

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, in the manner and for the purposes hereinafter appearing;

It is hereby enacted as follows:-

1. **Short title and commencement.-** (1) This Act shall be called the Constitution (Twenty-sixth Amendment) Act, 2024.

(2) This Act shall come into force at once.

2. **Insertion of new Article 9A of the Constitution.-** In the Constitution of the Islamic Republic of Pakistan, hereinafter called as the Constitution, after Article 9, the following new Article 9A shall be inserted, namely:-

"9A. Clean and healthy environment.- Every person shall be entitled to a clean, healthy and sustainable environment."

3. **Amendment of Article 48 of the Constitution.-** In the Constitution, in Article 48, for clause (4), the following shall be substituted, namely:-

"(4) The question whether any, and if so what, advice was tendered to the President by the Cabinet, or the Prime Minister, shall not be inquired into in, or by, any court, tribunal or other authority."

4. **Amendment of Article 81 of the Constitution.-** In the Constitution, in Article 81,-

(i) in paragraph (b), for the words "Supreme Court", the expression "Supreme Court, the Judicial Commission of Pakistan, the Supreme Judicial Council" shall be substituted; and

(ii) in paragraph (d), the word "and" shall be omitted and thereafter the following new paragraph shall be inserted, namely:-

"(da) any sums required to organize and conduct elections to the National Assembly, Senate, Provincial Assemblies and the local governments; and"

5. **Amendment of Article 111 of the Constitution.**- In the Constitution, in Article 111, after the expression "The Advocate-General", the expression "and an Adviser appointed under clause (11) of Article 130" shall be inserted.

6. **Amendment of Article 175A of the Constitution.**- In the Constitution, in Article 175A,—

- (i) in clause (1), after the expression "Shariat Court," the expression "and for performance evaluation of Judges of the High Courts," shall be inserted;
- (ii) for clause (2), the following shall be substituted, namely:-

"(2) For appointment of Judges of the Supreme Court, the Commission shall consist of-

(i)	Chief Justice of Pakistan;	<i>Chairperson</i>
(ii)	three most senior Judges of the Supreme Court;	<i>Members</i>
(iii)	Most senior Judge of the Constitutional Benches;	<i>Member</i>
(iv)	Federal Minister for Law and Justice;	<i>Member</i>
(v)	Attorney-General for Pakistan;	<i>Member</i>
(vi)	an advocate having not less than fifteen years of practice in the Supreme Court to be nominated by the Pakistan Bar Council for a term of two years;	<i>Member</i>
(vii)	two members from the Senate and two members from the National Assembly of whom two shall be from the Treasury Benches, one from each House, and two from the Opposition Benches, one from each House. The nomination from the Treasury Benches shall be made by the Leader of the House and from the Opposition Benches by the Leader of the Opposition. Provided that during the time when the National Assembly stands dissolved, the remaining two members, for the purpose of this paragraph, shall be nominated from the Senate in the manner as aforesaid, for such period;	<i>Members</i>
(viii)	a woman or non-Muslim, other than a member of <i>Majlis-e-Shoora</i> (Parliament), who is qualified to be a member of the Senate as a technocrat, to be nominated by the Speaker of the National Assembly for a term of two years;	<i>Member</i>

Explanation.- If the most senior Judge of the Constitutional Benches is the Chief Justice of Pakistan or is from amongst the Judges in paragraph (ii) of clause

(2), the Judge who is next in seniority below the Judges referred in paragraph (ii) of clause (2) shall become member of the Commission.”;

(iii) for clause (3), the following shall be substituted, namely:—

“(3) Notwithstanding anything contained in clause (1), or clause (2), the Chief Justice of Pakistan shall be nominated by the Special Parliamentary Committee, in this Article referred to as the Committee, from amongst the three most senior Judges of the Supreme Court. The Committee shall send the name of the nominee to the Prime Minister who shall forward the same to the President for appointment:

Provided that where the nominee under this clause declines a Judge from the remaining Judges amongst the three most senior Judges shall be considered and nominated:

Provided further that where the nominee under first proviso also declines the next most senior Judge if he is not from amongst the three most senior Judges shall be considered and nominated by the Committee and so on till the nominee under this clause is appointment as the Chief Justice of Pakistan.”;

(iv) after clause (3), substituted as aforesaid, the following new clauses shall be inserted, namely:—

“(3A) The Committee shall consist of the following twelve members, namely:—

- (i) eight members from the National Assembly; and
- (ii) four members from the Senate:

Provided that when the National Assembly stands dissolved, the total membership of the Committee shall consist of the members from the Senate only mentioned in paragraph (ii) and the provisions of this Article shall, *mutatis mutandis*, apply.

