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, 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 17 of the Constitution.** In the Constitution, in Article 17, in clause (2), for the words "Supreme Court", the words "Federal Constitutional Court", shall be substituted.

4. **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.".

5. **Amendment of Article 63A of the Constitution.** In the Constitution, in Article 63A,-

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(i) in clause (1), in paragraph (b), after the word "votes", the expression ", which shall be counted," shall be inserted;

(ii) in clause (4), after the full stop, the following explanation shall be added:

"*Explanation.*– For removal of doubt and notwithstanding any judgment of any court including the Supreme Court or a High Court, the vote cast by a member contrary to any direction issued by the Parliamentary Party under paragraph (b) of clause (1) shall be counted and not disregarded."; and

(iii) in clause (5), for the words "Supreme Court", the words "Federal Constitutional Court" shall be substituted.

6. **Amendment of Article 68 of the Constitution.** In the Constitution, in Article 68, after the words "Judge of", the expression "the Federal Constitutional Court,", shall be inserted.

7. **Amendment of Article 78 of the Constitution.** In the Constitution, in Article 78, in clause (2), in paragraph (b), after the word "with", the expression "the Federal Constitutional Court," shall be inserted.

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

(i) in paragraph (a), in sub-paragraph (i), after the word "of", the expression "the Federal Constitutional Court," shall be inserted;

(ii) in paragraph (b), for the words "Supreme Court", the expression "Federal Constitutional Court, the 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:

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

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9. **Amendment of Article 100 of the Constitution.** In the Constitution, in Article 100, in clause (1), after the word "of", the words "the Federal Constitutional Court or" shall be inserted.

10. **Amendment of Article 111 of the Constitution.** In the Constitution, in Article 111, after the words "The Advocate-General", the expression "and an Adviser" shall be inserted.

11. **Amendment of Article 114 of the Constitution.** In the Constitution, in Article 114, after the words "Judge of", the expression "the Federal Constitutional Court," shall be inserted.

12. **Amendment of Article 165A of the Constitution.** In the Constitution, in Article 165A,

(A) in clause (2), after the word "including" occurring twice, the expression "the Federal Constitutional Court," shall be inserted; and

(B) in clause (3), after the word "including", the expression "the Federal Constitutional Court," shall be inserted.

13. **Amendment of Article 175A of the Constitution.** In the Constitution, in Article 175A,

(ix) in clause (1),

(A) after the words "Judges of", the expression "the Federal Constitutional Court," shall be inserted; and

(B) after the expression "Shariat Court,", the expression "and for performance evaluation of Judges of the High Courts," shall be inserted;

(x) for clause (2), the following shall be substituted, namely:-

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"(2) For appointment of Judges of the High Courts and the Federal Shariat Court, the Commission shall consist of-

(i)	Chief Justice of the Federal Constitutional Court;	*Chairperson*
(ii)	two most senior Judges of the Federal Constitutional Court	*Members*
(iii)	Chief Justice and two most senior Judges of the Supreme Court;	*Members*
(iv)	Federal Minister for Law and Justice;	*Member*
(v)	Attorney-General for Pakistan;	*Member*
(vi)	a Senior Advocate or an advocate having not less than twenty years of practice in the Supreme Court to be nominated by the Pakistan Bar Council for a term of two years;	*Member*
(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.	*Members*

(xi) after clause (2), substituted as aforesaid, the following new clause (2A), shall be inserted, namely:-

"(2A) For the appointment of the Judges of the Federal Constitutional Court, the members in paragraph (iii) of clause (2) shall be substituted by three most senior Judges of the Federal Constitutional Court who are next in seniority below the Judges referred to in paragraph (ii) of clause (2)."

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(xii) after clause (2A), inserted as aforesaid, the following new clause (2B), shall be inserted:

"(2B) For the appointment of the Judges of the Supreme Court, the Chief Justice of the Supreme Court shall be the Chairperson of the Commission in clause (2) and five next most senior Judges of that Court shall be its members. The members in paragraphs (iv), (v), (vi) and (vii) of clause (2) shall be the other members of the Commission."

