**" shall be substituted."

- iii. Clause 7, shall be omitted , and the clauses occurring thereafter shall be renumbered, accordingly.
- iv. "7. Amendment of Article 196 of the Constitution.- In the Constitution, in Article 196, for the words "the senior most" the words " the available senior most" shall be substituted."
- v. "9. Amendment of Article 209 of the Constitution.- In the Constitution, in Article 209, for the words "clause 3" the words "clause 5" shall be substituted."

7. After discussion, the Chairman Committee put the Bill to vote. With the above amendments, the Bill was passed unanimously. The Committee recommended that "The Constitution (Amendment) Bill, 2022" as reported by the Committee may be passed by the Senate of Pakistan. The Committee also gave approval for presentation of this report to the House.

8. The Bill as reported by the Committee is at Annex-A, and the Bill as introduced in the Senate is at Annex-B.

  
(Hammad Khan Marri)  
D.S / Secretary (Committee)

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

**[AS REPORTED BY THE COMMITTEE]****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 175A of the Constitution.-** In the Constitution of the Islamic Republic of Pakistan, hereinafter referred to as "the Constitution", in Article 175A, in clause (3), after the words "Chief Justice of Pakistan" the words "and other Judges of the Supreme Court in accordance with their **fitness and seniority** which shall be determined with reference to their dates of appointment as a Judge of the High Court and in case the dates of appointment are the same with reference to their age." shall be inserted.

**3. Amendment of Article 181 of the Constitution.-** In the Constitution, in Article 181, after the words "clause (1) of Article 177" the words "and subject to confirmation by the Parliamentary Committee" shall be inserted.

**4. Amendment of Article 182 of the Constitution.-** In the Constitution, in Article 182;

(a) in paragraph (a) after the words "the President," the words "and subject to confirmation by the Parliamentary Committee" be inserted; and

(b) in paragraph (b) after the words "require a Judge" the words "or Chief Justice" be inserted.

**5. Amendment of Article 183 of the Constitution.-** In the Constitution, in Article 183;

- (a) in clause (1), the words, commas, figure and brackets ", subject to clause (3)," shall be omitted; and
- (b) clause (3) shall be omitted.

**6. Amendment of Article 184 of the Constitution.-** In the Constitution, in Article 184, in clause (3), for the full-stop "." at the end, a colon ":" shall be substituted and thereafter the following provisos shall be inserted, namely:-

"Provided that such an order shall be made by a bench of three judges of the Supreme Court and an appeal therefrom, filed within thirty days, shall be heard by a bench of **seven** Judges of the Supreme Court to be decided within sixty days:

Provided further that if an appeal against an order under this Article has been made, the order appealed against shall not be implemented pending decision of the appeal."

**7. Amendment of Article 196 of the Constitution.-** In the Constitution, in Article 196, for the words and comma "one of the other judges of the High Court, or may request one of the Judges of the Supreme Court", the words "the **available senior most** Judge of the High Court" shall be substituted.

**8. Amendment of Article 197 of the Constitution.-** In the Constitution, in Article 197, in paragraph (c), after the words "the President may", the words and comma "subject to confirmation by the Parliamentary Committee," shall be inserted.

**9. Amendment of Article 209 of the Constitution.-** In the Constitution, in Article 209, in clause (5), for the full-stop at the end "." a colon ":" shall be substituted and thereafter the following proviso shall be inserted, namely:-

"Provided that the Council shall inquire into the capacity or conduct of a Judge to remain as such within a period of ninety days from the receipt of information from any source or the President of Pakistan and thereafter forward its report to the President in accordance with clause (6)."

### **STATEMENT OF OBJECT AND REASONS**

The amendment in Article 175A pertains to the appointment of Judges to the Supreme Court which is purposed to be done in according with their seniority calculated from their date of appointment as a Judge of the High Court. Articles 181 and 182 have also been amended to ensure that the input of the Parliamentary Committee is present during the appointment of Acting and Ad-hoc Judges. The amendment in Article 183(1) updates the transitory provision and Article 183(3) has been omitted being now redundant. The amendment in Article 184(3) provides a mechanism for an appeal against an order passed under the said Article. The amendment in Article 195 further removes the discrimination between the ages of retirement of a Supreme Court and High Court Judge. The amendments in Articles 196 and 197 provide for clarity in appointment of an acting Chief Justice and additional Judges and include the role of the Parliamentary Committee. The amendment in Article 209 provides for a time limit for the decision of the Supreme Judicial Council. All of the above is in furtherance of principles of policy to ensure a fair and organized system of Judicial Appointments and in turn to improve the Justice system in Pakistan.