(3B) The Parliamentary Parties shall have proportional representation on the Committee, based on their strength in *Majlis-e-Shoora* (Parliament), to be nominated by their respective Parliamentary

Leaders. The Chairman and the Speaker of the National Assembly, as the case may be, shall notify members of the Committee.

(3C) The Committee, by the majority of not less than two-thirds of its total membership, within fourteen days prior to the retirement of the Chief Justice of Pakistan shall send the nomination as provided in clause (3):

Provided that the first nomination under clause (3), after commencement of the Constitution (Twenty-sixth Amendment) Act, 2024 (of 2024), shall be sent within three days prior to the retirement of the Chief Justice of Pakistan.

(3D) No action or decision taken by the Commission or the Committee shall be invalid or called in question only on the ground of existence of a vacancy therein or of the absence of any member from any meeting thereof.

(3E) The meetings of the Committee shall be held in camera and the record of its proceedings shall be maintained.

(3F) The provisions of Article 68 shall not apply to the proceedings of the Committee.

(3G) The Committee may make rules for regulating its procedure.”;

(v) for clause (4), the following shall be substituted, namely:—

“(4) The Commission may make rules regulating its procedure including the procedure and criteria for assessment, evaluation and fitness for appointment of Judges.”;

(vi) in clause (5),—

(A) in paragraph (ii), for the words “the most senior Judge of that High Court”, the words “Head of Constitutional Benches of that High Court” shall be substituted;

(B) in paragraph (iv), for the colon, occurring for the first time, a full stop shall be substituted and thereafter the following explanation shall be inserted, namely:—

"Explanation.- If Head of Constitutional Benches of a High Court is the Chief Justice of that High Court, the Judge who is next in seniority shall become member of the Commission:"

- (C) for the first proviso, the following shall be substituted, namely:-

"Provided that for appointment of the Chief Justice of a High Court the Judge mentioned in paragraph (ii), if he is the most senior Judge of a High Court, shall not be member of the Commission:"
and

- (D) in the second proviso, for the expression "Chief Justice of Pakistan in consultation with the four member Judges of the Commission mentioned in paragraph (ii) of clause (2)", the word "Commission" shall be substituted; and

- (E) in the second proviso, amended as aforesaid, for the full stop at the end a colon shall be substituted and thereafter, the following new proviso shall be added, namely,

"Provided also that the amendments in paragraph (ii) and first proviso shall take effect on coming into force of Article 202A for the respective High Courts."

- (vii) in clause (6),-

- (A) in paragraph (i), the word "and" shall be omitted;

- (B) in paragraph (ii), for the words "the most senior Judge of that High Court", the words "Head of the Constitutional benches of that High Court" shall be substituted;

- (C) in paragraph (ii), for the colon, a semi colon shall be substituted and thereafter, the following new paragraphs shall be added, namely

(iii)	an advocate having not less than fifteen years of practice in the High Court to be nominated by the Islamabad Bar Council for a term of two years; and	<i>Member.</i>
(iv)	a Federal Minister nominated by the Prime Minister:	<i>Member";</i>

- (D) in the second proviso, after the expression "Courts, the", the words "Explanation and" shall be inserted.

- (viii) for clause (8), the following shall be substituted, namely:-

"(8) The Commission, by the majority of its total membership, shall nominate one person for each vacancy of a Judge in the Supreme Court, a High Court or the Federal Shariat Court, as the case may be, to the Prime Minister who shall forward the same to the President for appointment."

- (ix) clauses (9) and (10) shall be omitted;

- (x) in clause (11), for the word "Senate", the word "National Assembly" shall be substituted;

- (xi) clauses (12), (13), (14), (15), (16) and (17) shall be omitted; and

- (xii) after clause (17), omitted as aforesaid, the following new clauses shall be added, namely:-

"(18) The Commission in clause (2) shall conduct an annual performance evaluation of Judges of the High Courts.

(19) If the performance of a Judge of a High Court is found by the Commission to be inefficient, it shall grant him such period for improvement, as it deems appropriate. If, upon completion of the period so

granted, the performance of such Judge is again found to be inefficient, the Commission shall send its report to the Supreme Judicial Council.