(xiii) after clause (2B), inserted as aforesaid, the following new clause (2C), shall be inserted:

"(2C) Notwithstanding anything contained in clause (1) or clause (2), the Chief Justice of the Federal Constitutional Court shall be appointed, on recommendation of the National Assembly Committee, from amongst the three most senior Judges of the Federal Constitutional Court. The National Assembly Committee, constituted for the aforesaid purpose, shall send the name of the nominee to the Prime Minister who shall forward the same to the President for appointment:

Provided that the first Chief Justice of the Federal Constitutional Court shall be appointed by the President, on the advice of the Prime Minister:

Provided further that the first appointment of the Judges of the Federal Constitutional Court shall be made by the President, in consultation with the Chief Justice of the Federal Constitutional Court:

Note.– The provisos to clause (2C) shall cease to form part of the Constitution and shall stand repealed on the appointment of the first Chief Justice of the Federal Constitutional Court and the appointment of the Judges under the second proviso.";

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(xiv) after new clause (2C), the following new clauses shall be inserted:

"(2D) The National Assembly Committee, hereinafter in this Article referred to as the Committee, shall consist of eight members nominated by the Speaker of the National Assembly.

(2E) Each Parliamentary Party shall, as far as practicable, have proportional representation on the Committee.

(2F) The Committee, by majority of its total membership, within seven days prior to the retirement of the respective Chief Justice shall send the nomination as provided in clauses (2C) and (3) of this Article.

(2G) No action or decision taken by the Commission or 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.

(2H) The meetings of the Committee shall be held in camera and the record of its proceedings shall be maintained.

(2I) The provisions of Article 68 shall not apply to the proceedings of the Committee.

(2J) The Committee may make rules for regulating its procedure."

(xv) for clause (3), the following shall be substituted:

"(3) Notwithstanding anything contained in clause (1) or clause (2), the Chief Justice of the Supreme Court shall be appointed, on recommendation of the Committee, from amongst the three most senior

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Judges of the Supreme Court. The Committee, constituted for the aforesaid purpose, shall send the name of the nominee to the Prime Minister who shall forward the same to the President for appointment.";

(xvi) for clause (4), the following shall be substituted:

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

(xvii) in clause (6),

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

(B) after paragraph (ii), the following new paragraphs shall be added:

"(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	*Member*
(iv)	a Federal Minister nominated by the Prime Minister:	*Member";*

(xviii) for clause (8), the following shall be substituted:

"(8) The Commission, by majority of its total membership, shall nominate one person for each vacancy of a Judge in the Federal Constitutional Court, 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 with his advice to the President for appointment:

Provided that for vacancies in the High Courts, the Commission shall, as far as practicable, nominate one-third from the courts subordinate to the High Courts.".

(xix) clauses (9), (10), (11), (12) and (13) shall be omitted;

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(xx) in clause (14), the words "or a Committee" shall be omitted;

(xxi) clauses (15), (16), and (17) shall be omitted; and

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

"(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 to be unsatisfactory by the Commission, 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 unsatisfactory, 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 no 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) Notwithstanding anything contained in the rules made under clause (20), each member of the Commission may nominate a person against a vacancy and the Commission shall consider such nomination.".

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14. Insertion of new Article 175B of the Constitution. In the Constitution, after Article 175A, amended as aforesaid, the following new Article 175B, shall be inserted, namely:-

"**175B. Constitution of Federal Constitutional Court.** (1) The Federal Constitutional Court shall consist of a Chief Justice to be known as the Chief Justice of the Federal Constitutional Court of Pakistan and so many other Judges as may be determined by Act of *Majlis-e-Shoora* (Parliament) or, until so determined, as may be fixed by the President:

Provided that each Province shall have equal number of Judges in the Federal Constitutional Court.

(2) The President may, by Order, make necessary provisions for the matters consequential or ancillary to the establishment and functioning of the Federal Constitutional Court.".

15. Amendment of Article 176 of the Constitution. In the Constitution, in Article 176, for the words "Chief Justice of Pakistan", the words "Chief Justice of the Supreme Court" shall be substituted.