**SENATOR FAROOQ HAMID NAEK  
MEMBER-IN-CHARGE**

[TO BE INTRODUCED IN THE SENATE]

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*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 175A of the Constitution.-** In the Constitution of the Islamic Republic of Pakistan, hereinafter referred to as "the Constitution", in Article 175A, in clause (3), after the words "Chief Justice of Pakistan" the words "and other Judges of the Supreme Court in accordance with their seniority which shall be determined with reference to their dates of appointment as a Judge of the High Court and in case the dates of appointment are the same with reference to their age." shall be inserted.

**3. Amendment of Article 181 of the Constitution.-** In the Constitution, in Article 181, after the words "clause (1) of Article 177" the words "and subject to confirmation by the Parliamentary Committee" shall be inserted.

**4. Amendment of Article 182 of the Constitution.-** In the Constitution, in Article 182;

- (a) in paragraph (a) after the words "the President," the words "and subject to confirmation by the Parliamentary Committee" be inserted; and
- (b) in paragraph (b) after the words "require a Judge" the words "or Chief Justice" be inserted.



**5. Amendment of Article 183 of the Constitution.-** In the Constitution, in Article 183;

- (a) in clause (1), the words, commas, figure and brackets “, subject to clause (3),” shall be omitted; and
- (b) clause (3) shall be omitted.

**6. Amendment of Article 184 of the Constitution.-** In the Constitution, in Article 184, in clause (3), for the full-stop “.” at the end, a colon “:” shall be substituted and thereafter the following provisos shall be inserted, namely:-

“Provided that such an order shall be made by a bench of three judges of the Supreme Court and an appeal therefrom, filed within thirty days, shall be heard by a bench of five Judges of the Supreme Court to be decided within sixty days:

Provided further that if an appeal against an order under this Article has been made, the order appealed against shall not be implemented pending decision of the appeal.”

**7. Amendment of Article 195 of the Constitution.-** In the Constitution, in Article 195, for the words “sixty-two years”, the words “sixty-five years” shall be substituted.

**8. Amendment of Article 196 of the Constitution.-** In the Constitution, in Article 196, for the words and comma “one of the other judges of the High Court, or may request one of the Judges of the Supreme Court”, the words “the senior most Judge of the High Court” shall be substituted.

**9. Amendment of Article 197 of the Constitution.-** In the Constitution, in Article 197, in paragraph (c), after the words “the President may”, the words and comma “subject to confirmation by the Parliamentary Committee,” shall be inserted.

**10. Amendment of Article 209 of the Constitution.-** In the Constitution, in Article 209, in clause (3), for the full-stop at the end “.” a colon “:” shall be substituted and thereafter the following proviso shall be inserted, namely:-

“Provided that the Council shall inquire into the capacity or conduct of a Judge to remain as such within a period of ninety days from the receipt of information from any source or the President of Pakistan and thereafter forward its report to the President in accordance with clause (6).”

**STATEMENT OF OBJECT AND REASONS**

The amendment in Article 175A pertains to the appointment of Judges to the Supreme Court which is purposed to be done in according with their seniority calculated from their date of appointment as a Judge of the High Court. Articles 181 and 182 have also been amended to ensure that the input of the Parliamentary Committee is present during the appointment of Acting and Ad-hoc Judges. The amendment in Article 183(1) updates the transitory provision and Article 183(3) has been omitted being now redundant. The amendment in Article 184(3) provides a mechanism for an appeal against an order passed under the said Article. The amendment in Article 195 further removes the discrimination between the ages of retirement of a Supreme Court and High Court Judge. The amendments in Articles 196 and 197 provide for clarity in appointment of an acting Chief Justice and additional Judges and include the role of the Parliamentary Committee. The amendment in Article 209 provides for a time limit for the decision of the Supreme Judicial Council. All of the above is in furtherance of principles of policy to ensure a fair and organized system of Judicial Appointments and in turn to improve the Justice system in Pakistan.

**SENATOR FAROOQ HAMID NAEK  
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