(20) The Commission may make separate rules for setting up effective standards for performance evaluation for the purpose of clauses (18) and (19).

(21) For the purposes of this Article and subject to the rules made by the Commission, there shall be a secretariat of the Commission to be headed by a secretary and shall include such other officers and staff as may be necessary.

(22) One-third of the members of the Commission may requisition a meeting of the Commission by sending a written request to the Chairperson who shall convene the meeting of the Commission not later than fifteen days from the receipt of such requisition. If the Chairperson fails to convene a meeting within the aforesaid period, the secretary shall convene the meeting within seven days of the expiry of the aforesaid period.

(23) For each anticipated or actual vacancy of a Judge in the Supreme Court, the Chief Justice of the Federal Shariat Court, the Chief Justice of a High Court, a Judge in the Federal Shariat Court or a Judge in a High Court, any member of the Commission may give nominations in the Commission for appointment against such vacancy."

7. Amendment of Article 177 of the Constitution:- In the Constitution, in Article 177, for clause (2), the following shall be substituted, namely:-

"(2) A person shall not be appointed as Judge of the Supreme Court unless he is a citizen of Pakistan and-

(a) has for a period of, or for periods aggregating, not less than five years been a Judge of a High Court; or

(b) has, for a period of not less than fifteen years, been an advocate of a High Court and is an advocate of the Supreme Court.

8. **Amendment of Article 179 of the Constitution.**- In the Constitution, in Article 179, for full stop at the end, a colon shall be substituted and thereafter the following provisos shall be added, namely:-

"Provided that the term of the Chief Justice of Pakistan shall be three years or unless he sooner resigns or attains the age of sixty-five years or is removed from his office in accordance with the Constitution, whichever is earlier:

Provided further that the Chief Justice of Pakistan on completion of his term of three years shall stand retired notwithstanding his age of superannuation."

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

"Provided that the Supreme Court shall not make an order or give direction or make a declaration on its own or in the nature of *suo motu* exercise of jurisdiction beyond the contents of any application filed under this clause."

10. **Amendment of Article 185 of the Constitution.**- In the Constitution, in Article 185, in clause (2), in paragraph (d), for the words "fifty thousand", the words "one million" shall be substituted.

11. **Substitution of Article 186A of the Constitution.**- In the Constitution, for Article 186A, the following shall be substituted, namely:-

"186A. **Power of Supreme Court to transfer cases.**- The Supreme Court may, if it considers it expedient to do so in the interest of justice, transfer any case, appeal or other proceedings, pending before any High Court to any other High Court or to itself."

12. **Amendment of Article 187 of the Constitution.**- In the Constitution, in Article 187, in clause (1), for full stop at the end, a colon shall be substituted and thereafter the following proviso shall be added, namely:-

"Provided that no order under this clause shall be passed otherwise than in pursuance of any jurisdiction vested in and exercised by the Supreme Court."

13. Insertion of new Article 191A of the Constitution.- In the Constitution, after Article 191, the following new Article 191A shall be inserted, namely:-

"191A. Constitutional Benches of the Supreme Court.- (1) There shall be Constitutional Benches of the Supreme Court comprising such Judges of the Supreme Court and for such term as may be nominated and determined by the Judicial Commission of Pakistan from time to time:

Provided that the Constitutional Benches may comprise equal number of Judges from each Province.

(2) The most senior Judge amongst Judges nominated under clause (1) shall be the most senior Judge of the Constitutional Benches.

(3) ~~No Bench of the Supreme Court other than a Constitutional Bench~~ shall exercise following jurisdictions vested in the Supreme Court, namely:-

- (a) original jurisdiction of the Supreme Court under Article 184;
- (b) appellate jurisdiction of the Supreme Court under clause (3) of Article 185, where a judgment or order of a High Court involves constitutionality of any law or a substantial question of law as to the interpretation of the Constitution; and
- (c) advisory jurisdiction of the Supreme Court under Article 186.

(4) For the purposes of clause (3), a Bench consisting of not less than five Judges, to be nominated by a committee comprising the most senior Judge of the Constitutional Benches and next two most senior Judges from amongst the Judges nominated under clause (1), shall hear and dispose of such matters.

(5) All petitions, appeals or review applications against judgments rendered or orders passed, to which clause (3) applies, pending or filed in the Supreme Court prior to commencement of the Constitution (Twenty-sixth Amendment) Act, 2024 (of 2024), forthwith stand transferred to the Constitutional Benches and shall only be heard and decided by Benches constituted under clause (4).