16. Insertion of new Article 176A of the Constitution. In the Constitution, after Article 176, amended as aforesaid, the following new Article 176A shall be inserted, namely:

"**176A. Appointment of Federal Constitutional Court Judges.–** (1) The Chief Justice of the Federal Constitutional Court of Pakistan and each of the other Judges thereof shall be appointed by the President in accordance with Article 175A.

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(2) A person shall not be appointed a Judge of the Federal Constitutional Court unless he is a citizen of Pakistan and does not hold citizenship of a foreign State and-

(a) holds or has held the office of a Judge of the Supreme Court; or

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

(c) 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.

Explanation.– The prohibition contained in clause (2) shall apply to the appointments made after the commencement date of the Constitution (Twenty-sixth Amendment) Act, 2024.".

17. Amendment of Article 177 of the Constitution. In the Constitution, in Article 177,

(i) in clause (1), after the word "Justice", the words "of the Supreme Court" shall be inserted;

(ii) for clause (2), the following shall be substituted:

"(2) A person shall not be appointed as Judge of the Supreme Court unless he is a citizen of Pakistan and does not hold citizenship of a foreign State 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.

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Explanation.– The prohibition contained in clause (2) shall apply to the appointments made after the commencement date of the Constitution (Twenty-sixth Amendment) Act, 2024.".

18. Insertion of new Article 177A of the Constitution. In the Constitution, after Article 177, amended as aforesaid, the following new Article 177A, shall be inserted, namely:-

"177A. Oath of Office of the Chief Justice and other judges of the Federal Constitutional Court.- Before entering upon office, the Chief Justice of the Federal Constitutional Court shall make before the President, and any other Judge of the Federal Constitutional Court shall make before the Chief Justice, oath in the form set out in the Third Schedule.".

19. Insertion of new Article 178A of the Constitution. In the Constitution, after Article 178, the following new Article 178A, shall be inserted, namely:-

"178A. Retiring Age. A Judge of the Federal Constitutional Court shall hold office until he attains the age of sixty-eight years, unless he sooner resigns or is removed from office in accordance with the Constitution:

Provided that where a person who has held the office of a Judge of the Supreme Court is appointed as a Judge of the Federal Constitutional Court, he shall hold the office for a term of three years unless he sooner resigns or is removed from office in accordance with the Constitution. If such a Judge is appointed as the Chief Justice, his term as the Chief Justice shall end on completion of the aforesaid three-year term:

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

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

20. Amendment of Article 179 of the Constitution. In the Constitution, in Article 179, the following new proviso shall be inserted:

"Provided that the term of the Chief Justice of the Supreme Court 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.".

21. Insertion of new Article 179A and 179B of the Constitution. In the Constitution, after Article 179, substituted as aforesaid, the following new Articles 179A and 179B shall be inserted:

"179A. Acting Chief Justice of the Federal Constitutional Court.– At any time when-

(a) the office of Chief Justice of the Federal Constitutional Court is vacant; or

(b) the Chief Justice of the Federal Constitutional Court is absent or is unable to perform the functions of his office due to any other cause,

the President shall appoint the most senior of the other Judges of the Federal Constitutional Court to act as Chief Justice.

179B. Acting Judges of the Federal Constitutional Court. (1) At any time when-

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(a) the office of a Judge of the Federal Constitutional Court is vacant; or

(b) a Judge of the Federal Constitutional Court is absent or is unable to perform the functions of his office due to any other cause,

the President may, in the manner provided in clause (1) of Article 176A, appoint a Judge of the Supreme Court or a High Court who is qualified for appointment as a Judge of the Federal Constitutional Court to act temporarily as a Judge of the Federal Constitutional Court.

Explanation. – In this clause, 'Judge of the Supreme Court or a High Court includes a person who has retired as a Judge of the Supreme Court or a High Court.

(2) An appointment under this Article shall continue in force until it is revoked by the President.".

22. **Insertion of Article 182A of the Constitution.** In the Constitution, after Article 182, the following new Article 182A shall be inserted:

"**182A. Seat of the Federal Constitutional Court.** (1) The permanent seat of the Federal Constitutional Court shall be at Islamabad.

(2) Until provision is made in this regard, the Federal Constitutional Court shall sit at such place or places which the President may, by Order, determine.".

23. **Substitution of Article 184 of the Constitution.** In the Constitution, for Article 184, the following shall be substituted:

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"**184. Original jurisdiction of Federal Constitutional Court.** (1) The Federal Constitutional Court shall, to the exclusion of every other court, have original jurisdiction in any dispute between any two or more Governments.

Explanation.- In this clause, "Governments" means the Federal Government and the Provincial Governments.

(2) In the exercise of the jurisdiction conferred on it by clause (1), the Federal Constitutional Court shall pronounce declaratory judgments only.

(3) Without prejudice to the provisions of Article 199 but subject to clause (3) thereof, the Federal Constitutional Court shall, if it considers that a question of public importance with reference to the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II is involved, have the power to make an order of the nature mentioned in the said Article.

(4) The full court comprising all Judges of the Federal Constitutional Court shall hear and decide petitions under this Article.

(5) All petitions and appeals or review applications against judgments rendered or orders passed under this Article, pending or filed before the Supreme Court prior to commencement of the Constitution (Twenty-sixth Amendment) Act, 2024, forthwith stand transferred to the Federal Constitutional Court and shall only be heard and decided by that Court.".

24. **Insertion of new Article 184A of the Constitution.** In the Constitution, after Article 184, amended as aforesaid, the following new Article 184A, shall be inserted:-

"**184A. Appellate jurisdiction of the Federal Constitutional Court.** (1) An appeal to the Federal Constitutional Court shall lie-

(a) where any Act of *Majlis-e-Shoora* (Parliament) so provides, except, and subject to paragraph (b) of this clause and

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clause (2), against a judgment, decree, order or sentence of a High Court; or

(b) if the High Court certifies that the case involves a substantial question of law as to the interpretation of the Constitution.

(2) An appeal to the Federal Constitutional Court from a judgment or order of a High Court passed under Article 199 to which paragraph (b) of clause (1) does not apply shall lie only if the Federal Constitutional Court grants leave to appeal.

(3) All appeals, petitions or review applications arising out of the judgments or orders of a High Court passed under Article 199, filed or pending before the Supreme Court prior to commencement of the Constitution (Twenty-sixth Amendment) Act, 2024, forthwith stand transferred to the Federal Constitutional Court and shall only be heard and decided by that Court.".

25. **Substitution of Article 185 of the Constitution.** In the Constitution, for Article 185, the following shall be substituted:

"**185. Appellate jurisdiction of the Supreme Court.** (1) Subject to this Article and Article 184A, the Supreme Court shall have jurisdiction to hear and determine appeals from judgments, decrees, final orders or sentences of a High Court, excluding those pronounced or made under Article 199.

(2) An appeal shall lie to the Supreme Court from any judgment, decree, final order or sentence of a High Court-

(a) if the High Court has on appeal reversed an order of acquittal of an accused person and sentenced him to

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death or to transportation for life or imprisonment for life; or, on revision, has enhanced a sentence to a sentence as aforesaid; or

(b) if the High Court has withdrawn for trial before itself any case from any court subordinate to it and has in such trial convicted the accused person and sentenced him as aforesaid; or

(c) if the High Court has imposed any punishment on any person for contempt of the High Court; or

(d) if the amount or value of the subject-matter of the dispute in the court of first instance was, and also in dispute in appeal is, not less than fifty thousand rupees or such other sum as may be specified in that behalf by Act of *Majlis-e-Shoora* (Parliament) and the judgment, decree or final order appealed from has varied or set aside the judgment, decree or final order of the court immediately below; or

(e) if the judgment, decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value and the judgment, decree or final order appealed from has varied or set aside the judgment, decree or final order of the court immediately below.