(6) Notwithstanding anything contained in the Constitution but subject to law, the Judges nominated under clause (1) may make rules regulating the practice and procedure of the Constitutional Benches."

14. Amendment of Article 193 of the Constitution.- In the Constitution, in Article 193, for clause (2), the following shall be substituted, namely:-

"(2) A person shall not be appointed as a Judge of a High Court unless he is a citizen of Pakistan, is not less than forty years of age, and-

- (a) he has, for a period of not less than ten years, been an advocate of a High Court; or
- (b) he has, for a period of not less than ten years, held a judicial office in Pakistan.

Explanation.- In computing the period during which a person has been an advocate of a High Court or has held judicial office, there shall be included any period during which he has held judicial office after he became an advocate or, as the case may be, the period during which he has been an advocate after having held judicial office."

15. Amendment of Article 199 of the Constitution.- In the Constitution, in Article 199, after clause (1), the following new clause (1A) shall be inserted, namely:-

"(1A) For removal of doubt, the High Court shall not make an order or give direction or make a declaration on its own or in the nature of *suo motu* exercise of jurisdiction beyond the contents of any application filed under clause (1)."

16. Insertion of Article 202A of the Constitution.- In the Constitution, after Article 202, the following new Article 202A shall be inserted, namely:-

"202A. Constitutional Benches of High Courts.- (1) There shall be Constitutional Benches of a High Court comprising such Judges of a High Court and for such term as may be nominated and determined by the Judicial Commission of Pakistan as constituted under clause (5) of Article 175A, from time to time:

(2) The most senior Judge amongst Judges nominated under clause (1) shall be the Head of the Constitutional Benches.

(3) No Bench of a High Court other than a Constitutional Bench shall exercise jurisdiction vested in the High Court under sub-paragraph (i) of paragraph (a) and paragraph (c) of clause (1) of Article 199.

(4) For the purposes of clause (1), a Bench to be nominated by a committee comprising the Head of the Constitutional Benches and next

two most senior Judges from amongst the Judges nominated under clause (1), shall hear and dispose of such matters.

(5) All petitions under sub-paragraph (i) of paragraph (a) and paragraph (c) of clause (1) of Article 199 or appeals therefrom, pending or filed in a High Court prior to commencement of the Constitution (Twenty-sixth Amendment) Act, 2024 (of 2024), forthwith stand transferred to the Constitutional Benches and shall only be heard and decided by Benches constituted under clause (4).

(6) Notwithstanding anything contained in the Constitution but subject to an Act of *Majlis-e-Shoora* (Parliament) in respect of the Islamabad High Court and an Act of Provincial Assembly in respect of other respective High Courts, a High Court may make rules regulating the practice and procedure of the Constitutional Benches.

17. Amendment of Article 208 of the Constitution:- In the Constitution, in Article 208, for the words "Supreme Court and the Federal Shariat Court", the expression "Supreme Court, the Federal Shariat Court and the Islamabad High Court" shall be substituted.

18. Substitution of Article 209 of the Constitution - In the Constitution, for Article 209, the following shall be substituted, namely:-

"209. Supreme Judicial Council:- (1) There shall be a Supreme Judicial Council of Pakistan, in this Chapter referred to as the Council.

(2) The Council shall consist of-

- (a) the Chief Justice of Pakistan;
- (b) the two next most senior Judges of the Supreme Court; and
- (c) the two most senior Chief Justices of the High Courts.

Explanation.- For the purpose of this clause, the *inter se* seniority of the Chief Justices of the High Courts shall be determined with reference to their dates of appointment as Chief Justice otherwise than as acting Chief Justice, and in case the dates of such appointment are the same, with reference to their dates of appointment as Judges of the High Courts.

(3) If at any time, the Council is inquiring into the capacity, efficiency or conduct of a Judge who is a member of the Council, or a

member of the Council is absent or is unable to act due to illness or any other cause, then if such member is the—

(a) Chief Justice or Judge of the Supreme Court, the Judge of the Supreme Court who is next in seniority below the Judges referred to in paragraph (b) of clause (2); and

(b) Chief Justice of a High Court, the Chief Justice of another High Court who is next in seniority amongst the Chief Justices of the remaining High Courts,

shall act as a member of the Council in his place.