(3) An appeal to the Supreme Court from a judgment, decree, order or sentence of a High Court in a case to which clause (2) does not apply shall lie only if the Supreme Court grants leave to appeal:

Provided that where the case involves a substantial question of law as to the interpretation of the Constitution, such case forthwith stands transferred to the Federal Constitutional Court. If a question arises as to the jurisdiction of the Federal Constitutional Court and the Supreme Court, the Federal Constitutional Court shall decide the same.

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(4) An appeal under this Article shall be decided within twelve months from the date of its filing in the Supreme Court:

Provided that the appeals pending immediately before the commencement of the Constitution (Twenty-sixth Amendment) Act, 2024 shall be decided within twenty-four months.";

26. **Amendment of Article 186 of the Constitution.** In the Constitution, in Article 186,

(i) for the word "Supreme" wherever occurring, the word "Federal Constitutional" shall be substituted;

(ii) in clause (2), the words "Supreme Court", the words "full court comprising all Judges of the Federal Constitutional Court" shall be substituted.

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

"**186A. Power of Federal Constitutional Court and Supreme Court to transfer cases.–** (1) The Supreme Court may, if it considers it expedient to do so in the interest of justice, transfer any case, appeal or other proceedings, other than the proceedings under Article 199, pending before any High Court to any other High Court.

(2) The Federal Constitutional Court shall have the power to transfer any proceedings instituted under Article 199 before any High Court to any other High Court or to itself.".

28. **Amendment of Article 187 of the Constitution.** In the Constitution, in Article 187,

(i) in the marginal heading, after the words "processes of", the words "Federal Constitutional Court and" shall be inserted; and

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(ii) in clause (1),

(A) after the expression "175,", the words "the Federal Constitutional Court and" shall be inserted; and

(B) for full stop at the end, a colon shall be substituted and thereafter the following proviso shall be added:

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

29. **Substitution of Article 188 of the Constitution.** In the Constitution, for Article 188, the following shall be substituted:

"188. Review of judgments or orders by the Federal Constitutional Court and the Supreme Court. The Federal Constitutional Court and the Supreme Court shall have the power, subject to the provisions of any Act of *Majlis-e-Shoora* (Parliament) and any rules made by the Federal Constitutional Court and the Supreme Court, to review any judgment pronounced or any order made by it.".

30. **Substitution of Article 189 of the Constitution.** In the Constitution, for Article 189, the following shall be substituted:

"189. Decisions of Federal Constitutional Court and Supreme Court binding on other courts. (1) Any decision of the Federal Constitutional Court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all other courts in Pakistan including the Supreme Court.

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(2) Any decision of the Supreme Court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all other courts in Pakistan excluding the Federal Constitutional Court".

31. Substitution of Article 190 of the Constitution. In the Constitution, for Article 190, the following shall be substituted:

"190. Action in aid of Federal Constitutional Court. All executive and judicial authorities throughout Pakistan shall act in aid of the Federal Constitutional Court.".

32. Substitution of Article 191 of the Constitution. In the Constitution, for Article 191, the following shall be substituted:

"191. Rules of procedure. Subject to the Constitution and any Act of *Majlis-s-Shoora* (Parliament), the Federal Constitutional Court and the Supreme Court may make rules regulating their respective practice and procedure.".

33. Amendment of Article 192 of the Constitution. In the Constitution, in Article 192, in clause (1), for the words "law", the expression "an Act of *Majlis-e-Shoora* (Parliament)" shall be substituted.

34. Amendment of Article 193 of the Constitution. In the Constitution, in Article 193, in clause (2),

(i) for the rider provision and paragraphs (a) and (b), the following shall be substituted:

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

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(a) he has, for a period of not less than fifteen years, been an advocate of a High Court; or

(b) he has, for a period of not less than fifteen years, held a judicial office in Pakistan.

Explanation-I.- 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;

Explanation-II.– The prohibition contained in clause (2) shall apply to the appointments made after the commencement date of the Constitution (Twenty-sixth Amendment) Act, 2024.";

(ii) clause (3) shall be omitted.