(4) If, upon any matter inquired into by the Council, there is a difference of opinion amongst its members, the opinion of the majority shall prevail, and the report of the Council to the President shall be expressed in terms of the view of the majority.

(5) If, on information from any source or the report from the Commission under clause (19) of Article 175A, the Council or the President is of the opinion that a Judge of the Supreme Court or of a High Court—

(a) may be incapable of properly performing the duties of his office by reason of physical or mental incapacity; or

(b) may be inefficient in the performance of the duties of his office; or

(c) may have been guilty of misconduct,

the Council, on its own motion or on receipt of report from the Commission under clause (19) of Article 175A or on the direction of the President, shall inquire into the matter.

(6) If, after inquiring into the matter, without unnecessary delay and in case of report or direction under clause (5), within six months, the Council reports to the President that it is of the opinion that—

(a) the Judge is incapable of performing the duties of his office or is found inefficient in performance of the duties of his office or has been guilty of misconduct; and

(b) he should be removed from office,

the President may remove the Judge from office.

(7) A Judge of the Supreme Court or of a High Court shall not be removed from office except as provided by this Article.

(8) The Council shall issue a code of conduct to be observed by Judges, of the Supreme Court and the High Courts.

(9) Subject to the rules made by the Council, there shall be a secretariat of the Council to be headed by a secretary and shall include such other officers and staff, as may be necessary."

19. Amendment of Article 215 of the Constitution.- In the Constitution, in Article 215, in clause (1),—

(A) after the first proviso, the following new proviso shall be inserted, namely:—

"Provided further that the Commissioner and a member shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon the office."; and

(B) in the existing second proviso, for the word "further", the word "also" shall be substituted.

20. Amendment of Article 255 of the Constitution.- In the Constitution, in Article 255, in clause (2), for the words "that person", occurring at the end, the expression "the Chief Justice of a High Court, in case of a Province and by the Chief Justice of Pakistan, in all other cases" shall be substituted.

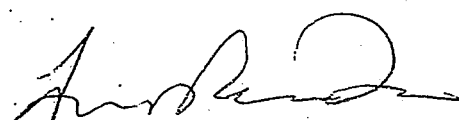
21. Amendment of Article 259 of the Constitution.- In the Constitution, in Article 259, in clause (2), for the words "or nursing", the expression "science, technology, medicine, arts or public service" shall be substituted.

22. Amendment of the Fourth Schedule to the Constitution.- In the Constitution, in the Fourth Schedule, in PART I, in entry 2, after the expression "cantonnement areas," the expression "local taxes, fees, cess, charges, tolls in such areas," shall be inserted.

STATEMENT OF OBJECTS AND REASONS

The Pakistan Bar Council, the Supreme Bar Association, the Provincial Bar Councils and the High Courts Bar Associations have since long recommended to improve the criteria and bring transparency in the appointment process of Judges of the Superior Courts and to give a meaningful role to Majlis-e-Shoora (Parliament) in the appointment process. Also, it has been a consistent demand of the legal community and the civil society to put in place an effective mechanism for performance evaluation of the Judges of the High Courts and make necessary amendments for their removal from office if they are found inefficient and fail to discharge their solemn duty to dispense justice to the public. Further, since the pendency of cases in the Supreme Court and the High Courts has considerably increased thus, causing huge backlog of pending cases of the ordinary litigants. This has necessitated creation of constitutional benches dedicated to hearing matters of constitutional and political significance thus, enabling the Supreme Court and High Courts to focus on the cases of ordinary litigants and dispose them of in a timely manner. Furthermore, over the years, it has been demanded by all and sundry to structure the jurisdictions vested in the Supreme Court and High Courts under Articles 184(3) and 199. Also, recently the Judiciary has recognized that seniority is no longer a benchmark or criteria for appointment of Chief Justices of the High Courts, therefore, it is only proper that a consistent practice is followed for the appointment of Chief Justice of Pakistan, from amongst the most senior Judges of the Supreme Court, while entrusting the nomination of Chief Justice of Pakistan to the Majlis-e-Shoora (Parliament). Finally, Pakistan has been one of the countries, worst affected by climate change. As has been said, we are the first generation to feel the impact of climate change and the last generation that can do something about it. Therefore, it is necessary and need of the hour to recognize right to clean, healthy and sustainable environment as a fundamental right in our Constitution.

2. This Bill has been designed to achieve the aforesaid objective.


Azam Nazeer Tarar
Minister-in-charge