35. Amendment of Article 199 of the Constitution. In the Constitution, in Article 199,

(i) after clause (1), the following new clause (1A) shall be inserted:

"(1A) For the removal of doubt, the High Court shall not make an order on its own (suo *motu*) in any matter under clause (1) of this Article.";

(ii) in clause (3), after the word "law", occurring at the end, the words "or performing functions under any law relating to national security" shall be inserted; and

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(iii) in clause (5), after the words "other than", the expression "the Federal Constitutional Court," shall be inserted.

36. Amendment of Article 200 of the Constitution. In the Constitution, in Article 200,

(i) in clause (1), for the expression "The President may transfer a Judge of a High Court from one High Court to another High Court, but no Judge shall be so transferred except with his consent and after consultation by the President with the Chief Justice of Pakistan and the Chief Justices of both High Courts:", the expression "The President may transfer a Judge of a High Court from one High Court to another High Court, on the recommendation of and for such period as determined by the Judicial Commission of Pakistan." shall be substituted;

(ii) after clause (1), amended as aforesaid, the following new clause (1A) shall be inserted:

"(1A) The seniority of a Judge of a High Court transferred under clause (1) shall be reckoned from the date of his initial appointment as a Judge of a High Court:

Provided that such Judge shall not be appointed as the Chief Justice of the High Court to which he has been transferred under this Article."; and

(iii) in clause (2), after the word "such", occurring for the second time, the word "additional" shall be inserted.

37. Amendment of Article 202 of the Constitution. In the Constitution, in Article 202, for the words "law", the expression "an Act of *Majlis-e-Shoora* (Parliament)" shall be substituted.

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38. **Amendment of Article 204 of the Constitution.** In the Constitution, in Article 204, for clause (1), the following shall be substituted:

"(1) In this Article, "Court" means the Federal Constitutional Court or the Supreme Court or a High Court;".

39. **Amendment of Article 205 of the Constitution.** In the Constitution, in Article 205, after the word "Judge", the words "of the Federal Constitutional Court or" shall be inserted.

40. **Amendment of Article 206 of the Constitution.** In the Constitution, in Article 206, for the words "Supreme Court" wherever occurring, the words "the Federal Constitutional Court or of the Supreme Court" shall be substituted.

41. **Amendment of Article 207 of the Constitution.** In the Constitution, in Article 207, for the words "Supreme Court" wherever occurring, the words "the Federal Constitutional Court or of the Supreme Court" shall be substituted.

42. **Amendment of Article 208 of the Constitution.** In the Constitution, in Article 208,

(i) for the words "Supreme Court and the Federal Shariat Court", the expression "Federal Constitutional Court, the Supreme Court, the Federal Shariat Court and the Islamabad High Court" shall be substituted;

(ii) for the word "servants", the expression "employees" shall be substituted; and

(iii) for full-stop at the end, a colon shall be substituted and thereafter the following proviso shall be added:

"Provided that till such time rules are made in this regard, the rules providing for the appointment of officers and employees of the Supreme Court

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and for their terms and conditions of employment shall *mutatis mutandis* apply to the officers and employees of the Federal Constitutional Court.".

43. **Substitution of Article 209 of the Constitution**. In the Constitution, for Article 209, the following shall be substituted:

"**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 the Federal Constitutional Court;

(b) the Chief Justice of the Supreme Court;

(c) the next most senior Judge of the Federal Constitutional Court; and

(d) the two most senior Chief Justices of 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 or conduct of a Judge who is a member of the Council, or a member of the Council is absent or in unable to act due to illness or any other cause, then

(a) if such member is the Chief Justice or Judge of the Federal Constitutional Court, the Judge of the Federal Constitutional Court who is next in seniority below the Judge referred in paragraph (c) of clause (2), and if such member is the Chief Justice of the Supreme Court, the next most senior Judge of that Court, and

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(b) if such member is the 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 Federal Constitutional Court or 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 may on its own motion, or the Council shall on receipt of report from the Commission under clause (19) of Article 175A, or the President shall direct the Council to, inquire into the matter.

(6) If, after inquiring into the matter, without unnecessary delay, 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,

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